Kishan Prakash Sharma & Ors vs Union Of India & Ors on 19 March, 2001

Equivalent citations: AIR 2001 SUPREME COURT 1493, 2001 AIR SCW 1309, (2001) 3 JT 554 (SC), 2001 (2) SCALE 586, 2001 (5) SCC 212, 2001 (2) UPLBEC 1232, 2001 (4) SRJ 281, 2001 (3) JT 554, 2001 SCC (L&S) 805, (2001) 2 SCT 656, (2001) 2 SERVLR 441, (2001) 2 UPLBEC 1232, (2001) 2 SUPREME 467, (2001) 2 SCALE 586

Bench: S. Rajendra Babu, D.P. Mohapatra, Doraiswamy Raju, Shivaraj V. Patil

CASE NO.:
Writ Petition (civil) 3815-19 of 1978

PETITIONER:
KISHAN PRAKASH SHARMA & ORS.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 19/03/2001

BENCH:
G.B. Pattanaik, S. Rajendra Babu, D.P. Mohapatra,Doraiswamy Raju & Shivaraj V. Patil.

JUDGMENT:

L...I...T.....T.....T.....T.....T.....T.....T..J [WITH W.P.(C) NOS. 800-01/1980, 15210-13/1984, 15209/1984, 3394/94A/1985, 15435/1984 and T.C. (C) NO. 5/1981] J U D G M E N T RAJENDRA BABU, J. :

> The genesis of dispute in these matters is embedded in the various schemes framed under the General Insurance Business (Nationalisation) Act, 1972 (Act 57 of 1972) as amended from time to time (hereinafter referred to as the Act).

The Preamble to the Act explains the purpose of the Act as to provide for the acquisition and transfer of shares in the Indian insurance companies and undertakings of other insurers in order to serve better the needs of the economy in securing development of general insurance business in the best interest of the community and to ensure that the operation of the economic system does not

result in concentration of wealth to the common detriment for the regulation and control of such business and for matter connected therewith or incidental thereto. Section 2 declared that it was for giving effect to the policy of the State towards securing the principles specified in Article 39(c) of the Constitution and under Section 3(a) acquiring company has been defined as any Indian insurance company and where a scheme had been framed involving the merger of one or more insurance companies in another or amalgamation of two or more such companies means the Indian insurance company in which any other company has been merged or the company which has been framed as a result of amalgamation. Section 4 provides that on the appointed day all the shares in the capital of every Indian insurance company shall be transferred to and vested in the Central Government free of all trusts, liabilities and encumbrances affecting these. Section 5 provides for transfer of the undertakings of other existing insurers. Section 6 provides for the effect of transfer of undertakings. Section 8 provides for provident fund, superannuation, welfare or any other fund existing. Section 9 stipulates that Central Government shall form a Government company in accordance with the provisions of the Companies Act to be known as General Insurance Corporation of India for the purpose of superintending, controlling and carrying on the business of general insurance. Section 10 stipulates that all shares in the capital of every Indian insurance company which shall stand transferred to and vested in the Central Government by virtue of Section 4 shall immediately on such vesting, stand transferred to and vested in the Corporation. Chapter 4 deals with the amounts to be made for acquisition. Chapter 5 of the Act deals with scheme for re- organisation of general insurance business. Sections 16 and 17 are important, to which we will advert to later and by amendment of the Act by an Ordinance issued in 1984 and subsequently replaced by an Act in 1985, the said provisions have been amended and a fresh provision was introduced as Section 17-A to which we will advert later in detail. After the Act came into force, several schemes have been framed by the Board of Directors and two schemes one dated July 30, 1977 amending the provisions regarding sick leave and another scheme pertaining to the payments to be made to the provident fund were challenged before this Court in the case of Ajay Kumar Banerjee v. Union of India, which resulted in a reported decision in 1984(3) SCR 252. The main ground of attack in that writ petition is that the amended notification altering the conditions of service is illegal as the Central Government has no power to issue it under Section 16 of the Act and as such the notification framing the scheme is ultra vires Section 16(1) of the Act. It was contended that once the merger of the Indian companies had taken place and the process of re-organisation was complete on 1st January, 1974 as stated before by forming the 4 insurance companies by 4 schemes framed in 1973, there could be no further re-organisation of the general insurance business and the merger of more insurance companies inasmuch as in the amended scheme there was no merger or re- organisation contemplated unlike the 1974 scheme. Mere amendment of the terms and conditions of service of the employees unconnected with or not necessitated by re- organisation of the business or merger or amalgamation of the companies could not fall within Section 16(1)(g) of the Act. It was also noticed by this Court that under the Life Insurance Corporation Act and Banking Companies Act provisions have been made to frame regulations independently of the re-organisation and there is no such comparable power under the Act and, therefore, the schemes impugned herein are made without authority of the law. This contention found favour with this Court. On interpretation of the provisions it was held that the power under Section 16(1)(g) to frame scheme for rationalising the provisions regarding pay-scales and other terms and conditions of service of officers and other employees wherever necessary if unrelated to the object envisaged in sub-section (2) of Section 16 of

the Act will not fall within the scope of exercise of powers and it would fall outside the same if the power exercised is beyond delegation and in view of the fact that the scheme of 1980 so far as it does not relate to the amalgamation or merger of the insurance company is not warranted by Section 16(1) of the Act. Ultimately, this Court held that the amended scheme of 1980 was bad as beyond the scope of the authority of the Central Government under the Act. Further it was also made clear that the parties will be at liberty to adjust their rights as if the scheme had not been framed and it was further made clear that this order will not prevent the Government, if so advised, to frame any appropriate legislation or make any appropriate amendment giving power to the Central Government to frame any scheme as it considers fit and proper.

However, in that batch of petitions, out of several of the cases that were disposed of by this Court in Ajay Kumar Banerjees case [supra], two matters [W.P.(C) Nos. 800-801/80] have remained undisposed of. In these two matters, a challenge is to the schemes framed in 1976 and 1977 by which the basis for contribution to provident fund had stood varied by changing it from 8 per cent of basic salary, dearness allowance and personal pay to 10 per cent of basic salary and personal pay and special pay, if any. The other amendment scheme effected certain changes in relation to sick leave. While it is the contention of the Petitioners that these two petitions have to be allowed, it is the stand of the respondents that in view of the changes that have been effected and the validation made thereto to the respective schemes these petitions will have to be dismissed. Inasmuch as the fate of these two petitions will depend on the view we take in the main matter, it would be appropriate to proceed to examine the other petitions that have been filed.

In WP(C) No.15209/84, All India Insurance Employees Association is the Petitioner, while Ummed Singh and another workman are the Petitioners in WP(C) Nos.15210-13/84. WP(C) No.15209/84 has been filed in challenging the Ordinance, which effected the changes to the Act in question. Inasmuch as the said Ordinance has been replaced by the Act, we must hold that these petitions have become infructuous and shall stand disposed of accordingly.

As stated already, by the Act, nationalisation of general insurance business was effected by notification made on September 20, 1972, which brought the Act into force with 2.1.1973 as the appointed date. On 27.9.1974, the scheme of 1974 was issued by the Central Government purported to have been issued under Section 16(1)(g) of the 1972 Act after discussions and negotiations with the employees under the Industrial Disputes Act. On 1.6.1976, another scheme was issued by the Central Government, stated to be unilaterally, under which the Provident Fund benefit granted to the employees under the 1974 scheme was modified. The 1974 scheme granted contribution of 8 per cent based on basic salary, dearness allowance and the personal pay and this was substituted with 10 per cent of basic salary and personal pay. The Provident Fund Act has been made applicable to the workmen of the GIC from 1970 onwards. On 30.7.1977, another scheme was published purportedly under Section 16(1)(g) of the 1972 Act amending the provisions regarding sick leave. The sick leave was available with full pay, but by the new scheme the same was reduced to only half pay. On 30.9.1980, the Central Government published another scheme to amend the 1974 scheme by which the existing employees would retire at the age of 60 years and those who joined the service after 1980 will retire at the age of 58 years. The ceiling on salary including basic, dearness allowance and special pay, if any, was imposed on Class III employees at Rs.2,750/- per month and on Class IV

employees at Rs.1,600/- p.m. The graduation increment was withdrawn. Subsequently, the ceiling was increased to Rs.3,500/- p.m. Class III employees and to Rs.2117/- p.m. Class IV employees. However, there is no ceiling at all at present. After the decision in Ajay Kumar Banerjees case [supra] Ordinance 10/84 was promulgated to amend the 1972 Act by introducing Section 17A, retrospectively and modification of Section 16 of the 1972 Act. On 21.9.1984, the Central Government issued the Amendment Scheme of 1984 purportedly under Section 17A of the 1972 Act by reviving the 1980 scheme. It also imposed a condition of compulsory retirement on completion of 55 years of age. The Petitioners have challenged the vires of the Act as well as the schemes in these proceedings.

At this stage, we may notice the following amendments effected to the Act :

> a. In the definition clause in Section 3(o), the expression scheme was altered to mean not only one framed under Section 16(1) but also a scheme framed under Section 17A.
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> b. Section 16 of the Principal Act was amended by introducing an additional sub-section (8) after sub-section (7) to the effect that the power to frame a scheme under sub-section (1), and the power conferred under sub-section (6) to add to, amend or vary any scheme framed under this section, shall include the power to frame such scheme with retrospective effect from a date not earlier than the appointed day.

c. Section 17A is introduced in which a validation clause and some consequential amendments have been added which we reproduce hereunder:

> 17-A. (1) The Central Government may, by notification in the Official Gazette, frame one or more schemes for regulating the pay scales and other terms and conditions of service of officers and other employees of the Corporation or of any acquiring company.
>
> (2) A scheme framed under sub-section (1) may add to, amend or vary any scheme framed under section 16 [including any addition, amendment or variation made therein by notification under sub-section (6) of section 16] with respect to rationalisation or revision of pay scales and other terms and conditions of service of officers and other employees of the Corporation or of any acquiring company, to provide for further rationalisation or revision of such pay scales and other terms and conditions of service notwithstanding that such further rationalisation or revision is unrelated to, or unconnected with, the amalgamation of insurance companies or merger consequent on nationalisation of general insurance business.
>
> (3) The Central Government may, by notification, add to, amend or vary any scheme framed under this section.

(4) The power to frame a scheme under sub-section (1), and the power conferred by sub-section (3) to add to, amend or vary any scheme, or, as the case may be, to make such addition, amendment or variation in any scheme framed under this section, with retrospective effect from a date not earlier than the appointed day.

(5) A copy of every scheme, and every amendment thereto, framed under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

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

(7) (1) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority or in any other law, agreement, award or other instrument for the time being in force, every scheme framed or purporting to have been framed with retrospective effect under sub-section (1) of section 16 of the principal Act and every notification made or purporting to have been made with retrospective effect under sub-section (6) of that section before the commencement of the General Insurance Business (Nationalisation) Amendment Ordinance, 1984 shall be, and shall be deemed always to have been, for all purposes, as valid and effective as if the amendment made in the said section 16 by section 3 of this Ordinance had been part of that section and had been in force at all material times.
(2) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority or in any other law, agreement, award or other instrument for the time being in force,-

(a) every scheme framed, or purporting to have been framed, by the Central Government under sub-section (1) of section 16 of the principal Act: and

(b) every notification made, or purporting to have been made by the Central Government under sub-section (6) of the said section 16, before the commencement of the General Insurance Business (Nationalisation) Amendment Ordinance, 1984, in so far as such scheme or notification provides (whether with or without retrospective effect) for any rationalisation or revision of pay scales or other terms and conditions of service of officers and other employees of the Corporation or of any acquiring company, otherwise than in relation to, or in connection with, amalgamation of insurance companies of merger consequent on nationalisation of general insurance business shall be, and shall be deemed always to have bee, for all purposes, as valid and effective as if section 17A, as inserted in the principal Act by section 4, of this Ordinance had been part of the principal Act, and had been in force at all material times and such schemes or notification in so far as it provides as aforesaid had been framed or made, under the said section 17A:

Provided that nothing in this section shall apply to, or in relation to, the notification dated the 30th day of September, 1980, framing the General Insurance (Nationalisation and Revision of Pay Scales and other Conditions of Service of Supervisory, Clerical and Subordinate Staff) Second Amendment Scheme, 1980.

Explanation.-In this section, the expressions acquiring company and Corporation shall have the meanings respectively assigned to them in the principal Act.

Shri P.P.Rao, learned senior counsel for the Petitioners, submitted that :

1. The schemes of 1976 and 1977 are illegal being ultra vires the Nationalisation Act of 1972 for reasons given in Ajay Kumar Banerjees case [supra].

2. The said schemes being void ab initio when they were made could not be revived by giving retrospective effect to the Amendment Act of 1985.

3. The 1985 Amendment Act is unconstitutional being violative of Articles 14, 19 and 21 of the Constitution inasmuch as it confers unreasonable and unguided power on the Central Government to frame schemes affecting the conditions of service of the workmen without any scope for collective bargaining.

4 . In any event the retrospective effect given to the 1985 Amendment with effect from 2.1.1973 is arbitrary and violates Articles 14, 19 and 21 of the Constitution as it takes away vested rights.

5. Vide proviso to Section 17-A(7)(2), the Act makes discrimination vis-à-vis the amendments to the Schemes made in 1976 and 1977 by specifically excluding the 1980 Scheme from the retrospective operation given to the 1985 Act.

6. The applicability of the Industrial Disputes Act to the workmen of the General Insurance Business is not excluded by the Nationalisation Act of 1972. Consequently, the view taken by the Industrial Tribunal in its award dated 1.8.1980 in ID No.17 of 1980 is liable to be reversed and the civil appeal remanded to the Industrial Tribunal for disposal in accordance with law.

In elaboration of these submissions and in challenging the validity of Section 17A of the 1972 Act, he further@@ JJJJJJJJJJJJJJJJJJJJJJJJ submitted as follows :@@ JJJJJJJJJJJJJJJJJJJJJ

1. Nature of power claimed to impose schemes without adjudication and or immunity from judicial examination is in the nature of crown prerogative not to be accountable in courts of law. It is not admissible under the Constitution.

2. The inevitable consequence of such power is total destruction of GIC Workers substantive right to collective bargaining, even though Banks employees are fully competent to negotiate and enter into

binding agreement. For the exercising this right both are similarly situate.

3. It also destroys the right to procedural safeguards of conciliation, arbitration and adjudication. Only in case of the General Insurance Employees, although in case of bank employees, with no rational differentia, the right to collective bargaining is recognised and not disturbed and the right to adjudication was recognised in Bharat Bank case in 1950 has resulted in Shastry Award and long line of other awards under the Industrial Disputes Act. Settlement with the Bank employees are cited by respondents to justify unilateral arbitrary changes imposed by impugned schemes under invalid Section 17A.

4. Discrimination against GIC employees, in matters of social and economic justice and fair play, is writ large on the face of Section 17A. The GIC employees have been singled out for denial of their dignity as equal partners, and the constitutional right to participate in the management of insurance industry and to take away the safeguards of a just, fair and reasonable procedure with well defined necessary safeguards against arbitrary changes in wage structures and other terms and conditions of service with retrospective effect to make lawless schemes lawful. Injustice is thereby aggravated. Article 14 is flagrantly overtaken in all its dimensions.

5. This ignores the role of workers who produce wealth and services for the community. The history of evolution of industrial jurisprudence and fundamental constitutional commitments are replaced by unguided executive fiat. The workers are trusted to build Modern India but Section 17A imposes avoidable humiliation of imposing wage slavery in sensitive fiscal public sector undertaking where justice and fair play must be the sole concern.

It blatantly makes Central Government a substitute for industrial Tribunals but lays down no guidelines for exercise of powers in fields where binding principles of industrial law declared by this Court are the law of the land. The procedural and substantive benefits of this law cannot be taken away to throw the GIC employees at the mercy of the executive.

6. The Central Government is obliged to act on relevant facts ascertained in a fair enquiry or principles of law which are available to the employees in other industries, with guaranteed protection of binding law and justice from this Court under Article 136 of the Constitution.

7. Section 17A cannot be read down to control the powers of the Central Government not to violate the binding principles of relevant law enacted or declared by this Court.

8. The artificial classification of GIC employees has no rational differentia nor does it reasonable nexus with any constitutionally permissible object to justify the amendment in the GIC Nationalisation Act.

9. After nationalisation all industrial disputes can and must be dealt with under relevant industrial laws, and not in exercise of absolute power conferred on the Government. Section 17A imposes hostile discrimination on GIC employees singled out to be subjected to wage slavery.

10. This amendment paralyses the Trade unions in insurance industry and also the courts and Tribunals for no constitutionally permissible object. The existence of power and its exercise both are, therefore, unconstitutional and hit by Article 14, 19(1)(c) and (g) and also 21 of the Constitution of India.

Shri Harish N. Salve, learned Solicitor General appearing for the Central Government, submitted that the background, in which the schemes have been framed and the modifications thereto have been effected, has to be borne in mind.

Prior to 1972, there were about 106 general insurance companies both of Indian and foreign origin. The conditions of service of the employees of the said insurance companies were governed by the respective contracts of service between the companies and the employees. The set-up, working, management and employment of staff by the erstwhile insurance companies showed no uniformity. The erstwhile companies were managed in diverse managerial systems and no uniform pattern of management could be discovered by the Central Government after the nationalisation. There was a pronounced disparity between one company and the other at all levels in the matter of remuneration and designations for similar posts. Employees of different companies were holding different designations and were paid differently for the same kind of work at the same station. Some companies gave very high sounding designations and paid salaries, which were not commensurate with the work. So the necessity for rationalisation of the entire structure of general insurance business, including designations, pay scales and other conditions of service arose.

On May 13, 1971, the Government of India assumed the management of the general insurance companies under the Act pursuant to an Ordinance issued at that time. The preamble of the Act explains the purpose of the said Act as to provide for the acquisition and transfer of shares of Indian insurance companies and undertakings of other insurers in order to serve better the needs of the economy in securing the development of general insurance business in the best interest if the community and to ensure that the operation of the economic system does not result in concentration of wealth to the common detriment, for the regulation and control of such business and for matters connected therewith or incidental thereto. The said Act also deals with the scheme for reorganisation of general insurance business in Chapter V. The first step the Central Government took in this direction was to reduce the number of companies carrying on general insurance business, which was also the main object of Section 16(2). With this object in view, the Government decided to retain four companies and all other companies were merged into one or the other of the said four companies. To achieve this end, four merger schemes were framed and promulgated. All these schemes came into force with effect from the 1st day of January, 1974. Prior to the coming into force of the aforesaid schemes, the different companies, pending formal merger, had been merged into one or the other of the said four companies.

Thereafter, the Government of India in exercise of powers under Section 16(1)(g) framed a scheme called the General Insurance (Rationalisation and Revision of Pay Scales and other Conditions of Service of Supervisory, Clerical and Subordinate Staff) Scheme, 1974. As per this scheme, contribution to the provident fund was to be at the rate of 8 per cent of the basic salary and dearness allowance with an equal contribution by the General Insurance Corporation or any of its

subsidiaries, while, at the same, time, they had maintained parity with other institutions such as LIC and the nationalised banks and for this purpose they had amended the notification issued on 1.6.1976 to provide that provident fund shall be contributed by every employee at the rate of ten per cent of the basic pay plus personal pay and special pay, if any, in place of 8 per cent of the basic salary and dearness allowance. It was also provided that any period of sick leave on half pay may be converted into sick leave on half pay at the option of the employees but in such cases twice the amount of sick leave was to be debited against the leave account of the employee. Provision was also made for the grant of special sick leave for serious ailments like cancer, leprosy, T.B., polymylitis and other serious diseases.

It is the stand of the respondents that these amendments were made while the process of rationalisation of pay scales and other service conditions were still in progress and the process had not been finally completed to achieve uniformity and inter-se rationalisation in terms and conditions of service of different categories of employees of merged companies.

The second amendment to the scheme was effected in 1980. This Court in Ajay Kumar Banerjees case [supra] quashed the scheme merely on the ground that the Central Government had no power under Section 16 of the Act to frame the scheme. However, this Court rejected the contentions of the Petitioners that the scheme was violative of Articles 14, 16 and 19 of the Constitution of India. While explaining the scope of Section 16(1)(g) of the Act, this Court found that the same gives powers to the Central Government to frame schemes, to regulate terms and conditions and pay scales of the employees and also to amend and vary the said schemes from time to time. However, it was held that such powers can be exercised only once. By virtue of the amending Act, now the Central Government has been empowered to amend and vary the said schemes from time to time bringing the same in conformity with the other institutions such as LIC and the nationalised banks enactment.

It is submitted that so far as the question relating to the fixation of age of retirement is concerned, it is clear from the provisions made that the age of retirement for the existing employees has been retained at 60 years and so far as the employees to be recruited after the notification are concerned, the retirement of age has been fixed at 58 years. Therefore, the alteration made does not take away any right of the existing employees and the Petitioners cannot make a grievance of the same in respect of the persons who have not yet been taken in employment of any of the insurance companies and the new recruits will be aware of the conditions of the service prevailing in the companies and will take up the employment subject to those conditions. So far as the ceiling on the maximum salary is concerned, it is submitted that the wage structure in the entire industry has become lopsided and has brought about grave inter se wage distortions reaching grave dimensions. For example, the emoluments (basic pay plus DA) on 1st July, 1984 of a Superintendent in Class III employed at the maximum of his grade, amounted to Rs. 4,082/- and this, if allowed to continue, would create further distortions while emoluments of a General Manager, amounted to Rs.3,950/- and Rs.4,450/- per month at the minimum and maximum of his grade respectively and the General Manager is seven steps above a Superintendent. It is submitted that if the ceiling had not been imposed, even the emoluments of a Superintendent would have overtaken those of the Chairman-cum-Managing Director of a Subsidiary company. This would not be conducive to the

smooth functioning of the organisation and would lead to distortions. These ceilings were, however, thereafter revised upwards and have since been removed altogether during subsequent revisions in the pay scales, allowance and other benefits payable to employees in the General Insurance companies. The provisions regarding graduation benefits were subsequently amended and graduation increments/allowance are now available to graduate employees in the general insurance companies.

The challenge now to the enactment is that this Court having held, the expression scheme for reorganisation of general insurance business will not include a scheme made after the reorganisation, is complete; that no further schemes, except in connection with the reorganisation of the general insurance business and merger of more insurance companies could be effected and the impugned scheme did not involve any such merger; that therefore, this scheme is ultra vires the Act; that the provision enabling the Central Government to frame the scheme is bad and the provision which gives retrospectivity to the said enactment is equally bad as there are no guidelines in Section 17A. Though there can be no limitation regarding providing better terms and conditions of service the same cannot be modified to the detriment of the workmen. The power that has been conferred upon the Central Government to frame the scheme without guidelines is bad and the guidelines have to be read into the provisions in such a manner that the benefit which is already given to the workmen should not be taken away and there should be enough scope for collective bargaining particularly in the absence of consultation and when there is no limitation on upward revision, the conferment of the power upon the authority concerned is bad.

So far as the delegated legislation is concerned, the case law will throw light as to the manner in which the same has to be understood and in each given case we have to understand the scope of the provisions and no uniform rule could be laid down. The legislatures in India have been held to possess wide power of legislation subject, however, to certain limitations such as the legislature cannot delegate essential legislative functions which consist in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct. The Legislature cannot delegate uncanalised and uncontrolled power. The Legislature must set the limits of the power delegated by declaring the policy of the law and by laying down standards for guidance of those on whom the power to execute the law is conferred. Thus the delegation is valid only when the legislative policy and guidelines to implement it are adequately laid down and the delegate is only empowered to carry out the policy within the guidelines laid down by the Legislature. The Legislature may, after laying down the legislative policy, confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of the policy. When the Constitution entrusts the duty of law-making to Parliament and the Legislatures of States, it impliedly prohibits them to throw away that responsibility on the shoulders of some other authority. An area of compromise is struck that Parliament cannot work in detail the various requirements of giving effect to the enactment and, therefore, that area will be left to be filled in by the delegatee. Thus, the question is whether any particular legislation suffers from excessive delegation and in ascertaining the same, the scheme, the provisions of the statute including its preamble, and the facts and circumstances in the background of which the statute is enacted, the history of the legislation, the complexity of the problems which a modern State has to face, will have to be taken note of and if, on a liberal construction given to a statute, a legislative

policy and guidelines for its execution are brought out, the statutes, even if skeletal, will be upheld to be valid but this rule of liberal construction should not be carried by the Court to the extent of always trying to discover a dormant or latent legislative policy to sustain an arbitrary power conferred on the executive. These very tests were adopted in Ajay Kumar Banerjees case [supra] also to examine whether there is excessive delegation in framing schemes and reading the preamble, the scheme and the other provisions of the enactment taking note of the general economic situation in the country, the authorities concerned had to frame appropriate schemes. Therefore, it is not open to the Petitioners to contend that there is excessive delegation in relation to the enactment to frame schemes.

In Ajay Kumar Banerjee case (supra), this Court after holding that there is no excessive delegation observed that the scheme framed was ultra vires the enactment for the scheme could only be framed once. Now the argument is that once a scheme is framed no further scheme should be allowed to be framed. If the legislature recognizes the fact the rationalisation resulting from the mergers of several companies are not yet over and on that basis enacts a law to enable the Government to frame appropriate schemes, we do not think that such step by the legislature is arbitrary or irrational as to be violative of Article 14 of the Constitution. In Ajay Kumar Banerjee case (supra), this Court pointed out that though there is power in the Government to revise the pay scales it cannot exercise the power more than once at the time of merging different companies for the purpose of rationalisation this power could have been exercised and for no further. But now the enactment itself specifically provides that every scheme framed or purporting to have been framed by the Central Government under Section 16(1) of the Principal Act and every notification made or purporting to have been made thereunder in so far as such scheme or notification provides for rationalisation or revision of pay scales or other terms and conditions of the officers and other employees of the Corporation are deemed always to have been for all purposes as valid and effective as made under Section 17A of the Act. The retrospective effect given to the scheme is only to overcome the difficulty pointed out by this Court in Ajay Kumar Banerjees case. That lacuna having been overcome it is not open to the Petitioners to contend that retrospective effect given is violative of Articles 14, 19 and 21 of the Constitution. Validation of invalid rule by amending the main enactment under which it is made is a well known legislative device approved by this Court.

We may now consider whether in any event the retrospective effect given to the 1985 Amendment Act with effect from 2.1.1973 is arbitrary and violates Articles 14, 19 and 21 of the Constitution? The Legislature is given the power to make laws not only prospectively but also retrospectively. If in exercise of those powers the Legislature makes an enactment the same cannot be held to be invalid for want of competence. But the grounds urged in the present petitions are arising under Article 14, 19 and 21 of the Constitution. The appointed date fixed for coming into force of the Amendment Act is 2.1.1973. It is clear that the scheme for reorganisation of the general insurance business were to come into effect from that date. Therefore, necessarily effect should have been given from that date. It is difficult to envisage that the rights arising under Article 14, 19 and 21 are affected. Vide proviso to Section 17-A(7)(2) amendments are made to the Schemes framed in 1976 and 1977 by specifically excluding the 1980 Scheme from the retrospective operation given to the 1985 Amendment Act. When different patterns in different companies existed necessarily rationalisation had to be effected and the position obtaining in several institutions such as the Life Insurance Corporation and the

nationalised banks had been taken note of and a common pattern had been adopted. Different patterns were operating in different companies earlier and the area where the adjustment had been made is a small area. When the provision, which enables the schemes to be modified from time to time retrospectively is being subject to several controls and as such schemes have to be approved by high-powered officer and ultimate control is exercised by Parliament, the action is good. It is only in particular cases if the schemes framed are discriminatory or otherwise arbitrary, the same could be challenged under Articles 14 and 16 of the Constitution.

This Court in A.V. Nachane & Anr. v. Union of India & Anr., 1982 (1) SCC 205, considered similar contentions that have been raised in this case. It was noticed therein that Section 48(2)(c) of the LIC Act provided that no rule made under clause 2(cc) of that scheme touching the terms and conditions of service of the employees of the Corporation shall have effect notwithstanding anything contained in the Industrial Dispute Act. 1947. It was explained that the rules framed thereunder regarding terms and conditions of service the right to raise an industrial dispute in respect of matters dealt with by the rules will be taken away and to that extent the provisions of the Industrial Disputes Act will cease to be applicable. Thus a separate class was sought to be made and having kept them out of the scheme their claims would be considered under the Industrial Disputes Act. It was noticed that the LIC Act as amended and the rules made after amendment placed the Corporation in the same position as other undertakings that the advantages being enjoyed by the employees of the Corporation which were not available to similarly situated employees of other undertakings have been taken away removing what was described as discrimination in favour of the employees of the LIC. Therefore, it was accepted that in the special features of the matter provision made therein cannot be stated to infringe Article 14 of the Constitution. Applying the same logic to the present case by reason of the impugned rules all that have been made is to achieve certain rationalisation. Thus the contention advanced by Shri Rao either as to retrospective application of the amendment or otherwise does not stand to reason.

In the original Scheme issued under Section 16(1)(g) of the Act in 1974, there is an indication that the same has been issued after discussion and negotiations with the employees under the Industrial Disputes Act, 1947. On 1.6.1976, another Scheme under Section 16(1)(g) of the Act was issued by the Central Government unilaterally under which the provident fund benefits granted to the employees under the 1974 scheme was modified. The 1974 Scheme granted contributions of 8% based on basic salary dearness allowance and personal pay, and substituted the same with 10% of basic salary and personal pay. The calculations based on dearness allowance were subsequently denied. The Provident Fund Act was applicable to GIC employees from 1970. On 30.7.1977, another scheme was published purportedly under Section 16(1)(g) of the 1972 Act amending the provisions regarding sick leave. The sick leave was available with full pay, but by the new scheme the same was reduced to only half pay. On 30.9.1980, the Central Government published another scheme to amend the 1974 scheme by which the existing employees would retire at the age of 60 years and those who joined the service after 1980 will retire at the age of 58 years. The ceiling on salary including basic, dearness allowance and special pay, if any, was imposed on Class III employees at Rs.2,750/- per month and on Class IV employees at Rs.1,600/- p.m. The graduation increment was withdrawn. Subsequently, the ceiling was increased to Rs.3,500/- p.m. Class III employees and to Rs.2117/- p.m. Class IV employees. However, there is no ceiling at all at present. We have already adverted to the various

provisions relating to the issue of the Ordinance X of 1984 replaced by the Amendment Act. If that is the stand of the Petitioners, the stand of the respondents is that on May 13, 1971, the Government of India took over the management of the companies engaged in general insurance business in India under the General Insurance Business Act, 1971. Prior to nationalisation, there were nearly 106 general insurance companies both of Indian and foreign origin. The conditions of service of the employees of the said insurance companies were governed by the respective contracts of service between the companies and the employees. The set- up, working, management and employment of staff by the erstwhile insurance companies showed no uniformity. The erstwhile companies were managed in diverse managerial systems and no uniform pattern of management could be discovered by the Central Government after the nationalisation. There was a pronounced disparity between one company and the other at all levels in the matter of remuneration and designations for similar posts. Employees of different companies were holding different designations and were paid differently for the same kind of work at the same station. Some companies gave very high sounding designations and paid salaries, which were not commensurate with the work. So the necessity for rationalisation of the entire structure of general insurance business, including designations, pay scales and other conditions of service arose.

Section 16 of the Act dealt with this aspect of the matter. In framing schemes under Section 16(1) thereof, the object of the Central Government should be to ensure that ultimately there are only four companies [excluding the Corporation] in existence and that they are so situate as to render their combined services effective in all parts of India. If the rationalisation or revision of any pay scale or other terms and conditions of service under any scheme is not acceptable to any officer or other employee, the acquiring company may terminate his employment by giving him compensation equivalent to three months remuneration, unless the contract of service with such employee provides for a shorter notice of termination. The preliminary step the Central Government took in this direction was to reduce the number of companies carrying on the general insurance business and decided to retain four companies and all other companies were merged into one or the other of the said four companies and they are as under :

1. The New India Assurance Company Ltd. (Merger) Scheme, 1973

2. The United India Fire & General Insurance Company Ltd. (Merger) Scheme, 1973

3. The Oriental Fire & General Insurance Company Ltd.

(Merger) Scheme, 1973

4. The National Insurance Company Ltd. (Merger) Scheme, 1973.

All these schemes came into force on 1.1.1974.

The Central Government, in exercise of the powers conferred under Section 16(1)(g) of the Act, framed three schemes for three different categories of employees relating to (i) supervisory, clerical and subordinate staff; (ii) officers; and (iii) development staff. The schemes also provided, inter alia,

various provisions like fixation of pay on promotion, increments, provident fund and gratuity, etc. When the process of categorisation and rationalisation was in progress, it was noticed that as per the 1974 scheme, contribution to the provident fund was @ 8 per cent of the basic salary and dearness allowance with an equal contribution of GIC or any of its subsidiaries. However, LIC and nationalized banks were giving provident fund at different rates. So as to keep parity with other similar organisations, the scheme was corrected by an amending notification issued on 1.6.1976 and it was provided that the provident fund shall be contributed by every employee at the rate of 10% of the basic pay plus personal pay and special pay, if any, in place of 8% of the basic salary and dearness allowance.

The original scheme of 1974 was silent about the payment of salary during sick leave. For that reason, an addition was made by the amendment notified on 30.7.1977 in para 10 of the original scheme providing that the employees would be entitled to draw, while on sick leave, salary equal to half the aggregate of basic pay, special pay, personal pay and that, in addition thereto, he shall also draw dearness allowance, house rent allowance, CCA and hill-station allowance, wherever admissible, appropriate to half the aggregate of such basic pay, special pay and personal pay. It was also provided that any period of sick leave on half pay may be converted into sick leave on half pay at the option of the employees but in such cases twice the amount of sick leave was to be debited against the leave account of the employee. Provision was also made for the grant of special sick leave for serious ailments like cancer, leprosy, T.B., polymylitis and other serious diseases.

The stand of the respondents is that amendments were made while the process of rationalisation of pay scales and other service conditions were still in progress and the process had not been finally completed to achieve uniformity and inter-se rationalisation in terms and conditions of service of different categories of employees of merged companies. In 1977 various labour unions presented a charter of demands in relation to revision of pay scales and service conditions. The scheme of 1974 contained a provision to the effect that the provisions of the scheme relating to scales of pay, dearness allowance etc. will continue to be in force till the Government modified the same. After considering the demands of the unions and the view of the management, the Government formulated guidelines and requested the management to hold consultations and discussions with the unions so that final views of the unions may be known and may be taken into account by the Government before modifying the pay scales, etc. But this course will not indicate that there was an obligation cast on the Government to formally negotiate with the unions. However, in keeping with the democratic tradition and to maintain harmonious industrial relations the management had several rounds of discussions with the four major registered unions. The procedure of consultations and discussions was adopted in order to narrow down the differences to the minimum and to ensure that the viewpoint of the employees was kept in mind before any scheme was finalized by the Government.

In 1980, the said scheme was amended providing for revision of pay scales, allowances, etc. for the betterment of the employees and notified the scheme on 30.9.1980. The employees, however, challenged the said amendment. But this Court, in Ajay Kumar Banerjees case [supra], rejected the contention of the Petitioners that the scheme was violative of Articles 14, 16 and 19 of the Constitution of India. However, the scheme of 1980 was quashed making it clear to frame any

appropriate legislation or to make appropriate amendment giving power to the Central Government to frame any scheme as it considers fit and proper. Thereafter, the Act was amended to remove the lacuna and to promulgate the said provision retrospectively from the date originally it was introduced. On that aspect of the matter, we have already adverted to the various challenges and rejected each one of them. Though the nationalisation process commenced some time in 1973 the process of merger was not over even in the year 1978. The contention that the Petitioners are subjected to hostile discrimination by reason of exclusion of the GIC employees from the Industrial Disputes Act being made applicable to them is also rejected. While dealing with the question of similar nature with reference to Section 48 of the Life Insurance Corporation Act, 1956 which by sub-section (2-C) provided that the rules made thereunder shall have effect notwithstanding anything contained in the Industrial Disputes Act, 1947 or any other law for the time being in force similar to Section 16(5) of the Act, this Court in A.V.Nachanes case [supra] noticed the effect of the same. It was stated that Section 48(2-C) read with Section 48(2)(cc) authorises the Central Government to make rules to carry out the purposes of the Act notwithstanding the Industrial Disputes Act or any other law. This means that in respect of the matters covered by the rules, the provision of the Industrial Disputes Act or any other law will not be operative. The argument advanced is that this provision introduced in the Principal Act does not lay down any legislative policy or supply any guidelines as to the extent to which rule-making authority would be competent to override the provisions of the Industrial Disputes Act or other laws. This Court answered this question by stating that there are sufficient guidelines in the Act and an executive authority can be empowered by the statute to modify either existing or future laws but not in any essential feature and relied upon the decision in Rajnarain Singh vs. Chairman, (1955) 1 SCR 290. Though certain doubts have been expressed in Ajay Kumar Banerjees case as to the effect of the said provision that if there is any industrial dispute pending the same may be affected but in the event that there is no such industrial dispute pending the amendment of the rules will not come in the way and, therefore, it was held that it would not amount to excessive delegation. Therefore, the contention that the Industrial Disputes Act is abrogated is not correct and what was done was to regulate the working of the provisions of the scheme in the larger interest of the insurance business.

The Government, which framed the scheme, has neither consulted any of the parties nor is there any obligation to do so under the Act. It is only the General Insurance Corporation which supplied the information to the Government of India or consultation with its employees in certain matters. But that will not confer on the parties to demand such consultation each time there is any change in the scheme. Moreover, in matters of legislative nature consultation is not required unless the law requires the same to be done. The contention that the exclusion of the Industrial Disputes Act will affect their rights under Article 19(1)(c) of the Constitution and thereby to their right to collective bargaining is not justified. The right to form union is still available as provided under Article 19(1)(c) of the Constitution and collective bargaining as such is not barred. It is not as though the Industrial Disputes Act is applicable to every industry. The Industrial Disputes Act itself makes several exemptions. The statute as such does not exclude collective bargaining. Therefore, we find no substance in that contention also. All the schemes framed by the Corporation must be taken as a composite whole and the several schemes framed will modify the rights of the parties and this Court took notice of this position in New Bank of India Employees Union v. Union of India [supra] and was of the view that in achieving parity in pay scales in different organisations several adjustments

have to be made and in ironing the differences, some may be at greater advantage than the other and that circumstance itself may not be taken note of in invalidating such a scheme.

So far as modification of some of the benefits granted as to the extent of the gratuity whether it may be based on 10% of the basic and personal pay or some other amount at 8% is too small an area which on rationalisation would not affect the rights of the parties. Broadly looked at, we do not think that it is justifiable for the Petitioners to contend that the modification of the scheme in this regard will seriously or at all affect their rights.

The scheme provides for the sickness leave but certain adjustments have been made in the manner it is made available. This modification has been made to bring out uniformity in service conditions in similar institutions. Such adjustment cannot seriously affect the Petitioners.

Now we may briefly refer to some of the decisions adverted to by the learned counsel.@@ JJJJJJJJ (1) Shri Rao relied upon a decision of this Court in Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir & Anr., 1980 (3) SCR 1338, to contend that the Directive Principles of State Policy in the Constitution had to be advanced or implemented with a view not to earn revenue but for the purpose of carrying out welfare scheme particularly for those deserving it. We fail to understand as to how this decision would be of any help to the learned counsel. Undoubtedly, constitutional scheme and, in particular the Directive Principles of State Policy provides for protection of the workers to the extent indicated in the Directive Principles of State Policy, that is, participation of workmen in the management of the undertaking. We do not think that principle is in any manner attracted to the present case. So is the position in regard to the decision in National Textile Workers Union Etc. v. P.R. Ramkrishnan & Ors. 1983 (1) SCR 922.

(2) Reliance was placed on the decision in Jyoti Pershad v. The Administrator for the Union Territory of Delhi, 1962 (2) SCR 124, to contend that in cases of delegated legislation when clear guidance in the enactment is made, the guidance could be derived from the enactment and that it bears a reasonable and rational relationship to the object to be attained by the Act. We do not know, how this decision can be of any assistance to the petitioner.

(3) In Hindustan Antibiotics Ltd. v. the Workmen & Ors., 1967 (1) SCR 652, a situation where the service conditions of the employees in public sector undertakings were not similar to those of government employees, there was no security of service, the fundamental rules did not apply to them and there was no constitutional protection, no pension, they were covered by standing orders, their service conditions were more similar to those of employees in the private sector was considered. In that case, it was found that industrial adjudication could be appropriate and wages could be properly revised. That situation is entirely different from the one with which we are dealing. We are not comparing conditions of service in different sectors but in similar sectors like GIC and LIC, which are common to nationalised banks, the conditions of service should at any rate be akin or similar. Therefore, the considerations that applied in Hindustan Antibiotics Ltd. v. the Workmen & Ors. case (supra) cannot be applied to the present case.

(4) When a law is made with retrospective effect to change the character of the earlier statute or statutory rules so that the court would not have rendered a decision had the changed situation prevailed at that time would not mean suppression of the judicial power by Legislation but only the decision stands nullified because the basis of that decision is taken away. This aspect was examined in detail by this Court in S.S. Dola and Ors. v. B.D.Sardana & Ors., 1997 (8) SCC 522. Applying the same principles to the present case, the action of the State is only to enact the law to give effect to its policy by rectifying the defect pointed out by the court with retrospective effect.

(5) In cases where amalgamations or mergers take place question relating to manner in which the service rendered in the transferor bank for the purpose of promotions, seniority in the transferee bank which was fixed in the ratio of 2:1 were all challenged before this Court in New Bank of India Employees Union & Anr. v. Union of India & Ors., 1996 (8) SCC 407, and the scheme framed was held to be legislative in character. Contrary view of such provision had to be made when the entire matter was in the state of efflux for the purpose of rationalisation. Therefore, we find no substance in this argument.

(6) This Court in Process Technicians and Analysts Union v. Union of India & Ors., 1997 (10) SCC 142, has taken the view that the scheme as amended by the Bharat Petroleum Corporation Limited (Determination of Conditions of Service of Employees) was valid though made retrospective in effect. The challenge was that it had conferred upon the Government unguided powers. It was held that this power enabled the Government to make conditions of service of the employees comparable with those of other private sector companies. Therefore, it was held that it was not an unguided power. In the present case, the position is not different. Thus none of the contentions raised on behalf of the petitioners can be accepted. Therefore, these petitions deserve to be dismissed. No costs.

G.B.PATTANAIK [S. RAJENDRA BABU D.P. MOHAPATRA DORAISWAMY RAJU SHIVARAJ V. PATIL March 19, 2001