

(2012) 11 MP CK 0146
In the Madhya Pradesh High Court
Case No : Writ Petition No. 262 of 2003

J.P. Gupta and Others

APPELLANT

Vs

Eveready Industries India Ltd. and Others

RESPONDENT

Date of Decision : 27-11-2012

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 2, 2(ka), 2(oo), 25F, 25F
Mines and Minerals (Development and Regulation) Act, 1957 — Section 3

Citation : (2013) 2 LLJ 245 : (2013) 2 MPHT 153 : (2013) 1 MPLJ 345

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : Shobha Menon, with Syed Shaukat Ali, for the Appellant; Brian D'silva, with V. Bhide, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Trivedi, J.—This petition under Article 227 of the Constitution of India is directed against the Order dated 28th of June, 2002 passed by the Industrial Court, Bench at Bhopal whereby the appeal filed by the respondents against the award passed by the Labour Court has been allowed and the award has been set aside on the ground that dispute was raised by the petitioners with respect to the validity of an agreement executed by the employees union with the employer with respect to the enhancement of the retrenchment compensation and it was further contended that the action of retrenchment of the petitioners by the employer was unsustainable in eye of law because of non-compliance of the provisions of section 25-N of Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). After adducing the evidence, the Labour Court reached to the conclusion that such an agreement by the Union was not in accordance with law and, therefore, the said agreement was declared to be invalid and illegal. Similarly the Labour Court reached to the conclusion that though a sanction was obtained for closure of the factory of the respondents, but it was necessary to comply with the provisions of section 25-N of the Act and since it was not

complied with, the petitioners were illegally retrenched on account of closure of the factory of respondents. It is contended that against said award, an appeal was preferred by the respondent employer and though the provisions of law were made clear, reliance was placed in several decisions of the Apex Court, wrongly relying the decisions which were not applicable, appeal of the respondent employer has been allowed, therefore, this writ petition is required to be filed. A tragic incident took place in the factory of respondents at Bhopal in intervening night of 2nd/3rd December, 1984. A prohibitory order was issued by the State Govt. to shut down the factory. Thereafter respondents moved an application for grant of sanction for closure of factory u/s 25-O of the Act which was allowed and sanction was granted on the terms of payment of compensation to the existing workmen and to offer them employment in other units of respondents, if possible. Notice was given, compensation was paid and the factory was closed. There was an agreement said to be entered into between the employer and workers' Union for extra payment of compensation. Thereafter, challenging the said agreement and complaining non compliance of provisions of section 25-N of the Act, thus seeking to set aside retrenchment claim, was made before the Labour Court, Bhopal, which was allowed. The appeal was preferred by the employer before the Industrial Court which was allowed by the impugned order, hence this writ petition is filed under Article 227 of the Constitution of India.

2. It is contended by the learned senior counsel for the petitioners that the law is well settled by the decisions of the Apex Court in several cases. Before amendment in the provisions of the Act, the operation of the law was different and different provisions were there for payment of compensation to workmen who were terminated on account of closure of any establishment. However, after the decisions rendered by the Apex Court in certain cases, the amendments were made in the provisions of the Act and now it has become necessary to comply with the provisions of section 25-N of the Act even if the establishment is closed on account of sanction granted by a competent Government. It is contended that this particular aspect has not been considered by the appellate authority and appeal of the respondents has illegally been allowed, therefore, order passed by Appellate Authority is liable to be set aside and that of the Labour Court is liable to be affirmed.

3. Per contra, it is submitted by learned senior counsel for the respondents that provisions of section 25-N of the Act would be attracted only in such cases where the retrenchment is done. In case of termination of employees under the provisions of section 25-O of the Act after obtaining sanction from the competent Government, the provisions of section 25-FFF would be attracted and in such circumstances where the specific provisions are made for compensation to workmen in case of closing down of undertakings which have already been defined in the Act, the provisions of section 25-N would not be attracted. Such a situation has been examined by the Apex Court, after taking note of the laws relating to application of such provisions in the decisions rendered on earlier occasions and since it has been held by the Apex Court that independent

provisions of section 25-FFF have been made in the Act, therefore, provisions of section 25-N of the Act, would not be attracted. No wrong was committed by the Industrial Court in allowing the appeal of the employer and setting aside the award granted by the Labour Court on wrong interpretation of the provisions of the Act. It is contended that the entire petition being based on misconceived facts is liable to be dismissed.

4. I have heard learned counsel for the parties at length and examined the record.

5. Undisputedly, the provisions were added in the Act after several decisions of the Apex Court and specific chapters have been added. Chapter V-B has been added by an amendment made in the year 1976. Chapter V-B infact contains special provisions relating to law for retrenchment and closure of certain establishments. The said provisions are attracted in such industries as have been defined u/s 25L(a). Specific provision has been made u/s 25-N as amended by Act No. 49 of 1984 with effect from 18-8-1984. The provisions are reproduced for ready reference:--

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

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

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) 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.

(4) Where an application for permission has been made under subsection (1) and

the appropriate Government or the specified authority 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.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, 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.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment 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 establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under subsection (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

6. Similarly provisions of section 25(O) are introduced by the Amending Act No. 46 of 1982 with effect from 21-8-1984 which reads thus:--

25(O). Procedure for closing down an undertaking. -

(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner,

apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

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

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

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

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

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

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

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

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like, it is necessary so to do, by order, direct that the provisions

of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under subsection (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.

There is an amendment made in the said provision by the State of Madhya Pradesh vide amending Act No. 32 of 1983, with effect from 28-10-1983 which reads thus:--

25-O. Procedure for closing down an undertaking. -

(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall apply for prior permission at least ninety days before the date on which the intended closure is to become effective, to the State Government stating clearly 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 by registered post with acknowledgment due.

(2) Where a notice has been served on the State Government by an employer under sub-section (1) of section 25FFA and the period of notice had not expired on the 5th August, 1983, such employer shall not close down the undertaking but shall, within a period of fifteen days from the said date, apply to the State Government for permission to close down the undertaking.

(3) Where an application for permission has been made under subsection (1) or sub-section (2) the State 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 or the reasons stated by employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and copy of such order shall be communicated to the employer and the workmen.

(4) Where an application has been made under sub-section (1) or subsection (2) as the case may be, and the State 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 sixty days.

(5) An order of the State Government granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties and shall remain in force for one year from the date of such order.

(6) The State 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 permission under sub-section (3) 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.

(7) Where no application for permission under sub-section (1) or subsection (2) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(8) Notwithstanding anything contained in the foregoing provisions of the section, the State 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.

(9) Where an undertaking is permitted to be closed down under subsection (3) or where permission for closure is deemed to be granted under sub-section (4), 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.

The only difference between the two is that before coming into the force of the Amendment in the year 1984, similar provisions were made by the State of M.P. by amending the Act with effect from 28-10-1983. Undisputedly, the application for closure of the factory of the respondents was made sometime in the year 1984, i.e. after coming into force of the amendment made by the State of M.P. in section 25-O of the Act with effect from 28-10-1983. Now, therefore, it has to be examined whether there was any application of section 25-N of the Act in such circumstances or not.

7. The reason and object of providing reasonable restriction in the case of retrenchment of a workman as is mentioned in the amending Act is to make protection of such service of the employee so that he may not suffer the loss of emoluments and livelihood all of a sudden if he is retrenched from service without any notice. The said object is fulfilled by prescribing the method of seeking approval for closure of an undertaking as is added by the State of M.P. in the amendment made in section 25-O of the Act, as in sub-section (9) of section 25-O of the Act as amended by the State Government, it is specifically prescribed that where an undertaking is permitted to be closed down under

subsection (3) of section 25-O of the Act or where permission for closure is deemed to be granted under sub-section (4) of section 25-O of the Act, 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 15 days' average pay for every completed year of continuous service or any part thereof in excess of six months. The object of section 25-N of the Act is, thus, fulfilled by giving such a protection in section 25-O(9) of the Act and, therefore, it would not be necessary for an employer to seek sanction for retrenchment of an employee in case he is granted permission to close down his establishment. The closure of an establishment means nothing but retrenchment as is clearly mentioned in section 25-FFF and 25-FFA of the Act. For better appreciation, provisions of section 25-FFF are reproduced thus:--

25FFF. Compensation to workmen in case of closing down of undertakings. -- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation. -- An undertaking which is closed down by reason merely of-

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.

(1A) Notwithstanding anything contained in sub-section (1), where an undertaking engaged in mining operations is closed down by reason merely of exhaustion of the minerals in the area in which Such operations are carried on, no workman referred to in that sub-section shall be entitled to any notice or compensation in accordance with the provisions of section 25F, if -

- (a) the employer provides the workman with alternative employment with effect from the date of closure at the same remuneration as he was entitled to receive, and on the same terms and conditions of service as were applicable to him, immediately before the closure;

(b) the service of the workman has not been interrupted by such alternative employment; and

(c) the employer is, under the terms of such alternative employment or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by such alternative employment.

(IB) For the purposes of sub-sections (1) and (1A), the expressions "minerals" and "mining operations" shall have the meanings respectively assigned to them in clauses (a) and (b) of section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957).

(2) Where any undertaking set-up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking had been set-up, no workman employed therein shall be entitled to any compensation under clause (b) of section 25F, but if the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every [completed year of continuous service] or any part thereof in excess of six months.

A harmonious reading of the aforesaid provision will make it clear that once sanction is granted to close down an establishment, as is defined u/s 2(ka) (and it is not in dispute that the establishment of the respondents is covered under the aforesaid definition), retrenchment of workmen is obvious and compulsory. Such retrenchment would not be covered under the retrenchment protected u/s 25-N of the Act.

8. As is contended by learned Senior counsel for petitioners, the laws laid down by the Apex Court which have taken note of by the Appellate Court, relate to the consideration of the application of provisions as were existing before the amendment made in the Act. Reading in extenso the law laid down by the Apex Court in the case of *Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union*, referring to the law laid down by the Apex Court in the case of *Hatisingh Mfg. Co. Ltd. and Another Vs. Union of India (UOI) and Others*, and *Hariprasad Shivshanker Shukla and another vs. A.D. Divikar and others*, AIR 1967 SC 121 , it has been contended that the law laid down by the Apex Court was with respect to the provisions of the Act as were existing before the amendments incorporated by the Parliament in the Act. Since the law so laid down by the Apex Court was with respect to grant of benefit to the employer, ultimately protecting the rights of the employees or workmen, exhaustive amendments were made, new provisions were added and, therefore, it was necessary for the Appellate Court to discard the submissions made by the employer and to hold that compliance of provisions of section 25-N of the Act was mandatory even when the sanction was granted by the competent Government to close down the industry. It is further contended that in case of *Charan Lal Sahu Vs. Union of*

India, Union Carbide Corporation Vs. Union of India and others, , Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc., and H.P. Mineral and Industrial Development Corporation Employees Union v. State of H.P. and Ors., 1996 (7) SCC 139 , again the law laid down was with respect to unamended provisions and the specific provisions of amendment were not taken note of as the case was not one which falls after coming into force of the amendment in the Act. It is contended that similar was the situation when the case was considered by the Apex Court in the matter of Lal Mohammad and Others Vs. Indian Railway Construction Co. Ltd. and Others, . It is further submitted by learned senior counsel for petitioners that the Apex Court has considered applicability of section 25-N of the Act in the case of Empire Industries Ltd. Vs. State of Maharashtra and Others, and as such the compliance of such a provision was necessary. Thus, it is contended that the law as is available was to be considered after coming into force of the amendment made in the Act and it was to be held that since the mandatory provisions of section 25-N of the Act were not complied with, the retrenchment of the petitioners was illegal and in view of this, the findings arrived at by the Labour Court were to be affirmed. However, the Industrial Court has set aside the order passed by the Labour Court without giving any reason only on the basis of law laid down by. the Apex Court in the aforesaid cases which in fact were not applicable at all. It is again contended that similar was the situation with respect to the agreement said to be executed and, therefore, findings arrived at by the Industrial Court were perverse and were liable to be set aside.

9. In response to these submissions of the learned Senior counsel for petitioners, learned senior counsel appearing for respondents has placed reliance heavily in the case of Lal Mohd. (supra), Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, and in S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka, . Learned senior counsel has contended that in the aforesaid laws, the Apex Court has considered the applicability of the provisions of section 25-N of the Act in the given circumstances. It is put forth that in the specific circumstances, the Apex Court has considered the applicability of section 25-FFF of the Act and has reached to the conclusion that once a closure validly come into effect the relationship of employer and employee does not survive and ceases to exist. In view of the law laid down by the Apex Court, it has to be seen whether still there was requirement of compliance of section 25-N of the Act or not. Placing reliance in the case of Maruti Udyog Ltd. Vs. Ram Lal and Others, , it is contended by learned Senior counsel for the respondents that earlier the provisions of section 25-O was not available since the same was struck down by the Apex Court, the only protection that was available to the workman whose services were terminated as a result of closure was contained in section 25-FFF of the Act. Even in the case of H.P. Mineral and Industrial Development Corporation Employees Union (supra); the Apex Court has given approval of an action if taken in compliance of provisions of section 25-O of the Act, which came

into force after the amendment made in the Act and it was categorically held that if the provisions in such manner have been complied with, there would not be any existence of relationship of master and servant between the employer and employees and, as such, there would not be an alleged non-compliance of any other mandatory provisions. Thus, it is contended that grant of sanction to close down the establishment of respondent itself was sufficient to authorise the discontinuance of service of persons like petitioners and undisputedly this provision was specifically complied with, therefore, there, was no occasion for the Labour Court to hold that the action taken by the respondents for discontinuance of employment of workmen like petitioners was violative of provisions of section 25-N of the Act. It is contended that, independent procedure has been prescribed in section 25-O of the Act, which further contains the provisions of grant of compensation for the retrenchment of employees/workmen in terms of the order of the closure of the establishment.

10. Learned Senior counsel for respondents further has drawn the attention of this Court to the fact that the agreement sought to be challenged before the Labour Court in fact was challenged before this Court in M.P. No. 2109/1985, Union Carbide Karmchari Sangh Navi Bagh vs. Union of India and others and the Division Bench of this Court has dismissed the said writ petition vide order dated 1-8-1991. It is contended that since the agreement was once found to be legal by this Court, it could not be challenged before the Labour Court. In view of this, findings arrived at by the Labour Court were not sustainable and the same have been set aside in rightful manner by the Industrial Court.

11. The Apex Court has considered the law as was available before the amendment in the Act, in the cases of Pipraich Sugar Mills Ltd. (supra), M/s. Hathi Singh Manufacturing Co. Ltd. (supra) and Hari Prasad Shivshankar Shukla (supra), but mainly the consideration was what would amount to retrenchment as prescribed in section 25F of the Act and as is defined in section 2(oo) of the Act. In none other but definite words the meaning "retrenchment" was interpreted by the Apex Court in the case of Hari Prasad Shivshankar Shukla (supra) in following manner:

For the reasons given above, we hold, contrary to the view expressed by the Bombay High Court, that retrenchment as defined in section 2(oo) and as used in section 25-F has no wider meaning than the ordinary, accepted connotation of the word: it means the discharge of surplus labour or staff by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on a real and bona fide closure of business as in the case of Shri Dinesh Mills Ltd. or where the services of all workmen have been terminated by the employer on the business or undertaking being taken over by another employer in circumstances like those of the Railway Company.

The meaning of retrenchment would not be changed merely because some

amendments are made in the Act because there is no amendment in the definition of retrenchment made by the Parliament. Even otherwise the provisions of section 25-N of the Act are simply made for protection of employees from illegal retrenchment and said action do not contain any non obstante clause. Meaning thereby the other provisions of the Act are not made applicable only after compliance of provisions of section 25-N of the Act. This is further clear from the definite findings of the Apex Court given in paras 5, 6 and 7 in the case of H.P. Mineral and Industrial Development Corporation Employees Union (supra) which reads thus:--

5. We are unable to accept this contention. It is no doubt true that in section 2(oo) the expression "retrenchment" is defined to mean the termination by the employer of the service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action and categories referred to in clauses (a) to (c) have been expressly excluded from the ambit of the said definition. But as far back as in 1957 a Constitution Bench of this Court in Hariprasad Shivshankar Shukla vs. A.D. Divikar had laid down that "retrenchment" u/s 2(oo) of the Act would not cover termination of services of all workmen as a result of the closure of the business. The said decision was considered by the Constitution Bench of this Court in Punjab Land Development and Reclamation Corpn. Ltd. vs. Presiding Officer, Labour Court, wherein it has been observed:

Mr. V.A. Bobde submits, and we think rightly, that the sole reason for the decision in Hariprasad was that the Act postulated the existence and continuance of an industry and where the industry, i.e., the undertaking, itself was closed down or transferred, the very substratum disappeared and the Act could not regulate industrial employment in the absence of an industry. The true position in that case was that sections 2(oo) and 25-F could not be invoked since the undertaking itself ceased to exist.

The judgments in Sundara Money and the subsequent decisions in the line could not be held to be per incuriam inasmuch as in Hindustan Steel and Santosh Gupta cases, the Division Benches of this Court had referred to Hariprasad case and rightly held that its ratio did not extend beyond a case of termination on the ground of closure and as such it would not be correct to say that the subsequent decisions ignored a binding precedent.

For the purpose of harmonious construction, it can be seen that the definitions contained, in section 2 are subject to there being anything repugnant in the subject or context. In view of this, it is clear that the extended meaning given to the term "retrenchment" under clause (oo) of section 2 is also subject to the context and the subject-matter. Section 25-F prescribed the conditions precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the reasons for retrenchment and payment of wages for the period of notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very

briefly, it provides that every workman who has been in continuous service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F as if the workman had been retrenched. (Emphasis supplied) section 25-FFA provides that sixty days" notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workmen in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched.

(emphasis supplied)

6. From the aforementioned observations it is evident that the definition of "retrenchment" as defined in section 2(oo) of the Act has to be read in the context of sections 25-FF and 25-FFF of the Act and if thus read "retrenchment" u/s 2(oo) does not cover termination of service as a result of closure or transfer of an undertaking though such termination has been assimilated to retrenchment for certain purposes, namely, the compensation payable to the workmen whose services are terminated as a result of such closure. In that view of the matter section 25-N which deals with retrenchment cannot apply to the present case where termination of the services of the workmen was brought about as a result of the closure of the undertaking.

7. There is one more reason why section 25-N cannot be made applicable to the workmen in the present case. Sections 25-N and 25-O were inserted in the Act by Act No. 32 of 1976 whereby Chapter V-B was introduced in the Act. Section 25-N imposed restrictions in the matter of retrenchment of workmen employed in large undertakings while section 25-O dealt with the procedure for closing down such undertakings. Section 25-O was held to be unconstitutional by this Court in Excel Wear case. The striking down of section 25-O would not, ipso facto, result in enlargement of the ambit of section 25-N so as to cover termination of services of workmen as a result of closure which was otherwise outside the ambit of section 25-N. We are, therefore, unable to uphold the contention of Shri Sharma that section 25-N was applicable in the present case and it was obligatory for the Management of the respondent-Company to give three months" notice as required by section 25-N. Since section 25-O was not available on account of the said provision having been struck down "by this Court the only protection that was available to the workmen whose services were terminated as a result of closure was that contained in sections 25-FFA and 25-FFF of the Act. It is not disputed that both these provisions have been complied with in the present case.

12. It has been pointed out hereinabove, as to what is the law presently

available under which the action has been-taken. Section 25-FFF of the Act has also been made as a protective provisions in the Act. Nothing has been said in section 25-N of the Act that even in the case where the sanction is granted u/s 25-O of the Act, still the employer would require to obtain a sanction to retrench the employees/workmen, before complying with the order of closure of the establishment. Thus, if the reading of both the provisions are made harmoniously, it will be clear that there would not be application of section 25-N of the Act, in case the sanction is granted for the closure of the establishment of an employer by the competent Government in exercise of its power prescribed under the provisions of the aforesaid Act.

13. Reliance placed by learned senior counsel for the petitioners in the case of Straw Products Limited, Bhopal and another vs. Union of India and others, 1986 MPLJ 473 is totally misconceived. Division Bench of this Court was examining the correctness of the order refusing to grant sanction to close down an industry as applied u/s 25-O of the Act and since simultaneously an application u/s 25-N of the Act, was also made by the said employer, both were rejected simultaneously. This Court was not, in fact, examining the applicability of provisions of section 25-N of the Act, despite the fact that sanction was granted u/s 25-O of the Act, to close down the industry. Thus, reliance placed by learned senior counsel for petitioners in the case of Straw Products Limited, Bhopal and another Vs. Union of India and others (supra) is totally misconceived.

14. Looking to these submissions if the law laid down by the Apex Court in the case of Maruti Udyog Ltd. (supra) is examined, it will be clear that the specific provisions made by the Parliament have been taken into consideration. The submission that special protection granted under the added provisions of Chapter V-B would not be affected, cannot be accepted. The scheme of the Act is to be seen. The scheme of the Act is to grant protection to the employees from the illegal action of retrenchment or removal of such employees or workmen from the industrial employment by the employer. If adequate arrangement is made for their protection even when sanction is required to be granted for closing down of an industry, it has to be treated that the object of the specific provisions made in Chapter V-B are achieved. That being so, contention of learned senior counsel for petitioners cannot be accepted. Undisputedly, petitioners have received compensation from the employer on account of their discontinuance from employment because of the closure of the establishment. It is also not in dispute that before the closure of the, establishment, sanction from the appropriate Government was asked for which was granted. It is also not in dispute that these facts were brought to the notice of the employees or workmen before effecting the closure of the establishment. Consequently, there was no occasion for the petitioners to claim any relief against" the retrenchment as they were compensated for discontinuance from employment in adequate manner. This being so, Labour Court was not right in entertaining their application or granting any relief to them. Though specific discussion in this respect has not been done by the appellate authority in its order with respect to the application of section

25-N of the Act or the provisions of section 25-O of the Act as has been done hereinabove, but still the law permits such retrenchment in case of grant of sanction to close the establishment, of course, only after payment of compensation which in the case in hand has already been done. Consequently, there is no force in the writ petition, same deserves to be and is hereby dismissed. However, there shall be no order as to costs.