
(1992) 12 BOM CK 0026
In the Bombay High Court
Case No : L.P.A. No's. 29 and 30 of 1992

Narkeshari Prakashan Ltd.

APPELLANT

Vs

Nagpur Press Kamghar Sangh and Others

RESPONDENT

Date of Decision : 10-12-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25N, 9A

Citation : (1993) 3 BomCR 565 : (1994) 68 FLR 462 : (1994) 2 LLJ 530

Hon'ble Judges : H.W. Dhabe, J;B.U. Wahane, J

Bench : Division Bench

Advocate : B.A. Udhoji, for the Appellant; P.N. Khadgi and V.R. Thakur, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

H.W. Dhabe, J.—These two LPAs arise out of the common judgment rendered by the learned Sinele Judge in two writ petitions preferred by the two trade unions who had on behalf of the employees, sought to be retrenched by the appellant challenged in the writ petitions the order passed by the Secretary (Labour), Industries, Energy and Labour Department, dated July 24, 1991 granting permission to Narkeshari Prakashan Limited which runs daily newspaper. "Tarun Bharat", to retrench 19 workmen subject to the conditions laid down in the said order dated July 24, 1991.

2. The facts are that the appellant which is a Public Limited Company registered under the Companies Act purchased the daily newspaper "Tarun Bharat" in or about 1949. Three to four years thereafter, it launched Hindi daily by name "Yugdharm". The work of composing of these two newspapers was done at that time by the hand compositors engaged by the appellant. In the year 1963-64, the appellant purchased and installed three Mono Composing Machines. According to the appellant these three machines operated in two shifts and there were about 23 or 24 employees required to operate them. The appellant then installed in 1965 one Lino Composing Machine which was also working in two

shifts and required about 4 or 5 operators to operate the same.

3. It is the case of the appellant that the work of operating these machines was highly technical and a skilled one requiring extensive training. Further, according to it, the hand compositors engaged by the appellant were not in a position to cope up with such technical work and therefore, the majority of the operators employed on these machines were from outside. However, according to the appellant, even after installation of these machines, the appellant did not effect any retrenchment of employees doing the work of hand composing because the said work in regard to the daily "Yugdharm" was still done by its hand compositors. The hand compositors in the appellant company, therefore, did the work of hand composing of "Yugdharm" and a very small quantity of work of hand composing of advertisement of "Tarun Bharat". Their conditions of service thus remained unaffected by reason of installation of the above machines. The fact that because of installation of the above machines there was no retrenchment of employees doing hand composing work is not in dispute between the parties.

4. It is the case of the appellant that the printing technology was undergoing rapid changes with the result that the above machines installed to do the composing work became obsolete and therefore in order to keep pace with the modern technology and other competing newspapers, the appellant installed 4 photo composing machines in or about 1980. The full-fledged work, however, according to it, could be extracted from these machines since 1982-83 onwards only. It is the case of the appellant that the operation of these highly sophisticated and expensive machines required thorough and extensive training. The appellant, therefore, invited applications from all the persons including the hand compositors from the Press Department who were desirous of or were interested in obtaining the necessary training for operating the above photo composing machines but none of these hand compositors responded to the said notice. Nonetheless, according to the appellant, all the employees who were operating Lino and Mono composing machines and who were interested in getting the training for operating the above photo composing machines were imparted the required training to operate the same. After thus imparting necessary training, 15 to 16 employees who were found suitable were entrusted with the work of operating these machines and the remaining employees who were operating the old Mono or Lino composing machines were absorbed in different departments/sections in the press of the appellant.

5. It is the case of the appellant that even after commissioning of the above photo composing machines in 1980 and after they had commenced full-fledged working in 1982-83, there was no retrenchment of the hand compositors working in its Press who continued to do as before the work of hand composing of "Yugdharm" and it is only in June, 1989 when "Yugdharm" withdrew the said work from the appellant company that the question of retrenchment of these hand-compositors arose for consideration before the appellant company.

6. It is pertinent to see at this stage some of the developments in the functioning of the Hindi daily "Yugdharm". As already stated, Yugdharm was started by the appellant company as its Hindi daily 3 or 4 years after purchasing "Tarun Bharat" a daily in Marathi. Yugdharm continued to be owned by the appellant company and was managed by the common staff till 1971 when it was separated from the appellant company and its management was taken over by "Rashtriya Vichar Sadhana" a society registered under the Societies Registration Act, 1860. However, even after the change in the Management of "Yugdharm" which became independent since 1971, the work of composing and printing of the said newspaper continued to be done in the press of the appellant through its employees.

7. The next phase in the Management of "Yugdharm" is that on or about November 1, 1988 the aforesaid society "Rashtriya Vichar Sadhana" transferred the business and undertaking of "Yugdharm" to "Yugdharm Workers Newspaper Pvt. Ltd., Nagpur", which is a private limited company registered under the Companies Act. However, according to the appellant, even after the above transfer of management of "Yugdharm", the work of printing and hand composing was still being done in the press of the appellant. Thus as hereinbefore stated, the hand compositors in the appellant company who were already doing the work of composing of Yugdharm since its inception continued to do the same till June 1989 when "Yugdharm Newspaper Pvt. Ltd." installed its own Desk Top Publishing System for the work of composing. It is as a result of installation of the Desk Top Publishing System for the work of composing in Yugdharm that the management of "Yugdharm" withdrew its work of composing from the appellant company which was thus not available since then i.e., June 1989, to the hand compositors working in the appellant company. It is thus the case of the appellant company that due to nonavailability of work of composing, the hand compositors concerned doing the composing work of "Yugdharm" became surplus to its requirements.

8. In the above facts and circumstances, the appellant initially made an application to the Assistant Commissioner of Labour Nagpur, u/s 25-M of the Industrial Disputes Act, 1947 (for short the Act) for permitting it to lay off 28 workers doing hand composing work in its establishment. The said application for lay off was rejected by the Commissioner of Labour, Nagpur, by his order dated April 5, 1990 on the ground that the case sought to be made out by the appellant for lay off was not covered by the definition of the expression "lay-off given in Section 2(kkk) of the Act.

9. The appellant then filed another application u/s 25-N of the Act before the Secretary, Department of Industries and Labour, Ministry of Labour for State Government of Maharashtra, Bombay, on May 27, 1991 seeking permission to retrench 16 hand compositors and 3 distributors. The said application was made in the prescribed Form No. XXIV-A-1 as per Rule 80-A(1) and the necessary information as required by its annexure was also supplied to the Government.

After receipt of the said application, the notices were given to the concerned employees who through their Unions, i.e., the respondent No. 1 in each of these LPAs which filed detailed written statements, opposed the said application seeking permission to allow their retrenchment. The State Government through its Secretary of the Labour Department, however, allowed the application made by the appellant by the order dated July 24, 1991 and granted it permission to retrench the 19 workmen concerned subject to the condition that the appellant should comply with the provisions relating to statutory compensation etc., as given in Section 25-N of the Act and that in future recruitment it should give preference to these retrenched workers.

10. Feeling aggrieved, each of the two Unions representing the concerned hand compositors, filed writ petitions in this Court challenging the above order of the State Government granting permission to retrench them. The writ petition preferred by the Union "Nagpur Press Kamgar Sangh" was registered as Writ Petition No. 2119 of 1991 and the writ petition preferred by the Union "Narkeshari Prakashan Karmachari Sangh" was registered as Writ Petition No. 2121 of 1991. Since the same order of the State Government dated July 24, 1991 was challenged by the above Unions, in their writ petitions, they were disposed of by common judgment rendered by the learned Single Judge of this Court on August 28, 1991. He held in his common judgment that the retrenchment of the hand compositors in question resorted to by the appellant company was an ultimate consequence of the new technology in composing work adopted by it. According to him, it was a change in item 10 of Schedule IV of the Act which would not have been effected without giving a notice of change u/s 9-A of the Act to the workmen affected thereby. As the appellant company failed to give the notice of change u/s 9-A of the Act to the concerned hand compositors, he held that the State Government had committed a patent illegality in not holding that the retrenchment of these workmen was the direct result of the new device adopted by the appellant company. He, therefore, set aside the order of the State Government; granting permission to the appellant company to retrench these workmen and thus dismissed its application u/s 25-N of the Act.

11. Feeling aggrieved by the common judgment of the learned Single Judge of this Court, the appellant company has preferred the instant Letters Patent Appeals in these two writ petitions, which as stated above, can be disposed of by this common judgment.

12. The basic question which arises for consideration in these appeals is whether the retrenchment of the workmen concerned is a direct outcome of the new technology adopted by the appellant company of installation of four photo composing machines to do the work of hand composing in its press or whether their retrenchment is because of "non-availability of the hand composing work of "Yugdharm". To appreciate the rival submissions of the parties it is necessary to see that as originally enacted the Act did not by itself regulate the rights or obligations regarding any industrial matters or the condition of service of an

industrial employee but provided only a machinery by way of conciliation and failing the same by way of compulsory adjudication by the tribunal on a reference of the industrial dispute being made to it by the appropriate Government. However, the subject matter of Termination of Service" which includes retrenchment etc. was governed by the Standing Orders which are required to be framed under the Industrial Employment (Standing Orders) Act, 1946 and the Rules framed thereunder. (See item 8 of the Schedule to the said Act).

13. It is a matter of common knowledge in the field of Labour Laws that in most of the Standing Orders, framed prior to Amendment to the Act in 1953, lay-off and retrenchment could be effected without the employer being required to pay any compensation for the same to the employees affected thereby causing thus loss and suffering to such employees without there being any fault on their part. Since for no fault of theirs they either remained unemployed without wages for certain periods because of lay off or were thrown out of employment by their retrenchment, in many such cases industrial disputes were raised before the Industrial Tribunal under the Act and in industrial adjudication certain principles were sought to be laid down in regard to the question of payment of compensation for lay off and retrenchment of workmen. Considering the plight of the workmen affected by lay-off or retrenchment, the Parliament amended the Act, by introducing Chapter V-A relating to lay off and retrenchment in 1953. Section 25(c) of Chapter V-A dealt with the question of payment of compensation for lay-off while Section 25(F) thereof dealt with the question of procedure and payment of compensation for retrenchment. Section 25-B in the said Chapter V-A defined for the purposes of the above provisions the expression "one year of continuous service".

14. As regards the question of retrenchment with which we are concerned in the instant letters patent appeals, Section 25-F of the Act casts a mandatory obligation upon the employer to give, before effecting retrenchment of any workman, one month's notice to him indicating reasons therefore or one month's wages in lieu of notice as provided in Clause (a) thereof and further pay him at the time of his retrenchment, retrenchment compensation at the rate of 15 days, average pay for every completed year of continued service or any part thereof in excess of 6 months as provided in Clause (b) thereof.

15. The above provisions of Chapter V-A relating to lay-off and retrenchment were not adequate to check frequent lay-off, retrenchment and closure in a larger industrial undertaking. Hence in 1976 Chapter V-B was introduced by amendment in the Act to make stringent provision to regulate lay-off, retrenchment and closure in industrial establishments defined in Section 25-L therein, employing not less than 300 workmen and not being an establishment of seasonal character or in which work was performed intermittently. The initial requirement of employing not less than 300 workmen for application of Chapter V- B of the Act was reduced to not less than 100 workmen by the amendment

made in 1982. The material protection granted by this Chapter V-B is that in cases of lay-off, retrenchment and closure of the industrial undertaking, prior permission of the competent authority specified therein is mandatory.

16. From the point of view of the instant letters patent appeals, we are principally concerned with the provisions of Section 25-N of the Act relating to conditions precedent for retrenchment of workmen. The relevant extract of Section 25-N is reproduced below for ready reference.

"25-N Conditions precedent to retrenchment of workmen - (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer, shall be retrenched by that employer until, - (a) the workman has been given three months" notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

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

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

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

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

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

any part thereof in excess of six months".

17. We shall, however, refer to the requirements of the said Section 25-N of the Act when we deal with the contention raised on behalf of the appellant whether in granting permission, the State Government has complied with the requirement of the said Section or not. Suffice it to say at this stage that the question of retrenchment is regulated by an express provision enacted in the Act.

18. Turning now to the provisions relating to notice of change in the Act, Section 9-A thereof mandates the employer that he shall not effect any change in the conditions of service applicable to any workmen in respect of any matter specified in the Fourth Schedule without giving to them a notice of change in the prescribed manner of the change proposed to be effected. It is then provided in Section 9-A(b) of the Act that the employer cannot effect any change as proposed in the notice of change within 21 days of giving the same.

19. Perusal of the Fourth Schedule in the Act shows that termination or retrenchment is not directly covered by any of the entries therein. Similarly "Rationalisation" simpliciter is also not covered by the said Schedule. However, what is covered by item No. 10 of the said Schedule is as follows:

"Rationalisation, standardisation or improvement of plant or technique which is; likely to lead to retrenchment of workmen".

20. It is clear from bare reading of the above item No. 10 of the Fourth Schedule of the Act that a notice of change is not necessary for Rationalisation, standardisation or for improvement of plant or technique, simpliciter but the said notice of change is necessary to be given by the employer only when such rationalisation, standardisation or improvement of plant or technique is likely to lead to retrenchment of workmen. This is also the view taken by the Supreme Court about the interpretation of the said item 10 of the Fourth Schedule of the Act in the case of Hindustan Lever Ltd. Vs. Ram Mohan Ray and Others, . With these provisions in mind, we may at this stage examine the judgments cited on behalf of the parties on the question whether for effecting retrenchment it is necessary for the employer to give notice of change u/s 9-A of the Act.

21. The first case which needs to be examined in this regard is the case of Chaganlal Textile Mills Private Ltd. v. Chalisgaon Girni Kamgar Union, 1959 II LLJ 1 decided by the Supreme Court. It was a case in which the question was whether a notice of change u/s 42 of the Bombay Industrial Relations Act, 1946 (for short "the B.I.R. Act") was necessary to be given by the employer for retrenchment of its employees occupying certain posts. It was urged that the said matter was covered by item No. 1 of the Schedule II of the B.I.R. Act which is in relation to reduction intended to be of permanent or semi-permanent character in the number of persons employed or to be employed in any occupation or process or department or departments or in a shift not due to force majeure.

22. In interpreting the said entry No. 1 of Schedule II of the B.I.R. Act, the Supreme Court held that the said entry is only concerned with the posts. It, therefore, held that a notice of change u/s 42(1) of the B.I.R. Act would be necessary when the posts were to be actually abolished and not for termination of employment as such on account of the alleged reason of abolition of posts. In the judgment, the Supreme Court has held that for retrenchment a different procedure is envisaged and so far as the question of notice of change is concerned, the said notice has to be given when there is a reduction in the number of posts. According to the Supreme Court, item No. 1 of Schedule II of the B.I.R. Act relates to the posts and not to the personnel occupying the posts. The actual process of retrenchment is thus bifurcated from the process of notice of change in the above case. A similar view is expressed in the case of Sher Mohamed Musahib Vs. The State of Maharashtra,

23. The learned counsel appearing for the appellant has relied upon the judgment of the Supreme Court in the case of L. Robert D'souza Vs. Executive Engineer, Southern Railway and Another, in support of his submission that retrenchment as such is not covered by any of the items in the Fourth Schedule of the Act. It is pointed out in para 7 of the said judgment that no item in the Fourth Schedule of the Act covers the case of the retrenchment and in fact the retrenchment is covered by item No. 10 of the Third Schedule. It is then held that if retrenchment, which connotes termination of service, cannot constitute change in conditions of service in respect of any item mentioned in the Fourth Schedule, Section 9-A would not be attracted and no notice of change as envisaged therein would be necessary.

24. The Supreme Court has also observed in para 7 of the judgment cited supra that it is obligatory upon the employer, who wants to retrench the workmen, to give notice as contemplated by Clause (a) of Section 25-F of the Act. What is important to be seen in the said para 7 is that according to the Supreme Court the notice of change contemplated by Section 9-A and notice for retrenchment u/s 25-F of the Act are two different aspects of notice, one having no correlation with the other, (underlining is ours). In taking the above view, the Supreme Court has relied upon its previous decisions in Workmen of Sur Iron and Steel Co. (P) Ltd. Vs. Sur Iron and Steel Co. (P) Ltd. and Another, , Tata Iron and Steel Co. Ltd. Vs. The Workmen and Others, and Assam Match Company Limited Vs. Bijoy Lal Sen and Others, .

25. The learned counsel for the appellant has then brought to our notice the judgment of this Court in the case of Arvind Anand Gaikwad v. Uni Abex Alloy Products Ltd. and Ors. (1988) (1) LLN 239. Following L. Robert D "Souza"s case cited supra the Division Bench of this Court after referring in para 9 of its judgment to the observations of the Supreme Court therein that when a workman is retrenched it cannot be said that change in his conditions of service is effected held in the said para of its judgment that notice of change u/s 9-A of the Act was not called for in the facts of the said case because the employer had

not reorganised the business, but had closed down the tube assembly section in view of the import restriction and, therefore, the post of Fitter to which the appellant was appointed had become redundant.

26. On the other hand, the learned counsel appearing for the respondent Union had heavily relied upon the judgment of the Division Bench of this Court in the case of Nav Bharat Hindi Daily, Nagpur Vs. Nav Bharat Shramik Sangha and another, . The facts in the said case would show that mono-composing machine was installed in the Nav Bharat Press in March 1973 and soon thereafter in May 1973 the services of the 33 compositors were terminated on the ground that there was no work for them. In the light of these facts, the Division Bench of this Court held that installation of mono-composing machine in a press, being a rationalised machinery was likely to lead to retrenchment of workmen, and therefore item No. 10 of the Fourth Schedule of the Act was directly attracted. Thus, according to the said judgment, it was imperative on the part of the employer to serve a notice of change u/s 9-A of the Act, failing which it would vitiate the retrenchment resulting from the operation of such a machine.

27. It is clear from the facts in the above case that retrenchment of workmen therein was a direct outcome of installation of mono-composing machine as there was proximity of time between the installation of the machine and the consequent retrenchment of the workmen concerned, which factor heavily weighed with the Division Bench in arriving at the conclusion in the said case that installation of rationalised machine by the Nav Bharat Press was likely to lead to retrenchment which in fact had immediately taken place within two months because of which in the absence of notice of change u/s 9-A of the Act, it held that the retrenchment of workmen in the said case was vitiated. It is, however, pertinent to see that unlike as in the instant case no other reason was pointed out for retrenchment of workmen in the said case.

28. The learned counsel for the appellant has distinguished the above judgment of this Court on the ground that in the facts and circumstances of the instant case it cannot be said that the retrenchment of the workmen concerned in the instant case is a direct outcome of the installation of the photo composing machine in 1980 which commenced their full-fledged working from 1982-83 because the workmen concerned in the instant case who were doing the composing work of Yugdharm continued to do the said work for a long time thereafter till June 1989 when Yugdharm withdrew the said work from the appellant after it installed its own Desk Top Publishing System for its composing work. The reason thus according to him for retrenchment of the workmen concerned in the instant case was not installation of photo composing machines by it in 1980 but withdrawal of the work of composing by Yugdharm in June 1989 which work till then from the establishment of Yugdharm was being done by the hand-compositors of the appellant.

29. The learned counsel appearing for the respondent/Union has then relied upon the judgment of the Supreme Court in the case of M/s. Tata Iron and Steel Co.

Ltd. v. Workmen of M/s. Tata Iron & Steel Co. Ltd. and Ors(supra). The facts in the said case would show that the question involved therein was relating to Item 8 of the Fourth Schedule of the Act. Sunday, which was originally fixed as a weekly day of rest, was changed and some other day was fixed as day of rest. It was held in the said case that fixation of Sunday as weekly rest day having been founded on usage and practice and the same being treated as a customary privilege, changing it to some other day of rest would fall within the scope of item 8 of the Fourth Schedule of the Act necessitating the notice of change to be given u/s 9-A thereof. The said case thus clearly turns upon the facts therein. It cannot be disputed that if a matter directly falls within any of the entries in the Fourth Schedule, notice of change u/s 9-A of the Act is a must, failing which introduction of such a change by the employer is illegal and ineffective. (See para 15 of the judgment).

30. The learned counsel for the respondent No. 1 Union has, however, focused our attention upon para 13 of the said judgment in which the object and purpose of enacting Section 9-A of the Act is discussed. The Supreme Court has observed that the real object and purpose of enacting Section 9-A seems to be to afford an opportunity to the workmen to consider the effect of the proposed change and if necessary to present their point of view on the proposal. Such consultation, according to the Supreme Court, would further serve to stimulate a feeling of common joint interest of the management and workmen in the industrial progress and increased productivity. This approach on the part of the industrial employer would reflect his harmonious and sympathetic co-operation in improving the status and dignity of the industrial employees in accordance with the egalitarian and progressive trend of our Industrial jurisprudence which strives to treat the capital and labour as co-sharers and to break away from the tradition of labour's subservience to capital.

31. There need not be any two opinions about the above object of enacting Section 9-A of the Act. The question, however, is whether the retrenchment of the workmen concerned in the instant case is covered by any item of the Fourth Schedule of the Act particularly when the Supreme Court in L. Robert Desouza 's case cited supra has held to be contrary and has observed that there is no change in conditions of service involved in effecting retrenchment and that notice u/s 9-A and notice u/s 25-F are two different aspects of notice, having no correlation with each other.

32. Examining the rival submissions on facts in the light of the principles laid down in the above judgments, what has to be seen is whether the rationalisation introduced by installation of four photo composing machines in the press of the appellant was likely to lead to retrenchment. It is material to see that according to the appellant the said machines were installed in 1980 and the full-fledged work could be actually extracted from these machines from 1982-83 onwards. The respondent-Union has denied the said fact and has stated that said machines were installed in 1985.

33. Be that as it may, there is, however, no dispute between the parties that at the time of installation of these machines there was no retrenchment of the workmen concerned i.e., the hand compositors, effected by the appellant-Company, the reason being that although after introduction of these machines, the work of hand-composing of the Daily Tarun Bharat owned by the appellant was not available, the hand compositors in Tarun Bharat were doing the work of composing of Yugdharm mainly and a small quantity of work of composing of advertisement of Tarun Bharat was also given to them. As regards the hand composing work of Yugdharm, there was no reason to believe as is clear from the facts hereinafter referred to that the said work was fortuitous or temporary in nature so that in short time there was likelihood of retrenchment of the hand-compositors of the appellant doing the said work.

34. It is pertinent to see from the facts hereinbefore narrated that originally the newspaper Yugdharm was a newspaper started in about 1953 or 1954 owned and published by the appellant. It was run by a separate local entity only from 1971 when Rashtriya Vichar Sadhana, a society registered under the Societies Registration Act, 1860, was formed and took over its ownership and management. However, in spite of the change of ownership and management, the composing work of Yugdharm still continued with the appellant. On November 1, 1988 the aforesaid society, Rashtriya Vichar Sadhana, transferred the ownership and management of Yugdharm to Yugdharm Newspapers Pvt. Ltd., a company registered under the Companies Act. What is material to be seen is that in spite of the ownership and management being transferred to the newly formed company, the composing work of Yugdharm still continued with the appellant. It is only when, in June 1989, the said company installed its own Desk Top Publishing System for the work of composing, that it stopped giving the work of composing of Yugdharm to the appellant. Consequently, the appellant was not thereafter in a position to give any composing work to its hand compositors i.e., the workmen concerned, and it had therefore no other alternative but to retrench their services.

35. It is clear from the above facts that this is not a case where some additional temporary job work was undertaken by the appellant after installation of four photo composing machines to maintain the hand compositors in question and to avoid their retrenchment temporarily. It is further clear from the above facts that initially as its own work as owner and thereafter as the work of its sister concern, the work of composing of Yugdharm always continued with the appellant till the time i.e., June, 1989 when the Desk Top Publishing system was introduced by Yugdharm Newspaper Pvt. Ltd., for doing the composing work of Yugdharm. In terms of period of time, the work of composing of Yugdharm continued with the appellant, for about 15 or 16 years. Even after the introduction of the photo composing machines in Tarun Bharat, the work of composing of Yugdharm continued with the appellant for about a period of 7 or 8 years or even assuming that the said machines were introduced in 1985 as urged on behalf of the respondent Union, for a period of about 4 years. The said work of composing of

Yugdharm stopped not because the photo composing machines were introduced in Tarun Bharat by the appellant, but because after a long time Yugdharm installed its own Desk Top Publishing System.

36. In the conspectus of the above facts and circumstances, the question which arises for consideration is whether it could be predicated at the time of installation of the photo composing machines in the appellant's press that the said installation was likely to result in retrenchment or, in other words, the work of composing of Yugdharm was likely to be discontinued when it had been done by the hand compositors of the appellant for a long time till then. The answer is obviously in the negative. There is also no material placed on record to show that at the time of installation of the photo composing machines in the appellant's Press, there was plan with the management of Yugdharm to introduce such machines to get its composing work done through them. On the contrary, even after introduction of the photo composing machines, the work of composing of Yugdharm continued with the appellant for an appreciable period i.e., for about 7 or 8 years, according to the appellant, and for about 4 years even according to the respondent-Union.

37. It cannot be said in the above facts and circumstances of this case that the introduction of photo composing machines in the appellant press was likely to lead to retrenchment of its hand compositors because, as hereinbefore shown, since many years prior to and after the installation of the said photo composing machines, the work of Yugdharm initially as its own concern and thereafter as its sister concern continued with the appellant-Press itself. In other words, it cannot be inferred in the above facts and circumstances of the instant case that the retrenchment of the workmen concerned is a direct result or outcome of the installation of photo composing machines by the appellant. There was thus no question of giving any notice of change u/s 9-A of the Act when the photo composing machines were installed because it is not in dispute that at the time of the installation or in reasonable period thereafter, there was no retrenchment made by the appellant of its hand compositors.

38. The learned counsel for the respondent/Union has then urged before us that even according to the appellant, it is because of the adoption of the new technology in composing by all the newspapers that there was no work for hand compositors in Tarun Bharat. It is submitted that in column No. 24 of the application in the prescribed proforma made for retrenchment, the appellant itself had given the above reason which itself would show that there was likelihood of retrenchment by installation of the photo composing machines in Tarun Bharat. In considering the above submission made on behalf of the respondent Union, in our view, it is necessary that the information given in column No. 24 should be read as a whole and that it should also be read along with the information given in column No. 22 of the said proforma.

39. The reason given for the proposed retrenchment in column No. 22 of the proforma is that the work of composing of daily Yugdharm was stopped from

June 1989 when Yugdharm made its own arrangement of composing by installation of Desk Top Publishing System. It is then clear from column No. 24 that although there was no work of Tarun Bharat as such for the hand compositors of the appellant, they were not retrenched but they were doing the work of composing of Yugdharm which as shown above was being given to them. As is made clear, it is only when in June, 1989 the said Yugdharm had introduced D.T.P. system that the composing work of Yugdharm could not be given to these hand compositors concerned. It is also stated in the said column No. 24 that the appellant is required to incur the expenditure of about Rs. 50,000/- per month upon the salary of these workmen concerned.

40. It is thus clear even from the information given in the prescribed proforma by the appellant that simpliciter by installation of the photo composing machines, the workmen concerned did not become surplus and were required to be retrenched, but the real reason for retrenchment of the workmen concerned was the non-availability of work of Yugdharm which was stopped after the D.T.P. system was introduced in Yugdharm itself in June, 1989. We cannot thus accept the above submission made on behalf of the respondent-Union that even according to the appellant, since there was adoption of new technology in composing by all the newspapers there was no work for hand compositors in Tarun Bharat.

41. Even otherwise, assuming that notice of change u/s 9-A of the Act was necessary for introducing the photo composing machines, it would not mean that the retrenchment of workmen concerned in the instant case without giving the notice of change u/s 9-A of the Act would be illegal because as held by the Supreme Court in L. Desouza 's case cited supra, retrenchment as such is not covered by any item in the Fourth Schedule of the Act and therefore no notice of change is necessary before effecting retrenchment. It is clearly held in the said case that retrenchment does not constitute any change in the conditions of service in respect of any item in the Fourth Schedule of the Act and that notice of change u/s 9-A and notice u/s 25-F for effecting retrenchment are entirely two different aspects having no correlation with each other.

42. It may then be seen that retrenchment is a matter originally regulated by the Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 by virtue of item 8 of the Schedule to the said Act relating to "termination of service" which includes retrenchment in its genetic sense. However, after enactment of Chapters V-A and V-B in the Act by amendment, retrenchment is regulated according to the provisions of the said Chapters as may be applicable to the Industrial Establishments in question and before effecting retrenchment, it is necessary for the employer to comply with the provisions therein and not the procedure u/s 9-A of the Act. A similar view is taken by the Supreme Court in the case of Chhaganlal Textile Mills and the case of Amrit Banaspati Co. cited supra upon substantially *pari-materia* provisions of the B.I.R. Act. We do not therefore agree with the contention raised on behalf of the respondent-Union that in the

absence of notice of change u/s 9-A of the Act, retrenchment of the workmen concerned by the appellant is illegal and void.

43. It is then necessary to see that if it was the apprehension of the respondent/ Union or the workmen concerned that there was likelihood of retrenchment due to installation of the said photo composing machines, it was open to them to raise, at the time of installation of such machines or immediately thereafter, an industrial dispute under the Act on the question whether the appellant had introduced a change which necessitated notice of change u/s 9-A of the Act and which was, therefore, in its absence illegal and ineffective. If such a dispute was raised and if it was found by the Industrial Tribunal that there was likelihood of retrenchment, it could have laid down appropriate norms to safeguard the interests of the workmen concerned imposing certain conditions upon the appellant for allowing it to do its work of composing with the aid of the new photo composing machines installed by it.

44. The learned counsel for the respondent/Union has, however, urged before us that there was no reason for them to take recourse to any remedy at that time as there was no retrenchment effected by the appellant management at that time and as such the workmen concerned were not hurt by its action. In our view, the question was not whether actually the retrenchment was effected or not, but the question was whether there was likelihood of retrenchment on introduction of the new rationalised machinery for which it was necessary for them to get necessary norms laid down through an award of the Industrial Tribunal which has in industrial adjudication wider power to create new obligations upon the parties. As observed by Ludwig Teller in his Book on "Labour Disputes and Collective Bargaining" Volume I at Page 536, "industrial arbitration may involve the extension of an existing agreement or the making of a new one, or in general the creation of new obligation or modification of old ones, while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements"".

45. The learned counsel for the respondent/Union has further urged before us that the cause of action is a continuing one and, therefore, the said question can be raised now. In our view, the question is not one of any cause of action but of getting the norms laid down in case the change introduced or sought to be introduced by the appellant management in installation of the photo composing machines is illegal. However, as we have held that the facts in these cases do not show that there was likelihood of retrenchment by reason of the installation of the above machines, the above discussion is really academic.

46. The next question which arises for consideration in these letters patent _appeals is, whether the Secretary of the Labour Department exercising the powers of the State Government u/s 25-N of the Act, has applied his mind to all the relevant factors regarding the question of retrenchment as required by Sub-section (3) of the Section 25-N of the Act. Perusal of the said provision i.e., Section 25-N(3) of the Act would show that the State Government has to

consider the question of granting permission for retrenchment having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors. Under Rule 80-A of the Rules framed under the Act, the employer has to give information in Form XXIV-A-1, which reveals that there are annexures to the said form giving the particulars about which the information has to be given by the employer. Perusal of the said annexures would show that the information demanded from the employer thereunder has bearing upon the question of consideration of the relevant factors in granting permission for retrenchment.

47. The learned counsel for the respondent/Union has urged before us that the Secretary of the Government who decided the application for permission for retrenchment, has not applied his mind to the factors relating to the interests of the workmen and the norms or conventions laid down about rationalisation. According to him, the norms or conventions about rationalisation are considered by the National Commission on Labour headed by Dr. Gajen-dragadkar, J. in para 18.16 at page 261 of its report. Perusal of the said para 18.16 shows that the model tripartite agreement adopted at the 15th Indian Labour Conference (1957) on rationalisation, laid down that there should be no retrenchment or loss of earning of the existing employees i.e., the full complement required for the operations before rationalisation should be maintained except for cases of natural separation or wastage. According to it, workers could, however, be provided with suitable alternative jobs in the same establishment or under the same employer subject to agreement between the employer and the workers. The other matters considered in the said agreement are equitable sharing of benefits of rationalisation as between the community, the employer and the workers and a proper assessment of workload made by an expert or experts which factors have no relevance to the question of actual retrenchment of the workers concerned, although they may have bearing upon the workmen who are continued in employment or who are actually working on the rationalised machines.

48. As regards the factor that there should be no retrenchment, the Secretary of the State Government has in his order applied his mind to the said factor. He has held, and it is not in dispute also, that after introduction or installation of the rationalised machine by the appellant, there was no retrenchment effected by the appellant of the employees doing hand composing work. As regards the retrenched employees concerned, the case of the management as set out in column No. 23 of the Annexure C is that they tried to obtain the job work for these workmen but since hand composing was out of demand, it could not get sufficient job work in market to offer to them. Further, according to it, it had also asked the employees concerned that they can also find out whether there is any job work for them but the said offer was not acceptable to them.

49. However, as regards the question of absorption of some of the workmen concerned, during the hearing of these letters patent appeals, we had asked the Management to consider the said question. In particular, we had asked the

parties to find out whether the matter as a whole can be settled amicably. The learned counsel for the appellant has stated before us that taking into consideration the requirement as on today, the work can be found for 7 from amongst these workmen concerned. It is pertinent to see that about two years have elapsed since the permission was sought for retrenchment of these workers. Therefore, at the time of their retrenchment, the case of the Management cannot be faulted because they can find work even today for some of them. Even otherwise, as pointed out by us hereinbefore, retrenchment is not due to rationalisation as such, but retrenchment is because the work which these hand compositors were doing, is not available since Yugdharm has installed its own D.T.P. system for its composing work.

50. Perusal of the impugned order of the Secretary of the State Government would show that in para 5 he has considered the question of absorption of these workmen. In para 4 also he has observed that originally the retrenchment was to be of about 28 persons but 8 persons were actually absorbed by the Management in other job., which would show that the retrenchment sought to be effected is not mala fide but is genuine. It cannot thus be said that there is no application of mind to these factors by the Secretary of the State Government who granted permission to the appellant for retrenchment of the workmen concerned.

51. It is, however, urged on behalf of the respondent-Union that in fact the work upon these photo composing machines itself should have been given to these hand compositors but instead of giving them the said work, the appellant had sought to make appointments of the workers of Tarun Bharat Printers and Processor Ltd., who were transferred from the said company to the appellant Company. It is further sought to be shown that out of the 27 persons brought in the appellant company, some have retired and some have resigned and therefore, in their vacancies atleast the workmen concerned could be absorbed. Perusal of the list of such employees filed as Annexure V of the reply by the respondent/Union before the State Government would show that some of them are only employed upon the work relating to photo composing machines. The above list of employees is filed in answer to the information supplied by the appellant upon item No. 16 of the prescribed proforma to the State Government in seeking permission for retrenchment.

52. The above referred reply of the respondent/Union shows that, according to it, Tarun Bharat Printers and Processors Ltd. is interconnected company of the appellant. It further shows that there were originally 35 employees working in the said company as hand compositors, out of whom during the period from 1986 to 1990 i.e., after installation of photo composing machines, 21 employees were absorbed by the appellant leaving these 19 employees concerned who were sought to be and are retrenched. The submission thus is that these 19 employees of the appellant could have been offered the above jobs upon which the employees of Tarun Bharat Printers and Processors Ltd., were transferred.

53. As regards these jobs and in particular regarding the jobs in relation to the photo composing machines, the appellant has pointed out in the return filed in the instant writ petition preferred by the respondents/Union that these photo composing machines are highly sophisticated and expensive requiring thorough and extensive training, and it is only after inviting application to give opportunities to all its employees including its compositors for giving the necessary training that the appointments were made in the jobs relating to photo composing machines. However, according to the appellant, none of these hand compositors responded to the said notice. It cannot be disputed that if the job is a skilled job no absorption as of right can be claimed in the said job without obtaining necessary training for the said job.

54. The respondent/Union has, however, denied the notice having been displayed upon the notice board by the appellant about training being given for the jobs in question. The learned counsel for the appellant has in this regard brought to our notice the copy of the said notice annexed as Annexure R-1 of the return filed by it and the endorsement upon the said notice which would show that the said notice was pasted upon the notice board of the appellant's press. The conduct of the appellant in this case does not show that they were bent upon retrenching the workmen concerned at any cost because even earlier when the Mono and Lino Composing Machines were installed, no retrenchment was effected although, according to it, it was found at that time that the hand compositors with their meager education and moderate background were not in a position to cope with the technical work of these machines. Moreover, when the said photo composing machines were introduced because of which, according to the respondent/Union, there was likelihood of re-trenchment of the hand-compositors concerned, it is difficult to believe that they would not inquire about what would happen to them in case the work of composing was done upon the said machines. In fact it would appear that since they continued to get hand composing work of Yugdharm, they did not show any interest in doing the work upon the photo composing machines. In these circumstances, we cannot accept the submission on behalf of the respondent/Union that the notice about training for the jobs in question was not displayed upon the notice board.

55. Be that as it may, the fact remains that the work upon these machines was highly technical and a skilled one and the machines could not be operated without any proper training to the hand compositors if the jobs upon such machines were to be offered to them. The said jobs could not therefore be claimed by these workers, without any training. It is not shown to us that if the workers from Tarun Bharat Printers and Processors Ltd. were transferred upon these jobs, they did not possess any knowledge about the same or had not undergone any training for the same. Moreover, the aforesaid list of the said employees incorporated in Annexure V of the reply of the respondent/Union does not show actually as to at what time these employees from Tarun Bharat Printers and Processors Ltd. were transferred to the appellant because the question of retrenchment of the hand compositors concerned had actually arisen in June,

1991.

55-A. As regards the other jobs except the appointment as peon, it does not appear by merely reading the said list (Annexure V) that the jobs shown therein could be done by these hand compositors, such as the work of Accountant, Cameraman, Machine man etc. Even as regards the question of appointment as peon, it is not stated when the person concerned was appointed as peon. The above list (Annexure V) is thus of no assistance to assess what job was available for absorption of the hand compositors concerned at that time when they were sought to be retrenched after the composing work of Yugdharm stopped coming to the appellant's Press and when the application was made on May 7, 1991 for their retrenchment because of the aforesaid reason.

56. It is not thus possible for us to accept the contention raised on behalf of the respondent/Union that the Secretary has not applied his mind to these factors.

57. It is, however, clear as hereinbefore referred to from the talks of settlement between the management and the respondent/Union that the Management has offered that it is possible for them as on today to absorb 7 of these workmen concerned. According to the management, it would do so on the basis of the test of seniority-cum-suitability of the workmen concerned for the jobs to be offered to them. The permission thus will have to be granted for retrenchment of 12 of the workmen concerned, the discretion for absorption of 7 persons being left with the Management, because their absorption depends upon their suitability for the jobs available for them in the appellant's concern.

58. In the result, the instant Letters Patent Appeals are allowed. The impugned judgment of the learned Single Judge under appeal is set aside and the original order of the Secretary, Labour Department of the State Government, granting permission for retrenchment, is restored subject to the condition that the permission shall be restricted to 12 out of 19 workmen concerned and as regards the remaining 7 workmen, the appellant/Management is directed to absorb them according to their suitability for the jobs available for them. There shall not be any order as to costs in these Letters Patent Appeals.

59. At this stage the learned counsel appearing for the respondent/Union has submitted before us that our judgment should be stayed for a period of two months or at any rate for a period of one month after the copy of the judgment is available since the respondent/Union proposes to move the Supreme Court in the matter. The learned counsel for the appellant has vehemently opposed the above request for stay. According to him, there was no work available with the appellant from June, 1989 for these hand compositors who are being paid since then without there being any work for them in the Press during the pendency of these protracted proceedings. Further, according to him, the monthly payment of these workmen is about Rs. 60,000/-which is difficult for the appellant to financially bear.

60. Keeping in mind the rival submissions, we direct that our judgment shall

remain stayed for a period of one month after the copy of our judgment is available to the respondent/Union. However, the concerned workmen who continue in service, shall not be entitled to claim any emoluments for this period for which it is open to them to obtain appropriate orders from the Supreme Court when the matter is moved in the Supreme Court.