
(2008) 09 MP CK 0049
In the Madhya Pradesh High Court

M.P. Transport Workers Federation and Others	APPELLANT
Vs	
State of M.P. and Others	RESPONDENT

Date of Decision : 15-09-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 143, 21, 226, 246

Citation : (2008) 5 MPHT 374 : (2009) 2 MPLJ 111

Hon'ble Judges : R.S. Jha, J;Dipak Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dipak Misra, J.

In this batch of writ petitions, the assail is to the constitutional validity of Sub-section (4) of Section 1 and Section 1-A of the M.P. Industrial Relations Act, 1960 (for brevity "the 1960 Act") and the notification issued under the said provisions. The said provisions were introduced by M.P. Act No. 16 of 2000 by the Madhya Pradesh Audyogik Sambandh (Sanshodhan) Adhiniyam, 2000 with a stipulation that the said provision would come into force on such date as the State Government may, by notification, appoint and was brought into force by notification dated 17-5-2006 from the date of publication of the notification. The petitioners have also challenged the notification issued in exercise of power conferred under Sub-section (4) of Section 1 of the 1960 Act by the State Government whereby it has directed that the provisions of the said Act shall not apply to the industries specified in the Schedule to the said notification with a postulate that the said exclusion shall not affect the cases pending before the Labour Courts or before any other Court of law and such cases shall be disposed of or proceeded with as if such items have not been omitted.

It is essential to state that in the writ petitions, various representatives of the union have assailed the constitutional validity on many a ground but the factual matrix which is imperative to state is, in a way, common to all and, therefore, it

is requisite to exposit the facts, regard being had to the features of commonality. Entry 22 of List III of the Seventh Schedule to the Constitution of India provides for the field of legislation relating to trade unions, industries and labour disputes. The Parliament in exercise of power conferred under Article 246 of the Constitution of India has legislated the Industrial Disputes Act, 1947. The said entry being in the Concurrent List, the State Legislature enacted the 1960 Act with the assent of the President obtained on 17-11-1960. The said enactment was enacted with the objects and reasons to regulate the relations of employers and employees in certain matters, to make provision for settlement of industrial disputes and to provide for certain other matters connected therewith. The said Act was notified in the M.P. Gazette, Extra-ordinary on 31-12-1960. Sub-section (2) of Section 1 stipulated that the Act extends to the whole of Madhya Pradesh. Sub-section (3) of Section 1 provided that the said Section and Section 112 shall come into force at once and the State Government may, by notification, bring all or any of the remaining provisions of the Act into force in respect of any or all industries or undertakings in any industry wherein the number of employees, on any day, during twelve months preceding or on the date of the notification or on any day thereafter, was or is more than such number as may be specified in such notification on such date as may be specified therein. Section 112 repealed the Central Provinces and Berar Industrial Disputes Settlement Act, 1947 (XXIII of 1947) and the Madhya Bharat Industrial Relations (Adaptation) Act, Samvat 2006 (31 of 1949) making certain savings.

In pursuance of the power conferred u/s 1(3) of the Act, the State Government brought out a notification on 31-12-1960 to the effect that all the provisions of the Act other than Sections 1 and 112 thereof shall come into force on 31-12-1960 in respect of the undertakings or industries specified in the Schedule to the notification wherein the number of employees on any date during 12 months preceding or on the date of the notification or any day thereafter was more than 100. In the Schedule to the said notification, 32 industries were incorporated.

After the notification was issued, various other notifications were issued from time to time for appointing certain authorities such as the Commissioner of Labour for the State and certain other categories of officers to give effect to the provisions of the Act. While the Act was in force, the State Government, in exercise of power u/s 1 (3) of the Act, brought out a notification dated 20-1-1999 deleting certain industries from the Schedule of industries. On being challenged, a Division Bench in Madhya Pradesh Dainik Vetan Bhogi Karmachari Sangh and Another Vs. State of Madhya Pradesh, , came to hold the notification to be constitutionally valid on the foundation that Sub-section (3) of Section 1 of the Act read with Section 21 of the M.P. General Clauses Act, 1957 vests power in the State Government to amend the notification under the provisions of the Act in relation to an industry.

Thereafter, as the factual matrix reveals, a notification was issued on 10-10-2005

purported to have been issued in exercise of power under Sub-section (3) of Section 1 of the Act by which the State Government amended the initial notification dated 31-12-1960 deleting the industries specified against Sr. Nos. 1, 2, 3, 4, 7, 10, 15 and 16 including electrical goods industry. Be it noted, the industries in these heads include:

(1) Textile, including cotton, silk, artificial silk, staple, fibre, jute and carpet.

(2) Iron and Steel.

(3) Electrical goods.

(4) Sugar and its by-products including (i) the growing of sugar-cane on farms belonging to or attached to concern engaged in the manufacture of sugar; and (ii) all agricultural and industrial operations connected with the growing of sugarcane or the said manufacture.

*** ***(7) Potteries.

*** ***(10) Electricity generation and distribution.

*** ***(15) Public Motor Transport.

(16) Engineering including manufacture of Motor Vehicle.

The constitutional validity of the said notification was called in question and eventually the matter was referred to the Larger Bench for reconsideration of the decision rendered in *M.P. Dainik Vetan Bhogi Karmachari Sangh, Jabalpur (supra)*, and ultimately the Full Bench in *Heavy Electricals Mazdoor Trade Union Vs. State of M.P. and Others*, , after analysing the law laid down in *Lachmi Narain and Others Vs. Union of India (UOI) and Others*, and *Brij Sunder Kapoor Vs. I Additional District Judge and Others*, , came to hold as under:

9. An analysis of the reasons given by the Supreme Court in the two decisions quoted above would show that the Court will have to examine the statutory provision which confers the powers on the Government to issue a notification is issued and the dimensions or limits of the statutory power and then decide as to whether Section 21 of the General Clauses Act could be invoked to issue a second notification to amend or rescind an earlier notification issued under the statutory provision. This is because Section 21 of the General Clauses Act is only a rule of construction and as has been held by the Supreme Court in *Gopi Chand Vs. The Delhi Administration*, , the nature and extent of application must be governed by the relevant statute which confers the power to issue the notification and has been held by this Court in *Bhure Balram Bramhan v. Gomati Bai (supra)*, the rule in Section 21 of the General Clauses Act is only a presumption which can be displaced by the object and context of the statutory provision conferring the power to issue the notification. It is not that the power under every piece of conditional legislation once exercised gets exhausted and cannot be exercised successively. As to whether such power gets exhausted once exercised will depend on the nature, character, limits, dimensions and object of

the piece of conditional legislation conferring the power. Hence, the provisions of Sub-section (3) of Section 1 of the Act, which confers the power on the State Government to issue the notification has to be examined for the purpose of finding out as to whether in the absence of a provision in the said Sub-section (3) of Section 1 of the Act, Section 21 of the General Clauses Act can be invoked for issuing a notification amending or rescinding a notification previously issued under Sub-section (3) of Section 1 bringing the provisions of the Act into force in respect of an industry or any undertakings.

Thereafter, the Full Bench referred to Sub-section (3) of Section 1 and Section 112 of the Act and scrutinised the said statutory provisions and other aspects that have been provided under the Act and quashed the notification on the following base:

...There is no provision in Sub-section (3) of Section 1 or any other Section of the Act saving the rights, privileges, obligations or liabilities, which have accrued under the different provisions of the Act, or saving such agreements, settlements, awards and orders made by Industrial Courts and Labour Courts under the Act or saving the proceedings pending before different authorities under the Act on the issue of such amending notification under Sub-section (3) of Section 1 of the Act. Obviously, the Legislature could not have intended such drastic consequences affecting adversely the rights of the employers and the employees and would have made a provision in the Act saving such rights, if the legislative intent of the said Sub-section (3) of Section 1 was to empower the State Government to issue an amending notification amending the first notification bringing the remaining provisions of the Act into force to the industries or undertakings specified in the first notification. Hence, we cannot hold that under Sub-section (3) of Section 1 of the Act read with Section 21 of the M.P. General Clauses Act, the State Government can by notification under Sub-section (3) of Section 1 of the Act amend the notification dated 31-12-1960 so as to exclude industries or undertakings in respect of which the remaining provisions of the Act were brought into force by the notification dated 31-12-1960. In our considered opinion, the nature, limits and dimensions of the power of the State Government under Sub-section (3) of Section 1 of the Act are such that it cannot include the power to amend or rescind the notification dated 31-12-1960. The Division Bench judgment of this Court in *M.P. Dainik Vetan Bhogi Karmachari Sangh, Jabalpur v. State of M.P.* (supra), in so far as it holds to the contrary, is thus not a good law and is over-ruled. Since Sub-section (4) of Section 1 of the Act has not been brought into force as yet, we refrain from deciding the vires of the said provision.

After the decision was rendered by the Full Bench, the State Government brought out a notification dated 17-5-2006 bringing into life Sub-section (4) of Section 1 which was introduced in 2000. After the said provision came into force, the respondent State, in exercise of power conferred under Sub-section (4) of Section 1 of the 1960 Act, on 14-8-2007 directed that the Act shall not apply to

the industries specified to the Schedule mentioned in the notification. Be it noted, the said notification stipulated that the provisions of the said Act shall not apply to the Industries specified in the Schedule below, however the said omission shall not affect the cases pending before the Labour Court, Industrial Court or before any other Court of Law and such cases shall be disposed of or proceeded with as if such items had not been omitted. The names of the industries which feature in the notification are as under:

----- S. No.	Name of
the	Industries
(1)	(2)
-----	1. Textile,
	including cotton, silk, artificial silk, staple fibre, jute and carpet.
	2. Iron and Steel.
	3. Electrical goods.
	4. Sugar and its by-products, including (i) the growing of sugarcane on farms belonging to or attached to concerned engaged in the manufacture of sugar, and (ii) all agricultural and industrial operations connected with the growing of sugarcane or the said manufacture.
	5. Cement.
	6. Electricity generation, transmission and distribution.
	7. Public Motor Transport.
	8. Engineering including manufacture of Motor Vehicle.
	9. Potteries including refractory goods, fire bricks, sanitary wares, insulators, tiles, stone, ware pipes, furnace lining bricks and other ceramic goods.
	10. Chemicals and chemical products industry.
	11. Leather and tanneries, including Leather Products.
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This notification shall come into force from the date of its publication in the Official Gazette.

As has been stated earlier, the sustainability of statutory provisions and the issue of the notification dated 14- 8-2007 have been called in question by this writ petition. The assertions and the averments in the writ petitions are that Section 1 (4) suffers from the vice of excessive delegation inasmuch as conferral of such power on an extraneous authority other than the Legislature amounts to abdication of the essential power of legislation; that the provisions violate Article 14 of the Constitution of India being arbitrary as they confer uncanalised powers in the absence of guidelines; that the Act is a social welfare and beneficial legislation and hence, there is no justification to incorporate such provisions in the statute book after expiry of four and a half decades; that once a notification had been issued by the State Government in exercise of power under the 1960 Act, the same cannot be rescinded or altered as such an exercise of power is meant for singular occasion; that the 1960 Act, a special enactment, has been framed after obtaining assent from the President under Article 254(2) of the Constitution of India and covers many essential aspects which should not be allowed to be nullified in any arbitrary manner; that the rights of the employees and representative union cannot be taken away by the executive by issuing a notification; and the notification issued does not reflect any reason and in the absence or any reason, the notification smacks of total arbitrariness.

It is further contended that the rights conferred under various provisions of the

1960 Act were adjudicated in a speedy and efficacious manner and denial thereof has seriously jeopardised the concept of speedy justice. The power conferred u/s 1(4) of the Act is unguided, uncanalised, sweeping, exjust, arbitrary and unreasonable.

Moreover, the deletion or omission of certain industries by a notification tantamounts to repeal of the enactment by the executive which is not permissible as the same amounts to abdication of the basic function of the Legislature. The employees who used to have easy access to justice by taking recourse to the 1960 Act are denied justice as a consequence of which the notification violates the fundamental quintessentiality as engrafted under Article 21 of the Constitution of India. It is urged that though the statutory provisions have come into force, yet the same still remains a conditional piece of legislation and hence, the notification issued by the State Government on 14th August, 2007 is ultra vires. It is also asseverated that the effect of enforcement of Sub-section (4) of Section 1 would result in closure of number of industries which would mar the interest of the employees.

A counter affidavit has been filed by the respondent No. 1 contending, inter alia, that it has been experienced that despite the industrial policy which was introduced way back in the State of Madhya Pradesh, the State has not yet experienced industrial development. It was experienced that the Schedule of industries has kept at bay the industrialists who have become hesitant to establish industries in the State of M.P. Prestigious industrial houses, viz., Mahavir Spinning Mills Ltd., wanted to establish an industry in Budni and Mandideep industrial area subject to the relaxation from the provisions of MPIR Act and M/s. Tata International Ltd., Dewas also sought exemption from MPIR Act. The said conditional offers have been brought on record as Annexures R-1 and R-2. The State of M.P. for the purpose of creating an industrial base and to create employment opportunities for the people has taken a policy decision to invite foreign investors to invest in industries in the State of M.P. and it was found that there were hesitations on the part of the industrialists and the Indian and foreign investors to invest in view of the existence of huge volume of industrial disputes under the 1960 Act in the State of M.P. It is put forth that it was not in the interest of industrial health of the State to keep, the investors away only because they are scheduled under the 1960 Act.

It is submitted that the Legislature in its wisdom has given power to the State to include within the schedule any industry and the only object is that the same would help to regulate the relations of the employer and the employees in certain matters and to make provisions for settlement of industrial disputes. In the present age of globalisation, a need has arisen to make efforts for advancement by having more industrial openings in the core sector which would help in improving the economy which in turn meets out the challenges of unemployment rather than indulging in disputes and the conciliations thereof. The State has experienced in the past that core sectors in the State of M.P. are lagging behind

in providing the basic input to economy and also better employment opportunities. It has become necessary to have a new look by inviting entrepreneurs, both Indian and foreign, to establish more industries in the State for the upliftment of the economic. Due to scheduling of the core sectors under the 1960 Act, it was hampering the advancement of industrialisation and hence, a decision was taken to denotify the industries from the MPIR Act. The denotification, as such, does not leave the workers or the unions without any forum for redressal of the grievances as the provisions of the Industrial Disputes Act, 1947 comes into operation for the protection of the interest of the workmen and the unions.

It is asserted that though the notification has been challenged on the ground of malafide and malice putting forth a stance that it is a piece of colourable exercise of power to achieve a collateral purpose to strip off the recognised representative character and status of the unions affiliated to INTUC in the industries which were at Sr. Nos. 1, 2, 3, 4, 7, 10, 15 and 16 yet such allegations are farther from the truth. It is put forth that in these sectors, it is not only the INTUC but other trade unions like B.M.S. who are the representative unions. The contention that by virtue of the de-notification there is reduction of bargaining power adversely affecting the rights of the employees is incorrect as there is provision in the Industrial Disputes Act, 1947 for representation of the employees/workmen especially u/s 36 of the said Act. It is contended that even when the provisions of the 1960 Act are not available, the 1947 Act provides for the mechanism.

It is also put forth that Section 27 of the 1960 Act provides for representation of employees and Section 13 of the said Act deals with the application for recognition as a representative union in respect of any industry in a local area. The local area is defined u/s 2 (23) of the 1960 Act which means any area notified as a local area for any or all industries and for all or any of the purposes of this Act provided that such area shall not comprise of more than one revenue district. It is the stand in the return that the recognition of the 1960 Act is for the local area which is a revenue district and there exist more than one industrial unit. Various examples have been given in respect of certain districts to show how the representative unions are being represented and how the de-notification would not adversely affect the workmen to be represented. In essentiality, it is the stand that the contention pertaining to stripping of the powers of the unions is totally misconceived. It is averred that the Legislature is within its domain to bring into force the amendment which was introduced by way of Amendment Act No. 16 of 2000 and the said provision is not ultra vires as it does not suffer from any kind of arbitrariness. It is also the asseveration in the return that the notification has been issued in pursuance of the statutory power and hence, the same cannot be found fault with.

We have heard Mr. Rajendra Tiwari, Mr. Rohit Arya and Mr. Kishore Shrivastava, learned Senior Counsel alongwith Mr. Sanjay Verma, Mr. Prem Francis, and Mr. Avinash Zargar, learned Counsel for the petitioners and Mr. Kumares Pathak,

learned Deputy Advocate General for the State.

Learned Counsel for the petitioners have raised the following contentions:

(i) The provisions incorporated under Sub-section (4) of Section 1 suffers from excessive delegation inasmuch as the Legislature has abandoned its essential function. The repeal of any provision of any enactment or repeal of an enactment is within the essential domain and purview of the Legislature and it cannot abdicate the said power in favour of the executive but in the case at hand, such a power has been conferred since the State Government has been bestowed with the power to issue a notification to the effect that the provisions of the 1960 Act shall cease to apply to such an industry and from such date.

(ii) The provision invites the frown of Article 14 of the Constitution of India as there is total absence of any guidance/yardstick/guideline as the language employed u/s 1 (4) would go a long way to show that uncanalised, unbridled and unfettered powers have been conferred on the State Government to issue notification without any foundation or base or without ascribing reasons.

(iii) It was not the intention of the Act to have a selective application but Section 1 (4) has conferred such a power on the executive as a consequence of which it makes Section 1 (3) totally otiose thereby creating an incurable contra-distinction inter se between the two provisions.

(iv) Removal of certain industries from the ambit and purview of the Act offends the basic legislative policy to have a uniform policy in respect of labour law, moreso when no reasons have been scribed for de-notification of the industries which find mention in the notification and the return is silent about it which manifestly shows that uncanalised power has been conferred on the State Government.

(v) Section 1-A as in the main part of the provision contains a postulate that the Act shall not apply to an industry being carried on by or under the control of the State Government but the proviso carves out an exception empowering the State Government to apply the provisions of the Act as a consequence of which a distinction comes into existence between State owned or controlled industries and industries owned by private entrepreneurs and industrialists without any intelligible differentia and nexus with the objective to achieve.

(vi) The notification creates dual applicability of the Act by selective classification and such classification has not been based on any rational paradigm and plays foul with the equality clause as envisaged under Article 14 of the Constitution of India.

(vii) The notification having been couched in a bald manner does not sub-serve the purpose of the Act which was framed, regard being had to industrial peace and hence, makes the provision ultra vires.

(viii) The notification could not have been issued by the State Government as the

power had already been exhausted and the present statutory amendment does not take it away from the sphere of conditional legislation.

Mr. Kumaresh Pathak, learned Deputy Advocate General for the State, resisting the aforesaid submissions, has canvassed as follows:

(a) The proponement relating to excessive delegation on the foundation that the Legislature has abandoned its essential and basic function is based on fallacious proposition inasmuch as the Legislature still retains the power and what has been delegated to the executive is the working out of the provisions as the Legislature cannot take up the burden upon itself with regard to minute details for working out of the enactments.

(b) The submission that by incorporation of Section 1 (4) the power has been bestowed on the State Government to repeal the provisions of the Act is unacceptable since the power conferred on the authority is a limited one and by no stretch of imagination it can be construed to have conferred the power to repeal.

(c) The challenge on the ground that there is no guidance in the provision is totally unacceptable because the provision itself has inbuilt guidance and further the same is discernible from the objects and reasons and various provisions and hence, the same does not invite the wrath of Article 14 of the Constitution.

(d) The classification made between the State-owned and controlled industries and industries owned by the private entrepreneurs and industrialists is permissible and speaks eloquently about the intelligible differentia.

(e) The notification has taken facts into consideration and cannot be termed to be a bald one and, therefore, it does not offend the purpose of the Act. The submission to the effect that by virtue of the amendment, uniform policy under the Labour Law, which has been in force for many a year, is affected, cannot be a ground for declaring a provision as unconstitutional.

(f) After the Act has been amended and specific power has been conferred, the issue of one time exercise of power vanishes as the nature of legislation has shed its character in entirety.

Before we proceed to deal with the proponements put forth by the learned Counsel for the parties; we would like to remind ourselves about certain well known principles about the role of the Court while testing the constitutional validity of any law.

In *The State of Punjab and Another Vs. Khan Chand*, , Their Lordships have expressed thus:

12. It would be wrong to assume that there is an element of judicial arrogance in the act of the Courts in striking down an enactment. The Constitution has assigned to the Courts the function of determining as to whether the laws made by the Legislature are in conformity with the provisions of the Constitution. In

adjudicating the constitutional validity of statutes, the Courts discharge an obligation which has been imposed upon them by the Constitution. The Courts would be shirking their responsibility if they hesitate to declare the provisions of the statute to be unconstitutional, even though those provisions are found to be violative of the Articles of the Constitution. Articles 32 and 226 are an integral part of the Constitution and provide remedies for enforcement of fundamental rights and other rights conferred by the Constitution. Hesitation or refusal on the part of the Courts to declare the provisions of an enactment to be unconstitutional, even in any case eroding the remedy provided to the aggrieved parties by the Constitution. Abnegation in matters affecting one's own interest may sometimes be commendable but abnegation in a matter where power is conferred to protect the interest of others against measures which are violative of the Constitution is fraught with serious consequences. It is as much the duty of the Courts to declare a provision of an enactment to be unconstitutional if it contravenes any Article of the Constitution as it is theirs to uphold its validity in case it is found to suffer from no such infirmity.

In *R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another*, it has been stated thus:

2. A prefatory caveat.- When examining a legislation from the angle of its vires, the Court has to be resilient, not rigid, forward - looking, not static, liberal, not verbal - in interpreting the organic law of the nation. We must also remember the constitutional proposition enunciated by the U.S. Supreme Court in *Munn v. Illinois* viz., "that Courts do not substitute their social and economic beliefs for the judgment of legislative bodies". Moreover, while trespasses will not be forgiven, a presumption of constitutionality must colour judicial construction. These factors, recognized by our Court, are essential to the modus vivendi between the judicial and legislative branches of the State, both working beneath the canopy of the Constitution.

In *Daya Ram and Anr. v. State of M.P. and Ors.* 2003(4) M.P.H.T. 435, after referring to *R.S. Joshi* (supra), this Court has observed as under:

The modus vivendi, which requires a purposive and constructive ratiocination while engaged in viceration of the provision also warrants that a policy decision, a facet of the Legislature or at times a spectrum of the executive though may draw strength and stimulus in all its variation from the greatest instrument, i.e., the Constitution in a given case and in a particular fact situation if the provisions trespass the quintessential characteristic of Organic Law or Judge made law should not be allowed to stand.

Keeping the aforesaid facets in mind, we proceed to dwell upon the factual matrix and law applicable to the same. Sections 1 (4) and 1-A of the Act which are under assail, read as follows:

1. Short title, extent and commencement.- (4) The State Government may, by notification, direct that the provisions of this Act shall cease to apply to such

industry in such area and from such date as may be specified in the notification.

*** ** 1-A. The provisions contained in this Act shall not apply to an industry being carried on by or under the control of the State Government:

Provided that the State Government may, by notification, direct that provisions contained in this Act, shall apply to such industry being carried on by or under the control of the State Government as may be specified in the notification.

The principal and frontal attack on the provisions is that on a mere reading of the language in which the provisions have been couched there has been excessive delegation. The first plank of the said submission is that there has been abdication of essential legislative functions which speaks in an eloquent manner. The second limb of the proponent is that in the absence of policy or guidance surfacing or emerging from the amended provisions, the said provisions also suffer from excessive delegation. To appreciate the submissions pertaining to abdication of the legislative functions/powers, the plea of limitation/restriction thereof and the role of Court how to deal with a particular legislation when assail is made on the backdrop of excessive delegation, it is thought apposite to refer to certain decisions in the field.

In *Re Article 143, Constitution of India and etc.*, AIR 1951 SC 332, the Apex Court, while dealing with the reference made by the President of India under Article 143 of the Constitution of India, adverted to the facet of excessive delegation as that was one of the contentions which was highlighted. Be it noted, Their Lordships in their separate opinions discussed whether Legislative power can be delegated at all and if so to what extent it may be done. Fazl Ali, J. has opined as under:

The Legislature must normally discharge its primary Legislative function itself and not through others. (2) Once it is established that it has sovereign powers within a certain sphere, it must follow as a corollary that it is free to Legislate within that sphere in any way which appears to it to be the best way to give effect to its intention and policy in making a particular law, and that it may utilize any outside agency to any extent it finds necessary for doing things which it is unable to do itself or finds it inconvenient to do. In other words, it can do everything which is ancillary to and necessary for the full and effective exercise of its power of Legislation. (3) It cannot abdicate its Legislative functions, and therefore while entrusting power to an outside agency, it must see that such agency acts as a subordinate authority and does not become a parallel Legislature. (4) The doctrine of separation of powers and the judicial interpretation it has received in America ever since the American Constitution was framed, enables the American Courts to check undue and excessive delegation but the Courts of this country are not committed to that doctrine and cannot apply it in the same way as it has been applied in America. Therefore, there are only two main checks in this country on the power of the Legislature to delegate these being its good sense and the principle that it should not cross the

line beyond which delegation amounts to "abdication and self-effacement.

His Lordship further proceeded to make certain general observations on the subject which read as under:

This form of Legislation has become a present-day necessity, and it has come to stay - it is both inevitable and indispensable. The Legislature has now to make so many laws that it has no time to devote to all the Legislative details, and sometimes the subject on which it has to Legislate is of such a technical nature that all it can do is to state the broad principles and leave the details to be worked out by those who are more familiar with the subject. Again, when complex schemes of reform are to be the subject of Legislation, it is difficult to bring out a self-contained and complete Act straightaway, since it is not possible to foresee all the contingencies and envisage all the local requirements for which provisions is to be made. Thus, some degree of flexibility becomes necessary...

B.K. Mukherjea, J. expressed his opinion on the following terms:

...the Legislature cannot part with its essential Legislative function which consists in declaring its policy and making it a, binding rule of conduct. A surrender of this essential function would amount to abdication of Legislative powers in the eye of law. The policy may be particularised in as few or as many words as the Legislature thinks proper and it is enough if an intelligent guidance is given to the subordinate authority. The Court can interfere if no policy is discernible at all or the delegation is of such an indefinite character as to amount to abdication, but as the discretion vests with the Legislature in determining whether there is necessity for delegation or not, the exercise of such discretion is not to be disturbed by the Court except in clear cases of abuse....

Das, J. expressed thus:

...It is that the Legislature must not efface itself or abdicate all its powers and give up its control over the subordinate authority to whom it delegates its law-making powers. It must not, without preserving its own capacity intact, create and arm with its own capacity a new Legislative power not created or authorised by the instrument by which the Legislature itself was constituted. In short, it must not destroy its own Legislative power. There is an antithesis between the abdication of Legislative power and the exercise of the power of Legislation. The former excludes or destroys the latter. There is no such antithesis between the delegation of Legislative power and the exercise of the Legislative power, for however, wide the delegation may be, there is nothing to prevent the Legislature, if it is so minded, from, at any time, withdrawing the matter into its own hands and exercising its law-making powers. The delegation of Legislative power involves an exercise of the Legislative power. It does not exclude or destroy the Legislative power itself, for the Legislative power is not diminished by the exercise of it. A power to make law with respect to a subject must, as we have seen, include within its content, the power to make a law delegating that power.

*** ** Apart from that consideration, if a statute laying down a policy and delegating power to a subordinate authority to make rules and regulations to carry out that policy is permissible then I do not see why an Act merely delegating Legislative power to another person or body should be unconstitutional if the Legislature does not efface itself or abandon its control over the subordinate authority. If the Legislature can make a law laying down a bare principle or policy and commanding people to obey the rules and regulations made by a subordinate authority, why cannot the Legislature, without effacing itself but keeping its own capacity intact, leave the entire matter to a subordinate authority and command people to obey the commands of that subordinate authority ? The substance of the thing is the command which is binding and the efficacy of the rules of conduct made by the subordinate authority is due to no other authority than the command of the Legislature itself. Therefore, short of self-effacement, the Legislative power may be as freely and widely delegated....

In *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, , the Constitution Bench has lucidly and succinctly culled out certain principles after referring to the previous decisions. The principles which are to be kept in mind for the present purpose are reproduced below:

(3) It is manifest that the above rule would not apply to cases where the Legislature lays down the policy and indicates the rule or the line of action which should serve as a guidance to the authority. Where such guidance is expressed in the statutory provision conferring the power, no question of violation of Article 14 could arise, unless it be that the rules themselves or the policy indicated lay down different rules to be applied to persons or things similarly situated. Even where such is not the case, there might be a transgression by the authority of the limits laid down or an abuse of power but the actual order would be set aside in appropriate proceeding not so much on the ground of a violation of Article 14, but as really being beyond its power.

(4) It is not, however, essential for the legislation to comply with the rule as to equal protection, that the rules for the guidance of the Designated Authority, which is to exercise the power or which is vested with the discretion, should be laid down in express terms in the statutory provision itself.

The Saurashtra case would seem to lay down the principle that if the impugned legislation indicates the policy which inspired it and the object which it seeks to attain, the mere fact that the legislation does not itself make a complete and precise classification of the persons or things to which it is to be applied, but leaves the selective application of the law to be made by the standard indicated or the underlying policy and object disclosed is not a sufficient ground for condemning it as arbitrary and, therefore, obnoxious to Article 14.

(*Kedar Nath Bajoria Vs. The State of West Bengal*,

So long as the policy is laid down and a standard established by a statute, no unconstitutional delegation of legislative power is involved in leaving to selected

instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the Legislature is to apply.

Harishankar Bagla and Another Vs. The State of Madhya Pradesh,

Such guidance may thus be obtained from or afforded by (a) the preamble read in the light of the surrounding circumstances which necessitated the Legislation, taken in conjunction with well-known facts of which the Court might take judicial notice or of which it is appraised by evidence before it in the form of affidavits Kathi Raning Rawat Vs. The State of Saurashtra, , being an instance where the guidance was gathered in the manner above indicated, (b) or even from the policy and purpose of the enactment which may be gathered from other operative provisions applicable to analogous or comparable situations or generally from the object sought to be achieved by the enactment.

The policy underlying the order is to regulate the transport of cotton textile in a manner that will ensure an even distribution of the commodity in the country and make it available at a fair price to all. The grant or refusal of a permit is thus to be governed by this policy and the discretion given to the Textile Commissioner is to be exercised in such a way as to effectuate this policy. The conferment of such a discretion cannot be called invalid and if there is an abuse of the power there is ample power in the Courts to undo the mischief.

Harishankar Bagla and Another Vs. The State of Madhya Pradesh, .

In Pannalal Binjraj Vs. Union of India (UOI), , the purpose of the provisions which was administrative convenience for enabling assessments to be made in the manner indicated by the Income Tax Act was held to afford a sufficient guidance so as to render the provision immune from attack on the ground of violation of Article 14.

In the circumstances indicated under the fourth head, just as in the third, the law enacted would be valid being neither a case of excessive delegation or abdication of Legislative Authority viewed from one aspect nor open to objection on the ground of violation of Article 14 as authorising or permitting discriminatory treatment of persons similarly situated.

In LaLa Hari Chand Sarda Vs. Mizo District Council and Another, , the Apex Court declared Lushai Hills District (Trading by non-Tribals) Regulations as ultra vires as the said regulations conferred upon the Licensing Authority unrestricted power of granting or refusing licence or its renewal to a non-Tribal trader and further there was no guidance.

In Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others, , it has been held as under:

It (the Municipal Corporation) has to perform various statutory functions. It is often given power to decide when and in what manner the functions are to be

performed. For all this it needs money and its needs will vary time to time, with the prevailing exigencies. Its power to collect tax, however, is necessarily limited by the expenses required to discharge those functions. It has, therefore, where rates have not been specified in the statute, to fix such rates as may be necessary to meet its needs. That, we think, would be sufficient guidance to make the exercise of its power to fix the rates valid.

In *Sitaram Bishambhar Dayal etc. v. State of U.P.* AIR 1972 SC 1168, it has been held thus:

Whether a power delegated by the Legislature to the executive has exceeded the permissible limits in a given case depends on its facts and circumstances. That question does not admit of any general rule. It depends upon the nature of the power delegated and the purposes intended to be achieved.

In *Tata Iron and Steel Co. Ltd. Vs. The Workmen and Others*, , it has been held thus:

...Due to the challenge of the complex socio-economic problems requiring speedy solution the power of delegation has by now as per necessity become a constituent element of Legislative power as a whole. The legal position as regards the limitation of this power is, however, no longer in doubt. The delegation of Legislative power is permissible only when the Legislative policy and principle are adequately laid down and the delegate is only empowered to carry out the subsidiary policy within the guidelines laid down by the Legislature.

In *Khan Chand (supra)*, it has been held thus:

We may state that the vesting of discretion in authorities in the exercise of power under an enactment does not by itself entail contravention of Article 14. What is objectionable is the conferment of arbitrary and uncontrolled discretion without any guidelines whatsoever with regard to the exercise of that discretion. Considering the complex nature of problems which have to be faced by a modern State, it is but inevitable that the matter of details should be left to the authorities acting under an enactment. Discretion has, therefore, to be given to the authorities concerned for the exercise of the powers vested in them under an enactment. The enactment must, however, prescribe the guidelines for the furtherance of the objects of the enactment and it is within the framework of those guidelines that the authorities can use their discretion in the exercise of the powers conferred upon them. Discretion which is absolute uncontrolled and without any guidelines in the exercise of the powers can easily degenerate into arbitrariness. When individuals act according to their sweet-will, there is bound to be an element of "pick and choose" according to the notion of the individuals. If a Legislature bestows such untrammelled discretion on the authorities acting under an enactment, it abdicates its essential function for such discretion is bound to result in discrimination which is the negation and antithesis of the ideal of equality before law as enshrined in Article 14 of the Constitution. It is the absence of any principle or policy for the guidance of the authority concerned in

the exercise of discretion which vitiates an enactment and makes it vulnerable to the attack on the ground of violation of Article 14....

In *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. Vs. The Asstt. Commissioner of Sales Tax and Others*, , it has been held as follows:

It would appear from the above that the view taken by this Court in a long chain of authorities is that the Legislature in conferring power upon another authority to make subordinate or ancillary legislation must lay down policy, principle or standard for the guidance of the authority concerned. The said view has been affirmed by Benches of this Court consisting of seven Judges. Nothing cogent, in our opinion, has been brought to our notice as may justify departure from the said view. The binding effect of that view cannot be watered down by the opinion of a writer, however, eminent he may be, nor by observations, in foreign judgments made in the context of the statutes with which they were dealing.

In *M. Chhagganlal v. Greater Bombay Municipality* AIR 1974 SC 2009, the Larger Bench of the Apex Court approved the proposition stated in *Jyoti Pershad* (supra), especially the fourth proposition. Thereafter, Their Lordships in Paragraph 15 summarised as under:

Where a statute providing for a more drastic procedure different from the ordinary procedure covers the whole field covered by the ordinary procedure, as in *The State of West Bengal Vs. Anwar Ali Sarkar*, and *Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another*, , without any guidelines as to the class of cases in which either procedure is to be resorted to, the statute will be hit by Article 14. Even there, as mentioned in *Suraj Mall Mohta's* case, a provision for appeal may cure the defect. Further, in such cases if from the preamble and surrounding circumstances, as well as the provisions of the statute themselves explained and amplified by affidavits, necessary guidelines could be inferred as in *Kathi Raning Rawat Vs. The State of Saurashtra*, and *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, the statute will not be hit by Article 14. Then again where the statute itself covers only a class of cases as in *Kangshari Haldar and Another Vs. The State of West Bengal*, and *Kedar Nath Bajoria Vs. The State of West Bengal*, the statute will not be bad. The fact that in such cases the executive will choose which cases are to be tried under the special procedure will not affect the validity of the statute.

In *Avinder Singh and Others Vs. State of Punjab and Others*, , it has been held as under:

19. In the *Cantonment Board, Poona Vs. Western India Theatres Ltd.*, the power given to the corporation (of the city of Poona), in terms very wide, to levy "any other tax" came to be considered from the point of view of abdication of Legislative function. The negation of this argument was based on the key words of limitation contained therein, namely, "for the purposes of the Act" and it was held "that this permits sufficient guidance for the imposition of the tax".

In *The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others*, , the Apex Court has held as under:

The Parliament and the State Legislatures are not bodies of experts or specialists. They are skilled in the art of discovering the aspirations, the expectations and the needs, the limits to the patience and the acquiescence and the articulation of the views of the people whom they represent. They function best when they concern themselves with general principles, broad objectives and fundamental issues instead of technical and situational intricacies which are better left to better equipped full time expert executive bodies and specialists public servants. Parliament and the State Legislatures have neither the time nor the expertise to be involved in detail and circumstance. Nor can Parliament and the State Legislatures visualise and provide for new, strange, unforeseen and unpredictable situations arising from the complexity of modern life and the ingenuity of modern man. That is the *raison d'être* for delegated Legislation. That is what makes delegated Legislation inevitable and indispensable. The Indian Parliament and the State Legislatures are endowed with plenary power to Legislate upon any of the subjects entrusted to them by the Constitution, subject to the limitations imposed by the Constitution itself. The power to Legislate carries with it the power to delegate. But excessive delegation may amount to abdication. Delegation unlimited may invite despotism uninhibited. So the theory has been evolved that the Legislature cannot delegate its essential Legislative function. Legislate it must by laying down policy and principle and delegate it may to fill in detail and carry out policy. The Legislature may guide the delegate by speaking through the express provision empowering delegation or the other provisions of the statute, the preamble, the scheme or even the very subject matter of the statute. If guidance there is, wherever it may be found, the delegation is valid.

(Emphasis supplied)

In *State of Mysore and Others Vs. M.L. Nagade and Gadag and Others*, , it has been held as under:

13. The question therefore, is whether there is any guideline for the exercise of this power? It is by now well-recognised that guideline need not be found in the impugned provision. The same may be collected from the setting in which the provision is placed, the purpose for which the Act is enacted and even the Preamble of the statute in which the provision is incorporated. A legislation or statute is enacted to achieve some public purpose and the policy of law and the object sought to be achieved can furnish reliable guidelines for the exercise of discretionary power.

(Emphasis supplied)

In *Y. Srinivasa Rao Vs. J. Veeraiah and Others*, , Their Lordships, while dealing with the eligibility criteria, which provide preference to be given to uneducated person over an educated person, came to hold that there is no rationale in

adopting such policy and in the absence of any guidelines the selection is entirely left to the whims of the individual officer who holds the interview.

In *Premium Granites and Another Vs. State of Tamil Nadu and Others*, , it has been held that when the power is conferred on the Government by express provision of statute, absence of guidelines for exercise of discretion would not render the provision unconstitutional when guidelines can be gathered from the scheme and setting of the statute.

In *M.J. Sivani and Others Vs. State of Karnataka and Others*, , it has been ruled thus:

...The guidance for exercising the discretion need not *ex facie* be found in the notification or orders. It could be gathered from the provisions of the Act or rules and a total consideration of the relevant provisions in the notification or order or conditions of the licence....

In *Mahe Beach Trading Co. and Others Vs. Union Territory of Pondicherry and Others*, , the Apex Court was dealing with the constitutional validity of Pondicherry Municipal Decree (Levy and Validation of Taxes, Duties, Cesses and Fees) Ordinance, 1973, which was replaced with the Validation Act. A contention was raised that there is excessive delegation of the Legislative power inasmuch as there was total abdication and effacement of Pondicherry Legislature of its essential Legislative functions and further no guidelines or policy was discernible. Their Lordships referred to the decisions rendered in *Hamdard Dawakhana and Another*, *Kalipada Deb and Another*, *Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, , *Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another*, and *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. (supra)*, and expressed the view as under:

13. The principle which emanates from the aforesaid decisions relied upon by the appellants is very clear namely : that if there is abdication of Legislative power or there is excessive delegation or if there is a total surrender or transfer by the Legislature of its Legislative functions to another body then that is not permissible. There is, however, no abdication, surrender of Legislative functions or excessive delegation so long as the Legislature has expressed its will on a particular subject-matter, indicated its policy and left the effectuation of the policy to subordinate or subsidiary or ancillary legislation, provided the Legislature has retained the control in its hand with reference to it so that it can act as a check or a standard and prevent or undo the mischief by subordinate Legislation when it chooses to or thinks fit.

In *The Consumer Action Group and Another Vs. State of Tamil Nadu and Others*, , the Apex Court has expressed thus:

The catena of decisions referred to above concludes unwaveringly in spite of a very wide power being conferred on the delegatee that such a section would still

not be ultra vires, if guidelines could be gathered from the Preamble, Objects and Reasons and other provisions of the Acts and Rules. In testing the validity of such provision, the Courts have to discover, whether there is any Legislative policy, purpose of the statute or indication of any clear will through its various provisions. If there be any, then this by itself would be a guiding factor to be exercised by the delegatee. In other words, then it cannot be held that such a power is unbridled or uncanalised.

(Emphasis supplied)

In *Kishan Prakash Sharma and Others etc. Vs. Union of India and Others*, , Their Lordships have ruled thus:

An area of compromise is struck that Parliament cannot work in detail the various requirements of giving effect to the enactment and, therefore, that area will be left to be filled in by the delegatee. Thus, the question is whether any particular Legislation suffers from excessive delegation and in ascertaining the same, the scheme, the provisions of the statute including its Preamble, and the facts and circumstances in the background of which the statute is enacted, the history of the Legislation, the complexity of the problems which a modern State has to face, will have to be taken note of and if, on a liberal construction given to a statute, a Legislative policy and guidelines for its execution are brought out, the statute, even if skeletal, will be upheld to be valid but this rule of liberal construction should not be carried by the Court to the extent of always trying to discover a dormant or latent Legislative policy to sustain an arbitrary power conferred on the executive.....

(Emphasis supplied)

In *Ashoka Kumar Thakur Vs. Union of India (UOI) and Others*, , while dealing with the concept of guidelines and excessive delegation without there being proper guidelines in relation to delegation of power to the Union Government to determine as to who shall be the backward class the Apex Court repelled the submission that conferral of power on Union of India to identify and determine the "Backward Class" is without any guidance inasmuch as the term "Backward Class" occurs in various provisions of the Constitution and further the determination of Backward Classes itself is a laborious task and Parliament cannot do it by itself and hence, it is incorrect to say that there are no sufficient guidelines to determine the Backward Classes.

From the aforesaid enunciation of law, the principles that can irrefragably be culled out are as follows:

(a) The Legislature has the power to Legislate within its own sphere regard being had to the concept of Legislative competence.

(b) The power to Legislate carries with it the power to delegate but there should not be such delegation which would efface the power of Legislature as that would tantamount to abdication of essential Legislative power.

(c) The Legislature must not abdicate its essential powers and give up its control over the subordinate authority to whom the power has been delegated.

(d) It has become necessitous in the modern context for the Legislature to delegate and the same has become a constituent element of the Legislative power as a whole.

(e) The Legislature cannot delegate such functions which consist in determination or choosing of the Legislative policy and of formally enacting that policy into a binding rule of conduct.

(f) The Legislature is required to express its will on a particular subject-matter and retain the control in its hand to check wherever it is necessary.

(g) The Legislature must lay down the policy and express the will and if there are guidelines laid down by the Legislature, the act of Legislature cannot be put in the compartment of excessive delegation.

(h) There is an acceptable compromise between the Legislation and delegated Legislation because the Legislature cannot always work out in detail the various requirements of giving effect to the enacted Legislation and, therefore, as a matter of necessity, has to delegate to the delegatee.

(i) An act of delegation by the Legislature would invite the wrath of Article 14 of the Constitution of India if the said enactment does not lay down any guidelines or policy whatsoever and confers uncanalised, unbridled and untrammelled powers on the delegated authority.

(j) For the purpose of determining as to whether a particular Legislation suffers from excessive delegation or not and whether there is guidance or guiding principles available or not, the scheme, the provisions of the statute including its Preamble, and the fact and circumstances in the background of which the statute is enacted, the history of the Legislation, the complexity of the problems which the modern State has to face can be taken note of.

(k) A liberal construction has to be given to a statute to see if there is skeletal guidance but it should not be carried to the extent to find out or discover a dormant or latent Legislative policy to sustain an arbitrary power conferred on the executive.

(l) In view of the fast changing scenario of economic, social order with scientific development which ushers in innumerable situations which the Legislature cannot foresee, the delegatee is entrusted with the power to meet such exigencies of policy and to achieve the objectives of the Act and there has to be some guidance which is discernible.

(m) If there are regulatory measures, judicial notice can be taken note of certain facts to find out the guidance.

Regard being had to the aforesaid pronouncement of law and the principles

culled out therefrom, it is apposite to have a close scrutiny of the Act. The Act was introduced to regulate the relations of employer and employees in certain matters, to make provision for settlement of industrial disputes and to provide for certain other matters connected therewith. The statement of objects and reasons clearly show that the bill was intended to integrate and improve upon the State Industrial Relations Law in force in Mahakoshal Region and Madhya Bharat Region areas. The Bombay Industrial Relations Act, which is a more developed and complex law than the Central Industrial Disputes Act was adopted in Madhya Bharat. The C.P. & Berar Industrial Disputes Settlement Act, 1947 is also an adaptation of the Bombay Law. The material changes in the Bill related to the application of the 1960 Act. It was mentioned therein that the scheme of the Bombay law being inconvenient for small industries was to apply only to establishments employing more than a specified number of persons.

The definition of "employee" was incorporated keeping in tune with the latest definition of "workmen" under the Central Act. The representation of employees was proposed to have a single bargaining agent for all employees in an industry in a local area where conditions exist for recognition of such a union. The Labour Judiciary was introduced to develop the tradition of settlement of industrial disputes by mutual understanding. A concept of joint consultation was kept in mind. The conciliation was also a major factor which has been kept in view in the Bill. As regards the safeguard against victimisation, it was stated that instead of having a limited number of protected workmen as in the Central Act, every lawful trade union activity is bound to be given protection by enabling the Court trying an alleged offence of victimisation to make an interim order for grant of subsistence allowance by the employer to the employee. The Legislature has felt that the State Government would be in a better position to adapt the Act to certain circumstances. It is worth noting that the delegated Legislation permits the experience in ground realities to be utilised as a result of which there is practical operation of the statute. The need of the modern society indubitably has become complex. The Legislation has to feel the needs. On a scrutiny of the object and reasons and the Legislative intendment behind the purpose of the enactment, they have nexus to various fact situations. The Legislature is not expected to enter into situational intricacies. It requires survey and expertisation. For those reasons, it was initially left to the State Government to apply the provisions of the Act to any or all industries and for that reason, it may be stated without any hesitation that the power has been given to the State Government to issue notification ceasing the applicability of the Act. The inclusion and cessation are guided by the object and reasons for the purpose to be achieved and irrefragably, the provision has a nexus with the Act.

On a perusal of the objects and reasons, it is quite clear that regard being had to the existing situation in the year 1960, the Act was brought into force as the said enactment received the assent of the President on 17-11-1960 and was published in the M.P. Gazette, Extra-ordinary on 31-12-1960. The enactment, as is perceivable, had a purpose with regard to the nature of the industries, the

recognition of unions, certain categories of establishments and certain other factors. Certain provisions which are relevant to be taken note of to understand the anatomy, the dictionary clause, effect of the Legislation and the purpose of the Act need to be reproduced and dealt with. Section 1 of the Act reads as under:

1. Short title, extent and commencement.- (1) This Act may be called the Madhya Pradesh Industrial Relations Act, 1960.

(2) It extends to the whole of Madhya Pradesh.

(3) This Section and Section 112 shall come into force at once and the State Government may, by notification, bring all or any of the remaining provisions of this Act into force in respect of:

(a) any or all industries; or

(b) undertakings in any industry wherein the number of employees, on any day, during twelve months proceeding or on the date of the notification or on any day thereafter, was or is more than such number as may be specified in, such notification;

On such date as may be specified therein.

Section 2(19) defines "industry". It reads as under:

2. Definitions.- In this Act, unless the context otherwise requires,:

(19) industry" means:

(a) any business, trade, manufacture, undertaking or calling of employers;

(b) any calling, service, employment, handicraft, or industrial occupation or a vocation of employees; and includes:

(i) agriculture and agricultural operations;

(ii) any branch of an industry or group of industries which the State Government may, by notification, declare to be an industry for the purposes of this Act.

Section 2 (23), which defines "local area" is as follows:

2. (23) "local area " means any area notified as a local area for any or all industries and for all or any of the purposes of this Act:

Provided that such area shall not comprise of more than one revenue district:

Provided further that such area may, for reasons to be recorded in writing, comprise of more than one revenue district including the entire State.

Undertaking" has been defined u/s 2 (33) as follows:

2. (33) "undertaking" means a concern in any industry.

Chapter II deals with the authorities to be constituted or appointed under the Act. Chapter III deals with the recognition of representative unions and associations of employees. Chapter IV deals with the representatives of employers and employees and appearance on their behalf. Section 30, which occurs in Chapter V, deals with powers and duties of Labour Officers. Under Sub-section (6) of the said Section, the Labour Officer is empowered to watch the interest of the employees and promote harmonious relations between employers and employees, to investigate the grievance of employees and represent to employers such grievances and make recommendations to them in consultation with the employees concerned for their redressal and to report to the State Government the existence of any industrial dispute of which no notice of change has been given together with the names of the parties thereto. Chapter X deals with the powers and duties of Labour Courts, Industrial Court or Board of Arbitration and certain other matters. Section 61 deals with the powers of Labour Court. The Labour Court has been empowered to decide dispute regarding which application has been made to it under Sub-section (3) of Section 31 of the Act, industrial disputes referred to it u/s 51 or 52 in respect of which it is appointed as the arbitrator by a submission, where a strike, lock-out, stoppage, closure or any change is illegal under this Act require any employer to withdraw any change or lock-out which is held by it to be illegal or to carry out any change provided such change is a matter in issue in any proceedings before it under this Act, require any employee to withdraw a strike which is held by it to be illegal and try offences punishable under this Act and where the payment of compensation on conviction for an offence is provided for, determination of the compensation and order its payment.

Section 65 of the Act provides for an appeal against a final decision or a Labour Court. Section 78 provides for execution of award, etc., by the Labour Court or Industrial Court. Section 78-B prescribes the time limit for disposal of cases by Labour Courts, etc.

Chapter XIII deals with protection of employees. Chapter XIV deals with penalties. Chapter XVI deals with miscellaneous provisions. Section 96 deals with amendment to the Schedule. It reads as under:

96. Amendment to Schedule.- The State Government may, by notification, at any time, make any additions to or alterations in the industrial matters specified in Schedule 1 or II or delete therefrom any such matter:

Provided that before making any such addition, alteration or deletion a draft of such addition, alteration or deletion, shall be published in the Gazette for the information of all persons likely to be affected thereby and the State Government shall consider any objection or suggestion that may be received by it from any person with respect thereto within six weeks of such publication.

Section 96-B deals with the delegation of powers. The same is as under:

96-B. Delegation of powers.- The State Government may, by notification, direct

that any power exercisable by it under this Act or the Rules made thereunder, except the power to make rules shall, in relation to such matter and subject to such conditions, if any, as may be specified in the direction, be exercisable by such officer or authority subordinate to the State Government as may be specified in the notification.

Section 111 empowers the State Government, by notification, to make rules to carry out the purposes of the Act. Section 112 deals with Repeal and Savings.

From the aforesaid narration, the objects and reasons and the scheme and purpose of the Act are to be understood. As is evident, Section 1 had conferred the power on the State Government to apply the Act in respect of certain industries and also to undertakings regard being had to the conditions incorporated in respect of the undertakings.

The question that emerges for consideration, as has been indicated hereinabove is, whether Section 1(4) amounts to excessive delegation. The submission of the learned Counsel for the petitioners is that by virtue of the said provision, the Legislature has abandoned its essential functions and, in fact, the executive has been conferred the power to repeal the Act. On a careful and anxious consideration of the said provisions, it is difficult to agree with the contention raised by the learned Counsel for the petitioner that the Legislature has used any kind of language by which the executive has been given any authority to repeal any enactment. Repeal has a different connotation in law. What has been conferred on the Government is to direct that the provisions of the Act shall cease to apply to such industry in such area and from such date as may be specified in the notification. The term "industry" has been defined under the Act. "Local area" has been defined in Section 2(23) to mean any area notified as a local area for any or all industries and for all or any of the purposes of the Act. There is also a rider that such area shall not comprise of more than one revenue district. It is further provided therein that such area, for the reasons to be recorded, could comprise of more than one revenue district including the entire State. There is no provision in the Act by which the Legislative power is totally effaced or there is abdication of powers or creation of parallel Legislature. Thus, the aforesaid limb of the submission of the learned Counsel for the petitioners does not commend acceptance and accordingly, we repel the same.

The second limb of the argument in the realm of attack of excessive delegation pertains to lack of guidance. The Court has a sacrosanct duty to ascertain the guidance from the Preamble, object and reasons, surrounding circumstances, changing scenario and various provisions of the Act. The efforts should not be made to find it from the deep layers which are dormant and latent. We have already referred to the object and reasons that was the purpose for bringing the Legislation. Keeping the aforesaid in view, the provisions of the Act are to be scrutinised. These are the factors the State Government is required to take into consideration and these aspects, in our considered opinion, are the guidance which are discernible and by no stretch of imagination, it can be said that there

is absence of guidance. We have no hesitation in holding that guidance is perceivable and it will be an anathema to the concept of guidance even if it is thought for a moment that it is dormant and latent. Applying the principles which have been laid down by the Apex Court and which we have culled out in our humble way, we are afraid to accept the first aspect that by incorporation of a provision in the statute book, the Legislature has abdicated its power and it tantamounts to self-effacement. Reading of the provision in proper perspective, we fail to perceive how there is abdication of power and effacement.

The submission of the learned Counsel for the petitioner is that by introduction of the said provision, the power has been totally transferred to the State Government to repeal the enactment. We are unable to perceive any substance in the said criticism. The Legislature, if we understand it properly, has not conferred the said power. The power is retained with the Legislature. The primary Legislative function still remains with the Legislature. It is not such conferral of power which would come in the realm of function of indefinite character which would amount to abdication. The Legislature has not created a parallel Legislative body, which can legislate. The Legislature has, if we understand appropriately, not totally surrendered or transferred the Legislative power to the executive. The plea that the executive can repeal the Act does not stand to reason and hence, we conclusively hold that the provision does not suffer from excessive delegation on the ground that there has been total abdication of Legislative power which tantamounts to its effacement.

On a scanning of the anatomy of the Act in entirety, it is luminescent that from the very inception of the enactment, the Legislature had in its own wisdom not specified which industries would be covered by the Act. If Section 1 of the Act is read with studied scrutiny, it would be quite vivid that the power to select the industries or undertakings to which the Act would apply rested with the State Government. It is worth noting, in exercise of the said power, the State Government had issued the notification in the year 1960. The Scheme of the Act, as is patent, revolves round the delegation of power to the executive in various spheres like what would be included in the Schedules I, II and III, under Sections 61 of the Act and other provisions, the policy was though by the Legislature guided from the object and reasons, definition clause and role ascribed. Be it noted, the Legislature has also delegated which undertakings or industries would be covered and that delegation was completely given to the executive and the said delegation included determining the number of employees in the undertakings to which the Act would apply. Thereafter, the State Government had issued the notification selecting certain industries and undertakings. The State Government had specified the number of employees, i.e., 100 in an undertakings. Thus, the Legislature in its wisdom thought it appropriate to delegate such powers as the applicability of the Act to any or all industries or undertakings in "such industries" and "such areas" could not be dealt with in detail or specific or precise manner by the Legislature. As is patent, the intendment of the Legislature is quite clear when it uses the words "such

industries" and "such areas" and they have close nexus with the meaning ascribed in the dictionary clause. By the statutory provision in the year 1960, the power was conferred on the State Government to select certain categories of industries or undertakings to which the Act would apply. At present, the Legislature has legislated by statutory enactment conferring the power on the executive to notify to which industries the Act shall cease to apply. It is, thus, manifest that there is guidance in the said provision and also inbuilt paradigms in the object and reasons. The object and reasons, if appropriately appreciated, relate to industrial growth, industrial harmony, labour welfare, promotion of industries in certain areas and non-victimisation on workmen.

The terms "such industries" and "such areas" have to take colour from the terms used under the Act. As has been indicated earlier the dictionary clause elaborately deals with the said definitions. We see no reason that the provision should be perceived from singular dimension that the power has been conferred on the State Government as if it is the authority to act as it pleases. Use of such terminology in the provision, when read in wholesome manner in the context of a statute, has its own restraint. The Legislature in its wisdom has thought it appropriate to confer the power on the executive as various factors have to be taken into consideration. There is nothing in the provision to predicate that the provision is uncanalised and unbridled: There is nothing to infer that there is non-application of mind. The authorisation in favour of the executive is in consonance with the plenary Legislative power. The Act had a purpose at the time of inception of the Act. Some industries were included and some were not brought under the umbrella of the enactment. A decision was left to be taken by the State Government. The submission of the learned Counsel for the petitioners is that there has to be consistency in labour matters and the Act has been operative in the field and there were industries which have been covered under the impugned notification as a consequence of which disharmony in the industrial sphere is likely to crop up. The learned Counsel for the petitioners have drawn our attention to various provisions of the Act to highlight that an industrial atmosphere was developed because of the aforesaid legislation. It is worth noting here that the workmen of the industries to which the Act ceases to apply, can take recourse to their grievance under the Central Act. In this context, we think it apposite to refer to certain decisions under the Industrial Disputes Act, 1947 to highlight the purpose and the scheme behind it.

In *Chandrakant Tukaram Nikam and Others Vs. Municipal Corporation of Ahmedabad and Another*, , it has been held as under:

The Industrial Disputes Act was enacted by Parliament to provide speedy, inexpensive and effective forum for resolution of disputes arising between workmen and the employers, the underlying idea being to ensure that the workmen do not get caught in the labyrinth of Civil Courts which the workmen can ill-afford. The procedures followed by Civil Courts are too lengthy and consequently, are not an efficacious forum for resolving the industrial disputes

speedily. The power of the Industrial Courts also is wide and such forums are empowered to grant adequate relief as they think just and appropriate. It is in the interest of the workmen that their disputes, including the dispute of illegal termination are adjudicated upon by an industrial forum.

In *Rajasthan State Road Transport Corporation and Others Vs. Zakir Hussain*, , the Apex court has observed as under:

30. The object of the Industrial Disputes Act, as its preamble indicates, is to make provision for the investigation and settlement of industrial disputes, which means adjudication of such dispute also. The act envisages collective bargaining, contracts between union representing the workmen and the management, a matter which is outside the realm of the common law or the Indian law of contract.

In this context, it is also seemly to refer to the decision rendered in *Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others*, , wherein it has been held as under:

It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one *ex facie*. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is *ex facie* frivolous, not meriting an adjudication.

Thus, we are not impressed by the aforesaid submission and do hereby repel the same.

The next aspect we would like to deal with is the challenge to Section 1-A of the Act. The submission of the learned Counsel appearing for the petitioners is that a discrimination has been created between State owned or controlled industries and industries owned by private entrepreneurs and industrialists. It is also contended that the State Government has also been allowed to retain the power to include certain State owned or controlled industries within the purview of the Act which is totally arbitrary.

The basic submission of the learned Counsel for the petitioners is that the classification is without any intelligible differentia and there is no purpose to achieve the object under the Act. Section 1-A envisages that the provisions contained in the Act shall not apply to an industry being carried on by or under the control of the State Government. A proviso has been added stipulating that the State Government to apply the provisions of the Act. The said provision enables the State Government may apply the Act to the industries of the State Government. The Legislature has thought it apt to leave it to the State

Government again to choose certain industries which are carried on by or under the control of the State Government. By conferral of such power, certain industries owned by the Government may not come within the ambit and sweep of the Act or the same may come. The same would depend upon the expertised analysis and regard being had to the modern scenario in the industrial field. The submission of the learned Counsel for the petitioners are basically two-fold in this regard, namely, certain industries run by the State Government is kept out of the benefit of the Act and some are given and second, the private sector has been excluded in entirety whereas there is possibility of inclusion of industries run by the State Government. Thus, both the submissions pertain to the facet of classification.

In this regard we may notice certain decisions in the field. In *Shashikant Laxman Kale and Anr. v. Union of India and Anr.* AIR 1990 SC 2114, the Apex Court has upheld the classification between the public sector employees and private sector employees.

In *Pallavi Refractories and Others Vs. Singareni Collieries Co. Ltd. Etc. Etc.*, the Apex Court upheld the dual fixation of price based on reasonable classification of different types of customers to be valid. Be it noted, in the said case, the Government of India had identified seven core/ priority sector industries and challenge was made by the non-core/unlinked sector industries.

In *Welfare Asscn. A.R.P., Maharashtra and Another Vs. Ranjit P. Gohil and Others*, it has been held that when a classification has been made regard being had to the definition clause, it would not play foul with Article 14 of the Constitution.

In *Government of Andhra Pradesh and Anr. v. G. Jaya Prasad Rao and Ors.* (2007) 11 SCC 528, while dealing with the scheme of accelerated promotion for the persons in extremist operation Their Lordships held that the classification withstands Article 14 of the Constitution and the said classification is valid in law.

In the case at hand, the classification has been made between the Government sector industries and the non-Government industries. There is foundation for the said classification and there is rationale behind the classification between Government owned and controlled industries and the industries of the private sector. The other part that certain Government industries may be included or the Act would apply by issue of a notification is also to be saved as there is guidance and it cannot be said that when there is guidance it becomes arbitrary. Regard being had to the purpose to be achieved, there can be certain industries which would come under the umbrella for which the Act may be applicable. There is enabling power and guidance to exercise the said power. The State Government may have expertise and experience and keeping in view the changing scenario and regard being had to the economic policy, globalisation, industrial peace and harmony, it may issue notification. Hence, judged from any angle, it cannot be said that the provision is hit by Article 14 of the Constitution.

The next submission of the learned Counsel for the petitioners fundamentally relates to the absence of rationale paradigm and restriction of industrial philosophy and absence of uniform policy in respect of labour law without any rationale or justification. We have already referred to the industrial philosophy under the Central Act. In the counter affidavit it has been mentioned in unequivocal terms that the changed circumstances made it necessitous to have a new look in the legislation inasmuch as there should be establishment of more industries in the State for upliftment of the economy. It was felt that core sectors under the 1960 Act were creating hurdle in the advancement of industrialisation. It was also asserted that the amendment had become imperative to create new employment opportunities as foreign investors were invited to invest in the State of M.P. Thus, we perceive that the object is to achieve industrial peace and harmony and to create more opportunities for employment. The unions have a grievance that it would affect their power to negotiate and other bargaining powers. As noticed in the decisions of the Apex Court under the Central Act, the power of bargaining exists under the Act and the industries which have been excluded from the purview of the present Act would not be denuded of the said powers. Therefore, the said submission, we are afraid, cannot be pressed into service to declare the statutory provision and the notification as invalid in law.

In view of the foregoing analysis, we conclude and hold that the provisions contained in Sections 1(4) and 1-A of the MPIR Act as amended by M.P. Act No. 16 of 2000 and brought into force by notification 17-5-2006 are intra vires. The notification issued on 14-8-2007 is also constitutionally valid. Ex consequent, the writ petitions, being sans substratum, stand dismissed. There shall be no order as to costs.