

(2002) 07 AP CK 0057

In the Andhra Pradesh High Court

Case No : Writ Petition No. 26465 of 1996

K. Ravindranath

APPELLANT

Vs

Government of Andhra Pradesh

RESPONDENT

Date of Decision : 02-07-2002

Acts Referred:

Andhra Pradesh Prohibition of Absorption of Employees of State Government Public Sector Undertakings into Public Services Act, 1997 — Section 2, 3, 4
Companies Act, 1956 — Section 456(2)
Constitution of India, 1950 — Article 14, 16, 21, 226, 245

Citation : (2002) 4 ALD 609 : (2002) 4 ALT 288

Hon'ble Judges : S.R. Nayak, J;L. Narasimha Reddy, J

Bench : Division Bench

Advocate : S. Ramachandra Rao, for the Appellant; Ad. General and Govt. Pleader for Industries, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J .

1. These writ petitions are filed by the employees of the erstwhile M/s. Andhra Pradesh Scooters Limited. In these writ petitions, the petitioners -employees have questioned the validity of the actions of the respondents to close down the A.P. Scooters Limited and in terminating or seeking to terminate their services and for direction to the respondent to take necessary steps to absorb their services in the Departments of the Government by protecting their pay-scales, seniority and continuity in service in accordance with the guidelines issued by the Government of Andhra Pradesh, General Administration (PE.I) Department in Letter No. 3 48/PE. 1/90-1, dated 25-5-1991, directing the Governmental authorities to lend financial assistance to the A.P. Scooters Limited for revival of the company, to accommodate all the employees of the A.P. Scooters Limited in Government departments in the event of winding up of that company etc. The petitioners have also by way of amendments questioned the constitutionality of the provisions of Sections 2 and 3 of the A.P. Prohibition of Absorption of

Employees of State Government Public Sector Undertakings into Public Service Act, 1997 (Act 14 of 1997) (for short "the Act"). In addition to these reliefs, in W.P. No. 150 of 2000, a direction is sought to the respondents to extend the benefit of Voluntary Retirement Scheme (VRS) to the employees of A.P. Scooters Limited on reasonable terms and direct payment of amounts under such VRS and other terminal benefits to the employees, if their services cannot be absorbed in other departments of the Government.

2. The background facts leading to the filing of these writ petitions be noted briefly as under: M/s. A. P. Scooters Limited was originally incorporated in August, 1974, for manufacture of two wheeler scooters in technical collaboration with "Scooters India Limited", a Government of India Undertaking, Lucknow. In view of huge losses and in view of erosion of its net-worth completely, the Managing Director of Company reported its sickness to Board for Industrial and Financial Reconstruction (BIFR) under the provisions of Sick Industries (Special Provisions) Act, 1985 (SICA). The BIFR declared the Company sick under the said Act and appointed the Industrial Development Bank of India (IDBI) as the Operating Agency for working out a revival package for the Company. As no promoter came forward to take over the Company the BIFR in its hearing held on 21-7-1993 held that all the efforts made for locating an alternative associate promoters have not yielded any results and that concrete proposals have not made for revival of the unit. The BIFR also held that the Company has no market for its product and has been burdened with huge debt through which it cannot survive. Hence, the BIFR came to a prima facie conclusion, that the Sick Industrial Company i.e., M/s. Andhra Pradesh Scooters Limited should be wound up under the provisions of Section 20 of SICA Act, 1985. Accordingly, the BIFR directed issue of a Public Notice fixing 23-9-1993 for considering objections/suggestions relating to the proposed winding up along with alternative proposals, if any, from any one interested in that regard. The BIFR in its hearing held on 23-9-1993 had observed that there was no viable proposal to rehabilitate the Company. The BIFR further observed that the Company was given ample opportunity but could not submit any viable scheme to revive the Company. No alternative proposal for rehabilitation of the Company was received from any other party. No valid objection to the winding up notice was also received. The State Government was not agreeable for any further involvement in the rehabilitation of the Company. Banks/Financial Institutions too had no objection to the winding up of the Company. The BIFR recorded its final opinion that it is just and equitable that Sick Industrial Company i.e., M/s. Andhra Pradesh Scooters Limited should be wound up and forwarded its opinion to this Court for necessary action on 1-10-1993. At this stage, the Bombay High Court on a suit filed by the IDBI in Civil Suit No. 1778 of 1992 for the recovery of the loan amounts advanced by it to the sick industry in its order dated 25.11.1993 has appointed the IDBI as Official Receiver to take charge of the movable and immovable properties of the Company and the Official Receiver took charge on 14-1-1994. As the matter stood thus, this Court with reference to the opinion

tendered by the BIFR Limited by its order dated 18-8-1994 ordered for winding up of M/s. Andhra Pradesh Scooters Limited and appointed Official Liquidator to take into his custody all the properties and assets of the Company but the Official Liquidator could not proceed further as per the direction of this Court because of the Receiver appointed by the Bombay High Court.

3. As a consequence of the closure and winding up of the Andhra Pradesh Scooters Limited, the employees of the erstwhile Andhra Pradesh Scooters Limited were rendered jobless. It appears that on behalf of Associations/Unions of the employees as well as the management of the Andhra Pradesh Scooters Limited, the Government directed the Heads of the public and statutory corporations to find out whether the erstwhile employees of the Andhra Pradesh Scooters Limited could be accommodated in their Corporations. In pursuance of these Government orders issued from time to time, some of the employees of the Andhra Pradesh Scooters Limited were given jobs in certain Corporations. There is no necessity to refer to each individual Government directions issued to the Heads of the Departments of the State Government and the Chiefs of State Government Public Sector Undertakings and Corporations from time to time. Suffice it to state that in pursuance of these instructions issued by the Government to the public sector undertakings and corporations, some of the erstwhile employees were given jobs and others remained jobless. At this stage, the Andhra Pradesh State Legislature realising the problems arising from the persistent demands from the employees of various State Government Public Sector Undertakings for absorption into the service under the State on the ground that the public sector undertakings wherein they were working have become sick or are closed and thinking that If all such requests were acceded to, it would violate mandates of Articles 14 and 16 of the Constitution and the Service Rules governing recruitment to the posts in the service under the State initially promulgated an Ordinance - A.P. Prohibition and Absorption of Employees of State Government Public Sector Undertakings into Public Service Ordinance, 1996 - A.P. Ordinance No. 25/96 prohibiting absorption of employees of public sector undertakings into the public service. The said Ordinance was replaced by A.P. Prohibition of Absorption of Employees of State Government Public Sector Undertakings into Public Service Act, 1997 (Act 14 of 1997). Having regard to the provisions of the Act, the services of some of the erstwhile employees of the Andhra Pradesh Scooters Limited who were given jobs in pursuance of administrative instructions of the Government were sought to be terminated. Further, the respondent-public sector undertakings also refused to consider the pending requests of the erstwhile employees of the Andhra Pradesh Scooters Limited to absorb their services in pursuance of the administrative instructions earlier issued by the Government and Heads of the Departments of the Government in the light of the provisions of the Act. Under those circumstances, these writ petitions were filed in this Court seeking various reliefs referred to above. When the Ordinance No. 25 of 1996 became the Act, the constitutional validity of Sections 2 and 3 of the Act was also assailed by amending the prayers

in the writ petitions.

4. We have heard Sri S. Ramachandra Rao, learned senior Counsel for the petitioners and learned Advocate General for the State Government and other respondents. Sri S. Ramachandra Rao, while assailing the constitutional validity of the provisions of Sections 2 and 3 of the Act contended that those provisions are arbitrary, illegal, unconstitutional, lack in legislative competence and opposed to basic structures of the Constitution and violative of fundamental rights guaranteed to the petitioners-employees under Articles 14, 16, 21 and Article 300-A of the Constitution of India as well as the very spirit of Social Justice and Welfare State concepts which constitute the backbone of the Indian Constitution. Alternatively, Sri S. Ramachandra Rao, contended that the bar contained in the Act on recruitment is only prospective in operation and the said bar cannot be applied to those petitioners whose services are already absorbed/ confirmed in the service of the State Government, Public Sector Undertakings and Corporations. Sri S. Ramachandra Rao also contended that the guidelines and administrative instructions issued by the Government before the enactment of the Act were legally valid and, therefore, the petitioner-employees are entitled to absorption in terms of those guidelines and administrative instructions issued by the Government from time to time to the Heads of the Departments of State Government, Public Sector Undertakings and Corporations and that the subsequent enactment of the Act would not be a justification either to deny employment to the petitioner-employees whose services are not yet absorbed or to terminate the services of those petitioner - employees whose services were absorbed before the Act came into force. Sri Ramachander Rao also contended that on behalf of the Government, an undertaking was given before the BIFR to absorb the services of the erstwhile employees of Andhra Pradesh Scooters Limited in the State Government, Public Sector Undertakings and Corporations and therefore, it is not open for the State Government, Public Sector Undertakings and Corporations to refuse the absorption of the services of the employees or to terminate the services of those employees who are already working in those undertakings under the garb of the provisions of the Act. Sri Ramachander Rao also contended that most of the employees have put in more than 20 years of service and they are age-barred now and, therefore, they cannot seek alternative employment elsewhere and if they are thrown out of service, that would violate their right to life guaranteed to them under Article 21 of the Constitution and that such an action would also be totally irrational and arbitrary violating Article 14 of the Constitution. Sri Ramachander Rao lastly contended that in the light of the judgment of the Full Bench of this Court in V.S.R. Murthy and Others Vs. Engineer-in-Chief (Irrigation Wing), I and C.A.D. Department, Govt. of A.P. and Others, , the petitioners are also entitled to be absorbed in the services of the State Government or in Public Sector Undertakings and Corporations.

5. Learned Advocate-General appearing for the State and other respondent-authorities contended that the challenge to the constitutional validity of Section 2

and 3 of the Act required to be rejected in limine because no necessary pleadings are laid by the petitioners to assail the constitutional validity of the Statute made by the competent Legislature, much less the constitutional grounds to declare the impugned provisions of the Act as invalid. The learned Advocate-General next contended that most of the contentions raised by the petitioners do not deserve any consideration and they are liable to be rejected in limine because the Andhra Pradesh Scooters Limited which became sick was finally ordered to be wound up and, therefore, the employees of the sick industry which is ordered to be wound up should work out their remedies and enforce their rights, if any, only as provided under the Companies Act and they cannot, by way of writ proceedings, seek the same kinds of reliefs they sought before the BIFR and AAIFR constituted under the SICA. Adverting to the administrative instructions and guidelines earlier issued by the Government and the Heads of the departments of the Governments to Heads of State Government Public Sector Undertakings and Corporations to absorb the services of the employees of the Andhra Pradesh Scooters Limited cannot be enforced in the light of the provisions of the Act. The learned Advocate-General contended that the petitioners have utterly failed to establish antecedent right vested in them on the basis of which they could claim as a matter of right that after winding up of the Andhra Pradesh Scooters Limited, their services should be absorbed and regularised either in the departments of the Government or in the State Government Public Sector Undertakings and Corporations. The learned Advocate-General contended that no mandamus would go to the State Government or other authorities to disobey the law or to do something unless it is shown that the State and State authorities are under a legal obligation to do that thing. The learned Advocate-General highlighted that if the prayers of the petitioners are granted, it would ex facie violate the statutory regulations governing recruitment to the posts in the service under the State as well as those statutory rules and/or administrative instructions or guidelines governing recruitment to the posts in the public sector undertakings and in that view of the matter, the writ petitions are liable to be dismissed in limine. The learned Advocate-General also contended that the contentions of the petitioners based on violation of Articles 14, 16, 21 and Article 300-A of the Constitution are totally misconceived and, in fact, none of the petitioners have laid even a bare or minimum pleading in that regard in the writ affidavits or in additional pleadings filed by them. The learned Advocate-General also pointed out that though the services of some of the employees of the Andhra Pradesh Scooters Limited were absorbed in some of the State Government Public Sector Undertakings and Corporations, those absorptions of the services are not in pursuance of any rehabilitation scheme framed by the State Government or by the concerned Corporation or Public Sector Undertaking but only as an adhoc and temporary measure on compassionate grounds. The learned Advocate-General also contended that the contention of the Senior Counsel for the petitioners that the State Government gave an undertaking before the BIFR that the services of the petitioners -employees would be absorbed and regularised in the departments of the Government and other public

sector undertakings is factually incorrect and that such an undertaking was not given on behalf of the State Government and that there is nothing on record to show that such a undertaking was given by the State Government before the BIFR. In that view of the matter, learned Advocate-General contended, application of the principle of promissory estoppel would not arise. Alternatively, learned Advocate-General contended that it is the well-established principle that no estoppel lies against the statute.

6. The petitioners have sought mandamus to declare the provisions of Sections 2 and 3 of the Act as invalid by way of amendment. Therefore, it is appropriate to first deal with the constitutionality question. It is true that mandamus is the proper relief to be asked for where the petitioner seeks a declaration that an "Act" or "Ordinance" is unconstitutional and a consequential direction restraining the State and its Officers or the concerned authority or authorities, as the case may be, from interfering or giving effect to the provisions of such unconstitutional law. It is trite law that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of constitutional principles and limits, whether it is a pre-Constitution or post-Constitution law. The Courts generally lean towards the constitutionality of a Statute upon the premise that a Legislature appreciates and understands the needs of the people, that the laws it enacts are directed to problems which are made manifest by experience, that the elected representatives in a Legislature enact laws which they consider to be reasonable for the purposes for which these laws are enacted and that a Legislature would not deliberately flout a constitutional safeguard or right. It is also well-settled that to sustain the presumption of constitutionality, the Court may take into consideration matters of common knowledge and may assume every state of facts which can be conceived as existing at the time of the enactment of the legislation in question. In *Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others*, , and in *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, the Supreme Court held that the burden of proving all the facts which are requisite for the constitutional invalidity is upon the person who challenges the same. However, it is not to state that by reason of the presumption in considering the validity of the impugned law, the Court will be restricted to the pleadings only. The Court would be free to satisfy itself whether under any provision of the Constitution the impugned law can be sustained having due regard to the circumstances in which such law was enacted. For the same reason, the Court should, if possible, make such a progressive and/or narrow construction of the impugned statute as would sustain its constitutional validity. The Supreme Court in *Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another*, , has opined that the Court should not cover grounds or make observations on points not directly involved in the proceeding, thereby meaning that unless a point arises for consideration and decision out of the pleadings of the parties, the Court shall not express its opinion on such point.

7. The Supreme Court in *Bharat Singh and Others Vs. State of Haryana and*

Others, , has declared that a party raising a point in a writ petition must plead not only relevant facts but also state facts by way of evidence in proof of facts so pleaded in support of such point. The Supreme Court in *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another*, , and in *The Municipal Board, Maunath Bhanjan Vs. Swadeshi Cotton Mills Co. Ltd. and Others*, , has handed down the opinion that the Constitutional Courts will not pronounce upon a constitutional issue, unless it has been raised in a proper case between two or more contending parties. The Supreme Court in *The Municipal Board, Maunath Bhanjan Vs. Swadeshi Cotton Mills Co. Ltd. and Others*, , held that a writ application should contain in a concise form of the matters on which the parity relies for his claim. The Supreme Court in *Municipal Bd v. Swadeshi Cotton Mills (1977) UJSC 180*, has opined that the pleading in the writ petition must not be vague. The Supreme Court in *Mathew alias Mathachan Vs. State of Kerala*, , has opined that the Court would not enter into the constitutionality of a statutory provision unless its constitutionality has been specifically challenged in the pleading setting out relevant grounds. One who invokes the power of Constitutional Court to declare an enactment enacted by the competent Legislature to be unconstitutional must be able to show not only that the statute is invalid on certain constitutional grounds but that he had sustained or is in immediate danger of sustaining some direct injury as a result of its enforcement of the Statute. If a party challenges a legislation on the ground of contravention of Part III of the Constitution, then, he must satisfy the Court that some fundamental rights to which he can lay claim has been impaired or has been threatened by the impugned legislation.

8. It would be appropriate and beneficial to remind ourselves of certain basic principles, propositions governing judicial review of legislation and limitation in that behalf before we proceed to consider the contentions raised in these writ petitions. Essentially, the question of constitutionality is always a question of power. As we know, in the United Kingdom, the Parliament is supreme and there are no limitations upon the power of the Parliament to legislate. Therefore, no Court in the United Kingdom can strike down an Act enacted by the British Parliament on any ground whatsoever. On the other hand, the United States of America has a Federal Constitution where the power of the Congress and the State Legislatures to make laws is subjected to two limitations viz., the division of legislative powers between the States and the Federal Government; and the limitations flowing from the Bill of Rights incorporated in the Constitution. In India too the position is substantially similar to the United States of America. In India, the power of the Parliament and the State Legislatures to enact law, broadly speaking, is subjected to two limitations: a law made by the Parliament or the Legislature of a State can be struck down by the Courts only on two grounds, viz., (i) lack in legislative competence and (ii) violation of any of the fundamental rights guaranteed in Part-III of the Constitution or any other substantive constitutional provisions. In *State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.*, , the Supreme Court has opined that

except the above two grounds there is no third ground on the basis of which the law made by the competent Legislature can be invalidated and that the ground of invalidation must necessarily fall within the four corners of aforementioned two grounds.

9. It is true that it will become the duty of the Constitutional Courts under our Constitution to declare a law enacted by the Parliament or the State Legislature as unconstitutional when the Parliament or the State Legislature has assumed to enact a law which is void, either from want of constitutional power to enact it, or because the constitutional forms or conditions have not been observed, or where the law infringes the fundamental rights enshrined and guaranteed in Part-III of the Constitution or any other substantive constitutional provisions. It is needless to state that Legislature and Judiciary are co-ordinate organs of the State, of equal dignity and status under the constitutional scheme. It is permissible for the Constitutional Courts to declare legislative enactments unconstitutional and void in some cases, but not because the judicial power is superior in degree or dignity to the legislative. The Court while declaring a law as invalid or unconstitutional is only enforcing the legislative will and the limits imposed by the Constitution on the law-making bodies.

10. No Court can declare a statute unconstitutional and void, solely on the ground of unjust and harsh provisions, or because it is supposed to violate some natural, social, political or economic rights of the citizen, unless it can be shown that such injustice is, in fact, prohibited or such rights guaranteed or protected by the Constitution. Strictly speaking, the Courts are not guardians of all kinds of rights of the people of the State, unless those rights are secured and protected by some constitutional provision which comes within the judicial cognizance,

11. In "A Treatise on the Constitutional Limitations" by Thomas M. Cooley, it is stated that the Court cannot run a race of opinions upon points of right, reason, and expediency with the law-making power, and that any legislative act which does not encroach upon the power apportioned to the other organs of the State, being prima facie valid, must be enforced, unless restrictions upon the legislative power can be pointed out in the Constitution itself, and the case shown to come within them. The Courts are not at liberty to declare statutes void because of their apparent injustice and impolicy, neither can they do so because they appear to the minds of the judges to violate fundamental rights of republican Government, unless it shall be found that those rights are placed beyond legislative encroachment by the Constitution nor are the Courts at liberty to declare an enactment unconstitutional, because in their opinion it is opposed to a spirit supposed to pervade the Constitution, but not expressed in words or discernible from the context, It is not permissible to limit the legislative power of the Legislatures by judicial interposition, except so far as the expressed words a written Constitution gives that authority to the Court. In the same Treatise, further, it is aptly stated that the law-making power of the State recognizes no restraints, and is bound by none except such as or imposed by (he Constitution

itself placing reliance on the opinion handed down in *Sill v. Village of Corning* 15 NY 303.

12. The Act contains only five sections. It reads as follows :

"1. (1) This Act may be called the Andhra Pradesh Prohibition of Absorption of Employees of State Government Public Sector Undertakings into Public Service Act, 1997.

(2) It shall be deemed to have come into force with effect from the 26th November, 1996.

2. Prohibition of absorption into public service :--Notwithstanding anything contained in any contract or agreement or any judgment, decree or order of any Court, Tribunal or any other authority or any order or proceedings of the State Government, or any officer of the State Government, no employee of a State Government Public Sector Undertaking shall be or shall ever be deemed to be entitled to absorption into public service from the date of commencement of this Act only on the ground that such undertaking has become sick or is likely to become sick or is closed or is likely to be closed and accordingly,--

(a) all orders issued by the Government or any other authority appointing any such employee to any post in public service on any such ground shall stand cancelled with effect from the 30th November, 1996

(b) no suit, or other proceeding shall be instituted, maintained or continued in any Court, Tribunal or any other authority against the State Government or any person or other authority whatsoever for such appointment or absorption into public service; and

(c) no Court shall enforce any decree or order directing such appointment or absorption.

Explanation :--For the purposes of this section, the expression "Public Service" means, services in any office or establishment of,--

(a) the Government;

(b) a local authority,

(c) a Corporation or undertaking wholly owned or controlled by the State Government;

(d) a body established under any law made by the Legislature of the State whether incorporated or not, including a University; and

(e) any other body established by the State Government or by a society registered under any law relating to the registration of societies for the time being in force, and receiving funds from the State Government either fully or partly for its maintenance or any educational institution whether registered or not but receiving aid from the Government.

3. Abolition of Supernumerary posts -Notwithstanding anything contained in any contract or agreement or any judgment, decree or order of any Court, Tribunal or other authority or any order or proceeding of the State Government or any Officer of the State Government, any supernumerary post created for appointment or absorption to any post in public service of any such employee on any such ground specified in Section 2 shall stand abolished with effect from the 30th November, 1996.

4. Schemes of rehabilitation - Nothing in this Act shall disentitle any such employee to the benefits of any scheme of rehabilitation under the relevant orders issued by the Government from time to time.

5. Repeal of Ordinance 25 of 1996 and Ordinance 4 of 1997 --The Andhra Pradesh Prohibition of Absorption of Employees of State Government Public Sector Undertakings into Public Service Ordinance, 1996 and the Andhra Pradesh Prohibition of Absorption of Employees of State Government Public Sector Undertakings into Public Service Ordinance, 1997 are hereby repealed."

As noticed above, the petitioners have assailed the constitutional validity of provisions of Sections 2 and 3 of the Act on the ground that those provisions are arbitrary, illegal, unjust, unconstitutional, lacking in legislative competence and opposed to basic structure of the Constitution and violative of fundamental rights guaranteed to the petitioners under Articles 14, 16, 21 and the constitutional guarantee under Article 300-A of the Constitution of India, spirit of social justice and welfare state concepts and also violative of provisions of unspecified Chapter of the Industrial Disputes Act, 1947. The petitioner except stating the above grounds in their affidavit in support of the WPMPs where they sought amendments of the prayers so as to assail the constitutional validity of Sections 2 and 3 of the Act, they have not laid any pleading in support of their challenge to the constitutionality of the impugned provisions of the Act. For example, in WPMP No. 23753 of 2000 filed in WP No. 27818 of 1996, where the petitioners have sought to assail the constitutional validity of Sections 2 and 3 of the Act, in para (4) of the affidavit filed in support of the said WPMP, have stated :

"In the above circumstances I am constrained to challenge the provisions of the Act. I submit that the application in WPMP No. of 1997 filed by us on 4th April, 1997 may be read as part and parcel of this affidavit I submit that Section 2 of the Act provides for prohibition of absorption into public service and Section 3 provides for Abolition of Supernumerary post. Section 4 of the Act, however, saves Schemes of rehabilitation provided by the Government from time to time. A copy of the Act is filed herewith. A mere reading of the Act would show that it is a verbatim reproduction of the Ordinance which is challenged in this Writ Petition. Myself and the other petitioners were, therefore, constrained to move an application to amend the prayer in the above Writ Petition. Now that the Ordinance has been made into a Legislation. Myself and the other petitioners herein are constrained to seek the permission of this Hon"ble Court to amend the prayer in the Writ Petition."

In the affidavit dated 4-4-1997 filed in support of WPMP No. 8734 of 1997 in WP No. 27818 of 1996, the petitioners have only made bald statements that the provisions of the impugned ordinance are arbitrary, illegal, unjust, unconstitutional, lacking in legislative competence and opposed to the basic structure of the Constitution and violative of the fundamental rights guaranteed to the petitioners under Articles 14, 16 and 21 and the constitutional guarantee under Article 300-A of the Constitution of India and also violative of provisions of unspecified Chapter of the Industrial Disputes Act, 1947. Except that averment, no other pleading relevant to the unconstitutionality of the impugned provision are laid in the pleadings anywhere. The same position obtains in every other Writ Petitions. Therefore, in terms of the well settled principles governing the kind and standard of pleading required where the constitutionality of a Statute is challenged, it should be held that the petitioners have utterly failed to lay even factual matrix and/ or legal grounds which could occasion consideration of the constitutional questions raised in the amended prayers. As held in *Bharat Singh's* case (supra), a party raising a point in a writ petition must plead not only relevant facts but also state facts by way of evidence in proof of facts so pleaded in support of such point. If this ratio is applied, the pleading of the petitioners is hopelessly bald and it does not conform to the standard laid down by the Apex Court even remotely. Further as held in *Yadupati* (supra), the Court would not enter into the constitutionality of a statutory provision unless its constitutionality has been specifically challenged in the pleading laying down necessary factual matrix and setting out relevant grounds. The pleadings of the petitioners insofar as they assail the constitutionality of Sections 2 and 3 of the Act is concerned, is totally unsatisfactory and not in conformity with the above principle. Even otherwise, we do not find any merit in the contention of the learned Senior Counsel that the provisions of Sections 2 and 3 of the Act are arbitrary, illegal, unconstitutional, lack in legislative competence, opposed to basic structures of the Constitution and violative of fundamental rights guaranteed to the petitioners-employees under Article 14, 16, 21 and Article 300-A of the Constitution of India. It needs to be noticed that though the petitioners have sought to assail the constitutional validity of Sections 2 and 3 of the Act by amending the prayers, in the pleading filed in support of the amendment petitions, what is actually asserted is that the provisions of the Act have no application to the case of the petitioners because of the fact that the services of the employees of M/s. Andhra Pradesh Scooters Limited were absorbed in the State Government Public Sector Undertakings and Corporations in pursuance of the Government orders and administrative instructions issued from time to time and that in the case of those petitioners whose services are not yet absorbed, their services are entitled to be absorbed in terms of the Government orders and administrative instructions earlier issued because, even if the impugned provisions of the Act is constitutionally valid, it could be implemented with effect from 26-11-1996 and that the right accrued to the petitioner-employees to seek absorption of their services in terms of the Government orders issued prior to the above date is not affected. Even at the time of argument, the thrust of the argument of Sri S.

Ramachandra Rao is that the provisions of the Act are not applicable and those provisions, therefore, would not come in the way of granting reliefs to the petitioners in terms of the several Government orders issued by the Government prior to the promulgation of Ordinance No. 25/1997 and the enactment of the Act No. 14 of 1997. The learned Senior Counsel did not advance any argument to assail the constitutionality of Sections 2 and 3 of the Act except generally asserting that the impugned provisions are arbitrary, unfair and unreasonable to the employees of those industries who have become sick and who have been ordered to be wound up under SICA.

13. There is no substance in the contention that the Andhra Pradesh State Legislature had no legislative competence to enact the Act. Article 309 of the Constitution deals with recruitment and conditions of service of persons serving the Union or the State. Recruitment is a comprehensive term and includes any method provided for inducting a person in public service. Appointment, selection, promotion, deputation are all well-known methods of recruitment. Even appointment by transfer is not unknown. The Constitution besides laying down certain general provisions, does not aim at providing detailed rules for recruitment or conditions of services of the Union or the State. The power is left to the respective Legislatures. Entry 70 of List I of Schedule VII reads : "Union Public Services, All-India Services; Union Public Service Commission," whereas Entry 41 of List II of VII Schedule reads : "State Public Services, State Public Service Commission ". In *Patel A.J. v. State of Gujarat* AIR 1965 Guj 23, and *Naganoor A.N. v. Union of India* AIR 1966 Mys. 95, the Gujarat and Mysore High Courts have held that Entry 41 of List II includes the power of integration of the services and service personnel. In *Saksena I.N. v. State of M.P.* AIR 1976 SC 2250, the Supreme Court held that the scope of Entry 41 is wider than that of Article 309 and that under Entry 41, the State Legislature may not only change the conditions of service of State civil servants with retrospective effect but also to validate with retrospective effect invalid executive orders, because validating legislation must be regarded as ancillary to the power of legislation on the subject covered by Entry 41. It is trite that the Act is a law relating to the State public services. The various Entries in the three Lists are not "powers" of legislation, but "fields" of legislation. It is well settled that the language of these Entries should be given the widest scope of which their meaning is fairly capable because they set up a machinery of Government. It is also well settled that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it, eg, the validation of executive orders; or a defective law relating to the subject referred to in the Entry. In *Seth Banarsi Das etc. Vs. Wealth Tax Officer, Special Circle Meerut, etc.,* , the Supreme Court held that in interpreting an Entry in the preceding manner, it would not be reasonable to import any limitation by comparing or contrasting that Entry with any other Entry. The impugned provisions of the Act no way impair or take away any of the rights of the writ petitioners to which they may be entitled under the provisions of the Industrial Disputes Act, 1947. If the petitioners, the employees

of the erstwhile M/s. Andhra Pradesh Scooters Limited are entitled to seek any relief (we should not be taken to have opined that they have such right) at the hands of the Industrial Courts under the provisions of the Industrial Disputes Act, 1947, they can certainly work out their remedies, but we do not find anything in the impugned provisions of the Act which are repugnant to the provisions of the Industrial Disputes Act. As a matter of fact, the subject dealt with by the impugned Act is altogether different from the subject dealt with by the Industrial Disputes Act.

14. There is no merit in the contention that the impugned provisions are arbitrary, illegal, unconstitutional, lack in legislative competence and opposed to basic structure of the Constitution and violative of fundamental rights guaranteed to the petitioners-employees under Articles 14, 16, 21 and Article 300-A of the Constitution of India. No enactment can be struck down by the Constitutional Courts just saying that in the opinion of the Court it is arbitrary or unreasonable. In the instant case, in the first place, there is nothing on record to establish that the impugned provisions are arbitrary or unreasonable; secondly, although non-arbitrariness, reasonableness and fairness are postulates of Article 14 of the Constitution of India, when an enactment is sought to be struck down on the ground of arbitrariness and unreasonableness, the reviewing Court should find some or other constitutional infirmity in addition to those grounds before invalidating the enactment. An enactment cannot be struck down merely on the ground that the Court thinks it is unjustified and unwise. This position is fairly well settled by the decision of the Supreme Court in *Mc Dowell and Co.'s case*, (supra). It is not open to a Court to declare an enactment unconstitutional and void solely on the ground of unwise and harsh provisions or that it is supposed to violate some of the perceived natural, social, economic or political rights of the citizen, unless it can be shown with satisfactory proof that such injustice is in fact prohibited or such rights guaranteed or protected by Constitution.

15. The contention based on Article 21 is also not well founded. Article 21 does not mandate the State to provide employment to a citizen. The primary object of Article 21 is to prevent encroachment upon personal liberty by the Executive save in accordance with law, and in conformity with the provisions thereof. Of course, once employment is given by the State and State authorities, such employment cannot be taken away by any procedure which is not reasonable, fair and just. The cause for taking away the public employment of the petitioners is not the provisions of the Act, but the fact that M/s. Andhra Pradesh Scooters Limited was closed and it was wound up by a competent Court of law, Therefore, the deprivation of public employment to the petitioners by virtue of the winding up order passed by the Company Court cannot be said to have been brought about by a procedure which is not reasonable, fair and just. Therefore, there is no need for us to dilate this aspect further on the question whether the public employment earlier provided to the petitioner-employees in M/s. Andhra Pradesh Scooters Limited were taken away by a fair and reasonable procedure or not As pointed out supra, the Andhra Pradesh State Legislature has legislative

competence to enact the Act and we do not find any of the impugned provisions offending or violating either any of the provisions of Part III or any other provisions of the Constitution. On the other hand, as could be seen from the Preamble of the Act, the practice of absorbing the services of the employees of sick industries in the public services resulted in an enormous drain on the State finances, thereby affecting the developmental programmes of the State and, therefore, the State wanted to arrest such practices to siphon the meagre and limited financial resources towards developmental programmes. Therefore, it cannot be said that a law made in that direction by a Legislature which has undoubtedly the power to enact that law by virtue of the power granted under Articles 245, 246(2) read with Entry 41 of List II of VII Schedule. In conclusion, we do not find any merit in the challenge to the constitutional validity of Sections 2 and 3 of the Act.

16. This takes us to the other contentions of the petitioners. According to the petitioners, as early as in the year 1988, a letter was addressed by the Managing Director of the Company on 26-12-1988 to the Principal Secretary to the Government, Industries and Commerce Department, mentioning inter alia that the company had suspended manufacture of scooters since 1-4-1987 and identified certain surplus employees for absorption in various departments/corporations in the Government of Andhra Pradesh. The said letter also identified 238 surplus staff of whom 117 were technical and 121 were non-technical staff members. That request of the company was followed by several other similar requests and that has resulted in absorption of some of the staff of the company. The petitioners have cited the Government Order G.O. Ms. No. 56, Housing (D.I) Department, dated 24.12.1990, whereunder one T.S.V. Ratnam, Public Relations Officer of the Company was absorbed in the services of the Andhra Pradesh Housing Board. In response to the requests of the company and that of the managements of the similarly circumstanced public sector sick companies, the Government of Andhra Pradesh issued guidelines vide Letter No-348/PE. 1/90-1, dated 25-5-1991 for absorption of surplus staff working in public sector enterprises in the service of other public sector undertakings and in the department of the Government of Andhra Pradesh. According to the petitioners, in terms of those guidelines, they should have been absorbed in other public sector undertakings or enterprises and if the respondents were to act upon on the guidelines issued by the Government, all the petitioners would have been absorbed either in the other public sector undertakings or in Government departments. There is no necessity for us to deal with individual orders whereby and whereunder the services of some of the employees of the company were absorbed on deputation or temporary basis in pursuance of the administrative instructions issued by the Government and Heads of the departments of the Governments, to the Chiefs or Heads of the public sector undertakings from time to time. Suffice it to state that these absorptions took place not in pursuance of any rehabilitation scheme framed by the Government of Andhra Pradesh or the concerned management of the public sector undertakings. These absorptions of

the services of the employees of the Company were effected as a kind of stop gap arrangement and on ad hoc and temporary basis and sometimes, on deputation basis. This position is made clear in the letter of the Commissioner vide Letter No. 987/PE-I/A2/94-2, dated 30-9-1994. Although in the said letter, it permitted all the Vice-Chairmans and Managing Directors of the State level Public Enterprises and all the Heads of the Department to consider the applications received from the office from the surplus staff of sick undertakings and other State Level Public Enterprises/ Corporation etc., the Government made it very clear that their absorption would be subject to finding them suitable qualification-wise. It is pertinent to note that even this limited concession shown to the surplus staff of the sick undertakings were withdrawn by the Government subsequently by Memo No. 13307.b/126/FC.11/95, dated 5-8-1995. It reads as follows :

"Government of Andhra Pradesh Finance & Planning (Fin.II) Department

Memo No. 13307.b/126/FC.II/95, Date: 5-8-1995

Sub :- Absorption of Surplus Staff of sick units in Government Departments/ State Level Public Enterprises - Instructions -Issued.

Ref:- G.A. (P.E.) Dept., Lr.No.987/PE.I/A2/ 94-2, dated 30-9-1994

In the reference cited, G A (P.E.I) Department issued instructions for considering appointment of surplus staff of sick State Level Public Enterprises (SLPE) in Government Departments/other State Level Public Enterprises on the basis of applications made by such employees.

On the other hand, Section 4 of Act 2 of 1994 i.e., Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act, 1994, prescribes that every recruitment to the "State Government, local authorities, Corporations covered and controlled by State Government and other bodies established under a law made by the expenditure of the State have to conform to the guidelines prescribed thereunder. Section 4 of the Act restricts recommend to the following channels only.

a) From the panel of candidates selected and recommended for appointment by the Public Service Commission/College Service Committee where the post is within the purview of the said Commission.

(b) From a panel prepared by any Selection Committee constituted for the purpose in accordance with the relevant rules or orders issued in that behalf and

(c) From the candidates having the requisite qualification and sponsored by the Employment Exchange in other cases where recruitment other wise that in accordance with clauses (a) and (b) is permissible.

Explanation - For the removal of doubts it is hereby declared that nothing in this section Shall apply to compassionate appointments made in favour of son/ daughter/ spouse of any person employed in public service who dies in harness

or who retires from service on medical grounds, in accordance with the relevant orders issued from time to time.

Accordingly, it is hereby clarified that the above instruction of General Administration Department in the reference cited and all other previous instructions issued by the State Government on the same subject have become void on the date the ACT 2 of 1994 came into the force i.e., 23-11-1993. The Government, after careful consideration of this matter, hereby order annulment of instructions issued by GA (PE.I) Department

vide their Lr.No.987/PE.I/A2/94-2, dated 30-9-1994.

M.S. Rajajee

Chief Secretary to Government To

All Departments of Secretariat

Commissioner, PEMB & E.O Pril, Secretary, GAD.

All Heads of Departments.

All VC & MDs of State Level PSUS.

All Collectors and District Magistrates.

All District Treasury Officers.

The Pay and Accounts Officer, Hyderabad

The Director of Treasuries and Accounts, Hyderabad. SF/SCS.

// Forwarded by Order//

Sd/-

Section Officer"

Therefore, the erstwhile employees of M/s. Andhra Pradesh Scooters Limited basing on the administrative instructions earlier issued by the Government cannot claim absorption of their services in the departments of the Government or in the State Government Public Sector Undertakings and Corporations, particularly after 5-8-1995, much less after the Act came into force. It needs to be emphasised that strictly speaking the erstwhile employees of M/s. Andhra Pradesh Scooters Limited rendered jobless not on account of the provisions of the Act, but on account of the fact that the industry was closed and it was ordered to be wound up by the Company Court in pursuance of the recommendation made by the BIFR, Therefore, the erstwhile employees of M/s. Andhra Pradesh Scooters Limited, if they have any grievance, should work out legal remedies as provided under the Companies Act or the Industrial Disputes Act wherever those provisions are applicable, but, they cannot seek absorption of their services on temporary basis or on regular basis in the departments of the

Andhra Pradesh State Government or on the establishments of the other public sector undertakings as a matter of right. It was not brought to our notice by the learned Senior Counsel for the petitioners any provision in any service rule under which the surplus employees of the public sector undertakings or the employees of sick public sector undertakings are required to be absorbed in Government service in any cadre. It is trite that appointment to Government service is regulated by statutory rules and the rules framed under the proviso to Article 309 of the Constitution. Appointment to Government service is normally done through direct recruitment or by promotion or by transfer. Placement or absorption of the personnel belonging to Public Sector Undertakings is not one of the modes of appointment in Government Service under the existing rules. Where the posts are in direct recruitment category coming under the purview of the Andhra Pradesh Public Service Commission, the concurrence of the Andhra Pradesh Public Service Commission would be required and the procedure laid down for such direct recruitment through Andhra Pradesh Public Service Commission will have to be followed. If the procedures laid down for such direct recruitment are not followed, the statutory requirements relating to educational qualifications, age wherever necessary, the provisions of Presidential Order, 1975 (Six Point Formula) would be violated. Secondly, in the pleading of the State Government and other respondent - public sector undertakings, it is specifically pleaded that the continuation of the services of the erstwhile employees of M/s. Andhra Pradesh Scooters Limited and that of the other sick industries have tremendous adverse financial impact on the meagre resources of the State Government and that there are also no needs for the services of those employees and that on account of the avoidable financial burden cast on the State and its public sector undertakings, the developmental programmes intended to achieve the public good could not be persuaded in the manner they should have been persuaded. It is stated by the State Government that "the financial positions of the State arising out of excessive expenditure on employees salaries is so serious that the State is not able to conserve the resources for the welfare and developmental activities". The State Government in its counter affidavit dated 7.6.2001 filed in WP No. 26465 of 1996 and Batch, has stated thus:

"..... The Constitution envisages the State to be a Welfare State. The State cannot neglect nor sacrifice the interests of the people by not taking up welfare and development schemes and activity. In order to implement the Welfare and Developmental programmes the State should see that the amount spent on its employees should be reasonable leaving adequate amount for taking up welfare and developmental activity for the rest of the people. In the recent past the number of employees have been increasing at such an enormous rate that the expenditure towards their emoluments is absorbing a major portion of State Revenue, leaving very little for developmental programmes for the public. It is submitted that the financial position of the State arising out of excessive on employees salaries is so serious that the State is not able to conserve the

resources for the welfare and developmental activities.

Hence, it has been felt necessary that the problem cannot be tackled by ordinary/ administrative actions and instruction. In these circumstances and in view of the persistent demands from the employees of various State Government Public Sector Undertakings for absorption into public service on the ground that the public sector undertakings wherein they were working have become sick or closed the Government have decided to prohibit absorption of any employees of the State Government Public Sector Undertakings into Public Service and promulgated the Andhra Pradesh Prohibition of Absorption of Employees of State Government Public Sector Undertakings into Public Service Ordinance, 1996 (Andhra Pradesh Ordinance is promulgated to prohibit the absorption of employees of State Government Public Sector Undertakings into Public Service and for matters connected therewith or incidental thereto). The said Ordinance has been subsequently replaced by Act No. 14/97."

The direction sought by the petitioners in WP No. 150 of 2000 to direct the respondents to enlarge the benefit of Voluntary Retirement Scheme to the petitioners also cannot be granted Consequent upon the winding up order passed by the Company Court, the properties and the assets of the company, are in the custody of the Official Liquidator as per the provisions of subsection (2) of Section 456 of the Companies Act. It is stated in the counter-affidavit filed by the 2nd respondent in WPMP No. 742 of 1999 in WP No. 15900 of 1993 that the ex-directors of the Andhra Pradesh Scooters Limited have filed Statement of Affairs before the Official Liquidator on 30-10-2000. Therefore, the question of extending the Voluntary Retirement Scheme benefits to the erstwhile employees of M/s. Andhra Pradesh Scooters Limited does not arise. Be that as it may, we do not find any vested legal right in the erstwhile employees of M/s Andhra Pradesh Scooters Limited to seek mandamus either to the Andhra Pradesh State Government or the managements of the public sector undertakings to absorb their services in their establishments. It is trite that no mandamus will go to an authority to do something unless the applicant for the writ satisfactorily establishes his legal right by producing relevant proof to seek such writ. The Court cannot issue mandamus de hors law or de hors its power to enforce of legal obligations merely on the basis of perceived hardship or inconvenience done to an applicant for the writ.

17. The claim of the petitioners based on the judgment of Full Bench of this Court in V.S.R. Murthy's case (supra) is also not well-founded. That case is distinguishable on facts. In that case, there was a rehabilitation scheme. In pursuance of an undertaking given by the State Government before the BIFR to make alternative arrangements for re-employment of 1500 surplus labour, a scheme was framed and that scheme was implemented. The Full Bench after finding that the surplus employees were identified and the Government had already completed the modalities for placement of those employees in various departments of the State Government and state level public enterprises opined

that the placement of surplus employees in various Government departments" and public sector undertakings was already completed and, therefore, the State Government cannot retrace its steps. The Full Bench also opined that once the scheme framed by the Government was approved by BIFR, the same became part of Statute and it binds on all parties including the State Government. In the instant case, firstly, there is no satisfactory proof to show that the State Government gave an undertaking. Secondly, the State Government did not frame any rehabilitation scheme and thirdly, the company M/s. Andhra Pradesh Scooters Limited has gone into liquidation, and is wound up by order of the Company Court.

18. The contention based on Doctrine of Promissory Estoppel is also not tenable. In our considered opinion, even if the facts of this case as pleaded by the respondent-company are taken to be true, it would not attract the doctrine of promissory estoppel. It is true that by virtue of the judgments of the apex Court in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., , Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, , and Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, and several other cases to follow, the equitable doctrine of promissory estoppel is applicable against the Government, instrumentalities of the State and the statutory authorities at the instance of a private individual.

19. The doctrine of promissory estoppel or equitable estoppel represents a principle evolved by equity to avoid injustice. The basis of the doctrine is that where any party has by his word or conduct made to the other party an unequivocal promise or representation by word or conduct, which is intended to create legal relations or effect a legal relationship to arise in the future, knowing as well as intending that the representation, assurance or the promise would be acted upon by the other party to whom it has been made and has in fact been so acted upon by the other party, the promise, assurance or representation should be binding on the party making it and that party should not be permitted to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings, which have taken place or are intended to take place between the parties. As noticed above the doctrine of promissory estoppel is applicable against the Government, instrumentalities of the State, statutory authorities also, particularly where it is necessary to prevent fraud or manifest injustice. The doctrine, however, cannot be pressed into aid to compel the Government or the public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. To invoke the doctrine of promissory estoppel, clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine. Bald expression, without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its opposition relying on the assurance of the Government or public authority would not be sufficient to press into aid the doctrine. As opined in

Kasinka Trading and another, etc. etc. Vs. Union of India and another, , the doctrine of promissory estoppel cannot be invoked in the abstract and the Courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, Courts have to do equity and the fundamental principles of equity must forever be present in the mind of the Court, while considering the applicability of the doctrine. The doctrine must yield when the equity so demands and if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation.

20. Unless the above noticed conditions coexist, application of the doctrine of promissory estoppel to grant the relief on that ground to an individual would not arise. In the instant case, in the first place, the promise said to have been made by the State Government is not substantiated by producing any satisfactory materials. Secondly, it is neither pleaded nor established that on account of the promises made by the Government, the petitioners have altered their position to their prejudice. Thirdly, "no estoppel against the statute" is the well-settled position in law. Therefore, no case is made out to apply the doctrine of promissory estoppel.

21. In conclusion, we hold that the petitioners have not made out any case either to declare the impugned provisions of the Act as invalid or to grant other reliefs sought in the writ petition. The writ petitions are devoid of merits. In the result, we uphold the constitutional validity of Sections 2 and 3 of the Andhra Pradesh Prohibition of Absorption of Employees of State Government Public Sector Undertakings into Public Service Act, 1997 (Act 14 of 1997) and dismiss the writ petitions with no order as to costs.

22. However, we hope and trust that this judgment should not come in the way of the State Government to pursue social welfare objectives and in finding some solution to the problem of unemployment caused to the erstwhile employees of M/s. Andhra Pradesh Scooters Limited by framing some special measure or rehabilitation scheme and if our hope is translated into a reality, it is trite, the Court will be happy.