

(2000) 02 MAD CK 0012

In the Madras High Court

Case No : Writ Petition No's. 1677 and 2336 of 1989 and 13504 of 1993

Gordon Woodroffe Workers and Staff Union

APPELLANT

Vs

Joint Commissioner of Labour and Another

RESPONDENT

Date of Decision : 07-02-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 2, 25F, 25N

Citation : (2000) 2 LLJ 1150

Hon'ble Judges : V.S. Sirpurkar, J

Bench : Single Bench

Advocate : K.M. Ramesh, for Row and Reddy, for the Appellant; G. Subramanian, S. Jayaraman, Patty Jagannathan and Samuel Rajapandian, for the Respondent

Judgement

V.S. Sirpurkar, J.—This judgment shall dispose of three writ petitions, they being W.P. Nos. 2336 of 1989, 1677 of 1989 and 13504 of

1993 as all the three writ petitions have one common ground of an industrial dispute between Gordon Woodroffe Ltd. a registered company,

hereinafter, called company for the sake of brevity and its Workers represented by Gordon Woodroff Workers and Staff Union, hereinafter called

"union" though the specific questions involved in the individual writ petitions are of different nature.

2. Following is the factual scenario:

An application came to be made in the prescribed form under the provisions of Section 25-N of the Industrial Disputes Act, on November 16,

1987, to retrench 96 workers of the company. The concerned authority, before whom the application came to be made, conducted an enquiry on

the basis of the documents filed by the company and the evidence led by the union, which naturally opposed such permission. This permission was

necessitated as the company had more than one hundred workmen on an average in the prior year. After the said enquiry, the appropriate

authority, by its order dated February 22, 1988, granted the permission u/s 25-N of the Industrial Disputes Act to retrench the said 96 workers.

The company, on the basis of this order, also went on to effect the said retrenchment on February 24, 1988. Almost immediately thereafter, the

union had filed a review application before the appropriate Government. The said review application came to be decided by an order dated April

15, 1988 passed by the same appropriate authority. Writ Petition No. 2336 of 1989 is filed by the union, challenging the order passed u/s 25-N of

the Industrial Disputes Act, dated February 22, 1988, granting permission to retrench the workmen as also the order dated April 15, 1988,

rejecting the review application. This writ petition was filed on February 21, 1989.

3. It seems, however, that before this writ petition was filed, the State Government had referred the industrial dispute to the Industrial Tribunal,

Madras by G.O. Ms. No. 26 dated January 3, 1989. By this reference, the questions whether non-employment of 92 workmen was justified or

not and as to what relief they were entitled to and to compute the relief, if any, in terms of money were referred naming in all 92 workmen. It seems

that as soon as this order was passed, Writ Petition No. 1677 of 1989 was filed by the company, questioning the validity of the reference itself on

the ground that once the review application u/s 25-N of the Industrial Disputes Act was decided and refused, there would be no question of a

reference. It was pointed out in this writ petition that after the permission to retrench the workmen was granted on February 22, 1988 and after the

review application was rejected on April 15, 1988 the union had raised a dispute regarding the non-employment u/s 2-A of the Industrial Disputes

Act and though the company had objected to the tenability of the disputes, conciliation was held, and, on the failure report having been sent by the

Conciliation Officer, the Government had referred the matter. It was suggested that such a reference was incompetent as the order granting

permission and further, because of the rejection of the review application, the matter of permission had become final. It seems that apprehending

the success of the Writ Petition No. 1677 of 1989, the union challenged the very validity of the order dated February 22, 1988, granting

permission and the subsequent order dated April 15, 1988, dismissing the review application by way of W.P. No. 2336 of 1989.

4. Writ Petition No. 13504 of 1993 was filed by the company much later, challenging the award passed by the Industrial Tribunal, which had

proceeded in terms of the reference made to it by the State of Tamil Nadu. Though the said reference was in challenge in W. P. No. 1677 of

1989, it seems that the proceedings in terms of the said reference before the Industrial Tribunal were not stayed. In the result, the Tribunal

proceeded with the award and passed the same on October 30, 1992 in the proceedings in I.D. No. 7 of 1989. Incidentally, the Tribunal, while

deciding the broader question as to whether the non-employment of the 92 workmen was justified, has also chosen to decide the question as to

whether it could go into the merits of the order granting permission to retrench u/s 25-N of the Industrial Disputes Act as also rejecting the review

application against the order. In fact, the company had raised a serious objection to the tenability of the award proceedings and had contended that

the Industrial Tribunal had no jurisdiction to pass the award as it had initially no jurisdiction to question the correctness of the permission granted

u/s 25-N of the Industrial Disputes Act. The Tribunal had specifically held that not only did it have jurisdiction to go into the correctness of the

order granting permission to retrench and the subsequent order rejecting the review application, but even on merits, the appropriate authority had

erred in granting the permission. Needless to mention, that the Tribunal has mainly decided the award in favour of the workmen practically only on

the ground that the appropriate authority had incorrectly granted the permission to retrench the workmen and such permission could not have been

granted in law on merits. The reasons given by the Tribunal and its award are thus challenged in the last mentioned Writ petition i.e. W.P. No.

13504 of 1993.

5. The learned counsel on both sides addressed the Court commonly in respect of all the writ petitions named above.

6. On behalf of the company, the contention of the learned senior counsel Mr. G. Subramanian is that the reference which has been made by the

State Government, exercising its powers u/s 10 of the Industrial Disputes Act, regarding the non-employment was incompetent in view of the finality attached to the question of permission u/s 25-N(5) of the Industrial Disputes Act. He contends that the reference could have been made only u/s 25-N(6) by the appropriate authority or the Government, as the case may be, and, therefore, the Government has acted beyond its powers in making a reference u/s 10 of the Industrial Disputes Act though it had received a failure report from the Conciliation Officer in the matter of conciliation on that issue. His further argument is, even if it is held that the reference was validly made, the question as to whether the permission to retrench was validly and correctly granted by the appropriate authority would be outside the jurisdiction of the Tribunal since subsequent order, refusing the review of that order granting permission to retrench, had put a final seal under the provisions of Section 25-N(5) of the Industrial Disputes Act, under which there was a total and complete finality. He, therefore, suggests that the Tribunal's finding regarding the incorrectness of the order granting permission to retrench is non est finding being without jurisdiction.

7. As against this Mr. N.G.R. Prasad, learned counsel appearing on behalf of the union, contends that firstly, it cannot be said that the reference to the Tribunal was incompetent as the power to make a reference generally flows from Section 10 of the Industrial Disputes Act alone. Therefore, even if there is a bar u/s 25-N(6) of the Industrial Disputes Act, such power would be referable to Section 10 of the said Act. Alternatively, his contention is that even if such a reference is held beyond jurisdiction, the initial permission granted by the authority to retrench is itself bad in law on merits and, therefore, this Court itself could go into the merits and demerits of the permission as also the order rejecting the review of the order granting permission. The argument is that though the concerned provision, i.e. Section 25-N(5) declares such a permission to be final, the merit of that order could always be questioned before this Court independently under the constitutional powers of this Court under Article 226 and/or Article 227 of the Constitution of India. He has addressed extensively on the lack of merits in the order granting permission as also the order refusing the review thereof to suggest that the permission to retrench could not have been granted. He has attacked the order firstly on the ground

that the original application seeking their permission for retrenchment of the workmen lacked bona fides and amounted only to a colourable exercise of powers on the part of the company. His further argument is that while granting that permission or while rejecting the review application, no proper enquiry was conducted and the principles of natural justice were simply ignored. Thirdly, he says that the company had miserably failed to bring out any necessity, much less compelling necessity, for retrenching 92 workmen. Lastly, he submits that the authority had rejected the permission on the basis of obsolete law, which had undergone a sea change because of the subsequent decisions of the Apex Court as also High Courts.

8. The learned senior counsel appearing for the company, on the other hand, justified the order on the ground that there was a compelling necessity on account of the precarious financial situation prevailing in the company at that time. The learned senior counsel argues that the company had already made an application before the Board for Industrial and Financial Reconstruction (hereinafter called "BIFR") under the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter called "SICA"). He is at pains to point out that subsequently the scheme was floated before the BIFR. He fairly submits that though the law had undergone a change, the appropriate authority had correctly granted the permission on the basis of the materials available before it. He seriously disputes the contention that no proper enquiry was conducted or that no opportunity was given to the parties to lead evidence. His further submission is that while entertaining a writ petition under Article 226 of the Constitution, this Court could not go into the factual aspect as to whether the company in reality, was in dire financial straits and as such justified in seeking the permission to retrench 92 workmen. According to him, such finding of facts are not normally disturbed by this Court, while entertaining the petition under Article 226. He, therefore, strongly justifies the order granting the permission as also the order refusing to review the order.

9. The learned Government Pleader has merely suggested that the action on the part of the Government to refer the dispute to the Industrial Tribunal was correct. He also supports the order passed granting permission but has not taken a definite stand before this Court as, according to

him, the question is inter partes, to which the Government could not be said to be a party.

10. From this conflicting arguments, the questions which basically emerge are as to whether the order granting permission u/s 25-N of the Industrial

Disputes Act and the subsequent order refusing to review that order are correct orders in law and whether the permission to retrench the said 92

workmen is rightly given or not. If that permission is rightly granted, there would be no question of deciding as to whether the reference made by

the Government was competent and further whether the Tribunal was right in holding that the permission should not have been granted. If, on the

other hand, the orders granting permission and refusing the review are wrongly passed, then also there would be no necessity to probe into the

question regarding the validity of the reference order made by the Government and the subsequent order of the Industrial Tribunal. The debate will

therefore narrow down to the question of correctness of the order granting permission to effect retrenchment and the subsequent confirmation of

that order by rejecting the review application.

11. The learned counsel for the petitioner Mr. Prasad, took me exhaustively through both these impugned orders dated February 22, 1988 and the

subsequent order dated April 15, 1988. The first attack of the learned counsel is on the bona fides of the company in filing the application u/s 25-

N of the Industrial Disputes Act. The learned counsel contends that the application itself has been made with a mala fide intention of depriving the

concerned workers, who were about 100 in number, of their rightful wages and for this purpose, the learned counsel relied on the agreement of

settlement dated February 13, 1985.

12. The said agreement was entered into between the Management of the company and the Union of the workers. My attention was drawn to

Clauses I to V of the settlement, which read as under:

I. The one hundred apprentices mentioned in Annexure A shall be confirmed in treated as permanent employees the services of the company and

shall be in accordance with the company's certified Standing Orders with effect from January 1, 1985.

II. These hundred apprentices shall be eligible for all fringe benefits applicable to the permanent workmen of the Leather Manufacturing Division.

III. Their wages shall be Rs. 450/- per month for the first year, i.e. 1985 Rs. 550/-per month during the second year, i.e. 1986 and Rs. 650/- per

month during the third year i.e. 1987 from the First of January of each year.

IV. Thereafter the workers shall be fitted into the starting basic pay of regular scale of wages applicable to the permanent workmen of their

category in the Leather Manufacturing Division.

V. The Union stakes no demand in respect of these hundred apprentices involving directly or indirectly any financial commitment on the part of the

company during the end of the year 1987.

13. It is pointed out that the hundred workers, whose names appear in Annexure A of that agreement, include the present 92 workmen. From this,

the learned counsel pointed out that firstly, though in the settlement deed these workers were described to be ""Apprentices"", atleast after February

"" 13, 1985 they did not any more remain as ""apprentices"" and were the ""confirmed workmen"" as also the ""permanent employees"" in accordance

with the certified Standing Orders of the company (in fact, under Clause I they are agreed to be treated as such not from the date of the

agreement, but from the prior date of January 1, 1985). He secondly, points out that these workers had agreed to work for three years on meager

wages, i.e. Rs. 450/- per month for 1985, Rs. 550/- per month for 1986 and Rs. 650/- for 1987. It is pointed out by the learned counsel that

these workers used to work on Rs. 250/-per month only. My attention was invited to the appointment order of one Shri R. Kanniappan, dated

December 14, 1985, who is at Sr. No. 1 of Annexure A. It is then pointed out by the learned counsel that with effect from January 1, 1987, the

company had agreed to fit all the workers into the starting basic pay of regular scale of wages applicable to the permanent workmen. Learned

counsel points out that such pay was much more than Rs. 650/- per month being I more than double of that amount.

14. On this backdrop, the learned counsel points out the date of application, i.e. November 16, 1987. The learned counsel points out that these

workers had been working on the meagre pay, starting from Rs. 250/- per month, even prior to 1983. Their services were utilised by the company

for three years on meagre pay of Rs. 450/- per month for the year 1985, 550/- per month for the year 1986 and Rs. 650/- per month for the year

1987, and when it came to give them the benefits of the settlement and a better decent salary available to the other permanent workers, the management unscrupulously made the application for permission to retrench them. For this, the learned counsel argues that the company probably never had any intention to make these workers permanent and extracted the work from them for three years on meagre wages, dangling before them the carrot of] permanency in the employment and when it came to fulfil the promise permanently, an application was made to throw them out of the job. The learned counsel also pointed out from the documents on record that some of these workers had been working even from 1981.

We have before us an appointment order in case of one R. Kanniappan, dated May 24, 1981, wherein he had been appointed as an "Apprentice on a salary of Rs. 150/- per month. The learned counsel, therefore, argues that the company itself lacked bona fides in making an application for retrenchment.

15. According to the learned counsel, very strangely in the Form R2, which is the prescribed form under Rule 61(A2) of the Rules under the

Industrial Disputes Act for permission to effect retrenchment of the workers, these 96 workers were described as "Apprentices". The learned counsel pointed out that this was a pure misrepresentation on the part of the company in the wake of the aforementioned agreement dated

February 13, 1985 as, under Clause I thereof, these workers were agreed to be treated as "permanent employees" with effect from January 12,

1985 only. It is pointed out by the learned counsel that even the appropriate authority could have been and, as a matter of fact, was misled

because of this description of the workers as "Apprentices". The learned counsel invited my attention to the last paragraph of the statement of

reasons for retrenchment wherein a misstatement was made that the workmen were currently designated as "Apprentices" though immediately

thereafter a reference is made to the settlement dated February 13, 1985 and it is stated that they were confirmed and treated as "permanent

employees". The learned counsel further urged that therein also a complete misstatement was made that these workers were the "junior most

workmen". For this, the learned counsel pointed out that it was an admitted position that as many as about fifteen workers were junior to these

persons and they were ultimately retrenched even before any orders were passed on the present application of the company. From these three

submissions, the learned counsel urges that the application for retrenchment itself was mala fide. The learned counsel, therefore, earnestly argued

that this was nothing but a colourable exercise of powers on the part of the company.

16. The learned senior counsel appearing on behalf of the company could not dispute any of these factual positions regarding the existence of a

settlement between the parties and the pay structure agreed to therein. It has to be candidly admitted by the learned senior counsel during his

submissions that these workers would have never got the salary of about Rs. 400/- per month. From January 1, 1988, as against the meagre sum of

Rs. 650/- per month, that too only for the year 1987 and which salary was still lesser in the earlier two years by Rs. 100/- per month in every year,

that their salary would have been raised to Rupees 1400/- is clear from the statement of reasons for retrenchment, wherein it is mentioned that the

wage level prevailing in the company was the highest in the leather industry and that at the current level, the wage of workmen was Rs. 1400/- per

month. It is therefore obvious that the company had chosen an opportune time to seek the permission to retrench these workers. In their statement

of reasons for retrenchment, the company had mentioned that during 1981-82 the leather division was operating at a profit and it was from 1982-

83 that the leather division was making continuous and heavy loss, as a result of which, an extreme step of retrenchment has been taken. In that

statement, it is pointed out that the production was constantly diminishing from 1981-82 during which year it was 104.52 lakhs sq. ft. and

ultimately in 1987 it was barely 34.40 lakhs sq. ft. It is also seen therefrom that in 1982-83 it was 71.17 lakhs sq. ft. It increased to 76.34 lakhs

sq. ft. in 1983-84 and again declined to 61.62 lakhs sq. ft. in 1984-85 and again rose in 1985- 86. One wonders therefore that if the company

had started declining from 1981-82 itself and had kept on declining further for almost five years, how is it that it is only at the end of the agreement

period that the action of retrenchment should be thought of by the company. It could have been taken even prior to the agreement dated February

13,1985. However, by that agreement it is clear that the company bought three years of period by asking the workmen to work on extremely

meagre salary for three years. It is obvious that at the end of the year 1987 the company would have been required to pay Rs. 1400/- per month

to these workers and, therefore, they timed their application so as to complete that year also by proposing the retrenchment from February 1988.

Thus it is clear that the company had extracted work from these poor workers for meagre wages by giving them a promise of permanency and

better prospects of a salary of more than Rs. 1400/- per month and when it became to fulfilling the promise, the company proceeded to seek the

permission to retrench only these workers covered by the agreement. The facts do speak for themselves. Unfortunately, this aspect of bonafide on

this account has been completely missed by the appropriate authority. (I shall discuss this aspect later on when I consider the merits and demerits

of the order in the latter part of this judgment.)

17. The learned senior counsel appearing for the company could not deny these factual position but tried to substantiate it by pointing out that in

fact the company had tried to pull the matters out of the boots by pouring in money into the company, but there also, because of the diminishing

production, the efforts met with no success. When we see the statement of reasons, it would be clear that though it is stated that its production had

fallen, it is not specifically stated therein that it has fallen due to any fault on the part of the workers or that the workers had in any manner been

responsible for the fall in the production by taking recourse to any strike, etc. In fact, the statement of reasons for retrenchment is very

conspicuously silent about that aspect. The learned senior counsel for the company also stressed that the company had become sick as it had

already approached the BIFR and as such it was not possible for the company to honour their settlement dated February 13, 1985 and it was

almost compulsively that the application u/s 25-N of the Industrial Disputes Act was made. At present, we are not on the question of the financial

aspect of the company. We are only on the question of bona fides. It cannot be gainsaid that the date of November 16, 1987 chosen by the

company for making the application was perfect so as to suit the company to the fullest extent inasmuch as by that the company could draw the

maximum benefit out of the settlement dated February 13, 1985 wherein the company would have been required to pay the increased wages from

January 1, 1988. The appropriate authority, therefore, should have been alive to this serious attack on the bona fides of the company. Atleast from

the order, the authority seems to have not taken this aspect into consideration with the seriousness that was required.

18. A very strange observation seems to have been made in the review order and that is, according to the Management there was no effective date

in the settlement dated February 13, 1985 from when the Management should increase the wages of 96 retrenched workers. A plain reading of the

agreement suggests that the workers had agreed to for Rs. 650/- per month only upto December 31, 1987 and, therefore, it was clear that

thereafter the Management was bound to fit them into higher salary and, therefore, the"" liability to pay the higher wages would have been from

January 1, 1988 as till that date, the workers were bound to work at the rates agreed to in the settlement. The authority has therefore clearly

ignored the agreement and the true spirit thereof. A very important aspect was again ignored that after throwing out these 96 workers that the

company thought of introducing a scheme for Voluntary Retirement, whereunder much more compensation was payable to the persons who

availed of the scheme. A reference to this is to be found in the proceedings of BIFR where even that Board had expressed as to why those 96

workers alone were discriminated against by choosing to give them a petty compensation u/s 25-F of the Industrial Disputes Act as compared to

the better compensation which would have been available to them had they availed of the voluntary retirement scheme. There also a totally

incorrect representation came to be made to the BIFR that these persons were only"" Apprentices"" and were working only for two/three years. The

following extract from the order of the BIFR would be sufficient:

Regarding the rationalisation of labour, the representative of the informant company stated that they had already retrenched 96 workers with the

permission of the State Government on the basis of fifteen days wages for every completed year of service. In addition, the company has

formulated a voluntary retirement scheme, which envisages compensation of one month salary for every completed year of service. On a query as

to why there were two types of retrenchment compensation, the representative of the company stated that the retrenchment compensation of

fifteen days" wages covered mainly the persons with two/three years experience and many of whom were trainees.

When the learned senior counsel for the company was specifically confronted with this statement, he could not satisfy the Court about the

correctness of the statement. It was obvious that none of these 96 workers was "Trainee", though they were tried to be described as "Apprentice

and it was clear that from January 1, 1985 itself they were treated as "permanent workers" of the company. Besides, the representation made by

the company before the BIFR that they were having experience of only two/three years was also a patent lie as most of them were working for

more than five/six years prior to the presentation of the application before the BIFR. :

This would suggest a last nail in the coffin and would suggest the extent to which the company had gone. This very important aspect has not been

taken into consideration by the concerned appropriate authority though much labour had been wasted by it in appreciating the fact that the

company had become a sick industry and had approached the BIFR for that purpose.

19. Same thing could be stated regarding the description of the workmen as "Apprentices". Strangely enough, these workers were described as

apprentices when it was apparent from the agreement that they were given the permanent status. To describe them as "apprentices" was nothing

but an eye-wash to suggest that these workers were working for a very short duration. We have on record the documents that some of the

workers were working in the company from as early as 1981. Though the union had clamoured before the appropriate authority, there does not

appear to be any consideration of this vital misstatement made by the company while approaching the authority for permission to retrench. In fact,

first making of an application to throw out 96 workers covered by the agreement, and thereafter surreptitiously introducing the Voluntary

Retirement Scheme itself speaks volumes regarding the lack of bona fides on the part of the company.

20. Last, but not the least, a total misstatement was made in the application that these workers were the "junior most workers". The company had

to eat its words when ultimately it became clear that 15 other persons, junior to these 96 workers covered hereunder, were left out by the

Management and were chosen to be sent home only during the pendency of the application. It was obvious that the description of the workers as juniormost workers"" of the company was a patent lie. A most roundabout treatment has been given to this aspect in both the orders. The learned senior counsel merely suggested that those were the persons who have not even completed 240 days of working and, therefore, they were not covered. In that case, it is not known as to why they were chosen to be retained and further as to why the present 96 workers were described as the juniormost persons. It has to be therefore concluded that on the material, which was available before the authority concerned, it was clear that the exercise of effecting the retrenchment was without any bona fides.

21. The lack of bona fides on the part of the company was found by the Tribunal before which this question was canvassed. The Tribunal also had the benefit of the evidence having been led by the parties. One Mr. Simon was examined as MW-1 before the Tribunal and it is revealed from his evidence that the company has established another independent company styled as "Shoes Specialties Private Limited" at Ambattur where this witness, who was the employee of the company, also worked as Industrial Relations Officer, without remuneration in addition to his job under the company. It has also come in the evidence that the machinery, which were previously installed in the Shoe Upper Department of the company, have been removed in 1987 though the removal was opposed and protested by the union. This establishment, on the part of the company, as a sister company at Ambattur and the removal of machinery in 1987 would speak volumes against the bona fides of the company. In fact, this factor, which speaks against the bona fides of the company, was not available to the concerned authority, whose order is impugned here in this petition but, the same can be taken into consideration as a subsequent event in the present petition to support the finding of lack of bona fides. Even the Industrial Tribunal, in its order, has looked down upon this aspect.

22. Since the bona fides of the company have come in serious doubts, the order allowing the application will have to be closely scrutinised. It will be interesting to see that the very approach of the appropriate authority in considering the question of the necessity of retrenchment is faulty more particularly because of the subsequent decisions of the Supreme Court. In this

order all through, the approach of the authority has been that it was for the Management to manage its own business and that if the Management has taken the decision of retrenchment in order to manage its business in a more efficient manner and for the betterment of the company, then it would be the sole discretion of the Management to take decision regarding the retrenchment. The authority has quoted the decision in Parry and Co. Ltd. Vs. P.C. Pal and Others, and has quoted the following paragraph from the said decision:

It is well established that it is within the managerial discretion of an employer to organise and arrange his business in the manner the employer considers best. If a scheme for such reorganisation results in surplus age of employee, no employer is expected to carry the burden of economic dead weight and retrenchment has to be accepted as inevitable. The legislature realised this position and therefore provided by Section 25-F compensation to soften the blow of hardship resulting from employees being thrown out of employment for no fault of his. It was held that it was not the function of the Tribunal to go into the question whether such scheme was profitable or not or whether it should have been adopted by the employer or not.

23. It has already been shown that beyond quoting the ruling, the authority has miserably failed to examine the bona fides on the part of the company for making an application. It is already shown and held by me in the earlier part of the judgment that this decision could not be said to be bona fide. Therefore, even applying the law laid down in the aforementioned decision, the retrenchment could not have been permitted as has been done by the authority. Beyond saying in the last paragraph of his order that he has found the proposed retrenchment is for bona fide and genuine reasons, the authority has really not bothered to examine the question of bona fides in detail. In fact, in a lengthy order, beyond stating the contentions of the rival parties, there is hardly anything worth naming in the name of consideration on the part of the authority. Most of the order is replete with the verbatim reproduction of the stand taken by the union and the company in their pleadings as also the letters exchanged between them and submitted before the authority. Even otherwise, as has been stated, the treatment of the material placed before the authority is far from

being satisfactory.

24. It cannot be forgotten on this background that the decision in Parry's case, (supra) on which substantial reliance seems to have been placed,

has been virtually negated by the Apex Court in another decision viz. Workmen of Meenakshi Mills Ltd. and Others Vs. Meenakshi Mills Ltd.

and Another, . There the Supreme Court was considering the constitutionality of unamended Section 25-A of the Industrial Disputes Act. In

paragraph 32, the Supreme Court has referred to the cases of D. Macropollo and Co. (Private) Ltd. Vs. D. Macropollo and Co. (Private) Ltd.

Employees' Union and Others, , Parry and Co. Ltd. Vs. P.C. Pal and Others, , and Parry & Co. Ltd. v. P. C. Lal, (supra) and has noted therein

the law laid down in those cases regarding the retrenchment. There the Apex Court has noted the five principles when the retrenchment is

permissible:

(i) management can retrench its employees only for proper reasons which means that it must not be actuated by any motive of victimisation or any

unfair labour practice:

(ii) it is for the management to decide the strength of its labour force:

(iii) if the number of workmen exceeded the reasonable and legitimate needs of the undertaking, it is open to the management to retrench them:

(iv) workmen have become surplus on the ground of rationalisation or economy, reasonably or bona fide adopted by the management or on the

ground of any other industrial or trade reasons; and

(v) the right to effect retrenchment cannot normally be challenged but when there is a dispute about the validity of retrenchment the impugned

retrenchment must be shown as justified on proper reasons, i.e., that it was not capricious or without rhyme or reasons

In the same paragraph, considering some other decisions, the Supreme Court has also considered the definition of Section 2(oo) of the Industrial

Disputes Act. The Apex Court says at p. 310:

In view of these decisions, it cannot be said that retrenchment means termination by the employer of the service of a workman as surplus labour

and, therefore, the law that was laid down by this Court in D. Macropollo & Co. case, (supra), Workmen of Subong Tea Estate case, (supra) and

Parry & Co. case (supra) on the basis of the said restricted meaning of retrenchment cannot be held to govern the exercise of the power by the appropriate Government or the authority under Sub-section (2) of Section 25-N. It is significant that even according to these decisions existence of proper reasons was a restriction on the employer's right of retrenchment earlier also. It is only the scope of the reasons which has undergone a change with this alteration in the law.

The Supreme Court has clearly stated that the principles laid down in these cases governing retrenchment were at the time when retrenchment, as defined in Section 2(oo) of the Industrial Disputes Act, was found to mean to discharge of surplus labour or staff. The Supreme Court has then taken a change in the law relating to the retrenchment since the decision of that Court in *The State Bank of India Vs. Shri N. Sundara Money*, wherein "retrenchment" was construed to mean termination howsoever produced and all terminations except those specified in Clauses (a), (b) and (c) of Section 2(oo) were held to be retrenchment. The Supreme Court has also given the long list of cases wherein the view expressed in *Sundara Money's* case, cited (supra), was reiterated. It is, therefore, clear that the law, on which permission has been granted, has itself undergone a sea-change.

25. In paragraph 33, the Supreme Court has clearly held that in enacting Chapter V-B the intention of the Parliament was to alter the existing law relating to lay-off, retrenchment and closure in relation to the larger industrial establishments falling within the ambit of Chapter V-B because it was felt that the existing law enabled large scale lay-offs, retrenchments and closures by large companies and undertakings and this had resulted in all round demoralising effect on workmen. The guiding principles for considering an application u/s 25-N having been changed by the Supreme Court in *Meenakshi Mill's* case cited (supra), the very basis of the order granting permission is shaken, though at the time when the permission was granted, the law laid down in *Meenakshi Mitt's* case was not available to the concerned authority. However, when the petition is being decided today, the change in the law would have to be noticed and acted upon.

26. Similar is the view expressed by the authority regarding the nature of enquiry. The authority observes:

The Bombay High Court in Maharashtra General Kamgar Union Vs. The State of Maharashtra, held that at the stage of permission u/s 25-N of

the Industrial Disputes Act, any elaborate judicial or quasi-judicial enquiry is not contemplated and the very scheme of Section 25-N preclude such

an elaborate enquiry.

There also, the law underwent a change in Meenakshi Mill's case, (supra). In paragraph 42, the Apex Court holds Workmen of Meenakshi Mills

Ltd. and Others Vs. Meenakshi Mills Ltd. and Another,

We have already dealt with the nature of the power exercised by the appropriate Government or the authority while refusing or granting

permission under Sub-section (2) and have found that the said power is not purely administrative in character but partakes of exercise of a function

which is judicial in character. The exercise of the said power envisages passing of a speaking order, on an objective consideration of relevant facts

after affording an opportunity to the concerned parties.

27. In the case of Maharashtra General Kamgar Union (supra) which has been relied upon by the authority, there is no doubt that the Bombay

High Court had expressed that the enquiry u/s 25-N was not meant to be an elaborate quasi-judicial enquiry. The observations are to be found in

paragraph 5 of that decision. However, the appropriate authority here seems to have picked-up those observations out of the context. It cannot be

forgotten that the main reason for those observations was that then the language of the section was altogether different. After Meenakshi Mill's

case (supra), Section 25-N came to be further amended. Sub- section (3) thereof is as under:

Where an application for permission under Sub-section (1) has been made, the appropriate Government or the specified authority, after making

such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons

interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the

workmen 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.

It has to be remembered that Section 25-N, which fell for consideration in

Meenakshi Mill's case, was an unamended section. Sub-section (2) of unamended Section 25-N was as under:

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

It can be seen that even with this comparatively narrow language of old Sub-section (2), the Apex Court has found that the said enquiry partook of exercise of a function which is judicial in nature. The appropriate authority has completely forgotten that the application was made under the amended Section 25-N and the amendment introduced by inserting Sub-section (3), which has been quoted above, has made the said enquiry a quasi-judicial enquiry, if not judicial enquiry. The authority, under the new provisions, has to grant an opportunity of being heard not only to the employer and the concerned workmen, but also to the persons interested in the retrenchment and has to then consider the genuineness and adequacy of the reasons stated by the employer and has also taken the interest of the workmen and all other relevant factors into consideration.

Thus, the scope of enquiry under unamended provisions has been vastly enlarged because of the amendment provisions of Section 25-N, which amendment was introduced by Act 45 of 1984, with effect from August 18, 1984. In that view it is obvious that the concerned authority was not even aware of the scope of enquiry and did not take into consideration the amended provisions of Section 25-N. This is almost a fatal defect in the order. Thus the very approach of the authority was defective, which had the effect of invalidating this order. The Apex Court while considering the scope of enquiry under unamended Section 25-N, has expressed in Para graph 43 that the power under that section has to be exercised keeping in view the provisions of the Act and the object underlying 1976 Act by which Section 25-N was inserted in the Act. The Court goes on to say that the basic idea was the settlement of the industrial disputes and the promotion of industrial peace so that the production may not be interrupted. It further takes note of the Statement of Objects and Reasons of 1976 Act and finds that the idea behind that provision is to prevent avoidable

hardships of unemployment to those employed and to maintain higher tempo of production and productivity. It further suggests that the appropriate

authority has to bear in mind the basic idea underlying the provisions of the Act, viz. settlement of industrial disputes and promotion of industrial

peace. I am afraid, the impugned order of the authority is sadly wanting as far as the consideration of the above mentioned factors is concerned.

By the amendment, clear pointers have provided as to the guiding factors and they are:

(i) The interests of the employer, workmen as also the other persons who are interested in such retrenchment: and

(ii) The authority has to consider the genuineness and the adequacy of the reasons which have been stated by the employer. By genuineness what is meant by the legislature is the truthfulness of the reasons stated.

28. I have already referred to the statements of reasons for retrenchment in paragraph 13 of this judgment and found that a misstatement has been

made therein calling the concerned workers as ""apprentices"". There is a further misstatement that these workers were the ""junior most workers"".

Again, in the statement of reasons for retrenchment, there is no reference to the relevant part of the agreement dated February 13, 1985 that the

workers had agreed to accept the meagre amount of Rs. 450/- p.m., Rs. 550/- p.m. and Rs. 650/- p.m. for three consecutive years ending with

1987 and thereafter they were to be brought on par with the regular confirmed employees, whose salaries were about Rs. 1400/- per month. The

company had obviously camouflaged these clauses in the agreement dated February 13, 1985 in a studious manner. Unfortunately, this has been

lost sight of by the appropriate authority, which had given primacy to the principle that it was for the employer to manage his business. No

consideration whatsoever has been shown to the workers' interest, which was covered by the agreement dated February 13, 1985, which

agreement was binding on the company. Not only this, but the authority has not even bothered to consider the effect of unemployment ensuing

because of the proposed retrenchment and remained content on the basis of the obsolete law in Parry & Co. Ltd., case (supra), that the blow of

unemployment was softened by the provision of compensation u/s 25-F. That is a basic error committed by the concerned authority. It may be

said that the authority has really failed to consider the perceptible overall change in the law of Section 25-N by the amendment of 1984, which

amendment was itself perhaps owing to the decision in Meenakshi Mill's case (supra). Even at the cost of repetition, I must add that the authority

did not have the advantage of the decision in Meenakshi Mill's case at the time when the permission came to be granted, but certainly had the

advantage of the amended provisions of Section 25-N which amendments were practically ignored by the authority on the basis of the law which

was pertaining to the unamended provisions of Section 25-N which law also underwent a change in Meenakshi Mill's case.

29. It seems that the authority was completely swept by the fact that the company had become a sick company and its application was registered

before the BIFR. In that behalf the authority seems to have accepted the documents filed by the company suggesting that the company had

incurred huge losses and therefore became a sick company. There has been practically no effort on the part of the authority to assess as to whether

the retrenchment was a must and further whether any other measures could have been taken without effecting the retrenchment of the workers and

thereby balancing the financial, position of the company as against the prospects of unemployment of workers. In fact, the authority has refused to

consider those questions which would be apparent from the observations in the order to the following effect:

it is for the applicant to organise their business in such manner as deemed fit. Heavy purchases, removal of machineries to some other place,

purchase of air conditioners and automobiles; etc. perquisites given to the executives, appointment of more executives, etc. are managerial

decisions and they need not be taken into consideration while ascertaining not only in production but also in marketing and getting orders from

customers,

This more or less suggests that the relevant objections raised by the union were simply brushed aside. I have already pointed out earlier that before

the Tribunal the company, tendered the evidence of one Mr. Simon, who spoke about not only the creation and floating of another company but

also regarding the removal of machineries of the company to the other sister concern. He had also to admit that he himself was working there also,

thereby one thing was certain that the new company was nothing but an eye-wash to get away from the liabilities faced by the old company and that there were common persons in the management of both the companies. While examining the genuineness of the reasons for retrenchment, such factors, as are stated above, were bound to be considered and, admittedly, they are refused to be considered. That non-consideration regarding the genuineness of the reasons for retrenchment poses a big question mark to the correctness of the orders. True it is, the evidence of Mr. Simon was not available to the authority because it became available only to the Tribunal subsequently but today when presently when the question is of the genuineness of the reasons for retrenchment, these subsequent events cannot be altogether ignored while deciding the writ petition challenging the correctness of the order itself. It was pointed out by Mr. Prasad, by referring to the order of the Tribunal, that 60% of the machinery was shifted. He also pointed out that the managerial staff was being given fabulous perquisites and that large money was spent on the purchase of air conditioners and automobiles for the company. His contention therefore appears to be right that the sole consideration before appropriate authority in granting permission was the fact that the application of this company was registered before the BIFR on the ground that it had become a sick company.

30. It is pointed out by the learned senior counsel Mr. G. Subramanian, that the application was made by this company before the BIFR under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 on August 25, 1987 on the basis of a resolution of the Board of Directors, dated June 24, 1987. It is also pointed out that this application was registered on October 15, 1987 and that the application u/s 25-N came to be filed only on November 16, 1987, after the application by the company before the BIFR was registered. Learned senior counsel very heavily relies on the order of the BIFR, to which reference has already been made earlier. It is pointed out that before the appropriate authority a report came to be filed authored by one Mr. S.N. Mukherjee, who was considered to be an authority in the leather industry and was a responsible consultant. The appropriate authority has made a passing reference to this report and seems to have relied thereupon to hold that 152 workmen

only were required for a production norm of 3.5 lakhs sq. ft. at the rate of 100 sq. ft. per mayday. It is interesting to note that this report relied upon by the authority was relied upon by the Management before the BIFR and the said report was submitted to the Industrial Credit Investment Corporation of India in October, 1987. According to the authority, in this report Mr. Mukherjee had referred to the high wage rate and low leather productivity as compared to the other leather industries. The authority has mentioned that as per this report, the productivity of the boot upper units in and around Madras City is approximately around 6 to 7 pairs per mayday, whereas in this company, under similar conditions, the productivity was only two pairs per mayday. So also in case of finished leather, the average production of this company was barely over 40 sq. ft. as compared to other leather industries, whose production was double that rate. It is also mentioned by the authority that this low productivity and the high wage rate had affected the economy of operations. This report was objected to by the union by its letter dated January 28, 1986 on the ground that this report was not proved in the sense the expert Mr. Mukherjee was not brought into depute about the same. Mr. Prasad, the learned counsel vociferously argued that what was given was not the full report, but extract thereof. It is also pointed out by Mr. Prasad that beyond mentioning the contents of the report, which was also not complete in itself, the authority has really not applied his mind as to whether the said report was totally acceptable or not. All that the authority has said about this report is that Mr. Mukherjee was an authority in the leather industry. For that also, reliance has been placed on the letter of the Management dated February 3, 1988. In the name of consideration of that report, all that has been said by the authority is as follows:

I do not consider that just because these documents are photostat copies or extracts and not marked as exhibits, they should not be taken into consideration, while arriving at my conclusion. The applicants have proved that they had been incurring losses consistently and that they had applied for declaration of their industry as a sick industry. Even though the leather industry has good prospects, this factory had been incurring continued loss.

According to the industry's average and also as per the report of Thiru S.N.

Mukherjee, 152 workmen are required for a production norm of 3.5 lakhs square feet at the rate of 100 square feet per mayday. This is not the prevailing norm or accepted norm in this factory. For the purposes of ascertaining the surplus labour nothing prevents the applicants from following the industry average, based on a specialists report which was given to the Industrial Reconstruction Bank of India and not to the management. For the purpose of ascertaining surplus labour the conditions precedent to retrenchment under the Industrial Disputes Act should be followed and for this purpose the employer need not issue Section 9-A Notice in view of the provisions u/s 25-N(9) of the Industrial Disputes Act.....

This discussion will show the haphazard manner in which the so- called report of Mr. Mukherjee was relied upon. It seems that this report, only the extract of which was supplied, has been treated as a be all and end all of the matter along with the fact that the application of the company was registered before the BIFR. In the name of finding out the adequacy of reasons this is all what the authority has considered. There is nothing in the name of discussion of the report or the assessment thereof. Even the Tribunal has refused to rely on this report. The objection raised by the union to this so-called report has not at all been considered. In fact, the union had objected to this report on a very substantial ground that the report was bound to be a tilted one as this Mr. Mukherjee was an erstwhile employee of the company and again further that his son was also an employee of the company at the time when this report was prepared. The learned counsel for the company, Mr. Subramanian, very seriously urged that this Court could not go into the factual aspects and could not record its own findings in place of the findings by the expert. True it is, that it would not be for this Court to comment upon the report and its merits and demerits particularly when even the full report is not made available, but the fact is that firstly, the authority was bound to consider the weighty objections made against this report by the union and secondly, the authority should have discussed the report considering the whole report and not the extract thereof. In the name of giving a finding for the adequacy of the reasons all that the authority has done is to plainly accept the technical findings in that report. At all the times the union was objecting to the accepting of this report without affording them an opportunity to cross- examining the said Mr.

Mukherjee. Even that aspect is completely ignored by the authority.

The reliance on the part of the authority on a report of a former employee of the company, whose son was also an employee in the company,

appreciating only the extract of that report and not the full report that too without affording an opportunity to the union to cross-examine the author

of the said report is wholly erroneous. It is correctly argued by the learned counsel for the petitioner, Mr. Prasad, that the company was

clamouring all through that its wages were high without even giving any evidence in respect of the other comparable industries. So also the claim of

the company that its productivity was low as compared to other leather industries was also without any specific evidence in that behalf. It is also to

be seen that no effort has been made by the concerned authority to find out the figures of the other leather industries for comparison and even the

company has not provided such figures. In the absence of the comparative wage structure of the other leather industries as also the norms of

productivity of other industries, the reliance placed by the appropriate authority on a one-side report of Mr. Mukherjee cannot spell out existence

of adequate reasons for retrenchment. In the absence of this comparative data or specific evidence even the Tribunal has refused to accept this

plea of the company of lower productivity. The Tribunal has also taken a similar view that the wage structure of the other industries was neither

pleaded before the concerned authority nor before the Tribunal also. Even if the company had led some evidence in support of this plea of his

wage structure prevailing in the company, those facts could have been considered while deciding the correctness of the findings of the appropriate

authority, but even before the Tribunal the company did not produce any such comparative data, on the other hand, its witness Mr. Simon had to

admit in his cross-examination that there were no evidence in support of the contention that the wages paid by the company were on the higher

side and that the higher wages was one of the causes for the higher cost of production, resulting in loss. In my view, therefore, the inference drawn

by the authority that there was lower productivity and higher wages in this company, solely based on Mr. Mukherjee's report, is wholly incorrect.

31. Again, while considering the genuineness and adequacy of the reasons for retrenchment, some effort should have been made to find out as to

whether the Management had in fact made any honest efforts to avoid the heavy losses and increase the productivity. It has already been found

that machinery of the company were shifted to the sister company at Ambattur and in the name of increasing the productivity nothing has been

done at least there does not appear to be any effort made on the part of the Management to do that. The learned counsel for the petitioner, Mr.

Prasad, also invited my attention to the order of the Tribunal where the Tribunal has discussed the question of continuing heavy losses necessitating

the retrenchment. It is found from the application that the loss commenced from the year 1982-83 and up to 1985-86 the total loss was Rs. 4.6

crores, while the loss for the year 1987 alone was Rs. 1.14 crores. Thus the total loss was about Rs. 5.50 crores. Therefore, according to the

company, it is because of this loss that the retrenchment became necessary. Heavy reliance was placed on the balance-sheets suggesting the above

mentioned losses. The Supreme Court in *Petlad Turkey Red Dye Works Co. Ltd. Vs. Dyes and Chemical Workers' Union, Petlad and Another*,

has adversely commented upon the principle of plainly accepting the balance-sheets. It is observed 1960 I LLJ 548

it is has to be borne in mind that in many cases the Directors of the companies may feel inclined to make incorrect statements in the balance-sheets

for ulterior purposes. While that is no reason to suspect every statement made in a balance-sheet, the position is clear that we cannot presume the

statements made therein to be always correct. The burden is on the party who asserts a statement to be correct to prove the same by relevant and

acceptable evidence.

Besides submitting the balance-sheets, the company had put nothing before the authority. In this behalf the demand of the union calling for more

documents also does not seem to have been taken into consideration. It must be said therefore that the total reliance on the balance-sheets by the

authority was not possible.

32. It is clear that the saving because of this retrenchment was barely Rs. 1.5 lakhs per month. From this, the learned counsel for the petitioner.

Mr. Prasad, questions the propriety and wisdom behind this retrenchment. The learned counsel also invited my attention to Item No. 20 in the

application (Ex, R-1 as per the Tribunal) that there was no proposal of reducing

the expenditure (salaries and perquisites) of the Management cadre or business promotion costs or general administration expenses. According to the learned counsel this was more than enough to prove the hollowness of the claim of the Management that the retrenchment was necessary because of the losses. While assessing the genuineness and adequacy of the reasons for retrenchment, the authority should have been alive to these factors, the existence of which would not be denied at all. Therefore, it is obvious that the authority had miserably failed to correctly assess the situation and grant the permission. Though it would be necessary for me to consider the correctness or otherwise of the Tribunal's order, I am of the opinion that, on merits, the finding of the Tribunal that the retrenchment has not been done on genuine ground and bonafide and the reasons pleaded in support of the retrenchment are only contrived and vitiated by mala fide and on extraneous consideration is correct.

33. The learned senior counsel for the company then argued that the order of the authority ultimately merged in order of review and that the review order was alone bound to be considered. I have carefully considered the review order passed by the authority. Here also, it must be said that the review order is nothing but a repetition of the original order. There is again a heavy reliance placed on the aforementioned decision of the Supreme Court in Parry & Co. Ltd, case (supra). The same paragraph, which was earlier quoted, has also been virtually picked up from the earlier order and has been put in the review order as it is. Earlier, even the aforementioned report of Mr. Mukherjee has been relied on to hold that there was a surplus workforce and low productivity and the high wage rate. Interestingly, before the reviewing authority, the union had pointed out that apart from these workers, the Management was also having contract labour and thus it was not necessary to retrench these 96 workers, who were the permanent workmen of the company in the name of considering all that the review authority has done is to accept the statement of the Management that no workman was affected because of the contract labour system prevailing in the company and that it does not have any bearing on the retrenchment. Even as regards the lack of bona fides on the part of the company regarding the settlement dated February 13, 1985 on account of abrupt retrenchment, the union had specifically relied upon the terms of

settlement dated February 13, 1985 to the effect that the workers were to work on the limited salaries only upto the end of 1987 and thereafter they were to be brought on par with the other permanent workers of the company, all that the authority has held in review is that this ground of review was not acceptable. There also a casual finding given by the reviewing authority that the surplus labour was much more than 96. In short, the review is nothing but a casually written order repeating the contentions raised and granting the certificate of correctness to the earlier order. Therefore what applies to the original order also applies to the reviewing order. The contention of the learned senior counsel for the company that the reviewing order would finally end the controversy is incorrect so also the order, which does not speak of any independent application of mind, is wholly incorrect.

34. A faint attempt was made to suggest that the whole matter had become in fruituous in view of elapse of one year from the date of grant of permission and, therefore, this Court should not now go into the exercise of reviewing the correctness or otherwise of the order passed by the authority, which was confirmed in review. The learned senior counsel heavily relied on the ruling of the Supreme Court in *Vazir Glass Works Ltd.*

v. Maharashtra General Kamgar Union, (supra). In that case, the Apex Court was dealing with an application u/s 25-O for closure. The

application was made on behalf of the company for closure of its unit at Andheri in Bombay on account of continuous losses suffered by it having been accumulated. The application of the company was rejected by the State Government on October 12, 1992 and the company thereafter made

an application for the review of the said order on February 23, 1993. The said review application remained pending with the State. Government

and the State Government instead of deciding their application made a reference to the Industrial Tribunal for adjudication of the case for closure

made by the company. It was an admitted position that the reference was made after notice and an opportunity of being heard was given to the

union. The union therefore challenged the legality and validity of reference by way of writ petition and the said writ petition came to be rejected by

the single Judge of the Bombay High Court and, therefore, an appeal came to be preferred before the Division Bench and the Division Bench

allowed the said appeal and set aside the judgment passed by the single Judge holding that since the order passed on the application for closure remained operative for one year from the date of such order and after expiry of such period the power of review of the order automatically comes to an end. It secondly held that it was incorrect to contend that until the review application was finally disposed of, the order passed u/s 25-O(2) by the State Government rejecting the application for permission for closure does not become final. It thirdly held that the State Government was not empowered to pass an order making a reference during the pendency of the review application even if one year had elapsed from the date of the order and since the review application was disposed of only by making the said reference purporting to dispose of the review application after the expiry of one year from the date of rejecting the application for permission to close, such an order of reference was invalid. The order of the Division Bench came to be challenged before the Apex Court. The Apex Court ultimately came to the conclusion that any application u/s 25-O was liable to be disposed of within sixty days by the State Government and if such application is not disposed of within sixty days and if the decision of the State Government on that application is not communicated within that period it is deemed that such permission has been granted. The Apex Court then went on to hold that such decision would operate only for one year and after that period, the employer could again make a fresh application for permission to close the unit. It then held that any order reviewing the permission also must be passed within one year. It ultimately held that the State Government would cease to have jurisdiction to review the order for closure of an industrial unit after the expiry of one year. It also took note of the fact that after the reference was ordered, the hearing was concluded before the Industrial Tribunal in pursuance of that reference. It also found that the High Court itself had permitted the Industrial Tribunal to make the award, which was sent to the Apex Court in a sealed cover. It, therefore, held that, in the facts and circumstances of the case, it would be appropriate to treat the application for review which was pending after the expiry of such time frame of one year as fresh application for permission for closure and to treat the order of reference to Industrial Tribunal by the State Government as an order of reference on a fresh application so that the entire exercise made before the

Tribunal by both the parties and the award made by the Tribunal are not rendered abortive. It therefore directed the award to be published.

35. In the first place, it must be said that on the factual aspects, the ruling in Vazir Glass Works case 1996 LIC 1061 : 1996 I LLJ 692 does not

apply inasmuch as the application u/s 25-N has been decided within sixty days and the review application has also been decided within one year in

this case and it was thereafter that the reference was made to the Industrial Tribunal. That apart, this Court would always have the jurisdiction to

test the correctness of the orders granting permission and refusing to review under Article 226 of the Constitution of India and there would be no

question of dearth of jurisdiction to test the validity of the orders merely because a finality has been attached by the Act. Law is more than clear on

that subject. Again, it cannot be forgotten that the Apex Court had taken the course that it did in the abovementioned case only under the special

circumstances applicable to the specific facts of that case. It has already been shown that the facts in that case are totally different. It cannot be

therefore said that merely because one year has elapsed, the permission had become final and that nothing more could be done about it. The

contention is therefore rejected.

36. Learned senior counsel argued that the matter be sent back and the authority can be asked to enquire into the matter again. Considering the

time which has been spent, I do not think the remand is possible. I have already found that the permission could not have been granted. The

learned counsel also argued that the setting aside of the order should not result into the automatic reinstatement and the back wages. However, this

is not a case of setting aside of the retrenchment order. This is a case where the retrenchment would never have been ordered as the basic order,

empowering the retrenchment is itself invalid.

37. In short, both the orders impugned in this writ petition (W.P. No. 2336 of 1999) will have to be set aside and the petition will have to be

allowed and since this writ petition is being allowed, there would be no necessity of giving a separate finding in the other writ petitions questioning

the reference and also questioning the correctness of the award made. Again the result would be no different since the Tribunal also has found that

the concerned authority has not correctly granted the permission and that the

permission could not be granted. Therefore no separate orders need be passed in respect of the two other writ petitions referred in the judgment in the first paragraph. I, therefore, hold that the permission was incorrectly granted and so also the review order incorrectly made. Once that position is obtained, there would be no question of going into the legality or the merits of the retrenchment and indeed no argument was addressed on the question of legality of the retrenchment process. Once the permission itself is found to be incorrectly granted, it will be as if that the whole exercise done by the company in retrenching the workmen would be non est in view of the specific provisions of Section 25-N as that would be an exercise without a valid permission. Therefore the situation would be reverted back prior to the order of retrenchment. The workers would, therefore, be treated to be continued in service. However, in the matter of back wages, it will be better to follow the course undertaken by the Tribunal. The Tribunal has ordered that the concerned 92 workmen would receive back wages upto December 31, 1989 at the rate of a monthly consolidated wages, which they were already drawing and thereafter receive back wages as per the enhanced wage scale in terms of Ex. W. 2 i.e. Settlement dated February 13, 1985. The Tribunal had directed to pay these wages from January 1, 1990 on par with the permanent workmen as agreed with the continuity of service and other attendant benefits. I would also take the same course.

38. In this behalf, it cannot be forgotten that the Tribunal's award, which is impugned in W.P. No. 13504 of 1993, was not stayed and, on April 10, 1995 an order came to be passed to the following effect.

After arguments were heard for some time, it has now been agreed by the parties that the petitioner will make payment for one month to all the workmen within a period of 10 days from today and will pay the amount in arrears as also the other payments that will fall due before July 4, 1995.

List this petition and the other connected Writ Petitions filed by the Management as also the workmen for final hearing on July 4, 1995.

When the parties were asked, it was revealed that the Management has paid only upto the July 4, 1995 and thereafter practically for four and a

half years the matter was merely kept pending on one or the other ground. It is ultimately finally heard and decided now. In the absence of any stay

order ordinarily also the company would have been required to pay the wages as the Tribunal had directed the reinstatement and the said

reinstatement was not effected by the company. In that view also, it would be proper to order payment of back wages in terms of the award of the

Tribunal. Thus, W.P. No. 2336 of 1989 stands allowed as indicated above, while W.P. Nos. 1677 of 1989 and 13504 of 1993 are disposed of

as orders are not necessary. All the pending W.M.Ps. are also disposed of.

39. With the above orders, the writ petitions are disposed of without any orders as to the costs.