BOMBAY HIGH COURT

K.T. Rolling Mills Private Ltd

Vs.

M.R. Meher

Appeal No. 86 of 1958 and Misc. Appln. No. 23 of 1958

(Mudholkar, J. On Difference of Opinion Between J.C. Shah and S.T. Desai, JJ.)

20.11.1959

JUDGMENT

J.C Shah, J.

1. The question which falls to be determined in this appeal is whether it is open to the Industrial Tribunal under the Industrial Disputes Act, 1947, to award lay-off compensation to workmen employed in an "industrial establishment" to which Section 25-C of the Act does not apply.

2. The two appellants are respectively a private limited company carrying on the business of a steel rolling mill and the Managing Director of that company. At all material times the appellants employed on an average per working day less than fifty workmen. The workmen employed by the appellants raised an industrial dispute claiming that the appellants "shall give regular work of average 25 days in a month throughout the year or pay wages and allowances for the minimum of 25 days in a month with effect from 1956", and without prejudice to that demand they also made claim that "with effect from 1st April, 1956, in case regular work cannot be provided and if the workers are laid off or had to suffer involuntary unemployment, they shall be given full wages and allowances for the days they are so laid-off or involuntarily unemployed." The workmen also claimed that those who had not been given work for certain days of the month be fully compensated since 1st January, 1955, and paid full wages and allowances for the days on which they were not given work and were involuntarily unemployed. Conciliation proceedings were adopted in the first instance to resolve this industrial dispute, but as they proved infructuous the Government of Bombay referred the dispute for adjudication by the Industrial Tribunal at Bombay under Section 12(5) of the Industrial Disputes Act. The Tribunal held that the workmen were not entitled to pay-off compensation under Chapter VA of the Industrial Disputes Act, but having regard to all the facts and circumstances and the financial position of the company, "on grounds of equity and social justice" the workmen were entitled to lay-off compensation for the period during which they were laid-off from 1st August, 1955 to 31st October, 1957, at the rate

of one-third of the wages and dearness allowance that would have been earned by the workmen if they were not laid off. The appellants then applied to this Court under Article 226 of the Constitution of India challenging the competence of the Industrial Tribunal to award lay-off compensation and claiming a Writ of Certiorari quashing the order awarding lay-off compensation and a Writ of Prohibition restraining enforcement of the Tribunal's award in so far as it related to lay-off compensation. The petition was heard by Mr. Justice K. T. Desai, and the learned Judge agreed with the view of the Tribunal that apart from the provision of Section 25-C of the Industrial Disputes Act, in a reference under Section 12 (5) of the Act it was open to the Industrial Tribunal to award lay-off compensation to the workmen. Against the order passed by Mr. Justice K. T. Desai this appeal has been preferred.

3. Chapter VA and certain consequential amendments were introduced in the Industrial Disputes Act, 1947, by the Industrial Disputes (Amendment) Act, 1953. By Section 2 (kkk) of the Act "lay-off" is defined as "the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or for any other reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched." By the Explanation to that clause it is provided :

> "Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause."

That Explanation is followed by two provisos which are not material. By Section 25-A, which is included in Chapter VA, it is provided by sub-section (1) that –

> "Sections 25-C to 25-E inclusive shall not apply (a) to industrial establishments in which less than fifty workmen on an average per working day have been employed in the preceding calendar month; or (b) to industrial establishments which are of a seasonal character or in which work is performed formed only intermittently."

By the Explanation to Section 25-A it is provided :

> "In this section (Section 25-A) and in Sections 25-C, 25-D and 25-E, "industrial establishment means -
> (i) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (LXIII of 1948); or
> (ii) a mine as defined in clause (j) of Section 2 of the Mines Act, 1952 (XXXV of 1952); or

(iii) a plantation as defined in clause (f) of Section 2 of the Plantation Labour Act, 1951 (LXIX of 1951)."

By Section 25-B the expression "one year of continuous service" is defined. By Section 25-C (1) it is provided, in so far as it is material :

"Whenever a workman ..... whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid-off, he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off."

By Section 25-D the employer is obliged to maintain for the purposes of Chapter VA a muster roll and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours.

4. By Section 25-C of the Act an obligation to pay lay-off compensation to workmen employed in certain establishments, and whose names are borne on the muster rolls of the industrial establishment, is imposed upon the employees. By the express provision contained in sub-section (1) of Section 25-A industrial establishments in which less than fifty workmen on an average per working day have been employed or industrial establishments which are of a seasonal character or in which work is performed only intermittently are not entitled to the benefit of the provisions relating to lay-off. Similarly by the Explanation to Section 25A a special definition has been devised of the expression "industrial establishment", and factories, mines and plantations only are included within the connotation of that expression. Evidently by Section 25-C liability to pay lay-off compensation is imposed upon the employer only in an "industrial establishment" as defined in Chapter VA such industrial establishment not falling within the exceptions contained in sub-section (1) of section 25-A.

5. The first appellant is not an "industrial establishment" to which the provisions of Sections 25-C to 25-E apply and it has under Section 25-C incurred no obligation to pay lay-off compensation because the number of workmen employed by it was at all material times less than fifty. But the question still remains whether there is authority vested in the Industrial Tribunal in adjudicating upon an industrial dispute to award lay-off compensation apart from the provision of Section 25-C of the Industrial Disputes Act.

6. That the first appellant is an employer in an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947, is not denied. By Section 2 (k) of the Act an "industrial dispute" is defined as "any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the

employment or non-employment or the terms of employment or with the conditions of labour, of any person," Under sections 10 (1) and 12 (5) it is competent to the appropriate Government to refer an industrial dispute to a Board, Labour Court, Tribunal or National Tribunal. In this case, the workmen raised an industrial dispute relating to lay-off compensation and it was referred by the Government of Bombay for adjudication to the Industrial Tribunal. Under the common law the rights between an employer and an employee are governed by the terms of the contract of employment, and subject to the terms of the contract the employer is entitled to terminate the employment. By industrial legislation several restrictions have been imposed upon the right of the employers to terminate the employment of the workmen employed in industries. By Section 25-C it is made obligatory upon the employer in an industrial establishment to which by Section 25-A that section applies to pay lay-off compensation, but no such obligation is imposed in respect of workmen employed in establishments which are not "industrial establishments" within the meaning of the Explanation to Section 25-A, or being such they are expressly excluded. But the absence of a statutory provision entitling all workmen to lay-off compensation is not decisive of the jurisdiction of the Industrial Tribunal to award lay-off compensation. Chapter VA undoubtedly deals with the obligation imposed upon employers to pay lay-off compensation, but it does not derogate from the right which a workman may have apart from the terms of Section 25-C to lay-off compensation. It is implicit in clause (a) of the Explanation to Section 25-B that lay-off of a workman may arise under an agreement or may be permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act or under any other law applicable to the industrial establishment. A claim made by the workmen for incorporation in the terms of employment a provision for payment of lay-off compensation and a refusal of that claim, or a claim for payment of lay-off compensation accrued due and denial thereof by the employer, in my judgment raises an industrial dispute. It is open to the appropriate Government under the Industrial Disputes Act to refer that dispute to the Industrial Tribunal, and there is nothing in Section 25-C of the Act which precludes the Tribunal in such reference from awarding lay-off compensation to workmen having regard to the condition of the industry, the earnings of the employer and the other relevant considerations which may be taken into account in ascertaining lay-off compensation. The jurisdiction to award such compensation is apparently not circumscribed by the terms of Section 25-C. Liability to pay lay-off compensation indisputably arises if the conditions prescribed in Section 25C are fulfilled, but in cases not governed by Section 25-C the liability to pay lay-off compensation may arise if a competent tribunal under the Industrial Disputes Act in a reference made by the Government either under Section 10 or under Section 12(5) of the Act awards it.

7. But the appellants place strong reliance upon sub-section (2) of Section 25J of the Act in support of their plea that the right of the workmen to lay-off compensation is delimited by the provisions of Chapter VA, and that apart from the express provisions made therein no lay-off compensation may, since the enactment of the Industrial Disputes (Amendment) Act 1953, be awarded. We may, therefore, proceed to examine the scheme of Section 25J. By sub-section (1) of Section 25J the provisions of Chapter VA are given overriding effect notwithstanding anything

inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing Orders) Act, 1946, but the overriding effect is not to derogate from any right which a workman may have under the Minimum Wages Act, 1948, or any notification or order issued thereunder or any award for the time being in operation or any contract with the employer. Sub-section (1) of Section 25J does not purport to abrogate any law to which Section 25C does not apply, and overriding effect is given to Chapter VA in those cases only in which under that Chapter lay-off or retrenchment compensation is awardable. By sub-section (2) of Section 25J it is provided :

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

Laws in force in any State providing for the settlement of industrial disputes are therefore declared to be unaffected by anything contained in Chapter VA : but that declaration is made subject to the provision that the rights and liabilities of employers and workmen in the matter of lay-off and retrenchment must be determined in accordance with the provisions of Chapter V-A. The exception, which requires that the rights and liabilities of employers and workmen relating to lay-off and retrenchment be determined in accordance with the provisions of Chapter VA, however, does not imply that the law relating to lay-off compensation and retrenchment is codified by Chapter VA and that apart from the provisions of that Chapter no lay-off compensation can be awarded. Sections 25C and 25J (2) are parts of a sinter VA, the special laws relating to settlement of industrial disputes, and the other of repealing all laws relating to award of lay-off compensation and applicabthe clause "but the rights and liabilities of employers and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter" in section 25J (2) is not, in my judgment, exclusive of that jurisdiction. In substance, the right of the workmen to lay-off compensation is conditioned by the provisions of sections 25C, 25D and 25E in industrial establishments to which by Section 25A those provisions apply but it is not circumscribed thereby.

8. Mr. Justice K. T. Desai was, therefore, in my judgment, right in holding that the award made by the Industrial Tribunal awarding lay-off compensation was made in exercise of jurisdiction which that Tribunal was, apart from the provisions of section 25C of the Industrial Disputes Act, invested with.

S.T. Desai, J.

9. I regret I cannot agree. I have very carefully considered the arguments addressed to us and the reasons which found favor with Mr. Justice K. T. Desai in the trial court and those given by my

learned brother in the judgment just delivered by him. While naturally doubting my own opinion, as my brother disagrees with me, I have reluctantly come to the conclusion that this appeal should succeed. It is also with reluctance that I feel compelled to construe the relevant provisions relating to lay-off against the workmen who are the respondents before us.

10. This appeal raises a question of considerable importance and consequences quod the position of a workman who is laid-off in an industrial establishment in which less than fifty workmen are employed. Simultaneously the question affects the employer of small industrial establishment in which less than fifty workmen are employed. It turns on the interpretation of certain provisions relating to lay-off introduced in the Industrial Disputes Act, 1947, when Chapter VA was, by amendment, incorporated in that Act in 1953. Thereafter there have been some further amendments in that Chapter to which it will be necessary to refer. The point of controversy is whether, after the insertion of those provisions, the law relating to an industrial dispute in respect of compensation for lay-off has now to be gathered only from those provisions which expressly and specifically deal with the matter of lay-off or has the Legislature left it open to the Industrial Tribunal to determine on the ground of social justice and equity any such dispute in case of a workmen employed in an industrial establishment in which less than fifty workmen are employed. Mr. Justice K. T. Desai has taken the view that Chapter VA is not exhaustive of the law relating to lay-off compensation and, therefore, it is open to the Industrial Tribunal to award compensation for lay-off on the ground of social justice and equity to a workman in any such establishment and the employers have now come before us on this appeal. The facts leading to the Petition out of which this appeal arises have been stated by my learned brother and I need not repeat them.

11. In view of the importance of the matter and since we are not agreed I desire to define at some length my reasons for coming to the decision that this appeal must succeed. It will be well to set forth sections 25A, 25J and then the material part of section 256 of the Act :

> "25A. (1) Sections 25C to 25E inclusive shall not apply -
> (a) to industrial establishments in which less than fifty workmen on an average per working day have been employed in the preceding calendar month; or
> (b) to industrial establishments which are of a seasonal character or in which work is performed only intermittently.
> (2) if a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.
> Explanation - In this section and in sections 25C, 25D and 25E "Industrial establishment,' means -
> (1) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (LXIII of 1948); or (ii) a mine as defined in clause (j) of section 2 of the Mines Act, 1952 (XXXV of 1952) or (iii) a plantation as defined in clause (f) of section 2 of Plantation Labour Act,

1951 (LXIX of 1951)".

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

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

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

"25C. (1) Whenever a workman (other than badli workman or a casual workman) whose name is borne on the muster roll of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid-off, he shall be paid by the employer for all days during which he is laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off :

Provided that the compensation payable to a workman during any period of twelve months shall not be more than forty-five days".

12. A good deal was said in the course of the arguments on either side about the legislative intent and the legislative purpose meaning thereby the reason why the provisions of Chapter VA relating to lay-off were introduced in the Act. A natural and true interpretation of the relevant provisions of that Chapter primarily requires that the dominant intention of the law-maker should be gathered as far as possible from the four corners of the Chapter and derived from what has been expressed by the words, used, of course, having regard to the scheme of the whole enactment. In case of provisions of the nature before us forming part of legislation intended to deal with investigation and settlement of industrial disputes and the manner of their insertion in the Act and the wide scope of the application of the Act is permissible, within bounds, to have regard to the state of thing and circumstances existing at the time of the insertion of those provisions to the law prior to the amendments, to the necessity of those provisions, and the evil which they were designed to remedy.

13. An argument was advanced on behalf of the respondents that equitable meaning should be given to the material provisions of the Chapter. Now, the doctrine of equitable construction is not favored by the Court and may indeed be said to have been abandoned. I do not suggest that there can be nothing of the sense of "equity of the statute" but the danger accompanying it is so great as to readily result in an encroachment on the Legislature. The Court takes a middle ground and

while preferring in the first instance the application of the canon of literal construction, does, where necessary, resort to other established principles and rules aimed at furthering the ascertainment of the true intention and meaning of the law-maker. One effectual way of discovering the import of dubious expressions is to bear in mind the spirit and reason of the law for that helps to bring out the legislative intent. This is of particular cogency in interpreting beneficial legislation but it is not the same thing as equitable construction.

14. Another argument related to "social justice" on which the decision of the Industrial Tribunal was founded. It will become necessary to examine this contention a little later in some detail but I would at this stage like to dispose of one aspect of it stressed before us by Mr. Vimadalal, learned Counsel for the appellants. It was argued that the principle of "social justice" as an aid to interpretation has been rejected by the Supreme Court and reference was made to certain observations of their Lordships in *Muir Mills Co., Ltd. v. Suti Mills Mazdoor Union, Kanpur*[1]*,*

> "Social justice is a very vague and indeterminate expression and no clear-cut definition can be laid down which will cover all the situations. Mr. Isaacs, the learned counsel for the respondents, attempted to give a definition in the following terms :- "Social justice connotes the balance of adjustments of the various interests concerned in the social and economic structure of the State, in order to promote harmony upon an ethical and economic basis" and he stated that there were three parties concerned here, viz., the employers, the labour and the State itself, and the conception of social justice had to be worked out in this context. Without embarking upon a discussion as to the exact connotation of the expression "social

[1](1955) SCR 991 at p. 1001 : (AIR 1955 SC 170 at p. 175)

> Justice" we may only observe that the concept of social justice does not emanate from the fanciful notions of any particular adjudicator but must be founded on a more solid foundation."

In *Prakash Cotton Mills v. State of Bombay*[2]*,* a decision to which I was a party, we observed :

> "It is true that social justice is an imponderable and Mr. Bhatt asked us not to introduce the principle of social justice in construing legislation which comes for interpretation before us. In our opinion, no labour legislation, no social legislation, no economic legislation can be considered by a Court without applying the principles of social justice in interpreting the provisions of these laws. Social justice is an objective which is embodied and enshrined in our Constitution. It is true that it may be difficult to define social justice. In the opinion of Mr. Justice Holmes it is an inarticulate major premise which is personal and individual to every Court and every Judge. How a Court or a Judge approaches a particular problem is influenced and coloured by his outlook on life and society. But however a Judge or a Court may approach a particular problem, it cannot

> ignore the fact that all our legislation is aimed at bringing about social justice, and, therefore, it would indeed be startling for any one to suggest that the Court should shut its eyes to social justice and consider and interpret a law as if our country had not pledged itself to bringing about social justice. Therefore, it is a truism to say that the present tendency of our labour and industrial legislation is to impose more and more burdens upon the employers. These burdens are imposed in the interests of the employees, because they have been under-dogs for decades and centuries and the Legislature wants to raise their status, and therefore an employer cannot be heard to say: 'There is an unreasonable restriction upon my right to carry on business or hold or own or possess property because the burden inflicted upon me by the law is such as in my opinion is intolerable". In the larger interests of the country an employer must submit to those burdens and carry on his business in conformity with the social legislation which is put upon the statute Book".

The observations of their Lordships of the Supreme Court have to be read in their own context. They were made in examining a formula evolved by the Labour Appellate Tribunal and in a case where the Tribunal itself had not applied, its own formula to the case before it. I am unable to read them as discountenancing all considerations of social justice. Nor do I read them as any fatal criticism of the principles referred to by us in the passage quoted by me above.

15. There is no injunction, therefore, to the acceptance of the proposition that no economic legislation can be considered by the Court without keeping in mind the principles of social justice in construing legislation which comes for interpretation before it. But the point before us is not simply of subscribing or not subscribing to those principles. The point is whether it is open to the Court to say that an industrial dispute can be determined on grounds of social justice and equity after the Legislature has stepped in and itself laid down specific provisions affecting that dispute. The crucial question,

[2](1957) 59 Bom LR 836

therefore, is what is the true import and meaning of the provisions of Sections 25-A and 25-C set out above to be collected from the words used in the statute. The exposition must, as far as possible, accord with the scheme of the Act and within the four corners of the Act - ex visceribus actus.

16. It was argued by learned Counsel for the appellants that the rights and liabilities of employers and workmen, in so far as they relate to compensation for lay-off have to be determined in accordance with the express provisions contained in Chapter VA and there is now no scope for determining any industrial dispute of this nature by restorting to any principle of social justice or equity. The effect of Section 25-A, so the argument proceeded, was to restrict the right to claim compensation for lay-off only to the case of those workmen who were employed in an "industrial establishment" as defined in the Explanation to the section and whose case did not fall within clauses (a) and (b) of sub-section (1) of the section. Reliance was also placed on the following

observations of Chagla,. C. J., in a decision of a Division Bench of this Court, *Mervin Albert Veiyra v. C. P. Fernandas*[3],

> "The employee as a matter of fact under the contract had no right whatsoever for the period during which the business or industry was suspended, he was liable to be dismissed summarily, and therefore if anything the obligation cast upon the employer under Chapter VA, far from derogating from any right of the employee, conferred a new right upon him during the time when the circumstances mention in the definition of "lay-off" continued to exist".

Learned Counsel relied very strongly on Section 25-J (2) and, argued that even if there was any scope for doubt about the effect of Sections 25-A and 25-C in the context of the position of a workman who is laid-off in an industrial establishment in which less than fifty workmen are employed that doubt has been dispelled by the express words used by the Legislature in sub-section (2) of Section 25-J :

> "But the rights and liabilities of employer and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter".

17. On the other hand it was argued by learned counsel for the Respondents that Chapter VA did not at all govern the case of the Respondents since the effect of clause (a) of sub-section (1) of Section 25-A was to exclude them from the operation of the provisions relating to lay-off contained in that Chapter. The amending provisions, according to Counsel, did not touch the right of workmen in an industrial establishment where less than fifty workmen were employed and, therefore, such workmen were entitled to lay-off compensation on the ground of social justice and equity as had been held by the Industrial Tribunal in case of disputes prior to the introduction of Chapter VA in the Act. That law it was urged, was not repealed and the right of workmen, in an establishment where less than fifty workmen were employed, to claim lay-off compensation has been saved by the language of clause (a). The argument proceeded that it was within the powers of the Tribunal to decide all industrial disputes referred to it by the Government and that it was

[3](1956) 58 Bom LR 385, 389 : ((SI AIR 1957 Bom100 at p. 103)

only where a case fell within the ambit of Section 25-C that the Tribunal was under an obligation to act as therein provided and in other cases it was left free to determine disputes relating to compensation for lay-off on principles of social justice and equity.

18. In one view, the whole question turns upon the meaning and effect of Section 25-J. In my judgment it is resolved by the declaratory provisions of that section and there is considerable substance in the contention of the appellants founded on that section. After declaring and providing in Section 25-C for the right of workmen in an industrial establishment to claim

compensation for lay-off and giving a restricted meaning to the expression "industrial establishment" and having stated that section 25-C is not applicable to the categories of workmen mentioned in clauses (a) and (b) of Section 25-A (1) the law-maker obviously felt that there was some scope for doubt as to the rights and liabilities of employers and workmen in so far as they relate to lay off and retrenchment. Apparently it was thought that there was the possibility of a contention being raised that the provisions of Chapter VA relating to lay-off applied only to workmen in an 'industrial establishment' in the limited connotation given to that expression and did not apply to industrial establishments in which less than fifty workmen were employed and in those which were of a seasonal character or in which work was performed intermittently and that workmen in other establishments might claim compensation for lay-off de hors the provisions of the Chapter. There is sufficient ground to warrant the conclusion that it was to obviate any such doubt or difficulty and to clear away any difficulty that might possibly arise from any provision in any State law on the subject- and to make it abundantly clear that the Chapter fully dealt with matters relating lay-off and retrenchment that Section 25-J (2) was added. A rather feeble attempt was made by Mr. Singhvi to get over this patent difficulty facing the respondents. I do not, however, desire to rest my judgment simply on this short answer to the case of the respondents and will revert to this aspect of the matter after examining the other arguments placed before us.

19. In order to appreciate those arguments it is necessary to examine the scheme of the Act in so far it has bearing on the question of layoff. The main purpose of the Act is to provide machinery for fair and equitable solution of industrial disputes inter alia by negotiation and conciliation and by adjudication by independent forums and one of the objects is to discourage and as far as possible prevent strikes and lock-outs. 'Industrial dispute" as defined in Section 2 (k) means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labor, of any person. "Lay-off" is defined (Section 2 (kkk)) as meaning the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or for any other reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched. The scheme of Sections 7, 7-A, 7-B, 10 and 15 is that on any industrial dispute being raised the appropriate Government is entitled to refer that dispute to a Board, Labor Court, Industrial Tribunal or National Tribunal in accordance with the provisions of the Act. It is a condition precedent to the jurisdiction of any such tribunal that there must be a reference of the dispute to it by the Government. The definition of "industrial dispute" it will be noticed is in wide terms and includes any dispute or difference between an employer and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour. Section 10 (d) relates to reference of a dispute by the Government to the Industrial Tribunal. The Act provides for conciliation and lays down in Section 12 the procedure to be followed by the Conciliation Officer whose duty it is to induce the parties to arrive at a fair and amicable settlement of the matters in dispute. In the case before us the Conciliation Officer was unable to bring about a settlement of the disputes between the parties. He thereupon made his

report to the Government and the Government referred the disputes to the Industrial Tribunal in accordance with the provisions of Section 12 (5). It is not necessary to set out any of the provisions of that section and for the purpose of examination of the scheme of the Act it will suffice to turn to Section 10. The material and relevant part of Section 10 is as under :

> "10.(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing -
>
> X X X
>
> X X
>
> (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second or Third Schedule, to a Tribunal for adjudication :
>
> Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c)."

The Second Schedule referred to in clause (d) above enumerates "Matters within the jurisdiction of Labour Court". The Third Schedule referred to in clause (d) above enumerates "Matters within the jurisdiction of Industrial Tribunals". It is clear that clause (d) confers jurisdiction upon the Industrial Tribunal constituted by the Government under Section 7-A. to adjudicate upon an industrial dispute relating to any matter, whether specified in the Second Schedule or the Third Schedule. It is abundantly clear and it has not been disputed before us that it was within the jurisdiction of the Industrial Tribunal to decide a dispute relating to compensation for lay-off. It is noticeable that Sections 7 A. 10 (1) (d) and the Second and the Third Schedule enact for the constitution and jurisdiction of the Industrial Tribunal and do not lay down any substantive provisions relating to any particular industrial dispute. Apart from Chapter V which deals with strikes and lock-outs there was, no express provision in the Act governing any specified industrial dispute and it was competent to the Industrial Tribunal on a reference being made to it by the Government in respect of the dispute referred to it to determine the dispute on broad principles of industrial law and social justice and equity. This had to be so in view of the difficulty and even impossibility of legislating for every type of industrial dispute and since standardization could have been possible only in case of some of those matters.

20. There was no definition of "lay-off" or "retrenchment" in the Act before its amendment by Ordinance V of, 1953 and the Industrial Disputes (Amendment) Act 1953. There being no express provisions in the Act prior to 1953 relating to lay-off or retrenchment, disputes relating to the same were determined on grounds of social justice and equity. This was the state of the law prior to the amendments. Those disputes relating to lay-off and retrenchment raised some thorny questions as appears from the numerous decisions on the subject. It was in this state of things and in these circumstances that the Legislature stepped in and inserted in the Act the specific provisions of Chapter VA. Ordinance V of 1953 was promulgated as Parliament was not in session and came into force on 24th October 1953. The preamble to the Ordinance states "The President is satisfied that circumstances exist which render it necessary for him to take immediate

action". It is not necessary here to refer to the provisions of the Ordinance and I need only observe that they are almost in pari materia with the provisions of the Amendment Act of 1953 which latter as stated in Section 1 (2) of that enactment was to be deemed to have come into force on 24th October, 1953. The Amendment Act had the effect of inserting in the Industrial Disputes Act of 1947 a fasciculus of rules relating to lay-off and compensation. There were some further amendments in the relevant sections of the Act in Chapter VA after 1953 but for the purpose of examining the circumstances in which Chapter VA was introduced in the Act and the scheme of the Act it is not necessary to refer to them. I have already set forth certain provisions of that Chapter viz., Sections 25-A and 25-J and the material part of Section 25-C earlier in this judgment and refrain from discussing here the scheme of Chap. VA itself since it will be necessary to examine the provisions relating to lay-off as a whole and some of them rather minutely in order to determine the precise question of interpretation that arises on this appeal.

21. Section 25-C enacts for the "Right of workmen laid-off for compensation" and is the substantive provision which deals with the same. Stripped off details not relevant for the purpose of this appeal, it rules that whenever a workman in an industrial establishment who has completed one year of continuous service under an employer is laid-off, he shall be entitled to be paid compensation to be assessed in the manner and subject to the maximum there stated. One express condition to this right of compensation is that the workman must have put in continuous service for one year and Section 25-B gives definition of "one year of continuous service". Another express condition and one vital to any claim by a workman for lay-off compensation is that he must be a workman on the muster roll of an "industrial establishment". Therefore, it is only a person employed in an industrial establishment who is entitled under the section to claim such compensation. The Explanation to Section 25-A gives the meaning of the expression "industrial establishment" which as I shall presently point out is in effect both inclusive and exclusive. That Explanation has to be read not only with Section 25-A but, as expressly stated in it, also with Sections 25-C, 25-D and 25-E. Section 25-D imposes upon an employer in any "industrial establishment" as defined in the Explanation, the duty to maintain a muster roll and to provide for the making of entries therein by workmen who present themselves for work. Section 25-E empowers an employer in such "industrial establishment" to offer alternative employment to a workman who is laid-off in any other establishment belonging to the employer in certain circumstances. This section also lays down some other cases where layoff compensation cannot be claimed by the workmen.

22. Reading Section 25-C with the Explanation, as it must be read, it is abundantly clear that the right to claim lay-off compensation is not recognized in favor of workmen in every "industrial establishment" in the general sense in which that expression would have to be understood having regard to the very wide meaning given to the expression "industry" in the definition clause (Section 2 (k)) but in the limited and restricted sense given to the expression "industrial establishment" by the explicit language of the Explanation. If the safe and reliable course of construction, that as far as reasonably possible the Court should not depart from their obvious

and grammatical meaning, be adhered to, the effect of those provisions plainly seems to me to be that Section 25-C recognizes the right to claim lay-off compensation only in case of these industrial establishments which are expressly enumerated in clauses (i), (ii) and (iii) of the Explanation. It does follow from those provisions read together that workmen in industrial establishments other than factories, mines and plantations are not entitled to claim compensation for lay-off. The reason for this limitation or exclusion is not far to seek. Then when it is said in sub-section 1 (a) of Section 25-A that Section 25-C "shall not apply to industrial establishments in which less than fifty workmen ..... have been employed ....." and in sub-section 1(b) that Section 25-C "shall not apply to industrial establishments which are of a seasonal character or in which work is performed only intermittently, the preferable construction, if the same safe and reliable course of construction be adhered to, seems to me to be that the Legislature has ruled that these categories of workmen should not have the right to claim lay-off compensation. I find strong and obvious reasons for preferring this construction because the very nature of the work of those employed in industrial establishments which are of a seasonal character or in which work is performed only intermittently must readily suggest that it would be incongruous to speak of lay-off in their case and rather inconsistent with the object and purpose of the enactment to recognize in their favour a right to claim compensation for lay-off. Similar considerations though to a lesser degree must arise in case of workmen in an industrial establishment where less than 50 persons are employed. The effect of both the clauses (a) and (b) of sub-section (1) of Section 25-A on the applicability of Section 25-C cannot be different and either both or none of the categories of workmen stated in those clauses can claim compensation for lay-off de hors the provisions of Section 25-C. In the course of his argument I put these aspects to learned Counsel for the Respondents and the answer was that all workmen who fell within the ambit of clauses (a) and (b) of Section 25-A (1) as well as all workmen in industrial establishments other than those employed in factories, mines and plantations as laid down in the Explanation were outside the applicability of Section 25-C and, therefore, entitled, to claim compensation for layoff independently and irrespective of the provisions of Chapter VA. Their right to do so, it was urged, was saved by Section 25-A (1) and the Explanation.

23. The Legislature is not bound to extend a legislation to all cases to which it might possibly reach even in case of beneficial provisions. It is for the Legislature to consider practical exigencies, relative degrees of harm to the employer and the workmen and all other material factors and determine the ambit and purview of those beneficial provisions.

24. The entire contention of the respondents rests upon an insistence that when a right is declared by a section in an enactment, as is done in Section 27-C, and it is laid down that the section is not applicable to certain categories of workmen, it can only mean that for those categories there is no legislation whatever and the matter so far as those workmen are concerned is left at large to be decided on grounds of social justice and equity. There is a fallacy underlying this argument. It seems clear to me that the provisions of Chapter VA confer certain new rights on the workmen in matters of lay-off and retrenchment. That, I must add, was the view taken by a division bench of this Court in (1956) 58 Bom LR 385, 389 : (AIR 1957 Bombay 100 at p. 103).

> "Therefore, in our opinion, and we shall presently point out the scheme of the Act, what the Legislature did by Chapter VA was to impose a certain obligation upon the employer and confer a certain right upon the employee. The obligation was that if the conditions referred to in the definition of "lay-off" exist, the employer was bound to continue the services of the employee, but was not bound to pay him full wages but compensation provided in the Act. The employer was also entitled to retrench the services of his employee, but that also he could only do provided he paid retrenchment compensation".

This was reiterated in that case by Chagla, C. J., at p. 389 of the report and it was stressed that the obligation cast upon the employer under Chapter VA, far from derogating from any right of the employee, conferred a new right upon him during the time when the circumstances mentioned in the definition of "lay-off" continued to exist. Therefore, one thing is certain, so far as this Court is concerned, that Chapter VA confers a new right upon the workman. I have already made reference to the state of things and circumstances existing at the time of the introduction of the provisions relating to lay-off and compensation and considered the scheme of the Act and of the provisions of Chapter VA. The present argument which is founded solely on the language of clause (a) of Section 25-A (1) asks us in effect wholly to disregard all those considerations and to put a construction on it which does not accord with the rules which regulate interpretation applicable to legislation which we are called upon to consider. The fact that before the Amendment Act the Tribunal acted on principles of social justice and equity in this matter does not touch the point, since the Legislature which had previously not enacted for the matter has by the Amendment Act stepped in and declared the law affecting that matter of lay-off.

25. All these considerations seem to me to afford strong reason for reaching the conclusion that the effect of Section 25-C read with Section 25-A is that the Legislature has by inserting Chapter VA settled what was disputable and with a view to avoiding difficulties and uncertainty declared what the law relating to lay-off is and by saying that Section 25-C has a limited application it has ruled that the right extends only to those who fall within the ambit of Section 25-C and are not excluded from its applicability by Section 25-A.

26. An alternative argument was advanced that the Tribunal had jurisdiction to deal with an industrial dispute relating to compensation for lay-off in any industry and the provisions of Chapter VA did not take away that jurisdiction. Reference in this behalf was made to Sections 10 (1) (d) and 12 (5) of the Act and it was urged that it was within the powers of the Government to refer the dispute in the present case to the Industrial Tribunal even though less than fifty workmen were employed by the Appellants in their factory. Then it was said that the Industrial Tribunal has under the provisions of Sections 10 (1) (d) and 12 (5) jurisdiction to deal with any industrial dispute referred to it whether it relates to any matter specified in the Second or Third Schedule. Therefore, so the argument ran, the Industrial Tribunal had jurisdiction to adjudicate upon the dispute raised by the respondents in the present case. Now, this whole argument fails to

distinguish between the jurisdiction of the Tribunal in the strict sense of that expression and between the powers that can be exercised by the Tribunal in the exercise of that jurisdiction which indisputably extends to the determination of every dispute that may be referred to it by the Government provided it relates to a matter specified in the Second or Third Schedule. There is here no question at all of the powers of the Government to refer a dispute to the Tribunal. That power indisputably exists. The question is of the powers of the Tribunal. The powers of the Tribunal to adjudicate upon a dispute relating to any matter referred to it are, however, controlled by the provisions of the Act wherever there is specific legislation relating to that particular matter. The controversy though loosely referred to as one of total absence of jurisdiction is not strictly so but relates to the extent of the powers or authority of the Tribunal. One of the contentions of the Petitioners as stated in paragraph 11 of the Petition is that the subject-matter of lay-off compensation in case of industrial establishments employing less than 50 workmen is outside the authority of the Tribunal and that the Tribunal has purported to exercise a power not given to it by the Act which has created its jurisdiction. Therefore, the point of controversy really is whether the Industrial Tribunal was bound to determine the dispute, referred to it, in accordance with the provisions of Chapter VA and in not doing so has it acted in excess of its legal authority? In the case before us one of the pleas of the respondents was that the Appellants had employed more than fifty workmen is their industrial establishment and the whole dispute relating to lay-off compensation was referred by the Government to the Industrial Tribunal under Section 12 (5) of the Act. That aspect of the dispute was decided by the Tribunal in favor of the Appellants and the crux of the matter was the meaning and effect of the relevant provisions of Chapter VA. It is not possible, therefore, to accede to the alternative argument founded on the provisions of Sections 10 (1) (d) and 12 (5) of the Act.

27. Were this question of interpretation of Section 25-C read with Section 25-A a matter in dubio,: though I do not regard it as such, I would yet have to consider and give effect to the provisions of Section 25-J on which Mr. Vimadalal has heavily leaned as an additional argument in favor of the Appellants. The initial part of sub-section (2) is obviously intended to remove any doubt or difficulty that may be raised by reason of there being any parallel legislation in any State. Such legislation is not to be deemed to have been affected by anything contained in Chapter VA. Then it is said "but the rights and liabilities of employers and workmen in so far as they relate to lay-off and retrenchment shall be determined inaccordance with the provisions of this Chapter". This sub-section, to my mind, clearly deals with the removal of doubts that may arise (1) by reason of the existence of any State law and (2) about the rights and liabilities of employers and workmen in respect of any dispute relating to layoff and retrenchment. The only argument urged by Mr. Singhvi on the construction of this sub-section was that it consists of only one sentence and only means that if there was any provision relating to lay-off and compensation in any State enactment the rights and liabilities of the employer and workmen are nevertheless to be determined in accordance with the provisions of this Chapter. I am unable to accede to this argument. Sub-section (2) is a declaratory enactment and it is an accepted principle that for modern purposes a declaratory enactment must be read as brought on the statute book for the

removal of doubts as to previous law when there was no legislation on the subject, or as to the meaning and effect of any statutory provisions. There can be a number of answers to the argument of learned counsel for the Respondents but I do not deem it necessary to discuss this point with elaboration. In the earlier part of my judgment I have adverted to this aspect of the matter and I need not rehearse what I have already stated. Section 25-J has to be read as a whole and the two sub-sections of it so read have the effect, inter alia, of laying down that when any dispute is raised as to any matter relating to lay-off and retrenchment, the dispute must be decided only in accordance with the provisions of Chapter VA and not by reference to "any other law". and even if sub-section (2) alone has to be considered in the context of the present argument, I am unable to read the latter part of it as confined in its effect and operation only to provisions in any law in force in any State. As I read it sub-section (2) means that the provisions of Chapter VA are not intended to affect the provisions of any other law in force in any State but whether there is any other law or not and irrespective of such law if there be any, the rights and liabilities of employers and workmen in so far as they relate to lay-off and retrenchment shall in all cases be determined in accordance with the provisions of Chapter V-A.

28. The effect of Section 25-A is to restrict the benefit of the right to compensation for layoff declared in Section 25-C to workmen in certain industrial establishments only and the two clauses of sub-section (1) of that section and the Explanation have been inserted for that specific purpose. It is possible to say that the method of expression in Section 25-A is somewhat involved but I do not think there is any real difficulty in the meaning of it. Even so the law-maker has taken care to insert Section 25-J and the conclusion seems to me inescapable that the rights and liabilities of employers and workmen in the matter of layoff are now crystallized and to be gathered only from Chapter VA and it is not open to a workman to claim any right relating to lay-off de hors the provisions of that Chapter on the grounds of social justice and equity.

29. I would, therefore, allow the appeal and make the Rule absolute.

P. C. :- In view of the difference of opinion we direct that the papers be placed before the learned Chief Justice for passing orders under Section 98 of the Code of Civil Procedure for decision of the following question of law :

> "Whether it is open to the Industrial Tribunal under the Industrial Disputes Act, 1947, to award lay-off compensation to workmen employed in an "industrial establishment" to which Section 25-C of the Act does not apply?"

Mudholkar, J.

30. This appeal went up before Justice J. C. Shah and Justice S. T. Desai. Upon a difference between them the following point has been referred to me by the learned Chief Justice for decision : -

"Whether it is open to the Industrial Tribunal under the Industrial Disputes Act, 1947, to award lay-off compensation to workmen employed in an "Industrial Establishment' to which Section 25C of the Act does not apply"?

This matter has been argued before me at considerable length by Mr. Nain on behalf of the appellants and M/s. Singhavi and Buch on behalf of the respondents Nos. 2 and 3. It is no longer in dispute that the appellants employed less than 50 workmen in the Rolling Mills. It is also not in dispute that because of this circumstance the workmen are not entitled to be granted lay-off compensation under Chapter V-A of the Act It is, however, contended on behalf of the workmen that on the ground of social justice, the Industrial Tribunal to whom the dispute between them and the appellants was referred by the Government under Section 10 of the Industrial Disputes Act, could grant them such compensation as it thought just and proper to do. The contention of Mr. Nain on behalf of the appellants is that the entire law on the subject having now been crystallised in Chapter V-A of the Act, the workmen could claim compensation only when they were entitled to it under Chapter V-A and that if they were not entitled to get it under that Chapter they could not lay claim to it and consequently the Industrial Tribunal could not award them any.

31. It is no doubt true that before the Legislature enacted the provisions of Chapter V-A in the year 1953 whenever a question arose as to the grant of compensation to workmen who had been laid-off for one reason or another, Industrial Tribunals, applying the principles of social justice, awarded such compensation as they thought (reasonable. I recollect my having done so in the year 1946-47 in an industrial dispute between the employees of certain textile mills in the former province of Central Provinces and Berar and the mills which was referred to me for adjudication. The dispute arose out of the closure of the mills because of the shortage of coal and the question was whether the workmen should be awarded any compensation for the period during which they were laid off. I awarded some compensation to them on equitable grounds and the award was accepted by the Government. It is also clear from several reported decisions in the Labour Journals that the Labor or Industrial Tribunals in different parts of the country did afford relief to workers who had been laid off prior to 1953 even though there was no law entitling the workmen to layoff compensation. Mr. Nain disputes the power of a tribunal to grant compensation for lay-off on the ground of social justice but he says that for the purpose of this case we may assume that such a right did exist in favour of the workmen in the past. According to him, however, that right has now been completely abrogated by the provisions of Chapter V-A and that the only right which workers can enforce against their employers for lay-off compensation is the one which the provisions of the Chapter V-A confers upon them.

32. According to Mr. Justice Shah the right which the tribunals had prior to 1953 to grant layoff compensation to the workmen has not been completely abrogated by the provisions of Chapter V-A, though in so far as the Industrial establishments to which the provisions of Sections 25-C to

25-E apply are concerned that right is replaced by the one conferred by Chapter V-A. According to Mr. Justice S. T. Desai, however, the only right which the workmen now have to the grant of lay-off compensation is that which could be founded upon the provisions contained in Chapter V-A.

33. I have carefully considered the reasons given by both the learned Judges for the respective views taken by them and have also considered the reasons given by Mr. Justice K. T. Desai from whose decision the present appeal has been preferred before this Court. I have also had the advantage of hearing arguments of the Counsel - which, if I may point out, were identical with those advanced before the learned Judges and I am of the opinion that the view taken by Mr. Justice S. T. Desai, is with respect the correct one and should prevail. The learned Judge has given, if I may say with respect, good and substantial reasons for coming to the conclusion that the right to lay-off compensation must be found within the four corners of Chapter V-A. Since I am in complete agreement with all that he has said, and said so well, I will content myself by dealing only briefly with the points advanced before me on behalf of the appellants and the respondents.

34. Mr. Nain argued in the first place that the question of lay-off compensation which was till 1953 left entirely to the Industrial Tribunals to be dealt with, has now been codified by Parliament and collected in Chapter V-A of the Act. That being the position, Mr. Nain argued, the workmen, i. e., the respondents, can succeed only by showing that the provisions of that Chapter entitle them to lay-off compensation. Now, since they accept the position that the provisions of that Chapter do not apply to them because the Industrial establishment in which they are working employs less than fifty workmen, the result would be that they will get no lay-off compensation whatsoever.

35. It seems to me that where the rights governing certain human relations are not covered by any Statute law or Common law, the Courts would, in order to do substantial justice, have regard to the principles of equity, or natural justice or social justice. Therefore, when with regard to a particular kind of right, the legislature has enacted a law for the first time, it is necessary to ascertain whether its intention was to deal completely with a right of that kind or only partially. Where, as here, the right incorporated in a new Statute had rested formerly on grounds of social justice and was of a nebulous character, the legislature must be presumed to have intended to define that right. Thus, where the legislature steps in and purports to regulate the rights flowing from a particular kind of human relations such rights can be enforced by the Courts only to the extent permitted by the Statute. The legislature has the unlimited power to limit or curtail a right, whether it originates from a Statute or common law or is founded on the principles of natural or social justice or equity, and to confine it within the ambit of the Statute. When the legislature legislates on a subject it must be presumed to have known the pre-existing law thereon and enacted a complete law on the subject. Now, it is an admitted fact that in the past the right to lay-off compensation was assumed to be available in all industries and to all establishments

irrespective of their sizes. Knowing this, when the legislature confers a Statutory right only on employees in establishments of particular sizes and in particular industries, it must be deemed to have limited the pre-existing unlimited right, unless the legislature has expressly or by necessary implication left the pre-existing right untouched. There is no express saving of the old right nor is there any valid ground for implying that it must be deemed to have been saved.

36. It was strenously urged by Mr. Singhavi that what the legislature did in 1953 was to confer a new right altogether, a right which could be enforced by the workmen and that therefore, all that can be said is that the intention of the Parliament in enacting the provisions of Chapter V-A was only to confer a new right on them and not to take away their existing rights. Mr. Singhavi, however, conceded that the workmen employed in those industrial establishments to which the provisions of Chapter V-A apply could not exercise any right to lay-off compensation other than that given in that Chapter. But if Mr. Singhavi's argument were to be accepted, the result would be that despite the enactment of the provisions of Chapter V-A even the workmen employed in establishments to which Chapter V-A applies would still have the right recognised by the tribunals in the past on the ground of social justice. That obviously was not the intention of the Legislature and it has made this abundantly clear by enacting Section 25-J sub-section (2).

37. It was argued on behalf of the appellants before the learned Single Judge as well as before the Division Bench that the Tribunal had no jurisdiction to grant compensation in the present case. As has been rightly pointed out by S. T. Desai, J., this argument does not mean that the reference by the Government itself was incompetent or that the tribunal when it dealt with the reference had no jurisdiction to deal with it at all. What it means is that though the tribunal had jurisdiction to entertain that reference it had no power to grant the kind of relief which it had granted to the workmen. I agree with S. T. Desai, J., that the tribunal could not have granted this particular relief to the workmen because the conditions specified in Chapter V-A and in particular in Section 25-A thereof have not been satisfied.

38. Mr. Singhavi then contended that if Chapter V-A is regarded as exhaustive in so far as the question of granting compensation for lay-off is concerned, then it would mean that a large number of industrial establishments which do not satisfy the requirements of Section 25-A would be left out and he gave as instances, the Railways, the Port Trust and so on. He says that the Legislature could not have intended to discriminate against the employees employed in other undertakings even though they employ more than fifty workmen and deprive them of the benefit of layoff compensation. It must be borne in mind that the legislature has got complete freedom in such matters and while legislating upon a topic it can give the benefit of the law made on it only to a particular class of persons or establishments and not extend its benefit to other persons or other classes of establishments. It is not suggested that because of the discrimination these provisions are unconstitutional and, therefore, I need not consider the constitutionality of the provisions.

39. Upon this view I answer the question in the negative. The papers will now go back to the Division Bench for deciding the appeal in accordance with the provisions of Section 98 of the Code of Civil Procedure .

40. So far as the hearing before me is concerned I make no order as to costs.
Question answered in the negative.