**SUPREME COURT OF INDIA**

Orissa Textile and Steel Ltd.

Vs.

State of Orissa

C.A.No.529 of 2002

(S.P.Bharucha CJI., S.S.M.Quadri, N. Santosh Hegde, S.N.Variava and Shivaraj V. Patil JJ.)

17.01.2002

**JUDGEMENT**

**S. N. Variava, J.**

1. In these Appeals and Writ Petitions the question for consideration, by this Bench, is the constitutional validity of Section 25-O of the *Industrial Disputes Act, 1947*. Section 25-O, as it now stands, was incorporated by the Amendment Act 46 of 1982 (for sake of convenience the said Section will hereinafter be referred to as the amended Section 25-O). In some of these matters the constitutional validity of Section 6-W of the U.P. Industrial Disputes Act is in question. Section 6-W is identical to amended Section 25-O. Even though in this judgment reference is made only to Section 25-O, what is set out herein will equally apply to Sec. 6-W. For considering the constitutional validity of these Sections it is not necessary to note the facts in each case. Therefore the facts are not being set out.

2. In the case of *Excel Wear Etc. v. Union of India and others*[1] a Constitution Bench struck down Section 25-O of the Industrial Disputes Act (as it then stood). Thereafter the constitutional validity of Section 25-N of the Industrial Disputes Act (as it then stood) was considered by a Constitution Bench in the case of *Workmen v. Meenakshi Mills Ltd.*[2]. In Meenakshi Mills' case this Court after referring to Excel Wear's case, upheld the constitutional validity of Section 25-N. These Appeals and Writ Petitions have been referred to a Constitution Bench with the following observation:

> "The common question that arises for consideration relates to the constitutional validity of S. 25(O) of the Industrial Disputes Act as introduced by Central Act No. 46 of 1982 and Section 25(O) as applicable in the State of M.P. by virtue of M.P. Act No. 32 of 1983 as well as Section 6(W) of the U.P. Industrial Disputes Act, 1947. The earlier provision contained in Section 25(O) was struck down by this Court in *Excel Wear Etc. v. Union of India and Ors.*[3]. The learned counsel for the employers in support of their submissions assailing the validity of the said provisions have placed reliance on various observations in the judgment in Excel Wear's Case. On behalf of the workmen reliance has been placed on the decision of the Constitution Bench in

*Workmen of Meenakshi Mills Ltd. and Ors. v. Meenakshi Mills Ltd. and Anr.*[4]. Since the questions raised involve interpretation of the various observations in the judgment in Excel Wear's case as well as in Meenakshi Mills' case, we consider it appropriate that these matters are heard by a Constitution Bench. It is, therefore, directed that all these matters be placed before Hon'ble the Chief Justice of India for suitable directions."

3. It must be mentioned that even amongst the High Courts there is a conflict of opinion. Some of the High Courts have held that the amended Section 25-O of the Industrial Disputes Act and or Section 6-W of the U.P. Industrial Disputes Act still suffers from the substantial vice pointed out in Excel Wear's case and is therefore unconstitutional. Some other High Court have, relying on Meenakshi Mills' case, upheld the validity of amended Section 25-O and/or Section 6-W.

4. At this stage a submission made by Ms. Jaising needs to be set out Ms. Jaising submitted that in Meenakshi Mills' case a Constitution Bench of this Court has extracted the reasons why in Excel Wears case Section 25-O was struck down. It was submitted that that decision would be binding on this Court. It was submitted that this Court should not itself go into Excel Wear's case to find out the reasons why Section 25-O was struck down. We are unable to accept this submission. As has been held by this Court in the case of P.A. Shah v. State of Gujarat reported in (1985) Supp 3 SCR 1025, it is the duty of the Constitution Court to form its own opinion about a given case and to consider the effect of a precedent by reading it over again, instead of relying upon the gloss placed on that precedent by some other decision. In our view the submissions of all the learned counsel will have to be considered in the light of what is laid down in Excel Wear's case and Meenakshi Mills' case.

5. In Excel Wear's case this Court negatived a submission that a right to close down a business was not a fundamental right and that it was merely a right appurtenant to ownership of property. This Court held that the right to close down a business was an integral part of the fundamental right to carry on business as guaranteed under Article 19(1)(g) of the Constitution. It was held that there could be a reasonable restriction on this right under Article 19(6) of the Constitution. It was held that the law could provide to deter reckless, unfair, unjust and mala fide closure. A challenge under Art. 14 of the Constitution was negatived. It was held that Chapter V-B dealt only with comparatively bigger undertakings and of a few types only and thus the classification was reasonable. It was held that reasonableness of the restrictions must be examined both from procedural and substantive aspects of the law. This Court then considered whether the restrictions imposed by Section 25-O (as it then stood) were reasonable and saved by Article 19(6) of the Constitution. It was held that the restrictions imposed by Section 25-O were unreasonable for the following reasons:

> "(i) Section 25-O did not require giving of reasons in the order. Even if the reasons were adequate and sufficient, permission to close could be denied in the purported public interest of labour as it had been left to the whims and caprice of the authority to decide one way or the other. Thus the order could be whimsical and capricious.

(ii) No time limit was fixed whilst refusing permission to close down.

(iii) That there was no deemed provision for according approval in the Section. It was held that the result would be that if the Government order was not communicated to the employer within 90 days, strictly speaking, the criminal liability under Section 25-F may not be attracted if on the expiry of that period the undertaking is closed, but the civil liability under S. 25-O(5) would come into play on the expiry of period of 90 days.

(iv) The order passed by the authority was not subject to any scrutiny by any higher authority or tribunal either in appeal or revision and the order could not be reviewed even after some time.

(v) The employer was compelled to resort to the provision of Section 25-N even after approval of closure.

(vi) The restriction imposed was more excessive than was necessary for the achievement of the object and thus highly unreasonable. It was suggested that there could be several other methods to regulate and restrict the right of closure e.g. by providing for extra compensation over and above the retrenchment compensation."

6. In Meenakshi Mills's case, while considering the constitutional validity of Section 25-N (as it then stood). Excel Wear's case was considered. This Court noted some of the vices pointed out in Excel Wear's case. This Court then pointed out the differences between Sections 25-O and 25-N (as they then stood) and held that considerations which weighed in Excel Wear's case could not be applied for judging the validity of Section 25-N. This Court proceeded on the assumption that the right to retrench workmen was an integral part of the fundamental right of the employer to carry on business under Article 19(1)(g). It was noted that Section 25-N formed part of Chapter V-B which bore the heading "Special Provisions Relating to Layoff, Retrenchment and Closure in Certain Establishments". It was noted that the said Chapter consisted of Sections 25-K to 25-S and that the said Chapter was inserted by Amending Act No. 32 of 1976. This Court held that the objects and reasons underlining the enactment was to prevent avoidable hardship to the employees resulting from retrenchment by protecting existing employees and to check growth of unemployment which would otherwise be the consequence of retrenchment in industrial establishments employing large number of wrokmen. It was noted that one of the objects and reasons was to maintain higher tempo of production and productivity by preserving industrial peace and harmony. It was noted that in mandate contained in the Directive Principles of the Constitution was sought to be given effect to. This Court held that ordinarily, a restriction which had the effect of promoting or effectuating a directive principle can be presumed to be a reasonable restriction in public interest. This Court held that the restrictions imposed must therefore be regarded as having been imposed in the interest of the general public. This Court held that the employer's right was not absolute and a restriction imposed on the employer's right to terminate the

service of an employee was not alien to the constitutional scheme. This Court then negatived the following submissions:

> "(i) Adjudication by a judicial body available in the case of retrenchment under Section 25-F has been substituted by an administrative order passed by an executive authority in the case of retrenchment under Section 25-N and thereby a function which was traditionally performed by Industrial Tribunals Labour Courts has been conferred on an executive authority.
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> (ii) No guidelines have been prescribed for the exercise of the power by the appropriate Government or authority under sub-section (2) of Section 25-N and it would be permissible for the authority to pass its order on policy considerations which may have nothing to do with an individual employer's legitimate need to reorganise its business. The requirement that reasons must be recorded by the appropriate Government or authority for its order under sub-section (2) of Section 25-N is not a sufficient safeguard against arbitrary action since no yardstick is laid down for judging the validity of those reasons.
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> (iii) There is no provision for appeal or revision against the order passed by the appropriate Government or authority refusing to grant permission to retrench under sub-section (2) of Section 25-N, Judicial review under Art. 226 of the Constitution is not an adequate remedy.
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> (iv) The provisions are ex facie arbitrary and discriminatory inasmuch as while the workmen have a right to challenge, on facts, the correctness of an order passed under sub-section (2) granting permission for retrenchment before the Industrial Tribunal by seeking a reference under Section 10 of the Act, the management does not have a similar right to challenge the validity of an order passed under sub-section (2) refusing to grant permission for retrenchment."
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> It was held that Section 25-N did not suffer from the vice of unconstitutionality, it was held that Section 25-N was not violative of the fundamental rights guaranteed under Art. 19(1)(g). It was held that Section 25-N was saved by Article 19(6) of the Constitution.

7. On behalf of employees, it is submitted that the amended Section 25-O has removed all the vices pointed out in Excel Wear's case. It is submitted that the amended Section 25-O is now similar to Section 25-N (as it then stood). It is submitted that on the reasoning given in Meenakshi Mills' case, the amended Section 25-O would have to be held to be constitutional valid.

8. On behalf of the employers it has been submitted that:-

> "(a) in Meenakshi Mills's case Section 25-N was being considered., It was submitted that in Meenakshi Mills' case it had been held that considerations which weighed in

deciding the constitutional validity of Section 25-O would not apply to Section 25-O. It was submitted that the principles on which Section 25-N was held to be constitutionally valid would not and should not be applied when considering the constitutional validity of Section 25-O.

(b) that in Excel Wear's case Section 25-O (as it then stood) was struck down not just on procedural grounds, but also on substantive grounds. It is submitted that the amended Section 25-O only removes the procedural defects but still suffers from the substantive vices pointed out in Excel Wear's case as in substance it is the same as Section 25-O (as it then stood).

(c) that the phrase "in the interest of the general public" was vague and of a very wide amplitude. It was submitted that anything and everything which is in the interest of general public would not have rational or proximate relations with the object of the present legislation. It was submitted that the restriction permitted by the use of this phrase goes way beyond what was necessary for the object to be achieved by the present legislation which was to prevent avoidable unemployment.

(d) that the reasonable restriction permissible under Article 19(6) has to be imposed by law. It was admitted that there could be a delegated legislation or subordinate legislation. It was however submitted that the restrictions could not be left for determination by the executive or be imposed by an executive order. It was submitted that, in the amended Section 25-O, the restrictions were not laid down by law but had been left to the executive to decide on a case to case basis.

(e) that the restrictions imposed were excessive inasmuch as in the purported interest of general public closure could be prevented even if the employer had genuine and adequate reasons. It was submitted, relying on Excel Wear's case, that a reasonable restriction would be one which provides for payment of different slabs of compensation in different situation.

(f) that the amended Section 25-O left it to the discretion of the appropriate Government to review the order or to refer the matter to the Tribunal.

(g) that the review provided in the amended Section was only a limited review. It was submitted that effectively the only review would be a judicial review under Article 226 or 32 of the Constitution in which factual elements, which went into the determination, could not be investigated.

9. In order to see whether the vices pointed out in Excel Wear's case have been cured and to consider whether principles laid down in Meenakshi Mills' case apply to amended Section 25-O it would be convenient to set out herein Section 25-O (as it then stood), the amended Section 25-O and Section 25-N (as considered in Meenakshi Mills' case). They read as follows :

25-O (Unamended) 25-O Amended 25-N

(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall serve, for previous approval at least ninety days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking: (1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner: (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workmen has been paid in lieu of such notice, wages for the period of notice:

Provided that nothing in this section shall apply to an undertaking set up for the construction of building, bridges, roads, canals, dams, or for other construction work. Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of building, bridges, roads, canals, dams, or for other construction work. Provided that no such notice shall be necessary if the retrenchment is under an agreement, which specifies a date for termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government by notification in the Official Gazette, and the permission of such Government or authority is obtained under sub-section (2)

(2) On receipt of notice under sub-s. (1) the appropriate Government may, if it is satisfied that the reasons for the intended closure of the undertaking are not adequate and sufficient or such closure is prejudicial to the public interest, by order, direct the employer not to close down such undertaking. (2) Where an application for permission has been made under subsection (1), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interest of the general public and all other relevant factors, by order and for

reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen. (2) On receipt of a notice under clause (c) of sub-section

(1) the appropriate Government or authority may, after making such enquiry as such Government or authority thinks fit, grant or refuse, for reasons to be recorded in writing the permission for the retrenchment to which the notice relates.

(3) Where a notice has been served on the appropriate Government by an employer under sub-s. (1) of S.25FFA and the period of notice has not expired at the commencement of the Industrial Disputes (Amendment) Act, 1976, such employer shall not close down the undertaking but shall within the period of fifteen days from such commencement, apply to the appropriate Government for permission to close down the undertaking. (3) Where an application has been made under subsection (1) and the appropriate Government does not communicate the order granting refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(3) Where the Government of authority does not communicate the permission or the refusal to grant permission to the employer within three months of the date of service of the notice under clause (c) of sub-section (1), the Government or authority shall be deemed to have granted permission for such retrenchment on the expiration of the said period of three months.

(4) Where an application for permission has been made under sub-s. (3) and the appropriate Government does not communicate the permission or the refusal to grant the permission to the employer within a period of two months from the date on the application is made, the permission applied for shall deemed to have been granted on the expiration of the said period of two months. (4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order. (4) Where at the commencement of the *industrial Disputes (Amendment) Act, 1976* (32 of 1976), the period of notice given under clause (a) of section 25-F for the retrenchment of any workman has not expired, the employer shall not retrench the workman but shall, within a period of fifteen days from such commencement, apply to the appropriate Government or to the authority specified in sub-section (2) for permission for retrenchment.

(5) Where no application for permission under sub-s. (1) is made, or where no application for permission under sub-s. (3) is made within the period specified therein or where the permission for closure had been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workman shall be entitled to all the benefits under any law for the time in force as if no notice had been given to him. (5) The appropriate Government may, either on its own motion or on

the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication : (5) Where an application for permission has been made under sub-section (4) and the appropriate Government or the authority, as the case may be, does not communicate the permission or the refusal to grant permission to the employer within a period of two months from the date on which the application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of two months

Provided that where reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(6) Notwithstanding anything contained in sub-s. (1) and sub-s. (3), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provision of sub-s. (1) or sub-s. (3) shall not apply in relation to such undertaking for such period as may be specified in the order. (6) Where no application for permission under sub-section (1) is made within the period specified therein or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down. (6) Where no application for permission under clause (c) of sub-section (1) is made, or where no application for permission under sub-section (4) is made within the period specified therein or where the permission for the retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice has been given to him.

(7) Whereas undertaking is approved or permitted to close down under sub-s. (1) or sub-s. (4), every workmen is the said undertaking who has been in continuous service for not less than one year in that undertaking immediately before the date of application for permission under this section shall be entitled to notice and compensation as specified in S. 25N as if the said workman had been retrenched under that section. (7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provision of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order. (7) Where at the commencement of the Industrial Disputes (Amendment) Act, 1976 (32 of 1976), a dispute relating, either solely or in addition to other matters, to the retrenchment of any workman or workmen of an industrial establishment to which this Chapter applies is pending before a Conciliation Officer or the Central Government or the State Government as the case may be, and---

(a) there is an allegation that such retrenchment is by way of victimization; or

(b) the appropriate Government is of the opinion that such retrenchment is not in the interest of the maintenance of industrial peace, the appropriate Government, if satisfied that it is necessary so to do, may, by order, withdraw such dispute or, as the case may be, such dispute insofar as it relates to such retrenchment and transfer the same to an authority (being an authority specified by the appropriate Government by notification in the Official Gazette) for consideration whether such retrenchment is justified and any order passed by such authority shall be final and binding on the employer and the workman or workmen.

(8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

10. The comparative table shows that the amended Section 25-O is in substance akin to Section 25-N (as it then stood). It contains many new provisions and substantially amends/alters the other provisions. Though Meenkashi Mills' case dealt with retrenchment the same principles would apply as a closure also has the effect of termination of service, though of all the workmen. Also both Section 25-N and Section 25-O are in Chapter V. The objects and reasons for enacting these provisions are the same and must be kept in mind whilst considering amended Section 25-O. As set out above (para 6) they have been extracted in Meenakshi Mills' case. Section 25-O has been enacted to give effect to the Directive Principles of the Constitution. This aspect was not noted in Excel Wear's case but has been emphasised in Meenakshi Mill's case. As set out in Meenakshi Mills' case such provisions muist be regarded as being in the interest of general public. We therefore do not accept the submission that the principles laid down in Meenakshi Mills case have no relevance in deciding the constitutional validity of (amended) Section 25-O.

11. As has been set out hereinabove, in Excel Wear's case one of the reasons why Section 25-O (as it then stood) was struck down was that it did not require giving of reasons. Now the order granting or refusing permission has to be in writing and be a reasoned order. In Meenakshi Mills case, in para 29, it has been held as follows:

"In sub-section (2) of Section 25-N, Parliament has used terminology which is different from that used in sub-section (2) of Section 25-O. In sub-section (2) of Section 25-O, Parliament had used the expression "the appropriate Government may, if it is satisfied that the reasons for intended closure of the undertaking are not adequate or sufficient or such closure is prejudicial to the public interest" which implied that the order refusing to grant permission to close down the undertaking was to be passed on a subjective satisfaction of the appropriate Government about the

adequacy or the sufficiency of the reasons for the intended closure or the closure being prejudicial to the public interest. In sub-section (2) of Section 25-N, the words used were "the appropriate Government or authority may, after making such enquiry as such Government or authority thinks fit grant or refuse, for reasons to be recorded in writing" which indicates that the appropriate Government or authority, before passing an order granting or refusing permission for retrenchment, is required to make an enquiry though the precise nature of the enquiry that is to be made is left in the discretion of the appropriate Government or authority and further that the order that is passed by the appropriate Government or authority must be a speaking order containing reasons. The requirement to make an enquiry postulates an enquiry into the correctness of the facts stated by the employer in the notice served under clause (c) of the sub-section (1) of Section 25-N for retrenchment of the workmen and other relevant facts and circumstances including the employer's bona fides in making such retrenchment and such an enquiry involving ascertainment of relevant facts will necessarily require affording an opportunity to the parties viz. the employer and the workmen, who have an interest in the matter, to make their submissions.....

(30) It would thus appear that the employer is required to furnish detailed information in respect of the working of the industrial undertaking so as to enable the appropriate Government or authority to make up its mind whether to grant or refuse permission for retrenchment. Before passing such order, the appropriate Government or authority will have to ascertain whether the said information furnished by the employer is correct and the proposed action involving retrenchment of workmen is necessary and it so, to what extent and for that purpose it would be necessary for the appropriate Government or authority to make an enquiry after affording an opportunity to the employer as well as the workmen to represent their case and make a speaking order containing reasons. This necessarily envisages exercise of functions which are not purely administrative in character and are quasi-judicial in nature. The words "as such Government or authority thinks fit" do not mean that the Government or authority may dispense with the enquiry at its discretion. These words only mean that the Government or authority has the discretion about the nature of enquiry which it may make. In our opinion, therefore, while exercising its powers under sub-section (2) of Section 25-N in the matter of granting or refusing permission for retrenchment the appropriate Government or the authority does not exercise powers which are purely administrative but exercises powers which are quasi-judicial in nature."

We are in agreement with the view that under the unamended Section 25-O, the order was to be passed on a subjective satisfaction of the appropriate Government. Now in amended Section 25-O the words used are "the appropriate Government may, after making such enquiry as it thinks fit, and after giving a reasonable opportunity of being heard to the employer, the workmen and persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, interest of the general public and all other relevant factors by order and for reasons to be recorded in writing, grant or refuse to grant such permission." Thus now the appropriate Government before passing an order is bound to make an enquiry.

Now the order passed by the appropriate Government has to be in writing and contain reasons. As in the case of retrenchment so also in closure, the employer has to give notice by filling up a form in which he has to give precise details and information. As held in Meenakshi Mills's case the requirement to make an enquiry postulates an enquiry into the correctness of the facts stated by the employer in the notice served by him and also all other relevant facts and circumstances including the bona fide of the employer. Now an opportunity to be heard would have to be afforded to the employer, workmen and all persons interested. The detailed information which the employer gives would enable the appropriate Government to make up its mind and collect necessary facts for the purposes of granting or refusing permission. The appropriate Government would have to ascertain whether the information furnished is correct and whether the proposed action is necessary and if so, to what extent. The making of an enquiry, the affording of an opportunity to the employer, the workmen and all interested persons and the necessity to pass a written order containing reasons envisages exercise of functions which are not purely administrative in character but quasi-judicial in nature. As held in Meenakshi Mills' case the words "the appropriate Government, after making such enquiry, as it thinks fit" does not mean that the Government may dispense with the enquiry at its discretion. These words only mean that the Government has discretion about the nature of the enquiry it is to make. We also agree with the following observations in Meenakshi Mills's case:

"42. It has been urged on behalf of the employers that sub-section (2) of Section 25-N does not prescribe any guidelines or principles to govern the exercise of the power that has been conferred on the appropriate Government or the authority in the matter of grant or refusal of permission for retrenchment and in the absence of such guidelines or principles, it will be open to the appropriate Government or authority to take into account matters having no bearing or relevance to the legitimate need of the employer to reorganise his business and which may even be opposed to such need and it has been pointed that it would be permissible to pass the order by taking into consideration the state of unemployment in the industry or the state of unemployment in the State. It has also been submitted that the requirement that reasons should be recorded in the order that is passed by the appropriate Government or authority would not provide any protection against arbitrary action because in the absence of principles governing the exercise of the power, there is no touchstone to assess the validity of those reasons. We find no substance in this contention. We have already dealt with the nature of the power that is exercised by the appropriate Government or the authority while refusing or granting permission under sub-section (2) and have found that the said power is not purely administrative in character but partakes of exercise of a function which is judicial in nature. The exercise of the said power envisages passing of a speaking order on an objective consideration of relevant facts after affording an opportunity to the concerned parties. Principles or guidelines are insisted on with a view to control the exercise of discretion conferred by the statute. There is need for such principles or guidelines when the discretionary power is purely administrative in character to be exercised on the subjective opinion of the authority.

> The same is, however, not true when the power is required to be exercised on objective considerations by a speaking order after affording the parties an opportunity to put forward their respective points of view.....
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> We are also unable to agree with the submission that the requirement of passing a speaking order containing reasons as laid down in sub-section (2) of Section 25-N does not provide sufficient safeguard against arbitrary action. In *S. N. Mukherjee v. Union of India*[5] it has been held that irrespective of the fact whether the decision is subject to appeal, revision or judicial review, the recording of reasons by an administrative authority by itself serves a salutary purpose, viz., "it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making" (SCC p. 612 para 36)."

12. Another reason why Section 25-O was struck down was that no time limit had been fixed while refusing permission to close down. This is now cured by sub-section (4) of the amended Section 25-O. This sub-section provides that the order of the appropriate Government shall remain in force for one year from the date of such order. Thus at the end of the year it is always open to the employer to apply again for permission to close. We see no substance in the submission that the employer would not be able to apply again (at the end of the year) on the same grounds. In our view if the reasons were genuine and adequate, the very fact that they have persisted for a year more is sufficient to necessitate a fresh look. Also if the reasons have persisted for a year, it can hardly be said that they are the same. The difficulties faced during the year, provided they are genuine and adequate, would by themselves be additional grounds. Also by the end of the year the interest of the general public or the other relevant factors, which necessitated refusal of permission on the earlier occasion may not prevail. The appropriate Government would necessarily have to make a fresh enquiry, give a reasonable opportunity of being heard to the employer, workmen and all concerned. In our view providing for a period of one year makes the restriction reasonable.

13. Now sub-section (3) of the amended Section 25-O provides that if the appropriate Government does not communicate the order within a period of 60 days from the date on which the application is made, the permission applied for shall be deemed to have been granted. Thus this defect has also been cured.

14. Further sub-section (5) of the amended Section 25-O provides that the appropriate Government may, either on its own motion or on an application made by the employer or any workman, review its order granting or refusing permission or refer the matter to a Tribunal for adjudication. It has also been provided that if a reference is made to a Tribunal (under this sub-section) then the Tribunal should pass its award within a period of 30 days from the date of such reference. Counsel for the employers submitted that it is left to the discretion of the appropriate Government to either review or make a reference. They submitted that there is no right in the employer to compulsorily seek a review or a reference. The learned Attorney General, fairly submitted that the word "may", in sub-section (5) of the amended Section 25-O should be read as "shall". He further submitted that the "review" would necessitate the making of an enquiry into all relevant facts, particularly the genuineness and adequacy of the

reasons stated by the employer, and the giving of an opportunity of being heard. He submitted that the order passed on review would have to be an order in writing giving reasons. He submitted that even though sub-section (5) of amended Section 25-O, does not lays down any time limits within which the review was to be disposed of, a proper reading of the section would necessarily imply that a review would have to be disposed of within a period of 30 days from the date on which an application for review was made.

15. The learned Attorney General relied on the case of *Chief Controlling Revenue Authority and anr. v. Maharashtra Sugar Mills Ltd. reported in*[6] in which this Court observed, in context of the powers conferred on the Chief Revenue Authority by Section 57 of the Indian Stamp Act, as follows :

> "In our opinion, the power contained in Section 57 is in the nature of an obligation or is coupled with an obligation and under the circumstances can be demanded to be used also by the parties affected by the assessment of the stamp duty."
>
> In the case of *Western India Match Co. v. Workmen reported in*[7] it has been held that on a proper construction the word "may", in Section 6-B of the Uttar Pradesh Industrial Disputes Act, should be read as "shall".

16. In our view, the learned Attorney General is right. A proper reading of sub-section (5) of amended Section 25-O shows that, in the context in which it is used, the word "may" necessarily means "shall". Thus the appropriate Government "shall" reviews the Order if an application in that behalf is made by the employer or the workmen. Similarly, if so required by the employer or the worman, it shall refer the matter to a Tribunal for adjudication. As submitted by the learned Attorney General, in a review the appropriate Government would have to make an enquiry into all necessary facts, particularly into the genuineness and adequacy of the reasons stated by the employer. An opportunity of being heard would have to be given to the employer, workmen and all interested persons. The order on review would have to be in writing giving reasons. Thus, in exercising powers of review, the appropriate Government would be performing quasi judicial functions. Sub-section (5) of amended Section 25-O provides that the Award should be passed within a period of 30 days from the date of reference. Even though it does not provide any time frame within which the review is to be disposed off, it is settled law that the same would have to be disposed of within a reasonable period of time. In our view, a period of 30 days would be a reasonable period for disposing of a review also. This review and/or reference under amended Section 25-O would be in addition to a judicial review under Article 226 or Article 32. In Meenakshi Mills' case it has been held that the exercise of power being quasi judicial the remedy of judicial review under Art. 226 or Article 32 was an adequate protection against the arbitrary action in the matter of exercising of power by the appropriate Government. We are in full agreement with those observations.

17. Under Section 25-O(7) (as it then stood), even when permission to close was granted, the employer had still to give notice and compensation as specified in Section 25-N. Nothing this, it was observed in Excel Wear's case as follows:

"Again, by interpretation we were asked to say that steps under Section 25-N can be taken simultaneously when a notice under Section 25-O(1) is given. Firstly, the language of sub-section (7) does not warrant this construction. The action of giving notice and compensation in accordance with Section 25N is to be taken when an undertaking is approved or permitted to be closed down and not before that. Secondly, it is not practicable to give three months notice in writing or wages for the said period in lieu of notice or to pay the retrenchment compensation in advance as required by Section 25-N before the employer gets an approval from the Government."

Now under the amended Section 25-O(8) this requirement of giving 3 months notices is dropped. All that is now required is to pay compensation which is equivalent to fifteen days average pay for every completed year of continuous service.

18. We also see no substance in the contention that the amended Section merely deals with the procedural defects pointed out in Excel Wear's case and does not deal with the substantive grounds set out in Excel Wear's case. In our view amended Section 25-O is very different from Section 25-O (as it then stood). It is now mere akin to Section 25-N (as it then stood) the Constitutional validity of which was upheld in Meenakshi Mills's case. In Excel Wear's case it has been accepted that reasonable restrictions could be placed under Art. 19(6) of the Constitution. Excel Wear's case recognizes that in interest of general public it is possible to restrict, for a limited period of time, the right to close down the business. Amended Section 25-O lays down guidelines which are to be followed by the appropriate Government in granting or refusing permission to close down. It has to have regard to the genuineness and adequacy of the reasons stated by the employer. However, merely because the reasons are genuine and adequate cannot mean that permission to close must necessarily be granted. There could be cases where the interest of general public may require that no closure takes place. Undoubtedly where the reasons are genuine and adequate the interest of the general public must be of a compelling or overriding nature. Thus, by way of examples, if an industry is engaged in manufacturing of items required for defence of the country, then even though the reasons may be genuine and adequate it may become necessary, in the interest of general public, not to allow closure for some time. Similarly, if the establishment is manufacturing vaccines or drugs for a epidemic which is prevalent at that particular point of time, interest of general public may require not to allow closure for a particular period of time. We must also take a note of sub-section (7) of amended Section 25-O which provides that if there are exceptional circumstances or accident in the undertaking or death of the employer or the like, the appropriate Government could direct that provision of sub-section (1) would not apply to such an undertaking. This, in our view, makes it clear that amended Section 25-O recognizes that if there are exceptional circumstances then there could be no compulsion to continue to run the business. It must however be clarified that this Court is not laying down that some difficulty or financial hardship in running the establishment would be sufficient. The employer must show that it has become impossible to continue to run the establishment. Looked at from this point of view, in our view, the restrictions imposed are reasonable and in the interest of general public.

19. In Excel Wear's case it has been held that under Section 25-O (as it then stood), even if the reasons are adequate and sufficient, approval could be denied in purported public interest or security of labour. It was submitted that even now permission to close could be refused even if the reasons were genuine and adequate. It was submitted that this was a substantive vice which still prevailed in the amended Section 25-O. We do not read Excel Wear's case to mean that permission to close must always be granted if the reasons are genuine and adequate. The observations relied on in Excel Wear's case, are in the context of an order under Section 25-O (as it then stood), based on subjective satisfaction and capable of being arbitrary and whimsical. Now the amended Section 25-O provides for an enquiry after affording an opportunity of being heard and provides that the order has to be a reasoned order in writing. The order cannot be passed arbitrarily and whimsically. Now the appropriate Government is exercising quasi-judicial functions. Thus the principles laid down in Meenakshi Mills's case would now apply.

20. Reliance was also placed on the observations, in Excel Wear's case, that there could be several methods to regulate and/or restrict the right of closure e.g. by providing for extra compensation over and above the retrenchment compensation. It was submitted that this was also a para 30 substantive ground on which Section 25-O (as it then stood) was struck down. It was submitted that the amended Section 25-O still suffers from the same inasmuch as permission to close could still be refused. It was submitted that this amounts to the restriction being excessive and unreasonable. We are unable to accept this submission. We do not read the observations in Excel Wear's case, which are relied on, as laying down, that that could be the only method of laying down a reasonable restriction. We read these observations as being a suggestion as to one method of imposing a reasonable restriction. This is clear from the following observations in Excel Wear's case (p. 1036):-

> "The law may provide to deter the reckless, unfair, unjust or mala fide closures. But it is not for us to suggest in this judgment what should be a just and reasonable method to do so."
>
> As set out hereinabove, the main consideration would be the genuineness and adequacy of the reasons stated by the employer. But that cannot be the only consideration. As stated herein-above, there could be exceptional cicumstances or overriding reasons where, in the interest of general public, there would have to be a restriction on closure for some time. The observations relied on, cannot be read out of context. It is not possible to accept the submission that if reasons are genuine and adequate the appropriate Government must always grant permission to close, even though interest of general public and/or other factors require that the business be continued for some time.

21. We also see no substance in the submission that the phrase "in the interest of the general public" is of a very wide amplitude or that it is vague or uncertain. In the case of *Mrs. Maneka Gandhi v. Union of India reported in*[8] it has been held as follows :
para 65

"We are concerned only with the last ground denoted by the words "in the interests of the general public", for that is the ground which is attacked as vague and indefinite. We fail to see how this ground can, by any stretch of argument, be characterised as vague or undefined. The words "in the interests of the general public" have a clearly well defined meaning and the courts have often been called upon to decide whether a particular action is "in the interests of the general public" or in "public interest" and no difficulty has been experienced by the courts in carrying out this exercise. There words are in fact borrowed ipsissima verba from Article 19(5) and we think it would be nothing short of heresy to accuse the constitution-makers of vague and loose thinking. The legislature performed a scissor and paste operation in lifting these words out of Article 19(5) and introducing them in Section 10(3)(c) and if these words are not vague and indefinite in Article 19(5), it is difficult to see how they can be condemned to be such when they occur in Section 10(3)(c). How can Section 10(3)(c) be said to incur any constitutional infirmity on account of these words when they are no wider than the constitutional provision in Article 19(5) and adhere loyally to the verbal formula adopted in the Constitution ? We are clearly of the view that sufficient guidelines are provided by the words "in the interests of the general public" and the power conferred on the Passport Authority to impound a passport cannot be said to be unguided or unfettered. Moreover, it must be remembered that the exercise of this power is not made dependent on the subjective opinion of the Passport Authority as regards the necessity of exercising it on one or more of the grounds stated in the section, but the Passport Authority is required to record in writing a brief statement of reasons for impounding the passport and, save in certain exceptional circumstances, to apply a copy of such statement to the person affected, so that the person concerned can challenge the decision of the Passport Authority in appeal and the appellate authority can examine whether the reasons given by the Passport Authority are correct, and if so, whether they justify the making of the order impounding the passport."

22 . Again, in the case of *Premium Granites v. State of Tamil Nadu reported in*[9] it has been held that the phrase "public interest" finds place in the Constitution and in many enactments and has since been noted and considered by this Court in various decisions. It has been held that the said expression is of a definite concept and that there is nothing vague about it. Undoubtedly, in Maneka Gandhi's case it had been held that a fundamental right had not been breached. However, that would make no difference to the understanding of the term "in the interest of the general public". In our view, the phrase "in the interest of the general public" is the phrase of a definite connotation and a known concept. This phrase, as used in amended Section 25-O, has been bodily lifted from Article 19(6) of the Constitution of India. As stated in Maneka Gandhi's case if it is not vague in the Constitution, one fails to see how it becomes vague when it is incorporated in amended Section 25-O.

23. It was submitted that the restriction in order to be valid must be imposed by law made by the Government. It is admitted that such law could include delegated legislation or subordinate legislation. It is submittted that mere executive order or mere executive determination was not permissible. It was submitted that the law itself must define the

content of the restriction. It was submitted that the Parliament cannot leave it to the executive to detemine the content of the restriction. It was submitted that the object of the restriction must be differentiated from the restriction itself. It was submitted that Articles 19(2) to (6) of the Constitution lay down the grounds or objects of the restriction. It was submitted that the actual restriction had to be defined by "law". It was submitted that otherwise it would not be possible to say whether the restriction laid down by the specific law conforms to the standards specified in the Constitution and/or whether it was proximate thereto and reasonable. It was submitted that if the content of the restriction was not laid down by the law but was left to be decided by the executive on a case by case basis there would be an impermissible delegation of legislative functions.

24. We see no substance in these contentions. Amended Section 25-O is the law which lays down the restriction. As has been set out above, there is nothing vague or ambiguous in its provision. It is Section 25-O which gives the power to grant or refuse permission. It would be impossible to enumerate or set out in Section 25-O all different contingencies or situations which may arise in actual practice. Each case would have to be decided on its own facts and on the basis of circumstances prevailing at the relevant time. All that can be set out, in the Section, are guidelines. These have been set out in amended Section 25-O.

25. Mr. Cama also submitted that amended Section 25-O was discriminatory inasmuch as a firm of lawyers or chartered accountants or doctors or a hospital employing several hundred workmen could close down on giving 60 days notice and on payment of closure compensation but in cases of a factory, mine or plantation permission to close could be refused.

> Just such an argument has been negatived in Excel Wear's case. In Excel Wear's case it has been held that the classification is reasonable. We see no reason to take a different view.

26. We, therefore, hold that the amended Section 25-O is not ultra vires the Constitution. We hold that it is saved by Article 19(6)of the Constitution.

27. All these Appeals and Writ Petitions are now sent back to a Division Bench for decision in accordance with law.
Order accordingly.

*[1](1979 (1) SCR 1009)*
*[2](1992) 3 SCC 336*
*[3]1979 (1) SCR 1009*
*[4]1992 (3) SCC 336*
*[5](1990) 4 SCC 594*
*[6](1950) SCR 536*
*[7](1974) 3 SCC 330*
*[8](1978) 1 SCC 248*
*[9](1994) 2 SCC 691*