Papnasam Labour Union vs Madura Coats Ltd on 8 December, 1994

Equivalent citations: 1995 AIR 2200, 1995 SCC (1) 501

Author: G.N. Ray

Bench: G.N. Ray, B.L Hansaria

```
           PETITIONER:
PAPNASAM LABOUR UNION

        Vs.

RESPONDENT:
MADURA COATS LTD.

DATE OF JUDGMENT08/12/1994

BENCH:
RAY, G.N. (J)
BENCH:
RAY, G.N. (J)
HANSARIA B.L. (J)

CITATION:
 1995 AIR 2200            1995 SCC  (1) 501
 JT 1995 (1)    71        1994 SCALE  (5)153


ACT:



HEADNOTE:



JUDGMENT:
```

The Judgment of the Court was delivered by G.N. RAY, J.- This appeal is directed against the order dated 9-4-1981 passed by the Division Bench of the High Court of Madras in Writ Petition No. 11 19 of 1977. The said writ petition was moved by Respondent 1 Madura Coats Ltd., for a declaration that Section 25-M of the Industrial Disputes Act, 1947 as it stood under the Industrial Disputes (Amendment) Act, 1976 insofar as it required prior permission to be obtained to effect layoff is ultra vires and void. The writ petitioner Respondent I also prayed that the State of Tamil Nadu represented by the Secretary to Government, Labour and Employment Department, Madras should be restrained from enforcing the provisions of the said Industrial Disputes (Amendment) Act in

respect of the lay- off application being Application No. 4 of 1976 made by the petitioner. The petitioner also prayed for a writ in the nature of certiorari calling for the records of the Joint Commissioner of Labour, Madras, for quashing the order dated 11 -9-1976 by which the said lay-off application was rejected by the Joint Labour Commissioner. Along with the said Writ Petition No. 11 19 of 1977, a number of similar writ petitions challenging the vires of Section 25-M of the Industrial Disputes Act and consequential prosecutional penalty for the lay-off in contravention of Section 25-M were heard by the Division Bench of the Madras High Court and by one common judgment, all the said writ petitions were disposed of.

2.The Division Bench of the Madras High Court inter alia held that Section 25-M as it stood under the said Amendment Act, 1976 was constitutionally invalid for the reasons given by this Court in invalidating Section 25-0 of the Industrial Disputes Act in the decision rendered in Excel Wear v. Union of India 1. The Madras High Court further held that in view of its finding that Section 25-M was constitutionally invalid, it was unnecessary for the court to go into the validity or otherwise of the orders passed by the authorities which had been impugned in some of the cases before the High 1 (1978) 4 SCC 224: 1978 SCC (L&S) 509 :(1979) 1 SCR 1009 Court. The High Court also rejected the prayer for granting leave to appeal to this Court by indicating that as the High Court had followed the judgment of the Apex Court in Excel Wear case1, there was no occasion to hold that the impugned decision involved a substantial question of law of general importance which was required to be decided by the Apex Court.

3.For the purpose of appreciating the respective contentions of the parties in this appeal, the provisions of Section 25- M of the Industrial Disputes Act as amended by the Industrial Disputes (Amendment) Act, 1976 is set out as hereunder:

> "25-M. Prohibition of lay-off.- (1) No workman (other than a badli workman or a casual workman) whose name is borne on the muster-rolls of an industrial establishment to which this Chapter applies shall be laid off by his employer except with the previous permission of such authority as may be specified by that appropriate Government by notification in the Official Gazette, unless such lay-off is due to shortage of power or to natural calamity.
>
> (2)Where the workman (other than badli workman or casual workman) of an industrial establishment referred to in sub-section (1) have been laid off before the commencement of the Industrial Disputes (Amendment) Act, 1976 and such lay-off continues at such commencement, the employer in relation to such establishment shall, within a period of fifteen days from such commencement, apply to the authority specified under sub-section (1) for permission to continue the lay-off. (3) In the case of every application for permission under sub-section (1)or sub-

section (2), the authority to whom the application has been made may, after making such inquiry as he thinks fit, grant or refuse, for reasons to be recorded in writing, the permission applied for.

(4)Where an application for permission has been made under sub-section(1) or sub-

section (2) and the authority to whom the application is madedoes not communicate the permission or the refusal to grant the permission to the employer within a period of two months from the date on which the application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of two months.

(5)Where no application for permission under sub-section (1) is made, or where no application for permission under sub-section (2) has been made within the period specified therein, or where the permission for the lay- off or the continuance of the lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which the workmen have been laid off and the workmen shall be entitled to all the benefits under any law for the time being in force as if they had not been laid off.

(6) The provisions of Section 25-C (other than the second proviso thereto) shall apply to cases of lay-off referred to in this section. Explanation.- For the purposes of this section, a workman shall not be deemed to be laid off by an employer if such employer offers any alternative employment (which in the opinion of the employer does not call for any special skill or previous experience and can be done by the workman) in the same establishment from which he has been laid off or in any other establishment belonging to the same employer, situate in the same town or village, or situate within such distance from the establishment to which he belongs that the transfer will not involve undue hardship to the workman having regard to the facts and circumstances of his case, provided that the wages which would normally have been paid to the workman are offered for the alternative appointment also."

4. Mr Kumar, learned counsel appearing for the appellant has contended that the decision rendered in Excel Wear case1 is clearly distinguishable and the High Court has gone wrong in relying on the said decision and accepting the reasons which weighed with this Court in striking down the constitutional validity of Section 25-0 of the Industrial Disputes Act by holding that the said reasons are equally applicable in considering the validity of the Section 25-M and on such premises declared Section 25-M as ultra vires the Constitution. Mr Kumar has submitted that in the decision in Excel Wear case1, this Court noticed the distinguishing features in Section 25-M and Section 25-N, when compared with Section 25-0 of the Industrial Disputes Act. This Court noticed that: (SCC p. 238, para 16) "Section 25-M dealt with the imposition of further restrictions in the matter of lay-off. Section 25-N provided for conditions precedent to retrenchment of workmen. In these cases the vires of neither of the two sections were attacked. Rather, a contrast was made between the said provisions with those of Section 25-0 to attack the latter. The main difference pointed out was that in sub-section (3) of Section 25-M, the authority while granting or refusing permission to the employer to layoff was required to record reasons in writing and in sub-section (4) a provision was made that the permission applied for shall be deemed to have been granted on the expiration of the period of two months. The period provided in sub-section (4) enjoins the authority to pass the order one way or the other within the said period. Similarly, in sub-section (2) of Section 25-N reasons are required to be recorded in writing for grant or refusal of the permission for retrenchment and the provision for retrenchment and the provision for deemed permission was made in subsection (3) on the failure of the governmental authority to communicate the permission or the refusal within a period of three months."

5. In Excel Wear' decision this Court analysed the provisions of Section 25-0 and it has been indicated that under Section 25-0, if in the opinion of the appropriate Government, the reasons for the intended closure are not adequate and sufficient or if the closure was prejudicial to the public interest, permission to close down could be refused. It was pointed out by this Court that reasons given for the closure by the employer might be correct yet permission could be refused if they were thought to be not adequate and sufficient by the State Government and no reason was required to be given in the order granting the permission or refusing it. It was also pointed out that the appropriate Government was not enjoined to pass the order in terms of sub-section (2) and Section 25-0 within 90 days' period of the notice. It was indicated in Excel Wear case' that even though a situation might arise both from the point of view of law and order and financial aspect that employer would find it impossible to carry on business any longer, permission could be refused even when the reasons for intended closure were bona fide but the authority concerned felt that the closure was against public interest, which reason would be universal in all cases of closure. Such provision with potentiality to pass unreasonable order was held to be beyond the pale of reasonable restriction permitted by Article 19(6) of the Constitution.

6. The learned counsel has submitted that Section 25-M and Section 25-N have common distinguishing features which make the said two provisions different from Section 25-0 the validity of which was considered by this Court in Excel Wear case'. In the aforesaid circumstances, the decision rendered in Excel Wear case1 is not applicable for deciding the constitutional validity of Section 25-M.

7. The learned counsel for the appellant has strongly relied on the decision of this Court in the case of Workmen v. Meenakshi Mills Ltd.2 In the said decision, the constitutional validity of Section 25-N as it stood prior to the substitution by Industrial Disputes (Amendment) Act, 1984 was taken into consideration and it has been held by this Court that conferment of power on appropriate Government authority to grant or refuse permission for retrenchment is not vitiated on the ground of absence of provision for appeal or revision against or review of the order passed by the Government or authority as the order is required to be a speaking order to be passed on objective considerations. It has also been held that sub-section (2) of Section 25-N is not vitiated on the ground of non- prescription of guidelines for exercise of the power because exercise of the power under Section 25-N being quasi- judicial in nature and not purely administrative and discretionary, guidelines are not required. Moreover, the power has to be exercised not only by indicating reasons but also in accordance with the objective indicated in the Statement of Objects and Reasons given in the said Amending Act, 19'/6 as also the basic idea of settlement of industrial disputes and promotion of industrial peace. It has also been held in the decision in Meenakshi Mills case2 that Section 25-N as it stood prior to the Amending Act, 1984, though imposed restriction on employer's right to retrench workmen, but such retrenchment were imposed in consonance with 2 (1992) 3 SCC 336: 1992 SCC (L&S) 679 the Directive Principles of the Constitution and in general public interest and therefore should be presumed to be reasonable.

8. The learned counsel has also submitted that in Meenakshi Mills case2 this Court has specifically pointed out that the decision in Excel Wear case1 is not applicable for considering the constitutional validity of the Section 25-N. It has been pointed out in distinguishing the decision made in Excel

Wear case1 that sub-section (2) of Section 25-0 provided for an order being passed by the State Government refusing to grant permission to close the undertaking on its subjective satisfaction and there was no requirement for recording of reasons in the said order and in these circumstances, this Court held that the absence of a right of appeal or review or revision rendered the restriction as unreasonable. The learned counsel has therefore submitted that in view of the decision in Meenakshi Mills case2, the constitutional validity of Section 25-M cannot be challenged and Section 25-M and Section 25-N having common features and being clearly distinguishable from Section 25-0 of the Industrial Disputes Act, the reasons indicated in Meenakshi Mills case2 for upholding the constitutional validity of Section 25-N fully applies for upholding the constitutional validity of Section 25-M. The learned counsel has therefore submitted that the appeal should be allowed by holding that Section 25-M as it stood prior to Amending Act, 1984 was valid and orders passed under Section 25-M cannot be held illegal and void.

9. Dr Shankar Ghosh, learned Senior Advocate appearing for Respondent 1, Madura Coats Ltd., has however submitted that for appreciating the question of unreasonable restriction imposed on the fundamental right to carry on trade or business under the guise of protecting public interest, it is necessary to consider whether or not the restriction imposed under the statute is consistent with and limited to the extent of control required for achieving the purpose for which the restriction was sought to be imposed. In this connection, Dr Ghosh has referred to an earlier decision of this Court in Chintaman Rao v. State of M.p3. In the said decision, Sections 3 and 4 of the Central Province and Berar Regulation of Manufacture of Bidi (Agricultural Purposes) Act, 1948 were taken into consideration. Under Section 3 of the said Act, the Deputy Commissioner was empowered to issue notification thereby fixing a period to be an agricultural season with respect to such villages as may be specified therein. Under sub-section (1) of Section 4 of the said Act, the Deputy Commissioner was empowered to issue an order in respect of such villages as he may specify thereby prohibiting the manufacture of Bidi during the agricultural season. Sub-section (2) of Section 4 provided that no person residing in a village specified in such order, shall during the agricultural season, engage himself in the manufacture of Bidis and no manufacturer shall during the said season employ any person for the manufacture of Bidis. In Chintaman Rao case3 this Court has held:

> 3 1950 SCR 759 : AIR 1951 SC 11 8 "The phrase 'reasonable restriction' connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word 'reasonable' implies intelligent care and deliberation, that is, the choice of a course which reason dictates.

Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality."

10.It has been held by this Court in the said decision that the object of the statute is to provide measures for the supply of adequate labour for agricultural purposes in Bidi manufacturing areas of the Province and it could be achieved by legislation restraining the employment of agricultural

labour in the manufacture of Bidis during the agricultural season. Even in point of time, a restriction may have been reasonable if it amounted to a regulation of the hours of work in the business. But the aforesaid provisions of the Act have no reasonable relation to the object in view but the said provisions are drastic in scope that they go in much excess of the object.

11.Dr Ghosh has also referred to another decision of this Court in Dwarka Prasad Laxmi Narain v. State of Up4 In the said case, constitutional validity of clause 43 of U.P Coal Control Order, 1953 was taken into consideration and it has been held in the said decision that the licensing authority may grant, refuse to grant, renew or refuse to renew a licence and may suspend, cancel, revoke or modify any licence or any term thereof granted by him under the order for reasons to be recorded for the action he takes. Not only so, the power could be exercised by any to whom the State Coal Controller may choose to delegate the same. Such wide power including the power to delegate to any person of the choice of the Controller without any guiding principle was held to be unreasonable and far in excess of the reasonable restriction required to achieve the purpose.

12.Dr Ghosh has further referred to the decision of this Court in Pathumma v. State of Kerala5. In the said decision, the constitutional validity of Section 20 of the Kerala Agriculturists Debt Relief Act was taken into consideration by a larger Bench of seven Judges. It has been held in the said decision by upholding the validity of Section 20 of the Kerala Act that in interpreting the constitutional provision, the court should keep in mind the social setting of the country so as to show a complete consciousness and deep awareness of the growing requirements of the society, the increasing needs of the nation, the burning problems of the day and the complex issues facing the people which the Legislature in its wisdom through beneficial legislation, seeks to solve. The judicial approach should be dynamic rather than static, pragmatic and not pedantic and elastic rather than rigid. It has 4 1954 SCR 803 : AIR 1954 SC 224 5 (1978) 2 SCC 1 : AIR 1978 SC 771 also been indicated that Article 19 guarantees all the seven freedoms to the citizens of the country including the right to hold, acquire and dispose of property. But Article 19 also provides reasonable restrictions to be placed by Parliament or the Legislature in public interest. It has been further indicated that in judging the reasonableness of the restrictions imposed by clause (6) of Article 19, the Court has to bear in mind the directive principles. It has also been indicated that restriction to be reasonable must not be arbitrary or in excessive nature so as to go beyond the requirement of the interest of general public.

13.Dr Ghosh has finally referred to the decision of this Court in Management of Kairbetta Estate v. Rajamanickam6. In this decision, this Court considered the import of the expression "any other reason" in the definition of "lay-off' under Section 2(kkk) of Industrial Disputes Act. It has been held that:

> "Any other reason to which the definition refers, must, we think, be a reason which is allied or analogous to reasons already specified." Dr Ghosh contends that the definition of lay-off clearly indicates a number of contingencies which may justify lay-off. He has submitted that in Meenakshi Mills case2, this Court has also noted the distinctive features of "lay-off'.

14.Dr Ghosh has contended that the decision rendered in Meenakshi Mills case2 has not laid down any absolute proposition that unfettered restriction on the right to hold and acquire property and carry on trade and business activity can be imposed only on the score of social interest. He has also submitted that in Meenakshi Mills case2, the provisions for retrenchment under Section 25-N of the Industrial Disputes Act were taken into consideration but retrenchment is a crystallised or frozen occasion and the same should not be held on a par with the provisions for lay-off under Section 25-M. It has been contended by Dr Ghosh that if the distinction between lay-off and retrenchment and different types of problems associated with lay-off and retrenchment are considered in their proper perspective the reasonings for upholding the validity of Section 25-N should not be made applicable in deciding the vires of Section 25-M. Dr Ghosh has submitted that for the purpose of upholding the constitutional validity of a statute, upon a challenge on account of unreasonable restriction, the Court is required to look into the facts and circumstances and the ground realities under which the offending provision of the statute is to be applied. No strait-jacket formula, therefore, can be laid down for deciding the question of reasonable restriction in each and every statute. He has submitted that in the matter of lay- off under Section 25-M, excepting in the case of power failure and natural calamity, in all other cases, even if there are genuine urgent grounds for immediate action of lay-off, a prior permission is required to be obtained. It is permissible under Section 25-M to defer disposal of an application for such permission for approval up to a period of two months from the date of application even if ultimately such permission is accorded. Such outer limit 6 (1960) 3 SCR 371 : AIR 1960 SC 893 of two months in a given case, may be wholly unreasonable thereby frustrating the very purpose for which an immediate action for lay-off was warranted. Dr Ghosh has submitted in support of his contention that even if in a given case there is breakdown of essential components of a machinery without which the productive activity in a particular factory cannot be carried on and even if it so happens that any attempt to run the factory involves substantial risk even in respect of other plants and also the labour force involved in operational activity, the management though has a bona fide and urgent need to immediately lay-off the labourers whose service cannot be gainfully utilised until the productive activities can be effectively restored on some future date, cannot resort to lay-off lawfully unless permission is accorded by the authority concerned. Dr Ghosh has submitted that it may not be unlikely that in some cases such machinery being imported and highly sophisticated may not be repaired and commissioned in near future and a case of immediate lay-off was essentially necessary, but the rigid provisions of Section 25-M do not provide for taking immediate action in such and similar contingency. The provisions of Section 25-M requiring formal approval in all circumstances except in the case of power failure or natural calamity must be held to be absolutely undesirable and harsh. The restriction imposed in Section 25-M is far in excess of reasonable restriction necessary to achieve the object of preventing improper action of the employer in resorting to lay-off. The unreasonable compulsion in retaining a large labour force without any service being rendered by them may lead to closure of the unit being sick and economically not a viable unit. Such undesirable result brought on the employer on compulsion cannot be held to be a normal incidence of a reasonable restriction on the employer's right to lay-off. Such provision may not even serve the interest of labour force because in the event of closure,, the job opportunity is bound to be affected and the economic interest of the nation is bound to be in jeopardy. Dr Ghosh has submitted that the problems associated with "lay-off' have their special features and incidence and the principle underlying the restriction imposed on retrenchment under Section 25-N as considered in

Meenakshi Mills case2 is not applicable on all fours in considering the reasonableness of the restrictions imposed in Section 25-M. Dr Ghosh has submitted that the broad features which weighed with this Court in holding Section 25-0 as unconstitutional in Excel Wear case1 are applicable in deciding the constitutional validity of Section 25-M. In the aforesaid facts, the impugned decision holding Section 25-M before amendment in 1984 as unconstitutional should not be interfered with and the appeal should be dismissed.

15.After considering the respective submissions of the learned counsel for the parties and considering various decisions of this Court in deciding the question of reasonableness of the restriction imposed by a statute on the Fundamental Rights guaranteed by Article 19 of the Constitution of India (reference to which would be made hereinafter), it appears to us that the following principles and guidelines should be kept in mind for considering the constitutionality of a statutory provision upon a challenge on the alleged vice of unreasonableness of the restriction imposed by it:

> (a) The restriction sought to be imposed on the Fundamental Rights guaranteed by Article 19 of the Constitution must not be arbitrary or of an excessive nature so as to go beyond the requirement of felt need of the society and object sought to be achieved7.

(b) There must be a direct and proximate nexus or a reasonable connection between the restriction imposed and the object sought to be achieved8.

(c) No abstract or fixed principle can be laid down which may have universal application in all cases. Such consideration on the question of quality of reasonableness, therefore, is expected to vary from case to case9.

(d) In interpreting constitutional provisions, courts should be alive to the felt need of the society and complex issues facing the people which the Legislature intends to solve through effective legislation10.

(e) In appreciating such problems and felt need of the society the judicial approach must necessarily be dynamic, pragmatic and elastic

11.

(f)It is imperative that for consideration of reasonableness of restriction imposed by a statute, the Court should examine whether the social control as envisaged in Article 19 is being effectuated by the restriction imposed on the Fundamental Rights 12.

(g) Although Article 19 guarantees all the seven freedoms to the citizen, such guarantee does not confer any absolute or unconditional right but is subject to reasonable restriction which the Legislature may impose in public interest. It is therefore 7 Chintaman Rao v. State of M.P, 1950 SCR 759 : AIR 1951 SC 118; Dwarka Prasad Laxmi Narain v. State of U.P., 1954 SCR 803 : AIR 1954 SC

224; Excel Wear v. Union of India, (1978) 4 SCC 224: 1978 SCC (L&S) 509: (1979) 1 SCR 1009 8 O.K. Ghosh v. E.X. Joseph, AIR 1963 SC 812; Pathumma v. State of Kerala, (1978) 2 SCC 1 AIR 1978 SC 771; Workmen v. Meenakshi Mills Ltd., (1992) 3 SCC 336: 1992 SCC (L&S) 679 9 Kavalappara Kottarathil Kochuni v. State of Madras & Kerala, AIR 1960 SC 1080 : (1960) 3 SCR 887 : Jyoti Pershad v. Administrator.for Union Territory of Delhi, AIR 1961 SC 1602 (1962) 2 SCR 125; Pathumma v. State of Kerala, (1978) 2 SCC 1 : AIR 1978 SC 771 10 Jyoti Pershad v. Administrator.for Union Territory of Delhi, AIR 1961 SC 1602 (1962) 2 SCR 125; Pathumma v. State of Kerala, (1978) 2 SCC 1 : AIR 1978 SC 771 11 Jyoti Pershad v. Administrator.for Union Territory of Delhi, AIR 1961 SC 1602 (1962) 2 SCR 125; Fatehchand Himmatlal v. State of Maharashtra, (1977) 2 SCC 670 : AIR 1977 SC 1825; Pathumma v. State of Kerala, (1978) 2 SCC 1 :

AIR 1978 SC 771

12 State of Madras v. VG. Row, AIR 1952 SC 196 : 1952 SCR 597; State of U.P v. Kaushailiya, AIR 1964 SC 416 : (1964) 4 SCR 1002; Pathumma v. State of Kerala, (1978) 2 SCC 1 : AIR 1978 SC 771 necessary to examine whether such restriction is meant to protect social welfare satisfying the need of prevailing social values13.

(h) The reasonableness has got to be tested both from the procedural and substantive aspects. It should not be bound by processual perniciousness or jurisprudence of remedies

14.

(j) Restriction imposed on the Fundamental Rights guaranteed under Article 19 of the Constitution must not be arbitrary, unbridled, uncanalised and excessive and also not unreasonably discriminatory. Ex hypothesis therefore, a restriction to be reasonable must also be consistent with Article 14 of the Constitution.

(k) In judging the reasonableness of the restriction imposed by clause (6)of Article 19, the Court has to bear in mind Directive Principles of State Policy15.

(l)Ordinarily, any restriction so imposed which has the effect of promoting or effectuating a directive principle can be presumed to be a reasonable restriction in public interest16.

16. In Meenakshi Mills case2, the contention that Section 25-N has imposed unreasonable restriction on the fundamental right to hold property and to carry on business activities has been rejected by indicating that the object underlying the enactment of Section 25-N by introducing prior scrutiny of the reasons for retrenchment is to prevent avoidable hardship to the employees resulting from retrenchment by protecting existing employment and to check the growth of unemployment which would otherwise be the consequences of retrenchment in industrial establishment employing a large number of workmen. It has also been indicated in the said decision that the restriction imposed in Section 25-N on the , right of retrenchment of the employer is intended to maintain higher tempo of production and productivity by preserving industrial peace and harmony, and in that sense, Section 25-N seeks to give effect to the mandate contained in the Directive Principles of

the Constitution as contained in Articles 38, 39(a), 41 and 43. It has been indicated in Meenakshi Mills case2 that ordinarily any restriction so imposed which has the effect of promoting or effectuating a directive principle can be presumed to be reasonable restriction in public interest and a restriction imposed on the employer's right to terminate the service of an employee is not alien to the constitutional scheme 13 State of Madras v. VG. Row, AIR 1952 SC 196 : 1952 SCR 597; State of U.P. v. Kaushailiya, AIR 1964 SC: 416: (1964) 4 SCR 1002; Bachan Singh v. State a Punjab, (1971) 1 SCC 712 AIR 1971 SC 2164; Pathumma v. State a Kerala, (1978)2 SCC 1 : AIR 1978 SC 771 14 Fatehchand Himmatlal v. State of Maharashtra, (1977) 2 SCC 670: AIR 1977 SC 1825; Excel Wear v. Union of India, (1978) 4 SCC 224: 1978 SCC (L&S) 509 :(1979) 1 SCR 1009 15 Kesavananda Bharati Sripadagalvaru v. State of Kerala, (1973) 4 SCC 225 : AIR 1973 SC 146 1; State of Kerala v. N.M. Thomas, (1976) 2 SCC 310 : 1976, SCC (L&S) 227 : AIR 1976 SC 490; Pathumma v. State of Kerala, (1978) 2 SCC 1 :

AIR 1978 SC 771

16 Workmen v. Meenakshi Mills Ltd., (1992) 3 SCC 336: 1992 SCC (L&S) 679 which indicates that the employer's right is not absolute. We may indicate here that even in Excel Wear case1 it has been held that:

> "the right to close a business is an integral part of the fundamental right to carry on a business. But as no right is absolute in its scope so is the nature of this right. It can certainly be restricted, regulated or controlled by law in the interest of general public." (emphasis supplied)

17.In Meenakshi Mills case2, it has been held that the power to grant or refuse permission for retrenchment of workmen conferred under sub-section (2) of Section 25-N has to be exercised on an objective consideration of the relevant facts after affording an opportunity to the parties having an interest in the matter and reasons have to be recorded in the order that is passed. The enquiry which has to be made under sub-section (2) before an order granting or refusing permission for retrenchment of workmen is passed, would require an examination of the particulars which are required to be supplied by the employer. Such decision being quasi-judicial, is justiciable before High Court. In view of the time-limit of three months prescribed in sub- section (3) of Section 25-N, there is need for expeditious disposal which may not be feasible if the proceedings are conducted before a judicial officer accustomed to the judicial process. Moreover, during the course of such consideration, it may become necessary to explore the steps that may have to be taken to remove the causes necessitating the proposed retrenchment which may involve interaction between the various departments of the Government. This can be better appreciated and achieved by an Executive Officer rather than a Judicial Officer. It has also been indicated in Meenakshi Mills case2 that in the matter of exercise of the power conferred by sub-section (2) of Section 25-N, the power has to be exercised keeping in view the provisions of the Act and the object underlying the Amending Act of 1976 whereby Section 25-N was inserted in the Act. The object underlying the requirement of prior permission for retrenchment of workmen introduced by Section 25N as indicated in the Statement of Objects and Reasons for the Amending Act of 1976, is to prevent avoidable hardship to the employees resulting from retrenchment by protecting employment to those already employed and

maintain higher tempo of production and productivity by preserving industrial peace and harmony. The said consideration coupled with the basic idea underlying the provisions of the Act, namely, settlement of industrial disputes and promotion of industrial peace, gives a sufficient indication of the factors which have to be home in mind by the appropriate Government or authority by exercising its power to grant or refuse permission for retrenchment under sub-section(2).

18.In our view, the aforesaid observations in upholding the validity of Section25-N squarely apply in upholding the validity of Section 25-M. It is evidentthat the Legislature has taken care in exempting the need for prior permission for lay-off in Section 25-M if such lay-off is necessitated on account of power failure or natural calamities because such reasons being grave, sudden and explicit, no further scrutiny is called for. There may be various other contingencies justifying an immediate action of lay-off but then the Legislature in its wisdom has thought it desirable in the greater public interest that decision to lay-off should not be taken by the employer on its own assessment with immediate effect but the employer must seek approval from the authority concerned which is reasonably expected to be alive to the problems associated with the industry concerned and other relevant factors, so that on scrutiny of the reasons pleaded for permitting layoff, such authority may arrive at a just and proper decision in the matter of according or refusing permission to lay-off. Such authority is under an obligation to dispose of the application to accord permission for a lay-off expeditiously and, in any event, within a period not exceeding two months from the date of seeking permission. It may not be unlikely that in some cases an employer may suffer unmerited hardship up to a period of two months within which his application for lay- off is required to be disposed of by the authority concerned but having undertaken a productive venture by establishing an industrial unit employing a large labour force, such employer has to face such consequence on some occasions and may have to suffer some hardship for sometime but not exceeding two months within which his case for a lay-off is required to be considered by the authority concerned otherwise it will be deemed that permission has been accorded. In the greater public interest for maintaining industrial peace and harmony and to prevent unemployment without just cause, the restriction imposed under sub-section (2) of Section 25-M cannot be held to be arbitrary, unreasonable or far in excess of the need for which such restriction has been sought to be imposed.

19.It may be pointed out that sub-section (3) requires recording of reasons for the decision taken, and a copy of the order is required to be communicated to all concerned. Further, by force of sub-section (4), permission sought for shall be deemed to have been granted, if the decision is not communicated within the mentioned period. Procedural reasonableness has been taken care of by these provisions. As regards substantive reasonableness, we feel satisfied, as the power in question would be exercised by a specified authority and as it can well be presumed that the one to be specified would be a high authority who would be conscious of his duties and obligation. If such an authority would be informed that lay-off is reuired because of, any sudden breakdown of machinery, which illustration was given by Dr Ghosh to persuade us to regard the restriction as unreasonable, we have no doubt that the authority would act promptly and see that the establishment in question is not put to loss for no fault on its part. As every power has to be exercised reasonably, and as such an exercise takes within its fold, exercise of power within reasonable time we can take for granted that the statutory provision requires that in apparent causes (like sudden breakdown) justifying lay-off, the authority would act with speed.

20.As already indicated, the distinguishing features between Section 25-M and Section 25-N on one hand and Section 25-0 on the other have been noticed in the decision in Excel Wear case1.

21.In our view, the reasonings indicated in Excel Wear case1 in striking down Section 25-0 are not applicable for considering the constitutional validity of' Section 25-M(2). On the contrary, it appears to us that the reasonings indicated in Meenakshi Mills case1 in upholding the validity of Section 25-N squarely apply in upholding the vires of Section 25-M. It also appears to us that the impugned provision of Section 25-M satisfies various aspects of scrutiny for upholding reasonable restriction on the fundamental right when tested in the context of guidelines and principles indicated hereinbefore. The restriction appears necessary to us in larger public interest and to protect the interest of workmen, who, but for the restriction may be subjected to uncalled for lay- off. The application of this restriction to industrial establishments specified in Section 25-K duly takes care of the hardship which could otherwise be caused to small establishments. Directive Principles do require placing of the restriction on large industrial establishments employing large number of workmen. The impugned decision of the Madras High Court, therefore, must be held to be erroneous and the same is, set aside by upholding the vires of Section 25-M of the Industrial Disputes Act, 1947 which was introduced under the Amending Act of 1976. This appeal is, therefore, allowed without, however, any order as to costs.