Ajoy Kumar Banerjee and Others

Vs

Union of India and Others

Umed Singh and Others

Vs

Union of India and Others

Writ Petitions Nos. 5434-37 of 1980 with C. M. P. No. 25734 of 1983 and Writ Petitions Nos. 5370-74 of 1980 with C. M. P. Nos. 8714 and 8872 of 1980 and 31279 of 1982 and Writ Petitions Nos. 5434-37 of 1980 and 31279 of 1982

(Y. V. Chandrachud, R. S. Pathak, Sabyasachi Mukharji JJ)

21.03.1984

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. These petitions under Article 32 of the Constitution are filed by the employees of the General Insurance Companies and the All-India Insurance Employees' Association. The respondents are, Union of India, the General Insurance Corporation of India and four general insurance Corporation of India and four general insurance companies.

2. The petitioners challenge the notification dated September 30, 1980 of the Ministry of Finance (Department of Economic Affairs) (Insurance) introducing what is called General Insurance (Rationalisation and Revision of Pay Scales and Other Conditions of Service of Supervisory, Clerical and Subordinate Staff) Second Amendment Scheme 1980 as being illegal and violative of their fundamental rights under Articles 14, 19 (1) (g) and 31 of the Constitution of India.

3. Prior to 1972, there were 106 general insurance companies - Indian and foreign. Conditions of service of these employees were governed by the respective contracts of service between the companies and the employees. On May 13, 1971, the Government of India assumed management of the general insurance companies under the General Insurance (Emergency Provisions) Act, 1971. The general insurance business was nationalised by the General Insurance Business (Nationalisation) Act, 1972 (Act 57 of 1972). The preamble of the Act explains the purpose of the Act as to provide for the acquisition and transfer of shares of Indian insurance companies and under takings of other insurers in order to serve better the needs of economy in securing development of general insurance business in the best interest of the community and to ensure that the operation of the economic system does not result in the concentration of wealth to the common detriment, for the regulation and control of such business and for matters connected t

4. Act 57 of 1972, by Section 2, declared that it was for giving effect to the policy of the State towards securing the principles specified in clause (c) of Article 39 of the Constitution. Under

Section 3 (a) of the Act, 'acquiring company' has been defined as any Indian insurance company and, where a scheme had been framed involving the merger of one or more insurance companies in another or amalgamation of two or more such companies, means the Indian insurance company in which any other company has been merged or the company which has been framed as a result of the amalgamation.

5. Section 4 provides that on the appointed day all the shares in the capital of every Indian insurance company shall be transferred to and vested in the Central Government free of all trusts, liabilities and encumbrances affecting these.

6. Section 5 provides for transfer of the undertakings of other existing insurers. Section 8 provides for the provident fund, super- annuation, welfare or any other fund existing. Section 9 stipulates that Central Government shall form a Government company in accordance with the provisions of the Companies Act, to be known as the General Insurance Corporation of India for the purpose of superintending, controlling and carrying on the business of general insurance. Section 10 stipulates that all shares in the capital of every Indian insurance company which shall stand transferred to and vested in the Central Government by virtue of Section 4 shall immediately after such vesting, stand transferred to and vested in the Corporation.

7. Chapter IV deals with the amounts to be paid for acquisition and as such we are not concerned in this case with that chapter in view of the controversy involved.

8. Chapter V of the aforesaid Act deals with " Scheme for re- organisation of general insurance business". Section 16 and 17 of the Act in this chapter are as follows :

> 16. (1) If the Central Government is of opinion that for the more efficient carrying on of general insurance business it is necessary so to do, it may, by notification, frame one or more schemes providing for all or any following matters :
>
> (a) the merger in one Indian insurance company of any other Indian insurance company, or the formation of a new company by the amalgamation of two or more Indian insurance companies :
>
> (b) the transfer to and vesting in the acquiring company of the undertaking (including all its business, properties, assets and liabilities) of any Indian insurance company which ceases to exist by reason of the scheme;
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> (c) the constitution, name and registered office and the capital structure of the acquiring company and the issue and allotment of shares;
>
> (d) the constitution of a board of management by whatever name called for the management of the acquiring company;
>
> (e) the alteration of the memorandum and articles of association of the acquiring company for such purposes as may be necessary to give effect to the scheme;
>
> (f) the continuance in the acquiring company of the services of all officers and other employees of the Indian insurance company which has ceased to exist by reason of the scheme, on the same terms and conditions which they were getting or, as the case may be, by which they were governed immediately before the commencement of the

scheme;

(g) the rationalisation or revision of pay scales and other terms and conditions of service of officers and other employees wherever necessary;

(h) the transfer to the acquiring company of the provident. Superannuation, welfare and other funds relating to the officers and other employees of the Indian insurance company which has ceased to exist by reason of the scheme;

(i) the continuance by or against the acquiring company of legal proceedings pending by or against any Indian insurance company which has creased to exist by reason of the scheme, and the initiation of such legal proceedings, civil or criminal, as the Indian insurance company might have initiated if it had not ceased to exist;

(j) such incidental, consequential and supplemental matters as are necessary to give full effect to the scheme.

(2) In framing schemes under-section (1), the object of the Central Government shall be to ensure that ultimately there are only four companies (excluding the Corporation) in existence and that they are so situate as to render their combined services effective in all parts of India.

(3) Where a scheme under sub-section (1) provides for the transfer of any property or liabilities, then, by virtue of the scheme, the property shall stand transferred to and vested in, liabilities of the acquiring company.

(4) If the rationalisation or revision of any pay scales or other terms and conditions of service under any scheme is not acceptable to any officer or other employee, the acquiring company may terminate his employment by giving him compensation equivalent to three months' remuneration, unless the contract of service with such employee provides for a shorter notice of termination.

Explanation - The compensation payable to an officer or other employee under this sub-section shall be in addition to, and shall not affect, any pension, gratuity, provident fund or other benefit to which the employee may be entitled under his contract of service.

(5) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, the transfer of the services of any officer or other employee of an Indian insurance company to the acquiring company shall not entitle any such officer or other employee to any compensation under that Act or other law, and no such claim shall be entertained by any court, tribunal or other authority.

(6) The Central Government may, by notification, add to, amend or vary any scheme framed under this section.

(7) The provisions of this section and of any scheme framed under it shall have effect notwithstanding anything to the contrary contained in any other law or any agreement, award or other instrument for the time being in force.

17. A copy of every scheme and every amendment thereto framed under Section 16 shall be laid, as soon as may be after it is made, before each House of Parliament.

9. The object of any scheme under this chapter, according to the petitioners, was clear from the main part of Section 16 (1) of the said Act, i.e. a scheme made under this chapter was only for the purpose of providing for the merger of Indian insurance companies, and this was made clear by Section 16 (2) of the Act. Section 16 (4) of the said, Act, it was contended on behalf of the petitioners, implied that any scheme of rationalisation or revision of the petitioners, implied that any scheme of rationalisation or revision of pay scales and other terms could only be in the context of merger and amalgamation of one or more of the companies. In this connection mention was made in the petition of the "Memorandum regarding delegated legislation" submitted to the Parliament along with the General Insurance Business (Nationalisation) Bill, 1972 (Bill No. 60 of 1972), which later became the aforesaid Act. It was made explicit, according to the petitioners, that Clause 16 of the Bill, later Section 16 of the Act "emp

10. In exercise of the powers contained in the aforesaid Section 16 (1) of the said Act, four merger schemes were framed in 1973 by the Central government and the four companies, Oriental Fire and General Insurance Company Ltd., National Insurance Company Ltd., New India Assurance Company Ltd., and United India Insurance Company Ltd., into one or the other of which several general insurance companies in the country were merged, were alone allowed to carry on the business of general insurance. The preamble of the scheme, called the New India Assurance Company Limited (Merger) Scheme, 1973, had stated that the Central Government was of the opinion that for the more efficient carrying on of the general insurance business, it was necessary to frame scheme for the merger of certain Indian insurance companies in the New India Assurance Company Limited, The preambles of the merger schemes in respect of the other three companies were on similar lines. These four companies are subsidiaries of the General Insurance Co

11. By a notification dated May 27, 1974, the Ministry of Finance (Department of Revenue and Insurance), Government of India, framed a 'scheme' called the General Insurance (Rationalisation and Clerical and Subordinate Staff) Scheme, 1974. and the preamble of the scheme stated that "whereas the Central Government is of the opinion that for the more efficient carrying on of general insurance business, it is necessary to do", therefore, in exercise of the powers conferred by Section 16 (1) (g) of the aforesaid Act, the Central Government framed the 'scheme' to provide for the rationalisation and revision of pay scales and other terms and conditions of service of employees working in supervisory, clerical and subordinate position under the insurers. The said scheme governed the pay scales, dearness allowance, other allowances and other terms and conditions of the general insurance employees. It dealt, inter alia, with nature and hours of work, fixation, retirement, provident fund and gratuity. Paragraph 23 of t

12. The petitioner further state that the employees of the insurance companies serving throughout the country were, however, subsequently not satisfied with the pay scales, dearness allowance, other terms and conditions available to them on account of several factors. Through their associations, they submitted their charters of demands to the General Insurance Corporation of India in 1977 for revision of terms and conditions of their service. Negotiations were held between the management and the unions of the upward revision but according to the petitioners, nothing happened. Industrial dispute was raised between the management of General Insurance Corporation of India and the class III and IV employees on the demand of revision of pay scales, dearness allowance and other allowances and service conditions. The Chief Labour Commissioner (Central), Government of India, Ministry of Labour issued conciliation notice dated September 11, 1980 under the Industrial

Disputes Act, 1947 to the Chairman of the General I

13. After the 1974 scheme, in 1976, the Board of Directors approved of promotion policy. On June, 1, 1976 another scheme by which there were amendments with regard to provident fund, was introduced. As mentioned before in 1977, major unions submitted charters of demands to respondent 2, seeking revision in the terms and conditions of service of the employees with retrospective effect. Between March 10, 1977 to March 30, 1977. memorandum was addressed by the employees of All-India Association to the Union Finance Minister.

14. In the memorandum addressed, it was stated that in the normal circumstances on the expiry of the prescribed period of operation of an agreement, settlement of award, the unions usually submitted charters of demands and the said charters of demands were settled either through mutual negotiations or as a result of award of an industrial tribunal, but as the pay scales and other conditions of service of the employees in general insurance industry were, how ever, governed by a scheme or schemes to be formulated by the Central Government and it was the Central Government which could amend these, the unions submitted that there was justification for making upward revision in the scheme and shifting the base year from 1960 to 1970-71 for he purpose of prescribing pay scales. This point was stressed by counsel appearing for the General Insurance Company, in order to emphasis that the unions always accepted the position prior to the present petition, that the Government had the power to amend or make further sche

15. It was contended on behalf of the petitioners that the said notification had been issued by the Government suddenly and unilaterally, without any notice to the parties concerned. The employees were taken unawares. It was contended that from the provisions of the said notification the service conditions of the employees including the petitioners employees, particularly with regard to dearness allowance, stagnation increments, retirement age and other increments had become worse than before and detrimental to the employees. While the employees were eagerly awaiting improvement in their service conditions, this notification had unilaterally altered the service conditions to their prejudice. Petitioners in their petitions had alleged certain facts by certain illustrations, which according to them, indicated that employees had been affected adversely, inter alia, in gross starting salary of different groups of employees, salary on confirmation of assistants who are graduates etc. It was further stated that re

16. It was further alleged that stagnation increments that is, increments after reaching the maximum of the grade too all cadres upto maximum of 3 for every two years of service were given before, but now under the present notification Clauses 5 substituted paragraph 7 and provided for no stagnation increment except only one increment for two years to the employees is record clerk cadre. Previously, there was no maximum limit on salary. Now maximum limit was fixed at Rs. 2750. Earlier, according to the petitioners house rent allowance was given to all employees irrespective of having official accommodation, under the new scheme, house rent allowance was withdrawn for employees having official accommodation. Earned leave earlier could have been accumulated upto 180 days, but the new scheme limited the accumulation of earned leave upto 180 days for the employees retiring at the age of 58 years and 120 days for the employees retiring at the age of 60 years. It was stated in the petitions that this had substanti

17. The main ground of the challenge is that the impugned notification is illegal as the Central Government has no power to issue it under Section 16 of the said Act and as such the notification framing the present 'scheme' is ultra vires Section 16 (1) of the General Insurance Business (Nationalisation) Act, 1972. According to the petitioners, once the merger of the insurance

companies took place and the process of reorganisation was complete on January 1, 1974 as mentioned before by forming the four insurance companies by the four scheme already framed in 1973, there could be no further scheme except in connection with further reorganisation of general insurance business and the merger of more insurance companies as mentioned in sub-section (1) of Section 16 of the said Act. But the present alleged scheme there was no merger or reorganisation contemplated, unlike 1974 scheme, according to the petitioners. The petitioners contend that merely making amendment to the terms and conditions of service of the emp

18. The petitioners further contend that under the Life Insurance Corporation Act, Banking Companies Act, etc. There were powers to frame regulations independently of reorganisation. But there is no such power, according to the petitioners, under the General Insurance Business (Nationalisation) Act, 1972. The said notification therefore is without the authority of law. It is further, submitted that the present service conditions of the employees unrelated to reorganisation of general insurance business or merger or amalgamation of insurance companies, could not form part of any scheme or notification under Section 16 of the aforesaid Act. Section 16 (7) of the Act would not come into play and the provisions of the Industrial Disputes Act, 1947 including Section 9-A were applicable to the general insurance industry. Therefore if the companies wanted to change the service conditions of their employees affecting them adversely, they should have given, the petitioners contend, notice of changes under Section 9-A

19. The petitioners contend that under the Sick Textiles Under-takings (Nationalisation) Act, 1974 the Coking Coal Mines (Nationalisation) Act, 1972 etc., separate companies had been formed on nationalisation. The employees of those companies were entitled to have their service conditions regulated under Industrial Disputes Act, 1947. In the present case, the employees have been deprived of the existing benefits without following the procedures prescribed under the Industrial Disputes Act, 1947. Therefore, there was discrimination and violation of Article 14 of the Constitution. The petitioners therefore contend that the terms and conditions of service enunciated in 1974 being as a result of bilateral agreement, could not be changed unilaterally, to the detriment of the employees' fundamental rights to carry on their employment for gain and as such violative of Article 19 (1) (g) of the Constitution. It is stated that the notification was illegal, being ultra vires Section 16 of the Act. Since, according to

20. The second batch of writ application (Writ Petitions Nos. 5434-37 of 1980) are on behalf of the employees as well as the General Insurance Employees' All-India Association challenging the scheme of 1980 more or less on the same though not identical grounds mentioned in Writ Petitions Nos. 5370-74 of 1980. Interim order was passed in the said application regarding payment of dearness allowance as would appear from the Court's order dated August 25, 1981. In the said order, directions were given for payment of dearness allowance payable under the old scheme form the beginning of 1981 with quarter April, as well as quarter beginning from July, 1981 within certain time mentioned in the said order. It was further, directed that subsequent dearness allowance will be paid in accordance with the directions to be given at the time of disposal of these writ applications.

21. In the Writ Petitions Nos. 5370-74 of 1980, there is a petition on behalf of All-India National General Insurance Employees' Association for intervention. It represents a trade union of workmen working in the offices of General Insurance Corporation of India, Bombay as well as its subsidiaries. They, inter alia, allege that the main petitions have challenged the scheme of 1980 on purely technical grounds and though it would be correct to say that the scheme of 1980 does not meet the aspirations of the workers wholly as reflected in the various charters of demands submitted to he management, they are of the opinion that the same is not completely bereft of any merit so that

the same may be quashed by this Court. They mentioned certain additional benefits available in the said scheme of 1980 in paragraphs 15, 16, 18 and 19 of the said application. They therefore claim right to intervene in the said Writ Applications Nos. 5370-74 of 1980. There is also an application by Senior Assistants of the New India As

22. All these will be disposed of by this judgment.

23. It will, therefore, be necessary, before we examine the contentions raised in these petitions, to briefly consider the scheme of 1980. as mentioned before, this scheme is called the General Insurance (Rationalisation and Revision of Pay Scales and Other Conditions of Service of Supervisory, Clerical and Subordinate Staff) Second Amendment Scheme, 1980. Some new definitions have been provided by paragraph 2 of 1980 scheme which included the meaning of the Company and under the scheme it mentioned that the 'Company' would mean the four nationalised companies, National Insurance Company limited, the New India Assurance Company Limited, the Oriental Fire and General Insurance Company limited and the United India Insurance Company Limited. Sub-paragraph (ii) of paragraph 2 of the said scheme defines Net monthly emoluments. By sub-paragraph (ii), the amended definition of Revised terms, (Revised Scale of Pay) was inserted. By paragraph 3, adjustment of pay was stipulated on the coming into effect of operation

24. It is not necessary to set out further details of the actual provisions of 1980 scheme. While on behalf of the petitioners, it was contended that the revised scales of pay and the terms included therein were highly detrimental to the employees concerned, on the other hand, it was contended on behalf of the Union of India as well as the General Insurance Company that on the whole, the revised scales of pay provided for better pay and allowances and better opportunities to the employees concerned. One of the intervener unions also states that the 1980 scheme is not completely devoid of merit. Parties have taken us through in detail by help of charts and other figures in support of the respective cases and contentions. It is not necessary, in view of the nature of the contentions raised before us, to express any opinion on the merits or demerits of the rival contentions of the parties in respect of the details of either or both the schemes. It may, however, be stated that there has been a ceiling on increas 74 and 1980 have to be viewed in this background.

25. The basic and, in our opinion, the main questions are have the Government and the respondents power in law to introduce the 1980 scheme and if they have that power, have they exercised that power in any arbitrary and whimsical manner to deny to the petitioners any of the fundamental rights and whether the petitioners have been discriminated against ? these, therefore, are the questions and it is not necessary, in our opinion, to detain ourselves with lengthy extracts from the schemes of 1974 and 1980 to examine which is better or which is detrimental and if so, to what extent. On these, there will be and are divergent views.

26. The Scheme of 1980 has been framed by the Central Government under the authority given to it by the Act under General Insurance Business (Nationalisation) Act, 1972. the scope of that authority has, therefore, to be found under Chapter V containing Sections 16 and 17 of the Act. We have set out hereinbefore the terms of Section 16 and 17. Sub-section (1) of Section 16 authorises the Central Government if it is of the opinion that "for the more efficient carrying on of general insurance business, it is necessary to do so, it may, by notification, frame one or more schemes " providing for all or any of the matters enumerated in the different clauses of Section 16 (1) of the said Act, and the matters have been set out in the different clauses of the said sub-section. For the present purpose, clause (g) is relevant, which gives authority to the Central Government to frame scheme for rationalisation or revision of pay scales and other terms and conditions of service of

officers and other employees wherever ne

27. There is another aspect which has to be kept in mind. The scheme is an exercise of delegated authority. The scope and ambit of such delegated authority must be so construed, if possible, as not to make it bad because of the vice of excessive delegation of legislative power. In order to make the power valid, we should so construe the power, if possible, given under Section 16 of the Act in such manner that it does not suffer from the vice of delegation of excessive legislative authority.

28 It is well-settled that unlimited right of delegation is not inherent in the legislative power itself. This Court has reiterated the aforesaid principle in Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. Assistant Commissioner of Sales Tax. The growth of legislative power of the executive is a significant development of the twentieth century. The theory of laissez-fairs has been given a go-by and large and comprehensive powers are being assumed by the State with a view to improve social and economic well-being of the people. Most of the modern socio-economic legislations passed by the Legislature lay down the guiding principles of the legislative policy. The Legislatures, because of limitation imposed upon them and the time factor, hardly can go into the matters in detail. The practice of empowering the executive to make subordinate legislation within the prescribed sphere has evolved out of practical necessity and pragmatic needs of the modern welfare State.

29. Regarding delegated legislation, the principle which has been well established is that Legislature must lay down the guidelines, the principles of policy for the authority to whom power to make subordinate legislation is entrusted. The legitimacy of delegated legislation depends upon its being used as ancillary which the Legislature considers to be necessary for the purpose of exercising its legislative power effectively and completely. The Legislature must retain in its own hand the essential legislative function which consists in declaring the legislative policy and lay down the standard which is to be enacted into a rule of law, and what can be delegated is the task of subordinate legislation which by very nature is ancillary too the statute which delegates the power to make it effective provided the legislative policy is enunciated with sufficient clearness or a standard laid down. The courts cannot and do not interfere on the discretion that undoubtedly rests with the Legislature itself in determining

The essential legislative function consist in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct. It is open to the Legislature to formulate the policy as broadly and with as little or as much details as it thinks proper and it may delegate the rest of the legislative work too a subordinate authority who will work out of the details within the framework of that policy.

30. But as explained before, the Act must be read as a whole, The Act must be read in conjunction with the preamble to the Act and in conjunction with the memorandum in Clause 16 of the Bill which introduced the Act in question. But above all it must be read in conjunction with sub-section (2) of Section 16 of the Act which clearly indicated the object of framing the scheme under Section 16 (1) of the Act. The authority and scope for subordinate legislation can be read in either of the two ways, namely one which creates wider delegation and one which restricts that delegation. In our opinion, in view of the language of sub-section (2) of Section 16 and the memorandum to the Bill, in the peculiar facts of this case the one which restricts the delegation must be preferred to the other. So read, in our opinion, the authority given under Section 16 under the different clauses of sub-section (1) must be to subserve the object as envisaged in sub-section (2) of Section 16 of the Act, and if it is so read then fram

31. This being the position, it is not necessary to examine the various other contentions raised in this case. Various contentions have been made. Both sides relied on various decisions in support of their respective contentions. Both sides relied on the decisions dealing with the employees of the Life Insurance Corporation and the Acts and the amendments in connection with their terms of employment. We will jut note the decisions. Reliance was placed on the decision in he case of Madan Mohan Pathak v. Union of India The question in that decision was the validity of Section 3 of the Life Insurance Corporation (Modification of Settlement) Act, 1976, The questions involved in that decision, in the view we have taken as well as in the facts of the instant case, are not relevant. In last mentioned case there was a writ petition which was allowed by the learned Single Judge of the High Court and appeal was preferred from that decision. during the pendency of the appeal, there was an amendment to the Act namely, t

32. Chandrachud J., as the learned Chief Justice then was, speaking for himself and Fazal Ali and Shinghal, JJ. concurred with the majority view on the basis that the impugned Act violated Article 31 (2) of the Constitution and was therefore void. Bhagwati, J, speaking for himself and on behalf of Iyer and Desai, JJ. was of the view that irrespective of whether there impugned Act was constitutionally valid or not, the Corporation was bound to obey the writ of mandamus issued by the High Court and to pay the bonus for the year 1975-76 to Class III and Class IV employees. The said learned Judges held that writ of mandamus was not touched by the impugned Act. The other observations of the said Judges as well as the other learned Judges are not relevant in the view was have taken In instant case before us we do not have any case of settlement which was the subject-matter there between the workers and the employees and the rights flowing therefrom.

4. (1978) 3 SCR 334 : (1078) 2 SCC 50 : 1978 SCC (L&S) 103 : AIR 1978 SC 803

33. Reliance was also placed on the decision in the case of Life Insurance Corporation of India v. D. J. Bahadur as well as the decision in the case of A. V. Nachane v. Union of India In the view we have taken, it is not necessary to examine these decisions in detail. In those cases, the question under consideration was the Life Insurance Corporation Act, 1956 and the subsequent amendments thereto as well as certain orders in respect of the same.

34. The bases upon which the aforesaid two decisions proceeded were (a) a right had crystallised by the directions in D. J. Bahadur case 5 and this could not be altered or taken away except by a fresh industrial settlement or award or by relevant legislation and (b) the relevant legislation which was the subject matter of challenge in A. V. Nachane case 3 cannot take away the rights which had accrued to the employees with retrospective effect. As is evident from the facts of the case before us, the situation is entirely different. We are concerned here with the question primarily whether the scheme is authorised by the Act and if it is so authorised, the question is whether the Act in question is constitutionally valid in the sense it had taken away any rights which had crystallised or whether it infringed Article 14 of the Constitution. These decisions also deal with the question whether a special legislation would supersede a general legislation and which legislation could be considered to be a special leg

35. Another aspect that was canvassed before us was whether Section 16 of the 1972 Act with which we are concerned in any way affected any industrial dispute and whether the provisions of sub-section (5) of Section 16 of sub-section (7) of Section 16 in any way curtailed any right in respect of any industrial dispute and if so whether the General Insurance Business (Nationalisation) Act, 1972 is a special legislation or whether the Industrial Disputes Act, 1947 is a special legislation in respect of adjudication of rights between the employees and the employees.

36. If we had held that the scheme of 1980 was permissible within the power delegated under Section 16 of the General Insurance Business (Nationalisation) Act, 1972, it would have been necessary for us to discuss whether there is any conflict between the provisions of the said Act and the Industrial Disputes Act, 1947, and if so, which would prevail. Section 16 (5) of the 1972 Act, as we have noticed earlier, stipulates that notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, the transfer of the services of any officer or other employee of an Indian Insurance company to the acquiring company shall not entitle any such officer or other employee to any compensation under that Act or other law, and no such claim shall be entertained by any court, tribunal or other authority. This, to a certain extent, clearly excludes the operation of the Is Act, 1947 in respect of disputes arising on the transfer of the business of general insurance. There is

37. We have noticed the scheme of 1980. That scheme puts certain new conditions about retirement, about emoluments and other benefits of the employees. It may be noted that the application of Industrial Disputes Act as such in general is not abrogated by the provisions of 1972 Act, nor made wholly inapplicable in respect of matters not covered by any provisions of the scheme. This aspect is important and must be borne in mind.

38. Wrongful dismissal, other disciplinary proceedings, unfair labour practices, victimization etc. would still remain unaffected by any scheme or any provision of the Act. The only relevant and material question that would have arisen, is, whether in case where a statutory ceiling which one of the counsel for the petitioners tried to describe as "statutory gherao on rise of increase in emoluments and other benefits with the rise in the cost of index of prices (sic) " affected the position under the Industrial Disputes Act, 1947. It may be noted as we have noted before that this is not a case where any dispute was pending before any tribunal or before any authority under the Industrial Disputes Act, 1947 between the workmen concerned and the insurance companies. Though there was conciliation proceedings, the conciliation proceedings could not reach to any successful solution and the Conciliation Officer had made a report of failure of conciliation. The Government had the report. Thereafter the Government has

(i) The two are inconsistent with each other.

(ii) There is some express reference in the later to the earlier enactment.

If either of these two conditions is fulfilled, the later law, even though general, would prevail.

39. From the text and the decisions, four tests are deducible and these are : (j) The Legislature had the undoubted rights to alter a law already promulgated through subsequent legislation, (ii) A special law may be altered, abrogated or repealed by a later general law by an express provision, (iii) A later general law will override a prior special law if the two are so repugnant to each other that they cannot co-exist even though no express provision in that behalf is found in the general law, and (iv) It is only in the absence of a provision to the contrary and of a clear inconsistency that a special law will remain wholly unaffected by a later general law. See in this connection, Maxwell on the Interpretation of Statutes, Twelfth Edition pages 196-198.

40. This question was posed in the case of Life Insurance Corporation of India v. D. J. Bahadur where at page 1125, Krishna Iyer, J. has dealt with this aspect of the question. There the learned Judge posed the question whether the LIC Act was a special legislation or a general legislation. Reference in this connection may also be made on Craies on Statute Law, Seventh Edition (1971),

pages 377-382, but it has to be borne in mind that primary intention has to given effect to. Normally two aspects of the question would have demanded answers, if the scheme of 1980 was held to be valid on the first ground we have discussed, one in whether the General Insurance Business (Nationalisation) Act, 1972 is a special statute and the Industrial Disputes Act, 1947 is a general Act or vice versa, and secondly whether there is any express provision in the General Insurance Business (Nationalisation) Act, 1972 which deals with the subject. Now in this case, we have categorical reference to the Industrial Disputes Act, 1947

41. Having regard to the context in which the question now arises before us, in our opinion, there is no question as to whether the provisions of Industrial Disputes Act would prevail over the provisions of General Insurance Business (Nationalisation) Act. There is no industrial dispute pending as such. The General Insurance Business (nationalisation) Act, 1972 has not abrogated the Industrial Disputes Act, 1947 as such.

42. The question of the application of the principle of "Generalia specialibus non derogant" has been dealt with in the case of J. K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U. P. Some of these aspects were also discussed in the case of U. P. State Electricity Board v. Hari Shanker Jain.

43. Had it been possible to uphold the scheme of 1980 as being within the power of 1972 Act, it would have been also necessary for us to consider whether such a scheme or Act would have been constitutionally valid in the context of the fundamental rights under Article 14, Article 19 (1) (g) and Article 31 of the Constitution and the effect of the repeal of Article 31 of the Constitution and the effect of the repeal of Article 31 by the Forty-fourth Amendment of the Constitution. The General Insurance Business (Nationalisation) Act was put in the Ninth Schedule of the Constitution as item 95 on August 10, 1975. The effect of putting a particular provision in the Ninth Schedule at a particular time has been considered by this Court in the case of Prag Ice & Oil Mills v. Union of India. It was held by the learned Chief Justice in the said decision that on a plain reading of Article 31-A it could not be said that the protective umbrella of the Ninth Schedule took in not only the Acts and regulations specified th

44. It was contended that the rights of the petitioners under Article 19 (1) (g) have been affected by the impugned legislation and the scheme framed thereunder. Empowering the Government to frame schemes for carrying out the purpose of the Act, does, not, in out opinion, in the facts and circumstances of the case, in any way, affect or abridge the fundamental rights of the petitioners and would not attract Article 19 (1) (g).

45. The other aspect which was canvassed before us was whether the Act and the scheme in question violated Article 14 of the Constitution. This question has to be understood from two aspects, namely whether making a provision for salary and emoluments of the petitioners who are the employees of the General Insurance Corporation specifically and differently from the employees of other public sector undertakings is discriminatory in any manner or not and the other question, is whether making a provision for the employees of General Insurance Corporation for settlement of their dues by schemes and not leaving the question open to the general provisions of Industrial Disputes Act, 1947 is discriminatory and violative of the rights of the employees.

46. It is true that sometimes there have been rise in emoluments with the rise in the cost of living index in certain public sector corporations. The Legislature however is free to recognise the degree of harm or evil and to make provisions for the same. Making dissimilar provisions for one group of public sector undertakings does not per se make a law discriminatory as such. It is well settled that

courts will not sit as super-Legislature and strike down a particular classification on the ground that any under-inclusion namely that some others have been left untouched so long as there is no violation constitutional restraints. It was contended that the application of the Industrial Disputes Act not having been excluded from the nationalised textile mills, nationalised coal and coking coal mines and nationalised banks but if and insofar as it excluded the application of the Industrial Disputes Act, in case of general insurance companies, the same is arbitrary and bad. In this connection reliance may be place

47. As there was no industrial dispute pending, we are of the opinion that on the ground that the petitioners have been chosen out of a vast body of workmen to be discriminated against and excluding no violation of Article 14 of the Constitution. This question, however, it must be emphasised again, does not really arise in the view we have taken.

48. Before us it was contended that sick mills which have been nationalized have been treated differently that general insurance employees under 1972 Act in Section 16 (5) and Section 16 (7) and in the scheme framed under the General Insurance Business (Nationalisation) Act, 1972. The object and purpose of the Sick Textile Undertaking (Nationalisation) Act, 1974, was "reorganising and rehabilitating such sick textile undertakings so as to subserve the interests of general public by augmentation of the products and distribution at fair prices of different varieties of cloth and yard". The basic objective of the said Act was rehabilitation of the sick textile mills. That was different for the purpose of the present Act. The sick textile units had under them the bulk of their employees as workmen those who came under the provisions of Industrial Disputes Act. Section 14 of the said Act statutorily recognises the special position of the workmen as contra-distinguished from the other employees by enacting separat

49. Another item mentioned before us was the employees of Coking Coal Mines (Nationalisation) Act, 1972 (sic). It has to be borne in mind that the object covered by the scheme of the Act was entirely different from the General Insurance Business (Nationalisation) Act, 1972. The Coking Coal Mines (Nationalisation) Act, 1972 was enacted to provide for the transfer of the interest of the owners of such mines and also the transfer of the interests of owners of coke even plants with a view to "reorganising and reconstructing such coal mines and plants for the purpose of protecting, serving and permitting scientific development of resources of Coking coal needed to meet the growing requirement of iron and steel industry". According to the normal prevalent view, the workmen of coking coal mines were sweated labour. These workmen constituted very large percentage of the employees. The act in question namely the Coking Coal Mines (Nationalisation) Act recognised the independent existence of the said workers as a clas

50. Differentiation is not always discriminatory. If there is a rational nexus on the basis of which differentiation has been made with the object sought to be achieved by particular provisions, then such differentiation is not discriminatory and does not violate the principles of Article 14 of he Constitution. This principle is too well-settled now to be reiterated by reference to cases. There is intelligible basis for differentiation. Whether the same result or better result could have been achieved and better basis of differentiation evolved is within the domain of Legislature and must be left to the wisdom of the Legislature. Had it been held that the scheme of 1980 was within the authority given by the Act, we would have rejected the challenge to the Act and the scheme under Article 14 of the Constitution.

51. It was also urged before us on behalf of the respondents that the petitioners being employees of public sector undertakings, and these are economic instrumentalities of the State and having regard

to the constants and contour of the concept of public employment as developed in the Indian legal system, an employee in a public sector can be approximated with the treated as a Government servant. Having regard to the principles which govern the employer and employee relationship in the governmental sectors, the conditions of service of employees in pubic employment should be exclusively governed by the statute and by the rules and regulations framed thereunder. Predication of such power would necessarily exclude the provisions of Industrial Disputes Act and the principles of collective bargaining just as these would exclude the principles of contractual relationship in such matters. The point is interesting. However, in the view we have taken we need not discuss this aspect any further.

52. It was further submitted on behalf of the respondents that the rationale, justification and the genesis of the law of nationalisation being the creation of economic instrumentalities to subserve the constitutional and administrative goal of governance in a social welfare society, of the management nor for sharing such profits with the workmen alone but to utilise the investible funds available as a result of such ventures and undertakings for socially oriented goals laid down by the governmental policies operating on the said sectors. In this connection reference was made before us to the decision in the case of State of Karnataka v. Ranganatha Reddy (1978) 1 SCR 641, 672, 676, 691, : (1977) 4 SCC 471, 503, 507, 517

53. Employment in the public sector undertakings enjoys a status. It was submitted that both historically as well as a matter of law, the public sectors undertakings being the economic instrumentalities of the State and discharging the obligations which the State have, the employees of such undertakings in principle cannot be distinguished from the employees in the government services. In this connection our attention was drawn to the case of Sukhdev Singh v. Bhagatram, Sardar Singh, Raghuvanshi (1975) 3 SCR 619, 646, : (1975) SCC 421, 450 : 1975 SCC (L & S) 101 : (1975) 45 Com Cas 285. It was urged that in all constitutional democracies, the relationship between the government and the civil service is exclusively governed by the statutory provisions with the power in the Government employees. Reference was made to The Law of Civil Service by Kaplan. It was further submitted that in India the law is the origin of the Government service might be contractual but once appointed to a post under the Government, t

54. We would have considered these aspects had it been necessary for us to do so but it is not necessary in the view taken. We may reiterate that Article 14 does not prevent Legislature from introducing a reform i.e. by applying the legislation to some institutions or objects or areas only according to the exigency of the situation and further classification of selection can be sustained on historical reasons or reasons of administrative exigency or piecemeal method of introducing reforms. The law need not apply to all the persons in the sense of having a universal application to all persons. A law can be sustained if it deals equally with the people of well- defined class- employees of insurance companies as such and such a law is not open to the charge of denial of equal protection on the ground that it had no application to other persons.

55. In the view we have taken of the matter, these applications succeed and the impugned scheme of 1980 must be held to be bad as beyond the scope of the authority of the Central Government, under the general Insurance Business 222, 1972. The operation of the scheme has been restrained by the order passed as interim order in these cases. The impugned scheme is therefore quashed, and will not be given effect to. The parties will be at liberty to adjust their rights as if the scheme had not been framed. The application for intervention is allowed. Let appropriate writs be the Government, if it is so advised, to frame any appropriate legislation or make any appropriate amendment giving power to Central Government to frame any scheme as it considers fit and proper. In the facts and

circumstances of these cases and specially in view of the fact and that petitioners had themselves at one point of time wanted that view scheme be framed by the Central Government. We direct that parties will pay and bear their own co

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