

(1996) 07 PAT CK 0030
In the Patna High Court
Case No : C.W.J.C. No. 699/1994 (R)

Hindalco Industries Ltd. and Another	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 19-07-1996

Acts Referred:

Citation : (1996) 07 PAT CK 0030

Final Decision : Dismissed

Judgement

B.P. Singh, J.—Petitioner No. 1 Hindalco Industries Ltd. is a Public Limited Company within the meaning of the Companies Act. Having its registered office at Century Bhavan, Dr. Annie Besant Road, Bombay. It has also an office at Court Road, Lohardaga. Petitioner No. 2, Sri Nawal Kishore Birla is a shareholder of petitioner No. 1 -Company is engaged in the business of producing primary aluminium metal and its alloys at its factory at Renukoot in Uttar Pradesh. The basic raw material for manufacture of Aluminium is Bauxite, and in order to meet its requirement of Bauxite, petitioner No. 1-Company has obtained mining leases in the State of Bihar under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957. One of the leases held by the petitioner-Company is in respect of lands located in the district of Lohardaga consisting of both forest as well as non-forest land. The mining operations carried on over the said lease hold area is known as Maidanpat Bauxite Mine. The petitioner-Company initially carried on mining activity in the non-forest area comprised within its leasehold, and thereafter extended its mining activity to the forest area after obtaining permission of the Forest Department. However, by order dated July 24, 1993 the Divisional Forest Officer ordered the closure of the mining operation at the said mine with immediate effect. The aforesaid order of the Divisional Forest Officer is annexed to the writ petition as Annexure-1 from which it appears that under the directions of the Conservator of Forests the petitioner-Company was directed to stop its mining operations at the Maidanpat Bauxite Mine regardless of the fact whether the mining area was broken up before or after October 25, 1980. Though not mentioned in the said order, it is apparent that the said order was

passed by the Divisional Forest Officer having regard to the provisions of the Forest (Conservation) Act, 1980.

2. The case of the petitioners is that they protested against the said order of the Divisional Forest Officer and contended that their lease was valid till January 2, 1997, and therefore they should be permitted to carry on mining operations. Various letters written by them in this connection have been annexed and marked collectively as Annexure 2. However, in view of the direction of the Divisional Forest Officer the work at the said mine was stopped resulting in permanent closure of the mine. Since there was no work for the workmen a lay-off was declared from July 31, 1993 which was notified to the Regional Labour Commissioner (Central) at Dhanbad. Lay-off compensation was also paid to the workmen. The petitioners were still hopeful that their representation may be favourably considered, and the order (Annexure 1) may be revoked. However, no favourable response came from the forest authorities leaving the petitioners with no option but to close down the mining operation. The said mine was closed with effect from August 19, 1993, and an intimation of closure was sent to the Divisional Forest Officer by letter dated August 20, 1993. A notice of closure u/s 25FFA of the Industrial Disputes Act (hereinafter referred to as "the Act") was also sent to the concerned authorities.

3. The case of the petitioners is that the provision of Section 250 of the Act did not apply to forced closures, that is to say, a closure which is not a planned and intended closure, but one which is for reasons beyond the control of the Management. In the instant case, the closure was necessitated because of the orders passed by forest authorities, and there was no element of volition so far as the Management was concerned. In fact, the management intended to work the mine for the full term of the lease. However, though no permission for closure was required u/s 250 of the Act, as a matter of abundant caution petitioner No. 1 applied to the Union of India (Respondent No. 1) for permission to effect a closure. A copy of the said application has been annexed as Annexure 6 to the writ-petition. Initially, Respondent No. 1 did not entertain the application filed by the petitioners on the ground that such permission was to be sought at least 90 days before the date of intended closure whereas the Mine in question had already been closed with effect from August 19, 1993. However, after the petitioners explained the compelling circumstances in which such permission could not be sought, Respondent No. 1 informed the petitioners that November 8, 1993 had been fixed as the date for hearing in the matter, to which the representatives of the workmen were also invited. After hearing the interested parties Respondent No. 1 by order dated December 6, 1993 (Annexure 10) communicated the impugned decision of Government of India that having regard to the genuineness and adequacy of the reasons advanced by the Management for the closure, and in view of the fact that mining in the forest area had been prohibited by the Government of Bihar, the Central Government had no objection to the closure of the Mine which will result in retrenchment of 211 workmen. This, however, was subject to following conditions :

"(i) The closure would be as per- provisions of Section 25O of the Industrial Disputes Act, 1947;

(ii) Compensation and notice salary would have to be paid to the workmen as per provisions contained u/s 25O(8) of the Industrial Disputes Act, 1947;

(iii) Whenever a fresh permission is granted to the management or mining in the State of Bihar, the retrenched workmen would be employed as per the provisions contained in Section 25H of the Industrial Disputes Act.

This permission shall take effect from the date of issue of this letter.

4. The petitioners have impugned the aforesaid order of the Central Government on several grounds. It was submitted that the closure not being a voluntary closure, but a closure on account of circumstances beyond the control of the Management. Section 25O was inapplicable, in any event Sub-section (8) of Section 25O was not applicable as it only applied to cases of voluntary closure. In a case of closure on account of circumstances beyond the control of the Management, the compensation is payable under the proviso to Section 25FFA(1) of the Act. Even if Section 25O of the Act was applicable to a closure necessitated by circumstances beyond the control of the Management, the Central Government had no authority to impose conditions for the closure, if it was otherwise satisfied about the genuineness and the adequacy of the reasons for the closure. Lastly it was submitted that the provisions of Section 25O of the Act were unconstitutional and invalid.

The respondents, on the other hand, contend that Section 25O of the Act is constitutionally valid having regard to the amendment brought about with effect from August 21, 1984 by Act 46 of 1982. Section 25O of the Act applies to all closures of an industry governed by the provisions of Chapter V-B of the Act. No distinction can be drawn between voluntary closure and a closure on account of circumstances beyond the control of the Management. The provision of Section 25FFF did not apply to an industry which engages on an average more than 100 workmen, and is confined in its operation to industries which employ more than 50 and less than 100 workmen. The provisions of Section 25FFF are not applicable to the case of the petitioner-Company which has effected closure of the mine rendering 211 workmen unemployed. The compensation payable to the workmen is, therefore, to be computed in accordance with the principles laid down in Sub-section (8) of Section 25O of the Act. The question as to whether the Central Government could validly impose conditions while permitting closure in the instant case is academic because on a fair reading of the impugned order (Annexure 10) it would appear that the so-called conditions are nothing more than mere elaboration of the consequences that must follow the closure in law. Even if those conditions were not mentioned in the impugned order, that would have made no difference, because even in that event the provisions of law mentioned in the so-called conditions would have operated by their own force. This question, therefore, in the instant case is academic.

5. I shall first consider the submission urged by Mr. Ginwala that Section 250 of the Act has no application to a closure of this nature, and in any event Sub-section (8) thereof cannot apply to a closure which is occasioned by circumstances beyond the control of the Management. In such cases the proviso to Sub-section (1) of Section 25FFF will apply.

6. The submission that Section 250 will not apply to a case of closure on account of circumstances beyond the control of the Management must be rejected outright. Section 250 does not make any distinction between a closure for other reasons and a closure on account of circumstances beyond the control of the Management. If the concerned Industry is governed by the provisions of Chapter V-B of the Act, of which Section 250 is a part, the aforesaid provision must apply. It was submitted that Sub-section (1) of Section 250 contemplates only an intended closure, meaning thereby a closure by volition on account of certain justifiable reasons. An employer who intends to close down an Undertaking of an Industrial Establishment is required to apply for prior permission at least 90 days before the date on which the intended closure is to become effective. Obviously, therefore, sudden closures necessitated by compelling reasons and circumstances beyond the control of the Management do not come within the purview of Section 250 because by the very nature of things where a sudden closure becomes necessary, and the Management is compelled to effect such sudden closure, the Management may not be in a position to apply, giving 90 days, notice as required. In the instant case, the Divisional Forest Officer issued directions for immediate stoppage of mining operations. The petitioner Company did not intend to close down its mining operations, but was compelled to do so in view of the orders passed by the Forest authorities. In such a case it was impossible for the petitioner-Company to seek permission in advance, as required by Sub-section (1) of Section 250. In my view, the submission, though attractive, cannot be accepted. Section 250 itself contemplates of a situation where it may not be possible for the Management to apply and seek permission, as required under Sub-section (1). An express provision has been made to deal with such situations. Sub-section (7) of Section 250 provides that notwithstanding anything contained in the foregoing provisions of the Section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order direct that the provision of Sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order. It was open to the petitioner-Company to seek the benefit of Sub-section (7) of Section 250 if it was its case that owing to exceptional circumstances it was not possible for the company to apply for prior permission under Sub-section (1) of Section 250. In any event, Section 250 applies to all closures of an Undertaking of an Industrial Establishment to which Chapter V-B applies and it is therefore, not possible to carve out another class of closures to which Section 250 may not apply. That is essentially a legislative function and legislature, though aware of such circumstances, has not considered it necessary

to provide separately for such closures. It was submitted that Section 25FFF conceives of a situation where an Undertaking is closed down on account of unavoidable circumstances beyond the control of the employer. The proviso to Section 25FFF(1) provides that in such cases the compensation to be paid to the workmen under Clause (b) of Section 25F shall not exceed his average pay for three months. Mr. Ginwala submits that since the undertaking was closed down on account of unavoidable circumstances beyond the control of the employer the proviso to Sub-section (1) of Section 25FFF was applicable and therefore, the Management had paid compensation to its workmen in accordance with the said provision.

7. Counsel for the respondents submitted that Section 25FFF could not be made applicable to the Undertaking of the petitioner-Company since it employed more than 100 workmen. Section 25FFF finds place in Chapter V-A of the Act, whereas the Undertaking of the petitioner-Company is governed by the provisions of Chapter V-B of the Act. Counsel for the petitioners submitted that Section 25A in terms prohibited that Section 25-C to 25-E inclusive shall not apply to industrial establishments to which Chapter V-B applied or to establishments enumerated under Sub-section (1) of Section 25A. Inferentially it was argued that there is no bar to the application of Section 25FFF to an Industrial Establishment to which Chapter V-B applied. The submission must be rejected having regard to the express words of Section 25K which is the first Section under Chapter V-B and provides that the provisions of this chapter shall apply to an Industrial Establishment (not being an establishment of seasonal character or in which the work is performed only intermittently) in which not less than 100 workmen were employed on an average per working day for the preceding 12 months. In view of the express mandate of Section 25K, the undertaking of the petitioner-Company is governed by the provisions of Chapter V-B. The mandate of an express provision must supersede any inferential application of the provision of Section 25FFF contained in Chapter V-A of the Act. No doubt, Section 25A provides that Sections 25-C to E inclusive shall not apply to industrial establishments to which Chapter V-B applies. The said provision is negative in its import, and only mentions the provisions which shall not apply. On the other hand, Section 25K is in the affirmative, and in express words provides that the provisions of Chapter V-B shall apply to an industrial establishment employing not less than 100 workmen. I have, therefore, no hesitation in coming to the conclusion that in view of the express language employed in Section 25K the provision of Section 25FFF, which is contained in Chapter V-A of the Act cannot apply to the petitioner's undertaking by inference.

8. I may, however, observe that I have not applied my mind to the question as to whether in the facts and circumstances of the case the closure was on account of unavoidable circumstances beyond the control of the employer. Counsel for the respondents submitted that it was not so, because with due diligence the petitioners could have sought prior permission of the Central Government under the provisions of the Forest Act, if they wished to use any part of the forest land

for non-forest purpose. If with due diligence such permission could be obtained, their failure to obtain such permission as a consequence of which mining work was stopped by the Divisional Forest Officer the resultant closure could not be said to be on account of unavoidable circumstances beyond the control of the employer. The case would have been no different if the petitioner-Company had failed to a renewal of the lease as a consequence of which the district authorities may have forbidden them carrying on mining operation. It is not necessary for me to express any opinion on this question, because once it is held that Section 25FFF has no application, the question as to whether the closure was on account of unavoidable circumstances beyond the control of the employer becomes academic. I, therefore, hold that the closure effected by the petitioner-Company is governed by the provision of Section 25O of the Act, and compensation is payable to its workmen as provided under Sub-section (8) thereof.

9. This takes me to the next submission urged by Mr. Ginwala that if Section 25O applied, the Central Government could not impose conditions while granting permission u/s 25O of the Act. He submitted that three conditions were imposed by the Central Government while granting permission under the aforesaid Section, even though the Central Government recorded its satisfaction about the genuineness and adequacy of the reasons advanced by the management. On the other hand, the respondents contend that the conditions mentioned in the order granting permission are no more than the statement of the consequences that must follow in law. The respondents appear to be right in their contention. The first condition mentioned in Annexure 10, the order granting permission to close, is that the closure would be as per the provision of Section 25O of the Industrial Disputes Act, 1947. I have already held earlier that Section 25O would apply to the closure in question and, therefore, the so-called first condition is nothing but a mere statement of law. It is not a condition at all. The second condition is that compensation and notice salary would have to be paid to the workmen as per the provision of Section 25O(8) of the Industrial Disputes Act, 1947. It was not necessary for the Central Government to say so in its order, because where permission is accorded by the Central Government for closure of an undertaking u/s 25O of the Act, necessarily compensation has to be paid in accordance with Sub-section (8) of the Section 25O. The second condition merely states the correct legal position about the liability of the petitioner-Company towards its workmen. The third condition is that whenever a fresh permission is granted to the management for mining in the State of Bihar, the retrenched workmen would be employed as per the provisions contained in Section 25H of the Industrial Disputes Act. The third condition is also of the same nature as the first two conditions. Counsel for the petitioners submitted that Section 25H would apply only in a case where re-employment is granted in the same establishment. It is not necessary for me to express any opinion on this question, but it is enough if it is clarified that re-employment has to be granted in accordance with the provisions of Section 25H of the Act. The third condition does not impose any other obligation on the petitioner-Company. Mr. Ginwala faintly argued that a

closure does not result in retrenchment, and he sought to argue that the words of Section 25FFF and Section 25F are significantly different. Retrenchment has been defined u/s 2(oo) of the Act and the law is now well settled by several decisions of the Supreme Court. I need not refer to all of them, but I may only refer to the decision of the Supreme Court, reported in *Workmen of Meenakshi Mills Ltd. and Others Vs. Meenakshi Mills Ltd. and Another*, of the report the Court has referred to a large number of decisions which have reiterated the decision of the Supreme Court in *The State Bank of India Vs. Shri N. Sundara Money*, that retrenchment as defined in u/s 2(oo), means termination by the employer of the service of workmen inflicted by way of disciplinary action and those expressly excluded by Clauses (a), (b) and (c) of the definition. The submission must, therefore, be rejected.

10. It was then contended on behalf of the petitioners that even after its amendment by Act 46 of 1982, Section 25O still suffers from vices which render it unconstitutional. It has been submitted before us that though some of the deficiencies in the law have been rectified pursuant to the judgment of the Supreme Court in *Excel Wear and Others Vs. Union of India (UOI) and Others*, the law as amended nonetheless enables the appropriate Government to pass an unreasonable order. The permission may be refused having regard to interest of general public which is always in favour of continued production and employment. However genuine and adequate the reasons may be for the closure, in exercise of authority u/s 25O, the appropriate Government can still reject the application in an unreasonable manner against which there is no provision for appeal or revision. The power of review is illusory, because the Government itself is to consider the matter and pass orders on the review application. It was, therefore, submitted that though procedural safeguards have been provided to some extent, the substantive ground on which the law was struck down by the Supreme Court in *Excel Wear's* case still remains and, therefore, the amended provision should also be struck down as unconstitutional.

11. It has been brought to our notice that the constitutional validity of the amended Section 25O has been the subject-matter of decisions by different High Courts. Counsel for the petitioners brought to our notice at least three decisions which have held the amended Section 25O to be constitutionally invalid. Those decisions are *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.*, *Maulins of India Ltd. and Another Vs. State of West Bengal and Others*, and *Maulins of India Ltd. and Another Vs. State of West Bengal and Others*, . All these decisions have been rendered by learned single judges of the respective High Courts. It has also been brought to our notice that the judgment of the learned single Judge of Karnataka High Court in *Stumpp Schuele & Somappa Ltd. (supra)* has since been overruled by a Division Bench of that Court in a writ Appeal, and the aforesaid judgment is reported in *Union of India Vs. Stumpp, Scheule and Somappa Ltd.*, . On the other hand, apart from the Division Bench judgment of Karnataka High Court, a Full Bench of the Delhi

High Court in *D.C.M. Ltd. v. Union of India and Ors.* AIR 1989 Delhi 193 has upheld the constitutional validity of Section 25O as amended. Similarly a learned single Judge of the Kerala High Court has upheld the constitutional validity of the aforesaid provision in the decision, reported in 1992 II LIC 1337 (*Laxmi Starch Ltd. v. The Kundara Factory Workers Union*).

12. Section 25O, as it stood before its amendment, reads as follows :

"1. An employer who intends to close down an undertaking an industrial establishment to which this chapter applies shall serve, for previous approval at least ninety days before the date on which the intended closure is to become effective, a notice in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking :

Provided that nothing in this Section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

2. On receipt of a notice under Sub-section (1) the appropriate Government may, if it is satisfied that the reasons for the intended closure of the undertaking are not adequate and sufficient or such closure is prejudicial to the public interest, by order, direct the employer not to close down such undertaking.

3. Where a notice has been served on the appropriate Government by an employer under Sub-section (1) of Section 25FFA and the period of notice has not expired at the commencement of the Industrial Disputes (Amendment) Act, 1976, such employer shall not close down the undertaking but shall within a period of fifteen days from such commencement, apply to the appropriate Government for permission to close down the undertaking.

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

5. Where no application for permission under Sub-section (1) is made, or where no application for permission under Sub-section (3) 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 no notice had been given to him.

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

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

After its amendment by Act 46 of 1982 the provision reads as follows :

(1) An employer who intends to close down an undertaking of an industrial establishment to which this chapter applies shall, in the prescribed manner, apply for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner :

Provided that nothing in this 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-section (1) the appropriate Government after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant facts, by order and for reasons 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 for permission has been made under Sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

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

(5) The appropriate Government may, either on its own motion or on the application made by the employer, or any workmen review its order granting or refusing to grant the 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-section (1) is made within the period specified therein or where the permission for closure has been refused,

the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking has not been closed down.

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

(8) Where an undertaking is permitted to be closed down under Sub-section (2) or where permission for closure is deemed to be granted under Sub-section (3) every workman who is employed in that undertaking immediately before the date of application for permission under this Section shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months."

13. In *Excel Wear v. Union & of India and Ors.*, (supra), the constitutional validity of the unamended Section 250 of the Industrial Disputes Act came up for consideration. It was urged on behalf of the petitioner in that case that a right to close down the business is an integral part of the right to carry on the business guaranteed under Article 19(1)(g) of the Constitution of India. The impugned law imposed restriction on the said fundamental right which was unreasonably excessive and arbitrary and amounted to destruction or infraction of the right guaranteed. The restriction imposed was manifestly beyond the permissible bounds of Clause (6) of Article 19 of the Constitution. The validity of the provision was also sought to be impugned on the ground that a right to carry on business, just like any other right mentioned in Clause (1) of Article 19. Consequently, none could be compelled to speak or to form an association or to acquire or hold property, and similarly nobody could be compelled to carry on any business. After a careful consideration of the position in law the Court came to the conclusion that if one does not start a business at all, then, perhaps, under no circumstances he can be compelled to start one. Such a negative aspect of the right to carry on a business may be equated with the negative aspects of the right embedded in the concept of the right to freedom of speech, to form an association or to acquire or hold property. Perhaps, under no circumstances a person can be compelled to speak; to form an Association or to acquire or hold property. But by imposing a reasonable restriction he can be compelled not to speak not to form an association or not to acquire or hold property. Total prohibition of business is possible by putting reasonable restrictions within the meaning of Article 19(6) of the right to carry on the business, but it was cautioned that the greater the restriction, the more the need for strict scrutiny by the Court. Relying upon the decision of the Supreme Court in *Hathising Manufacturing Company Ltd. and Ors. v. Union of India and Ors.*

1960 II LLJ I the Court held that 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 employer by equating the two rights and placing them at par is not quite apposite and sound. It was further held that it is wrong to say that an employer has no right to close down a business once he starts. If he has such a right, as obviously he has, it cannot but be a fundamental right embedded in the right to carry on any business guaranteed under Article 19(1)(g) of the Constitution. The Court then proceeded to examine whether the restrictions imposed under the impugned law were reasonable within the meaning of Article 19(6) of the Constitution. On examining of the nature of the restrictions imposed, and in view of the finding of the Court that the right to close a business is an integral part of the fundamental right to carry on a business the Court held that as no right is absolute in its scope, so was the nature of the right to close a business. That right could be restricted, regulated or controlled by law in the interest of general public.

14. The law as laid down in Excel Wear's case (supra), therefore, leaves no scope for doubt that though right to close down business is also a fundamental right embedded in the right to carry on a business, the same was subject to the same limitations as the right to carry on business. The challenge to the law must, therefore, be confined to the nature of the limitations put on the exercise of that right. The wider submission urged before the Supreme Court was rejected and obviously so, because the question of imposition of restrictions can arise only when a right is exercised, and not when a citizen chooses not to exercise his right.

15. The judgment of the Supreme Court in Excel Wear's case (supra) has been considered by the Supreme Court in a later decision in Workmen v. Meenakshi Mills Ltd. (supra). The Court after very careful examination of the earlier judgment of the Court in Excel Wear's case (supra) observed as follows at p. 300 :

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

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

(ii) If the Government order was not communicated to the employer within 90 days, strictly speaking, the criminal liability u/s 25F may not be attracted if on the expiry of that period he closed down the undertaking, but the civil liability u/s 25O(5) would come into play even after the passing of the order of refusal of

permission to close down on the expiry of the period of 90 days ; and

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

16. On a careful reading of the judgment of the Supreme Court in Excel Wear's case (supra) it is apparent that apart from the three grounds mentioned in Meenakshi Mills case (supra), there was no other ground on which unamended Section 25O was held to be unconstitutional. Certain observations have been made by the Court in Excel Wear's case, but those were only with a view to highlight the unreasonableness of the restrictions imposed, such as there being no provision for passing speaking order which enables the appropriate Government to reject an application for permission to close even if good and sufficient cause existed justifying closure. The Court had examined the impugned orders refusing permission to close and found them to be unreasonable. The reasons given by the petitioner in great detail disclosed adequate and sufficient grounds for closure, yet an unreasonable order was possible to be passed because of the unreasonableness of the law. The Court observed that the authority could refuse permission to close down whimsically and capriciously. Such an order, if passed, was not subject to any scrutiny by any higher authority or Tribunal either in appeal or revision. The order could not be reviewed either. These observations were made only to highlight the unreasonableness that resulted if the competent authority was not obliged to disclose reasons for refusing permission to close down. The provisions of Section 25O, as amended, have in my view removed the deficiencies pointed out by the Supreme Court in Excel Wear's case (supra). Sub-section (2) of Section 25O, as amended, provides that on the filing of an application, 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 recorded in writing grant or refuse to grant such permission. Sub-section (2) of Section 25O, therefore, makes it obligatory for the appropriate Government to consider all aspects of the matter, and to hear the parties interested and thereafter to pass a reasoned order. The judgments which have taken the view that the amended Section 25O is constitutionally invalid proceed on the basis that even the amended Section does not provide as to what are genuine and adequate reasons, and if genuine and good reasons are there the permission has to be granted. It does not provide the circumstances under which a permission can be refused. The permission can be refused having regard to interest of general public, which is always in favour of continued production and employment, it does not provide as to what are the other relevant facts. It also does not provide as to what are the grounds which will not be adequate. The provision of the amended Section is such that a permission can be refused even in the interest of general public and if the appropriate

Government is of the opinion that the grounds are inadequate, even genuine and good grounds may be held to be inadequate in the opinion of the appropriate Government. In other words, an unreasonable order could be made well within the scope of the power conferred under the Section, because the Section itself was unreasonable. In my view, this aspect of the matter stands answered by the judgment of the Supreme Court in *Workmen v. Meenakshi Mills Ltd.* (supra). In that case the Court was concerned with Section 25N of the Industrial Disputes Act before its amendment by Act 49 of 1984. Section 25N(2) provided that on receipt of a notice the appropriate Government or authority may, after making such enquiry as such Government or authority thinks fit, grant or refuse, for reasons to be recorded in writing the permission for the retrenchment to which the notice related. It was urged in that case that no guideline had been prescribed for the exercise of the power by the appropriate Government or authority under Sub-section (2) of Section 25N, and it would be permissible for the authority to pass its order on policy considerations which may have nothing to do with an individual employer's legitimate need to reorganise his business. The requirement that reasons must be recorded by the appropriate Government or authority for its order under Sub-section (2) of Section 25N was not sufficient safeguard against arbitrary action since no yardstick is laid down for judging the validity of those reasons. The Court negated the contention in following words.

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

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

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

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

The same reasons apply with equal force while considering the provision of Sub-section(2) of Section 25O in express words provides for guidelines which were absent in Sub-section (2) of Section 25N. The matters which must be considered by the State Government have been enumerated in Sub-section (2) of Section 25O, such as, genuineness and adequacy of the reasons, the interests of the general public, and all other relevant facts. It is, therefore, difficult to say that Sub-section(2) of Section 25O confers upon the appropriate Government an unfettered power which may be exercised capriciously or whimsically resulting in unfairness or arbitrariness. Sub-section (2) provides sufficient guidelines for the exercise of the authority, which in any event may be scrutinised by the High Court in exercise of its writ jurisdiction,

17. A similar challenge to Section 25N of the Industrial Disputes Act was repelled by the Supreme Court in *Papnasam Labour Union v. Madura Coats Ltd.* 1995 LIC 735 the Supreme Court referred to its earlier decisions in *Excel Wear's* case (supra) and *Meenakshi Mills* case (supra) and several other decisions as well. The Court concluded that the observations of the Supreme Court upholding the validity of Section 25N squarely applied in upholding the validity of Section 25M of the Industrial Disputes Act.

18. In these circumstances, it must be held that so far as the first ground pointed out by the Supreme Court in *Excel Wear's* case (supra) for holding Section 25O to be unconstitutional no longer exists in view of the amendment of Section 25O. Counsel for the petitioner did not urge before us that the other two deficiencies pointed out in *Excel Wear's* case (supra) have not been remedied by the amendment. We notice that Sub-section (5) of the amended Section 25O provides for review of the order granting or refusing to grant permission and also

provides for reference to a Tribunal for adjudication. This is apart from the remedy of judicial review under Article 226 of the Constitution of India.

19. I, therefore, find myself in agreement with the view taken by the Division Bench of Karnataka High Court, the Full Bench of Delhi High Court and a learned Single judge of Kerala High Court and concurring with their views with due respect I hold that Section 25O of the Industrial Disputes Act, as amended by Act 46 of 1982 is constitutionally valid. The vices pointed out by the Supreme Court in *Excel Wear's* case (*supra*) have been removed by the amendment of the Section, and no valid ground exists to hold that the said Section, as amended, is still constitutionally invalid.

20. In the result, this writ petition is dismissed, but without any order as to costs.