Neptune Assurance Co. Ltd. & Ors vs Union Of India & Anr on 10 November, 1972

Equivalent citations: 1973 AIR 602, 1973 SCR (2) 940, AIR 1973 SUPREME COURT 602, 1973 (1) SCC 310, 43 COM CAS 469, 1973 2 SCR 940

Author: A.N. Ray

Bench: A.N. Ray, S.M. Sikri, D.G. Palekar, M. Hameedullah Beg, S.N. Dwivedi

PETITIONER:
NEPTUNE ASSURANCE CO. LTD. & ORS.

Vs.

RESPONDENT:
UNION OF INDIA & ANR.

DATE OF JUDGMENT10/11/1972

BENCH:
RAY, A.N.
BENCH:
RAY, A.N.
SIKRI, S.M. (CJ)
PALEKAR, D.G.
BEG, M. HAMEEDULLAH
DWIVEDI, S.N.

CITATION:
1973 AIR 602 1973 SCR (2) 940
1973 SCC (1) 310

ACT:
General Insurance (Emergency Provisions) Act 1971 s. 15(a)-'Insurer' whose business is voluntarily wound up or is wound up under order of Court exempted from operation of Act-Voluntary winding up of business whether includes cessation of business-Insurer' and insurance company, whether distinct-Sections 2(e) and 15(a) of Act whether violative of Art. 14, Constitution of India.

HEADNOTE:
The first petitioner was a public limited company incorporated under the Indian Companies Act. The second and third petitioners were shareholders and directors of the

first petitioner. Up to the end of March, 1971 the petitioner company was registered under the Indian Insurance Act, 1938. The registration authorised it to carry on the business of general insurance comprising fire and miscellaneous insurance. On September 17, 1970 its Board of Directors resolved that it would cease to underwrite any insurance business as from the close of business on September 30, 1970. On that very date it informed the Controller of Insurance of the resolution and returned its certificate of registration for the year 1970 to the Controller of insurance. After-the close of business on September 30. 1970 it stopped doing any kind of general insurance business. On October 3, 1970 the Controller of Insurance returned the Registration certificate to it with the remark that there was no provision in the Insurance Act for return of certificate. The Controller advised it not to ,apply for renewal of certificate for the year 1971. On February 2, 1971 the Board of Directors of the company passed a resolution canceling all policies with effect from March 10/12, 1971 after giving due notice to the policy-holders. Another resolution was passed terminating all re-insurance treaties, both inward and outward, with effect from December 31. 1971. The company refunded to the policy-holders a sum of Rs. 48.000 on cancellation of their policies. The uncollected refund amount came to Rs. 2013.98. On February 16, 1971 the Controller of Insurance cancelled the registration of the company with effect from April 5, 1971 under section 3(4)(f) of the Insurance Act. The company reduced its staff from the month of September 1970. By the end of February 1971 the total staff consisted of one officer, one clerk, one typist and one peon. In respect of some of the policies cancelled cases were pending in court. The Union of India, the first respondent, appointed a Custodian over the undertaking of the company under s. 4 of the General Insurance(Emergency Provisions) Ordinance 1971 on May 13, 1971, The said Ordinance was eventually reenacted as General Insurance (Emergency Provisions) Act. 1971. The Union of India issued also certain directions on May 13, 1971 to regulate the management of the undertaking by the Custodian. The company filed petitions under article 32 of the Constitution claiming that the Act of 1971 was not applicable to it because it was an insurer whose business was being voluntarily wound up in terms of section 15(a) of the Act and therefore it could not be taken over by the Central Government under s.. 3 of the Act. It was contended that the words "whose business is being voluntarily wound up" in section 15(a) also meant "whose business is being voluntarily brought to

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a close or final settlement". The company also challenged the constitutionality of part of section 2(e) as also of section 15(a) of the Act, under Art. 14 of the Constitution

of India.

Held : per majority (Palekar, Beg and Dwivedi, JJ.)

(i) The appellant company could not get the benefit of s. 15(e) and was subject to the provisions of s. 3 of the Act which provides for the take over of insurance companies. [966 H]

Section 2C of the Insurance Act has limited the denotation of the word 'insurer' from the date of the commencement of the Insurance (Amendment) Act 1950. Section 2C(1) provides that "no person shall,, after the commencement of the Insurance (Amendment) Act 1950 begin, to carry on any class of business in India and no insurer carrying on any class of insurance business in India shall, after the expiry of one year from such commencement, continue to carry on any such business unless he is a public company incorporated in or out of India or a Society registered under any law relating to Co-operative Societies Act, 1972. In the result at the commencement of the Ordinance and the Act,'Insurer' included a public company either incorporated under the Companies Act or under a foreign Company law and a Cooperative Society. Although according to the proviso to s. 2C(1) the Central Government may by a Gazette notification exempt from the operation of s. 2C(1) any person or insurer for the purpose of carrying on general insurance business for not more than three years at a time, no such notification was shown to have been in fact issued. Cooperative Societies are under the various State laws relating to Cooperative Societies wound up by an order of the Registrar of Cooperative Societies. Therefore the word insurer in s. 15(a) of the Act includes only two classes of persons : (a) public limited company incorporated under the Companies Act; (b) a public company incorporated under a foreign company law. [960 H; 961 BCRF]

The twin expressions "being voluntarily wound up" and "being wound up by a court" have acquired a crystallised meaning in the Company and 'Insurer' included a public company either incorporated under the Companies Act and the Insurance Act. In the Companies Act the expression " voluntary winding up means a winding up by a special resolution of the company to that effect. Section 54 of the Insurance Act provides its own procedure for the winding up of an insurance company. According to it, an insurance company shall not be wound up voluntarily "except for the purpose of effecting amalgamation or reconstruction of a company on the ground that by reason of its liability it cannot continue its business". Parliament will be presumed to know that the expression, " voluntary winding up" and "winding up by the Court" have acquired a technical meaning in our Company and Insurance jurisprudence [961 H; 962 A-D]

Sections 433(c), 560, 583(4) (a) & 584 of the Companies Act and sections 2Ę 3(5D), 53 of the Insurance Act make a clear distinction between the cessation of business of a company and its voluntary winding up or winding up by an

order of the court. Parliament will be presumed to be aware of the distinctions between the cessation of business by an insurance public company and its voluntary winding up or winding up by an order of the Court. There is nothing unequivocal in s. 15(a) of the Act to show that Parliament intended to depart from the technical meaning of these expressions and to bid good-bye to the aforesaid distinction. [963 D-E]

The appellant company did not claim that it was being wound up, under s. 54 or s. 58 of the Insurance Act. It could not voluntarily be

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wound up otherwise than in accordance with s. 54 of the Insurance Act. It was accordingly difficult to comprehend the argument that the cessation of business by the appellant company means voluntary winding up of its business. This kind of voluntary winding up of business is unknown to the Insurance Act. [964 E]

The winding up of a foreign company by an order of the Court in India really means the winding up of its business in India. The word business' is not therefore redundant in s.15 (a). If Parliament really meant that the first limb of s. 15(e) should also apply to as insurer who is in the process of closing its business it should have expressed the first limb in some such manner as any insurer "whose business is being closed" or "is being wound up". The construction put forward by the appellant company assigns little significance to the word "voluntarily" and makes it a surplus age. [965 E-F]

Regina v. Board of Trade, [1965] 1 Q.B. 603 and Rajah of Vizinagram v. Official Receiver, Vizianagaram, [1962] Supp. 1 S.C.R. 344, referred to.

Sections 15(b) and 2(e) of the Act both refer to an insurance company which has ceased to do business for a certain period. Section 15(a) should be construed in the setting of s. 15(b) and 2(e). So construed it is difficult to believe that Parliament has not used the expression "whose business is being voluntarily wound up" in the technical sense. [966 D]

One of the professed objects of the Act is "to protect the interest of the policy-holders pending nationalisation of the general insurance business". The interpretation suggested by the appellant company would defeat that object. Assuming that s. 15(a) is susceptible of two meanings-the wider and the narrower (the technical), the one which fructifies the said legislative object should be preferred. [966 F-G]

(ii) The challenge to sections 2(e) and 15(a) of the Act based on Article 14 of the Constitution must fail. [968 E]

When the registration of a company has remained wholly cancelled for six months from the appointed day, the Controller may apply to the Court for its winding up under s. 3(5D). As soon as the judicial process is set in motion,

the company comes under the control of the Court. The Court's control will protect those policy holders who have got unsatisfied claims against the company. On the other hand the company whose registration has remained wholly cancelled for less than six months can revive itself. It cannot be wound up by the Court at the instance of the ,:Controller. The claims of the policy-holders against such a company will remain unprotected., The takeover of the undertaking of the company under the Act improves, by reason of the Government's management, the prospects of their claims satisfaction. It is also calculated to protect all interests by applying after the takeover, if that course is deemed necessary, to revive the business of the company. Section 2(e) is therefore not discriminatory. For the same reasons s. 15(a) also is not discriminatory. [968 B-E]

[As the attack based on Art. 14 did not succeed, the Court found it unnecessary to deal with the respondents' contention based on Art. 31A(b) (d) of the Constitution.]

Per Sikri C.J. and Ray, J. (dissenting).

On the language of section 15(a) the company in the present case was an insurer whose business was being voluntarily wound up. Therefore the ordinance and the Act did not apply to the petitioner company. [955 G]

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It is important to notice that the Act uses the word 'insurer' and not the words 'insurance company'. The Insurance Act has throughout the Act used the words 'insurer' as well as 'insurance company'. The appropriate section in each instance will indicate as to why the Act uses the word 'insurer' in one, section and the words 'insurance company' in the other. An insurer under the definition of the insurance Act is of wider amplitude than an insurance company. It is an individual or any un-incorporated body of individuals or a body corporate incorporated under the law of a foreign country. From section 2C of the Insurance Act it follows that an insurer as an individual may be allowed by the Government to carry on general insurance business under the Government exemption. [948 DE & 949 C]

The Legislature knows the distinction between voluntary winding up of an insurance company or winding up of it by a Court and an insurer whose business is being voluntarily wound up or is wound up by Court. Full effect is to be given to the words used in a legislative measure. The words which are not found in the present legislative measure cannot be substituted by words which are used in other statutes. That would be defeating the purpose of the Act. The word 'insurer' cannot be read in place of insurance company. L952 G-H]

The provisions in the Insurance Act relating to voluntary winding up and partial winding up of insurance companies indicate the difference between the concepts of voluntary winding up under the Insurance Act ,and the Indian Companies

Act and the business of an insurance company being voluntarily wound up. A voluntary winding up under the insurance Act occurs for the purpose of effecting a reconstruction or amalgamation or on the ground that a company cannot continue its business be-cause it cannot meet its liabilities. None of these contingencies is the same as voluntarily winding up business. A partial winding up of an insurance company is winding up of a particular type of business. That company does not cease to do business. Nor is the company voluntarily wound up in such a case. [953 D-E]

In the present case the company resolved to wind up its business. The company discontinued to do insurance business. The company cancelled all outstanding policies in the month of February, 1971. The company had not undertaken any new business after 30 September, 1970. [953 H]

After 30 September 1970 the company had taken steps to wind up voluntarily all insurance business., The company informed the Controller of its decision to stop doing insurance business. The company returned its registration certificate. All these features lead to the inescapable conclusion that the business of the insurer was being voluntarily wound up. Therefore the provisions contained in section 15(a) will apply to the company whose business is being voluntarily wound up.. [954 A-B]

(ii) In the Bank Nationalisation case this Court said that the Court will not, concentrating merely upon the technical objection of the action, deny itself jurisdiction to grant relief to the share holders when the rights of the shareholders as well as of the company are impaired. The locus, standi of the petitioners could not be challenged. [957 C-D]

R. C. Cooper v. Union of India, [1970] 3 S.C.R. 530, referred to.

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition No. 425 of 1971. Petition under article 32 of the Constitution of India for the enforcement of fundamental rights.

B. Divan and I. N. Shroff, for the petitioners. V. M. Tarkunde, G. Das and B. D. Sharma, for respondent No. 1.

M. C. Setalvad, P. C. Bhartari, J. B. Dadachanji, O.C. Mathur and Ravinder Narain, for respondent No. 2. The Judgment of D. G. Palekar, M. H. Beg and S. N. Dwivedi, JJ. was delivered by Dwivedi, J. The dissenting Opinion of S. M. Sikri, C. J. and A. N. Ray, J. was given by Ray, J. RAY, J. This writ petition challenges the application of the General Insurance (Emergency Provisions) Ordinance 1971, the General Insurance (Emergency Provisions) Act 1971 as 'Well as the General Insurance (Emergency Provisions) Amendment Act 1972 to the petitioner company. The petitioners are three

in number, viz., the company and two Directors and shareholders.

The petitioners asked for a declaration that the order dated 13 May 1971 made in exercise of powers conferred by section 4(1) of the General Insurance (Emergency Provisions) Ordinance 1971 and the directions dated 13 May 1971 given by virtue of powers conferred by section 4(3) of the General Insurance (.Emergency Provisions) Ordinance 1971 are illegal.

The paid up capital of the Neptune Assurance Company referred to as the company is Rs. 10,00,000. The petitioner Jalan is .a Director of the company. He holds 16,725 ordinary shares of the face value of Rs. 20 each. The petitioner Goenka is a Director of the company. He holds 2,000 ordinary shares of the face value of Rs. 20 each. The company carried on business as general insurers consist- ing of fire and miscellaneous insurance business. In the month of September 1970 about 2343 insurance policies of the company were in force. On 17 September 1970 the Board of Directors of the company resolved that the company would cease to underwrite any insurance business as from the close of business hours on 30 September 1970. On 30 September 1970 the company wrote to the Controller of Insurance about the decision of the company to ,cease to do business as on the close of business on 30 September 1970. The company returned its registration certificate for the ,current year to the Controller of Insurance. After close of business on 30 September 1970 the company stopped doing all insurance business.

On 3 October 1970 the Controller of Insurance returned to the company its registration certificate. The Controller pointed out that there was no provision for return of certificate. The Controller advised the company not to apply for renewal of registration certificates for the year 1971.

In the month of October 1970 there was an agreement between the company and the New Great Insurance Company of India Ltd. referred to as the New Great in respect of an intended transfer of the entire business of the company to the New Great. The agreement provided inter alia the following features. Before transfer of the entire general insurance business by the company it will obtain the consent of the shareholders at the general meeting for transfer of the general insurance business to the New Great. The company shall prepare a detailed list of all the claims received from policies issued by the company and which claims are outstanding and/or pending on 30 September 1970 and give the same to the New Great with all particulars.

On 20 October 1970 notice was given that an extra-ordinary general meeting of the company would be held on 17 November 1970. The extraordinary general meeting was inter alia to transact the business of the proposal for transfer of the company's insurance business and also of the liabilities in respect of claims relating to the insurance business to the New Great upon the terms recorded in the agreement dated 15 October 1970. The second business to be transacted at the said extraordinary general meeting was to resolve that pursuant to section 149 (2A) of the Companies Act 1956 the company would do business as set out in clause III, sub- clauses (8) and (9) of the Memorandum of Association of the Company except Banking business. The company thought of in-vestment and finance business. As required by section 173 of the Companies Act the company gave an explanatory statement of the extraordinary general meeting. In- the month of October 1970 circular letters were issued to all policy holders about the company ceasing to underwrite new

insurance business with effect from 1 October 1970. The company sent to all policy holders letters to express their confirmation of the arrangement for taking over the liabilities by the New Great. On 17 November 1970 there was an extraordinary general meeting of the company. The resolutions which had been notified were passed. It may be stated here that about 50 policy holders demanded cancellation of policies on receipt of circular letters. About 1,389 policy holders did not send any reply. The company advised that they would not be completely discharged from their liabilities unless and until all policy holders agreed to transfer policies to the other insurance company or desired cancellation.

On 2 February 1971 there was a resolution of the Board of Directors of the company canceling the agreement dated 15 October 1970 entered into with the New Great. There was a second resolution canceling all policies as from 10/12 March 1971 after giving due notice to all policy holders. There was a third resolution to terminate all re-insurance treaties both inward and outward from 31 December 1970. The company and the New Great by mutual consent cancelled the agreement dated 15 October 1970. In the month of February 1971 the company issued circular letters to all policy holders effecting cancellation of all policies under relevant clause in each policy. The company refunded to policy holders the sum of Rs. 48,000 on cancellation of the policies. The uncollected refund amounts to Rs. 2013.98.

On 16 February 1971 the Controller of Insurance affected cancellation of the registration of the company with effect from 5 April 1971 under section 3(4)(F) of the Insurance Act, 1938.

On 22 February 1971 the company gave letters to Indian Guarantee and General Insurance Co. and M/s India Re-Insu- rance Corporation Ltd. canceling all re-insurance treaties with effect from 31 December 1970.

The company alleged that it ceased to do all new insurance business from the close of business from 30 September, 1970. The company refunded to policy holders premia excepting a small sum of Rs. 2,000 which was not collected. The company reduced its staff from the month of September 1970. By the month of February 1971 the total staff of the company was reduced to one officer, one clerk, one typist and one peon drawing total emoluments of Rs. 1854.20 per month as contrasted with salary bill of Rs.7179. 10 per month prior to the month of September 1970. On these allegations the company said that its business was being voluntarily wound up since 30 September 1970.

On 13 May 1971 the General Insurance (Emergency Provisions) Ordinance 1971 referred to as the Ordinance was promulgated. On 13 May, 1971 an order under section 4(1) of the Ordinance was made by the Central Government appointing respondent No. 2 as the custodian of the company. On the same day directions were given by the Central Government under the Ordinance in regard to the management of the undertaking of the company.

On 17 June 1971 the General Insurance (Emergency Provisions) Act 1971 referred to as the Act was enacted. The Act replaced the Ordinance. The Act was retrospectively brought into force with effect from 13 May 1971. The Ordinance as well as the Act contain similar provisions. The purpose of the aforesaid legislative measures was to provide for the taking over in the public interest of the

management of general insurance business pending nationalisation of such business. By general insurance business is meant under the Act fire, marine or miscellaneous insurance business, whether carried on singly or in combination with one or more of them, but does not include capital redemption business and annuity business. An insurer under the Act means an insurer. as defined in the Insurance Act 1938 referred to as the Insurance Act who carries on general insurance business in India, and includes an insurer whose registration under the Insurance Act has not remained wholly cancelled for a period of six months immediately before the appointed day. Undertaking is defined by the Act to mean in relation to an insurer incorporated outside India, the undertaking of that insurer in India.

Section 3 of the Act states that as from the appointed day which is 13 May, 1971 the management of the undertakings of all insurers shall vest in the Central Government. It is further provided that pending the appointment of a custodian the persons in charge of the management of the undertaking shall be in charge, of the management for and on behalf of the Central Government. An insurer is forbidden without the previous approval of the person specified by the Central Government in this behalf to make any payment or grant any loan otherwise than in accordance with the normal practice observed by him in respect of such matters immediately before the appointed day. There is similar prohibition to incur any expenditure from the assets appertaining to the undertaking, to transfer or otherwise dispose of any such assets, to invest in any manner any money forming part of such assets, to acquire any immovable property out of any moneys forming part of such assets to enter into contract of service or agency. Every insurer is also required to deliver to the persons specified by the Central Government various documents, namely, minutes book, current cheque books, registration books containing particulars relating to investments, loans, advances, promissory notes and certificates.

Section 4 of the Act is. the other important provision. Under that section the Central Government is empowered to appoint a custodian for the management of the company. The Central Government is also empowered to issue directions to- the custodian as to his powers and duties in relation to the management of the company.

The Act provides for payment of compensation. The Act places a bar against winding up of a company the management of which is vested in the Central Government. After the appointed day the Controller of Insurance shall not issue any new certificate of insurance to any person. The crucial provisions are section 15(a) of the Act. It is enacted that nothing contained in this Act shall apply to

(a) any insurer whose business is being voluntarily wound up or is being wound up by Court.

The petitioners strongly rely on section 15(a) of the Act. The petitioners allege that the business of the company was being voluntarily wound up at all material times within the meaning of the Ordinance and the Act. Therefore the petitioners contend that the company is not within the mischief of those legislative measures.

The Government contention is ',hat section 15(a) of the Act applies only to an insurance company which is being voluntarily wound up and is being wound up by Court. It is emphasized that when an insurance company or an insurer ceases to carry on any particular kind 'of business it is not being voluntarily wound up. Voluntary winding up or winding up by Court is said by the Government to mean only winding up within the meaning of the Indian Companies Act and the Insurance Act. The meaning of the words "'an, insurer whose business is voluntarily wound up ,or is wound up by Court" is, according to the Government, an insurance company which is being voluntarily wound up or wound up by Court.

At the threshold it is important to notice that the Act uses the word 'insurer' and not the words "insurance company". The Insurance Act has throughout the Act used the words "insurer" as well as "insurance company". The appropriate section in each instance will indicate as to why the Act uses the word "insurer" in one section and the words "insurance company" in the other. An insurance company under the Insurance Act means any insurer being a company, association or partnership which may be wound up .under the Indian Companies Act or to which the Indian Partnership Act applies. A partnership to which the Indian Partnership Act Applies is not a company within the meaning of the Indian Companies Act. The insurance Act has yet included a partnership within the meaning of an insurance company. An insurer, on the other hand, under section 2 clause (9) of the Insurance Act means (a) any individual or unincorporated body of individuals or body corporate, incorporated under the law of any country other than India carrying on business not being a person specified in subclause (c) of clause (9) of section 2, (b) any body corporate incorporated under any law for the time being in force in India and (c) any person who in India has a standing contract with underwriters who are members of the Society of Llyod's whereby such person is authorised within the terms of such contract to issue protection notes, cover notes, or. other documents granting insurance cover on behalf of underwriters. Therefore an insurer under the definition of the Insurance Act is of wider amplitude than an insurance company, it is an individual or any unincorporated body of individuals or a body corporate incorporated under the law of a foreign country is an insurer.

Section 2C of the Insurance Act which came into effect in 1950 enacted that after the commencement of the Insurance (Amendment) Act 1950 which brought that section into existence no person after the expiry of one year from the commencement of the Amendment Act shall continue to carry on business unless he is, (a) a public company, or (b) a society registered under the Cooperative Societies Act, or (c) a body corporate incorporated under the law of any country outside India. Therefore after 1950 an individual will not be allowed to carry on business as an insurer. There is however a proviso to section 2C of the 1950 Amendment that the Central Government may by notification in the Official Gazette, exempt from the operation of section 20 any person or insurer for the purpose of carrying on the business of granting superannuation allowances and annuities as mentioned in section 2(ii)(c) of the Act or for the purpose of carrying on any general insurance business. It is also provided that an insurer carrying on general insurance business will not be entitled to such notification being issued having effect for more than three years at any one time. It, therefore, follows that an insurer as an individual may be allowed by the Government to carry on general insurance business under the Government exemption. The various kinds of insurance business are. fire insurance business, general insurance business, life insurance business, marine

insurance business and miscellaneous insurance business defined in clauses (6A), (6B), (11) (13A) and (13B) of section 2 of the Insurance Act. General insurance business means , fire, marine or miscellaneous insurance business whether carried on singly or in combination with one or more of them.

Section 3 of the Insurance Act speaks of registration of the persons carrying on insurance business. Section 3 (4) of the Insurance Act speaks of cancellation of the registration of an insurer.' Section 3(5C) of the Insurance, Act states that where the registration is cancelled the Controller may at his discretion revive the registration. The instances where registration may' be revived are also specified. If the registration is cancelled on the ground that the insurer is in liquidation the registration cannot be revived. It is noticeable, that the Insurance Act speaks of liquidation of an insurer. Liquidation here means winding up of an insurance company. Liquidation in the first place does not apply to individuals or partnerships, and secondly liquidation is not the same thing as ceasing to carry on business. Under section 3 (5D) where the registration is cancelled the Controller may after the expiry of six months from the date on which the cancellation took effect, apply to the Court to wind up the insurance company unless the registration has been revived under sub-section (5C). The Insurance Act in sections 53 to 60 speaks of winding up. Section 53 states that the Court may order the winding up of an insurance company. Section 54 speaks of the voluntary winding up of an insurance company. Section 55 deals with valuation of liabilities in the winding up of an insurance company. Section 56 deals with application of surplus assets of life insurance fund in liquidation of insurance company or insolvency of insurer. Liquidation is spoken of companies. Insolvency is spoken of insurers. The distinction between an insurer and an insurance company is apparent to emphasise the difference between winding up and insolvency. Section 57 relates to, winding up of secondary companies. That section defines secondary company to be an insurance company whose insurance business or any part of the insurance business has been transferred under an arrangement to a principal company. If the principal company is wound up by or under the supervision of the Court the Court shall order the secondary company to be wound up in conjunction with the principal company.

Section 58 deals with partial winding up of insurance com- panies. Partial winding up happens when the affairs of an insurance company in respect of any class of business should be wound up but any other class of business should continue to be carried on by the company or transferred to another insurer. A scheme for partial winding up is to be submitted to Court for confirmation. A scheme shall provide for allocation and distribution of the assets and liabilities of the company. A scheme is to contain provisions for altering the memorandum of the company with respect to its objects giving effect to the scheme when the company carries on another class of business. There may be winding up of the company when under the scheme it is proposed to transfer the business to another insurer. The provision relating to the valuation of liabilities of insurers in liquidation and insolvency and to the application of surplus assets of the life insurance fund in liquidation are to apply to the winding up of any part of the affairs of the company in case of any partial winding up. An order of the Court confirming a scheme under this Section whereby the memorandum is altered as to its objects shall as respect the alteration have effect as if it were an order confirmed under section 12 of the Indian Companies Act 1913 and the provisions of sections 15 and 16 of that Act shall apply accordingly. Section 59 speaks of return of deposits in the case of winding up of an insurance

company other than in a case to which section 58 applies. Section 60 states that on the winding up of an insurance company, the persons appearing by the books be entitled to or interested in the policies granted by the company are to be given notice of policy values. Section 61 states that where an insurance company is in liquidation the Court may make an order reducing the amount of the insurance contracts of the company.

The first noticeable feature is that sections 53, 54 and 58 of the Insurance Act which deal with winding up by Court, voluntary winding up and partial winding up respectively speak only of insurance company. There are some sections which speak of insolvency of any other insurer. These sections are 55, 56 and 61 of the Insurance Act which deal respectively with valuation of liabilities, application of surplus assets of life insurance fund and powers of the Court to reduce contracts of insurance. Insolvency of other insurer will refer to Co-operative Societies, individuals and companies which are incorporated outside India. Under the Insurance Act these are not insurance companies. A foreign company which is in voluntary liquidation or is being wound. up by Court will be an insurer within the meani ng of the 1971 Act and will also be described as an insurer who is insolvent. These sections indicate the distinction between an insurance company and an insurer. The second important matter to be noticed in all the sec- tions relating to winding up in the Insurance Act is that voluntary winding up and partial Winding up of insurance companies is not the same as under the Indian Companies Act. A voluntary winding up under the Insurance Act is impermeable except for the purpose of effecting an amalgamation or a reconstruction of the company or on the ground that by reason of its liabilities it cannot continue its business. The provisions of the Indian Companies Act do not apply to such voluntary winding up of an insurance company. Under the Indian Companies Act 1956 a company may be voluntarily wound up if the company passes special resolution that the company be wound up voluntarily. The special provisions of the Insurance Act regarding voluntary winding up rule out the application of the provisions of the Indian Companies Act. Amalgamation and Reconstruction under the Indian Companies Act are a different matter. Under section 394 of the Indian Companies Act a transferrer company on Amalgamation may be dissolved without any winding up. Again under section 392 of the Indian Companies Act 1956 the Court at the time of sanctioning a compromise of an arrangement may make an order winding up the company. It will be treated as winding up by Court. These provisions indicate that voluntary winding up of corner under the Indian Companies Act and the voluntary winding up of insurance companies under the Insurance Act are not the same.

Next comes the partial winding up of Insurance companies. There is no such provision in the Indian Companies Act. A partial winding up under the Insurance Act is treated as an alteration of a memorandum of the company. A partial winding up under the Insurance Act will in relation to that part which is wound up attract the provisions of the Insurance Act regarding valuation of liabilities and application of surplus assets in liquidation or insolvency. The Government relied on sections 53, 54 and 58 of the Insurance Act in support of the contention that the winding up or a voluntary winding up will mean only voluntary winding up or winding up of the company and will never mean the voluntary cesser of doing any kind of insurance business by a company. It is said that if a business can be said to be voluntarily wound up without a voluntary winding up of the company the sections will be robbed of their full effect. Reliance was also placed by the Government on section 2D of the Insurance Act which states that every insurer shall be subject to all the provisions of the Act in

relation to any class of insurance business so long as his liabilities in India in respect of business of that class remain unsatisfied or not otherwise provided for. The Government leaned on this section to emphasize that if a company ceasing to do any business could be said to be one whose business was being voluntarily wound up it could not again be said to be subject to the provisions of the Act on the (,round that the liabilities remain unsatisfied. The Insurance Act speaks of winding up of insurance com- panies. The legislature has yet in the General Insurance (Emergency Provisions) Ordinance 1971 and the General Insurance (,Emergency Provisions) Act 1971 not spoken of an insurance company being voluntarily wound up or wound up by Court. On the contrary, the legislative measures in the present case have used the words "an insurer" whose business is voluntarily wound up or is being wound up by a Court. In this context, it may be stated that when the Life Insurance (Emergency Provisions) Act 1 956 came into existence both the Life Insurance, (Emergency Provisions) Ordinance 1 956 and its successor the Life Insurance (Emergency Provisions) Act 1956 used identical words that nothing in the Ordinance or in the Act shall apply to any insurer whose business is voluntarily wound up or is wound up Linder order of Court". The legislature knows the distinction between voluntary winding up of an insurance company or winding up of it by a Court and an insurer whose business is, being voluntarily wound up or is wound up by Court. Full effect is to be given to the words used in a legislative measure. The words which are not found in the present legislative measures cannot be substituted by words which are used in other statutes. That would be defeating the entire purpose of the Act. The word "insurer" cannot be read in place of insurance company.

An insurer is not for all purposes the same as an insurance company. An individual is an insurer. A co-operative society is an insurer. A company incorporated in a foreign country and carrying on business in India is an insurer. A co- operative society is not wound up under the Indian Companies Act. A co-operate society is dissolved under the provisions of the Cooperative Societies Act. The consequence of dissolution of a cooperative society is the winding up of the society by the appointment of a liquidator. A company incorporated in a foreign country is neither voluntarily wound up nor wound up by Court like other companies under the Indian Companies Act. A foreign company may under section 584 of the Indian Companies Act be wound up as an unregistered company. Therefore the words "an insurer whose business is being voluntarily wound up or is being wound up by a Court" wilt refer not only to an insurance company incorporated in India ceasing to do insurance business but also to individuals or co-operative societies or foreign conipanies in the same position.

The provisions in the Insurance Act relating to voluntary winding up and partial winding up of insurance companies indicate the difference between the concepts of voluntary winding up under the Insurance Act and the Indian Companies Act and the business of an insurance company being voluntarily wound up. A voluntary winding up under the Insurance Act occurs for the purpose of effecting a reconstruction or amalgamation or on the L,round that a company cannot continue its business because it cannot meet its liabilities. None of these contingencies is the came as voluntarily winding up business. A partial winding up of an insurance company, is winding up of a particular type of business. That company does not cease to do business. Nor is the conical voluntarily wound up in such a case. The deliberate choice of words in the Ordinance and the Act of 1971 in the present case indicates that the legislature did not by the crucial words in section 15(a) mean voluntary

winding Lip of insurance companies. The legislature meant also insurers who are not necessarily insurance companies. The concept of voluntarily winding up business is more akin to individuals another persons winding up business than to companies being ,voluntarily wound up under the provisions of the Insurance Act. The voluntary winding up under th e Insurance Act is applicable not only to reconstruction or to amalgamation but to a company being unable to continue business because of liabilities. The idea of business being voluntarily wound up is quite a different matter. In the present case, the company resolved to wind up its business. The company discontinued to do insurance business. The company cancelled all outstanding policies in the month of February, 1971. The company has not undertaken any new busi-

95 4 ness after 30 September 1970. After 30 September 1970 the company had taken steps to wind up voluntarily all insurance business. The company informed the Controller of its decision to stop doing insurance business. The company returned its registration certificate. All these features lead to the inescapable conclusion that the business of the insurer was being voluntarily wound up. Therefore, the provisions contained in section 15(a) will apply to the company whose business is being voluntarily wound up. The provisions in section 2D of the Insurance Act show that an insurer is subject to liabilities under the Act. The company does not dispute that proposition. The company has made provisions to meet those liabilities. The company is required under section 7 of the Insurance Act to keep in deposit with the Reserve Bank of India sums of money. Under section 9 where an insurer has ceased to carry on in India all classes of insurance business and his liabilities in India in respect of all classes of insurance business have been satisfied or are otherwise provided for, the Court may, on the application of the insurer, order the return to the insurer of the deposit made by him. Section 10 provides that where an insurer carries on business of more than one of the classes of insurance business he shall keep a separate account of all receipts and payments. These provisions show that liabilities under the Act are to be satisfied and provided for over and above the deposit under section 7 of the Insurance Act even after the business has been voluntarily wound up.

Counsel for the Government relied on the decision of this Court in The Vanguard Fire and General Insurance Co. Ltd., Madras v. M\s Fraser and Ross & Anr.(1) in order to find out the meaning of closing of business of any insurer. The company in that case carried on various kinds of insurance business other than life insurance business. The shareholders of the company passed a resolution by which the business was to be closed. On the application of the company the Controller cancelled the certificate of business. Thereafter complaints are received by the Government against the company. The Government passed an order under section 33 of the Insurance Act directing the Controller to investigate the affairs of the company. The company challenged the legality of the order on the ground that the Government had no jurisdiction to pass an order. The contention of the company was that section 33 spoke of an order of investigation by the Central Government of the affairs of an insurer who, as defined in section 2(9), is one who is actually carrying on the business of insurance. Section 2D of the Insurance Act was contended to be applicable to cases where an insurer was carrying on (1) [1960] 3 S.C.R. 857.

different classes of business' and had closed some of them but not all of them. Section 2D was also. said by the company to be not applicable as the company's liabilities did not remain unsatisfied. This Court held that section 33 of the Insurance Act refers not only to a person who is carrying on

the business of insurance but also to one who has substantially closed it. Section 2D was also held to be applicable to cases where an insurer who was carrying on different classes of business but closed all of them. Section 2D was also held to apply to make provision for liabilities of the company over and above the deposit. The words in section 33 are that the Central Government may, at any time, direct the Controller to investigate the affairs of an insurer. The meaning ascribed to a Word in the definition clause was held by this Court to be not inflexible because there might be sections in the Act where the meaning might have to be departed from.

This Court in the Vanguard Fire & General Insurance Co. Ltd. case (supra) said that the word 'insurer' has been used in some sections to mean not only a person carrying on an insu- rance but also one who intends to carry on the business of insurance but has not actually started it and also a person who was carrying on the business of insurance but has ceased to do so. Section 9 of the Insurance Act which speaks of refund of deposit furnishes an instance of the Act applying the word 'insurer' in relation to one who has ceased to carry on business. Section 55 of the Act also speaks of the insolvency of an insurer. An insurer in section 2D of the Act is an insurer who was carrying on the business of insurance but has closed it. Section 2D was held to dispel all doubts that the word 'insurer' would not be referable to one who ceased to carry on any business inasmuch as ail the provisions of the Act applied to an insurer so long as his liabilities remained unsatisfied or otherwise not provided for. Some provisions of the Insurance Act will apply to insurers who ceased to carry on business.

It was said on behalf of the Government that if section 15

(a) applied to the case of an insurer whose business is being voluntarily wound up or is being wound up by Court it might not be applicable to the case of an insurance company which was being voluntarily wound up under the provisions of the Insurance Act. It is for the legislature to legislate as to the class to which the Act will apply. On the language of section 15(a) the company in the present case is an insurer whose business is being voluntarily wound up. Therefore the Ordinance and the Act do not apply to the petitioner company.

It was also contended on behalf of the insurance company that if the Ordinance and the Act applied Article 31A of the Constitution could not protect the taking over of the manage-

9 56 ment of the company. Under Article 3 1 A (1) (b) the taking over of management of the property for a limited period either in public interest or in order to source the proper management of the property is protected. It cannot be said in the present case that the management was taken over for a limited period nor was it said on behalf of the Government that Article 31A(1)(b) applied. On behalf of the Government it was said that Article 31A(1)

(d) applied because the legislative measures in the present case modified the rights of the managing agents. It was also said on behalf of the petitioners that Article 14 was offended. In view of our conclusion that the Ordinance and the Act do not apply to the petitioner-company it is not necessary to express any opinion on the two contentions based on those two Articles.

The Government contended that the petitioner company could not invoke fundamental rights. Apart from the company the other petitioners are two shareholder and Directors. In R. C. Cooper v. Union of India(1) which is referred to as the Bank Nationalisation case the petitioner fulfilled three capacities. He was a shareholder, a Director and a holder of deposit of current account in the Bank. The locus stand of the petitioner was challenged in the Bank Nationalisation case (supra) on the (,round that no fundamental right of the petitioner was directly impaired by the Ordinance or the Act or any action taken thereunder. The petitioner in that case claimed that rights guaranteed under Articles 14, 19 and 31 of the Constitution were impaired. The ruling of this Court in the Bank Nationalisation(1) case was this "A measure executive or legislative may impair the rights of the company alone, and not of its shareholders; it may impair the rights of the shareholders and not of the company; it may impair the rights of the shareholders as well as of the company.

Jurisdiction of the Court to grant relief cannot be denied, when by State action the rights of the individual shareholder are impaired if that action impairs the rights of the company as well. The test in determining whether the shareholder's right is impaired is not formal; it is essentially qualitative; if the State action impairs the rights of the shareholders as well as of the company, the Court will not, concentrating merely upon that technical operation of the action, deny itself jurisdiction to grant relief".

95 7 It follows that the Court finds out whether the legislative measure directly touches the company of which the petitioner is, a shareholder. A shareholder is entitled to protection of fundamental rights. That individual right of a shareholder is not lost by reason of the fact that he is a shareholder. The reason why the shareholders' fundamental rights are protected is that when. their fundamental rights as shareholders are impaired by State action the Court applies the qualitative test on the ratio that the shareholders' rights are equated to and correspond to the rights of the company. The shareholders own the property through. the company. The shareholders carry on business through the medium of the company. The shareholders' investment in the shares is affected by the State action or the legislative measure.

In the Batik Nationalisation case (supra) this Court said that the Court will not, concentrating merely upon the technical objection of the action, deny itself jurisdiction to grant relief to the shareholders when the rights of shareholders as well as of the company are impaired. The locus standi of the petitioners cannot be challenged. For these reasons, the petitioners succeed.-, There will be an order quashing the orders dated 13 May 1971 being Exhibits 'K' and 'L' to the petition. A mandamus will also go requiring the respondents to forbear from acting on and giving effect to the two orders. Parties will pay and bear their own costs.

DWIVEDI, J.-There are three petitioners in this petition under article 32 of the Constitution: (1) The Neptune Assurance Company Ltd. (2) Sanwar Prashad Jain and (3) Krishna Murari. 'The first petitioner is a public company incorporated under the Indian Companies Act. The second and third petitioners are shareholders and Directors of the first petitioner (hereinafter called the Neptune Assurance). The Union of India, the first respondent, appointed a custodian over the undertaking of the Neptune Assurance under s. 4 of the General Insurance (Emergency Provisions) Ordinance, 1971 on May 13, 1971. The said Ordinance was eventually reenacted as General Insurance (Emergency

Provisions) Act, 1971 (hereinafter called the Act). The Custodian appointed under the Ordinance is continuing to manage the undertaking by virtue of s. 4 of the Act. The Union of India also issued certain directions on May 13 1971. Those directions regulate the management of the undertaking of the Neptune Assurance by the Custodian. The petitioners challenge the validity of the aforesaid order and directions. They also question the constitutionality of a part of s. 2 (e) and s. 15 (a) of the Act. They pray for the quashing, of the aforesaid order and direction and for a direction to the, respondents to hand over charge of the undertaking of the Neptune Assurance to the petitioners.

Upto the end of March, 1971, the Neptune Assurance was registered under the Indian Insurance Act, 1938. The registration authorised it to carry on the business of general insurance comprising fire and miscellaneous insurance. On September 17, 1970, its Board of Directors resolved that it would cease to underwrite any insurance business I as from the close of business hours on September 30, 1970. On that very date it informed the Controller of Insurance of the resolution and returned its certificate of registration for the year 1970 to the Controller of Insurance. After the close of business on September 30, 1970, it stopped doing any kind of general insurance business.

On October 3, 1970, the Controller of Insurance returned the registration certificate to it with the remark that there was no provision in the Insurance Act for return of a certificate. The Controller advised it not to apply for renewal of certificate for the year 1971.

In October 1970 there was an agreement between it and the New Great Insurance Company of India Ltd. with respect to transfer of its entire business to the New Great Insurance Company of India Ltd. On October 20, 1970 notice was given to the shareholders of the Neptune Assurance that an extraordinary general meeting would be held on November 17, 1970 to consider the proposal of transferring its insurance business and liabilities to the New Great Insurance Company of India Ltd. The agenda of the meeting included certain other matters for consideration. It is not necessary to mention them.

On November 17, 1970, in the extra-ordinary general meeting the aforesaid resolution regarding transfer of business and liabilities was passed. In the month of October 1970 a letter was sent to all the policy-holders informing them that the Neptune Assurance had ceased to underwrite new insurance business with effect from October 1, 1970. It also sought their approval to transfer of business and liabilities of the Neptune Assurance to the New Great Insurance Company of India Ltd.

About 50 policy-holders demanded cancellation of the policies. About 1389 policy-holders did not send any reply. It appears that the Neptune Assurance was advised that it would not be' completely discharged from its liabilities unless and until all the policy-holders had agreed to the transfer of its business and liabilities to the New Great Insurance Company of India Ltd. So on February 2, 1971, the Board of Directors of the Neptune Assurance cancelled the agreement with the New Great Insurance 'Company of India Ltd. The Board of Directors also passed a resolution cancelling all policies with effect from March 10/ 12, 1971 after giving due notice to the policy-holders. Another resolution was passed terminating all re-insurance treaties, both inward and outward, with effect from December 31, 1971.

As the agreement was cancelled, it did not have any effect. In February, 1971 the Neptune Assurance issued circular letters to all policy-holders cancelling the policies in accordance with the cancellation clause in each policy. The Neptune Assurance refunded to policy-holders a sum of Rs. 48000 on cancellation of their policies. The uncollected refund amount comes to Rs. 2013.98.

On February 16, 1971, the Controller of Insurance cancelled the registration of the Neptune Assurance with effect from April 5, 1971. He cancelled the registration under s. 3(4)

(f) of the Insurance Act. On February 22, 1971, the Neptune Assurance sent letters to the Indian Guarantee and General Insurance Company and M/s India Re-Insurance Corporation Ltd. cancelling all re-insurance treaties with effect from December 31, 1970.

The Neptune Assurance reduced its staff from the month of September 1970. By the end of Fe 1971 the total staff consisted of one officer, one clerk, one typist and one peon, The total emoluments of the staff upto September 1970 were Rs. 7179.1 per month, but after that month they have come down to Rs. 1154.20 per month.

It is not disputed that many claims which had accrued before the cancellation of policies are still outstanding against the Neptune Assurance. Some cases are pending in courts with respect to some of them.

The first argument is that as the Neptune Assurance had ceased to do general insurance business several months before the commencement of the Ordinance and the Act, it is out of the purview of the Act by virtue of s.15 (a) of the Act. It cannot be taken over by the Central Government under s. 3 of the Act. The rival contention of the respondents is that it is not covered by the provisions of s.15 (a) and that accordingly it can be taken over by the Central Government under s. 3. So the real issue is; what is the true construction of s. 15 (a) ? Section 15, in so far it is relevant for this case, provides;

> "Nothing contained in this Act shall apply to-
>
> (a) any insurer whose business is being voluntarily wound up or is wound up by a court;
>
> (b) any insurer to whom the Insurance Act does not apply by reason of the provisions contained in section 2E thereof :"

96 0 The argument of the Neptune Assurance is that the expression "whose business is being voluntarily wound up" in cl. (a) also signifies the voluntary cessation of business by an insurance company. One of the dictionary meanings of the word "wind up" is "to bring to a close; to bring an affair to a final settlement" (See Shorter Oxford Dictionary, 3rd edition). Adopting that meaning, counsel for the Neptune Assurance submits that the expressions "whose business is being voluntarily wound up" would also mean " whose business is 'being voluntarily brought to a close or to a final settlement".

The true meaning of cl. (a) of S. 15 is to be determined in the light of its language, scheme and setting. Language and setting : The, last word in cl. (a) is 'Court'. This word is not defined in the Ordinance and the Act. But S. 2(1) of the Act provides that the words and expressions used in the Act but not defined and defined in the Insurance Act have the meaning assigned to them in that Act. Section 2(6) of the Insurance Act defines the word 'Court' as the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction. The word "insurer" in clause (a) of S. 15 is defined in S. 2(e) of the Act. For our present purposes it is sufficient to say that it means an insurer as defined in the Insurance Act, who carries on general insurance business in India. Section 2(9) of the Insurance Act defines "insurer" as (-a) any individual or unincorporated body of individuals or body corporate incorporated under the law of any country other than India, carrying on insurance business in India, or having his or its principal place of business or domicile in India or employing a representative or maintaining a place of business in India with the object of obtaining insurance business (b) any body corporate incorporated under any law for the time being in force in India and carrying on business of insurance. There is yet another class of insurer, but we are not concerned with it in this case. The word "Insurance Company" is defined in S. 2(8) of the Insurance Act as any insurer being a company, or partnership which may be wound up under the Companies Act, or to which the Partnership Act applies. It is apparent from the definition of 'insurer' in the Insurance, Act that an insurer may be an individual, a partnership firm, an association of persons and a company incorporated in or outside India.

Section 20 of the Insurance Act, however, has limited the denotation of "insurer" from the date of the commencement of the Insurance (Amendment) Act, 1950. Section 2c(1) provides that no person shall, after the commencement of the Insurance (Amendment) Act, 1950 begin to carry on any class of business in India and no insurer carrying on any class of insurance busi-

96 1 ness in India shall after the expiry of one year from such commencement, continue to carry on any such business unless he is a pubic company incorporated in or out of India or a society registered under any law relating to Co-operative Societies Act, 1912. In the result, at the commencement of the Ordnance and the Act, 'Insurer' included a public company either incorporated under the Companies Act or under a foreign company law and @t co-operative society. An individual, a partnership firm, and an unincorporated,association of persons could not be an insurer at the time of the commencement of the, Ordinance and the Act. According to the proviso to s. 2C(1) the Central Government may' by a Gazette notification, exempt from the operation of s. 2C(1) any person or insurer for the purpose of carrying on general insurance business for not more than three years at any one, time. Counsel for the Neptune Assurance has admitted that the Central Government has issued no such notification. In any case no such notification has been shown to us.

Co-operative Societies are excluded from the ambit of 'Insurer' in s. 15 (a). We have examined the provisions of the Co-operative Societies Act, 1912, and various State laws relating to cooperative societies. It appears from those laws that a cooperative society can neither be voluntarily wound up nor wound up by a Court. It is wound up by an order of the Registrar of Co-operative Societies. It is significant to notice that the cessation of business by a co-operative society is one of the grounds for its being wound up by an order of the Registrar. So various State law dealing with co-operative

societies make a distinction between the cessation of,' business by a co-operative society and its winding up by an order of the Registrar. When a co-operative, society has cessed to do business, it cannot be said that it is voluntarily wound up. To sum up, the word 'insurer' in s. 15 (a) of the Act includes only two classes of persons : (a) a public company incorporated under the Companies Act; and (2) a public company incorporated under a foreign Company law. The next important word in s. 15(a) is "business". It is not disputed that it means the entire business of an insurer.

It Will follow from this discussion that cl. (a) s. 15 may be paraphrased in this manner; "Any public company incorporated under the Companies Act or under a foreign company law whose entire business is being voluntarily wound up by a Court."

Turning now to the crucial words "being volubleness wound UP and "being wound up by a court", it is necessary to observe that these twin expressions have acquired a crystallised meaning in the Company and Insurance jurisprudence. They have been used in that sense in the Companies Act and the Insurance Act. In the Companies Act the expression "voluntary winding up", means a winding up by a special resolution of a company to that effect. Similarly, the expression "winding up by the court" means winding up by an order of the Court in accordance with S. 433 of the Companies Act. Section 53(1) of the Insurance Act provides that an insurance company may be wound up in accordance with the Companies Act. Section 53(2) supplements the grounds for the winding up of an insurance company by the Court. Section 54 does not apply the provisions of the Companies Act in regard to the voluntary winding up of an insurance company. It provides its own procedure for the voluntary winding up of an insurance company. According to it, an insurance company shall not be wound up voluntarily "except for the purpose of effecting amalgamation or reconstruction of a company or on the ground that by reason of its liability it cannot continue its business".

A citizen is presumed to know the laws of his country. A fortiori, Parliament will be presumed to know that the expressions ,.voluntary winding up;" and "winding up by the Court" have acquired a technical meaning in our Company and Insurance jurisprudence. Like the co-operative society laws, the Companies Act and the Insurance Act also make a distinction between the cessation of business by a company and its voluntary winding up or winding up by an order of the Court. Section 43 3 (c) of the Companies Act provides that a company may be wound up by the Court, if it "suspends its business for a whole year." Section 560 deals with the powers of the Registrar to strike a defunct company off the register. It provides that where the Registrar has reasonable cause to believe that a company "is not carrying on business" he shall proceed to strike its name off the register in the manner provided therein. According to s. 583(4) (a) on a registered company may be wound up if it "has ceased to carry on business." Section 584 provides that where a company which has been incorporated outside India and which has been carrying on business in India "ceases to carry on business in India", it may be wound up as an unregistered company.

Section 2E of the Insurance Act provides that where an in- surer as defined in paragraph (i) and (ii) of sub-cl. (a) of cl. 9 of s. 2 in relation to any class of insurance business "has ceased before the commencement of that Act to enter into any new contracts of that class of business," the Insurance Act shall not apply to him. According to s. 3 (5D) where the registration of an insurance public. company stands cancelled for more than six months from the date of its cancellation, the Controller

of Insurance may apply to the Court for an order to wind it up. The re-

96 3 gistration may be cancelled inter alia, on the ground that the insurance public company has not applied for the renewal of its registration. When the repstration is cancelled, the company is forbidden from entering into any new contracts of insurance. So when an insurance company has ceased to do the business of insurance for more than six months from the date of the cancellation of its registration, it may be wound up by an order of the Court at the, instance of the Controller. As already mentioned s. 53(1) of the Insurance Act provides that an insurance public company may be wound up in accordance with the Companies Act. We have already mentioned that s. 433(c) of the Companies Act provides for the winding up of a company when it "suspends its business for a whole year." It would follow from the foregoing provisions that the Insurance Act also makes a distinction between the cessation of insurance business by an insurance public company and its voluntary winding up or winding up by an order of the Court. Indeed, the cessation of its business for a whole year or the cessation of its business for more than six months from the date of the cancellation of its registration for not applying for renewal thereof is one of the grounds for its winding up by the Court. Parliament will be presumed to be aware of the distinction between the cessation of business by an insurance public company and its voluntary winding up or winding up by an order of the Court. There is nothing unequivocal in s. 15(a) of the Act to show that Parliament intended to depart from the technical meaning of the "voluntary winding up" and "winding up by the Court" and to bid a good-by to the distinction in our Company and Insurance jurisprudence 'between mere cessation of business by a company and its voluntary winding up or winding up by an order of the Court. Section 15(a) consists of two limbs : (a) an insurer "whose business is being voluntarily wound up"; (2) an insurer "whose business is being wound up by a Court". The word "wound up" forms part of both limbs. It is reasonable to assume that it is used in the same sense in both limbs. It is not and cannot be disputed that in the second limb it is used in the sense in which it is understood in our Company and Insurance jurisprudence. The Companies Act and the Insurance Act provide for the winding up of a company by an order of the Court. Neither of them provides for the winding up of anything other than the entire business of a company by an order of the Court. The specified case in s. 58 of the Insurance Act of partial winding up of any particular class of business by preparing scheme for confirmation by the court cannot be described as 'winding up by the order of the court' within the meaning of s. 53. We have earlier shown that 'insurer' in s. 15(a) means a public company incorporated in and out of India and none else. Accordingly, in the second 10-L52lSup.Cl/73 limb the expression "whose business is being wound up by the Court" must be construed to mean the winding up of an insurance public company by an order of the Court. This should settle the meaning of the word "wound up?' in the first limb also. The phrase "voluntarily wound up" in the first limb would me-an the voluntary winding up of an insurance public company in accordance with s. 54 of the Insurance Act.

A company is a creature of statute. Its birth, progress, and extinction are all controlled by the statute. As the Neptune' Assurance is carrying on the business of General insurance, it is controlled by the Insurance Act read with the Companies Act. Section 54 of the Insurance Act provides for the voluntary winding up of an insurance company. According to it, an insurance company may be voluntarily wound up only in three circumstances. Those circumstances are (1) amalgamation, (2) reconstruction of the company; or (3) the inability to carry on business on account of its liabilities.

Section 58(1) of , the Insurance Act provides for the winding up of only a class of an insurance business of a company in certain circumstances provided a scheme for that purpose is submitted to and confirmed by the Court. The Neptune Assurance has not claimed before us that it is being wound up under S. 54 or s. 58. The Neptune Assurance could not voluntarily be wound up otherwise than in accordance with S. 54. It is accordingly difficult to comprehend the argument that the cessation of business by he Neptune Assurance means voluntary winding up of its business. This kind of voluntary winding up of business is unknown to the Insurance Art.

It is said that our construction makes redundant the word "business" in s. 15(a). But there is no redundancy. A company which is being wound up voluntarily or by the court may, without the least violence to language, be described as a company whose business is being voluntarily wound up or is being wound up by the Court. Winding up of a company is, in effect, the same as the winding up of the entire business of the company. Both expressions in substance convey the same sense. Moreover, the expression "any insurer whose business is being wound up by the court" is more appropriately applicable to the context of a foreign company whose business in India is being wound up by the Court under s. 584 of the Companies Act, 1956. The expression "any insurer who is being wound up by the court" would not be appropriate in its application to foreign company because the business of that company outside India cannot be wound up by an order of the Court in India. Its entire business in India may be wound up. That may be, a reason for introducing the word "business" in s. 15(a). Section 481 of the Companies Act, 1956 provides that "when the affairs of a company have been completely wound up", the court shall make an order that the company be dissolved from the date of the order. Upon that order the company shall stand dissolved. The phrase "the affairs of a company have been completely wound up" is significant. It shows that the expressions "winding up of a company" and "winding up of the affairs of, a company" convey the same sense, for we think that the phrase ",the affairs of a company" means the business affairs of a company(1). In Rajah of Vizianagaram v. Official Receiver Vizianagaram(2) speaking about the winding up of a foreign company in India, this Court said : "It is therefore necessary that if a company carries on business in countries other than the country in which it is incorporated, the courts of those countries too should be able to conduct winding up proceedings of its business in their respective countries. Such winding up of the business..... is really an ancillary winding up of the main company." (emphasis added).

It appears from these observations that the winding up of a foreign company by an order of the Court in India really means the winding up of its business in India. Having regard to the foregoing consideration we are of opinion that the word "business" is not redundant in S. 15 (a). On the other hand, the charge of redundancy may really be made against the construction suggested by the Neptune Assurance. That construction makes the word "voluntarily" redundant in the first limb. If Parliament had really intended that the first limb should apply also to an insurer who is in the process of closing its business, it should have expressed the first limb in some such manner as any insurer "whose business is being closed" or "is being wound up." The construction put forwarded by the Neptune Assurance assigns little significance to the word "voluntarily" and makes it a surplusage.

Section 15 (b) of the Act provides that the Act shall not apply any insurer to whom the Insurance Act does not apply by reason of S.. 2E thereof. Section 2E of the Insurance Act provides that it shall not apply to any insurer as defined in paragraphs (i) and (ii) of sub-clause (a) of clause 9 of S. 2 in relation to any class of insurance business where the insurer has ceased before the commencement of that Act to enter into new contracts of that class of business. Section 29(a) (i) and (ii) of that Act includes in the definition of 'insurer' a public company incorporated under a foreign law and carrying on business in India or having its principal place of business or domicile in India. If such (1) Regina vs. Board of Trade ,[1965] 1 Q.B. 603 In this case it was held that the phrase "the affair of a company in s. 16 of the English Companies Act connotes its business affairs." Section 1655 corresponds to s. 237 of the Companies Act, 1956.

(2) [1962] Supp: 1 S.C.R. 344.

a company has ceased before the commencement of the Insurance Act to enter into any new contracts of insurance business or a class of insurance business, as the case may be, it shall not be governed by the provisions of the Insurance Act. According to S. 15 (b) of the Act such a company shall also not be governed by the Act. Thus s.15(b) refers to a foreign insurance company which had ceased to do insurance business or class of insurance business in India before the commencement of the Insurance Act. Section 2(e) of the Act excludes from the definition 'insurer' an insurance public company whose registration under the Insurance Act has remained wholly cancelled for a period of six months immediately before May 13, 1971. We have already discussed that the registration of an insurance public company may be cancelled by the Controller if the Company has not applied for the renewal of its registration. One of the reasons for not so applying may be cessation of business. So s. 2(e) also refers to an insurance public company which has ceased to do business for a certain period.

Section 15(a) should be construed in the setting of s. 15(b) and 2(e). So construed, it is difficult to believe that Parliament has not used the expression "whose business is being voluntarily' wound up" in the technical sense. If Parliament had intended to exempt from the operation of the Act an insurance public company which has of its own accord ceased to do business before the, commencement of the Act, it would have inserted in the Act a clear provision like s. 15(b) or s. 2(e). Now the deliberate insertion of s. 15(b) and S. 2(e) necessarily implies that Parliament did not intend to exclude an insurance public company which has merely ceased to do business of its own accord. Scheme :-One of the professed objects of the Act is "to protect the interest of the policy-holders pending nationalisation of the general insurance business." The interpretation suggested by the Neptune Assurance would defeat that legislative object. Assuming that s. 15(a) is susceptible of two meanings-the wider and the narrower (the technical), the one which fructifies the said legislative object should be preferred. This preference is the Act. Section 15 carves out an exception to section 3. It excludes certain insurance public companies and some other institutions from the operation of the Act. Ordinarily an exception is strictly construed. So the technical meaning of the' expression "whose business is being voluntarily wound up"

should be-preferable to the wider meaning of that expression.

In the light of the foregoing discussion we are of opinion that the Neptune Assurance cannot get the benefit of s. 15(a) and will be subject to the provisions of s.3 of the Act which provides for the take-over. of the management of the insurance companies.

The next submission of the Neptune Assurance is that a part of s. 2 (e) and s. 1 5 (a) as construed by us run a foul of Art. 14 of the Constitution. The offending part of s. 2(e) according to it is this : "and includes an insurance company whose registration under that Act has not remained wholly cancelled for a period of six months immediately before the appointed day." It is said that this part of s. 2(e) creates two classes of insurance companies. The first class consists of those insurance companies, whose registration under the Insurance Act has remained wholly cancelled for a period of six months immediately before the appointed day; the second class consists of those companies whose registration under the Insurance Act has remained wholly cancelled for less than six months immediately before the appointed day. The Neptune Assurance falls within the second class. It is complained that the temporal difference as to the cancellation of registration between the two classes is no valid reason for treating them differently. The second class should also have been excluded from the definition of 'insurer' in s. 2(e). The same argument is reiterated with reference to s.15(a). It is said that there is no reason why any insurance company which is closing its business; of its own accord should not be excluded from the purview of the Act. The respondents, on the other hand, have urged that Art. 14 will not help the Neptune Assurance on account of the Act being protected by Art. 31A(b) and (d) of the Constitution.

It is not and cannot be denied that an insurance company whose registration under the Insurance Act has remained wholly cancelled for six months immediately before the appointed day is in one very important respect radically unlike the insurance company whose registration under the Insurance Act has remained wholly cancelled for less than six months immediately before the appointed day. An insurance company whose registration under the Insurance Act has remained wholly cancelled for more than six months from the appointed day has become defunct. It cannot be revived. It may be wound up by the Court on the application of the Controller under s. 3 (5D) of the Insurance Act. An insurance company whose registration under the Insurance Act has remained wholly cancelled for less than six months from the appointed day is in a state of suspended animation. It can revive itself. The Controller cannot make an application to the Court for its winding up. The temporal differential as to the cancellation of registration between the two classes of companies determines the liability of one of them to be wound up under s. 3 (5D). This is a meaningful and intelligible differentia. It is not arbitrary, whimsical or illusory. The differentia has got rational relation to one of the objects of the Act. According to the preamble, the protection of the interests of the policy holders is an object of the Act. The differentia is calculated to accomplish this legislative object. Where the registration of a company has remained wholly cancelled for six months from the appointed day, the Controller may apply to the Court for its winding up under s. 3

(5D). As soon as the judicial process is set in motion, the company comes under the control of the Court. A liquidator will be appointed to wind up its affairs. The Court's control will protect those policy-holders who have got unsatisfied claims against the company. The liquidator will collect the assets of the company and pay those claims as far as possible from the realised assets. The company whose registration has remained wholly cancelled for less than six months from the appointed day can revive itself. It cannot be wound up by the Court at the instance of the Controller. The claims of the policy-holders against such a company will go unprotected. The company may or may not pay the claims. It may fritter away its assets. The policy-holders would be constrained to resort to.litigation against the company or realisation of their claims against it. The take-over of the under-taking of the company under the Act improves by reason of Government's management the prospects of their claims satisfaction. It is also calculated to protect all interests by applying after the take-over, if that course is deemed necessary, to revive the business of the company. Section 2(e) is in our view not discriminatory. For the foregoing reasons, section 15(o) also is not discriminatory.

As in our view the attack based on Art. 14 cannot succeed, it is unnecessary to deal with the respondents' contention based on Art. 3 1 A (b) and (d) of the Constitution. In the result, we would dismiss the petition with costs. ORDER In accordance with the opinion of the majority, the writ petition is dismissed with costs.

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