
(1988) 07 DEL CK 0004
In the Delhi High Court
Case No : C.W.P. 1281 of 1985

D.C.M. Ltd.

APPELLANT

Vs

Union of India (UOI) and others

RESPONDENT

Date of Decision : 22-07-1988

Acts Referred:

Citation : AIR 1989 Delhi 193

Hon'ble Judges : Sunanda Bhandare, J;S.S. Chadha, J;Gian Chand Jain, J

Bench : Full Bench

Advocate : J.B. Dadachanji and Co. with F.S. Nariman, Rajiv Sawhney and Sanjeev Anand, for the Appellant; R.K. Anand, Amit Kemka, S.P. Sharma for Respondent No. 1, M.K. Ramamurthy, for Respondent Nos. 6 to 18, R.S. Dewan, for Respondent No. 4, Anil Kumar Gupta and Ms. Ahoka Jain for Respondent Nos. 2, 3 and 5, for the Respondent

Judgement

S.S. Chadha, J.—This petition under Art. 226 of the Constitution of India seeks a writ of certiorari to quash the decision of the Lt. Governor, Delhi communicated in the letter dated April 15, 1985 rejecting the petitioner's application dated March 27, 1985 and refusing the petitioner permission under S. 250 of the Industrial Disputes Act, 1947 (for short called I.D. Act) to close its undertaking Delhi Cloth Mills at Bara Hindu Rao, Delhi with effect from July, 1, 1985. The further relief claimed is to declare that the provisions of S. 250 of the said Act (as inserted by Act 46 of 1982), are ultra vires Arts. 14 and 19(1)(g) of the Constitution of India.

2. Petitioner No. 1 is a public limited company incorporated on March 26, 1889 under the name and style of Delhi Cloth and General Mills Co. Ltd. under the provisions of Act 6 of 1882. The name of the said company was changed on Oct. 6, 1983 to D.C.M. Ltd. An industrial unit (hereinafter called the Mill) was set up in the year 1889 at the present site at Bara Hindu Rao, Delhi. The undertaking of the Mill comprises of the textile mill with spinning, weaving and processing activities. At present the licensed and installed capacity of the Mill is 943 looms

and 49,244 spindles. The Mill has its own coal based power plant which meets part of the Mill's power requirements. For the balance, the Mill is dependent upon the power from the Delhi Electric Supply Undertaking. The Mill complex is located over an area of 24 acres. It has its own separate housing colony for its employees which is located over an area of 39 acres. The total Mill complex area is spread over an area of about 63 acres. At present, the total number of 6,109 workmen are employed in the Mill.

3. We may, at this stage, briefly recall the provisions brought to our notice during hearing to appreciate the correspondence exchanged between the parties and the rival contentions.

4. The Delhi Development Act, 1957 (hereinafter referred to as the Act) was enacted to provide for the development of Delhi according to plan and for matters ancillary thereto. Section 3 provides for the constitution for the purposes of the Act of an authority to be called the Delhi Development Authority (hereinafter referred to as the Authority). The Authority is a body corporate by the name aforesaid having perpetual succession and a common seal. The Authority consists of, inter alia, a Chairman who shall be the Administrator of the Union Territory of Delhi, ex officio. The objects of the Authority are to promote and secure the development of Delhi according to plan and to do everything necessary or expedient for purposes of such development and for purposes incidental thereto. The provisions relating to the preparation of the Master Plan and Zonal Development Plans are contained in Chapter III. The Act required the Authority to carry out a civic survey and prepare a Master Plan for Delhi. A draft Master Plan was accordingly drawn up and released to the public on July 8, 1960 for the purpose of inviting objections and suggestions. After consideration of the objections that were filed and hearing, the Master Plan was finalised. The plan as finally prepared by the Authority was submitted to the Government of India for its approval as required under S. 9 of the Act. The Master Plan was approved by the Central Government under S. 9(2) of the Act and was published on Sept. 1, 1962 in compliance with the provisions of S. 11. Section 11A was inserted by S. 79(Act No. 36 of 1963) empowering the modification to the Master Plan and the Zonal Development Plan.

5. Chapter I of the Master Plan for Delhi deals with the land use plan. Para 1 of Chapter I deals with land use plans for Delhi Metropolitan Area. Para 2 of the same deals with land use plan for urban Delhi. It gives the characteristics of the plan. The land use plan is general, but by the nature of the legislation under which it has been prepared it carries legal sanction and has a certain amount of rigidity, though it can be amended according to law from time to time. There is provision to revise the plan when considered necessary after publication and public hearing. The Zoning Regulations are also embodied in the plan. These are required to be strictly enforced for each kind of development and are subject to stipulations contained therein. Space standards for community facilities and services stipulated in the Master Plan are to govern zonal and sub-division plans.

It also contains the major policy decisions. One of the major policy decisions, viz., of considering urban Delhi as the core of the larger Metro political complex has been stated and the necessity of planning and developing the Ring Towns with a sound industrial base and employment in Government offices, with regulatory measures in the intermediate rural areas has been explained. The other major policies are stated therein, inter alia, "it would, however, be unwise to locate large and heavy industries in Delhi, which would, besides posing problems of air pollution, waste disposal, traffic congestion etc., also give an industrial bias to the city which would be undesirable in a national capital. Moreover, Delhi does not have enough water supply and power to sustain large scale industries."

6. Para 5 of Chapter I deals with Industry and Manufacturing. Here, proposals for industry in urban areas are made. It is noticed therein that there are only two existing planned industrial districts in Delhi. One is along the Najafgarh Road developed by the erstwhile Delhi Improvement Trust. This has both extensive type of manufacturing units like D.C.M. Chemicals and intensive industries like the Hindustan Breakfast Food Factory. The other is a small scale industrial estate near Okhla developed by the Government of India. The rest of the existing industries are scattered all over the city as described in the Chapter of Land Use survey and Analysis in the work studies. In sub-para A of Para 5, provision has been made for flatted factories. It is stated that in order to provide work centers within walking distance of the existing concentration of population in the central areas, it is proposed to have "flatted factories". These are multi-storied buildings with right density employment ratio which can house many of the small industries that at present operate in commercial areas, as in Kamla Market. Areas are suggested for the location of "flatted factories" in the central area of Delhi, the number depending upon local factories in each area. The D.C.M. site comprising of 27 acres is specifically mentioned therein. The decisions as regards D.C.M. site in the Master Plan itself are that. The Delhi Cloth Mills have to move out of this congested area to the extension industrial districts according to the time schedules given for non-conforming uses. The present site should be developed for flatted factories in gradual stages to relocate the industries now located in Ahata Kidara and other areas." In sub-para E of Para 5, it is again reiterated that as a matter of general policy large scale and heavy industries should not be encouraged in urban Delhi, that this matter has been fully discussed in the Chapter on Industry and Manufacturing in the work studies and that all the noxious industries which are now located in the residential areas should be re-located in areas meant for extensive industries.

7. Chapter II of the Master Plan provided for Zoning and Sub-Divisional Regulations. It is reiterated that zoning regulations and their administration are a major tool in carrying out the land use part of the Master Plan of which it is an integral part. The Union Territory of Delhi has been divided into 24 use zones as designed therein. The land use plan shows the various use zones. Para 3 of Chapter II deals with non-conforming uses, the discontinuance of non-

conforming uses and also provides time schedule for nonconforming uses. It is apposite to reproduce the same: --

3. NON-CONFORMING USES :

The provision regarding these will come into effect with respect to industrial nonconforming uses and such other uses specifically mentioned below. For the rest of the non-conforming uses the provisions will come into effect only after the preparation of the zonal development plans since only these will determine the sitting of local facilities like shops etc. mentioned above. All existing places of worship, temples, gurudwaras, mosques churches, Jain temples, Parsi fire-temples, etc., and burial grounds shall not be considered as non-conforming uses.

DISCONTINUANCE OF NONCONFORMING USES.

A. Industrial Non-Con forming Uses:

Such Industrial uses that do not conform to the land use shown in the Master Plan, will have to be shifted in gradual stages to industrial areas earmarked in the Plan. In allocating new industrial sites, the demands of the non-conforming uses will have to be given priority by the authorities and if possible other inducements may have to be given for expediting the shifting. This can be in the shape of providing extra land needed for expansion by the industry at the new site allowing the present owners to develop land from which they are shifting in accordance with the land use shown in the Plan, providing a loan etc. It should also be noted that the shifting of industry according to plan will be possible only if suitable land for the purpose is available.

While it is agreed that the non-conforming industries should be given suitable time to shift from their present site, it is necessary to have a uniform policy on which to lay down a time schedule for their shifting. It is recognised that this process must be largely governed by the fact that there should be the minimum amount of dislocation of production and the industries and workers should not be put to undue hardship.

Time-Schedule.

(1) Noxious industries must be the first to go from their present location. A three year period may be stipulated within which they have to be shifted with additional time if the capital value exceeds one lakh rupees.

(2) Industries which are not noxious but are causing nuisance should be given up to four years for shifting.

However, additional time limit, as per table, up to a maximum of 10 years may be given to nuisance industries on a sliding scale on the following criteria:

(a) The capital value of land, structure and machinery allowing for depreciation; more time is given to industry with higher capital value.

(b) The registered employment of industry. More time given to industries

employing more workers.

(c) The production floor space per worker. More time if the industry has more floor space per worker which is computed by dividing the total production floor space in square feet by the total registered industrial employment.

(3) Non-nuisance industries will get more time on each of the counts up to a maximum of 20 years.

(4) A non-conforming use tax will be levied if the industry wants to stay after the moratorium period has lapsed and it is considered by the Competent Authority that such permission should be given. In such cases, the extension should not exceed ten years.

8. Section 14 of the Act on which considerable arguments on its construction and scope have been addressed by the counsel for the parties reads as under :--

After the coming into operation of any of the plans in a zone no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan:

Provided that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by regulations made in this behalf any land or building for the purpose and to the extent for and to which it is being used upon the date on which such plan comes into force.

Section 29 lays down penalties. Sub-sec. (2) of S. 29 provides that any person who uses any land or building in contravention of the provisions of S. 14 or in contravention of the any terms and conditions prescribed by regulations under the proviso to that section shall be punishable with fine which may extend to five thousand rupees and in the case of a continuing offence, with further fine which may extend to two hundred and fifty rupees for every day during which offence continues after conviction for the first commission of the offence.

9. The case set out by the petitioner in the writ petition is that in view of the provisions of the Act and the Master Plan, the industrial undertaking of the petitioner is located in a non-conforming area and the respondents have been pressing the petitioner to move out of the non-conforming area or close down the undertaking at Bara Hindu Rao. Reference is made to the correspondence hereinafter noticed. The Delhi Administration addressed a letter dated June 1, 1981 to the Mill on the subject of shifting of industries from nonconforming area to the conforming areas. The Mill was informed that the Delhi Administration is setting up an industrial complex at Narela in an area of about 612 acres to be developed through the Delhi State Industries Development Corporation and that a part of this area was proposed to be used for shifting the industries located in the nonconforming areas. It was stated that It has been reported that your industrial unit is located in the non-conforming area. The Secretary (Industry) would like to discuss about the shifting of the unit to Narela Industrial Complex". The Mill was requested to depute a senior responsible representative with

information about (1) the nature of industry carried out, (ii) the area presently occupied, (iii) the date of establishment, (iv) the appropriate annual turnover, (v) employment, (vi) affluent, if any, discharged by the industry and (vii) the requirement of land in the Narela Industrial Complex. It was also desired that the representative should be in a position to convey the general view of the management about shifting of the unit to Narela Industrial Complex. A meeting was held pursuant to the letter of June 1, 1981 between the representative of the Mill and Secretary (Industries). Subsequently, a letter dated Dec. 1, 1981 with a brief write up was addressed by the Mill to the Secretary, Ministry of Works and Housing on the subject of shifting of the Mill from its existing location to a conforming area under the Master Plan of Delhi. It was expressed that the shifting of the unit would involve colossal expenditure which was unthinkable in the present unhealthy status of the textile industry, not to mention of the great hardship that would be faced by the employees. It was suggested that the property of about 63 acres be declared commercial in the proposed revised plan so that the Mill could develop the property and from the funds raised, it may be in a position to plan shifting the Mill to a new location conforming to the Master Plan. A request was made that an area of about 200 acres in an industrial complex be earmarked for the unit. This letter was forwarded by the Government to the Authority for further study. The Vice-Chairman of the Authority in his letter dated Jan. 6, 1982 informed the Mill that "as per the Master Plan for Delhi, it appears that the shifting of the unit is inevitable" but called the representative of the Mill for discussions to ascertain whether there is a scope to process the case further. In the meanwhile, the Mill drew up a proposal for the development of Bara Hindu Rao Complex for residential purposes and also for flatted factories in accordance with the land uses provided under the Master Plan. A meeting was held between the representative of the Mill and officials of the Authority for consideration of the proposal for the redevelopment of 63 acres of land at Bara Hindu Rao in accordance with the Master Plan for residential purposes and for flatted factories. A letter dated Sept. 11, 1982 was addressed by the Mill to the Authority endorsing a detailed proposal as prepared by the Architects in accordance with the parameters laid down in the Master Plan of Delhi and requesting for a "no objection" Certificate" so that the Mill could proceed further with the presentation of necessary drawings for submission to the appropriate authority.

10. A Technical Committee of the Authority examined the scheme of the Mill for flatted factories and group housing for their plots located in Bara Hindu Rao and Kishan Ganj area for issue of "no objection certificate". A detailed report was made for consideration of the Authority and it was observed that the scheme envisaged is feasible for implementation in phases. It was also noticed that the shifting of Mill could involve a lot of working population and consequently, the income and products manufactured by the. Mill and that this needs to be carefully looked into in terms of consequences to Delhi economy by Delhi Administration and the Ministry of Industries. The proposal contained in the

agenda was approved by the Authority's resolution No. 26 dated Feb. 1, 1983. The scheme of re-development proposed by the Mill was thus duly approved and accepted by the Authority in its said resolution. The Authority subsequently by Resolution No. 3 dated Aug. 1, 1986 revoked its earlier Resolution No. 26 dated Feb. 1, 1983. That resolution was challenged as bad in law, ultra vires and violative of the provisions of the Delhi's Master Plan and the Act in "D.C.M. Ltd. v. Delhi Development Authority etc." C.W.P. 268/86, which was allowed by us in the judgment dated May 22, 1987.

11. As regards the proposal for shifting of the industrial undertaking, the petitioner wrote a letter dated May 3, 1983 that it would need 150 acres (as against its earlier request for 200 acres) of land for its proposed shifting. A request was made that keeping in view its future expansion plans, an allotment of 150 acres of land in Delhi be made, that it is proposed to install spinning, weaving and processing facilities with modern equipment requiring skilled manpower at the new location, that housing at site for workers is also contemplated and that the textile industry with up-to-date technology is a power intensive industry and requires nearly 6-8 MW power. In answer to the request of the petitioner for allotment of alternative land to the industrial undertaking for re-locating the Mill, the Authority vide letter dated July 15, 1983 informed the petitioner "that as per the Delhi Master Plan, heavy and large scale industries are not permitted to be located in the Union of Territory of Delhi Therefore, land measuring 150 to 200 acres would not be available."

12. The stand of the petitioner is that the Mill is located in a non-conforming area and it can no longer continue the industrial activities at the present site and in fact the heavy and large scale industries are not permitted to be located in the Union Territory of Delhi. Apart from it, the contention is that the industrial undertaking per se is economically unviable and unprofitable. The losses suffered by the industrial undertaking of the petitioner over the past years from 1978-79 to 1983-84 are detailed in para 36 of the amended writ petition. The reasons for the alleged recurring heavy losses being suffered by the Mill are detailed in para 37 of the amended writ petition. According to the petitioner, it is not possible to convert the present industrial undertaking into a modern plant at the present site for various reasons, inter alia, that the industrial undertaking is located in a non-conforming area, that the buildings are very old and not designed for the installation of a modern equipments and that the cost of renovation and modernization would not be substantially less than the cost of installing a new and modern unit projected at about Rs. 50 crores. It is alleged that in view of the recurring loss being suffered, the Mill being located in non-conforming area and other factors the petitioner was compelled to take the decision to close down the industrial undertaking.

13. No condition was imposed, prior to the amendment of the I.D. Act by 1976 amendment, requiring the permission of the appropriate Government for closing down" an industry. Chapter V-B containing Ss. 25K to 25S was inserted in the

I.D. Act by Amendment Act 32 of 1976 with effect from March 5, 1976. Restraints were imposed on the decisions of the owners of the industrial establishments in the matter of lying off or retrenchment of the workmen (in addition to those contained in Ss. 25A to 25J) or closure of the industrial undertaking. Certain employers challenged the constitutional validity of Ss. 25O and 25R of the I.D. Act before the Supreme Court. The Supreme Court in the case of *Excel Wear and Others Vs. Union of India (UOI) and Others*, held that the law, embodied in Ss. 25O and 25R was bad for violation of Art. 19(1)(g) of the Constitution and it declared that S. 25O of the I.D. Act as a whole and S. 25R in so far as it relates to the awarding of punishment for infraction of the provisions of S. 25O are constitutionally bad and invalid for violation of Art. 19(1)(g) of the Constitution. We will deal with this judgment later. The legislature re-enacted the provision after it was struck down by the Supreme Court. A new S. 25O was inserted by Amendment Act 46 of 1982 enforced with effect from Aug. 21, 1984 (for short called the new S. 25O) reading as follows:--

25-O(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applied 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 sub-section 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-sec. (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-sec. (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 sub-section, 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-sec. (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 under taking 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-sec. (2) or where permission for closure is deemed to be granted under sub-sec. (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.

14. The petitioner made an application on March 27, 1985 giving complete and detailed information in the prescribed form together with annexure to the Administrator, Union Territory of Delhi and seeking permission under the new S. 250 of the I.D. Act for the closure of the Mill with effect" from July 1, 1985 for the reasons stated in the application. It was stated, inter alia, that specially in view of the fact that (i) the industrial undertaking is located in a nonconforming area, (ii) on account of haphazard growth in the area of Bara Hindu Rao leading to extreme congestion the dense population in the vicinity is exposed to the hazards of pollution, traffic, fire and unhealthy environment and (iii) also in view of the fact that various sections of the present factory buildings which are very old have become unsafe, the company has taken a decision to close down the industrial undertaking with effect from July 1, 1985. It is further alleged that the undertaking is now economically not viable and is suffering losses. It is urged that the closure shall (1) ensure due compliance with the provisions of the Master Plan and (2) to enable the Mill to undertake immediately the re-development of the area in accordance with the Master Plan for purposes of setting up a residential complex and flatted factories in accordance with approval plans and (3) immediately mitigate the hazards of pollution, fire and unhealthy

environment to the population of vicinity and to save the petitioner from possible claims for damages and criminal prosecutions.

15. The petitioner was requested to attend the meeting in connection with its application dated March 27, 1985 with Labour Commissioner on April 2, 1985 at 12 noon to discuss the letter sent by the petitioner pertaining to the closure of the Mill. The petitioner could not attend the hearing on April 2, 1985 and the formal hearing was fixed on April 6, 1985 at 11 a.m. The meeting was held on April 6, 1985 which is stated by the petitioner as not proper hearing under the new S. 250 of the I.D. Act but not pressed at the hearing of the petition.

16. By the impugned letter dated April 15, 1985, Secretary (Labor)/Labor Commissioner informed the petitioner that the matter had been examined in detail and they are of the opinion that the closure is not desirable in public interest and the reasons advanced by the management are inadequate to justify the same. The reasons recorded are:--

The closure of the unit is not in public interest as this would render almost 6000 workers jobless and adversely affect thousands of their family members. Besides, trade and commercial activity associated with this mill would be adversely affected on account of the closure : It is in public interest that the management makes all out efforts towards the efficient functioning of this Mill. Finally, the operations of this unit are not dangerous to the lives of the industrial workers and the people living around the factory. The location of the unit in a thickly populated locality therefore does not involve any community task.

17. To the challenge of Mr. F.S. Nariman, Senior Advocate, the learned counsel for the petitioner that the new S. 250 of the I.D. Act which requires the prior permission of the appropriate Government for closing down an industry to which Part V-B of the I.D. Act applies, is void on the ground that it is violative of the fundamental rights guaranteed under Art. 14 and Art. 19(1)(g) of the Constitution of India and is not saved by Art. 19(6) . Mr. R.K. Anand, Senior Advocate, the learned counsel for the Central Government invokes, as a preliminary submission, the umbrella of Art. 31C and says that it is beyond the pale of challenge on the ground of violation of Art. 14 and Art. 19(1)(g) . The submission is that Art. 31C excludes from the operation of Art. 13 such laws which give effect to the policy of the State towards securing all or any of the principles laid down in Part IV even though such law is inconsistent with, or takes away or abridges any of the rights conferred by Art. 14 or Art. 19. He relies on the decision of the Supreme Court in *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another*, to urge that Art. 31C as amended still operates in the field. Relying upon a number of decisions of the Supreme Court (not referred as not necessary to decide in view of our opinion on Art. 31C, he urges that there is "annexure" or "reasonable connection" of the provisions contained in S. 250 of the I.D. Act and it gives effect to the directive principles of the State Policy contained in Part IV particularly in Arts. 43 and 43A of the Constitution. We intend to dispose of this contention first.

18. Article 31C was inserted by s. 3 of the Constitution (Twenty-fifth) Amendment Act, 1971 reading as follows:--

31C. Saving of laws giving effect to certain directive principles.-- Notwithstanding anything contained in Art. 13, no law giving effect to the policy of the State towards securing the principles specified in Cl. (b) or Cl. (c) of Art. 39 shall be deemed to be void " on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Art. 14, Art. 19 or Art. 31, and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy:

Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply there to unless such law, having been reserved for the consideration of the President, has received his assent.

In His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, , the Supreme Court held by a majority that though by Art. 368 Parliament is given the power to amend the Constitution, that power cannot be exercised so as to damage the basic feature of the Constitution or so as to destroy its basic structure. The first part of S. 3 inserting Art. 31C was held valid. The second part, namely "and no law containing a declaration that it is for giving effect to such policy shall be called in question in any Court on the ground that it does not give effect to such policy" was held as invalid. Part IV of the Constitution contains directive principles of State Policy. Article 39, which gives particular directions to the State, reads thus:--

Certain principles of policy to be followed by the State -- The State shall in particular, direct its policy towards securing--

(a) xxxxxxxxxxxxxxxxxxxxxxx

(b) That the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

The provisions of Art. 31C, as they stood then, conferred power on Parliament and the State Legislature to enact laws forgiving effect to the principles specified in Cls. (b) and (c) of Art. 39. Article 43 and Art. 43A contain directions to the State to secure to all workers work, a living wage, conditions of work etc.

19. Section 4 of the Constitution (Forty-Second) Amendment Act, 1976 which came into force with effect from Jan. 3, 1977 amended Art. 31C by substituting the words and figures "all or any of the principles laid down in Part IV" for the words and figures "the principle specified in Cl. (b) or Cl. (c)of Art. 39". The scope of the laws which fall within Art. 31C had been expended by this amendment. All laws giving effect to the policy of the State towards securing "all or any of the principles laid down in Part IV" were attempted to be saved from

the Constitutional challenge under Art. 14 or Art. 19.

20. In *Excel Wear and Others Vs. Union of India (UOI) and Others*, reference was made to the effect of amended Art. 31C which came into force on Jan. 3, 1977 vis-a-vis S. 250 of the I.D. Act for violation of Art. 19(1)(g) of the Constitution. It was ruled that the law (S. 250) which was enacted on March 19, 1976 could, by no stretch of imagination, be said to be a law giving effect to the policy of the State towards securing any of the principles laid down in Part IV within the meaning of amended Art. 31C came into force in Jan. 1977. The constitutional validity of the amended Art. 31C was not before the Supreme Court or considered there.

21. A question arose before the Supreme Court in *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, as to whether S. 4 of the Constitution (Forty-second) Amendment Act, 1976 amending Art. 31C of the Constitution is constitutionally valid. By an order dated May 9, 1980 (Y.V. Vhandrachud, C.J. and Gupta, Untawalia and Kailasam, JJ.), it was ruled:--

Section 4 of the Constitution 42nd Amendment Act is beyond the amending power of the Parliament and is void since it damages the basic or essential features of the Constitution and destroyed its basic structure by a total exclusion of challenge to any law on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Art. 14 or Art. 19 of the Constitution, if the law is for giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV of the Constitution.

Bhagwati, J. preferred to pass a final order in the case when his Lordship delivered the reasoned judgment. The reasons for the order which was passed on May 9, 1980 are given later on July 31, 1980 by Chandrachud, C.J. for himself and the aforesaid three Judges. Bhagwati, J. took the contrary view that S. 4 of the Constitution (Forty-second) Amendment Act, 1976 does not damage or destroy the basic structure of the Constitution and is within the amending power of Parliament and the amended Art. 31C is constitutional and valid.

22. By reading para 29 of the said reported case, it seems that the question before the Supreme Court was whether the amendment made by S. 4 of the 42nd Amendment to Art 31C of the Constitution was valid or not and not the challenge to the amended Art 31C. Mr. Palkiwala did not challenge there the validity of the unamended Art 31C. The unamended Art. 31C formed the subject matter of a separate proceeding in which the order was announced on the same day i.e. May 9, 1980 by the Constitution Bench presided over by Chandrachud, C.J. for himself on behalf of V.R. Krishna Iyer, V.D. Tulzapurkar and A.P. Sen, JJ. in *Waman Rao and Others Vs. Union of India (UOI) and Others*, . It was held:--

Article 31C of the Constitution, as it stood prior to its amendment by S. 4 of the Constitution (42nd Amendment) Act, 1976, is valid to the extent to which its constitutionality was upheld in *Kesavananda Bharti*. Article 31C, as it stood prior to the Constitution (42nd Amendment) Act does not damage any of the basic or

essential features of the Constitution or its basic structure.

The reasons are given later on Nov. 13, 1980. Bhagwati, J. gave his own reasons for subscribing to this order and later adopted the reasons of the judgment in *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, . The question as to the validity of the unamended Art. 31C was considered afresh and held valid to the extent to which its constitutionality was upheld in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, . Reading the two orders made on May 9, 1980 by the Constitution Benches, both presided over by Chandrachud, C.J., we are absolutely clear that what struck down was S. 4 of the Constitution (42nd Amendment Act of 1976 and not amended Art. 31C. The unamended Art. 31C as it stood prior to 42nd Amendment still remains on the statute book.

23. A question arose in the case of *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another*, before the Constitution Bench of the Supreme Court whether the Coking Coal Mines Nationalization Act, 1972 is entitled to the protection of Art. 31C of the Constitution. The decision in *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, , was strongly relied upon by the counsel for the petitioners there to support his submissions regarding what he claimed was the true content and interpretation of I Art. 31C. Mr. R.K. Anand read and re-read: the reported case particularly paras 10 to 14 I of the report to contend that the majority judgment in *Minerva's* case has been overruled on the ground that the judgment was obiter and the correct view on Art. 31C is that contained in the dissenting judgment of Bhagwati, J. Support is taken for the same view expressed by Mr. H.M. Seervai in *Constitutional Law of India*, Third Edition. Para 17.742 C.P. 1661. We are unable to persuade ourselves to take this view.

24. O. Chinnappa Reddy, J. who spoke for the Constitution Bench of five Judges with A.P. Sen, J. also separately agreeing in *Sanjeev Coke's* case, expressed in para 10 of the report that "We have some misgivings about the *Minerva Mill's* decision despite its rare beauty and persuasive rhetoric". His Lordship then gave three reasons, firstly, "no question regarding the constitutional validity, of S. 4 of the Constitution (Forty-second) Amendment Act, 1976 appears to have arisen for consideration in that case", secondly, "the question of the constitutional validity of Art. 31C appears to us to be concluded by the decision of the Court in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, and thirdly, "notwithstanding the strong reliance placed upon *Minerva Mills* by the learned counsel for the petitioners, we are not really concerned with the decision in that case since that is not the point at issue before us." In our view although in para 9 of the report there is a recognition of the fact that S. 4 of the Constitution (Forty-second) Amendment Act, 1976 which substituted the words "all or any of the principles laid down in Part IV" for the words "the principles specified in Cl. (b) or (c) of Art. 39" was struck down by the Court in *Minerva's* case, yet no words have been employed, expressly or impliedly, suggesting categorically a

wrong decision or disagreement with the view or overruling the majority judgment in *Minerva's* case. A judgment of the Constitution Bench of five Judges could not be considered as overruled with the expressions employed or with the same strength of the Bench. Serious doubts are only expressed to the correctness of the view in *Minerva's* case relying on *Kesavananda Bharti's* case that "the dialectics, the logic and the rationale involved in upholding the validity of Art. 31C when it confined its protection to laws enacted to further Art. 39(b) or (c) should uncompromisingly lead to the same resolute conclusion that Art 31C with the extended protection is also constitutionally valid" But then it is said that "we wish to say no more about the *Minerva's* case as we are told that there is pending a petition to review the judgment". The Constitution Bench of five Judges stated as a matter of interpretation of *Minerva's* case judgment that the reasoning advanced is not sustainable in view of *Kesvananda's* case or the decision is questionable, but did not declare any law under Art 141 of the Constitution different than that laid down in *Minerva's* case. We are told at the Bar that a review petition in *Minerva's* case was filed on Sept. 5, 1980 and the matter came up before the Constitution Bench on Sept 10, 1980 when the Court merely "adjourned the matter". The cases were ultimately disposed of on Sept 9, 1986 and the decision is reported in *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, and the law declared in *Minerva's* case has not been reviewed.

25. The question in *Minerva's* case decided on May 9, 1980 squarely related to the constitutional validity of S. 4 of the Constitution (Forty-second) Amendment Act 1976 amending Art 31C of the Constitution. It was not a casual observation made in the judgment but declaration of law on a question argued at length before the Supreme Court even though it did not arise in that case. This Court in *Minerva's* case even if it be obiter. The protection of Art 31C invoked by the Government counsel is thus not available to shield the challenge to the virus of new S. 250.

26. The virus of new S. 250 of the I.D. Act is questioned by Mr. F.S. Nariman firstly on the ground that it is an illegal deviation from the usual scheme of the I.D. Act which provides quasi-judicial function of industrial adjudication by established Labour Court, Industrial Tribunal or the National Tribunal. This argument was not advanced in *Excel Wear and Others Vs. Union of India (UOI) and Others*, , but the counsel urges that it is open to him to address arguments on a question not settled by the Supreme Court. Section 25-O vests the power in the appropriate Government to grant or refuse to grant permission to the employer to close down his undertaking by making necessary enquiry into the facts and circumstances of the case, by giving reasonable opportunity of being heard, by considering the genuineness and adequacy of reasons, public interest and other relevant factors and then passing a reasoned order. Under S.250, urges Mr. Nariman, such a decision with a finality clause has been left by an uncontrolled and unguided power of refusal to grant permission to close an industrial undertaking with the executive which is a political body not judicially

trained. Reference is invited to the provisions of S. 7, 7A of I.D. Act. The Labour Courts are constituted under S. 7, Industrial Tribunals are constituted under S. 7A and National Tribunals are constituted under S. 7B. The qualifications for appointment as Presiding Officers are prescribed and indicate that judicially trained officers are to be appointed to man these adjudicating authorities. Their functions are quasi-judicial in nature. The industrial adjudication which is the scheme of the I.D. Act, says the counsel, has been excluded and the set pattern not followed in the impugned provision. Our attention is invited to the provisions contained in Ss. 10, 10A, 12(5), 19(4), 22(3), 25FFA(2), 33C(1) and 34 of I.D. Act wherein certain powers have been conferred on the appropriate Government. The contention of the counsel is that there is a departure from the usual scheme of the Act by giving power to the appropriate Government of industrial adjudication under S. 25O for no compelling reasons. The normal way of dealing with an industrial dispute under the I.D. Act would be to have it dealt with judicially either by conciliation or by adjudication and that judicial process cannot be circumvented by resort to executive action as has been held in *State of Bihar Vs. Kamla Kant Misra and Others*, . The question arose there about the vires of the second part of the sub-section (6) of S. 144 of the Criminal P.C. empowering the State Government extending the duration of an order made under S. 144. Their Lordships advertent to the restriction imposed in the case frowned upon that the power to impose the same is conferred on the executive Government and not to any judicial authority. Reliance is lastly placed on the judgments of the Supreme Court in "*S.P. Sampath Kumar v. Union of India*", AIR 1987 SC 386 and *P. Sambamurthy v. State of Andhra Pradesh*, AIR 1987 SC 663 dealing with the constitution of Administrative Tribunal under the Administrative Tribunal Act, 1985 laying great emphasis on the power of judicial review conferred on an independent institutional authority. He concludes on the first main submission that there is no right to go to quasi-judicial authority for the determination of the us as to the closure of the industrial undertaking.

27. The fundamental right guaranteed under Art. 19(1)(g) of the Constitution to do business includes the right to close down the business. The Supreme Court considered in *Excel Wear and Others Vs. Union of India (UOI) and Others*, whether the right to close down a business was an integral part of the fundamental right to carry on any business guaranteed under Art. 19(1)(g). Following its earlier decision in *Hatisingh Mfg. Co. Ltd. and Another Vs. Union of India (UOI) and Others*, it was ruled:--

But then, as pointed out by this Court in *Hatisingh's* case (supra) the right to close down a business is an integral part of the right to carry it on. It is not quite correct to say that a right to close down a business can be equated or placed at par as high as the right not to start and carry on a business at all. The extreme proposition urged on behalf of the employers by equating the two rights and placing them at par is not quite apposite and sound. Equally so or rather more emphatically we do reject the extreme contention put forward on behalf of the Labour Unions that right to close down a business is not an integral part of the

right to carry on a business, but it is a right appurtenant to the ownership of the property or that it is not a fundamental right at all. It is wrong to say that an employer has no right to close down a business once he starts it. If he has such right, as obviously he has, it cannot but be a fundamental right embedded in the right to carry on any business guaranteed under Art. 19(1)(g) of the Constitution. In one sense the right does appertain to property. But such a faint overlapping of the right to property engrafted in Art. 19(1)(g) or Art. 31 must not be allowed to cast any shade or eclipse on the simple nature of the right as noticed above.

Mr. F.S. Nariman accepts that placing of a fetter on the exercise of the fundamental right to close down a business is possible by putting reasonable restrictions within the meaning of Art. 19(6). It is not absolute in its scope and can certainly be restricted, regulated or controlled by law. His second main submission is that the restrictions imposed in the interest of the general public must be adjudged in the light of the nature, essence and incidence of the fundamental right of the closure of the business and the reasonableness of the quality and the extent of the fetter upon that right. Mr. F.S. Nariman has been very fair and did not contend that the main defects, as pointed out by the counsel reproduced in para 22 of their ported case of *Excel Wear in Excel Wear and Others Vs. Union of India (UOI) and Others*, on the ground of purely procedural infirmities in the impugned provisions have not been remedied. He contended that the vice pointed out by the Supreme Court in respect of substantive defects noticed in sub-paras (iii), (iv), (xii) and (xiii) of para 22, to the portion of S. 250 which was struck down continues to exist. The emphasis is that in the impugned provision the power conferred is arbitrary and unbridled and no guidelines have been given as to which specific grounds, if made out, entitled the employer to secure the permission and on which specified considerations to weigh the balance with public interest. As the reasons given by the petitioner in detail together with the documentary proof are genuine and adequate, as the impugned order accepts them and does not pronounce to the contrary, it is wholly unreasonable to say without any material grounds that the intended closure is prejudicial to the public interest. The right to close a business is an integral part of the fundamental right to carry on business and to direct the employer not to close down when there are genuine and adequate reasons to close, contends the counsel, is complete negation of that right.

28. The closing down of an industry may be compelled, argues the counsel, by recurring losses, or the industry per se may be economically unviable or unprofitable, or there may be inability to renovate or modernize the industry or the factory building is old and has become unsafe or as in this case it is located in a non-conforming area and has to be closed by 1989 and in that case the power to refuse permission to close the industry would be unreasonable. The reasons in such cases are genuinely valid and it would be wholly reasonable to deny the fundamental right of closure. No conditions have been specified by the impugned law as to when and why the permission to close in such cases can still

be refused. Reliance is placed on Stumpp Schuele and Somappa Ltd. and M. Shivkumar Vs. State of Karnataka, Union of India and Workmen of Electronic Divisions of Stumpp Schuele and Somappa Ltd., wherein it was held :--

Therefore, if in the impugned provision the specific grounds which, if made out, entitled the employer to secure the permission were set out and the section made it obligatory for the Government to accord permission, if one or more grounds so specified were made out, with a further provision that reasons must be recorded in the event of refusing permission, such a permission might perhaps ; be regarded as a reasonable restriction on ; the exercise of the right, for, the aggrieved employer could even in the absence of any, appeal to a specified authority enforce his right and secure the relief through a petition under Art. 32 or 226 , if he is able to prove that he had made good one or more of the grounds which entitled him to secure the permission, but had been refused by recording reasons which were perverse.

But without specifying the grounds, which if made out, entitles the owner of an industry to secure permission to close it down, a mere provision for recording reasons does not save it from the vice of unconstitutionality, for, even if such an order is struck down on the ground that the permission had been rejected arbitrarily, it is of no use to the owner as it does not have the effect of according permission, and the position of the owner remains the same, i.e., he cannot close down the business without permission. Even if there were to be a direction to the Government to reconsider the matter, again the permission can be rejected.

The legislature in its wisdom has provided for payment of compensation under S. 25O(8) or it may increase the quantum of compensation to give partial protection to the retrenched employees to search for reemployment and to enable them to tide over the period of unemployment. The misery resulting from unemployment has already been alleviated by the statutory provision and, therefore, the impact of the unemployment of the worker cannot form part of the consideration under the heading public interest or other factors. It cannot also include, urges the counsel, the considerations of maintaining the tempo of industrial production and productivity, for it is open to State to take over the industry under the relevant provisions of law.

29. As already noticed, there was no provision in the I.D. Act when enacted restricting or preventing closure of an industrial undertaking. By the Amending Act of 1972, S. 25FFA was inserted with the object of requiring the employer to give sixty days" notice in the prescribed form to the appropriate Government of his intention to close down an undertaking with the reasons clearly stated for the intended closure of the undertaking if employing fifty or more persons prior to the closure. The requirement was only for notice and there was no fetter on the right to close down the undertaking. The I.D. Act was amended by Act 32 of 1976 which enacted Chapter V-B containing Ss. 25K to 25S. Section 25A was amended to the effect that Ss. 25C to 25E will not apply to the industrial undertakings to which Chapter V B applies. Chapter V-A puts restriction and

constraints on employers in effecting lay-off, retrenchment and closure of industrial establishment as defined in S. 25L employing three hundred since amended by Act 46 of 1982 with effect from Aug. 21, 1984 to one hundred or more workmen. Act 32 of 1976 came into force with effect from March 5, 1976. The constitutional validity of Ss. 25O and 25R of I.D. Act was challenged by certain employers before the Supreme Court in *Excel Wear and Others Vs. Union of India (UOI) and Others*, . Certain infirmities, both procedural as well as substantive, were pointed out by the counsel before the Supreme Court. Their Lordships accepted the petitions and declared S. 25O as a whole and S. 25R in so far as it related to awarding of punishment for infraction of the provisions of S. 25O to be constitutionally bad and invalid for violation of Art. 19(1)(g) of the Constitution. The new S. 25O as quoted above has been inserted by the Amending Act 46 of 1982 and brought into force with effect from Aug. 21, 1984. It is to be seen whether the infirmities pointed out by the Supreme Court have been removed in the impugned provisions and to what extent. The question to be answered is whether the new section in so far as it empowers the appropriate Government to refuse to grant permission to an employer to close his industrial undertaking does or does not infringe the fundamental rights guaranteed by Arts. 14 and 19(1)(g) of the Constitution. All the counsel appearing in the case read and re-read the judgment in *Excel Wear and Others Vs. Union of India (UOI) and Others*, and laid emphasis on different portions of the judgment and read it differently.

30. It is, therefore, apposite that the true meaning, effect, scope and import of the decision in *Excel Wear's* case be noticed at the outset. The contentions which were advanced in support of the attack to the invalidity of old S. 25O are enumerated in the judgment itself in para 22 of the report reading as follows:--

On behalf of the petitioners, the restrictions imposed by the impugned law are said to be unreasonable because--

- (i) Section 25O does not require giving of reasons in the order.
- (ii) No time limit is to be fixed while refusing permission to close down.
- (iii) Even if the reasons are adequate and sufficient, approval can be denied in the purported public interest of security of labour. Labour is bound to suffer because of unemployment brought about in almost every case of closure.
- (iv) It has been left to the caprice and whims of the authority to decide one way or the other. No guidelines have been given.
- (v) Apart from the civil liability which is to be incurred under sub-sec. (5), the closure, however, compulsive it may be, if brought about against the direction given under sub-sec. (2) is visited with penal consequences as provided in S. 25R.
- (vi) There is no deemed provision as to the according of approval in sub-sec. (2) as in sub-sec. (4).

(vii) Refusal to accord approval would merely mean technically that the business continues but a factory owner cannot be compelled to carry on the business and go on with the production and thus one of the objective sought to be achieved by this provisions cannot be achieved.

(viii) There is no provision of appeal, revision or review of the order even after sometime.

(ix) The employer is compelled to resort to the provisions of S. 25N only after approval of the closure.

(x) Restriction being much more excessive than is necessary for the achievement of the object is highly unreasonable.

(xi) There may be several other methods to regulate and restrict the right of closure by providing for extra compensation over and above the retrenchment compensation if the closure is found to be mala fide and unreasonable.

(xii) To direct the employer not to close down is altogether a negation of the right to close. It is not regulatory.

(xiii) If carrying on any business is prohibited in public interest, a person can do another business. But to prohibit the closure of a running business is destruction of the right to close.

(xiv) That reasons should be adequate and sufficient from whose points of view is not indicated in the Statute.

(xv) The reasonableness of the impugned restrictions must be examined both from procedural and substantive aspects of the law. Sub-sec. (2) of S. 25O does not make it obligatory for any higher authority of the Government to take a decision. It may be taken even by a lower officer in the hierarchy.

31. Procedural safeguards which were lacking in old S. 25O have now been admittedly incorporated in the new S. 23O as to the making of such enquiry on the application for permission to close an industrial undertaking as the appropriate Government thinks fit; of giving a reasonable opportunity of being heard to the employer, to the workmen and the persons interested in such closure, of consideration of the genuineness and adequacy of the reasons stated by the employer, the interest of the general public and all other relevant factors, recording of the reasons in writing in the order granting or refusing to grant such permission and communication of the order to the employer and the workmen. A provision for review, either on its own motion or on the application made by the employer or any workmen, of the order by the Government has also been made. An order of the Government granting or refusing to grant permission is to remain in force for one year from the date of such order. There is also a deemed provision that if the Government does not communicate the order granting or refusing to grant permission 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

32. Para 25 of the reported case dealt with some of the grounds of challenge. Firstly it was ruled that "Section 25O(2) does not require the giving of reasons" thus "whimsically and capriciously the authority can refuse permission to close down." In para 32 again, their Lordships came to the conclusion that it "permits the authority to pass a cryptic, capricious, whimsical and one sided order." Some pertinent questions were posed suggestive of answers and significant aspects of the right to close vis-?-vis public interest and social justice were noticed in these words in para 25 :--

.....Public interest and social justice do require the protection of the labour. But it is reasonable to give them protection against all unemployment after affecting the interests of so many persons interested and connected with the management apart from the employers. Is it possible to compel the employer to manage the undertaking even when they do not find it safe and practicable to manage the affairs? Can they be asked to go on facing tremendous difficulties of management even at the risk of their person and property? Can they be compelled to go on incurring losses year after year? As we have indicated earlier, in S. 25FFF retrenchment compensation was allowed in cases of closure and if closure was occasioned on account of unavoidable circumstances beyond the control of the employer a ceiling was put on the amount of compensation under the proviso. The Explanation postulates the financial difficulties including financial losses or accumulation of indisposed stocks etc. as the closing of an undertaking on account of unavoidable circumstances beyond the control of the employer but by a deeming provision only the ceiling in the matter of compensation is not made applicable to the closure of an undertaking for such reasons. In 1972 by insertion of S. 25FFA in Chapter V-A of the Act, an employer was enjoined to give notice to the Government of an intended closure. But gradually the net was cast too wide and the freedom of the employer tightened to such an extent by introduction of the impugned provisions that it has come to a breaking point from the point of view of the employers. As in the instant cases, so in many others, a situation may arise both from the point of view of law and order and the financial aspect that the employer finds it impossible to carry on the business any longer. He must not be allowed to be whimsical or capricious in the matter ignoring the interest of the labour altogether. But that can probably be remedied by awarding different slabs of compensation in different situations. It is not quite correct to say that because compensation is not a substitute for the remedy of prevention of unemployment, the latter remedy must be the only one. If it were so, then in no case closure can be or should be allowed.....

33. One of the submissions made was that there is no provision of appeal, revision or review of the order even after some time. Their Lordships in para 27 of the report observed:

The order passed by the authority is not subject to any scrutiny by any higher authority or tribunal either in appeal or revision. The order cannot be reviewed

either. We were again asked to read into the provisions that successive applications can be made either for review of the order or because of the changed circumstances. But what will the employer do even if the continuing same circumstances make it impossible for him to carry on the business any longer? Can he ask for a review?

34. Their Lordships then pointed out the problem of the competing interests in para 29 in these words :--

It is not always easy to strike a balance between the parallel and conflicting interests. Yet it is not fair to unreasonably tilt the balance in favour of one interest by ignoring the other. Mr. Nadkarhi relied upon the following passage of Frankfurter J. while expressing his view on "Balance of Interest:--

I cannot agree in treating what is essentially a problem of striking balance between the competing interest as an exercise in absolutes.

Learned counsel also referred to a note on "Government and liberty" from "Paradoxes of Legal Science" by Benjamin Cardozo which is to the followed effect:--

As the social conscience is awakened, the conception of injury is widened and insight into its cause is deepened the area of restraint is therefore increased.

Nobody can have a quarrel with these basic principles however high sounding or unreasonable they may appear to be on their face. But yet no jurisprudence of any country recognizes that the concept of injury is widened and the area of restraint is broadened to an extent that it may result in the annihilation of the person affected by the restraint

35. In para 32 their Lordships considered the principles of judging the reasonableness of the restriction both from the procedural and substantive aspects of the law :--

The reasonableness has got to be tested both from the procedural and substantive aspects of the law. In the case of State of Bihar Vs. Kamla Kant Misra and Others, it has been said at page 196 (of SCR): (at p. 1675 of AIR):--

As observed in Dr. N.B. Khare Vs. The State of Delhi, and reiterated in State of Madras Vs. V.G. Row, that in considering reasonableness of law imposing restrictions on fundamental rights both substantive and procedural aspects of the law should be examined from the point of view of reasonableness and the test of reasonableness wherever prescribed should be applied to each individual statute impugned and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. It is not possible to formulate an effective test which would enable the Court to pronounce any particular restriction to be reasonable or unreasonable per se. All the attendant circumstances must be taken into consideration and one cannot dissociate the actual contents of the restrictions from the manner of their imposition or the mode of putting them into

practice.

It is clear to us that their Lordships examined the procedural safeguards and found its absence with the result that the State action could be whimsical, arbitrary or capricious. Their Lordships did not declare it unconstitutional on the basis of substantive aspects of the law.

36. We will deal first with the question whether there is any deviation in the scheme of the I.D. Act in S.250. The right to close a business is an integral part of the fundamental right to carry on a business and is guaranteed under Art. 19(1)(g) of the Constitution. It can be controlled, regulated or restricted by law imposing, in the interest of general public, reasonable restriction on its exercise. Section 250 has been enacted and puts restrictions and restraints on employers in closure of industrial undertakings and provides machinery for scrutiny of the exercise of right of intended closure. Under the scheme of the I.D. Act, various authorities have been constituted and entrusted with different powers to be exercised, duties to be discharged and functions to be performed. Under the overall scheme of the I.D. Act, the statute makes provision for the investigation and settlement of industrial disputes. It provides a machinery and forum for adjustment of such conflicting and seemingly irreconcilable interests without disturbing the peace and harmony in the industry, assuring industrial growth which was the pre-requisite for a welfare State. The Act in its broad outlines provides a method for bringing to the notice of the Government, which in a welfare State cannot afford to look askance at the industrial unrest, industrial disputes and once what are broadly described as industrial disputes came to the notice of the Government, the Government could compel the parties to resort to arbitration and for that purpose different forums were set up for the resolution of such disputes" (See "Dahyabhai Ranchhodas Shah v. Jayantilal Mohanlal," 1973 Lab IC 967(Guj). It deals with industrial disputes, settlements, adjudication and regulates the rights of the parties and the enforcement of the awards and settlements. It also arms the appropriate Government with powers which could be used when it considered necessary to intervene in industrial dispute. The appropriate Government's intervention spreads through the scheme of the I.D. Act. Its pervasive role is significant one. Under S. 10 the power and discretion to make a reference is vested in the appropriate Government. Firstly it has to come to the conclusion after applying its mind to the material before it, that an industrial dispute is in existence or is apprehended and then it has to be satisfied that it would be expedient to refer the dispute or not. This power is one of the measures for securing and preserving amity and good relations between the employer and workmen. The function of the appropriate Government to make a reference under S. 10(1) is an administrative function even though the jurisdictional facts on which the appropriate Government may act, are the formation of an opinion that an industrial dispute exists or is apprehended which opinion undoubtedly is a subjective one. It may not be a judicial or quasi-judicial function, but is a dominant role in industrial adjudication. Sections 10(3) and 10A(4A) empowers the Government to prohibit the continuance of a strike or

lock-out in connection with an industrial dispute, which may be in existence on the date such dispute is referred for adjudication or arbitration respectively. The power may be discretionary with the Government to prohibit or not the continuance of a strike or lock-out but is a significant power to maintain industrial peace. Sub-section (4) of S. 19 which empowers the appropriate Government, suo motu, or on the application of any party bound by the award to make a reference on the limited question "Whether the period of operation of the award should not, by reason of a material change in the circumstances on which it is based, be shortened", is a discretionary power. Section 22 provides for prevention of strikes and lock-out sub-section (3) of S. 22 casts a duty on the employer to send an intimation of the lockout declared by him or of the strike declared by the workmen to an authority specified by the Government. Sub-section (6) of S. 22 further requires the employer to send a report to the appropriate Government. Under S. 25FFA(1) sixty days notice is to be given of intention to close down any undertaking. Sub-section (2) empowers the Government, as an exception, to direct that the provision of that sub-section shall not apply in relation to any particular undertaking. This order of the Government is of administrative nature Section 33C(1) provides for the recovery of money due from an employer and the Government may satisfy itself as to the exact amount and then take action under that section. Under S. 34, a Court can take cognizance only on a complaint made by or under the authority of the Government. It is a discretion to be exercised by the Government on pure grounds of expediency. Section 36-A enables the Government to refer a question if any difficulty or doubt arises as to the interpretation of any provisions of an award or settlement. These provisions bring out the dominant role of the appropriate Government in the scheme of the I.D. Act.

37. Section 2(K) of I.D. Act defines the industrial dispute -- means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or terms of employment or with the conditions of labour of any person. The definition of industrial dispute restricts it to the factor of dispute or difference between the specified parties and the subject matter of dispute in an industry. For the adjudication of the industrial dispute, the appropriate Government may constitute under Ss. 7 and 7A, Labour Courts and Industrial Tribunal respectively and Central Government may constitute under S. 7B, National Tribunal. Labour Court adjudicates industrial disputes relating to any matters specified in the Second Schedule (S. 10(1)(c)) or matters appearing to be connected with or relevant to such dispute or other functions assigned to them such as petitions under S. 33C(2) . The Industrial Tribunal adjudicates industrial disputes relating to any matter specified in the Second or the Third Schedule (S. 10(1)(d)) or matters appearing to be connected or relevant to such disputes and performs such other functions as may be assigned. The National Industrial Tribunal has been constituted for the adjudication of industrial disputes which in the opinion of the Central

Government involve questions of national importance or the industrial disputes in which industrial establishments situated in more than one State are likely to be interested or are likely to be affected by such disputes. Under the scheme of the ID. Act these Labour Courts and Tribunals have been constituted and the perimeter of the jurisdiction of the adjudicating authorities who act quasi-judicially has been delineated conferring powers and jurisdiction upon the adjudicatory authorities to settle disputes and to make appropriate awards in determining industrial disputes. But it is only that dispute or difference between employers and employers or between employers and workmen or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person which fall within the ambit of the definition of industrial dispute can be adjudicated

38. The dispute relating to "retrenchment of workmen and closure of establishment" has been included as Item 10 in the Third Schedule. A dispute may arise as to the nature of the closure but can a right to close an establishment be disputed. In *Hatisingh Mfg. Co. Ltd. and Another Vs. Union of India (UOI) and Others*, the fundamental right of an employer to close down a business was ruled as an integral part of the fundamental right to carry on business. Under the scheme of the I.D. Act before the introduction of S. 250; an Industrial Tribunal could not adjudicate upon the reasonableness or justification for a closure. It could only decide whether the closure was real or bogus. The bona fide or otherwise of the closure or the necessity for the closure could not be gone into. It could not be referred as an industrial dispute. In *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, it was held that if the action taken by the management is not a lock-out but is a closure, bona fide and genuine, the dispute which the workmen may raise in respect of such a closure is not an industrial dispute at all. If in fact and in substance, the closure of the business is a lock-out and the business has been closed for the purpose of disguising a lock-out and a dispute is raised in respect of such closure it would be an industrial dispute. The propriety of or jurisdiction for the closure of a business, in fact and truly effected, cannot raise an industrial dispute as contemplated by the I.D. Act (See "*Pottery Mazdoor Panchayat v. Perfect Pottery Co.*", AIR 1979 SC 1356). The Industrial Tribunal has no jurisdiction to go into the question of motive behind the closure. In this state of the view of the law, S. 250 was enacted. The appropriate Government's intervention permeates the scheme of the ID. Act and, therefore, in consonance with the scheme the power is conferred on the appropriate Government to consider the genuineness and adequacy of the reasons stated by the employer for closure as also the interest of the general public and other relevant factors. In our view, there is no divergence from the normal position of the entrusting of various functions on the appropriate Government.

39. The power conferred under S. 250(2) is not for settlement of any industrial dispute. An employer who intends to close down an undertaking of an industrial

establishment has to make an application in the prescribed manner for prior permission stating clearly the reasons for intended closure. On the receipt of the application power is conferred on the appropriate Government to make such enquiry as it thinks fit. This discretionary power of investigation suggests the exercise of administrative power and not a quasi-judicial function. The requirement of giving a reasonable opportunity of being heard and recording of reasons are procedural safeguards in the exercise of power, not necessarily pointing out to the exercise of a quasi-judicial power. The legislature considered that consistent with the scheme of the I.D. Act initial power to determine the application for intended closure be vested in the appropriate Government. It considered as to who will be the appropriate authority. The appropriate Government is charged with several duties under the I.D. Act for the maintenance of industrial peace. It could be the best authority, in our view, to investigate the circumstances, the reasons for intended closure, public interest and other factors to make up its mind on the intended closure.

40. Under the Banking Companies Act, 1949, Ss. 38(1) and 3(b)(ii) make the Reserve Bank of India the sole judge to decide Whether the affairs of a banking company are being so conducted as to be prejudicial to the interest of the depositors and the Court has no option but to pass an order winding up the banking company, when the application is made by the Reserve Bank of India. In *Joseph Kuruvilla Vellukunnel Vs. The Reserve Bank of India and Others*, , it was held:--

These observations lay down clearly that there may be occasions and situations in which the legislature may, with reason, think that the determination of an issue may be left to an expert executive like the Reserve Bank rather than to Courts without incurring the penalty of having the law declared void. The law thus made is justified on the ground of expediency arising from the respective opportunities for action. Of course, the exclusion of Courts is not lightly to be inferred nor lightly to be conceded. The reasonableness of such a law in the total circumstances will, if challenged, have to be made out to the ultimate satisfaction of this Court and it is only when this Court considers that it is reasonable in the individual circumstance that the law will be upheld.

41. Under S. 237(b) of the Companies Act, 1956 power has been conferred on the Central Government or the Company Law Board, to whom the Central Government's powers under the said section have been delegated, to order investigation into the affairs of a company. This investigation is an inroad in the right of the company to manage its own affairs. The inspectors appointed have to make a report which may have wide repercussions. It may expose some persons to prosecutions or may end in the winding up of the company. The Central Government, however, has to satisfy itself, before ordering any investigation that the circumstances of the case fall within sub-clauses (i), (ii) or (iii) of sub-sec. (b) of S. 237. The existence of the circumstances suggesting that the business of the company is being conducted with intent to defraud as laid down in sub-clause

(1), or the persons mentioned in sub-clause (2), were guilty of fraud or misfeasance or other misconduct towards the company or towards any of its members or the members of the company have not been given all the information with respect to its affairs which might reasonably be expected. The formation of the required opinion has been entrusted to an expert body like the Central Government or the Company Law Board.

42. In *Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi and Others*, the Supreme Court expressed the view that right to travel is a part of personal liberty envisaged under the Constitution. This decision was also instrumental in the promulgation of the Passport Ordinance, 1967 and later to the enactment of Passport Act, 1967 to provide for the issue of passport and travel documents to regulate the departure from India of citizens of India and other persons for matters incidental or ancillary thereto. S. 10 of the said Act contains provisions for variation, impounding and revocation of passports and travel documents. S. 10(3)(c) empowers the Passport Authority including the Central Government to impound or caused to be impounded the passport or travel documents. This power to impound the passport seriously interferes with the constitutional right of the holder of the passport to go abroad and it entails adverse civil consequences. This vesting of the power in Central Government was upheld in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, wherein it was ruled:--

.....It is true that when the order impounding a passport is made by the Central Government, there is no appeal against it, but it must be remembered that in such a case the power is exercised by the Central Government itself and it can safely be assumed that the Central Government will exercise the power in a reasonable and responsible manner. When power is vested in a high authority like the Central Government, abuse of power cannot be lightly assumed. And in any event, if there is abuse of power, the arms of the Court are long enough to reach it and to strike it down. The power conferred on the Passport Authority to impound a passport under S. 10(3)(c) cannot, therefore, be regarded as discriminatory and it does not fall foul of Art. 14. But every exercise of such power has to be tested in order to determine whether it is arbitrary or within the guidelines provided in S. 10(3)(c) .

43. Section 250 of the I.D. Act has similarly recognised the dominant role of the appropriate Government in the scheme of the I.D. Act in firstly considering the applications for closing down an industrial undertaking, but no finality is attached to its decision. S. 250, prior to the amendment, as considered in *Excel Wear's* case did not provide for any machinery for review or adjudication against the orders passed under sub-sec. (2) of S. 250. Their Lordships of the Supreme Court in *Excel Wear and Others Vs. Union of India (UOI)* and *Others*, in para 27 of the report had observed that the order passed by the authority is not subject to any scrutiny by any higher authority or Tribunal either in appeal or revision and the order cannot be reviewed either. Sub-sec. (5) of S. 250 inserted by Act

46 of 1986 (with effect from August 21, 1984) now provides that the appropriate Government may, either on its own motion or on an application made by the employer or any workman, review its order granting or refusing to grant permission under sub-sec. (2) or refer the matter to a Tribunal for adjudication. The procedural safeguard of a reference of the matter to a Tribunal for adjudication takes care of any whimsical, capricious or arbitrary order of the appropriate Government to be tested in the quasi-judicial industrial adjudication by an established Court. It can, therefore, be safely assumed that the appropriate Government will exercise the powers in a reasonable and responsible manner and if there is any abuse of power, it can always be tested in the quasi-judicial industrial adjudication.

44. The new section in so far as it empowers the appropriate Government to refuse to grant permission to an employer to close his industrial undertaking does not, in our view, infringe the fundamental rights guaranteed by Arts. 14 and 19(1)(g) of the Constitution being saved by Art. 19(6) of the Constitution which provides :--

Nothing in sub-clause(g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,--

(i) the professional or technical qualification necessary for practicing any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial of citizens or otherwise.

Mr. Nariman accepted that placing of a fetter on the exercise of the fundamental right to close down a business is possible by putting reasonable restrictions within the meaning of Art. 19(6) . It is not absolute in its scope and can certainly be restricted, regulated or controlled by law. "It is abundantly clear that fundamental rights enshrined in Part III of the Constitution are neither absolute nor unlimited but are subject to reasonable restrictions which may be imposed by the State in public interest under Cls. (2) to (6) of Art. 19. As to what are reasonable restrictions would naturally depend on the nature and circumstances of the case, the character of the statute, the object which it seeks to serve, the existing circumstances, the extent of the evil sought to be remedied as also the nature of restraints or restrictions placed on the rights of the citizens" (See *Laxmi Khandasari and Others Vs. State of U.P. and Others*,).

45. In judging the reasonableness of the restrictions imposed by the I.D. Act, one has to bear in mind the directive principles of the State policy set down in Part IV of the Constitution. Art. 41 of the Constitution provides that the State

shall, within the limits of its economic capacity and development, may make effective provisions for securing the right to work, to education and to public; assistance in cases of unemployment, old age, sickness and disablement and any other cases of undeserved want. This directive principle contained in Art. 41 may not have any application in the decision of a dispute between the management and its workmen but the framers of the Constitution have clearly contemplated that there shall be no undeserved want or unemployment. S. 250 of the I.D. Act is intended to protect that right which is contemplated under Art. 41 of the Constitution. When an undertaking is proposed to be closed down in exercise of its fundamental right to close and the restrictions on this right are imposed by the provisions contained in S. 250 of the I.D. Act, then the, reasonableness of the provisions is to be tested in view of the principles of the State policy. In "State of Bombay v. F.N. Balsara", AIR 1951 SC 318, their lordships held that in judging the reasonableness of the restrictions imposed by the Bombay Prohibition Act, 1949, one has to bear in mind the directive principles of State policy set forth in Art. 47 of the Constitution. Again in *Minerva Mills Ltd. supra*, their Lordships ruled that if a law is enacted for the purpose of giving effect to a directive principle and it imposes a restriction on the fundamental right, it would be difficult to contend such restriction as unreasonable or not in public interest. So also where a law is enacted for the purpose of giving effect to a directive principle in furtherance of the constitutional goal of social and economic justice, it may conflict with a formalistic and doctrinaire view of equality before the law in its total magnitude and dimension. "In the circumstance, the Court would not be unjustified in making the presumption that a law enacted really and genuinely for giving effect to a Directive Principle in furtherance of the cause of social and economic justice, would not infringe any Fundamental Right under Art. 14 or 19".

46. The reasonableness of the restrictions have also to be considered from the policy and purpose of the Act. Such guidance may be obtained from or afforded by the preamble read in the light of the surrounding circumstances which necessitated the legislation. As already noticed, no condition was imposed prior to the amendment of the I.D. Act by 1976 amendment, requiring the permission of the appropriate Government for closing down an industry. The objects and reasons for Amending Act No. 32 of 1976 say that in order to prevent avoidable hardship to the employees and to maintain higher tempo of production and productivity, it has become now necessary to put some reasonable restrictions on the employer's right to lay off, retrenchment and closure. This is sought to be achieved by inserting Chapter V-B in the I.D. Act, including S. 250.

47. In *Excel Wear and Others Vs. Union of India (UOI) and Others*, , their Lordships referred to enacting of law which "may provide to deter the reckless, unfair, unjust or mala fide closures". In other words, the right to close a business which is an integral part of the fundamental right to carry on the business can be subject to reasonable restrictions as no right is absolute in its scope. It can certainly be restricted, regulated or controlled by law in the interest of general public. Their Lordships considered the general principles of judging the

reasonableness of the restrictions and observed in para 31 of the report (quoted above) that it is not possible to formulate an effective test which would enable the Court to pronounce any particular restriction to be reasonable or unreasonable per se. All the attendant circumstances may be taken into consideration. It was then recognised that even a negation of a right conferred under Art. 19(1)(g) , in certain circumstances, could be said to be a reasonable restriction. It is settled law that the legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials or the body in power to execute the law. The essential legislative function consists in the determination or choice of legislative policy and of formally enacting that policy into a binding rule of conduct (See *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*,).

48. The phrase "reasonable restriction" connotes that the limitation imposed on the fundamental right of a person to close down a business should not be arbitrary or of an excessive nature, beyond what is required in the interest of the general public. Public interest and social justice do require the protection of the labour. An owner cannot be allowed to be whimsical so as to ignore the interest of the labour altogether. The textile industry has a unique place in the economy of our country. Its contribution to industrial production, employment and export earnings is very significant. There are bound to be some adverse effects of the closure of large industrial undertaking on the national economy. The product of a particular industry may be vital as for instance for defense if our country is facing an external aggression, and it would be in public interest to continue its production and supply. The legislature has, therefore, laid down guidelines in S. 250(2) for striking a proper balance between the right of a person to close down his industrial undertaking and the social control. The appropriate Government has to have regard "to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors". The exercise of the power is guided by the considerations set out in the statute. It is not arbitrary or unbridled as is contended by Mr. F.S. Nariman. We cannot also accept the contention that the legislature should have specified as to which specific grounds, if made out, entitled the employer to secure permission and on which specified condition to weigh the balance with public interest. The propriety and justifications for the closure of the industrial undertaking has to be given by the owner in the application for permission to close the business and the appropriate Government has to consider and pronounce on the genuineness and adequacy of the reasons. This is with a view to deter reckless or mala fide closures. Complex problems may result from the closure of a large undertaking employing more than three (now one) hundred workers. The particular industry may involve not only the employer and the workmen, but various other institutions or industries. The appropriate Government is, thus called upon to intervene to balance the genuineness and the adequacy of the reasons with the interest of the general public and all other relevant factors. "In the context of modern conditions and the variety and complexity of the situations which present

themselves for solution, it is not possible for the Legislature to envisage in detail every possibility and make provision for it" (See *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, . In the complex society of ours, all relevant factors could not be enumerated nor any additional guidelines could be laid down contemplating all possible considerations in a changing society and its requirements from time to time. In such situations, the legislature is forced to leave or invest in the appropriate authority created by it ample discretion to be exercised consistent with the purpose, scheme and guidance afforded by the statute. The concept of "the interest of the general public" is well recognised and there was thus no need to further circumscribe the exercise of discretion by the appropriate Government.

49. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , it was held :--

.....The words "in the interests of the general public" have a clearly well defined meaning and the courts have often been called upon to decide whether a particular action is "in the interests of the general public" or in "public interest" and no difficulty has been experienced by the Courts in carrying out this exercise. These words are in fact borrowed passim verbal from Art. 19(5) and we think it would be nothing short of heresy to accuse the constitution-makers of vague and loose thinking. The legislature performed a scissors and paste operation in lifting these words out of Art. 19(5) and introducing them in S. 10(3) (c) and if the se words are not vague and indefinite in Art. 19(5) , it is difficult to see how they can be condemned to be such when they occur in S. 10(3)(c). How can S. 10(3)(c) be said to incur any constitutional infirmity on account of these words when they are no wider than the constitutional provision in Art. 19(5) and adhere loyally to the verbal formula adopted in the constitution? We are clearly of the view that sufficient guidelines are provided by the words "in the interests of the general public"-and the power conferred on the Passport Authority to impound a passport cannot be said to be unguided or unfettered.....

50. In *M.P. No. 2012 of 1983 "Straw Products Ltd. and another v. State of Madhya a Pradesh and others"*, a Full Bench of the Madhya Pradesh High Court ruled :--

The public interest is, no doubt, a wide term but it has to be read in the context of an undertaking the closure of which is under consideration. It is clear that in a complex society as we are in it is not possible to fix any definite limit of pubic interest as it is not possible to fix any limit or ambit of the function of an undertaking and its production, its utility, the natural resources which it utilizes and the service it renders and the employment which it offers. It is, therefore, clear that the scope of public interest in respect of every industry will have to be judged from various factors : (1) the raw material it uses, (2) the goods it produces, (3) the use that is made of the goods by common men, and (4) the potential employment which it offers, and in this context and in the context of the circumstances prevailing in the society at the relevant time the question of public interest could be judged and it is this which law requires the State to keep

in view while considering the application submitted by a Company for closure of the undertaking.

We are in respectful agreement with this view.

51. As already noticed, the procedural safeguards have been incorporated in S. 250 of the I.D. Act as to the making of such enquiry on the application for permission to close an industrial undertaking as the appropriate Government thinks fit, of giving a reasonable opportunity of being heard to the employer, to the workmen and the persons interested in such closure; of consideration of the genuineness and adequacy of the reasons stated by the employer, the interest of the general public and all other relevant factors; recording of the reasons in writing in the order granting or refusing to grant such permission and communication of the order to the employer and the workmen. A provision for review, either on its own motion or on the application made by the employer or any workman, of the order by the Government has also been made. An order of the Government granting or refusing to grant permission is to remain in force for one year from the date of such order. There is also a deemed provision that if the Government does not communicate the order granting or refusing to grant permission 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. There is power to "refer the matter to a Tribunal for adjudication". All these circumstances go to show towards the reasonableness of the impugned restrictions imposed on the right of the management to close down an industrial undertaking.

52. Some arguments have been advanced as to the construction of sub-sec. (5) of S. 250 as to the right to obtain an order of reference for quasi-judicial adjudication. The absence of a corrective machinery by way of review or revision or appeal does not always make a provision unreasonable (See *Babubhai and Co. and Others Vs. State of Gujarat and Others*, and *Prakash Amichand Shah Vs. State of Gujarat and Others*,). Power is conferred on the appropriate Government who may either on its own motion or on the application made by the employer or any workmen review its order or refer the matter to a Tribunal for industrial adjudication. Two courses are open. Whether one or the other of the course should be adopted by the appropriate Government must depend on the facts of each case, the surrounding circumstances, the interest of the general public and all other relevant factors. The discretion vested in the appropriate Government is for the purpose of determination of the application of the employer who intends to close down an industrial undertaking. The appropriate Government may itself scrutinize the genuineness and adequacy of the reasons stated by the employer and then balance it with the interests of the general public and other relevant factors and take a decision. When an application for review is received it gives an opportunity to the appropriate Government to reconsider its earlier decision. The statute also provides for reference to the Tribunal for adjudication. The reference may be made even on an application for

review or when specific request is made for reference. We cannot read the statute that it is obligatory on the appropriate Government to either review the earlier order failing which it shall make a reference. Such a construction does not fit in the scheme of I.D. Act. The word "may" cannot be read as "shall" for an order of reference of the matter to the Tribunal. No hard and fast rule can be laid down that the appropriate Government must make an order of reference in each case to a Tribunal for adjudication. A discretion has been vested to be exercised on the facts and circumstances of each case. It is legitimate to presume that the discretion will be exercised in a reasonable manner and not with an evil eye or unequal mind.

53. The scheme of S. 250 of the I.D. Act is that the application for prior permission to close down an undertaking has to be dealt with expeditiously. The application is to be made at least ninety days before the intended closure. The deeming permission in sub-sec. (3) enjoins upon the appropriate Government to decide the application within sixty days. Under proviso to sub-sec. (5), the Tribunal has to pass an award within a period of thirty days from the date of the reference of the matter to the Tribunal for adjudication. The appropriate Government, therefore, has to decide the application for review or make an order of reference within the shortest possible time. The decision cannot be unduly delayed. It has to be exercised within reasonable time and the length of the reasonable time has to be determined on the facts of each case. If the appropriate Government does not make an order within a reasonable time or does not refer the matter to a Tribunal for adjudication, then it is always expected that it would record the reasons and communicate the same even though the statute does not specifically say so. The grounds in support of the order refusing to make a reference has to be relevant or germane. That decision can always be tested in a Court of law through a writ petition and in proper cases a direction can be made that a reference be made forthwith.

54. A Full Bench of the Madhya Pradesh High Court in *Straw Products Ltd.*'s case (supra) considered the constitutional validity of S. 250 as amended by the Industrial Disputes (M.P. Amendment) Act, 1983 whose provisions are *pari materia* with the new S. 250 considered in this case. The scheme of S. 250 as amended by the State had been examined in detail and it was ruled that there are enough safeguards provided and that the restriction imposed could not be said to be un-reasonable. We are, therefore, fortified in upholding the vires of S. 250 of the I.D. Act.

55. That takes us to the consideration of the merits of the impugned order dated April 15, 1985 refusing permission to the Delhi Cloth Mills to close the undertaking. During the course of hearing of the writ petition, some suggestions were mooted for an out of Court settlement. Counsel for the petitioner was called upon to give a proposal, without prejudice to his rights, for consideration of the Lt. Governor, Labour Commissioner and the workmen as represented by their Unions and their counsel. The petitioner formulated the proposals for

consideration of the respondents. Mr. Ramamurty who was appearing for the Unions, felt that there was a great possibility of the workmen accepting the proposal for the closure of the Mills if the petitioner was willing to pay the existing wages upto the date of closure fixed by the Delhi Development Authority and retrenchment compensation. Counsel for the Delhi Administration then stated "That if the workmen broadly accept the proposal, then the Delhi Administration will not come in the way of the closure as the provision will not apply". The talks for compromise, however, failed. We heard the case on merits and reserved the judgment.

56. In the meanwhile, a joint application had been filed on behalf of the petitioner and respondents 6 to 18 excepting respondent No. 10 for recording a settlement. The application set out the terms and conditions that had been discussed and settled between them relating to the compensation payable to the workmen on the closure of the Delhi Cloth Mills Undertaking at Bara Hindu Rao, Delhi. Notice of this application was issued to all the parties. The counsel for the parties, who are not signatories to the settlement, requested for time to consider their stand. By our order dated August 3, 1987, in view of the subsequent events and the settlement arrived at, we considered that it would be in the interest of justice, particularly for the management and the workmen who had agreed to the recording of the settlement, to direct the appropriate Government, i.e. the Lt. Governor, to exercise the powers of suo motu review of its order dated April 15, 1985 refusing to grant permission for the closure of the Delhi Cloth Mills Undertaking at Bara Hindu Rao, Delhi. This review was directed to be undertaken considering the terms and conditions of the settlement set out in the application and in accordance with law.

57. A number of representatives of the petitioner management and the workers of the Mill met the Lt. Governor, Delhi from time to time and discussed the matter and some petitions were received for and against the closure of the Mill. The Lt. Governor, Delhi passed the following order on May 5, 1988:

After taking into consideration the above facts, the adverse impact that the closure of the Mill may cause on the long term interests of the working class, the economy of the Union Territory, the general law and order problem which might be created when about 6,000 workers are rendered without job and also taking into account the fact that the agreement arrived at is subject to certain conditions which are to be implemented by other agencies which may or may not be acceptable to them as also the fact that all workers have not accepted this settlement, I, on review, and under the present circumstances, do not find it appropriate to accede to the request of the closure of the Mill.

58. The terms to the settlement recorded in C.M. 3085/87 were modified to the extent indicated in the application, C.M. 1042/88. The prayer that the modified terms of the settlement be placed on the record was granted and they have been placed on record. Mr. F.S. Nariman, the learned counsel for the petitioner took leave of the Court to file additional grounds of challenge to the order dated May

5, 1988 passed by the Lt. Governor, Delhi. The leave was granted and the additional grounds of challenge were filed. The case was finally heard on May 26, 1988.

59. One of the compelling reasons urged by the petitioner to take the decision to close down the industrial undertaking is that it is located in a non-conforming area as prescribed by the Authority under the Master Plan for Delhi and under the Act it can no longer continue the industrial activities at the present site and in fact the heavy and large scale industries are not permitted to be located in the Union Territory of Delhi. The Master Plan as prepared by the Authority was approved by the Central Government under S. 9(2) of the Act. It was published in the Gazette of India on the 1st September, 1962 in compliance with the provisions of S. 11 of the Act and Regulation 2(1) of the Delhi Development Authority (Publication of Approval of Plan) Regulations, 1962. It was also duly published by affixing copies thereof in the offices of the Authority, M.C.D., N.D.M.C. and the Delhi Administration Secretariat. It was also published by advertisement in the local newspapers. The Master Plan thus came into operation from the date of first publication of notice on September 1, 1962. Once a plan has come into force or operation, it cannot be altered or modified except as provided in S. 11A of the Act. The user of land and buildings in contravention of the plan is prohibited by S. 14 of the Act. Any person using any land or building contrary to the provisions of the Master Plan, after it came into operation, would contravene the provisions of S. 14 and would be liable to be penalised under S. 29 of the Act.

60. During the course of hearing of the writ petition, the counsel for the petitioner urged that the reason, inter alia, for closure of the Mill is that it is volatile of the Master Plan being located in the non-conforming area. The stand of the counsel for the respondents is at variance as to the nature of the industry and the period prescribed for closure. We, therefore, called upon the respondents to file an affidavit categorically stating their stand on the following points:

1. Whether the industrial undertaking of the petitioner is a "noxious industry" or "nuisance industry" or merely an industry of "non-conforming use" and the period prescribed for its shifting/closure?
2. Whether the respondents are willing to make a statement that no prosecutions would be launched against the petitioner or its officers under S. 29(2) of the Delhi Development Act, 1957 in the event of their continuing the existing industry in these premises beyond the period of three to five years?

The affidavit of Shri M.P. Jain, Secretary, D.D.A. says:

With respect to point No. (preferred to in para 2 above, I respectfully submit that:

(a) Use of the site under the Delhi Cloth Mills is a non-conforming use as a "heavy and large scale industry" (Item No. 12 on page 83 of the Delhi Master Plan).

(b) As regards the point No. (ii) referred to in para 2 above, I submit that the Central Government in exercise of its powers under S. 11A of the Delhi Development Act, 1957, proposed extensive modifications in the Master Plan and has called for suggestions/objections. The proposed modifications are published in the Gazette of India (Extraordinary) on 6th April, 1985. A large number of suggestions/objections have been received and it will take time to finalize the proposed modifications. The Delhi-Development Authority will not take any penal action against the Delhi Cloth Mills Limited till the finalization of the said proposed extensive amendments and consideration by the Government of the entire matter relating to the Delhi Cloth Mills Limited in the light of the said modifications and in view of the special circumstances of the case, i.e. its impact on the economy and the number of workers employed under the plants, etc.

61. The Authority has published a notification dated April 6, 1985 in the Gazette of India Extra-ordinary in compliance with the requirement of S. 11 A(3) of the Act. The proposed modifications in the Master Plan are detailed in the notification. We had occasion to consider these in "D.C.M. v. D.D.A.", C.W.P. 2687/86, decided on May 21, 1987 and expressed the opinion that there is no proposal at all for change of the land use of the D.C.M. site. "The Authority has published a notification dated April 6, 1985 in the Gazette of India Extraordinary in compliance with the requirement of S. 11 A(3) of the Act. It says that "the following extensive modifications which the Central Government proposed to make in the Master Plan for Delhi, keeping in view the perspective for Delhi 2001 and new dimensions in the Urban Development are hereby published for public information. Any person having objection or suggestion with respect to the proposed modifications may send his objection/suggestion in writing to the Secretary, D.D.A....." Then the proposed modifications are detailed in the notification. We were taken through the proposed modifications and we find there is no proposal at all for change of the land use of D.C.M. Site. On the contrary there is reiteration of the land use of the D.C.M site for flatland factories and residential area and the policies of the Master Plan that the heavy and large scale industries should not be located in the Union Territory of Delhi At page 81 of the Gazette it is stated that industrial activity in DUA 81 shall be conducted at the following locations in the prescribed use zones as indicated in the land use plan.

(i) Light Industry-- flatland Factories and Service Industry, Jhandewalan, Birla Mills Site on G.T. Road, near Shanker Market, D.C.M., Anand Parbat, Kirti Nagar Near Pusa Institute.

At the same page it is stated that new industrial units shall be permitted in different use zone as per conditions prescribed in Annexure III-Classification of Industries. For the existing units in different zones it is recommended, "(e) Industrial Units of the type given in Annexure IIIH are not permitted in the Union Territory of Delhi". Annexure that pages 132-134 of the Gazette specifies the industries prohibited within Union Territory of Delhi. Under the. Hazardous/

Noxious Industrial Units is included under the sub-head textile, finishing, bleaching and dying with the characteristic of "acid water waste". Under the sub-head Heavy and Large Scale Industries is included the Cotton Textiles (large scale). The proposed modifications thus expressly declare that the heavy and large scale industry of cotton textiles such as of the petitioner is noxious/hazardous industry not permitted in the Union Territory of Delhi. Regulations framed under S. 57 read with the proviso to S. 14 of the Act were notified on January 18, 1986 which provides for a period of three years to shift noxious industries to a conforming area. The extensive modifications proposed in the Master Plan for Delhi with perspective 2001 do not contain any proposal for change of land use of D.C.M. site. On the contrary there is reiteration of the land use of the D.C.M. site for flatted factories and residential and the policies of the Master Plan that the heavy and large scale industries should not be located in the Union Territory of Delhi. We have already quoted in extensor the major policy decision with respect to the Master Plan against the location of large and heavy industries in Delhi and the time period within which the discontinuance of the nonconforming uses of the land in Delhi must be ensured. The Mill had a period of 20 years upto September, 1982 to stop the nonconforming use of the land of D.C.M. site.

62. Under the proviso to S. 14 of the Act, it was lawful to continue to use upon such terms and conditions as may be prescribed by regulations made in that behalf any land or building for the purpose and to the extent for and to which it is being used upon the date on which such plan comes in force. The view taken by this Court in *Delhi Development Authority Vs. Ganga Singh, and "Sarojini Market v. M.C.D."*, (1964) 66 PLR 1144 is that so long as the regulations are not framed an occupier of land or building cannot be deprived of continuing the non-conforming user and he cannot be prosecuted. We are not advertent to the arguments that pending framing of the regulations, there is no compulsion to close or there can be no prosecutions in respect of non-conforming user or to the construction of main part of S. 14 and the proviso being distinct provisions. Regulations have now been framed (during the tendency of the writ petition) under S. 57 read with the proviso to S. 14 of the Act and notified on January 18, 1986 which provides for a period of three years to shift the industry of the petitioner to a conforming area. The Mill is a noxious and hazardous industry causing severe pollution by discharge of highly toxic effluents which are not permitted. Thus the heavy and large scale industry of the petitioner at Bara Hindu Rao has to be shifted out of the nonconforming area by January 16, 1989. The reason that "the operations of these units are not dangerous to the lives of the industrial workers or the people living around the factory or the location of the unit in a thickly populated locality, therefore, does not involve any community risk" is factually wrong.

63. The Authority's letter dated January 6, 1982 advising the petitioner that "As per Master Plan of Delhi, it appears that the shifting of the unit is inevitable" and the letter dated July 15, 1983 saying that "as per the Delhi Master Plan heavy

and large scale (sic) are not permitted to be located in Union Territory of Delhi" are specifically (sic) in extensor in the reasons for closure and a submission made that the industrial undertaking is located in a non-conforming area. The main reason advanced for closure is that it was with a view to comply with the mandatory provisions of the Act and the Master Plan. The Administrator does not express that this reason given by the petitioner is not correct or genuine. If the requirement of the law is that the industrial undertaking of the petitioner is to be closed in the not too distant future then surely one would expect that aspect would be dealt with and met by the order as to why it cannot be permitted to be closed. Even in the order dated May 5, 1988, the Lt. Governor does not deal or meet this reason for closure or how he balances it with the public interest.

64. The other reason stated in the application for grant of permission to close is that the industrial establishment of the petitioner at Bara Hindu Rao per se is economically unviable and unprofitable and is suffering heavy losses. The expression "industrial establishment" or "undertaking" or "industry" has been synonymously used at various places in the LD. Act. Chapter V-B was inserted by Act 32 of 1976 and amendments made therein by Act 46 of 1982. Section 25L defines industrial establishment for the purposes of Chapter V-B. Section 2(ka) was inserted by S. 2 of Act 46 of 1982 and with effect from August 21, 1984 defining "industrial establishment or undertaking". The term "industry" is already defined in S. 2(j). Industrial establishment or undertaking means an establishment or undertaking in which any industry is carried on. Industry means any business, trade, undertaking, manufacture or calling of employees and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen. Thus an undertaking is a narrower concept of an industry. An undertaking may be a separate unit of the overall industry activity. The profits and losses of the petitioner which has eleven units, are not the relevant consideration when considering the application for permission to close one industrial establishment or undertaking. The prescribed pro forma requires the detailed information to be furnished in respect of the industrial establishment which is proposed to be closed, besides giving the information if it belongs to a large industrial house. The genuineness or adequacy of the reasons for closure have to be restricted for the unit at Bara Hindu Rao as it is a separate and distinct industrial activity of the petitioner.

65. The petitioner has stated in para 36 of the writ petition that the undertaking has been continuously incurring heavy losses and has been draining on the petitioner's resources and cash flow. The losses suffered by the industrial undertaking over the past few years are as follows :--

Amount in Rs. Lacs

1978-79 193

1979-80 387

1980-81 369

1981-82 935

1982-83 283

1983-84 356

The prescribed pro forma requires the submission of the balance sheet and profit and loss account and audit report for the last three years. The petitioner enclosed the requisite information for the petitioner company as well as the balance sheet and profit and loss account of the unit duly audited for the years ended June 30, 1982, June 30, 1983 and June 30, 1984 as annexure. In the detailed reasons for the proposed closure it is stated that as the shifting of the units is "inevitable", it has not been possible to mitigate the recurring losses, and that it has not been possible for the company to make the necessary investment for undertaking the necessary renovation and modernization of the undertaking in view of the fact that the undertaking is located in a non-conforming area and it has to be shifted out of the present location so as to comply with the necessary provisions of the Act and the direction of the Delhi Administration.

66. In the impugned order the Delhi Administration has not dealt with at all with this ground and the reasons enumerated in the petitioner's application for closure. There is no indication in the order or the reasons recorded that it appreciated the reasons advanced that the industrial undertaking is uneconomical unprofitable and unviable. Again the orders dated May 5, 1988 in review are silent on this aspect. In *Excel Wear and Others Vs. Union of India (UOI) and Others*, their Lordships posed several questions suggestive of answers:--

- (i) Is it possible to compel the employer to manage the undertaking even when they do not find it safe and practicable to manage the affairs?
- (ii) Can they be asked to go on facing tremendous difficulties of management even at the risk of their person and property?
- (iii) Can they be compelled to go on incurring losses year after year?
- (iv) As in the present cases, so in many others, a situation may arise both from the point of view of law and order and the financial aspect that the employer finds it impossible to carry on the business any longer.

There is a complete non-application of the mind by the Delhi Administration in the two impugned orders to this vital reason advanced for permission for closure that the undertaking is economically not viable and suffering heavy losses or for what justifiable reasons that they should be compelled to go incurring losses year after year. The reasons, if not recorded in the order, cannot be supplemented in law in the counter-affidavit in this Court but even that attempt has not been made in the Government's reply. The expression in the impugned order that "it is in public interest that the management makes all out efforts towards the

efficient functioning of this mill" is one-sided order without considering the reasons advanced.

67. Another reason advanced in the impugned order dated April 15, 1985 is that the closure of the unit is not in public interest as this would render almost 6,000 workers jobless and adversely affect thousands of their family members. In the order in review dated May 5, 1988, it is again reiterated that the closure of the Mills may cause adverse impact on the long-term interest of the working (sic) Every closure of an industrial undertake employing a large number of workmen worn necessarily have an impact on the workers of the undertaking. As the Supreme Court said in *Excel Wear and Others Vs. Union of India (UOI) and Others*, is it reasonable to give them protection against all unemployment after affecting the interests of so many persons" interest and connected with the management apart from the employer? The closure of an undertaking may have an impact on the long-term interest of the working class and it is for this reason that the Legislature enacted the provisions under S. 250 to consider the interest of the workers employed in a large industrial undertaking. The interest of the labour could not be ignored altogether and it is for this reason that the Legislature had provided the compensation in the event of the closure of an industrial undertaking. Otherwise, in no case, the closure of an industrial undertaking can be allowed as it would always have an impact on the working class. In the order dated May 5, 1988, the Lt. Governor has failed to take into account the fact that under the settlement the workers are to receive an amount virtually equivalent to their present wages that they could have received if they had continued in employment for a period of six years. It had also to be considered whether this period is sufficient or insufficient to tide over difficulties in obtaining employment including possible employment in the flatted factories which may come up at a future date and which are to be constructed at the present site well within a period of six years. Under the scheme of settlement, the compensation equivalent to six years wages is to be paid in lump sum after two years of closure and during this period of two years after closure an amount equal to interest at 11% is payable quarterly to the workmen which interest amount will be roughly equivalent to the present wages of the workmen. Even otherwise, their Lordships in *Excel Wear's* case said that "it is not quite correct to say that because compensation is not a substitute for the remedy of prevention of employment, lithe latter remedy must be the only one. If it induce so, then in no case closure can or should the Allowed....."

68. Undue importance has been given in the order dated May 5, 1988 that all workers have not accepted the settlement. The; authenticity or genuineness of settlement has not been challenged; by any worker of the Unions respondents 6 to 9 and 11 to 18. Only the Union respondent No. 10 is not a party to the settlement. Over 5,100 workers covered under the settlement have voluntarily appended their signatures approving the terms and conditions of the settlement and other workers belonging to the Unions respondents 6 to 9 and 11 to 18 have not expressed any dissent to the settlement despite opportunities having been

afforded. Only a handful of about 100 workers who are members of the Union respondent No. 10 have not appended their signatures to the settlement. Thus an overwhelming majority of over 98% of the workmen has opted for the closure of the Mill in the hope of the receipt of adequate compensation.

69. The area of the Mill is earmarked for flatted factories in sub-para A of Para 5 of Chapter I of the Master Plan (noticed earlier). The flatted factories" are multi-storied buildings with high density employment ratio. The flatted factories are for small scale industries which may come up in this very area and the working force in the undertaking of the Mill may get employment. This fact was brought to the notice of the Administrator but has not been dealt with. If the Mill is allowed to be closed with the consequential redevelopment of the land for putting up flatted factories, then it may not cause any adverse impact on the long term interest of the working class. On the contrary, it would generate employment for more workmen in terms of the policy decision mentioned in the Master Plan. The redevelopment itself may give employment to over 20,000 workers in the course of next three or four years of its implementation. There is a complete misdirection to the its implementation. There is a complete misdirection to the aspect of the impact of unemployment due to the proposed closure of the Mills.

70. The Lt. Governor has taken note of a fact that the agreement arrived at is subject to certain conditions which are to be implemented by other agencies which may or may not be acceptable to them. To say the least, this reason is based on pure conjectures and surmises and is no valid reason in the eye of law. There are no doubt conditions contained in the settlement between the management and workmen for securing the requisite approvals and sanctions from appropriate statutory authorities. The fact is that the redevelopment of the site of the Mills is sought strictly in accordance with the provisions of the Master Plan. The proposed land use for flatted factories is admittedly within the purview of the land use prescribed in the Master Plan and is in no way affected by the proposed modifications of the Master Plan. The scheme of redevelopment proposed by the Mill was duly approved and accepted by the Authority in its Resolution of No. 26 dated Feb. 1, 1983. The Authority subsequently by Resolution No. 3 dated Aug. 1, 1986 revoked its earlier resolution. That resolution was challenged as bad in law, ultra vires and violative of the provisions of the Master Plan and the Act in C.W.P. 2687/86 ; "D.C.M. v. D.D.A.". The writ petition was allowed by us in the judgment dated May 22, 1987. A SLP is pending in the Supreme Court but there was no basis to rely upon an extract of the grounds before the Supreme Court. The Municipal, Corporation of Delhi is enjoined to sanction the building plans if they are in accord with the building bye-laws or the land use prescribed therefore under the Master Plan. There was thus no reasonable basis to conclude that the conditions may or may not be acceptable to other agencies. It had to be presumed that the other agencies will act reasonably and in accordance with the Act and the bye-laws.

71. Another reason in the impugned order is that the trade and commercial

activity associated with this Will would be adversely affected on account of closure or it will have adverse impact on the economy of Delhi. We could have appreciated this reason if there was any elaboration. As already noticed, the policy contained in the Master Plan was duly formulated after great deliberations by the Authority consisting of, inter alia, a Chairman who is the Administrator of the Union Territory of Delhi, ex officio. One has to infer that when the Master Plan was formulated even when the amendments were proposed, the impact on the economy and other consequential factors must have been taken into account. One of the major policy decisions contained therein is that "it would be unwise to locate large and heavy industries in Delhi, which would, besides posing problem of air pollution, waste disposal, traffic congestion, also give an industrial bias to the city which would be undesirable in a national capital. Moreover, Delhi does not have enough water supply and power to sustain large scale industries". Thus the impact of the trade and of commercial activity or the loss of production must have been considered at the time of formulation of the policy, yet a policy decision was taken that the textile mill is prohibited in Delhi.

72. The only other additional reason advanced in the order in review is to the general law and order problem which might be created when about 6000 workers are rendered without job. We have neither been furnished the material nor the information nor have the expertise to appreciate the apprehended law and order problem in the event of the closure of the Mill. The apprehension with some reasonable basis should have been spelled out in the reasons recorded. The majority of the workmen (more than 98%) are feeling completely secured when they accepted the settlement and prayed for permission being given to close the Mill in terms of the settlement. There is no real likelihood of them creating any law and order problem. The insecurity and uncertainty must be present in the mind of the workmen and their families as to what would happen if the benefits conceded by the management lapse or are withdrawn and the Mill is ultimately closed either under the orders of the Tribunal on a reference or under the orders of the Court. It is then that law and order problem may arise, but that is also safeguarded against by the management's affidavit to the effect:--

The Petitioner Company agrees and undertakes that in the event of this Hon'ble Court allowing the writ petition and the petitioner being permitted by law to close the Delhi Cloth Mills, Bara Hindu Rao, Delhi, then in addition to, the payment of the statutory compensation the petitioner company shall also pay to the workmen an additional compensation of up to Rs. 55 crores in terms of the joint application being C.M.P. No. 3085 of 1987 and subject to the other terms and conditions contained therein. This additional compensation shall be payable on expiry of two years from the date the petitioner Company is allowed by all the concerned authorities including the DDA and Municipal Corporation of Delhi to redevelop its entire 63 acres of land at Bara Hindu Rao and Kishan Ganj, in accordance with the land use stipulated therefore under the Master Plan for Delhi dated Sept. 1962.

No assurance is extended by any competent authority to the workmen that the authorities shall not enforce the Master Plan or shall not insist for due compliance of the provisions of the Act and the regulations in the matter of the Mill. It is also doubtful if any one could opt out of the statutory provisions.

73. The reasons for the closure of the Mill are given in the application dated March 27, 1985 in the prescribed form under S. 250 of the I.D. Act and run into about eight pages together with the documentary evidence in support of it. The impugned order dated April 15, 1985 says that "the reasons stated by the management are not adequate to justify the closure". It is a mere ipse dixit of the authority without specifying the grounds or basis of the so called inadequacy. We wish to say no more on this aspect.

74. In all fairness to Mr. A.K. Gupta, we may notice the argument that the impugned order dated April 15, 1985 having expired, its validity cannot be canvassed in this petition. In our view, the reasons for the order prevail beyond the validity of the order and thus the terminated on merits.

75. In the result, we uphold the vires of the provisions of S. 250 of the I.D. Act and quash the impugned order dated April 15, 1985 communicating the decision of the Lt. Governor, Delhi rejecting the petitioner's application dated March 27, 1985 and refusing the petitioner permission under S. 250 of the I.D. Act to close its undertaking as well as the order in review dated May 5, 1988. We direct the Lt. Governor to determine afresh the application of the petitioner for permission to close its undertaking Delhi Cloth Mills at Bara Hindu Rao, Delhi within a period of 60 days in the light of the observations made in this judgment and in accordance with law. On the facts and circumstances of the case, we leave the parties to bear their own costs.