
(1974) 11 GUJ CK 0004
In the Gujarat High Court

P.G. Textile Mills (Pvt.) Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-11-1974

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 33

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 19A, 19A

Citation : (1976) 17 GLR 18

Hon'ble Judges : P.D. Desai, J;J.B. Mehta, J

Bench : Division Bench

Judgement

J.B. Mehta, J.—The petitioner company challenges in this petition under Articles 226 and 227 of the constitution, the order of the central Government, dated April 15, 1974, u/s 19A of the Employees Provident Fund Act, 1952, denying infancy benefits to the petitioners new.

2. The short facts which have given rise to this petition are as under:

The Baroda Spinning & Weaving Mills Company Limited which was running a cotton textile unit at the present site was closed down in October 1966 and winding up petition was presented before this Court on March 8, 1967. On April 17, 1968, this Court ordered the said company, hereinafter referred to as the old company, to be wound up and the official liquidator was by the order dated August 25, 1969, authorised to sell the moveable and Immovable properties of the company by public auction. Those assets of the company included extensive open land with this textile unit. Meanwhile the Gujarat State Textile Corporation, hereinafter referred to as the Corporation took over this textile unit on lease for two years from February 3, 1970 to run the mill by giving unemployment relief to the workers. The lease was to expire on February 2, 1972. The central Government had by the order, dated January 28, 1972, given infancy benefits u/s 16(1)(b) of the Act for a period of three years. When this mill was run by the Corporation, the Corporation had applied to extend the lease but that request was refused by the learned Company Judge. The Official Liquidator, therefore,

issued tenders. The petitioner company gave a tender on December 4, 1971, and its final offer was accepted on December 7, 1971. The sale of the assets of the company i.e. land, building etc. Was finally confirmed by the order of this Court dated December 21, 1971, at Annexure D, and the conveyance was directed to be executed of the land, building etc. In favour of the petitioner company. The possession was to be given of the land and buildings and the fixed assets of the old company on February 3, 1972, by including even the open land which was in possession of the liquidator, and which was not leased to the Corporation. A tripartite arrangement was arrived at where the Corporation, the petitioner and the representative union i.e. Majoor Mahajan Sangh were parties and this agreement had the seal and approval of this court, as per the order, dated January 21, 1972. It was in terms stated that the Corporation had agreed to give possession of the land, building and fixed assets leased to it by February 3, 1972, but it was allowed to work the mill in order to clear the goods in process and after stopping processes gradually, the entire possession of the whole mill would be delivered to the petitioner on or before April 30, 1972. The Corporation would stop feeding cotton in the blow room from March 13, 1972, and stop the final process by April 20, 1972, it was further agreed that the Corporation shall pay to the petitioner Corporation compensation for use and occupation at the rate of Rs. 15,000/- per month for the period for which it was thus allowed to remain in possession till April 30, 1972, to clear out the goods in process. It was further agreed in Clause 5 that the Corporation shall discharge all the workers, clerks, staff members and officers by paying them all their legal dues. Under Clause 6 it was agreed that the purchaser would start the mill after the Corporation handed over possession and would employ such number of workers as required by them afresh as new employees. Finally it was agreed in Clause 6A that the period of unemployment in respect of employees who were to be taken in employment by the purchaser would not exceed six weeks and such workers would have to write to the provident fund authorities to close their accounts with the old establishment or the Corporation before being newly employed. The petitioner, therefore, started the mill from May 15, 1972, and all sections were started by August 16, 1972. As per the chart at Annexure F the petitioner had put up an additional machinery to the tune of Rs. 18, 22, 029.30 p. As per Annexure F. As the old concern of the old company was on an investigation by the investigation committee u/s 15 of the industrial development and regulation Act, 1951, recommended to be scrapped, it is the petitioners case that the Corporation had during the period of lease started the mill only as a measure of unemployment relief when the Government had assured to advance Rs. 25,00,000/- to the Corporation. Even the Corporation was treated as an infant concern. The petitioner, therefore, for its new concern claimed the infancy benefits and when a dispute had arisen in that connection, the petitioner approached the central Government to resolve that doubt or dispute u/s 19A of the Act. The central Government has, therefore, passed the impugned order at Annexure C, dated April 15 1974 the central Government found that the establishment was restarted on February 3, 1970, and it continued to function

when it was taken over by the petitioner company. It was stated that a fresh infancy benefit was granted to the establishment on February 3, 1970, and a mere change of ownership or management would not entitle it to infancy benefit again it was further stated that temporary cessation of work of the establishment from February 3, 1972, to May 15, 1972, did not alter the position the Central Government emphasised the fact that the establishment was being run practically with the same machinery, on the same site and with the same employees, barring a few fresh recruits. Therefore having considered all these matters, the central Government issued directions u/s a of the Act that the petitioners establishment was not entitled to fresh infancy benefit. It is this order which is challenged by the petitioner company in the present petition.

3. As labour was vitally affected by the decision in this matter the representative union was ordered to be impleaded at their instance and so it is joined as respondent No. 4 in this petition. During the course of hearing of this petition, respondent No. 4 union which is the sole mouth piece of all the cotton textile employees in the baroda region under the Bombay industrial relations Act, 1946, and which had its members to the extent of 1466 out of the total number of 1537 employees of the petitioner company, had considered the entire legal position. In view of the settled legal position which would be immediately referred, the representative union adopted the safer and wiser course of settling this matter by code the bargaining with the employer, and accordingly a registered agreement has been arrived at, in pursuance to the notice of change in this connection on October 21, 1974. It was duly registered under the Bombay Industrial Relations Act, 1946, by the registrar on October 22 1974 a slight modification was done in Clause 3 to point out the relevant considerations which were kept in mind by the representative union and the employer while settling this question and accordingly this agreement was modified on October 24, 1974, and even the modification is now registered by the registrar on October 28, 1974. It has been stated in that modified Clause 3 that having regard to the aforesaid dispute and also because of exemption granted to anil synthetic limited, ahmedabad, in similar circumstances by the central Government and also because of the downfall legal position in view of the Supreme Court decision in The Provident Fund Inspector, Trivandrum Vs. The Secretary, N.S.S. Co-operative Society, Changanacherry, The Provident Fund Inspector, Trivandrum Vs. The Secretary, N.S.S. Co-operative Society, Changanacherry, and also with a view to maintain the harmonious relations between the management and employee and preserve industrial peace, that the parties had agreed that the petitioner company shall give the benefit of provident fund scheme made under the provisions of the Act to all those employees who had completed 240 days on or before December 31, 1973, calculated as per the provisions of the said Act and the scheme from January 1, 1974. The representative on has filed an affidavit pointing out how all the elected representatives numbering 61 had unanimously arrived at this agreement in the best interests of the employees. Some of the disgruntled workers who appear to be wholly ill-advised, as is

usually the case in case of such collective bargaining, have now appeared before us and Mr. J. G. Shah had protested against this agreement being approved by this court. Before we go into that question we will consider the whole question on merits as per the settled legal position.

4. The infancy benefit is to be found in Section 16(1)(b) of the Act which runs as under:

This Act shall not apply-

x x x (b) to any other establishment employing fifty or more persons or twenty or more persons, but less than fifty, persons until the expiry of three years in the case of the former and five years in the case of the latter, from the date on which the establishment is, or has been, set up.

Explanation: for the removal of doubts, it is hereby declared that an establishment shall not be deemed to be newly set up merely by reason of a change in its location.

Section 19A(iv) provides that if any difficulty arises in giving effect to the provisions of this Act, and in particular, if any doubt arises as to the number of years which have elapsed from the date on which an establishment has been set up, the central Government may, by order, make such provision or give such direction, not inconsistent with the provision of this Act as appear to it to be necessary or expedient for the removal of the doubt or difficulty; and the order of the central Government, in such cases, shall be final. In this connection we may also refer to one more section viz. Section 1(4) which provides that notwithstanding anything contained in Section 1(3), which provides in Clause (a) that subject to the provisions contained in Section 16, it applies:

(a) to every establishment which is a factory engaged in any industry specified in schedule I and in which (twenty) or more persons are employed,

or what is contained even in the infancy-benefit provision of Section 16(1), the Act can be made applicable to the establishment by a notification in the official gazette, if it appears to the central Government on the application made to it or otherwise that the employer and the majority of employees in relation to the establishment have agreed that the provisions of the Act should be made applicable to such an establishment. On such a notification being issued, the Act shall apply to such establishment notwithstanding the fact that the infancy benefit would be available otherwise to such an establishment. Section 1(4) discloses a clear policy of the Act to encourage such a collective bargaining even in such matters of resolving a doubt or dispute as to whether the infancy benefit would be available and which has to be resolved by the central Government u/s 19A(iv) to see that the Act is duly implemented. In *Ram Narain & Co. v. Union of India* 13 G.L.R. 189, speaking for the division bench, had upheld the vires of this provision in Section 19A on the ground that the power was delegated to the Central Government u/s 4 to extend the Act by amending the schedule of

Industries and by notifying from time to time the class of establishments u/s 1(3) of the Act and, therefore, in such a measure of social justice where the disputes had to be immediately resolved so that the statute did not remain a dead letter and the benefits of this benevolent measure reached the employees concerned as expeditiously as possible, the legislature had advisedly left the function also to the same expert body viz. The central Government to decide such point of doubt or difficulty so that the Act could be speedily implemented. The central Government had to exercise the power as per the various restrictions and guide-lines and norms laid down in the statute within the four corners of the Act. Therefore, it was held by me at that time that this was quasi-judicial power which could never be assailed as arbitrary or unreasonable without any guidelines and the vires of Section 19A was upheld under Articles 14 and 19(1) (g) of the constitution. It was further pointed out at pages 192-193 that there was no delegation of the legislative power in this connection as it was quasi-judicial function which was delegated to the central Government and, therefore, the legislature had not abdicated its function. The delegation was only of the quasi-judicial function to the central Government instead of leaving it to ordinary courts. Thereafter in the full bench decision in Jintan Clinical Thermometer Co. (India) Pvt. Ltd. V. Union of India 15 G.L.R. 616 , this decision was approved. At page 629 I had pointed out the historical setting of Section 19A which was introduced in the Act by the amendment. Originally such a dispute would have to be resolved by recourse to the civil courts with the consequent delay and the necessary conflict of decisions. Therefore, this, expert body that was entrusted with the task of extending the Act progressively to various industries and establishments was also entrusted with this statutory function of resolving doubt and difficulties, particularly in respect of these five statutory issues u/s 19A, so that the Act would not remain a dead letter and it would be expeditiously implemented. It was, therefore, held even in this full bench decision that this was quasi-judicial decision which resulted in a declaratory judgment resolving the dispute as to certain relevant facts or the questions between the parties by removing doubt or difficulty which existed. The relevant doubt May be as to whether a particular factory or establishment was covered under schedule I or under the relevant notification u/s 1(3)(b) or whether twenty or more persons were employed by such establishment or as to the number of years which have elapsed from the date on which an establishment has been set up, or whether the total quantum of benefit to which an employee is entitled had been reduced by the employer. The adjudication of the central Government only decided these relevant facts or the statutory questions entrusted to this special authority. The decision would only set at rest the doubt which had existed or was sought to be created. But the implementation of the Act would still depend on the terms of the statute and, therefore, once the infancy protection had ceased, the Act automatically applied if the relevant statutory requirement of its being a scheduled factory employing twenty or more persons was satisfied u/s 1(3)(a). It was further pointed out that the guideline was provided u/s 19A that the central Government could not make inconsistent direction contrary to the terms of the

statute. The object behind the enactment of Section 19A was to provide speedy remedy as the usual remedy of a court adjudication was dilatory. We had also referred to the decision in Union of India (UOI) and Another Vs. Ogale Glass Works, where it had been held that the employer could resort to this remedy in case of such doubt as to the implementation of the Act. Therefore, the scheme of Section 19A was that this function of deciding these statutory issues as to the relevant facts on which the question of the applicability of the Act turned was left to the decision of the central Government and the decision of the central Government operated as a final adjudication on these statutory questions and it was given finality under the Act. Therefore, it is in the light of this settled legal position that this decision u/s 19A is a quasi-judicial decision, which has to be arrived at by the central Government as per the relevant guidelines, that we have to examine the present question.

5. Even Section 16(1)(b) has now been finally interpreted and the tests for determining the old or the new concern viz., of continuity and identity are now well settled. In R. Ramakrishna Rao Vs. State of Kerala, , it is observed that the intention behind Section 16 clearly reveals that the period of this infancy protection was enacted to give breathing time to the new establishment. That reason does not hold good when the establishment was already old and well founded. That is why the legislature had used these last 13 words in the relevant clause in Section 16(1)(b) from the date on which the establishment is, or has been set up. This precise language covers both the cases whether the establishment was new or whether the establishment was old. The word is refers to the new establishment and the words has been refers to the existing establishment. Therefore, it was in terms held that u/s 16(1)(b) in the case of a new establishment the infancy benefit period of 5 or 3 years as laid down therein, would have to be counted forward from the date the establishment is set up, but in the case of existing establishment, from the date the establishment has been set up. Therefore, if this was the case of an old establishment, the period of exemption for the purpose of applying Section 16(1)(b) of the Act would run from the date on which the old establishment had been set up and could not be counted from the date when the petitioner company set up this establishment. If, however, this was the new establishment set up by the petitioner company, it would be entitled to have the benefit of the infancy protection from the date it has set up the new establishment. In The Provident Fund Inspector, Trivandrum Vs. The Secretary, N.S.S. Co-operative Society, Changanacherry, , after referring to the settled legal position in R. Ramkhshnaraos case, their lordships considered the relevant tests. The conclusion on facts which was arrived at by their lordships was, as stated at page 86, that at the time of the purchase a new owner came in place of the previous owner; the work of the press was stopped on sale and was restarted after a break of about three months; the machinery in the press was also altered; the persons employed previously were not continued in service, while a fresh recruitment of the employees took place, amongst whom only six happened to

be previous employees and compensation was paid to the workmen at the time of the sale. On these facts their lordships held that no other conclusion could be drawn, except that the old establishment was completely closed when the transfer of ownership took place and an entirely new establishment was set up three months later, so that in this case an infancy benefit u/s 16(1)(b) of the Act was available to this newly set up concern from the date when the new establishment was set up. The earlier decision in *Lakshmi Rattan Engineering Works v. Regional Provident Fund Commissioner, Punjab* (1966) I L.L.J. 741 was distinguished on the ground that there it was a mere change in the location of the establishment or a change in the line of business which would not have the effect that a new establishment had been set up provided there was continuity of working. It was further held that the decision in *lakshmi rattan engineering works* could not apply to the case before their lordships where there was no continuity of the business, and there were the additional factors of termination of services of all the workmen and new establishment being set up by a fresh recruitment of workmen, in addition to alteration of machinery in the press. Various decisions of the High Courts were considered by their lordships, which were distinguished on their own facts, and one of the grounds relied on by their lordships was that the case was of transfer of business which was run under licences and those licences were also transferred by the seller to the purchaser, and, therefore, it was held in that decision by the madras High Court that it was a case of sale of a going concern and there was continuity of business. Their lordships refused to express any final opinion as to the correctness of this decision about there being continuity of business in such a case. Their lordships distinguished this decision on the short ground that there was a finding that it was a case of a transfer of a going concern; while the case before their lordships revealed that the old concern was closed and was restarted as a new business after recruiting new workmen. Thereafter their lordships approved the decision of the learned single judge of the madras High Court in *Vittaldas Jagannathadas and Another Vs. The Regional Provident Fund Commissioner, Madras and Another*, by in terms holding that the principle which has to be applied in arriving at a decision in such a case was rightly explained in this decision in the following words:

If in a particular case, it appears that the new establishment is not genuinely such, but is only an old one formally resuscitated in order to avoid the legal obligation, it is always open to the court to hold that it is the old establishment which is substantially continuing, and that the liability to contribute must be affixed to the apparently new form also. But where, in reality, the old establishment has come to an end, and there is a new establishment, this establishment is entitled to infancy protection in its own right, even if it happens by coincidence to have employed a large part of the personnel of the previous establishment.

Applying this correct principle, their lordships held that the only possible conclusion was that the N.S.S. Co-operative society had set up a new

establishment and it was entitled to infancy protection. In *State of Punjab Vs. Satpal and Another*, , their lordships applied the same test of continuity for finding out the identity of the business establishment and in that context it was held at page 657 that merely because there was a change in the manufacturing process, it made no difference, and the factory remained the same factory in spite of the change of the manufacturing process from was to iron nails. Similarly, merely because the partnership had changed, it could never be held that a new business had come into existence. It was in terms held that while deciding this question the court was not concerned with the law of partnership but with the employees provident funds Act. The law takes into account only the existence of establishment and the employment of a certain number of persons in factories over a given period. It is for this purpose that change of location or change of composition of partners or even a change in the manufacturing process was not considered vital in the application of law laid down in *laxshmi rattan engineering* decision. Therefore, these kinds of changes like a change in location or change of composition of partners or a change in the manufacturing process are changes without affecting continuity and that is why their lordships held that what was continuing could not be new. Therefore, the correct test which is settled is that what is continued cannot be succeeded to, as held in *Sait Nagjee Purushotham and Co. Vs. Commissioner of Income Tax, Madras*, . That is why in *Workmen of Brahmaputra Tea Estate, represented by Assam Chah Karamchari Sangha, Dibrugarh Vs. The Incoming Management of Brahmaputra Tea Estate and Others*, , their lordships, even when a question of successor-in-interest had to be decided as per the settled principle in *Anakapalla Co-operative Agricultural and Industrial Society Limited Vs. Workmen*, , in terms held that when a part of the assets were only purchased by a tea company in winding up in respect of which the official liquidator was still functioning, the new concern could not be said to be a successor-in-interest. That is the concept which even the parliament introduced in Section 25FF by providing for payment of retrenchment compensation in case of a transfer of the concern when those relevant conditions are satisfied by continuity of the employees being maintained in the new concern. If the continuity has been broken, what emerges is an entirely new concern. The nexus being the establishment which is organised undertaking where employer and the employee cooperated to produce these textile goods, to find out whether there is a continuity of the old establishment with the new establishment, all the aspects of this entire organism or the establishment will have to be taken into account. The question of continuity will have to be examined not merely from the fact that it is the same site or part of the machinery is the same machinery or even the employees are the old employees. The correct test as laid down by their lordships is that there must be continuity so far as the employer, employees and their joint venture or the establishment is concerned, and it is such a continuity in the change which keeps the identity intact. Even if the constitution of partners has changed or character of production has changed or the site has changed, even in such changes the identity substantially remains unaffected. That is why their

lordships in terms held-that when the case is of a going concern where the successor has a necessary continuity by sale of a going concern and when the employees have the necessary continuity by their services remaining intermediated so that the new concern would be taking over the old employees with continuity of service, their joint venture even after the transfer would remain the same old concern. If, however, the case is one as in the present case where the old company's business was completely wound up after it was finally closed in 1966, and the new purchaser came in on the court's sale of the assets of the old company, there could never be any continuity of this new employer with that old company which was wound up and whose business establishment had finally closed down. Even so far as the mill was run by the Corporation on a lease from this court, the central Government itself recognised break in continuity with the old establishment by giving necessary infancy protection to the Corporation for a period of three years from February 3, 1970. The lease has expired and in fact this Court refused to extend the lease and that is why the liquidator was authorised to sell this establishment in a public auction. The sale is not of a going establishment. In fact, the tripartite arrangement which had the seal of this Court makes it abundantly clear that there was no continuity whatever either with the old establishment of the old company or with the establishment which was started by the Corporation as an infant establishment. In fact, the Corporation had agreed to give up possession of all the land and building and fixed assets which it had taken under the lease and even the official liquidator had to give up possession of the extra open land which was not leased, by February 3, 1972. The period of lease was expiring on February 2, 1972 and it was by the order of the court that the Corporation was permitted to work the mill only to clear out the goods in process by stopping feeding cotton in the blow room from March 13, 1972 and gradually stopping other processes so as to close down all the processes and finally deliver possession of the entire mill to the purchaser company on or before April 13, 1972. That is why in Clause 4 the Corporation agreed to pay to the purchaser an amount of Rs. 15000/- per month as compensation for using the machinery and premises of the mill for this limited period for clearing the goods in process. Further, the conditions which are agreed by all the parties concerned including even the official liquidator are that the Corporation shall discharge all the workers, clerks, staff members and officers by paying them all their legal dues. Therefore, the services of the employees even with the Corporation were to stand finally terminated and the employees were to look for their legal dues to the Corporation. That is why, it was further agreed that this petitioner company would start the mill after the Corporation handed over possession and it would employ such a number of workers as required by it afresh as new employees. This Clause 6 clinches the entire issue so far as the employees are concerned. In fact that was the solemn agreement with the representative union and it could hardly lie in the mouth of the workers to contend that there was any continuity so far as the employees were concerned when they had agreed to accept employment with the petitioner company as new employees. Clause 6A of this solemn agreement is very eloquent because the

petitioner had agreed to restart the mills in such a way that the period of unemployment did not exceed six weeks. The petitioner company had however introduced a necessary condition for this purpose that such workers who wanted to be reemployed by the petitioner company would have to write to the provident fund authorities to close their accounts both with the old company and with the Corporation before being newly employed. If these two relevant conditions which have been incorporated into this solemn agreement with the representative union which is the sole mouth-piece of all the workers and whose agreement binds all the employees, were borne in mind, it could never be contended that there was any continuity so far as the employees were concerned. The employees had their services duly terminated both by the old company and by the Corporation and they had in terms agreed to close down their accounts both with the old company and the Corporation before they were employed afresh by the petitioner company. Therefore, not only so far as the employer is concerned it is totally a new concern which has severed all connection with the old company and the Corporation, but in so far as the employees are concerned, there is not an iota of evidence for showing any continuity either with the old concern or with the Corporation because they had accepted employment only as fresh recruits with the petitioner company. Therefore, so far as this industrial establishment was concerned, where the old employer and the old employees cooperated for producing these textile goods, it was totally a different establishment. The old concern or the concern of the Corporation had nothing to do with the concern of this new employer which has recruited all the employees afresh, even though they may be old employees. Besides, a very significant fact to be borne in mind is that so far as the old mill company was concerned, even the investigation committee under the industrial development Act, 1952, had recommended it to be scrapped. Even the Corporation ran this almost scrap concern only to give unemployment relief to the employees incurring heavy losses, of-course, because they had the assurance of the state Government as earlier referred to. That is why the new employer had to sink in as much as 18 lakhs of rupees in additional machinery to make this unit a viable unit. This is a total rejuvenation of the old concern into a new viable unit. If, therefore, the test of continuity was to be applied to the entire organised establishment as a whole, which was carried on by the mutual co-operation of the old employer and the old employees for producing the textile goods, the new establishment had completely parted company, lock, stock and, barrel and, therefore, there being no continuity, there could be no identity preserved. In such a context, there would be no question of mere temporary cessation of work. The closure of work is totally a different concept from closure of establishment. Their lordships in N.S.S. Co-operative Society case had approved the principle so succinctly laid down by the learned single judge of the Madras High Court in Vittaldas Jagannathadas and Another Vs. The Regional Provident Fund Commissioner, Madras and Another, . The query has to be whether in a particular case a new establishment is not genuinely such but is only old one formally resuscitates in order to avoid the legal obligation. Such disguise could always be pierced through so that the liability could be

fastened to the apparently new form as well. But where in reality, the old establishment had come to an end, and there was a new establishment, that establishment was entitled to infancy protection in its own right, even if it happened by co-incidence to have employed a large part of the personnel of the previous establishment. Here, rightly there was no suggestion that this was not a case of genuine and real closure of business both by the old company which was wound up and by the Corporation which went out on the expiry of the lease. Even the representative union which was the sole mouth-piece of the workers had realised this fact and had, therefore, by collective bargaining, persuaded the new employer to give employment to the old personnel after they had completely severed their connection with the old, by writing to the provident fund authorities to close their accounts both with the old company and with Corporation and by getting fresh employment as new employees with the present employer. If this solemn agreement of all concerned was looked into, the conclusion was inescapable that the organised establishment as a whole had been completely closed and continuity was completely broken and it is, therefore, not a case of mere temporary cessation of work or closure of work. This was clearly a case of closure of the old business or the old establishment giving rise to the new.

6. The grounds which have been relied upon by the central Government make no reference to this settled legal position even though admittedly this decision was cited at the hearing before the authority which decided this matter. The first reason given in the impugned order is that the old establishment which was restarted on February 3, 1970 had continued to function when it was taken over by the petitioner company. That is ignoring all realities. So far as the old company was concerned, not only the establishment was closed but the entire business was wound up and that is why even the central Government had recognised that fact by giving infancy benefit to the Corporation when it had run the mill under the lease from this court. It is true that after the lease expired, time was given under the order of this Court to the Corporation to enable it to clear the goods in the process. But that was not a cessation of work. That was a complete closure of the business of the lessee Corporation which went out of the picture leaving no trace behind. Even for the period they remained in possession for thus clearing out the goods in process, the Corporation had to pay the compensation amount at the rate of Rs. 15,000/- every month for use and occupation as agreed in the solemn agreement which had the seal of this court. Therefore, to treat this as sale of going concern is a complete misnomer. It proceeds from a confusion of all legal concepts. The second ground given is that fresh infancy benefit could not be granted because the infancy benefit was once granted to the Corporation. This reasoning is surprising. The infancy benefit is granted to the new establishments to give them breathing time and, therefore, whenever the old establishment dies giving rise to a new establishment, the question of a fresh infancy benefit would always arise and it is wholly irrelevant in that context that infancy benefit was granted to the Corporation which ran the concern under a lease from the liquidator. The same infancy benefit would be

available if the purchaser from the liquidator sets up his own new establishment in place of the old establishment of the old company or of the Corporation, therefore, this ground is totally irrelevant and misconceived and proceeds on a confusion that this was a mere change of ownership and management when really it was a change in the entire identity of the employer, who had no continuity with the old employer, and which would therefore give rise to a totally new establishment. The third ground of temporary cessation of work from February 3, 1972, to May 15, 1972, is equally misconceived and proceeds from the same confusion of thought as earlier pointed out by making no difference between a cessation or a closure of work and complete closure of business. The present case was not one of cessation of work but was of a complete closure of business both of the old company and of the Corporation. The last ground which is relied upon is that the establishment is being run practically with the same machinery on the same site with the same employees barring a few fresh recruits. This ground could not be considered in isolation ignoring the eloquent solemn agreement which speaks for itself. The solemn agreement recites the salutary fact that continuity of the employees was completely broken. It also recites the fact that it was a new employer who was coming in existence on purchase of all moveables and Immovable assets of the company. The purchase was not only of the assets, which were leased to the Corporation but even of other land which was of the old company. The old establishment of the old company was almost a scrap and it is the petitioner company which sunk almost 18 lakhs of rupees and turned it into a viable unit. The old hands have been employed, of-course, but that is to fulfil the obligation of this solemn collective agreement. Therefore, merely because on the same site, with some of the old machinery and with the old hands, this new employer has set up his new establishment, it could never introduce any continuity of the old establishment. The whole continuity in the process of the change has been broken for good and, therefore, identity of the establishment could never be preserved. Therefore, if the tests of continuity and identity as propounded by their lordships were applied by the central Government, the conclusion is inescapable on the undisputed facts of the present case that the company was entitled to the benefit of infancy protection u/s 16(1)(b). Even the suggested new ground that the factory license was the same could hardly make any difference in the context of the undisputed facts.

7. Mr. Vakharia, however, vehemently relied upon the decision of the Maharashtra High Court in Sayaji Mills Ltd. Vs. P.A. Bhaskar, , by the division bench consisting of Chandrachud J. (as he then was), and Apte J. The consistent trend of the various High Court decisions has been referred to which started with the unreported decision of justice tendolkar in misc. Application No. 389 of 1956, decided on November 5, 1956, as a single judge. There a company called the chalisgaon shri Laxminarayan Mills Co. Ltd. Carried on business of manufacturing textiles in their mills known as the chalisgaon shri laxminarayan mills. The company was ordered to be wound up at the instance of the creditors in August

1951. In March 1952 the liquidator gave a lease of the mills to M/s. Kotak & Co. For a period of three years from 1952 till 1955. On the termination of the lease, the lessee discharged all the employees and paid them their dues fully, including the provident fund standing to their credit. On February 28, 1955, the liquidator granted a lease to one Babulal Shrivallabh for a period of one year from 1st March 1955 to 29th February 1956. It was provided in the lease that the lessee shall not be liable in respect of any liabilities of the mills incurred prior to the 1st of March 1955, and that they shall work the mills as a new concern and not as successor either of the lessors or M/s. Kotak and company. The new lessees, viz. M/s. Babulal shrivallabh entered into possession on 13th March 1955 and announced by a notice that workers would be recruited on a new and purely temporary basis and that no worker would be entitled to any benefit that might have accrued to him for his previous service in the mills. The lessees applied for and obtained a licence under the factories Act for working the mills. In the context of these facts Tendolkar J. Had held that this was not a new establishment. The learned single judge held that the Act was made applicable to factories and not to the owners thereof, or in other words, it applied to factories irrespective of who the owners from time to time might be. The learned judge further held that the question was whether the order of liquidation and the consequent temporary discontinuance of business until a lease was granted to kotak and company had the consequence of making the factory which was established ceased to be established, and the answer of the learned judge was in the negative. It was pointed out that temporary cessation of the Activities of an established factory could not lead to the result that the factory ceased to be established for the purposes of the Act, for if it did, the class of employers who spared no ingenuity in seeking to deprive the employees of all the benefits conferred upon them by statute would have a convenient handle in order to deprive the employees of the benefits under the Act. The learned single judge took it that the establishment of a factory involved that the factory had gone into production and no more. But once it went into production, a temporary cessation of its Activities, for whatever reasons that cessation took place, could not, take the factory out of the category of an established factory for the purposes of the Act. The learned single judge went further and stated that even a complete change in the whole body of employees could not make a factory which was established, ceased to be established. In any event, the Act was a beneficial legislation for the benefit of the employees and every construction of its provisions which would defeat the object of the legislation and lead to an evasion, must be rejected, unless the clear language of the Act left no option to the court but to accept such an interpretation. This view was followed in this Bombay decision and in a number of cases referred to in that decision. At page 423 Chandrachud J. (as he then was) had pointed out that the only decision which had struck a discordant view was that of Anantnaray-Anan J. In Vittaldas Jagannathadas and Another Vs. The Regional Provident Fund Commissioner, Madras and Another, , where it was held as under:

That an establishment means an organised body of men maintained for a purpose...where, therefore, on the entire complex of facts of a given case, it can be concluded that the legal entity the establishment had come totally to an end, and was succeeded by a fresh legal entity, then that fresh entity is the entity to which the Act applies as a first impact and, if that entity is entitled to infancy protection, that protection will have to be granted as a matter of course, even if it happens by coincidence to have employed a large part of the personnel of the previous establishment.

The madras decision was a case of a lease of a cinema house and Anant-Narayanan J. Had held that on the termination of the old lease of the talkies a new establishment must be deemed to have come into existence so as to attract the exemption of Section 16(1). It is true that Chandrachud J. (as he then was) was unable to agree with that decision. However, their lordships in N.S.S. Cooperative society case had approved the principle so succinctly stated by the learned single judge of the madras High Court, Anantnarayanan J. In this decision, in Vittaldas Jagannathadas and Another Vs. The Regional Provident Fund Commissioner, Madras and Another, as earlier pointed out by us. Therefore, Mr. Vakharia could hardly draw any inspiration from the other line of decisions which is relied upon in this maharashtra decision where the trend was started by the decision of justice tendolkar. The difficulty underlying the decision of justice tendolkar is realised by the central Government because they themselves refused to hold that same old concern of the old company was continued by the Corporation. Their lordships in N.S.S. Co-operative society case have pointed out the correct principle to meet those cases of disguise where by temporary cessation of work or closure of work the employer wants to get out of the Act. Where however the case is of a real bona fide closure of business as distinct from temporary cessation of work or closure of work, there is a clear interruption in the continuity of the establishment. It would be completely wrong to equate the establishment with merely a factory site, with the old machinery or with the old employees, because the industrial establishment is a complex legal entity which is an organised industrial Activity which was carried on with the mutual co-operation of the old employer and the old employees for producing these textile goods. It was that complex industrial establishment which had been discontinued because the old employer had closed his business viz. The old company and the Corporation, and the old employees also had been duly terminated and had been employed afresh only in view of collective agreement entered into with the representative union which had the seal of this court. It is, therefore, a mere coincidence that the old employees have got fresh employment with the petitioner company which had set up a new establishment on the same site with the help of old machinery which was almost a scrap. Therefore, the legal position having been finally settled by their lordships by approving the discordant note sounded by Anantnarayanan J. In Vittaldas Jagannathadas and Another Vs. The Regional Provident Fund Commissioner, Madras and Another, , the conclusion was inescapable, if the settled law was followed by the central Government, that the

petitioner company was entitled to the full infancy benefit from the date when it set up its new establishment i.e. on May 15, 1972. In that view of the matter we would have to quash the decision of the central Government because the settled legal principles had not been followed and the decision rested on totally irrelevant misconceived grounds.

8. Next question which would arise would be as to the relief which we should give in the present case in view of the aforesaid conclusion on merits of the case. So far as the authorities are concerned, it is obvious that they cannot have a fresh round or fresh innings after they had their say in the matter, on all the facts that they had put up against the petitioner company. They have not been able to establish that this was an old establishment, in view of the aforesaid settled legal position. Therefore, at their instance no question of remand for a fresh hearing to the central Government could arise. So far as the workmen are concerned, the position could have been different because, as earlier pointed out by us, the function exercised by the central Government u/s 19A of the Act is a quasi-judicial function. Even if Section 19A itself does not expressly provide for a notice while arriving at this adjudication affecting so seriously the rights of the employees, justice of the common law would supply the omission and would require notice and an opportunity to be heard to the employees, when a decision adverse to the employees is to be arrived at by holding that the petitioner company is entitled to a benefit of the infancy protection, as per the settled legal position in *Shri Bhagwan and Another Vs. Ram Chand and Another*, and *The Keshav Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others*, . Fortunately, however the employees have rightly considered that the remand to the authority would be futile and representative union also does not want a remand the representative union which is the sole mouth-piece of the employees has now entered into the registered agreement which binds all the employees u/s 114 of the Bombay industrial relations Act 1946 in fact, the employees of the petitioner company to the tune of 1466 out of 1537 are even the members of the representative union.

9. So far as the Bombay Industrial Relations Act, 1946, is concerned the position of law is well settled that it is only the representative union which alone has a right of this collective bargaining in such an industrial dispute and the individuals would have no locus standi in the matter laid down in the decisions in *Girja Shankar Kashi Ram Vs. The Gujarat Spinning and Weaving Co. Ltd., & Textile Labour Association*, *Bhadra Ahmedabad Vs. Ahmedabad Mill Owners Association*, Ahmedabad, . In the latter decision even in the other appeal by the individual semi, clerks, their lordships passed an order in terms of the compromise with the representative union in view of the salutary scheme in Section 27A Section 32 and Section 33 of the Bombay industrial relations Act, 1946. Therefore, the individual workmen would have no locus standi when the representative union has settled this dispute by Acting in its own right as a representative union by resolving doubts and difficulties. Mr. Shah, however, vehemently relied upon the fact that this was not a proceeding which had started under the Bombay

industrial relations Act, 1946. It is true that the matter has arisen in regard to the doubt whether this was a new establishment or old establishment for the purposes of the infancy protection benefit u/s 16(1)(b) of the Act. That, however, does not taken the matter out of the sphere of the collective bargaining of the industrial dispute legislation, even though for a speedier resolution of this dispute or a doubt the central Government has been constituted as an expert body. While resolving this doubt or difficulty, it can take into consideration such beneficial settlement of a collective dispute, as ultimately it is the employees who are going to be affected by the decision of the central Government when the infancy benefit is granted to the petitioner company by adjudication u/s 19A In Razia Begum Vs. Sahebzadi Anwar Begum and Others, , in cases of declaratory judgment their lordships held that such parties affected and bound by the decision would have to be joined as necessary parties so as to effectively and completely adjudicate upon the controversy. Therefore, normally the representative union would have got a notice of hearing of this dispute. In view of the settled legal position, if the representative union had appeared before the central Government and compromised this hopeless claim, the authorities would have surely given effect to this compromise which was in the best interest of the employees. The authorities are not expected to take contentious stand by evincing a completely dead approach. The authorities cannot in the end make good the loss if ultimately the labour loses. It is the representative union which has to deliver the goods to the employees. That is why we are never convinced that this is a matter outside the scope of collective bargaining. The whole field of labour disputes is a live, sensitive field where imaginative approach has to be adopted by all concerned if the parties are not to be left to the law of jungle. These matters are not to be decided on legal technicalities in a contentious spirit, but keeping the true perspective of the industrial legislation in mind to encourage better harmonious relations between the employers and employees and to maintain industrial peace, so that not only the two co-operative elements in this joint industrial venture, the labour and capital, benefit by continuance of their industrial cooperation but the society reaps benefit of this industrial peace.

10. Both Mr. Vakharia and Mr. Shah in this context vehemently relied upon the decision in The Union of India (UOI) and Another Vs. Ogale Glass Works, . That decision is hardly relevant in the present context because it proceeds in terms on the footing that the decision of the central Government not to enforce the provisions of the Act was only a provisional decision because the High Court had at that time taken the view that the Act did not apply to that Activity. Once that view was overruled by their lordships and the legal position was settled, there being no final decision u/s 19A there was no question of any res judicata or any estoppel against the statute. That is why when the industrial award proceeded on the footing that the Act was not applicable and the provident fund was introduced at much lower rates, the award could never be pressed in service against the clear, binding provisions of the Act. That is the salutary guideline laid down by the parliament by an in built guarantee in Section 19A itself, because it

is provided that while resolving doubt or dispute the central Government was to give such direction which is not inconsistent with the provisions of the Act. Therefore, if the Act applies, the central Government has no jurisdiction to give a decision u/s 19A so as to deprive employees of their rights under the Act. That is why at page 694 their lordships in terms held that the object of the authorities in enforcing the Act was only to discharge the statutory duty enjoined on them for the benefit of the employees concerned. In view of the decision of the Supreme Court, it was held that the Act. And the scheme applied to all the sections and, therefore, the employer was liable to make contributions at the rates specified in the Act and, therefore, the award giving lower rate in industrial adjudication could not stand in the way of the authorities demand for the period mentioned therein regarding the provident fund and the administrative charges as per the Act. In the present case, the facts are totally different because the question of collective bargaining arose in the very process of adjudication u/s 19A What the representative union is doing is not to deprive the employees of their rights but to confer right when under the settled legal position the employees would be completely deprived of any provident fund benefit. Therefore, in the present case, what is sought to be done is not to evade the obligations as per the settled law but to confer better rights on the employees according to the provisions of the Act. In fact, that is the policy enacted by the provisions in Section 1(4) of the Act. As earlier pointed out, Section 1(4) in terms enacts that notwithstanding anything contained in sub-section (3) of Section 1 or Section 16(1), if the employer and the majority of employees in relation to any establishment have agreed that the provisions of the Act should be made applicable to that establishment, the central Government can make the Act applicable to that establishment by a notification in the official gazette. Therefore, the collective agreement which has been arrived at in the present case is really carrying out this policy of the Act and the central Government while deciding the matter u/s 19A would have to give effect to this collective settlement which is in the best interests of the employees and which can be arrived at only because the representative union has been able to persuade the employer to be generous enough and not to rest itself on legal technicalities. This is a human approach which both the employer and the employees have evinced for a satisfactory solution of this dispute. An attempt is, of-course, sought to be made by some of the disgruntled employees to explode this settlement and the authorities have in terms remained indifferent to this aspect even after this collective settlement was brought to their notice. If the authorities cannot have fresh innings by getting remand and if the representative union does not want such a fruitless remand in view of all the facts of the case and the settled legal position, it would be the duty of this Court not to rest at merely quashing the impugned order but to substitute the order as per the consent terms so that these employees get the benefit of the provident fund as agreed upon with the representative union. u/s 19A the central Government has all the powers while resolving this doubt or dispute to give the necessary direction. Such a direction on the facts of such a particular case can include direction u/s 1(4) that this collective agreement

having been arrived at with the representative union, which under the present state industrial law means all the employees in this concern, it should be made applicable to the establishment by a proper notification u/s 1(4) in the official gazette.

11. As far as the individual employees are concerned, we have already pointed out that they would have no locus standi. Even otherwise, in such matters of labour settlement a few individuals cannot hold up a benefit duly secured by collective bargaining by a representative union. In *The Sirsilk Ltd. and Others Vs. Government of Andhra Pradesh and Another*, their lordships had to consider the question whether it was open to the Government not to publish award u/s 17(1) when a settlement had been arrived at between the parties after the proceeding before the tribunal had come to an end and the tribunal had sent its award to the Government but before its publication by the Government. Looking to the salutary scheme of this industrial legislation, various provisions were harmonised by holding that the only way to reconcile Section 18(1) and Section 18(3) was to withhold publication of the award because a binding settlement had already come into force, in order to avoid possible conflict between a binding settlement u/s 18(1) and a binding award u/s 18(3). In such a situation, the Government ought not to publish the award u/s 17(1) within 30 days of its receipt as per the mandatory provision, and in cases where the Government was going to publish it could be directed by the High Court not to publish the award in view of the binding settlement arrived at between the parties u/s 18(1) with respect to the very matters which were the subject-matter of adjudication under the award. This would not in any way affect the mandatory nature of the provisions in Section 17(1), for the Government would ordinarily have to publish the award but for the special situation arising in such cases. The other reason which was given by their lordships was that the reference to the tribunal was for the purpose of resolving the dispute that may have arisen between employer and their workmen. Where, however, a settlement was arrived at between the parties to a dispute before a tribunal after the award had been submitted to the Government but before its publication, there was in fact no dispute left to be resolved by the publication of the award. In such a case, the award sent to Government might very well be considered to have become infructuous and so the Government should refrain from publishing such an award because no dispute remained to be resolved by it. A rider was no doubt added that if any dispute arose as to the bona fides of the settlement, that would be another industrial dispute which the Government might refer for adjudication and if on such an adjudication the settlement was found not to be binding u/s 18(1) of the Act, it would always be open to the Government then to publish the award which it had withheld, though such instances were likely to be anything but extremely rare. In the present case, if in view of the settled legal position the employees refuse to undergo tortuous course of a fresh remand and reach this just and fair settlement, this Court would surely substitute this order as per the consent terms after the central Governments impugned order is quashed. Any delay in

such a labour matter would defeat the whole salutary purpose. Even in *The Workmen of Government Silk Weaving Factory, Mysore Vs. The Presiding Officer, Industrial Tribunal, Bangalore and Others*, , their lordships had pointed out the approach to be adopted when a few workers insisted on an award of industrial tribunal when the matter was already settled or compromised with the management by majority of the workmen. Their lordship pointed out that the tribunal had posed two right questions:

(1) Whether the workmen or a majority of them, through their accredited representatives, have entered into a settlement or compromise with the management, and

(2) Whether the terms of such settlement are to the manifest advantage of the workmen.

12. The purpose of industrial adjudication was to establish peaceful industrial relationship between employer and employee, and therefore the settlement must be acted upon and award must be passed in terms thereof. The High Court would be justified in declining to interfere with such an award. The settlement was beneficial to a substantial body of workmen, and even if a few employees are not satisfied with the same, the dispute need not be resolved on merits. It is the very same approach which has appealed to us and we refuse now to make any remand because the authorities are not entitled to a fresh round and the representative union does not want such fruitless remand.

13. In the result, we would allow this petition. The petition is, therefore, allowed by quashing the impugned order of the central Government under the Section 19A dated April 15, 1974 and by substituting in its place the order as per the consent terms embodied in the registered agreement, dated October 21, 1974, as modified on October 24, 1974. The central Government is further directed to issue a notification u/s 19(4) in that behalf to avoid any further difficulty in speedier implementation of the Act. Rule is accordingly made absolute with no order as to costs in the circumstances of the case.