
(1979) 08 GUJ CK 0002
In the Gujarat High Court

Suhrid Geigy Ltd.

APPELLANT

Vs

Chemical Mazdoor Sabha

RESPONDENT

Date of Decision : 23-08-1979

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(2), 10(2), 2(kkk)

Citation : (1980) 21 GLR 466

Hon'ble Judges : S.H. Sheth, Acting C.J.; S.B. Majmudar, J

Bench : Division Bench

Judgement

S.B. Majmudar, J.—The petitioner company, by the present. Pe on cTaaenges an award passed by the Industrial Tribunal, Gujarat, in a reference u/s 10 of the Industrial Disputes Act, 1947, by which the Tribunal has declared that the lay-offs of about 215 workers effected by the petitioner company, vide Notices, Ex. 8/1 dated 18-11-74, Ex. 8/2 dated 4-12-1974, and Ex. 8/3 dated 27-12-1974 were not in accordance with law and, therefore, they were illegal; and also further declared that all the concerned workmen covered by the said lay offs would be entitled to receive full wages for the period for which they were laid off.

2. A few facts leading to the present proceeding may now be stated:

The petitioner company is registered under the Indian Companies Act and is engaged In the business of manufacturing pharmaceutical and chemicals. It has got its factory at Renofi in Baroda District.

3. The respondent is a trade union registered under the Indian Trade Unions Act and commands membership of the majority of the workers employed in the factory of the petitioner at the relevant time.

4. According to the petitioner company it has two divisions, namely-(i) Dyes and Chemical division including petro-chemicals, and (ii) pharmaceutical division. In the Dyes and Chemical, division, the petitioner company employs on an average about 1000 workers, whereas in the Pharmaceutical Division, the petitioner company is employing about 700 workers. The petitioner's case is that the

process of manufacture being highly specialised, the workers are not transferred from one division to another, even for Badli work, and, for all practical purposes, the two divisions are treated as independent divisions. Further case of the petitioner company is that in the year 1974 there was accumulation of stock in the Dyes and Chemical Division of the petitioner company and there was non-availability of adequate sales orders with the result that petitioner company was constrained to curtail its production in the Dyes and Chemical Division in the later part of 1974, and consequently the petitioner company had to lay off the workmen according to seniority in the Division. The petitioner company had accordingly put up three notices, dated 18th November 1974, 4th December 1974 and 27th December 1974, laying off 163 workers, 30 workers and 22 workers respectively on each occasion.

5. The respondent union challenged these notices of lay off put up by the petitioner company and it addressed two letters, dated 16th November 1974 and 19th November 1974 to the petitioner company raising dispute regarding the validity of the concerned notices.

6. In view of the dispute raised by the respondent union, negotiations ensued between the parties and ultimately it appears that the parties decided to make a joint reference of the dispute u/s 10(2) of the Industrial Disputes Act, hereinafter referred to as the I.D. Act for the sake of convenience.

7. Accordingly the parties made a joint application to the Assistant Commissioner of Labour, Baroda, for having a reference made to the Industrial Tribunal to resolve the dispute between the parties. The Assistant Commissioner of Labour by his order dated 28th October 1975 referred the dispute to the Industrial Tribunal Gujarat presided over by Shri R.C. Israni. As there is a serious controversy between the parties regarding the scope and ambit of the aforesaid joint reference to the Industrial Court, it is necessary to reproduce the exact wordings employed in the aforesaid reference:

Whether lay off of about 215 workmen Vide notices dated 16-11-74, 4-12-74 and 27-12-74 is in accordance with the provisions laid down under the Industrial Disputes Act and Rules made thereunder and consequential relief thereof.

8. When the aforesaid reference was received for adjudication by the Industrial Tribunal, Gujarat, due notices were issued to the parties. They submitted their written statements of claim and defence. Thereafter the dispute was taken up for adjudication by the Tribunal. The respondent Union examined one witness Vasantrao Anandrao, a workman, at Ex. 10 and on behalf of the petitioner company affidavit Ex. 12 was filed by one R. K. Mehta, who was tendered for cross-examination by the other side. Accordingly he was cross-examined at Ex. 13.

9. In the light of the evidence recorded before the Tribunal and in the light of the arguments addressed, the Tribunal proceeded to resolve the dispute referred to it by the joint reference of the parties. The impugned judgment and award of the

Tribunal show that three contentions or objections were raised before it on behalf of the respondent union in support of its contention that the impugned three lay offs were illegal. The first objection was that factually all the three lay offs were not justified and that there was no paucity of supply orders of goods as contended by the company and consequently, there was no valid or genuine reason for effecting the concerned lay offs. The second objection or contention raised on behalf of the respondent union before the Tribunal was that the notices as contemplated by the standing order 20 of the Model Standing Orders for the workmen doing manual or technical work, were not given to the workmen before declaring those lay offs and, therefore, the same were illegal and invalid. The third contention raised on behalf of the union was that the principle of seniority was not followed at the time of laying off the concerned workmen; that junior workmen were retained and were permitted to work while the senior workmen were laid off and hence also the impugned lay offs were illegal and they were required to be declared as such.

10. The petitioner company combated the aforesaid contentions raised on behalf of the respondent union on the merits of the case. But in addition the company submitted a preliminary objection for consideration of the Tribunal. That preliminary objection was to the effect that the reference made to the Industrial Tribunal was of a limited nature and the Industrial Tribunal had no jurisdiction to enlarge the scope of the said reference and to embark upon an inquiry about the validity of the concerned lay offs on grounds which did not form part of the terms of reference.

11. The Tribunal repelled the preliminary objection regarding its jurisdiction to entertain contentions of the parties on merits, by holding that its jurisdiction was not whittled down by the terms of reference. Having overruled the preliminary objection on behalf of the petitioner company, the Tribunal proceeded to consider the points on merits as raised before it and came to the conclusion that the impugned lay offs could not be declared to be illegal on the ground of absence of any factual basis. On appreciating the evidence led by the parties, the Tribunal took the view that petitioner company could establish that at the relevant time it had faced fall in the orders for supply of goods and hence the impugned lay offs were factually justified. The Tribunal also overruled the objection on behalf of the respondent union by which it was sought to be urged that in effecting the impugned lay offs the petitioner company had not followed the principles of seniority. Thus, the aforesaid two planks of objections raised by the respondent union against the impugned lay offs were held to be unsustainable by the Tribunal. But the Tribunal declared the impugned lay offs to be illegal on the ground that the petitioner company had not followed the procedure prescribed by the Standing Order 20 of the Model Standing Orders for workmen for manual or technical work as framed under the provisions of the Industrial Employment (Standing Orders) Act, 1946, and hence it was held by the Tribunal that the petitioner company was not entitled to lay off workers on the three occasions on which the impugned layoffs were declared. Consequently it was held that the

petitioner company had wrongfully relieved the concerned workmen on those relevant dates, and concerned workmen were entitled to full wages for the period during which the impugned lay offs were effected. As stated above, the aforesaid award of the Tribunal has culminated into the present petition on behalf of the petitioner company.

12. Mr. J.C. Bhatt, learned Advocate, appearing for the petitioner Company, has raised the following submissions in support of the petition.

(1) The reference made to the Industrial Tribunal at the instance of the parties was a joint reference u/s 10(2) of the Industrial Disputes Act and it was limited in its scope and ambit as seen from its terms of reference and consequently the Industrial Tribunal had no jurisdiction to go into the question regarding the legality of the lay offs under the provisions of the Model Standing Orders as well as into the question regarding the legality of the lay offs under the provisions of the industrial Disputes Act and the rules made thereunder except for the limited purpose for deciding the question about the applicability of the correct principle of seniority while laying off the concerned workmen.

(2) On merits Mr. Bhatt contended that the Tribunal had apparently erred in law in holding that the impugned three lay offs were violative of the provisions of the Model Standing Order 20 and consequently the Tribunal was not justified in giving the impugned declaration in favour of the respondent union. It was further submitted by Mr. Bhatt that the sole ground on which the Tribunal had held against the petitioner company was not at all made out on the facts of the present case and consequently the impugned award was liable to be quashed and set aside.

Mr. M.R. Anand, learned Advocate appearing on behalf of the respondent union, on the another hand supported the award of the Tribunal on the question of jurisdiction as well as on merits.

13. We may point out at this stage that on merits the Tribunal had rejected the two objections raised on behalf of the respondent union while it attacked the impugned lay offs. These objections pertained to the genuineness of the concerned lay offs on account of fall in the orders for supply of goods as well as to the challenge to the lay offs on the ground of alleged not following of the principle of seniority by the petitioner company while laying off the concerned workmen. These two objections were overruled by the Tribunal in the light of the factual position as emerged on the record of the case. Mr. Anand was not in a position to point out any apparent error or flaw in the reasoning of the Tribunal while it rejected the aforesaid two objections on behalf of the respondent union. But Mr. Anand supported the award of the Tribunal on the third ground, namely, that the petitioner company had violated the provisions of Model Standing Order 20 and hence the impugned lay offs were illegal.

14. We may now proceed to examine the rival contentions raised before us by the parties.

15. So far as the first submission of Mr. Bhatt on the question of jurisdiction of the Industrial Tribunal is concerned, he has presented two limbs of argument, before us in support of his contentions. The first limb of Mr. Bhatt's submission is that the present reference to the Industrial Tribunal was pursuant to the joint application by both the parties u/s 10(2) of the I.D. Act, 1947. He invited our attention to the form of application u/s 10(2) of the I.D. Act which is at Ex. C-1 to the petition. The officer-barer of the respondent union had signed the said form. In para 2 of the said form I it was mentioned that whereas an industrial dispute is apprehended/exists between Suhrid Geigy Ltd. and Chemical Mazdoor Sabha and it is expedient that the matters/the dispute specified in the enclosed statement which is connected with or relevant to the dispute should be referred for investigation and settlement/inquiry/adjudication by a Labour Court/Tribunal an application is hereby made under Sub-section (2) of Section 10 of the Industrial Disputes Act, 1947, that the said matters/said dispute should be referred to a Labour Court/Tribunal. The enclosed statement to the said reference application was also pointed out to us by Mr. Bhatt. He drew our attention to paras (b) and (e) of the said statement. Para (b) of the said statement mentions specific matters in dispute and in that column the details given are: "Whether lay off of about 215 workmen - vide notice dated 16-11-74, 4-12-74 and 27-12-74 is in accordance with the provisions laid down under the Industrial Disputes Act and rules made thereunder and consequential relief thereof." Mr. Bhatt also invited our attention to para (e) of the said statement which mentions - efforts made by the parties themselves to adjust the dispute and the details of efforts which are mentioned in the said column read as under:

The Chemical Mazdoor Sabha-vide their letters dated 16-11-74 and 19-11-74 tried to explain the management their view point that while resorting to lay off, the basis of category wise seniority amongst all the employess should be considered. Management during their discussion with the Sabha's representatives made it clear that the lay off of workmen is always for a temporary period and the workmen, working in the Sections and/or department, which are affected due to the reasons which led to the lay off are to be laid off according to their categorywise seniority.

It is further mentioned that:

The Sabha however could not agree to the above and even threatened to take direct action. Subsequently it was decided to go in a for a joint Reference u/s 10(2) of the Industrial Disputes Act, 1947.

On this statements are put the signatures of both the Personnel Manager of the petitioner company and President of the respondent union respectively.

16. Mr. Bhait taking a clue from the recitals mentioned in para (e) the efforts made by the parties themselves to adjust the dispute, submitted that the real dispute between the parties which was made the subject matter of the joint reference u/s 10(2) pertains only to the application of the principle of seniority

while laying off the concerned workmen and that only appears to be the bone of contention between the parties which ultimately culminated in the present reference before the Tribunal. Hence in the submission of Mr. Bhatt, whatever may have been the specific matters in dispute, as mentioned in para (b) of the said statement, jointly signed by the parties, their attention was concentrated on the sole question of application of the correct principle of seniority while laying off the concerned workmen and that alone was the real dispute between the parties which formed the basis of para (e) of the said statement. Under the circumstances, according to Mr. Bhatt, the Industrial Tribunal was concerned only with the question regarding the applicability of the correct principle of seniority while laying off the concerned workmen. Thus, the first limb of Mr. Bhatt's argument pertains to the jurisdiction of the Tribunal in so far as it considered questions other than one of seniority while deciding the legality of the concerned three lay offs.

17. Now so far as this aspect of the matter is concerned, we are not able to agree with Mr. Bhatt that the only question referred to the Tribunal was pertaining to the applicability of the correct principle of seniority while laying off the concerned workmen covered by the three impugned lay offs. Efforts may have been made at a particular stage to resolve a given controversy but the specific matters in dispute which the parties wanted to refer to the Tribunal are mentioned in para (b) of the said statement. Para (b) of the said statement mentions what the parties wanted the Tribunal to consider: i.e.: "Whether the three impugned lay offs dated 16-11-74, 4-12-74 and 27-12-74 concerning 215 workmen were in accordance with the provisions laid down under the Industrial Disputes Act and the rules made thereunder and consequential relief thereto. The parties were, therefore, clear in their minds that they were desirous of getting an adjudication from the Tribunal on the question of legality of the impugned three layoffs and hence it cannot be said that the Tribunal could not have considered any other question save and except the one pertaining to the applicability of the correct principle of seniority while laying off the concerned workmen. Thus, the first limb of the argument of Mr. Bhatt on the aspect of jurisdiction cannot stand in view of the clear recitals in para (b) of the statement showing specific three matters in dispute. Thus, all questions about the legality of, these three lay offs were certainly within the ambit of the jurisdiction of the Tribunal and that exactly is reflected by the final order passed on behalf of the State Government by the Assistant Commissioner of Labour referring these disputes to the Industrial Tribunal for adjudication. The terms of reference are at Annexure D to the petition. They show that the order of reference is made by the Assistant Commissioner of Labour, Baroda on 28-10-75. The Schedule to the said order clearly shows the question regarding the legality of the three impugned lay offs dated 16-11-74, 4-12-74 and 27-12-74 has been referred to the Tribunal for adjudication. The Schedule provides that the Tribunal had to decide as to whether these three lay offs were in accordance with the provisions laid down under the Industrial Disputes Act and rules made thereunder and consequential

relief thereof. In view of the terms of reference at Annex. D and in the light of para (b) of the Statement about the points of reference signed by both the parties, it is very clear that both the sides wanted adjudication on the question of legality of the concerned three lay offs and also on the question whether these lay offs were as par the requirement of the Industrial Disputes Act and the rules made thereunder. Under the circumstances; it cannot be said with any emphasis that only one question regarding the legality of the lay offs in the light of the applicability of the correct principles of seniority by the petitioner company while laying off the concerned workmen was referred to the Tribunal as submitted by Mr. Bhatt. The terms of reference would be the real repository of the power and jurisdiction of the Tribunal for adjudicating upon the dispute referred to it for decision. Whatever prior efforts the parties may have made to resolve the dispute and whatever may have been highlighted by the respective parties at the stage of prior efforts, cannot be the sole basis for deciding the scope of reference. The terms of reference are widely couched. Whatever may have transpired between the parties at the stage of negotiations cannot cut down the scope of the clear terms of reference. Thus, it is not possible to accept the first limb of argument of Mr. Bhatt on the question of jurisdiction.

18. Mr. Bhatt alternatively submitted that even if the terms of reference are to be looked into for the purpose of deciding the jurisdiction of the Tribunal, even then these terms exclude any consideration by the Tribunal on the aspect of legality of the impugned lay offs as per the requirement of standing order 20 of the Model Standing Orders. This question, according to Mr. Bhatt, is clearly contraindicated in view of the clearly limited scope of reference as reflected by the terms of reference as seen from the order of reference, Ex. D and the Schedule thereof. The submission of Mr. Bhatt on the second limb of the question of jurisdiction was that even if the Tribunal could have gone into the question regarding the genuineness of the need for the impugned three lay off, in no case the Tribunal could have gone into the question of the legality of concerned lay offs as par the provisions of the Model Standing orders. The submission of Mr. Bhatt was to the effect that the joint reference by the parties clearly showed that they wanted an adjudication from the Tribunal on a limited question as to whether the three impugned lay offs dated 16-11-74, 4-12-74 and 27-12-74 were in accordance with the provisions laid down under the Industrial Disputes Act and the rules made thereunder and the consequential reliefs thereof. The question whether these three impugned lay offs were violative of the provisions of the Model Standing Orders which are framed under the Industrial Employment (Standing Orders) Act, 1946, was completely foreign to the scope of the reference as seen from the terms thereof. Hence, the Industrial Tribunal had no competence to go into this question the consideration whereof would result in expanding the scope of the reference. Such jurisdiction was not available to the Tribunal in the submission of Mr. Bhatt.

19. In order of emphasise the said submission on the second limb of the question of jurisdiction, our attention was drawn to a recent judgment of the Supreme

Court reported in the case of Pottery Mazdoor Panchayat v. Perfect Pottery Co. Ltd. AIR 1979 S.C. 1356 wherein it has been laid down that the jurisdiction of the Tribunal in industrial dispute is limited to the points specifically referred for the adjudication and to matters incidental thereto and the Tribunal cannot go beyond the terms of reference. Where the very terms of references showed that the point in dispute between the parties was not the fact of closure of its business by the employers and the references were limited to the narrow question as to whether the closure was proper and justified, the Tribunals by the very terms of the references, had no jurisdiction to go behind the fact of closure and inquire into the question whether the business was in fact closed down by the management. It was submitted that in view of the limited scope of the terms of reference in the present case as extracted above, the Industrial Tribunal could not have gone into the other question whether the impugned lay offs were violative of the provisions of the Model Standing Orders.

20. In order to appreciate the aforesaid submission of Mr. Bhatt, it will be necessary to have a look at the legal position which is by now well settled, on the aspect of interpretation of the terms of reference of a dispute referred to the Industrial Tribunal under the provisions of Section 10(2) of the I.D. Act, in the case of Management of Express Newspapers Ltd. v. The Workers, the Supreme Court was concerned with the question regarding the interpretation of the terms of reference by which the matter was referred for adjudication to the Industrial Tribunal u/s 10(2) of the The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others, the Court made the following pertinent observations on the vital question.

Since the jurisdiction of the Industrial Tribunal in dealing with industrial disputes referred to it u/s 10 is limited by Section 10(4) to the points specifically mentioned in the reference and matters incidental thereto, the appropriate Government should frame the relevant orders of reference carefully and the questions which are intended to be tried by the Industrial Tribunal should be so worded as to leave no scope for ambiguity or controversy. An order of reference hastily drawn in a casual manner often gives rise to unnecessary disputes and thereby prolongs the life of industrial adjudication which must always be avoided. Even so, when the question of this kind arises, before the Courts, the Courts must attempt to construe the reference not too technically or in a pedantic manner, but fairly and reasonably. The fact that the relevant action of the employer is called a lockout in order of reference does not mean that the Tribunal must hold it to be a lockout. In several cases where the industrial disputes are referred for industrial adjudication in respect of certain persons named as workmen, the employers raise the contention that the specified persons are not their workmen and merely because the said persons are described as workmen in the reference, the employer is not precluded from disputing their status and the Tribunal has jurisdiction to try such an incidental dispute.

(Emphasis supplied.)

In a later decision of the Supreme Court in the case of *The Management of National Projects Construction Corporation Ltd. Vs. Their Workmen and Others*, , the Supreme Court had an occasion to construe the terms of reference made under the Industrial Disputes Act for adjudication to the Tribunal. It was contended that the form in which the reference was made was not complete and hence the Court had to take an overall view of the situation to find out aforesaid c Supreme Court made the following observations:

The document in which the reference is made is in a standard form which mentions the total number of workmen employed in the undertaking affected and the estimated number of workmen affected or is likely to be affected by settlement. In filling those columns the parties may or may not necessarily take into consideration the number of workman whose case is already covered by the settlement and no argument could be built upon the basis of the entries in those two columns.

Thus mere entries in the column of reference application will not be a decisive factor for finding out the scope of reference. Our attention was drawn by Mr. Anand to another decision of the Supreme Court where the Supreme Court had ruled that while interpreting out the terms of reference, the Court had to look at the pleadings of the parties to cull out the real points in controversy between the parties. In *Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others*, , the Supreme Court had to consider the four propositions advanced by Mr. Chari learned Advocate appearing for the respondent in the aforesaid case. These propositions were as under:

- (1) the fact that there was a recital of dispute in the order of reference did not show that the Government had come to a decision on the dispute.
- (2) the order of references only limited the Tribunal's jurisdiction in that it was not competent to go beyond the heads or points of dispute.
- (3) not every recital of fact mentioned in the order of Government was irrebutable, and
- (4) in order to find the ambit of dispute it was necessary to refer to the pleadings of the parties.

So far as proposition (4) was concerned, Shri Chari argued that the Tribunal had to examine the pleadings of the parties to see whether there was a strike at all. While accepting Mr. Chari's argument on proposition No. 4 the Supreme Court held that the Tribunal must, in any event, look into the pleadings of the parties to find out the exact nature of the dispute, because in most cases the order of reference is so cryptic that is impossible to cull out therefrom the various points about which the parties were at variance leading to the trouble. (Emphasis supplied). In the case of *Workmen of Motipur Sugar Factory Private Ltd. v. The Motipur Sugar Factory Pvt. Ltd.* , reference to the Industrial Court mentioned the question for adjudication as follows:

Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory, Whether the discharge of workmen mentioned in the Appendix was justified, if not, whether they should be reinstated and/or they are entitled to any other relief.

While construing the aforesaid reference the Supreme Court observed that the reference and its terms were wide and general and required the Tribunal to decide whether the discharge of the workmen concerned was justified or not. It did not mention the grounds on which the discharge was based and it was for the Tribunal to investigate the grounds and decide whether those grounds justify discharge or not. While considering the aforesaid question the Supreme Court also observed that the notices dated 15-12-69 and 17-12-60 which were given by the management in that case were useful for finding out the real scope of controversy between the parties. The contention before the Supreme Court on behalf of the workmen in Motipur Sugar Factory's case (*supra*) was that the notice dated 17-12-60 given by the management mentioned the reason for discharge and the Tribunal was required to confine itself to that notice and it had only to consider whether the reason given in the notice for discharge was justified or not. While rejecting that submission the Supreme Court in the aforesaid decision held that apart from the fact that both the parties before the Tribunal went into the question of go-slow and voluminous evidence was led by both the sides either to prove that there was go-slow or to disprove the same, it would be taking much too technical a view to hold that the discharge was due merely to the failure of the workmen to give the undertaking and that the go-slow had nothing to do with the dispute. Considering the conduct of the parties and the notices issued by the management prior to the raising of the dispute, the Supreme Court culled out the real scope for adjudication before the Tribunal. In *Workmen of Shri Rangavilas Motors (P.) Ltd. and Another Vs. Shri Rangavilas Motors (P) Ltd. and Others*, again a question pertaining to the interpretation of the words used in the reference u/s 10 of the Industrial Disputes Act cropped up for consideration of the Supreme Court. The order of reference in that case contained the words, "reinstatement in Bangalore Branch with benefits of back wages." The actual words of the reference were as under:

Whether the order of the management of Shri Rangavilas Motors Private Ltd. in transferring the workman Shri Mahalingam, Foreman, from their branch at Fort, Bangalore to Ktishnagiri, is illegal or unjustified. If so, is the workman entitled to reinstatement in Bangalore branch with benefits of back wages or to any other relief.

The question was whether the aforesaid reference covered the consideration of the question regarding the alleged illegal removal of the workman concerned as the said workman's service was terminated after his transfer to Krishnagiri, by the management. The contention on behalf of the management in the said case was that looking to the limited scope of reference the question of removal of the concerned workman was not included in the scope of adjudication before the

Tribunal. While repelling that contention it was observed by the Supreme Court in the aforesaid case that the order of reference was not clear with regard to "reinstatement in Bangalore Branch with benefits of back wages" and that if the words "benefits with back wages" were not considered, and with respect, the High Court did not consider them, the High Court's conclusion might possibly be justified. But it appears clear that by the time the reference came to be made everybody knew that Mahalingam had been removed from service. The words "with benefits of back wages," coupled with the words "reinstatement" were appropriate only to a case of removal and not to a case of transfer. So the question regarding the legality of removal of the concerned workman was considered to have been included in the scope of reference, even though the word "removal" was not actually used on the terms of reference.

21. Placing reliance on the aforesaid judgments of the Supreme Court Mr. Anand submitted before us that the terms of reference should be liberally construed and no technical approach should be made in that behalf. The substance of the dispute is to be found out and considered and not merely the form in which the referring authority may choose to word the reference. Mr. Bhatt on the other hand submitted that there was no dispute with the proposition that if the terms of reference were ambiguous, effort can be made to find out the real meaning of the terms. But according to Mr. Bhatt, in the present case, there appears to be no ambiguity whatever in the terms of reference. On the contrary, the terms of reference had crystalised the controversy between the parties by clearly mentioning that the Tribunal had to decide whether the lay off of the concerned workmen was in accordance with the provisions of the Industrial Disputes Act. Thus, according to Mr. Bhatt, there was no ambiguity left in the terms of reference which could enable the Court to travel beyond these clear terms.

22. In order to appreciate these rival contentions on the aspect of jurisdiction of the Tribunal, it could be necessary to have a peep into the past to find out how the present controversy arose between the parties. It has been found by the Tribunal as a fact that the petitioner company was passing through difficult times in the later half of the year 1974, its stock of purchased goods was accumulating and the orders were held up. Under the circumstances, the petitioner company put a notice on 18th November 1974 directing that from 19th November 1974, 163 workers whose names were mentioned in the Appendix to the said notice, were being laid off. In the first para of the said notice it was mentioned that as the sales of the company had fallen down, the company had been compelled to reduce production and hence the lay off had become necessary. It appears that the difficulty which the company faced resulted due to a cut down of the sales of the products of the company. This position continued for some time more with the result that the petitioner company was required to issue another notice dated 4th December 1974 by which it sought to lay off 30 more workers from 9th December 1979, of course for the same reason for which the earlier notice of lay off was issued. After some time followed a third notice dated 27-12-74 by the petitioner company seeking to lay off 22 more workers from Saturday, 29th

December 1974, on the same ground of the accumulation of stocks. These three lay off notices naturally triggered off a sharp reaction on the part of the respondent union. The said reaction is reflected in the letters of protest addressed by the respondent union to the petitioner company. The first letter was dated 16th November 1974 wherein the respondent union contended that the petitioner company had not observed the correct principle of seniority while ordering the impugned lay offs. A further contention was raised that notice of 7 clear days was required to be given as per the standing orders and the lay offs etc. should be implemented on the completion of the said notice of 7 days. Even that requirement was not followed by the petitioner company. The respondent union addressed another letter dated 19-11-1974 to the petitioner company in response to the lay off notice dated 18th November 1974. In that protest letter it was pointed out that the lay off of the workmen mentioned in the notice with effect from 19-11-74 without any previous notice was illegal being in contravention of the standing orders. In para 4 of the said letter it was stated that the lay off effected from 19-11-74 without any notice was illegal and hence the workers laid off should be taken back and paid fully for the days for which they were so illegally laid off. From these two letters addressed by the respondent union it appears clear that amongst other contention, one contention pertained to the legality of the impugned notices of lay offs in the light of the non-compliance of the provisions of the standing orders by the company. Then came the joint form of reference u/s 10(2) of the I.D. Act as filled by both the parties, reference to which has already been made by us in the previous part of this judgment while considering the first limb of the argument of Mr. Bhatt on the question of jurisdiction. Thereafter followed the order of reference which is also reproduced by us in the earlier part of this judgment. Mr. Bhatt is right when he submits that in the terms of reference it is not mentioned whether the impugned lay offs were in accordance with the provisions of the standing orders or not and that in the prior letters addressed by the respondent union to the petitioner company such a contention was definitely raised as shown by us. After the above reference was received by the Tribunal for adjudication, the respondent union filed its statement of claim putting forth its case regarding the illegality of the impugned notices of the lay offs. The said written statement of claim by the respondent union is at Annexure E to the petition. In para 4 of the statement of claim submitted by the respondent union before the Tribunal, it is clearly mentioned that the Standing Orders require that 7 days notice should be given before effecting lay off. The same has not been given and hence the lay off so illegal being in contravention of standing orders. In para 5 of the said statement of claim it was further contended that the standing orders also provided that the workers can be laid off for not more than 6 days in a month. The lay off effected by the company was much more than within the limitation of the standing orders. Thus the lay offs being more than for 6 days in a month were illegal being in contravention of the provisions of the standing orders. In that connection the union referred to a decision of the Industrial Court, Bombay, in the case of Premier Automobiles. There the impugned lay offs were sought to be

challenged on the ground of failure to follow the procedure laid down by the concerned standing orders. It is interesting to note that the petitioner company while it filed its written statement to the aforesaid statement of claim on behalf of the respondent union did not think it fit to submit that the said controversy which was thought to be raised by the union was outside the scope of reference. On the contrary, the petitioner company submitted to the jurisdiction of the Tribunal on this aspect and joined issue on merits of this contention as could be culled out from the written statement of the petitioner Company at Annex C. In para 6 of its written statement the petitioner company contended that with regard to the averments made in para 4 of the statement of claim of the union, it is true that the standing orders contemplate 7 days' notice to be given before effecting lay off. But it is not true that since the company had not given the aforesaid 7 days' notice before effecting the lay offs, the lay off was illegal being in contravention of the standing orders. Thus, in para 6 of the written statement the petitioner company sought to rebut on merits the said contention on behalf of the respondent union in the statement of claim, pertaining to illegality of the lay offs being in contravention of the Standing Orders. The same is the position in para 7 of the written statement wherein the petitioner company sought to meet on merits the contention of the respondent union about the illegality of the impugned lay off as per the provisions of the standing orders. The same stand is repeated in para 14 of the written statement when it is denied by the petitioner company that the three lay offs were unjustified and illegal being in contravention of the standing orders and the principles of natural justice. Thus, at the beginning stage of the proceedings before the Tribunal, we find that there was no controversy between the parties about the jurisdiction of the Tribunal in entertaining the question regarding the lay offs being contrary to the Model Standing Orders. Both the sides joined the issue on merits on this point and led evidence. It appears that ultimately at the stage of arguments a contention was sought to be raised on behalf of the petitioner company before the Tribunal challenging its jurisdiction. The said preliminary objection is dealt with by the Tribunal in paras 8 and 9 of its judgment. A careful glance at these two paras of the judgment of the Tribunal shows that the preliminary objection raised on behalf of the petitioner company on the aspect of jurisdiction of the Tribunal was to the effect that the Tribunal could not decide any other point save and except the question regarding the following of the correct principles of seniority while laying off the workmen. No contention seems to have been raised before the Tribunal challenging its jurisdiction in going into the question regarding the legality of the impugned lay off from the point of view of the standing orders. We do not mean to say that Mr. Bhatt is not entitled to raise this contention for the first time before us but we are mentioning the factual aspect to show how the dispute proceeded from stage to stage from the time the notices were given by the petitioner company and the replies given by the union and subsequently a joint application for reference was made to the Tribunal and till the stage of evidence was reached. Till that stage the parties did not challenge the jurisdiction of the Tribunal on the aspect of its entitlement to consider the

question regarding the legality of the impugned lay offs from the point of view of their compliance with the relevant Standing Orders. That shows that both the sides sought the decision of the Tribunal on this aspect and the Tribunal accordingly gave its decision. In the light of the aforesaid factual background we may now consider the rival contentions of the parties on this aspect.

23. Mr. Anand's first contention was that mere mention of the words "under the Industrial Disputes Act and the rules thereunder and the consequential relief thereof," in the reference will not deprive the Tribunal of its jurisdiction to consider the legality of the impugned three lay offs on any other legal ground. Mr. Anand went to the extent of saying that the reference to the words "under the Industrial Disputes Act and the rules made thereunder and the consequential relief thereof" was a nullity. It is difficult for us to travel that far with Mr. Anand. The parties and the referring authority have deliberately chosen to use those words. But it is equally difficult for us to accept the technical submission of Mr. Bhatt that merely because one Act is mentioned under which the legality of the impugned lay offs is to be adjudicated as per the terms of the reference, the Industrial Tribunal being a Court of law had to shut its eyes to any other legal infringement committed by the petitioner company while laying off the workmen under the impugned lay offs. From the aforesaid state of controversy as reflected by the notices and the replies and the written statements of the parties, it appears crystal clear that the substance of the dispute between the parties is regarding the three lay offs of 215 workmen by the three notices dated 16-11-74, 4-12-74 and 27-12-74. Only because the reference mentioned that the decision is to be given pertaining to the legality of the three lay offs under the Industrial Disputes Act, it does not mean that the Industrial Tribunal is prohibited from applying the correct principles of law while judging the question referred to it. The scheme of Section 10(4) of the I.D. Act envisages that the points of disputes for adjudication have to be specified in the reference and the concerned Court to which such a reference is made has to adjudicate upon these points of dispute. The points of dispute in the present case pertain to the lay offs of 215 workmen under the three notices dated 16-11-74, 4-12-74 and 27-12-74. There is no dispute between the parties as to which law applies to these lay offs. What correct position of law is to be applied to judge the legality of the action of the employer vis-a-vis the employees is for the Tribunal to decide. That can never be a point of dispute between the parties. To apply proper law to the facts of a given case is always left to the Tribunal. The parties by their agreement cannot ask the Tribunal to apply one law and not to apply the other law, if applicable, to resolve their disputes. u/s 10(4) of the I.D. Act the legislature has provided for specification of the points of dispute to be referred to the Tribunal for adjudication. There is a dispute between the parties regarding the legality of the three lay offs of 215 workmen. If the Tribunal considered this question in the light of infraction of the standing orders, it applied the correct provisions of law for deciding that question which is clearly covered by the terms of reference. That does not amount to expanding the scope of reference as Mr. Bhatt suggests.

The terms of reference and the points of reference would be expanded, if, for example, the petitioner company had effected a fourth lay off after 27th December 1974, and the dispute regarding the same even though not covered by the terms of reference was sought to be adjudicated upon by the Tribunal. Once a reference was made for adjudication about first three lay offs, the dispute pertaining to the fourth lay off would require a separate reference. If the Tribunal had proceeded to decide the legality of the said fourth lay off in the present reference, then Mr. Bhatt's contention would have been right that the Tribunal had exceeded the limited scope of the reference. But if the Tribunal proceeded to adjudicate only upon the legality of the three lay offs which had been brought on the anvil before it, only because the Tribunal applied the provisions of the Model Standing Orders, while pronouncing upon the legality of these very lay offs, it cannot be said that there was any excess of jurisdiction on the part of the Tribunal. The Tribunal was required to decide the legality of the first three lay offs. It did decide that question. But which deciding it, it also went into the legal submission on the part of the respondent union that these impugned lay offs were bad on account of the infraction of the Model Standing Orders. The parties are entitled to raise any number of legal submissions in support of their contentions and that does not exceed or expiate the scope of the dispute. The dispute remains the same. It is the legality of the three impugned lay offs. What the respondent union did was to attack the legality of these three lay offs on the basis of an additional legal ground. To entertain such an additional legal ground is surely not exceeding the scope of reference. Raising additional legal arguments in support of a given plea or a point of dispute cannot be said to adding to the point of dispute. Hence it is not possible to accept the submission of Mr. Bhatt that the Tribunal could not have gone into the question regarding the legality of the impugned three lay offs from the point of view of infraction of the Model Standing Orders by the petitioner company. As per the terms of reference, the Tribunal was called upon to adjudicate upon the legality of the notices dated 16-11-74, 4-12-74 and 27-12-74 imposing the impugned lay offs. The only wrong, according to Mr. Bhatt, which appears to have been done by the Tribunal, is that the Tribunal decided the legality of these lay offs in the light of any other law. With respect, it is difficult to countenance the said submission. We, therefore, hold that looking to the conduct of the parties and their own pleadings, it is clear that the real dispute between the parties which was referred for adjudication, pertained to the legality of the three impugned lay offs of 215 workmen and the Tribunal was justified in adjudicating on this question in the light of any applicable provision of law. In the course of the said adjudication, the Tribunal had considered the relevant provisions of law, and in doing so, it could never be said to have overstepped contours of its jurisdiction.

24. It was further submitted by Mr. Anand for the respondent union that once the question of legality of lay off was referred for decision to the Tribunal, it necessarily follows that the Tribunal had to decide whether the petitioner company had a power to lay off workmen. It is now well settled that the power to

lay off a workman is not a common law right nor is it available to the employer under any of the provisions of the Industrial Disputes Act. The power, if any, has to be culled out from either the contract between the parties or on the applicability of the relevant standing orders. Thus, once the question regarding the legality of the three lay offs was referred to the Tribunal, the petitioner company had necessarily to (sic) back on the relevant standing orders to support its action. The contention of the p3titioner company is that it could rely upon the standing orders to sustain its power of lay off but the respondent union cannot rely upon the very standing orders to show that the standing orders were not complied with by the company. There cannot be such a one way traffic. The direct result of the submission of Mr. Bhatt is that the petitioner company may rely upon the standing orders. But the respondent union should not be permitted to rely upon these very standing orders to show how breaches thereof were committed by the petitioner company while exercising its power under these standing orders. We had great substance these submissions of Mr. Anand. Whenever a question regarding legality of lay off crops up, implicit in the question is the reference to the power of the concerned employer to lay off the workman and a quest for such power necessary leads to the inquiry about the applicability of relevant standing orders which are the repository of such power. If the petitioner company tried to justify its action of lay offs on merits on the basis of standing orders, the other side is entitled to show that the company's action is not justified because it had not complied with the relevant standing orders. When the Tribunal resolved this dispute it cannot be said that it had overstepped its limits of jurisdiction. In the case of *The Workmen of Firestone Tyre and Rubber Co. of India (P) Ltd. Vs. The Firestone Tyre and Rubber Co.,* , the Supreme Court had to consider the powers of the employer to lay off its workmen. While considering this question, it was held by the Supreme Court in the aforesaid case that Jay off means the failure, refusal or inability of the employer on account of contingencies mentioned in Clauses (kkk) of Section 2 to give employment to workman whose name is borne on the muster roles of his industrial establishment. Thereafter the Supreme Court considered the amendment of the I.D. Act by insertion of chapter VA to provide for lay off compensation. The Supreme Court in para 12 of the said judgment observed as under:

...there is neither temporary discharge of the workmen nor a temporary suspension of his contract of service. Under the general law of roaster and servant, an employer may discharge an employee either temporarily or permanently but that cannot be without adequate notice. Mere refusal or inability to give employment to the workman when he reports for duty on one or more grounds mentioned in Clause (kkk) of Section 2 is not a temporary discharge of the workman. Such a power, therefore, must be found out from the terms of contract of service or the standing orders.

The Supreme Court further observed that the definition of lay off u/s 2(kkk) did not confer any power on the employer to lay off workmen. The power to lay off

had to be searched somewhere else. Thus, it is clear that the power to lay off a workman is not found in the four corners of the I.D. Act, and Mr. Bhatt in all fairness did not raise any controversy on this aspect. The terms of reference in the present case called upon the Tribunal to adjudicate upon the legality of the three impugned lay offs dated 10-11-74, 4-12-74 and 27-12-74 pertaining to 215 workmen. The legality of the three lay offs would necessarily bring in the question of the power of the petitioner company to effect the lay offs. That power naturally is to be found in the Standing Orders. If the management can fall back on Standing Orders to support that power, there is no rhyme or reason or any justification for the company to urge that the workmen should not be permitted to fall back on these very standing orders to show that such exercise of the alleged power was in the breach of the standing orders. Hence, even on this ground also it cannot be said that the consideration of the standing orders was totally foreign to the reference. On the contrary, it was implicit in the said reference. Shorn off the consideration of the standing orders, the reference would be devoid of any substance and it would be practically a still born reference. Hence, it is not possible to accept the submission of Mr. Bhatt on the aspect of jurisdiction of the Tribunal even from this point of view.

25. Mr. Anand submitted one another ground for showing that consideration of standing orders is implicit in the reference. u/s 10(2) Of the Act, it can certainly be considered to be a matter incidental to it. We agree with the said submission of Mr. Anand. The legality of the impugned lay offs can be agitated by the concerned parties one way or another on the basis of any (sic) submission and such submission based on any existing law could certainly be considered to be incidental to the main dispute between the parties. Hence on this ground also, it can be said that the term of reference permitted the consideration of the applicability of the standing orders while the legality of the concerned three lay offs was being adjudicated upon.

26. Mr. Anand further submitted that, apart from anything else, even if the reference is construed literally and strictly, as petitioner would like to have it, even then there is no difficulty in his way. The submission was that if the petitioner contended that the scope of reference must be limited to the actual words used in the Schedule, even then the Tribunal was called upon to decide the legality of the three impugned lay offs in accordance with the provisions of the ID. Act, Mr. Anand submitted that he was relying upon the proviso to Section 25J(1) of the I.D. Act itself to sustain his contention that the workmen were entitled to the benefits under the concerned standing orders. Said Section 25J reads as under:

25J(1)The provisions of this chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law (including standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (XX of 1946).

Provided that where under the provisions of any other Act, or rules, orders or

notifications issued thereunder or under and Standing orders or under an Award, contract of service or otherwise, a workman is entitled to benefit in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.

(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as the law provides for the settlement of industrial disputes but the rights and liabilities of employers and workman in so far as they relate to lay off and retrenchment shall be determined in accordance with provisions of this Chapter.

Mr. Anand's submission was that under the proviso to Section 25J(1) any benefit which a workman is entitled to under any standing orders is expressly saved and consequently the respondent union wanted to fall back upon the standing orders which give them more benefits under the provisions of the Model Standing Orders and hence when the Tribunal considered the question of this benefit which may accrue to the workmen under the provisions of the Model Standing Orders which applied at the relevant time, it cannot be said that the Tribunal had travelled beyond the scope of the reference or had entered upon an impermissible field. There is considerable substance even in this last submission of Mr. Anand. The petitioner company's contention is that the words used in the terms of reference should not be departed from. Even then, it does not improve the position of the petitioner company. The respondent union was justified in seeking sustenance from the provisions of the proviso to Section 25J(i) of the I.D. Act and the said provision entitled them to rely on the concerned standing orders. If the Tribunal entertained this plea, it cannot be said that it decided the reference de hors the provisions of the I.D. Act. On the contrary, the said consideration was strictly according to the proviso to Section 25J(1) of the I.D. Act itself. Thus, it cannot be said that the consideration of the applicability of the concerned standing orders was totally foreign to the scope of the reference in the present case. Consequently even on this last ground also, the second limb of the argument of Mr. Bhatt on the question of the jurisdiction of the Tribunal is liable to be rejected.

27. The aforesaid discussion, therefore, reveals that there is no substance in the contention raised by Mr. Bhatt that the Tribunal had no jurisdiction to decide the points raised before it. We hold that looking to the substance of the dispute between the parties which was referred for adjudication by their consent to the Tribunal, the Tribunal had ample jurisdiction to go into all aspects of the legality of the impugned lay offs in the light of the correct legal position as applicable to the facts of the present case.

28. That takes us to the main submission of Mr. Bhatt on the merits of the case. Mr. Bhatt invited our attention to sec 2 (kick) of the I.D. Act which was brought

on the statute by Amending Act XLIII of 1953. The word lay off was defined for the first time for the purpose of I.D. Act. The said definition reads as under:

2 (kkk): lay off (with its grammatical variation and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or for any other reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

Mr. Bhatt submitted that this definition lays down the circumstances in which a workman can be laid off by the employer and the germane grounds mentioned by the legislature are listed there. One of the germane grounds is accumulation of stocks. Mr. Bhatt submitted that it is found as a matter of fact by the Tribunal that because of the accumulation of stocks the petitioner company was forced to cut down its production layout and programme at the relevant time and in the circumstances it was justified in laying off the concerned workmen. The moment this stage is reached, submits Mr. Bhatt, springs in action Section 25C which states that in that eventuality the concerned workmen laid off shall be entitled to compensation statutorily provided for in Chapter VA and which compensation was duly paid off by the petitioner company to the concerned workmen. Mr. Bhatt therefore, submits that no grievance was left on the part of the concerned workmen. The petitioner company had fully behaved according to the requirements of the I. D. Act and the action of laying off the workmen was found to be genuine as held by the Tribunal. That question has not been affectively reagitated by the other side before us. Under the circumstances it was contended by Mr. Bhatt that the impugned lay off can be said to be in accordance with the I.D. Act, namely, Section 2(kkk) read with Section 25C. Consequently, the relief which the workmen could have demanded was 50% of wages by way of compensation which were fully paid as the very notices issued by the petitioner company showed. The claim for the remaining 50% was the only bone of contention, which according to Mr. Bhatt, was totally unjustified. Mr. Bhatt further drew our attention to Section 25J and contended that whatever may have been mentioned in the standing orders will be of no avail and the provisions of Chapter VA would supersede and would prevail over the standing orders. But the aforesaid submissions of Mr. Bhatt can be of no avail as unfortunately for the employer, no power to lay off is found from any corner of the I.D. Act, as held by the Supreme Court in the case of *The Workmen of Firestone Tyre and Rubber Co. of India (P) Ltd. Vs. The Firestone Tyre and Rubber Co., The Workmen of Firestone Tyre and Rubber Co. of India (P) Ltd. Vs. The Firestone Tyre and Rubber Co.,* wherein the definition of lay off u/s 2(kkk) came to be considered. The employer can lay off its workmen on the exigencies mentioned therein. Section 25C only prescribes the mode of computation of compensation to be paid to laid off workmen. It also gives no power to the employer to lay off the workmen. Once the concerned lay offs are challenged by the workmen such employer will have to show how he is justified in ordering the lay off and under

exercise of what power the workmen concerned were laid off. That inquiry takes the employer out of the scope of the I.D. Act and necessarily makes him travel to the standing orders. In the present case it is an admitted position that there is no contract between the parties permitting the employer to lay off the workmen in any eventuality. Thus the only source of power left to the management to lay off the workmen in case of any difficulty will have to be traced from the standing orders. The petitioner company necessarily has to take resort to the standing orders to justify its action of lay off. If the standing orders did not permit the petitioner company to order these lay offs, all the three impugned lay offs will be unauthorised and will result in the inevitable conclusion that the workmen were wrongly refused work on the relevant days and which would naturally require these workmen to be paid fully their wages and not 51%. The balance of 50% of wages would be considered to be unauthorisedly withheld. Consequently, reference to Section 2(kkk) or Section 25C or Section 25J will be really of no avail to the petitioner company if it wants to successfully meet the attack of the other side on the impugned lay offs. In this connection it may be profitable to have a reference to an earlier decision of the Supreme Court in the case of *Workmen of Dewan Tea Estate and Others Vs. The Management*, . There the Supreme Court was concerned with a converse case viz that the standing order did not permit employer to effect lay off in all contingencies and had laid down certain guiding factors to be considered before lay off could be effected. The concerned standing orders permitted management to lay off workman on the ground of stoppage of work. The standing order 8(a)(i) of the standing orders applied to Dewan Tea Estate. It permitted management of Dewan Tea Estate to lay off workmen if the Supply of raw materials was short. The management submitted that the stoppage of supply of raw materials was not on account of exigencies beyond the control of the management but there was paucity of funds with them with the result that the stoppage of supply of raw materials ensued. According to the management of Dewan Tea Estate this circumstance entitled them to lay off their workmen. Repelling this submission the Supreme Court held that stoppage of supply must mean stoppage of raw materials or other such things. In regard to the factory, the stoppage of supply may mean the stoppage of tea leaves, or, in the case of field work, it may mean the stoppage of supply of other articles necessary for field operations, and does not mean paucity of money or funds. Thus, it was held that the ground put forward by the management to lay off workmen, namely, paucity of funds was totally extraneous to the permissible grounds of lay off as mentioned in the relevant standing order. It was further held that other causes beyond its control mentioned in the said standing order, will not take in its wake the financial difficulty of the employer. Then frantic effort was made by the management to fall back upon Section 2(kkk). It was contended that for any other reason mentioned in the provision would at least cover the financial difficulties of the management. The said submission was also repelled. While considering the scheme of Section 25C and Section 2(kkk), the Supreme Court in the aforesaid decision held that it would be legitimate to hold that lay off which primarily gives

rise to a claim for compensation u/s 25C must be a lay off as defined by Section 2(kkk). If the relevant Clauses in the standing orders of industrial employees make provisions for lay off and also prescribe the manner in which compensation should be paid to them for such lay off, perhaps the matter may be covered by the said relevant clauses; but if the relevant Clause merely provides for circumstances under which lay off may be declared by the employer and a question arises as to how compensation has to be paid to the workman thus laid off, Section 25C can be invoked by workmen, provided of course, the lay off permitted by the standing order also satisfies the requirement of Section 2(kkk). It was then observed that it was not correct to say that Section 25 recognises the inherent right of the employer to declare lay off for reasons which he may regard as sufficient or satisfactory in that behalf. No such common law right can be spelt out from the provisions of Section 25C.

(Emphasis supplied).

The aforesaid decision in the case of Dewan Tea Estate clearly lays down that there is no such common law right with the employer to lay off his employees. Under the contract of employment the employer agrees to give work to the employees on agreed remuneration. If the employer finds it difficult to continue an employee any longer as the available work no longer justifies him, under the general law he may terminate his services. But there is nothing like lay off known to common law. Laying off presupposes the continuity of the bond of employer-employee relationship and still exonerates the employer from offering work to a willing worker who is ready and willing to discharge his part of obligations under the contract of employment. Such a situation is not contemplated by common law. Consequently, the power to lay off which is not an inherent power in the employer has got to be culled out from the express contract between the parties or from the standing orders which may be applicable to the parties. In view of the aforesaid decision of the Supreme Court it must necessarily follow that the petitioner company will have to resort to the standing orders to support its action. Mr. H.M. Mehta who appeared as intervener in the present case in support of the submission of Mr. Anand that the standing orders which are duly settled have force of statute, drew our attention to the decision of this Court in the case of Tata Chemicals Ltd. and Others Vs. Kailash C. Advharyu, . In the aforesaid decision it was observed that the standing orders when finally settled and certified are binding and operative by virtue of the provisions of the Act and shall govern the relationship between employer and its employees and it is not open to the employer and the workmen to contract themselves out of the rights and obligations created by the standing orders. Thus these standing orders which are binding on both the sides would govern the relationship of employer and employee concerned and they have statutory force. Consequently in order to spell out any power to lay off the workmen, the petitioner company would necessarily be required to draw upon the standing orders. That would naturally take us to consider the relevant standing orders which are applicable to the parties. But before we do so, we may refer to one submission of Mr. Bhatt that

the standing orders cannot be pressed in service for resolving the present controversy in view of Section 25C. We have already reproduced the said Section in extenso in the earlier part of this judgment. This submission of Mr. Bhatt, even apart from the merits of the same can be absolutely of no help to the petitioner company. If Mr. Bhatt contends that the consideration of the standing orders is totally foreign to the present case and we cannot go into the consideration of that question the respondent union must necessarily succeed for the simple reason that the three impugned lay offs dated 16-11-74, 4-12-74 and 27-12-74 cannot be justified by the petitioner company under the Industrial Disputes Act or under the contract between the parties. It will have nothing to fall back upon if the legality of its action under the standing orders is not open for consideration. No power to lay off springs from any Section of the I.D. Act as held by the Supreme Court in the aforesaid decision. Under the circumstances, the impugned three lay offs would be rendered totally unauthorised. This shows that the petitioner company must seek support from the relevant standing orders to sustain its actions of impugned lay offs. That will take us inevitably to the considerations of the concerned standing orders.

29. We may at this stage try to appreciate the submission of Mr. Bhatt on the construction of Section 25J which clearly shows that Chapter VA shall have effect notwithstanding anything inconsistent therewith that may be found in the standing orders. Thus, if there is any inconsistency between the provisions of Chapter VA, and the provisions of the standing orders, the provisions of Chapter VA would prevail. There cannot be any doubt or dispute on this aspect. But Mr. Anand relied upon the proviso to Section 25J and his submission was that the workmen were entitled to the benefits which were more favourable to them under the standing orders, and, therefore, they can certainly rely upon the relevant standing orders to show how they get additional benefit under these provisions. Mr. Bhatt combats this submission by saying that the proviso refers to the benefit which must be a monetary benefit. To get seven days notice before any lay off can be ordered under the standing order No. 20, is surely no monetary benefit to a workman. Mr. Bhatt submits that if 7 days notice is given no wages shall become payable to the workman for the relevant period of lay off. Thus it would not improve the position of workmen by getting 7 days notice and hence that is no benefit to him. It is difficult to accept the said submission of Mr. Bhatt on the construction of word "benefit" as used in the proviso to Section 25J(1). "Benefit" is a wider term which takes into its sweep all sorts of advantages which may be available to the person concerned and they need not necessarily mean only a monetary benefit. Mr. Anand invited our attention to the meaning of the word "benefit" as found in the Concise Oxford Dictionary, 1968 edition, at page 110, where the word "benefit" is shown to mean "advantage". He also invited our attention to the meaning of word "benefit" as found in Chambers 20th Century Dictionary, 1964 edition, wherein at page 97 the word "benefit" is mentioned and its various meanings are categorised. One meaning given is, "favourable" or "any advantage". Apart from these general meanings

given in the dictionaries, Mr. Anand also invited our attention to the interpretation of the word "benefit" in the light of industrial legislation. In Board of Directors of the South Arcot Electricity Distribution Co. Ltd. Vs. K. Mohamed Khan and Others, , a bench of the Madras High Court had an occasion to consider the meaning of the word "benefit" as used in Section 33(c)(2) of the Industrial Disputes Act. It was held that the word "benefit" as used in the said Section meant "an advantage" and would obviously include monetary as well as non-monetary one. Our attention was also invited to the decision in The Bombay Gas Co. Ltd. Vs. R.N. Kulkarni and Another, , where the Bombay High Court construed the word "benefit" as used in Section 33C(2), to include within it both monetary and non-monetary benefits. It was observed in the aforesaid decision of the Bombay High Court that it was now well accepted that the word "benefit" was of wide import and included within it both monetary and a non-monetary benefits. The word "benefit" in the proviso to Section 25J(1) cannot be construed to have such a narrow meaning to include only monetary benefit as sought to be suggested by Mr. Bhatt. Thus, it must mean that the workman concerned would be entitled to any advantage, monetary or otherwise which he would get under the standing orders as compared to the benefit which he may get under the I.D. Act. Such a benefit would be saved for him under the proviso to Section 25J(1).

30. Before parting with the construction of Section 25J, it will be necessary to have a look at Sub-section (2) of Section 25(j) which runs as under:

(2) For removal of doubt it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as the law provides for the settlement of industrial disputes but the rights and liabilities of employers and workmen in so far as they relate to lay off and retrenchment shall be determined in accordance with the provisions of this Chapter.

Now this Sub-section (2) of Section 25J cannot be pressed into service on behalf of the petitioner for two reasons: firstly, Sub-section (2) only provides that applicability of any other provision of law for the time being in force in any State in so far as that law provides for the settlement of industrial disputes shall not be affected by the provisions of Chapter VA. Thus, the very scope Section 25J(2) pertains to the interaction of the Central Act and the relevant State Act which may be applicable and may be holding the same field at a given point of time. As per Section 25J(2) after that given point of time, the State law is permitted to hold the field, save and except on the questions of the retrenchment and lay off. The Model Standing orders framed under the Industrial Employment (Standing orders) Act, 1946, cannot be said to be a State Act at all. Thus, Section 25J(2) cannot be pressed in service by the petitioner to whittle down the operation of the relevant standing orders. Again the State law must provide for settlement of industrial disputes and any other State law is not envisaged by Section 25J(2). By no stretch of imagination it can be urged that the Model Standing orders framed under the Standing Orders Act which is a Central Act have ever provided

for settlement of industrial disputes. No such machinery is provided thereunder. Apart from this aspect, the second aspect of the matter is that before Section 25J(2) can be pressed in service, it has to be seen whether the rights and liabilities of the employer and workman pertaining to lay off and retrenchment have been determined in accordance with the provisions of Chapter VA. The moment Chapter VA is pressed in service to decide this question regarding the rights and liabilities of the employer and the workman with reference to lay off, Section 25J(1) proviso necessarily steps in, because the said proviso is in Chapter VA itself. Interplay of Section 25J(1) and Section 25J(2) ultimately results in a situation in which if any additional benefits are available to the workman under any standing order, they prevail notwithstanding Chapter VA of the I.D. Act. This question has been finally settled by the Supreme Court in *Rohtak Hissar District Electricity Supply Co. Ltd. Vs. State of Uttar Pradesh and Others*, . The question before the Supreme Court in the aforesaid decision was regarding the legality of certain standing orders framed under Industrial Employment (Standing Orders) Act, 1946, by the management in consultation with its employees and having submitted them to the Government for necessary certification. The question before the Supreme Court was whether the standing order which was certified by the authority and which was applicable to the parties was in conflict with Section 6K of the U.P. Industrial Disputes Act. Under the said provision certain scales of lay off compensation payable to workmen were provided. u/s 6R(1) of the U.P. Act, it was provided that the provisions of Section 60 shall have the effect, notwithstanding anything inconsistent therein contained in any other law including the standing orders made under the Industrial Employment (Standing Order) Act, 1946. The proviso to that Section did not protect any benefit which may be available under any standing order. The said proviso to Section 6R(1) of the U.P. Act is clearly distinguishable from the proviso to Section 25J(1) which we find in the present case. Under the proviso to Section 6R(1) of the U.P. Act, it was provided that nothing contained in that Act shall have effect to derogate from any right which a workman had under the Minimum Wages Act, 1948, or any notification or order issued thereunder or any award for the time being in operation or any contract with the employer. Hence the Supreme Court observed that the proviso could not cover cases of standing orders which were expressly included in Section 6R(1) of the U.P. Act. It was further observed that it was true that the standing orders, when certified, in substance embody conditions of employment but they cannot be treated as a contract within the meaning of the proviso. But the proviso to Section 25J(1) of the I.D. Act was pressed in service in the aforesaid case before the Supreme Court on behalf of the workman and consequently the Supreme Court considered the provisions of Section 25J(1) proviso as well as Section 25J(2). While interpreting the aforesaid provisions of the I.D. Act the Supreme Court observed that it was thus clear that the last part of Section 25J(2) categorically provided that the rights and liabilities of the employers and workmen in relation to lay offs shall be determined in accordance with the provisions of Chapter V-A of the Central Act. That clearly meant that in regard to

the question about the payment of compensation for lay off and retrenchment, the relevant provisions of the Central Act would apply and not those of the U. P. Act. It was further observed in para 24 of the judgment in the aforesaid case as under:

Once we reach this stage, we have to go to the proviso to Section 25J(1), because it is one of the provisions contained in Chapter VA which is made applicable by Section 25J(2); and this proviso clearly and unambiguously lays down inter alia that where under any standing orders, a workman is entitled to benefits in respect of any matter covered by Chapter VA, which are more favourable to him than those to which he would be entitled under this Act, he shall continue to be entitled to the more favorable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act. The position, therefore, is that Section 25.1(2) makes Chapter VA of the Central Act applicable to disputes in relation to compensation for lay offs notwithstanding Section 6K and 6R of the U.P. "Act, and amongst the provisions thus made applicable by Section 253(2) is the proviso to Section 25J(1) under which the standing orders which give more favourable benefits to the employees in respect of compensation for lay off, will prevail over the provisions of the Central Act.

(Emphasis supplied)

Thus, in the aforesaid decision of the Supreme Court, the whole controversy is finally set at rest. The aforesaid decision now leaves no room for doubt that if the workmen have some more beneficial provisions under the relevant standing orders concerning compensation for lay off, these benefits will be preserved under the proviso to Section 25J(1) and Section 25J(2) will not come in the way of the concerned workmen. Under these circumstances, the submission of Mr. Bhatt that the provisions of Section 25J(1)(2) whittle down the rights of the workmen under the concerned standing orders cannot be countenanced. The said submission is no longer *res Integra* and is fully covered by the aforesaid judgment of the Supreme Court 1966 S.C. 1471.

31. The aforesaid resume of the relevant provisions of the I.D. Act clearly shows that the petitioner company cannot take resort to any of the provisions of I.D. Act to sustain its power to lay off workmen under the impugned three notices which have culminated in the present reference before the Tribunal. Consequently, the petitioner company will have to seek sustenance from the relevant standing orders in support of their case and if the relevant standing orders do not help the petitioner company, their action of purported lay off on the concerned three occasions would be clearly unauthorised.

32. Consequently we have to refer to the relevant standing orders which were applicable at the time of the concerned three lay offs. The relevant Model Standing Orders pertain to the workmen doing manual or technical work and they are framed under the provisions of the Industrial Employment (Standing Orders) Act, 1946. The relevant standing orders to which our attention was

drawn by the parties and which pertain to the question of lay off are standing orders 18 and 20. The standing orders read as under:

18. (1) In the event of a fire, catastrophe, breakdown of machinery, stoppage of power supply, an epidemic, civil commission or other cause beyond the control of the Manager, the Manager may, at any time without notice or compensation in lieu of notice stop any machine or department wholly or partially or the whole or part of the establishment for a reasonable period.

(2) In the event of a stoppage under Clause (1) during working hours the workman affected shall be notified, as soon as practicable, when work will be resumed and whether they are to remain or leave the establishment. The period of detention in the establishment shall not ordinarily exceed one hour after the commencement of the stoppage. If the period of detention does not exceed one hour, workmen so detained shall not be paid for such period. If the period of detention in the establishment exceeds one hour, workmen so detained shall be entitled to receive wages (including all allowances) for the whole of the time during which they are detained in the establishment as a result of the stoppage. In the case of piece-rate workmen the average daily earnings for the previous month shall be taken to be the daily wages.

(3) Whenever practicable, reasonable notice shall be given of the resumption of normal work, and all such workmen laid off under this standing order who present for work, when work is resumed, shall be given preference for employment.

(4) All notices required to be given under this standing order shall be displayed on notice boards at the time-keeper's office and at the main entrance to the establishment. Where a notice pertains to a particular department or departments only, it shall also be displayed in the department concerned.

20. Workmen may be laid off due to shortage of orders, temporary curtailment of production or similar reasons and consequent stoppage of any machine or department, for a period not exceeding six days in the aggregate (excluding statutory holidays) in any month provided that seven days' notice is given. A workman laid off under this standing order for more than five days in a month may, on being laid off, leave his employment on intimation of his intention to do so.

A mere look at the standing order 18 shows that it permits the management to lay off a workman in certain contingencies beyond the control of the management. Such contingencies may not even give breathing time to the management and the act may be under the extraordinary circumstances contemplated by the "standing order. Consequently, there is no provision made for any notice to be given to the concerned workmen before effecting such a lay off. As there is no provision of notice naturally there is no provision for compensation to be paid to the concerned workman in lieu of notice. But all the same, the contingencies contemplated by the standing order 18 are so grave that

they brooke no delay and they are all beyond the volition of the concerned management. So far as standing order 20 is concerned, it depicts a different situation in which there are no such exceptional circumstances beyond the contemplation or volition of the management, but on account of shortage of orders, temporary curtailment of production etc. it becomes uneconomic or unprofitable for the management to run the full show and temporary curtailment therein is called for. But the circumstances under which such power of lay off can be exercised under standing order 20, postulates some breathing time to the management during which it can reasonably foresee how things are shaping and how a necessity may arise for temporarily laying off workmen and how the situation can be remedied. Thus, the circumstances under which the power of lay off can be exercised under standing order 20 are such which can brooke some delay during which proper notice can be given to the concerned workmen by the management. There is no such emergency which may not brooke any delay as we find in standing order 18. Two provisions are made to fetter the power of the management to impose any lay off under standing order 20. One fetter is that a ceiling is placed on the aggregate number of days per month for which a lay off can be imposed. The ceiling is fixed at six days in aggregate every month. Further fetter is that even for imposing a limited lay off upto six days, a seven days" notice is required to be given by the management. Both these are fetters on the power of the management to impose lay off as per standing order 20. Thus, if any of these conditions is not fulfilled, the power does not exist in the management to impose any lay off under standing order 20. As per the aforesaid standing order, the management can impose at the highest six days lay off per month and that too by giving seven days" clear notice before imposing such lay off. If one of the conditions is missing, the power does not exist at all. It flows only in the limited sphere. The management has to strictly behave as per the standing order 20 and it can impose maximum lay off for six days per month only by giving seven days clear notice. As per the aforesaid requirement of the standing order, even if the situation may demand larger lay offs per month, even by giving seven days clear notice, the management cannot impose lay off of more than six days a month. Even if the situation so requires the management has got to wait till the next month and again follow the cycle of six days preceded by seven days notice. Beyond that there is no power which flows from the standing order 20 to support any action of the management imposing lay offs on the grounds specified in that standing order. Mr. Bhatt submits that standing order 20 does not confer any benefit to the workman but it imposes a limitation on the right of the worker. Mr. Bhatt's submission was that if the management gives 7 days" clear notice, the worker concerned is allowed 6 days lay off in a month but he will be liable to lose his emoluments for 6 days as the management can be said to have behaved property. Thus, by insisting for a notice of 7 days the concerned workmen in substance gets his wages for six days practically reduced to nothing according to Mr. Bhatt. It is difficult to agree with the said submission of Mr. Bhatt. On correct interpretation of the aforesaid standing order it is clear that it imposes a limitation or a fetter on the power of

the management to impose a lay off under the circumstances contemplated by the said standing order. The said standing order imposes a ceiling of total number of days per month beyond which the management cannot proceed while imposing lay offs per month. As shown by us above, if the management requires to lay off certain workers for, say, 15 days in a month, even if it serves notice of 7 days it cannot do so in the given case. Beyond six days which is the maximum quota available to the management for imposing lay off every month, the management cannot impose larger lay off in that month. If it still does, it will do so at its own peril i.e. for the period exceeding six days, it will be considered to have imposed lay offs de hors the provision of standing order 20 and the cloak of protection of the standing order will not be available in such a case. It will be deemed to have illegally refused work to the worker and the worker will be entitled to full wages for the period exceeding six days in a month. Thus standing order 20 certainly imposes a limitation on the power of the management to lay off workers every month. The limitation is qua the number of days in a month for which a lay off can be imposed. There is a further fetter or limitation on the power of the management. Even if the management wants to lay off workers within the permissible limit of six days per months as per standing order 20, say if the management wants to impose lay off for 2 days per month, it cannot even do so without giving seven days prior notice. Seven days notice is a further protection available to the workman concerned. Thus a locus penentanlia is given to each workman and a corresponding fetter is imposed on the power of the management while clamping any lay off on its workmen. Seven days notice is a must in every case when the management decides to lay off a workman, say, even for a single day. These are the two limitations imposed on the power of the management while deciding to lay off their workmen under any contingency contemplated by standing order 20. The power to lay off as per the requirement of standing order 20 is thus a circumscribed power. Without the limitation the power does not operate at all. If these limitations are complied with, limited power is generated permitting management to lay off workmen. If the conditions therein mentioned are not fulfilled power would not be generated at all and the action would be devoid of any power or efficacy and it would be de hors the protection of standing order 20 with the result that the employer can be said to have illegally refused work to his workmen during the relevant time when his action was not covered by the protection of standing order 20. Hence it must be held that the power under standing order 20 being a limited power can be exercised subject to limitations or never at all. There will be in fact no power at all in the management to impose a lay off de hors the standing order 20 on any of the grounds provided therein.

33. Mr. Bhatt drew our attention to standing order 21 which reads as under:

21. Notwithstanding anything contained in Standing orders 18, 19 and 20, the rights and liabilities of employers and workmen in so far as they relate to lay off shall be determined in accordance with the provisions of Chapter VA of the Industrial Disputes Act, 1947.

Provided that nothing contained in the said Chapter shall have effect to derogate any right which a workman has under the Minimum Wages Act, 1948 or any notification or order issued thereunder or any award for the time being in operation or any contract with the employer.

His submission was that whatever may have been mentioned in standing orders 18 or 20 on the topic of lay off, by virtue of standing order 21 again we travel back to Chapter V?A of the I.D. Act, and consequently the workman cannot have any better rights than what they have in Chapter VA of the I.D. Act namely, Section 25C. There are two clear answers to this submission. Firstly, if any reference back to Chapter VA is contemplated by standing order 21, again Section 25J(1) proviso operates as it is part and parcel of the Chapter VA as finally decided by the Supreme Court in Rohtak Hissar District Electricity Supply Co. Ltd. Vs. State of Utter Pradesh and Others, . Apart from this circumstance, it is clear that standing order 21 contemplates a valid lay off which may have been ordered pursuant to standing orders 18, 19 and 20. We may at this stage say that standing order 19 contemplates how period of unemployment permissible under standing order 18 is to be regulated. Consequently, standing order 21 can be pressed in service only in a case when the management behaves according to standing orders 18 and 20 while imposing permissible lay offs. If the management has done so, its action is protected and covered by standing orders 18 and 20, as the case may be. If that happens the management can authoritatively tell the workman that for the period during which he was effectively and legally laid off as per the aforesaid standing orders, he would not be paid any wages or he may be paid as per the requirement of standing order 19. Even in such a case due to standing order 21 Section 25C of the I.D. Act walks in along with Chapter VA and protects at least 50% of the wages of such workmen. Thus standing order 21 has a limited scope which only covers these cases in which the management may have properly followed the provisions of standing Orders 18, 19 or 20. Even in such cases, because of standing Order 21, Chapter VA is made applicable and all the workmen are ensured at least 50% of the wages which otherwise they would not have got if they would have been covered only by standing orders 19 and 20. It is in this limited sphere that standing order 21 operates. But if in a given case the management does not comply with the requirements of standing orders 18 and 20, it cannot be said that they have laid off workmen and consequently there is no question of rights and liabilities of the employer and workmen in such a case being governed only by Chapter VA as the lay off is not pursuant to the standing orders 18 or 20. Such layoffs would be de hors the standing orders 18 or 20, and with such lay offs, standing order 21 has nothing to do. In fact, standing order 21 is designed to give additional rights to workmen whose lay offs are validly covered by standing orders 18 or 20, and in such cases, standing order 21 saves the rights of such workmen under Chapter VA especially Section 25C thereof. In cases of lay offs not covered by standing orders 18 or 20, it must be held that there is an illegal and wrongful refusal of work by the employer to his employees. Hence

standing order 21 instead of supporting the contention of the petitioner Company really goes against it.

34. Mr. Bhatt then submitted that there is a conflict between these standing orders and the provisions of Section 25C of the I.D. Act. Mr. Bhatt's submission was that Section 25C does provide for a contingency in which the period of lay off may exceed 45 days and standing order 20 does not contemplate any lay offs which can exceed six days in a month and, therefore, according to Mr. Bhatt, there is a direct conflict between these two provisions. It is difficult to spell out any such inconsistency or conflict as tried to be suggested by Mr. Bhatt. When the proviso to Section 25J(1) is carefully read, it is found that it contemplates a situation in which the workman may be laid off during 12 months for more than 45 days. Standing order 20 contemplates a ceiling of 6 days per month during which a workman can be laid off. Obviously for 12 months, at the rate of six days per month, standing order 20 would permit 72 days" lay off which would be naturally for more than 45 days in a year. Thus proviso to Section 25C in no way conflicts with the standing order 20. In fact, there is no inconsistency between the two and both could co-exist. Mr. Bhatt then submitted that the standing order 20 requires notice of 7 days which is not to be found in Section 25C. This is no case of any conflict between the two provisions. There is no provision for notice in Section 25C and there a provision for notice in standing order 20. But there is no inconsistency between the two. Consequently it cannot be said that standing order 20 conflicts with the provisions of Section 25C of the I.D. Act or that both cannot co-exist.

35. As a result of the aforesaid discussion, it is clear that management which wants to lay off its workmen has to take action either on the basis of contract between the parties or on the basis of relevant standing orders applicable to each case. If fortunately for the management a given standing order is complied with, then its action would be protected by the said standing order. But still its liability to pay at least 50% of the wages to the concerned workmen by way of compensation would remain in view of standing order 21 read with Chapter VA of the I D. Act. But if the management commits a breach of the relevant provision of any standing order, the limited power of lay off under it could not be available to the management and its action would be completely devoid of any efficacy at law and would be totally ultra vires and the conclusion would be inevitable that the management would be considered to have deprived workman of their right to work and for this unauthorised obstruction on the part of the management, the management would be liable to pay full wages for the period during which they thus unlawfully deprived the workmen of their legitimate work. Thus, really speaking, there is no inconsistency between the provisions of I.D. Act and the concerned standing orders. Both can be harmoniously reconciled. It will be convenient at this stage to see the effects of interaction of the provisions of the concerned standing orders and the provisions of the I.D. Act on the question of permissible lay offs. In order to better illustrate these effects, we may style a lay off permissible u/s 2(kkk) of the I.D. Act as a permissible lay off, and a lay off

permissible under the concerned standing order as authorised lay off.

36. A combined and harmonious operation of the provisions of the I.D. Act and the concerned standing orders results in the following four types of situations regarding lay offs, giving rise to four categories of lay offs:

(1) If the management has fully complied with the provisions of a given standing order while effecting a lay off and if the said lay off is covered by Section 2(kkk) of the I.D. Act, such lay off will be both authorised and permissible. In such an eventuality, the management will be liable to pay 50% wages and compensation to workmen u/s 25C, even though under the standing order simpliciter, it may not have to pay this much. This is because of the overriding effects of Section 25J and standing orders like standing order 21.

(2) Even if all the requirement of Section 2(kkk) have been fulfilled, and the contingencies contemplated by this provision have arisen, if the management does not comply with the procedural requirement of the standing orders, its action will be still unauthorised, and in such a case there will be no lawful lay off. Its action will be completely unauthorised and the management will be liable to pay full compensation or wages for that period to the workmen. It can be said that the lay off though permissible is not authorised, and consequently it will remain illegal.

(3) In a possible contingency, it may happen that the given standing orders may authorise management to lay off workmen in certain contingencies which may travel beyond the definition of lay off in Section 2(kkk), for example, a given standing order may permit lay off on the basis that there is a trading loss, but Section 2(kkk) does not permit such a ground for lay off. In that case, even though the management may follow all the requirements of the standing order, the action though authorised, would remain impermissible. It would still be illegal and consequently Section 25C would not be of any avail to the management and the management will have to pay full compensation by way of wages to the workmen for the period during which work was wrongly refused to them.

(4) It may happen that the management may not have followed the requirements of the standing orders. Its action would be unauthorised and the contingency in which it seeks to lay off the workman may not be covered by Section 2(kkk). For example, the management may be permitted to give a lay off on the ground of financial difficulty under the relevant standing order, but if the conditions of the standing orders have not been complied with while imposing such a lay off, the lay offs would be both unauthorised by the standing order and it will also be impermissible u/s 2(kkk). The net result would be that such a lay off would be illegal.

37. Thus, it will be seen that a lay off to be strictly legal has to be permissible u/s 2(kkk) of the Act and authorised by the relevant standing orders which are the repository of the powers of the management to effect a lay off. In such cases of legal lay offs only the employer can justifiably pay of 50% wages as

compensation u/s 25C for the period covered by such lay off. In all other cases the action of the management will not be protected as a legal one and it will remain liable to pay full wages to the willing workers who were wrongfully deprived of work during the relevant period. These lay offs will remain purported or illegal lay offs. Out of the aforesaid four types of cases, the first type shows the category of legal lay offs, all the rest represent categories of purported lay offs which are totally illegal having no efficacy whatsoever. They represent cases of stillborn lay offs.

38. The present is a case which is covered by the second category. Mr. Bhatt's contention is that the petitioner company has behaved under the provisions of the I.D. Act and Section 2(kkk) does contemplate lay off of workmen on account of accumulation of stocks. That does not help him for the simple reason that it has remained unauthorised as the management has committed breaches of standing order 20 by not giving 7 days notice and also by imposing lay offs for more than six days in a month. No protection is available to the petitioner company in this case and hence its action remains completely unauthorised even though permissible u/s 2(kkk). There was really no power of lay off available to the petitioner company on all these three occasions and hence its purported lay offs on all the three occasions had remained null and void and were exercises in futility with the result that during the concerned periods the above workmen were deprived of their work and wages unauthorisedly by the management and hence the management was bound to pay them full wages for the period during which it unauthorisedly prevented them from working.

39. The result is that both the contentions raised by Mr. Bhatt on behalf of the petitioner company fail and hence the petition is liable to be dismissed.

40. We may mention at this stage that when the petition was admitted, no interim relief was given to the petitioner as Mr. Anand for the respondent union had stated to the Court that in the event of the petitioner company succeeding in this litigation, the workmen will repay the amount that they will receive under the award of the Industrial Tribunal by monthly instalments deductible from their monthly wages. This eventuality has not arisen in the present case as we are dismissing the present petition.

In the result, the petition fails and the rule is discharged with costs.