SUPREME COURT OF INDIA

Empire Industries Ltd.

Vs.

State of Maharashtra

C.A.No.3003 of 2005

(Aftab Alam and Dr.B.S.Chauhan JJ.)

17.03.2010

JUDGEMENT

Aftab Alam, J.

1. The appellant, which is a public limited company incorporated under the Companies Act, 1956 seeks to challenge the order dated September 23, 1992 issued by the Government of Maharashtra in exercise of the powers conferred by sub-section (3) of section 10 of the Industrial Disputes Act, 1947 (for short `the Act') prohibiting continuance of the lock-out in its factory, Garlick Engineering at Ambernath, Thane.

2. The appellant first challenged this order before the Bombay High Court in Writ Petition No.6051/1995. The writ petition was dismissed by a learned single judge of the court by judgment and order dated February 9, 2 2001. Against the judgment of the single judge, the appellant preferred an internal court appeal (LPA No. 70 of 2001) which too was dismissed by a division bench of the court by judgment and order dated April 1, 2005. The appellant has now brought the matter in appeal before this Court.

3. It may be stated here that during the course of this protracted litigation the factory was closed down on April 26, 1999 and since then it remains closed. The validity of the factory's closure is not in issue. This means that the relevance of the present appeal is only for the period September 23, 1992 (the date on which the prohibition order was issued) to April 26, 1999 (when the factory was finally closed down). In case, the impugned prohibition order is held legal and valid and the appeal is dismissed the lock-out in the factory after September 26, 1992 would be illegal in terms of section 24(O) of the Act and the appellant would be liable to face the legal consequences.

> "If, on the other hand the appeal succeeds and the prohibition order is struck down as illegal and invalid, that would be the end of the matter."

4. Mr. Shanti Bhushan, learned Senior Advocate, appearing for the appellant assailed the government order prohibiting the continuance of lock- out in its factory, Garlick Engineering by raising a simple point. With reference to the closure notice, he submitted that the closure of the factory was in connection with three demands, namely, (i) the workmen should abjure agitational activities and desist from intimidation and acts of violence, (ii) the workmen should accept a ceiling on dearness allowance and (iii) the workmen should agree to reduction of the workforce and retrenchment of a number of workers. He further submitted that out of the three demands the government had referred only one concerning the ceiling on dearness allowance for adjudication to the Industrial Tribunal and yet issued the notice prohibiting closure of the factory. Mr. Shanti Bhushan contended that as long as all the demands leading to the strike or the lock- out were not referred to adjudication under section 10(1) of the Act, it was not open to the government to prohibit the strike or the lock-out, as the case may be. Learned counsel submitted that the government would derive the legal authority to prohibit a strike or a lock-out in terms of section 10(3) only after it had referred for adjudication all the disputes leading to the strike or the lock-out, as the case may be. He further submitted that it was not open to the government to refer selectively only a few out of several demands for reference and yet prohibit the lock-out or the strike in connection with those demands and, thus, close all doors for the concerned party for realization of the demands that were left out of reference. He submitted that this position would be clear from a plain reading of section 10(3) of the Act which is as follows:

> "10(3): Where an industrial dispute has been referred to a Board, Labour Court, Tribunal or National Tribunal under this section, the appropriate government may by order prohibit the continuance of any strike or lockout in connection with such disputes which may be in existence on the date of the reference."
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> (Emphasis added) Learned counsel submitted that the power and the authority to prohibit a strike or lock-out could be exercised only in respect of such dispute(s) that had been referred to a Board, Labour Court, Tribunal or National Tribunal. It necessarily followed that in case some of the disputes that had led to the strike or lock-out, as the case may be, were left out of the reference made under section 10(1) of the Act, the precondition for invoking section 10(3) would not be satisfied and it would not be permissible for the government to issue the prohibition order under that provision. In support of the submission, he relied upon a decision of this Court in *Delhi Administration, Delhi 17/03/2010vs. Workmen of Edward Keventers*[1], In paragraphs 2, 4 and 6 of the decision on which reliance was placed by Mr. Shanti Bhushan the Court observed as follows:
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> "2. A plain reading of the sub-section leaves no room for doubt in our minds that the High Court has correctly interpreted it.
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> Indeed, the learned Judges have gone into details, although we in this affirming judgment desire to express ourselves only briefly. Two conditions are necessary to make Section 10(3) applicable. There must be an industrial dispute existing and such

existing dispute must have been referred to a Board, 5 Labour Court, Tribunal or National Tribunal under this section, namely, Section 10(1). Section 10 stands as a self-contained code as it were so far as this subject-matter is concerned. The prohibitory power springs into existence only when such dispute has been made the subject of reference under Section 10(1). What then is such dispute? The suchness of the dispute is abundantly brought out in the preceding portion of the sub- section. Clearly, there must be an industrial dispute in existence. Secondly, such dispute must have been already referred for adjudication. Then, and then alone, the power to prohibit in respect of such referred dispute can be exercised.

4. Shri Aggarwal pressed before us a ruling reported in *Keventers Karmachari Sangh v. Lt. Governor of Delhi*[2] decided by the Delhi High Court. Although the ratio there is contrary to the same High Court's ruling which is the subject-matter of the present appeal, we are obviously inclined to adopt the reasoning of the judgment under appeal. Imagine twenty good grounds of dispute being raised in a charter of demands by the workmen and the appropriate Government unilaterally and subjectively deciding against the workmen on nineteen of them and referring only one for adjudication. How can this result in the anomalous situation of the workmen being deprived of their basic right to go on strike in support of those nineteen demands. This would be productive not of industrial peace, which is the objective of the Industrial Disputes Act, but counter-productive of such a purpose. If Government feels that it should prohibit a strike under Section 10(3) it must give scope for the merits of such a dispute or demand being gone into by some other adjudicatory body by making a reference of all those demands under Section 10(1) as disputes. In regard to such disputes as are not referred under Section 10(1), Section 10(3) cannot operate. This stands to reason and justice and a demand which is suppressed by a prohibitory order and is not allowed to be ventilated for adjudication before a Tribunal will explode into industrial unrest and run contrary to the policy of industrial jurisprudence.

6. While we appreciate the strenuous efforts made by Shri Aggarwal to support the judgment and perhaps sympathise with 6 him on the particular facts of this case, we cannot agree that hard cases can be permitted to make bad law. The appeal is dismissed, but since the workmen for obvious reasons have not been able to represent themselves in this Court, the normal penalty of costs against the appellant who loses cannot follow.

The appeal is dismissed, but for the reasons above stated, there will be no order as to costs."

5. Mr. Shanti Bhushan submitted that though the decision in Workmen of Edward Keventers was rendered in a case of strike by workmen, for the present case the court should read it by substituting the word "lock-out" for "strike". Learned counsel submitted that lock-out was the obverse of strike and in industrial law strike and lock-out were the two sides of the same coin. The decision in Workmen of Edward Keventers would, therefore, equally apply to a

case of lock-out. In support of the submission he relied upon two decisions of the Supreme Court, one in The *Management of Express Newspapers Ltd. vs. Workers & Staff Employed Under It and Ors.*[3], and the other in *Management of Kairbetta Estate, Kotagiri vs. Rajamanickam and Ors.*[4],.

> "In Management of Express Newspapers Ltd., it was observed as follows:
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> "... The theoretical distinction between a closure and a lockout is well settled. In the case of a closure, the employer does not merely close down the place of business, but he closes the business itself;
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> and so, the closure indicates the final and irrevocable termination of the business itself. Lockout, on the other hand, indicates the closure of the business itself. Experience of Industrial Tribunals shows that the Lockout is often used by the employer as a weapon 7 in his armoury to compel the employees to accept his proposals just as a strike is a weapon in the armoury of the employees to compel the employer to accept their demands...."
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> And in Management of Kairbetta, it was observed as follows:
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> "... Even so, the essential character of a lock-out continues to be substantially the same. Lock-out can be described as the antithesis of a strike. Just as a strike is a weapon available to the employees for enforcing their industrial demands, a lock-out is a weapon available to the employer to persuade by a coercive process the employees to see his point of view and to accept his demands. In the struggle between capital and labour the weapon of strike is available to labour and is often used by it, so is the weapon of lock-out available to the employer and can be used by him. The use of both the weapons by the respective parties must, however, be subject to the relevant provisions of the Act. Chapter V which deals with strikes and lock-outs clearly brings out the antithesis between the two weapons and the limitations subject to which both of them must be exercised...."

6. Apart from the decisions of the Supreme Court, Mr. Shanti Bhushan also relied upon a decision of the Delhi High Court in *D.D. Gears Ltd. vs. Secretary (Labour) and Ors.*[5], and another of the *Madras High Court in Metal Box India Ltd. vs. State of Tamil Nadu & Ors.*[6]. In the two High Court decisions the notices issued by the respective governments under section 10(3) prohibiting the lock-out of the factory by the management were held to be bad and illegal under similar circumstances, by applying the same reasoning as advanced by Mr. Shanti Bhushan and relying upon the decisions of this Court in Workmen of Edward Keventers and Management of Express Newspapers Ltd.

7. On the basis of the submissions made above, it was submitted that the prohibition notice coming under challenge in the present appeal was equally liable to be struck down.

8. The point so carefully crafted by Mr. Shanti Bhushan appears to be quite unexceptionable and there may not be any quarrel with the proposition that in a case where the strike or the lock-out is in connection with a number of disputes, the appropriate government would derive the authority and the power to prohibit, the lock-out or the strike, as the case may be, only if all the disputes are referred for adjudication under section 10(1) of the Act.

9. But let us see, how far the proposition applies to the present case.

10. We must begin with a brief summary of the facts of the present case. The appellant company had a division called Garlick Engineering at Ambernath which was engaged in the manufacture and sale of E.O.T. cranes. The undertaking maintained its own profit and loss account separately. Before the present conflict started between the parties, the employer and the workmen of the undertaking were bound and governed by the last settlement arrived at between the two sides on December 24, 1986. This settlement expired in June 1989 and on its expiry the third respondent submitted a charter of demands to the appellant. At that time the undertaking was in dire straits, so much so that at the end of 1990 its overhead losses for the past twenty seven months roughly 9 worked out to Rs.9.89 crores as against the paid up public capital of Rs.5,99,99,980/-. It was not in a position even to pay the electricity charges and the provident fund dues of the employees. The appellant responded to the workmen's charter of demands by letter dated September 15, 1990, stating that it would be impossible to agree to any increase in wages and further that the only way forward was to impose a ceiling on the dearness allowance. This letter was followed by a notice dated November 24, 1990 given under section 9A of the Act. In this notice, the appellant proposed to peg the amount of dearness allowance of monthly and daily rated workmen at the cost of living index number 4524 worked out for the month of October 1990. In the notice, the appellant declared its intention to "effect the change to the effect that irrespective of the rise in the level of CPI over the CPI No.4524 as worked out in the month of October 1990, no workman shall receive DA over and above the CPI No.4524.". The workmen rejected the proposal and refused to accept any ceiling on dearness allowance. The dispute which, thus, arose between the employer and the workmen was taken up for conciliation under sections 11 and 12 of the Act. The conciliation, however, ended in failure on September 10, 1991 and the failure report submitted by the conciliation officer concluded by stating as follows:

> “During the conciliation proceeding the Management did not attend the hearings most of the time & also did not put up any 10 documents to show its worsening financial position since there was no possibility of settlement the failure was recorded and the conciliation proceedings were concluded on 10.9.1991."
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> In this connection, Mr. Colin Gonsalves, learned Senior Advocate for respondent no. 3, also invited our attention to the affidavit-in-reply filed by the State in the LPA filed by the petitioner before the division bench of the High Court from which the present appeal arises. In paragraph 3 of its affidavit, the State stated as follows:

"... During conciliation proceedings, the Management did not attend the hearing most of the time and also has not shown any documents to show its worsening financial position. Since there was no possibility of settlement, failure was recorded and the conciliation proceedings were concluded. Hereto annexed and marked as EXHIBIT-"3" is the copy of the failure report dt.27.3.1992 submitted to the Government and copy was given to the respective parties..."

11. On receipt of the failure report of the conciliation proceedings, the state government referred the dispute concerning the ceiling on dearness allowance to the Industrial Tribunal, Thane under section 10(1) of the Act vide order dated February 12, 1992 which gave rise to Reference (IT) 3 of 1992.

12. Even before its demand concerning imposition of ceiling on dearness allowance was referred by the state government for adjudication to the Industrial Tribunal, the appellant issued the lock-out notice on September 11 28, 1991. In the notice, the reason for the proposed lock-out was stated as follows:

"The Management endeavoured to impress upon the office bearers/members of the said Association that the Management is not at all in a position to concede any further demands and they should agree for ceiling on DA. In addition to this, the office bearers/members of the Association were during several meetings, advised by the representatives of the Management that they should also agree for reduction of surplus, labour as it is not economically viable to run the said factory with the existing manpower/labour force. The office bearers/members of the said Association were sought to be taken into confidence from time to time by the Management and explained to them that the very existence/survival of the Undertaking is at stake and that they should see the reasons and realities and give up their Charter of Demands and they should agree to the ceiling of reduction in DA and reduction of surplus labour as also give up unlawful/agitational activities. However, no wiser counsel prevailed upon them. On the contrary, they resorted to various agitations/illegal/unlawful activities from time to time."

Here, it needs to be made clear that it was on the basis of the above passage in the lock-out notice that Mr. Shanti Bhushan argued that the lock-out was in connection with three materially separate demands. One, relating to the agitational activities of the workmen and the alleged intimidations and acts of violence committed by them, the other in respect of the imposition of ceiling on dearness allowance and the third, with regard to the reduction in the workforce and the retrenchment of a number of workers."

13. In reply, Mr. Colin Gonsalves, submitted that in regard to the alleged agitational activities of the workmen, the appellant had already filed a complaint under section 26 read with Item Nos.5 and 6 of Schedule III of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, which was registered as Complaint (ULP)

No.368 of 1991 in the Industrial Court of Maharashtra, Thane, titled M/s Garlick Engineering Ambernath vs. Association of Engineering Workers and Ors. On July 24, 1991, the date of filing of the complaint, the appellant had also obtained an ex parte order of injunction against the workmen. The complaint was eventually dismissed because the appellant stopped taking any steps in the proceeding but once having taken resort to the provisions of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, any proceeding under the Industrial Dispute Act was barred by section 59 of the former Act and, therefore, there was no question of any reference of this particular demand by the petitioner under section 10(1) of the Act.

14. Mr. Gonsalves is undoubtedly right insofar as the appellant's grievance/demand with regard to the workmen's alleged activities are concerned. But in fairness to Mr. Shanti Bhushan it must be said that he did not much refer to this particular demand. His grievance was mainly with regard to the demand concerning retrenchment of a number of workers for 13 reduction of the workforce and the state government's omission to refer it for adjudication.

15. In so far as the demand concerning retrenchment of workers is concerned, Mr. Gonsalves countered that it was equally a false alibi. He pointed out that the section 9A notice given by the management was only about putting a ceiling on dearness allowance paid to the daily rated and the monthly rated workers and there was no mention in it of any proposal for retrenchment of workers. Further, in the conciliation proceeding that took place in pursuance of the section 9A notice it was perfectly open to the management to raise any additional demand concerning retrenchment of workers but the appellant did not even properly take part in the protracted proceedings that continued for about 10 months, much less raising any additional demand.

> “Coming then to the lock-out notice in which the matter of retrenchment of workers was mentioned for the first time, Mr. Colin Gonsalves pointed out the manner in which it was put:
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> "... In addition to this, the office bearers/members of the Association were during several meetings, advised by the representatives of the Management that they should also agree for reduction of surplus, labour as it is not economically viable to run the said factory with the existing manpower/labour force.”

16. Mr. Gonsalves submitted that the matter of reduction of surplus labour was, thus, at best an advice by the appellant. He contended that the retrenchment of workers was never presented to the workmen as a demand by the appellant, the non-acceptance or rejection of which could give rise to an industrial dispute. In other words, on facts there was no industrial dispute concerning the retrenchment of workers in the factory that could form the subject matter of any reference for adjudication under section 10(1) of the Act.

17. From the legal point of view, Mr. Gonsalves argued that in the matter of retrenchment, the initiative always lies in the hands of the employer and the employer can, at all times, take steps for retrenchment of workers subject of course to the provisions of the Act. Hence, the mere fact that the matter of retrenchment of workers was not referred for adjudication under section 10(1) cannot be taken as a plea to defy the prohibition order issued under section 10(3) of the Act.

18. In short, learned counsel submitted that so far as the issue of retrenchment of workers is concerned, as a matter of fact, no such dispute between the parties had crystallised and co17/03/2010me into existence for reference; further a dispute of such nature was not required to be referred for adjudication under section 10(1) of the Act because the retrenchment of 15 workmen was always within the power of the employer. Hence, its non reference would not vitiate or invalidate the impugned closure notice.

19. In reply to the submission of Mr. Gonsalves that no dispute concerning retrenchment of workmen ever came into existence, Mr. Shanti Bhushan submitted that for reference for adjudication it was not necessary that a dispute should come into existence but an apprehended dispute could also be referred under section 10(1) of the Act. In support of his submission he relied upon a Constitution Bench deci17/03/2010sion of this Court in *State of Madras vs. C.P. Sarathy and Anr.*[7], He cited the following passage from the decision:

> "Moreover, it may not always be possible for Government, on the material placed before it, to particularise the dispute in its order of reference, for situations might conceivably arise where public interest requires that a strike or a lockout, either existing or imminent, should be ended or averted without delay, which under the scheme of the Act, could be done only after the dispute giving rise to it has been referred to a Board or a Tribunal (vide sections 10(3) and 23). In such cases Government must have the power, in order to maintain industrial peace and production, to set in motion the machinery of settlement with its sanctions and prohibitions without stopping to enquire what specific points the contending parties are quarrelling about, and it would seriously detract from the usefulness of the statutory machinery to construe section 10(1) as denying such power to Government. We find nothing in the language of that provision to compel such construction. The Government must, of course, have sufficient knowledge of the nature of the dispute to be satisfied that it is an industrial dispute within the meaning of the Act, as, for instance, that it relates to retrenchment or reinstatement. But, beyond this no obligation can be held to lie 16 on the Government to ascertain particulars of the disputes before making a reference under section 10(1) or to specify them in the order."
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> The proposition that an apprehended dispute can also form the subject matter of a reference under section 10(1) of the Act is well established, but we do not see any application of the principle or of the Constitution Bench decision relied upon by Mr. Shanti Bhushan in the facts of the case."

20. In reply to Mr. Gonsalves' second submission that since in the matter of retrenchment the initiative always remained in the hands of the employer, there was no need to make any reference of the demand of retrenchment made by the employer, Mr. Shanti Bhushan submitted that the employer might be free to carry out retrenchment of workers on its own but that would not prevent it to have the legal confirmation of its action in advance by raising a demand for retrenchment and getting it referred for adjudication under section 10(1) of the Act.

> "The submission though apparently reasonable, is quite fallacious as it would nullify and render meaningless a whole lot of provisions of the Act."

21. Retrenchment is defined in the Act to mean termination of the service of a workman by the employer for any reason whatsoever, otherwise than as punishment for any misconduct and further subject to the four exceptions enumerated in clauses (a), (b), (bb) and (c) of section 2(oo) of the Act.

> "Retrenchment being termination of service for no fault on the part of the workman is likely to visit the concerned worker(s) and his/their families with disastrous consequences. Retrenchment is an important and serious issue in industrial law since its wanton and improper use can become a major source of industrial unrest and disharmony. The issue of retrenchment is, therefore, not left uncontrolled but is regulated in great detail by the law.
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> The Industrial Disputes Act lays down not only certain inflexible preconditions that must be satisfied before an employer can resort to retrenchment but also a detailed procedure following which retrenchment can be carried out. Section 9A provides that no employer proposing to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule shall effect such change without giving twenty one days notice in the prescribed manner of the nature of change proposed to be effected. Item No.11 of the Fourth Schedule deals with any increases or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift (not occasioned by circumstances over which the employer has no control)."

22. Then, we come to Chapters VA and VB of the Act which were inserted with effect from October 24, 1953 and March 5, 1976 respectively.

> "Chapter VA contains sections 25A to 25H dealing with lay-off and retrenchment. Section 25A excludes the application of sections 25C to 25E to certain industrial establishments, including those covered by the provisions of Chapter VB. Section 25B gives the definition of continuous service. Section 25F lays down the conditions precedent to retrenchment of workmen and requires the employer to give notice to the appropriate government/prescribed authority apart from giving one month's notice in

writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the concerned workman(en). Section 25FF provides for compensation to workmen in case of transfer of undertakings.

Section 25FFF provides for compensation to workmen in case of closing down of undertakings. Section 25G lays down the procedure for retrenchment and provides that retrenchment should follow the principle of last come, first go. Section 25H deals with re-employment of retrenched workers. Section 25J has the non-obstante clause and lays down that the provisions of chapter VA would have effect notwithstanding anything inconsistent therewith contained in any other law, including standing orders made under the Industrial Employment (Standing Orders) Act, 1946."

23. Chapter VB has "Special Provisions" relating to lay-off, retrenchment and closure in certain establishments. The provisions of chapter VB (from 19 section 25K to section 25S) apply to industrial establishments (not of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day in the past 12 months. It is not in dispute that the number of workers employed by Garlick Engineering was in excess of hundred and, therefore, the industrial establishment was covered by the provisions of Chapter VB]. Section 25L contains the definitions. Section 25M prohibits lay-off except under certain conditions. Section 25N lays down the conditions precedent for the retrenchment of workmen and it is as follows:

"25N. Conditions precedent to retrenchment of workmen.- (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,- (a) the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such 20 application shall also be served simultaneously on the workmen concerned in the prescribed manner.

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

recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or 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.

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

(6) The appropriate Government or the specified authority 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 (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication:

Provided that where a 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.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any 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 had been given to him.

(8) 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 establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.

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

Section 25Q lays down the penalty for lay-off and retrenchment without previous permission."

24. As may be seen from Section 25N, it has a complete scheme for retrenchment of workmen in industrial establishments where the number of workers is in excess of hundred. Clauses (a) & (b) lay down the conditions precedent to retrenchment and provide for three months' notice or three months' wages in lieu of the notice to the concerned workmen and the prior 22 permission of the appropriate government/prescribed authority. Sub-section (2) & (3) plainly envisage the appropriate government/prescribed authority to take a quasi-judicial decision and to pass a reasoned order on the employer's application for permission for retrenchment after making a proper enquiry and affording an opportunity of hearing not only to the employer and the concerned workmen but also to the person interested in such retrenchment. Sub-section (4) has the provision of deemed permission.

"Sub-section (5) makes the decision of the government binding on all parties.

Sub-section (6) gives the government the power of review and the power to refer the employer's application for permission to a tribunal for adjudication.

Any retrenchment without obtaining prior permission of the government is made expressly illegal by sub-section (7) with the further stipulation that the termination of service in consequence thereof would be void ab initio. Sub- section (8) empowers the government to exempt the application of sub- section (1) under certain exceptional circumstances and sub-section (9) provides for payment of retrenchment compensation to the concerned workmen."

25. The procedural details for seeking prior permission of the appropriate government for carrying out retrenchment under section 25N are laid down in rule 76A of the Industrial Disputes Central Rules. The application for 23 permission for retrenchment is to be made in Form PA and that requires the employer to furnish all the relevant materials in considerable detail.

26. It is, thus, seen that the subject of retrenchment is fully covered by the statute. It is not left open for the employer to make a demand in that connection and to get the ensuing industrial dispute referred for adjudication in terms of section 10(1) of the Act

27. In face of such detailed regulatory mechanism provided for in the Act and the Rules, we find the submission of Mr. Shanti Bhushan completely unacceptable. To say, that even without following the provisions of section 25N of the Act, it is open to the employer to raise a demand for retrenchment of workmen and to ask the government to refer the ensuing dispute to the Industrial Tribunal for adjudication, would tantamount to substituting a completely different mechanism in place of the one provided for in the Act to determine the validity and justification of the employer's request for retrenchment of workers. It is true that under section 25N the authority to grant or refuse permission for retrenchment is vested in

the appropriate government which in this case would be the state government or the authority specified by it. Under section 10(1) too it is the state government that would make a reference of the industrial dispute. But the two provisions are not comparable. The nature of the power of the state government and its functions under the two provisions are completely different. In making the reference (or declining to make the reference) under section 10(1) of the Act the state government acts in an administrative capacity whereas under section 25N(3) its power and authority are evidently quasi judicial in nature (see the Constitution Bench decision of this court in *Workmen of Meenakshi Mills Ltd. and Ors. vs. Meenakshi Mills Ltd. and Anr.*[8], paragraphs 28 to 30). Further, though section 25N(6) has the provision to refer the matter to the tribunal for adjudication, that provision is completely different from section 10(1). A reference under section 10(1) of the Act cannot be used to circumvent or bypass the statutory scheme provided under section 25N of the Act. This is, however, not to say that there cannot be any dispute on the subject of retrenchment that can be referred to the tribunal for adjudication. A dispute may always be raised by or on behalf of the retrenched workmen questioning the validity of their retrenchment. Similarly, the employer too can raise the dispute in case denied permission for retrenchment by the government. [It is another matter that the chances of the disputes being referred for adjudication are quite remote: see Workmen of Meenakshi Mills Ltd., (supra) paragraphs 56 & 57].

> "But the point to note is that the occasion to raise the demand/dispute comes after going through the statutory provisions of section 25N on the Act."

28. The view taken by us is fully supported by a Constitution Bench decision of this Court in Workmen of Meenakshi Mills Ltd.. In a more recent decision of this Court in *Oswal Agro Furane Ltd. and Anr. vs. Oswal Agro Furane Workers Union and Ors.*[9], this Court even went to the extent of holding that there cannot be any settlement between the parties, superseding the provisions of sections 25N and 25O of the Act. In paragraphs 14, 15 and 16, of the decision, the Court observed as follows:

> "14. A bare perusal of the provisions contained in Sections 25- N and 25-O of the Act leaves no manner of doubt that the employer who intends to close down the undertaking and/or effect retrenchment of workmen working in such industrial establishment, is bound to apply for prior permission at least ninety days before the date on which the intended closure is to take place. They constitute conditions precedent for effecting a valid closure, whereas the provisions of Section 25-N of the Act provides for conditions precedent to retrenchment; Section 25- O speaks of procedure for closing down an undertaking.
>
> Obtaining a prior permission from the appropriate Government, thus, must be held to be imperative in character.
>
> 15. A settlement within the meaning of Section 2(p) read with sub-section (3) of Section 18 of the Act undoubtedly binds the workmen but the question which would arise is, would it mean that thereby the provisions contained in Sections 25-N and 25-

O are not required to be complied with? The answer to the said question must be rendered in the negative. A settlement can be arrived at between the employer and workmen in case of an industrial dispute. An industrial dispute may arise as regard the validity of a retrenchment or a closure or otherwise. Such a settlement, however, as regard retrenchment or closure can be arrived at provided such retrenchment or closure has been effected in accordance with law. Requirements of issuance of a 26 notice in terms of Sections 25-N and 25-O, as the case may, and/or a decision thereupon by the appropriate Government are clearly suggestive of the fact that thereby a public policy has been laid down. The State Government before granting or refusing such permission is not only required to comply with the principles of natural justice by giving an opportunity of hearing both to the employer and the workmen but also is required to assign reasons in support thereof and is also required to pass an order having regard to the several factors laid down therein. One of the factors besides others which is required to be taken into consideration by the appropriate Government before grant or refusal of such permission is the interest of the workmen. The aforementioned provisions being imperative in character would prevail over the right of the parties to arrive at a settlement. Such a settlement must conform to the statutory conditions laying down a public policy. A contract which may otherwise be valid, however, must satisfy the tests of public policy not only in terms of the aforementioned provisions but also in terms of Section 23 of the Indian Contract Act.

16. It is trite that having regard to the maxim "ex turpi causa non oritur actio", an agreement which opposes public policy as laid down in terms of Sections 25-N and 25-O of the Act would be void and of no effect. The Parliament has acknowledged the governing factors of such public policy. Furthermore, the imperative character of the statutory requirements would also be borne out from the fact that in terms of sub-section (7) of Section 25-N and sub-section (6) of Section 25-O, a legal fiction has been created. The effect of such a legal fiction is now well- known. [See *East End Dwellings Co. Ltd. v. Finsbury Borough Council*[10], *Om Hemrajani v. State of U.P.*[11], *and Maruti Udyog Ltd. v. Ram Lal*[12].”

29. In light of the discussions made above, we arrive at the conclusion that on the material date there was no dispute on the basis of any demand raised by the appellant in regard to retrenchment of any workers in the factory, Garlick Engineering. Secondly, and more importantly, any retrenchment of worker(s) can only be effected by following the provisions laid down under the Act and the Rules. It follows that it is not open to the management to make a demand/proposal for retrenchment of workmen and disregarding the provisions of the Act ask the government to refer the demand/dispute under section 10(1) to the tribunal for adjudication. The only demand raised by the management regarding imposition of ceiling on dearness allowance was already referred to the Industrial Tribunal. Hence, the appropriate government was fully competent and empowered to issue the impugned order prohibiting closure of the factory. There was no illegality or infirmity in the closure notice.

30. We find no merit in the appeal. It is, accordingly, dismissed with costs.

[1]*(1978) 1 SCC 634*
[2]*(1971) 2 LLJ 375*
[3]*1963 (3) SCR 540*
[4]*1960 (3) SCR 371*
[5]*2006 Lab. I. C. 1462*
[6]*1995 II L.L.N. 814*
[7]*1953 (4) SCR 334*
[8]*(1992) 3 SCC 336*
[9]*(2005) 3 SCC 224*
[10]*(1951) 2 All ER 587*
[11]*(2005) 1 SCC 617*
[12](2005) 2 SCC 638