National Textile Workers vs P.R. Ramkrishnan And Others on 10 December, 1982

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Bench: P.N. Bhagwati, O. Chinnappa Reddy, E.S. Venkataramiah, Baharul Islam, Amarendra Nath Sen

PETITIONER:
NATIONAL TEXTILE WORKERS' UNION ETC.

Vs.

RESPONDENT:
P.R. RAMKRISHNAN AND OTHERS.

DATE OF JUDGMENT10/12/1982

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
REDDY, O. CHINNAPPA (J)
VENKATARAMIAH, E.S. (J)
ISLAM, BAHARUL (J)
SEN, AMARENDRA NATH (J)

CITATION:
1983 AIR 75 1983 SCR (1) 9
1983 SCC (1) 228 1982 SCALE (2)1144
CITATOR INFO :
RF 1992 SC 248 (76)
D 1992 SC2093 (17)

ACT:
Indian Companies Act, 1956-S. 433-Petition for winding-up of company-Orders likely to adversely affect interests of workers-Workers have right to appear and be heard-Workers

also entitled to hearing on their own request when application for appointment of provisional liquidator is being considered-Trade Unions representing workers competent to intervene on behalf of workers.

Companies (Court) Rules, 1959-R. 34-Provides for procedure only-Does not confer on workers right to appear at hearing of Winding-up petition.

HEADNOTE:

The respondents were two groups of shareholders of a private limited company which had a thousand persons under its employment. A group of shareholders filed a petition for winding-up the company under cls. (e) and (f) of s. 433 of the Indian Companies Act, 1956 along with applications for an interim injunction and for appointment of a provisional liquidator. The Company Judge passed an order of injunction restraining the company from borrowing any moneys from banks, financial institutions or others without the prior permission of the court. Three trade unions representing the employees of the company filed applications for being impleaded as respondents/interveners in the winding up petition claiming that the interests of the employees had been adversely affected by the interim order. The Company Judge rejected these applications. A Division Bench of the High Court turned down the appeal preferred by one of the unions and that union sought special leave to appeal against the order of the Division Bench while the other two unions sought special leave to appeal against the order of the Company Judge. The Court granted special leave to all the three unions and permitted the Company Judge to pass orders on the application pending before him for appointment of a provisional liquidator with the direction that the liquidator shall not take any steps which would prejudicially affect the employees.

It was contended on behalf of the appellants that since an order winding up a company amounts to notice of termination of services of its employees under s. 445(3) and since even an interim order freezing the resources of the company might affect the interest of the employees by making it difficult for the company to pay their wages, etc., it would be contrary to fair judicial procedure and violative of the rule audi alteram partem to deny the employees the right to be heard before any order prejudicially affecting their interests is made. The

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employees who contribute materially to the working of a company and enable it to effectively play its socio-economic role are equal, if not more important, partners in the running of the company and they must be heard in a proceeding for winding up of the company. It was further urged that under r.34 of the Companies (Court) Rules, 1959

the employees have a right to appear at the hearing of a winding-up petition either to support or to oppose it.

On behalf of the respondents it was contended that the employees of a company have no locus standi in a winding-up petition as the Act does not contain any provision conferring such a right on them; that since the Act is a self-contained Code exhaustive in regard to all matters relating to a company, no such right could be spelt out in their favour outside the provisions of the Act that r. 34 of the Companies (Court) Rules, 1959 does not confer such a right on them and that, under the various provisions of the Act including ss. 439 and 440, it is only the creditors and contributories and in certain specified contingencies, the Registrar and the Central Government, who are entitled to participate in the proceedings for winding up of a company. It was further contended that in this case it was not even the employees, but the three trade unions, who had applied for being heard, and since the trade unions had no right to be heard, their applications had been rightly rejected.

Allowing the appeals,

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HELD : By Majority : Per Bhagwati, Chinnappa Reddy and Baharul Islam, JJ. (Venkataramiah and Amarendra Nath Sen, JJ. dissenting):

The workers of a company are entitled to appear at the hearing of the winding-up petition whether to support or to oppose it. They have a locus standi to appear and be heard both before the petition is admitted and an order for advertisement is made as also after the admission and advertisement of the petition until an order is made for winding up the company. The workers also have a right of appeal against a winding up order. But when a winding-up order has become final, the workers ordinarily would not have any right to participate in any proceeding in the course of winding up, the company though there may be rare cases where in a proceeding in the course of winding up, the interests of the workers may be involved and in such a case it may be possible to contend that the workers must be heard before an order is made by the court. Even in an application for appointment of a provisional liquidator the workers have a right to be heard if they so wish but neither the petitioner in the winding up petition nor the court is under any obligation to give notice of such application to the workers. [956 A-E]

In the instant case the circumstance that the workers were not heard by the Company Judge before he passed the order appointing the provisional liquidator would not have the effect of vitiating the order but it would be open to the workers to apply to the court for vacating that order. [956 F-G]

(i) The making of a winding-up order on a petition for winding-up would have an adverse consequence on the workers inasmuch as the continuance of their service would be

seriously jeopardised and their right to work and earn
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their livelihood would be disastrously imperilled. It is an elementary principle of law that no order involving adverse civil consequences can be passed against any person without giving him an opportunity to be heard against the passing of such order. If the audi alteram partem rule has been held to be applicable in a quasi-judicial or even in an administrative proceeding, it would a fortiori apply in a judicial proceeding such as a petition for winding-up of a company. No system of law which is designed to promote justice through fair-play in action can permit the court to make a winding-up order which has the effect of bringing about termination of the services of the workers without giving them an opportunity of being heard against the making of such order. Unless there is express provision in the Act which forbids the workers from appearing at the hearing, the workers must be held entitled to appear and be heard in the winding-up petition. [950 A-E]

State of Orissa v. Dr. Bina Pani, [1967] 2 S.C.R. 625; A.K. Kraipak v. Union of India, [1970] 1 S.C.R. 457 and Maneka Gandhi v. Union of India, [1978] 2 S.C.R. 621 referred to.

(ii) There is no provision in the Act which excludes the workers from appearing at the hearing of a winding-up petition. Merely because the right to apply for winding up a company is not given to them it does not follow as a necessary consequence that the workers have no right to appear and be heard in a winding-up petition filed by one or more of the persons specified in s. 439. In fact, there would be no point in conferring that right on the workers since they cannot have any interest in demolishing the enterprise which is the source of their livelihood. So also, the circumstance that the right to make applications or be consulted in the course of the winding up of a company is conferred under s. 440 and other provisions of the Act only on the creditors and contributories does not in any way militate against the right of the workers to appear and be heard in the winding-up petition. Once the winding-up order is made, the assets of the company have to be realised, the creditors to be paid and if there is any surplus it has to be distributed among the contributories and, therefore, at that stage, it is only the creditors and contributories who have an interest and that is why in the course of the winding up it is the creditors and contributories who have been given a voice. Sections 440, 464, 466, 478, 517, 542, 543, 549, 556, 557 and 560 deal with a stage after the winding up has commenced. These sections have nothing to do with the question whether the company should be wound up or not. [950 F; 948 D-F; 951 B; 951 C-E; 949 A-H]

(iii) After the amendment of ss. 397 and 398 of the Act by ss. 10 and 11 of the Companies (Amendment) Act, 1963, the court, while deciding whether a company should be bound up,

has to take into consideration not only the interest of the shareholders and editors but also public interest in the shape of the need of the community and the interest of employees. It is therefore axiomatic that the workers must have an opportunity of being heard for projecting and safeguarding their interest before a winding-up order in made. [951 G: 952 E-F]

In the instant case, the Division Bench of the High Court, after conceding that the court had to take into consideration the interest of the workers, went wrong in holding that the workers had no locus standi to file an application for being heard in the winding-up petition. [952 G-H; 953 A-B]

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Fertilizer Corporation Kamgar Union and Ors. v. Union of India and Ors., [1981] 2 S.C.R. 52, referred to.

Bhalchandra Dharmajee Makaji and Ors. v. Alcock Ashdown and Co. Ltd. and Ors., 42 Company Cases 190, approved.

(iv) It is true that according to the statement of law contained in the leading text books on Company Law, it is only the Company, the creditors and the contributories who are entitled to appear in a winding-up petition and no other persons have a right to be heard. This statement of the law is based on a decision rendered by the English Courts over a hundred years ago when a company was regarded merely as a legal device brought into being as a result of a contractual arrangement between the shareholders for the purpose of carrying on trade or business and the workers were looked upon as no more than employees of the company working under a master and servant relationship and the interest of the public as consumers or otherwise was a totally irrelevant consideration. It can have no validity in the present times when the entire concept of a company has changed. [953 F-H]

In re. Bradford Navigation Company [1870] 5 Ch. A.C. 600, held inapplicable.

In re. Edward Textiles Limited, 38 Company Cases 984, overruled.

(v) Our Constitution has shown profound concern for the workers and given them a pride of place in the new socio-economic order envisaged in the Preamble and the Directive Principles of State Policy. Article 43A states that the State shall take steps by suitable legislation or in any other way to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry. The constitutional mandate is therefore clear and undoubted that the management of the enterprise should not be left entirely in the hands of the suppliers of capital but the workers should also be entitled to participate in it. In a socialist pattern of society the enterprise which is a centre of economic power should be controlled not only by capital but also by labour. It cannot therefore be contended that the workers should have no voice in the determination of the question whether

the enterprise should continue to run or be shut down under an order of the court. The workers who have contributed to the building of the enterprise have every right to be heard when it is sought to demolish that centre of economic power. [946 C; 947 D-F]

People's Union for Democratic Rights v. Union of India and Ors. (W.P. No. 8143 of 1981 decided on September 18, 1982) referred to.

(vi) It is not only the shareholders who have supplied capital who are interested in the enterprise which is being run by a company but the workers who supply labour are also equally, interested because what is produced by the enterprise is the result of labour as well as capital. The owners of capital bear only limited financial risk and otherwise contribute nothing to production while labour contributes a major share of the product. While the former invest only a part of their moneys the latter invest their sweat and toil; in fact, their life itself.

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The workers therefore have a special place in a socialistic pattern of society. They are no more vendors of toil; they are not a marketable commodity to be purchased by the owners of capital. They are producers of wealth as much as capital; they supply labour without which capital would be impotent. [945 G-H: 946 A-B]

(vii) The concept of a company has undergone radical transformation in the last few decades. The old nineteenth century view which regarded a company merely as a legal device adopted by shareholders for carrying on trade or business as proprietors has been discarded and a company is now looked upon as a socioeconomic institution wielding economic power and influencing the life of the people. The view that a company is the property of the shareholders can no longer be regarded as valid. Apart from capital and labour there are other factors which contribute to the production of national wealth; the financial institutions and depositors who provide the additional finance required for production and the consumers and the rest of the members of the community who are vitally interested in the product manufactured. A company, according to the new socio-economic thinking, is a social institution having duties and responsibilities towards the community in which it functions and one of its paramount objectives is to bring about maximisation of social welfare and common good. This necessarily involves reorientation of thinking in regard to the duties and obligations of the company not only vis-a-vis the shareholders but also vis-a-vis the rest of the community affected by its operations such as workers, consumers and the Government representing the society. [942 B; 943 A G; 944 C-D]

Chiranjit Lal Chowdhri v. Union of India, [1950] S C.R. 869, referred to.

Panchmahal Steel Ltd. v. Universal Steel Traders, 46

Company Cases 706 approved.

per Chinnappa Reddy, J. (concurring)

(i) Quite apart from s. 445(3), it is plain that the future of the workers is at stake and their right to work is in jeopardy as a result of the presentation of the winding-up petition. The workers are so intimately tied up that their interest in the survival and the well-being of the company is much more than the interest of any shareholder. They cannot be denied a hearing when their very existence is under threat of extinction. [957 D-G]

(ii) It is not correct to say that natural justice is exclusively a principle of administrative law. It is first a universal principle and, therefore, a rule of administrative law. Courts, even more than administrators, must observe natural justice. [959 A-C]

(iii) The Act does not prohibit a hearing to the workers. It does not provide for all situations. The law "falls to be applied to a growing and changing subject matter". The Company Judge must acknowledge the transformation which corporations are presently undergoing from capitalist contrivances into socialist instruments and recognize the reality of the workers interest. The
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working classes, all the world over, are demanding "workers' control" and "industrial democracy". They want the right to work to be secured. Our Constitution has accepted the workers' entitlement to control and it is one of the Directive Principles of State Policy. It is in this context of changing norms and waxing values that the workers' demand to be heard has to be judged.

[957 G-H; 958 B-C-E-F-G]

(iv) The duty to hear those asking to be heard is not dependent on the vesting of any right under the very statute in respect of which jurisdiction is being exercised by the Court but on any right whatever which may come under threat. It is not the law that rights other than those created by a particular statute may be taken away in proceedings under that statute without affording a hearing to those desiring to be heard. [959 D-E]

(v) It is not correct to say that once the workers are allowed to enter the company court, the flood gates will be opened, all and sundry will join in the fray and utter confusion will prevail. The court is the master of the proceedings and the ultimate control is with the court. Parties may not be impleaded for the mere asking. The court may ask the reason why, if someone asks to be heard. [960 B-C]

(vi) The contention that since workers are not allowed to intervene in a partition or dissolution of partnership they should also not be allowed to intervene in a winding-up petition cannot be accepted. There is no reason why workers may not be allowed, in appropriate cases to intervene in such actions to avert disaster and to promote welfare. [960

D]

(vii) There is good reason for holding that In re. Bradford Navigation Company is not valid in the present times. It was decided in the heydays of laissez faire at a time when individualism dominated every field and the public interest was but a slow runner. Now the position is reversed. In Britain itself Corporate law and labour law have changed considerably. After nationalisation of certain important and crucial industries a considerable measure of workers' control of management of industry has been achieved in that country. One should rather look to the Constitution for guidance and inspiration while interpreting the laws. After the 42nd Amendment, the Constitution is openly Socialist. The Directive Principles of State Policy emphasize the role and interest of the workers. Art. 43A contemplates workers' participation in the management of the industry. There are several provisions in the Act itself which take notice of the element of public interest. There are other enactments like the Monopolies and Restrictive Trade Practices Act and the Industries Regulation and Development Act under whose provisions the activities of a company may be scrutinized in public interest. There are legislations involving employment and welfare of labour to which the managements of the companies are subject. The problem before the court must be considered in this context of ferment and development.

[962 F; 961 G-H; 962 A-B; 960 G-H; 961 D-F]

In re. Bradford Navigation Company, [1870] 5 Ch. A.C. 600, held inapplicable.

Panchmahal Steel Ltd. v. Universal Steel Traders, 46 Company Cases 706 approved.

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per Baharul Islam, J. (concurring)

The statement of law contained in the English authorities cited by counsel for respondents may be good law for England with altogether a different system of economy but it is not applicable in our country, particularly after the Constitution (42nd Amendment) Act, 1976, by which the "Socialist" and "Secular" concepts have been incorporated in the Preamble to our Constitution. The workers' right to be heard in a winding-up proceeding has to be spelt out from the Preamble and Arts. 38 and 43-A of the Constitution and from the general principles of natural justice. [990 D-F]

per Venkataramiah and Amarendra Nath Sen, JJ. (dissenting)

Under the existing law the workers or their unions may make any suggestions to the Court at any stage but they cannot claim to be impleaded as parties to the winding-up petition as of right. The privilege of making suggestions to the court in public interest is different from the right to be impleaded as a party with the concomitant right to enter into contest with the other parties and of making an order in appeal before higher courts. The latter right has to be conferred expressly by the statute in any person who wishes

to exercise it. [979 D]

(i) The principles of administrative law have not much relevance to the administration of the affairs of a company, the primary purpose of administrative law being the imposition of checks on the powers of government or its officers so that they may not either abuse their powers or go out of their legal bounds. In particular, the proceedings relating to winding-up by court are subject to the orders of higher courts in appeal and are not amenable to interference by superior courts as in the case of actions of government or its officers. [967 H, 968 A-B]

(ii) The law on the question as to who can be heard as of right in a winding-up proceeding is clear and is based on the decision of the English Court in In re. Bradford Navigation Company. The decision may be of the last century but there is hardly any justification to depart from it even now unless compelled by the statute to do so.[970 B-D; 971 E]

In re. Bradford Navigation Company, [1870] 5 Ch. A.C. 600, referred to.

Halsbury's Laws of England (4th Ed.) Vol. 7 Para 1028 referred to.

(iii) That only the company, creditors and contributories (apart from the Central Government or the Registrar when they choose to intervene under the express provisions of the Act) are entitled to participate in the winding-up proceedings is clear from ss. 439, 447 and 557. Sections 450(2), 466, 478(3), 517, 518, 542, 543, 546(1), 549(1) and 556 show that only the Company, the official liquidator, liquidator, creditors, contributories or the Registrar have a statutory right to participate as of right in the winding-up proceedings. The workers or their trade unions have not been given any such right.

[969 C-D; 971 F; 972 E-H; 973 A-F]

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In re. Edward Textiles Ltd., 38 Company Cases 284 approved.

(iv) Under s. 433, a company may be wound up by the court on one or more of the following grounds : (a) if the company has, by special resolution, resolved that it may be wound up by court; (b) if default is made in delivering the statutory report to the Registrar or in holding the statutory meeting; (c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year; (d) if the number of members is reduced, in the case of a public company, below seven, and in the case of a private company, below two; (e) if the company is unable to pay its debts; and (f) if the court is of opinion that it is just and equitable that the company should be wound up. As regards the ground mentioned at (a), when a company has passed a special resolution that it may be wound up by the court, the employees and workers can have hardly any ground to object. The position is the same when

any of the defaults mentioned in (b) and (c) are committed by the company. The officers and employees of the company also cannot get over the deficiency in the required number of members of a company referred to in (d) above. When a company is unable to pay its debts and a creditor moves a petition for winding-up under (e) above, he cannot be compelled to prove his claim not merely against the company but also against the officers and employees. When there is a deadlock in the management of the company arising out of disputes amongst the directors or when some directors without any justification exclude some other directors from the management of the company and a petition for winding-up is filed under (f), above, it would be unreasonable to expect the excluded directors to fight a case both against the directors who are responsible for their exclusion and also against the officers and employees who are neither creditors nor contributories but who may be supporting the contesting directors. [968 H; 969 A-B; 969 F-H; 970 A-B]

In the instant case, it is seen from the grounds of objection filed by the trade unions that they are only interested in supporting the cause of one set of respondents against the other by making certain general submissions. The petitioners in the Company Petition would be in a more disadvantageous position if they have to face the opposition of the trade unions also in addition to the respondents to that petition. Such a situation should not be created by extending the area of controversy by a liberal interpretation of the provisions of law when there are no compelling reasons to do so. [985 E-G]

(v) There are specific provisions in the Act and the Rules (ss. 417 to 420, 530(1)(b) to (f) and 635-B and r. 152 read with Form No. 67) dealing with the rights of employees of a company. The right to resist a winding-up petition is not one such right. [975 D-E]

(vi) It is because of some doubts that had been expressed earlier about the continuance of the employment of the employees of a company ordered to be compulsorily wound up that s. 445(3) was enacted making it clear that the passing of the order of winding-up amounts to a notice of discharge of the employees concerned. Section 445(3) corresponds to the termination of service brought about by the abolition of a post under a Government or by the closure of a business, neither of which as the law stands today requires compliance with the principles of natural justice. [975 B-C]

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(vii) It is true that public interest which may include within its scope interests of employees of a company has to be kept in view by the courts in exercising certain powers under the Act. Sections 388-B, 394, 396, 397 and408 do refer to the concept of public interest. These provisions deal with the powers of the Central Government and the Court. They do not, however, state that trade unions can as

of right intervene in the proceedings arising under them. [975 F-H]

Bhalchandra Dharmajee Makaji and Ors. v. Alcock, Ashdown and Co. Ltd. and Ors., 42 Company Cases 190 referred to.

In the instant case the High Court has passed necessary orders to protect the interests of the employees. As these orders stand today, the workers can always approach the High Court by way of a company application for appropriate orders whenever they feel that their working conditions are adversely affected during the pendency of the proceedings. It is not necessary that the workers or the trade unions should be impleaded as parties to the winding-up petition enabling them to contest the same; their presence on record is not necessary for a complete and effectual adjudication of the petition. The trade unions are, therefore, neither necessary nor proper parties to the winding-up petition on the facts and in the circumstances of this case including the element of public interest involved in any liquidation proceeding. [985 H; 986 H; 987 A-C]

(viii) In Fertilizer Corporation Kamgar Union (Regd) Sindri and Ors. v. Union of India and Ors., [1981] 2 S.C.R. 52 the court was concerned with operations in a public sector company and the activities of the government. The observations contained therein cannot have any relevance to a case involving the affairs of a company which is governed only by the express provisions of company law and other relevant statutes. [982 C]

(ix) As the law stands today, the workers in a factory owned by a company do not have any hand in the birth of a company, in its workingur ding its existence and also in its death by dissolution. Workers' participation in the affairs of a company or the ushering in of an industrial democracy is quite a laudable object. That is the reason for enacting Art. 43-A. Art. 43-A clearly states that the State shall take steps by suitable legislation or in any other way to secure the participation of workers in the management of undertakings etc. The High-powered Expert Committee on Companies and MRTP Act, has made certain recommendations in this behalf in paragraphs 11.27 and 18.137 of its report and it is for the Parliament to take steps to implement them. The legislature has not taken concrete steps in this regard. The suggestions made by the committee emphasize that at present workers have no right to contest winding-up proceedings. It is significant that there is no recommendation made even in this report about the right of trade unions to contest winding-up petitions. The court cannot step in and introduce drastic amendments into the company law. Many of the Directive Principles are still to be implemented by passing appropriate legislation. This Court cannot compel the executive by issuing writs to implement the policy underlying them. There are well-recognized limitations on the power of the court making

inroads into the legitimate domain of the legislature. If the legislature exceeds its power, this Court steps in. If the executive exceeds its power,

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then also this court steps in. If this court exceeds its power what can people do ? Should they be driven to seek an amendment of the law on every occasion ? The only proper solution is the observance of restraint by this court in its pronouncements so that they do not go beyond its own legitimate sphere. It may be that the workers who are likely to be affected by the winding-up need a larger protection. That can be done only by legislative action. This Court cannot make any order which will conflict with the existing law.

[982 G-H; 983 A; 977 E-F; 983 G; 983 B-D; 989 C]

(x) The proposition that law should not be static but should grow cannot be disputed. But it should be the result of the exercise of legislative judgment, particularly when a departure from express provisions of a statute or an established practice is to be made. A discussion involving a comprehensive view of all interests which are likely to be affected by any decision in such a matter is not possible before a court where only the parties to a case or their lawyers are heard. [987 D-F]

(xi) It is not correct to say that there is no other remedy at all for workmen who are likely to be affected by the winding-up order made by the court. It is open to the workers or their trade unions to move the Central Government to take appropriate steps under the Industrial (Development and Regulation) Act, 1951 the provisions of which provide that where a company owning an industrial undertaking is being wound up by or under the supervision of the High Court and the business of such company is not being continued, the Central Government may investigate into the possibility of running or restarting the industrial undertaking, provide relief to it or take steps to ensure that the undertaking is sold as a running concern, or prepare a scheme of reconstruction of the company and send it to the trade unions of employees concerned inviting their suggestions and objections. [976 A-H; 977 A-C]

(xii) When once the right to contest a winding-up petition is extended to workers either on the principle of equity or of administrative law, on the same principle it would logically follow that all others who may have dealings with the company such as commission agents, selling agents. etc. whose contracts with the company are going to be terminated by reason of its liquidation also have to be allowed to contest the proceedings. Such a claim is not permissible. [974 B]

Ex parte Maclure, [1870] L.R. 5 Ch. 737, referred to.

(xiii) It is no doubt true that the view of the High Court is also in conformity with the view prevailing in England. That does not mean that the High Court has

surrendered its judgment to a foreign practice because that is the very view which is being followed till now in the Indian Courts. A foreign decision is either worthy of acceptance or not depending upon the reasons contained in it and not its origin or age. There is no reason why we should not follow a well-reasoned foreign decision unless it is opposed to our ethics, tradition and jurisprudence or otherwise unsuited to our conditions. Moreover, it is difficult, even though it may not be impossible, to administer the company law as it is now in force in India without the aid of the principles laid down by some of the leading English cases. [987 H: 988 A-F]

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Needle Industries (India) Ltd. and Ors. v. Needle Industries Neway (India) Holding Ltd. and Ors., [1981] 3 S.C.R. 698, referred to.

per Amarendra Nath Sen, J. (agreeing with Venkataramiah, J.)

(i) If the right to participate in a winding-up proceeding is to be judged from the view-point of the interest of any party who may be prejudicially affected as a result of an order of winding-up being made, it must logically follow that not only every employee of the company but also various other parties and persons who have trade relations or dealings with the company must necessarily be held to have the same right to be heard in such a proceeding; further, no suit for dissolution of a partnership can also be decided without impleading the employees of the firm and other parties having trade relations with the firm.

[992 A-E; 991 H]

(ii) A company can only be wound up in accordance with the provisions of the Act. The right to have a company wound-up is a right created by the statute. The entire proceeding in relation to the winding-up is governed by the provisions of the Act and the Rules. The Act recognises that a company may go into liquidation without any intervention by the Court and also under the supervision of the court. Where the company goes into liquidation without reference to court, the employees of the company who have to meet the same fate of losing their employment cannot have any voice or say in the procedure to be adopted for liquidation of the company. [992 F-G; 993 B-C]

(iii) The right of appearance and of being heard in a winding-up proceeding has been conferred on persons whom the legislature considered to be necessary or proper parties for effective adjudication of the proceeding before the court. If a company is commercially insolvent and is unable to pay its debts, it has necessarily to be wound up and the employees can have hardly anything to say in such a case for assisting the court in deciding the matter. [993 E-G]

(iv) Although an employee cannot claim to appear and be heard in a winding-up petition as a matter of right, the court may, in any appropriate case, require or permit any

employee to appear at any stage of a winding up proceeding and hear him, if it is of the opinion that it is necessary in the interest of administration of justice and for proper disposal of any matter. [998 H; 999 A]

(v) The legislature has made suitable provisions in the Act for safeguarding what is considered to be in the interest of employees or in public interest. The introduction of Art. 43A in the Constitution does not affect the position in any way. Participation in the management does not by itself create any right to appear and be heard in a winding-up petition. Unless otherwise named personally as a party to such a petition, no person, merely on the ground that he happens to be in the management of the company, is entitled to appear and be heard in a winding-up proceeding. Persons in management may, if so authorised, appear and participate in such a proceeding on behalf of the company.

[995 D; 995 E-H]

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(vi) The Indian and the English Companies Acts contain similar provisions. As early as in 1870 the English court held that no person had a right to be heard against a petition for winding-up of a company except creditors and contributories. That decision still holds good and is considered good law. The English Act has undergone changes from time to time with the passing of various legislations for the benefit and welfare of employees. An order winding up a company affects the employees in England in the same way as it does in India. It cannot be said that workers in England are not conscious of the important role they play in the functioning of a company. Despite all these, the right of an employee or any trade union representing the workers to participate and be heard in a winding-up petition is not recognised in England. Even in our country, though the provisions of the Act have undergone changes and various enactments for the welfare of the workers have been passed from time to time, the legislature has not considered it proper or necessary to amend the Act to confer any such right on the workers. [996 A-D; 996 H; 997 A-B; 998 F]

In re Bradford Navigation Company, [1870] 5 Ch. A.C. 600, referred to.

Halsbury's Laws of England (4th Ed.) Vol. III. p. 614; Palmer's Company Precedents (7th Ed.) Part II, p. 77 and Buckley on the Companies Act, (14th Ed.) Vol. I, p. 546 referred to.

Hind Overseas Private Ltd. v. Raghunath Prasad Jhunjhunwala and Ors., [1976] 2 S.C.R 226, distinguished.

2. By majority: Per Bhagwati, Chinnappa Reddy and Baharul Islam, JJ. (Venkataramiah and Amarendra Nath Sen, JJ. dissenting): Trade unions are competent to make applications before the Company Judge hearing a winding-up petition on behalf of the workers represented by them. [956 H]

In this case the applications were made by the unions on behalf of the workmen represented by them and though made in the name of the Unions the applications were in reality and substance applications of the workmen who were members of each respective Union. The controversy therefore really is not whether the unions of workmen are entitled to be heard in a winding-up petition but whether the workmen have such right when a winding-up petition is filed against a company. [939 G-H]

per Venkataramiah and Amarendra Nath Sen, JJ. (dissenting): In none of the English text books on Company Law there is any statement to the effect that trade unions of officers and employees of a company for whose winding-up a petition is filed would be entitled as of right to be impleaded as parties and to contest the petition. It is not also shown that any such right of a trade union is recognised by the Indian Law which more or less corresponds to English Law in this regard. The decision of the Bombay High Court in In re Edward Textiles Ltd. is a clear authority for the proposition that at any rate trade unions have no locus standi to oppose a winding-up petition. We shall proceed to decide this case on the assumption that the application for impleading was made in fact on behalf of the workers and not by the trade unions. [968 C-F]

934

In re Edward Textiles Ltd., 38 Company Cases 284, referred to.

3. By the Full Court: Rule 34 of the Companies (Court) Rules, 1959 does not confer a right on the workers to appear at the hearing of a winding-up petition. [955 G; 973 G; 994 E-F]

per Bhagwati, Chinnappa Reddy and Baharul Islam, JJ.: The object and purpose of r. 34 is not to confer a right on anyone to appear at the hearing of the winding-up petition but merely to provide for the procedure to be followed before a person who is otherwise entitled to appear in a winding-up petition can be heard in support of or in opposition to the winding-up petition. [955 F]

per Venkataramiah, J: The words "every person" in r. 34 of the Companies (Court) Rules, 1959 do not entitle a worker who is neither a shareholder nor a contributory to support or oppose a winding-up petition under that rule because they refer only to a person who is otherwise entitled to do so under the Act. An anomalous result that may flow from the acceptance of the case of the workers is that whereas in a winding-up by court they may get an opportunity to contest the petition, the voluntary winding-up proceedings or winding-up under the supervision of the court would go on without any such contest although in all cases ultimately the workers will be discharged from service. A construction which leads to such a discriminatory result should be avoided. [973 G-H; 974 A]

per Amarendra Nath Sen, J.: Rule 34 only lays down the

procedure to be followed by any person who intends to be heard at the hearing of a petition; it does not deal with the right of any person to appear at the hearing nor does it create any such right in any person. Rule 9B in part III of the Rules makes specific provision in that behalf. [994 E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 4065- 67 of 1982.

Appeals by special leave from the judgments and orders dated 30.11.81 and 14.9.1981 of the Madras High Court in O.S.A. No. 148 of 1981 and Company Appeal Nos. 880-881 of 1981.

M.K. Ramamurthy, Somyaji, Ambrish Kumar, Miss Nitya Ramakrishnan for the Appellants in CA. No. 4065/82.

G. Vasanta Pai, S.N. Kacker, O.C. Mathur and D.N. Mishra for the Respondents in CA. 4065 of 1982 and for the Appellants in CA. Nos. 4066-67/82.

R.K Garg, A.T.M. Sampath and P.N. Ramalingam for the Appellants in CA. Nos. 4066-67/82.

V.M. Tarkunde, E.C. Aggarwala, R. Satish, V.K. Pandia and T.S. Vishwanath Rao for the Respondent Nos. 6-9 and 11.14 in CA. Nos. 4066-67 of 1982.

O.C. Mathur, Ravinder Narain and D.N. Mishra for the Respondents in C.A. 4065 of 1982.

M. Natesan and M. Raghuraman for the Intervener. The following Judgments were delivered BHAGWATI J. These three appeals by special leave raise a short but interesting question of law relating to the right of workmen employed in a company to appear and oppose a petition for winding up of the company. The controversy between the parties arises out of a petition for winding up a private limited company called Ramakrishna Industries (P) Limited (hereinafter referred to as a company). The Company has three units, one a textile mill in the name of Jotie Mills which employs about 500 workmen, another, a workshop for manufacture of textile and other machinery which employs about 400 workmen and the third a printing press which brings out a Tamil daily, called "Nav India" and employs about 100 workmen. It is a closed company in which there are two groups of shareholders, one group consisting of respondent Nos. 1 to 5 and the other consisting of respondent Nos 7 to 14. Respondent Nos. 1 to 5 hold 608 shares and respondent nos. 7 to 14 687 shares while the remaining 300 shares belong to a Trust in which both the groups are equally represented on the Board of Trustees. It appears that a serious dispute arose between Respondent nos. 1 to 5 on the one hand and Respondent nos. 7 to 14 on the other in regard to the management of the affairs of the company and since the dispute could not be settled amicably, Respondent nos. 1 to 5 filed a petition for winding up the Company on two grounds set out in clauses (e) and (f) of section 433 of the Companies Act, 1956. One ground was that the Company is unable to pay its debts and the other was that it is just and equitable that the Company should be wound up. The winding up

petition was filed by Respondent nos. 1 to 5 not only as contributories but also as creditors of the Company. Immediately on filing the winding up petition on 13th July 1981, Respondent nos. 1 to 5 submitted an application, being company application no. 844 of 1981, for an interim injunction and on this application, an ex parte order was made by the learned Company Judge restraining the Company which was respondent no. 6 in the winding up petition as also Respondent nos. 7 to 14 from borrowing any monies from banks, financial institutions or others without the prior permission of the Court and from alienating and/or creating any charge or encumbrance over any of the assets of the Company in its various enterprises. The immediate consequence of this ex parte order of injunction was that the Jotie Mills Employees Co-operative Store stopped issuing any provisions or supplies to the workmen from 18th July 1981 and the workmen were also unable from 23rd July 1981 to enjoy the benefits under the Employees State Insurance Scheme. The workmen also apprehended that on account of the ex parte order of injunction, they may not be able to get their wages which were due to be paid on 7th August 1981. Now some of the workmen were members of the National Textile Workers Union, some others were members of the Coimbatore District National Textile Employees Union while still some others were members of the Coimbatore District Engineering Workers Union. The Coimbatore District National Textile Employees Union with a view to protecting the interests of its members made an application, being company application no. 880/81 on 28th July 1981 for impleading itself as a respondent. The Coimbatore District Engineering Workers Union also made a similar application to the Company Judge on the same day, being Company Application No. 881 of 1981. So also the National Textile Workers Union made an application, being company application no. 883 of 1981, to the Company Judge on 29th July 1981 praying that it may be permitted to intervene in the winding up petition and that the ex parte order of injunction may be vacated. Respondent nos. 1 to 5 filed their affidavit in reply to these three applications and the principal contention raised by them was that the National Textile Workers Union, the Coimbatore District National Textile Employees Union and the Coimbatore District Engineering Workers Union had no locus standi to appear and oppose the winding up petition, since the workmen who were members of these three unions were neither creditors nor contributories of the company. These three applications came up for hearing before the Company Judge and after hearing full arguments on both sides, the Company Judge made an order dated 14th September 1981 rejecting all the three applications on the ground that under the Companies Act 1956, the workmen had no right either to get impleaded in the winding up petition or even to intervene in the winding up petition. The Company Judge followed the decision of a single Judge of the Bombay High Court in In re Edward Textiles Limited(1) in taking this view. The Company Judge conceded and this concession had to be made because of the observations of this Court in Fertilizer Corporation Kamgar Union and Ors. v. Union of India and Ors.(2) and of the High Court of Bombay in Bhalchandra Dharamaji Makaji v. Alcock Ashdown and Co. Ltd.(3) that the factors to be taken into account by the court while disposing of a winding up petition would include the interest of the workmen of the company, but observed that "the duty of the court to consider the interest of the worker of the company would not create a right in such workers to intervene in the absence of express provision in the Companies Act and in the teeth of such right specifically conferred only on the creditors and contributories." The National Textile Workers Union thereupon preferred an appeal before a Division Bench of the High Court but the Division Bench also took the same view and held that though it was undoubtedly true that while disposing of a winding up petition preferred on the ground that it is just and equitable to wind up the company, the court must consider the

interest of the workmen, it does not mean "that everybody who is remotely interested in the company can file an application to implead himself as a party in the petition for winding up" and "merely because in considering the question whether to wind up or not the court has also to take the larger point of public interest including that of the workers into consideration, it will not clothe the Unions with any locus standi to file applications for impleading themselves as parties or to be heard in the company petition." The Division Bench accordingly rejected the appeal and this led to the filing of Special Leave Petition No. 9661 of 1981 in this Court by the National Textile Workers Union. The Coimbatore District National Textile Employees Union and the Coimbatore District Engineering Workers Union did not prefer any appeal against the judgment of the Company Judge before the Division Bench of the High Court but they preferred Special Leave Petitions Nos. 10248 and 10249 of 1981 directly in this Court against the judgment of the Company Judge. We issued notice on all the three Special Leave Petitions and when the Respondents appeared before us, we intimated to them that we will dispose of the entire controversy between the parties on the Special Leave Petitions and that is how full and detailed arguments were advanced before us at the hearing of the Special Leave Petitions. We now proceed to dispose of these cases after granting special leave to appeal in each of the three special leave petitions.

Before we proceed to discuss the basic and vital question that arises for consideration in these appeals, it is necessary to set out a few further facts which may have some bearing on the final relief to be granted by us. On the same day on which respondent Nos. 1 to 5 filed the winding up petition and applied for interim injunction, they also made an application, being Company Application No. 843 of 1981, praying for appointment of Provisional Liquidator of the company. Respondent Nos. 6 to 14 appeared at the time when this application was presented and asked for time to file their affidavit in reply and time was granted by the Company Judge upto 10th August, 1981. Respondent Nos. 6 to 14 thereafter filed an affidavit in reply on 10th August, 1981 and after hearing both sides in a bitterly contested argument, the Company Judge made an order on 7th December 1981 appointing the official liquidator as Provisional Liquidator of the Company. The workmen represented by the National Textile Workers' Union, the Coimbatore District National Textiles Employees' Union and the Coimbatore District Engineering Workers' Union did not have an opportunity of being heard before the order appointing Provisional Liquidator was passed by the Company Judge, because as pointed out above, their applications for impleading themselves as parties in the winding up petition or in any event, for being allowed to intervene in the winding up petitions were rejected by the Company Judge on 14th September, 1981 and this rejection was confirmed by the Division Bench of the High Court on 30th September 1981. The result was that the order appointing Provisional Liquidator of the company came to be made by the Company Judge without any opportunity being given to the workmen represented by these three Unions to appear and show cause against the making of such order. It may be pointed out that the order appointing Provisional Liquidator was stayed for some time by the Division Bench of the High Court in an appeal preferred by respondent Nos. 6 to 14 but the application for stay was ultimately dismissed by the Division Bench and the Official Liquidator immediately thereafter took charge of the affairs of the company.

We may now proceed to consider the question that arises for determination before us. The question, briefly stated, is: when a petition for winding up a company is filed in court, are the workmen of the company entitled to ask the court to implead them as parties in the winding up petition or to allow

them to appear and contest the winding up petition or they have no locus standi at all so far as winding up petition is concerned and they must helplessly watch the proceedings as outsiders though the result of the winding up petition may be to bring about termination of their services and thus affect them vitally by depriving them of their means of livelihood ? It is a well established principle of administrative law that no order entailing adverse civil consequences can be made by the State or a public authority unless the person affected is afforded an opportunity to show cause against the making of such order by controverting the allegations made against him and presenting his own positive case, but in case of a winding up petition, it was contended on behalf of respondents Nos. 2 to 5, that though the result of successful termination of a winding up petition may, and in most cases, would be to put an end to the services of the workmen and throw them on the streets, they are not entitled to an opportunity to be heard against the making of the winding up order, because under the Companies Act 1956, it is only the creditors and contributories and in certain specified contingencies, the Registrar and the Central Government who can present a petition for winding up a company and the workmen have no locus at all in a winding up petition except where their dues have remained unpaid in which case they would be entitled to be heard in a winding up petition, but that would be in their capacity as creditors and not as workmen. It was also urged on behalf of respondent Nos. 1 to 5 that in any event, even if workmen have a right to intervene in a winding up petition in the present case, it was not the workmen who had applied for being heard in the winding up petition but the applications were made by the three unions and since a Union of workmen has no right to be heard, the applications of the three unions were rightly rejected. This last contention of respondent Nos. 1 to 5 is obviously untenable and it need not detain us. It is incontrovertible- and this indeed could not be disputed on behalf of respondent Nos. 1 to 5-that the applications were made by the Unions on behalf of the workmen represented by them and though made in the name of the unions, the applications were in reality and substance applications of the workmen who were members of each respective union. The controversy therefore really is not whether the unions of workmen are entitled to be heard in a winding up petition but whether the workmen have such right when a winding up petition is filed against a company. We may straight away point out that though the applications made by the Coimbatore District National Textile Employees and Coimbatore District Engineering Workers Union were for impleading them as parties in the winding up petition, it was conceded on behalf of these two unions that they were not pressing their applications for being added as parties, because there was no procedure known to Companies Act 1956 for any one to be impleaded as a party in a winding up petition and even the creditors and contributories were not entitled to be added as parties and they were claiming only the right to appear and be heard in support or opposition to the winding up petition. The contention of these two unions was therefore a limited one and that was also the narrow contention advanced on behalf of National Textile Workers' Union, namely, that the workmen represented by them were entitled to intervene in the winding up petition and to be heard before any order was made by the Company Judge in the winding up petition, because any such order might affect the interest of the workmen. It was pointed out on behalf of the three unions that even if an interim order were to be made by the Company Judge which might prejudicially affect the workmen by freezing the resources of the company so as to make it difficult for the company to pay the wages of the workmen or bringing about stoppage of the business of the company resulting in non-payment or diminution of their wages or termination of their services, the workmen must surely be afforded an opportunity to be heard before any such interim order is made. It would be contrary to every recognised principle

of fair judicial procedure and violative of the rule of audi alteram partem which constitutes one of the basic principles of natural justice to deny to the workmen the right to be heard before an order is made by the Company Judge prejudicially affecting their interest. Additionally, reliance was also placed on behalf of the three unions on Rule 34 of the Companies (Court) Rules 1959 which provides as follows:

> "Rule 34. Notice to be given by persons intending to appear at the hearing of petition-Every person, who intends to appear at the hearing of a petition, whether to support or oppose the petition, shall serve on the petitioner or his advocate, notice of his intention at the address given in the advertisement. The notice shall contain the address of such person, and be signed by him or his advocate, and save as otherwise provided by these rules shall be served (or if sent by post, shall be posted in such time as to reach the addressee) not later than two days previous to the day of hearing, and in the case of a petition for winding up not later than five days previous to the day of hearing. Such notice shall be in Form No. 9, with such variations as the circumstances may require, and where such person intends to oppose the petition, the grounds of his opposition, or a copy of his affidavit if any, shall be furnished along with the notice. Any person who has failed to comply with this rule shall not except with the leave of the Judge, be allowed to appear at the hearing of the petition."

The argument urged on behalf of the three unions was that this rule confers a right on the workmen to appear at the hearing of the winding up petition either to support it or to oppose it and clearly recognises that they are entitled to intervene and be heard in the winding up petition. Respondent Nos. 1 to 5 however seriously challenged the locus of the workmen to appear and be heard in the winding up petition and contended that so far as the winding up petition is concerned, it is only the creditors and contributories and in certain specified contingencies the Registrar and the Central Government who are entitled to appear at the hearing of the winding up petition whether to support or to oppose it. The right to be heard in the winding up petition, contended respondent Nos. 1 to 5 is governed solely by the provisions of the Companies Act 1956 and since no such right is conferred on the workmen by any provision of the Companies Act 1956, the workmen are not entitled to intervene in the winding up petition, even though the making of a winding up order may result in termination of their services. The workmen, according to respondent Nos. 1 to 5, could appear at the hearing of the winding up petition and make their submissions only in their capacity as creditors if any part of their wages remained unpaid by the company but they had no locus to appear in their capacity as workers. These rival contentions urged on behalf of the parties raised an interesting question of law which we shall now proceed to consider.

There is one very important consideration which we must bear in mind while dealing with this question and it is necessary to advert to it at the present stage. The concept of a company has undergone radical transformation in the last few decades. The traditional view of a company was that it was a convenient mechanical device for carrying on trade and industry, a mere legal frame work providing a convenient institutional container for holding and using the powers of company management. The company law was at that time conceived merely as a statute intended to regulate the structure and mode of operation of a special type of economic institution called company. This

was the view which prevailed for a long time in juristic circles all over the democratic world including United States of America, United Kingdom and India. That was the time when the doctrine of laissez faire held sway and it dominated the political and economic scene. This doctrine glorified the concept of a free economic society in which State intervention in social and economic matters was kept at the lowest possible level. But gradually this doctrine was eroded by the emergence of new social values which recognised the role of the State as an active participant in the social and economic life of the citizen in order to being about general welfare and common good of the community. With this change in socio-economic thinking, the developing role of companies in modern economy and their increasing impact on individuals and groups, through the ramifications of their activities, began to be increasingly recognised. It began to be realised that the company is a species of social organisation, with a life and dynamics of its own and exercising a significant power in contemporary society. The new concept of corporate responsibility transcending the limited traditional views about the relationship between management and shareholders and embracing within its scope much wider groups affected by the trading activities and other connected operations of companies, emerged as an important feature of contemporary thought on the role of the corporation in modern society. The adoption of the socialistic pattern of society as the ultimate goal of the country's economic and social policies hastened the emergence of this new concept of the corporation. The socio-economic objectives set out in Part IV of the Constitution have since guided and shaped this new corporate philosophy. We shall presently refer to some of the Directive Principles of State Policy set out in Part IV which clearly show the direction in which the corporate sector is intended to move and the role which it is intended to play in the social and economic life of the nation. But, one thing is certain that the old nineteenth century view which regarded a company merely as a legal device adopted by shareholders for carrying on trade or business as proprietors has been discarded and a company is now looked upon as a socio- economic institution wielding economic power and influencing the life of the people.

It is now accepted on all hands, even in predominantly capitalist countries, that a company is not property. The traditional view that the company is the property of the shareholders is now an exploded myth. There was a time when a group controlling the majority of shares in a company used to say: "This is our concern. We can do what we like with it." The ownership of the concern was identified with those who brought in capital. That was the outcome of the property-minded capitalistic society in which the concept of company originated. But this view can no longer be regarded as valid in the light of the changing socio-economic concepts and values. Today social scientists and thinkers regard a company as a living, vital and dynamic, social organism with firm and deep rooted affiliations with the rest of the community in which it functions. It would be wrong to look upon it as something belonging to the shareholders. It is true that the shareholders bring capital, but capital is not enough. It is only one of the factors which contributes to the production of national wealth. There is another equally, if not more, important factor of production and that is labour. Then there are the financial institutions and depositors, who provide the additional finance required for production and lastly, there are the consumers and the rest of the members of the community who are vitally interested in the product manufactured in the concern. Then how can it be said that capital, which is only one of the factors of production, should be regarded as owner having an exclusive dominion over the concern, as if the concern belongs to it? A company, according to the new socio-enconomic thinking, is a social institution having duties and

responsibilities towards the community in which it functions. The Supreme Court pointed out as far back as 1950 in Chiranjeetlal v. Union of India:

> "We should bear in mind that a corporation, which is engaged in production of commodities vitally essential to the community, has a social character of its own and it must not be regarded as the concern primarily or only of those who invest their money in it."

Pt. Govind Ballabh Pant also pointed out in one of his speeches:

> "...industry is not an isolated concern of the shareholders or the managing agents alone. It reacts on the entire people in the country, on their economic conditions, on employment or standard of living, on everything that conduces to the material well being."

The same view was also expressed at the International Seminar on Current Problems of Corporate Law, Management and Practice held in New Delhi where it was observed that "an enterprise is a citizen. Like a citizen it is esteemed and judged by its actions in relation to the community of which it is a member as well as by its economic performance." That is why it is regarded as one of the paramount objectives of a company to bring about maximisation of social welfare and common good. This necessarily involves reorientation of thinking in regard to the duties and obligations of a company not only vis-a-vis the shareholders but also vis-a- vis the rest of the community affected by its operations such as workers, consumers and the Government representing the society. There was at one time a serious controversy between two schools of thought, one represented by Adolf Berle and the other by Professor Dodd, as regards the nature of duties and obligations owed by directors representing management of a company. Adolf Berle took the view that directors are trustees only for shareholders-that is the traditional view which directly flows from a purely capitalistic approach which identifies ownership and dominion with capital-while Prof. Dodd believed that directors are trustees not only for shareholders but also for the entire community. Ultimately, however, in his subsequent book, "Twentieth Century Capitalist Revolution", Adolf Berle conceded that Prof. Dodd was right and that modern directors are not limited to running business enterprise for maximum profit motive alone, but are in fact administrators of community system or of a social institution. That is why we find that in recent times there is considerable thinking on the subject of social responsibilities of corporate management and it is now acknowledged even in highly developed countries like the United States and England that maximisation of social welfare should be the legitimate goal of a company and shareholders should be regarded not as proprietors of the company, but merely as suppliers of capital entitled to no more than reasonable return and the company should be responsible not only to shareholders but also to workers, consumers and the other members of the Community and should be guided by considerations of national economy and progress. This new concept of a Company was felicitously expressed by Desai, J sitting as a Judge of the Gujarat High Court in Panchmahal Steel Ltd. v. Universal Steel Traders(1) in the following words:

> "Time-honoured approach that the company law must safeguard the interest of investors and shareholders of the company would be too rigid a framework in which it can now operate. New problems call for a fresh approach. And in ascertaining and devising this fresh approach, the objective for which the company is formed may provide a guide line for the direction to be taken. As Prof. De Wool of Belgium puts it, the company has a three-fold reality economic, human and public-each with its own internal logic. The reality of the company is much broader than that of an association of capital; it is a human working community that performs a collective action for the common good. In recent years a debate is going on in the world at large on the functions and foundations of corporate enterprise. The "preservationists" and the "reformers" are vigorously propounding their views on the possible reform of company, the modern trend emphasising the public interest in corporate enterprise."

The learned judge elaborated this "modern trend" by quoting from Prof. Gower's book on "The Principles of Modern Company Law": "One section of the community whose interests as such are not afforded any protection, either under this head or by virtue of the provisions for investor or creditor protection, are the workers and employees of the taken-over company. This is a particularly unfortunate facet of the principle that the interest of the company means only the interest of the members and not of those whose livelihood is in practice much more closely involved."

We are concerned in these appeals only with the relationship of the workers vis-a-vis the company. It is clear from what we have stated above that it is not only the shareholders who have supplied capital who are interested in the enterprise which is being run by a company but the workers who supply labour are also equally interested because what is produced by the enterprise is the result of labour as well as capital. In fact, the owners of capital bear only limited financial risk and otherwise contribute nothing to production while labour contributes a major share of the product While the former invest only a part of their moneys, the latter invest their sweat and toil, in fact their life itself. The workers therefore have a special place in a socialist pattern of society. They are no more vendors of toil, they are not a marketable commodity to be purchased by the owners of capital. They are producers of wealth as much as capital. They supply labour without which capital would be impotent and they are, at the least, equal partners with capital in the enterprise. Our constitution has shown profound concern for the workers and given them a pride of place in the new socio-economic order envisaged in the Preamble and the Directive Principles of State Policy. The Preamble contains the profound declaration pregnant with meaning and hope for millions of peasants and workers that India shall be a socialist democratic republic where social and economic justice will inform all institutions of national life and there will be equality of status and opportunity for all and every endeavour shall be made to promote fraternity ensuring the dignity of the individual. Every one is assured under Article 14 equality before the law and equal protection of the laws and implicit in this provision is the guarantee of equal remuneration for men and women for some work or work of a similar nature. Traffic in human beings and begar and other similar forms of forced labour are prohibited under Article 23 and Article 24 mandates that no child below the age of 14 may be employed in any factory or mine or engaged in any other hazardous employment. These two Articles recently came up for construction before this Court in People's Union for Democratic Rights & Ors.v. Union of India & Ors.(1) Article 38 imposes obligation on the State, albeit unenforceable in a

court of law, to "strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which social justice shall inform all the institutions of the national life". This is followed by Article 39 which inter alia obliges the State to direct its policy towards securing that the citizens, men and women equally have the right to an adequate means of livelihood, the ownership and control of the material resources of the community are so distributed as best to subserve the common good, the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment, there is equal pay for equal work for both men and women and the health and strength of workers, men and women and the tender age of children are not abused and citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. The State is directed by Article 41 to make effective provision, within the limits of its economic capacity and development, for securing the right to work and Article 42 requires the State to make provision for securing just and humane conditions of work and for maternity relief. Article 43 provides that the State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, a living wage, conditions of work ensuring decent standard of life and full enjoyment of leisure and social and cultural opportunities. Then follows Article 43A which is intended to herald industrial democracy and in the words of Krishna Iyer, J. mark "the end of industrial bonded labour". That Article says that the State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry. The constitutional mandate is therefore clear and undoubted that the management of the enterprise should not be left entirely in the hands of the suppliers of capital but the workers should also be entitled to participate in it, because in a socialist pattern of society, the enterprise which is a centre of economic power should be controlled not only by capital but also by labour. It is therefore idle to contend thirty two years after coming into force of the Constitution and particularly after the introduction of Article 43A in the Constitution that the workers should have no voice in the determination of the question whether the enterprise should continue to run or be shut down under an order of the court. It would indeed be strange that the workers who have contributed to the building of the enterprise as a centre of economic power should have no right to be heard when it is sought to demolish that centre of economic power.

The principal argument urged against the right of the workers to be heard in the winding up petition was that under the scheme of the Companies Act 1956, it is only the creditors and contributories who are entitled to appear and be heard in a winding up petition. The Companies Act 1956 is a self-contained code exhaustive in regard to all matters relating to companies and since there is no provision in that Act conferring on the workers a right to intervene in a winding up petition, no such right can be spelt out in their favour outside the provisions of that Act Respondent Nos. 6 to 9 relied upon various provisions of the Companies Act 1956 in support of their contention that the workers have no locus in a winding up petition but we do not think these provisions lend any support to that contention. The first provision relied upon by Respondent Nos. 6 to 9 was section 439 which inter alia provides as to who shall be entitled to make an application for winding up of a company. It is no doubt true that this section confers the right to present a winding up petition only on certain specifically enumerated persons and the workers are not included in that enumeration and therefore obviously, the workers have no right to prefer a petition for winding up of a company. The right to apply for winding up of a company being a creature of statute, none other than those on whom the

right to present a winding up petition is conferred by the statute can make an application for winding up a company and no such right having been conferred on the workers, they cannot prefer a winding up petition against a company. But from this exclusion of the workers from the right to present a winding up petition, it does not follow as a necessary consequence that the workers have no right to appear and be heard in a winding up petition filed by one or more of the persons specified in section 439. It may be that the workers have no right to present a winding up petition against the company, but if a winding up petition is properly filed by any of the persons entitled to do so under section 439, they may still be entitled to appear and be heard in support or opposition to the winding up petition. That would depend upon whether their interest is likely to be affected by any order which may be made on the winding up petition. The next section relied upon by respondent Nos. 6 to 9 was section 440 which says that where a company is being wound up voluntarily or subject to the supervision of the court, a petition for its winding up by court may be presented by any person authorised to do so under section 439 or the official Liquidator, but the court shall not make a winding up order unless it is satisfied that the voluntary winding up or winding up subject to the supervision of the court cannot be continued with due regard to the interests of the creditors or contributories or both. It was urged on behalf of respondent Nos. 6 to 9 that this section shows that the winding up of a company is intended to be for the benefit of the creditors and the contributories and the interest of the workers has no place at all in the winding up and is not required to be taken into account in winding up the company. This argument is also in our opinion futile because what this section deals with is the stage after the winding up has commenced, whether voluntary or subject to the supervision of the court, while we are concerned with a stage anterior to the making of a winding up order. There can be little doubt that the object of winding up being to realise the assets of the company, pay the preferential claims and expenses of liquidation and then discharge the debts of the creditors in full or pari passu and if after paying to the creditors, there is any surplus, distribute the same among the shareholders by way of dividend and ultimately dissolve the company, it is only the creditors and the contributories who would be affected by any action taken in the course of winding up of the company and that is why we find several provisions in the Companies Act 1956 which speak of winding up being carried on with due regard to the interest of the creditors and the contributories or after consultation with them or confer rights on the creditors and the contributories to make applications for diverse purposes with a view to effective winding up of the company. Such provisions are for instance to be found in section 464, 466, 478, 517, 542, 543, 549, 556, 557 and 560. These provisions apply at a stage after a winding up order is made by the court or the voluntary winding up has commenced or an order is made for continuance of winding up subject to the supervision of the court, when winding up having been ordered or resolved, what remains to be done is only to wind up the company, pay the creditors and if there is any surplus, distribute the same among the shareholders. These provisions do not deal with a situation prior to the making of the winding up order when the question is whether the company should be ordered to be wound up or not. While the company is continuing to subsist, the workers would be employed in the enterprise which is being run by the company and they would be earning their livelihood from such employment, but if an order for winding up is made, their services would, except in cases where the business of the company is continued, stand terminated by reason of sub- section (3) of section 445 which provides that a winding up order "shall be deemed to be notice of discharge to the officers and employees of the company, except when the business of the company is continued." Ordinarily when a winding up order is made, the business of the company

would cease to continue and even if the Liquidator is authorised to carry on the business, such continuance would be only for the beneficial winding up of the company and the logical and inevitable end would be the ultimate discontinuance of the business. The making of a winding up order on a petition for winding up would therefore almost certainly have an adverse consequence on the workers in as much as the continuance of their service would be seriously jeopardised and their right to work and earn their livelihood would be disastrously imperilled. Now it is an elementary principle of law, well settled as a result of several decisions of this Court and particularly the decisions in State of Orissa v. Dr. Bini Pani,(1) A.K. Kraipa v. Union of India,(2) and Maneka Gandhi v. Union of India(3) that no order involving adverse civil consequences can be passed against any person without giving him an opportunity to be heard against the passing of such order and this rule applies irrespective of whether the proceeding in which it is passed is a quasi judicial or an administrative proceeding. The audi alterum partem rule which mandates that no one shall be condemned unheard is one of the basic principles of natural justice and if this rule has been held to be applicable in a quasi-judicial or even in an administrative proceeding involving adverse civil consequences, it would a fortiori apply in a judicial proceeding such as a petition for winding up of a company. It is difficult to imagine how any system of law which is designed to promote justice through fairplay in action can permit the court to make a winding up order which has the effect of bringing about termination of the services of the workers without giving them an opportunity of being heard against the making of such order. It would be violative of the basic principle of fair procedure and unless there is express provision in the Companies Act 1956 which forbids the workers from appearing at the hearing of the winding up petition and participating in it, the workers must be held entitled to appear and be heard in the winding up petition. That is the minimum requirement of the principle of audi alterum partem which cannot be ignored save on pain of invalidation of the order of winding up. Here we do not find any provision in the Companies Act 1956 which in so many terms excludes the workers from appearing at the hearing of the winding up petition with a view to supporting or opposing it and the only ground on which the right of the workers to appear and be heard in the winding up petition is disputed is that there is no specific provision in the Act entitling them to do so and the right to apply for winding up as also to participate in the proceedings in the course of winding up is conferred only on the creditors and the contributories. But, we have pointed out above that merely because the right to apply for winding up a company is not given to the workers it does not mean that they cannot appear to support or oppose a winding up petition which is properly filed by one or the other persons specified in section 439. There would, in fact, be no point in conferring the right to apply for winding up of a company on the workers since they cannot have any interest in demolishing the enterprise which is the source of their livelihood and particularly when the only effect of the winding up order would be to render them unemployed and to bring about winding up of the company for the benefit of the creditors and the contributories. So also the circumstance that the right to be consulted or to make applications in the course of the winding up of a company is conferred only on the creditors and the contributories does not in any way militate against the right of the workers to appear and be heard in the winding up petition because once the winding up order is made, the assets of the company have to be realised, the creditors have to be paid and if there is any surplus it has to be distributed among the contributories and therefore at that stage it is only the creditors and the contributories who have an interest and that is why in the course of the winding up it is the creditors and the contributories who have been given a voice. That has nothing to do with the question whether the company should be

wound up or not which is a question in which the workers are vitally concerned and on which they must obviously be heard before any decision is taken by the court.

This view which we are taking is in accord with the decision of the High Court of Bombay, namely, Bhalchandra Dharmajee Makaji and Ors. v. Alcock Ashdown & Co. Ltd. & Ors. where the Company Judge, while disposing of an application for appointment of Official Liquidator as Provisional Liquidator, pending the hearing and final disposal of the main petition for winding up, said:

> "After the amendment of sections 397 and 398 of the Companies Act by sections 10 and 11 of the Companies (Amendment) Act (LIII of 1963), it would appear that the affairs of the company have to be conducted not only in the best interest of its members for their profit but also in a manner which is not prejudicial to public interest. The element of public interest enters into the management of the companies after 1963. The modern corporation has become the accepted instrument of social policy, because it affects a large part of the economic life of the community. It has become an instrument for the improvement of the economic standards of the people and for economic growth of the nation. Society depends for some of its needs on corporate enterprise. It has therefore an interest in its stability and efficiency as an economic institution. The element of public interest also arises from the responsibility for ensuring a minimum wage to the numerous employees in the corporate sector. It is necessary to see that people who put their labour and lives into a concern get fair wages, continuity of employment and a recognition of their jobs where they have trained themselves to highly skilled and specialised work. In deciding whether the court should wind up a company or change its management the court must take into consideration not only the interest of the shareholders and creditors but also public interest in the shape of the need of the community and the interest of the employees. This, in my opinion, is the requirement of sections 397 and 398 of the Companies Act."

If in deciding whether the court should wind up a company or change its management the court must take into consideration not only the interest of the shareholders and creditors but also amongst other things the interest of the workers, it is axiomatic that the workers must have an opportunity of being heard for projecting and safeguarding their interest before a winding up order is made by the court. The Division Bench of the Madras High Court has of course conceded in the judgment under appeal that "in considering the question whether to wind up or not the court has to take the larger point of public interest including that of the workers into consideration" but that in the opinion of the Division Bench would not "clothe the workers with any locus standi to file an application for being heard in the winding up petition. With the greatest respect to the learned Judges constituting the Division Bench, we must express our emphatic disapproval of this approach. It amounts to the court telling the workers: "No doubt in deciding whether the company should be wound up or not, we are bound to take into consideration your interest but you need not be heard because we know best what your interest requires." This paternalistic attitude towards the workers that though they are most vitally concerned and their interest is required to be taken into consideration, they need not be heard because the court in its wisdom knows, presumably more

than the workers themselves, what is in their interest and they should leave their fate into the hands of the court without even a whisper of an argument sounds like a relic of a by-gone age and must be abandoned. If the interest of the workers has to be taken into account, the workers must have a say because they know best where their interest lies and they must have an opportunity of placing before the court relevant material bearing upon their interest.

Considerable reliance was however placed on behalf of respondent Nos. 6 to 9 on the statement of the law on this point contained in the leading text books on company law. Respondent Nos. 6 to 9 drew our attention to Palmer Company Precedents (17th Edn.) volume 2 at page 77 where it is stated that any creditor or shareholder may appear to support or oppose the petition but no one else can do so even if he has an indirect interest in the continued existence of the company. So also in Buckley on the Companies Act (14th Edn.) at page 546 the law has been stated in the following terms, namely, "the only persons entitled to be heard are the company, its creditors and contributories .. the court may in its discretion hear other persons who have an interest in order to learn what public grounds there are in favour of, or in opposition to, the winding up.. but such persons can be heard only as amici curiae and cannot appeal." Our attention was also invited to Halsbury's Laws of England 4th Ed. Vol. 7 where a similar statement of the law is to be found at page 614 paragraph 1028. Now it is undoubtedly true that according to the statement of the law contained in these three leading text books, it is only the company, the creditors and the contributories who are entitled to appear on the winding up petition and no other persons have a right to be heard, but this statement of the law is based on the old decision in Re. Bradford Navigation Company which was carried in appeal and decided as Re. Bradford Navigation Company. This decision given by the English Courts over a hundred years ago when a company was regarded merely as a legal device brought into being as a result of a contractual arrangement between the shareholders for the purpose of carrying on trade or business and the workers were looked upon as no more than employees of the company working under a master and servant relationship and the interest of the public as consumers or otherwise was a totally irrelevant consideration and it can have no validity in the present times when the entire concept of a company has changed and it has been transformed into a dynamic socio-economic institution in which capital and labour are both equal partners, possibly with heavy weightage in favour of labour and the interest of the public as consumers as also the general welfare and common good of the community constitute a vital consideration. We cannot allow the dead hand of the past to stifle the growth of the living present. Law cannot stand still; it must change with the changing social concepts and values. If the bark that protects the tree fails to grow and expand alongwith the tree, it will either choke the tree or if it is a living tree, it will shed that bark and grow a new living bark for itself. Similarly, if the law fails to respond to the needs of changing society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth. Law must therefore constantly be on the move adopting itself to the fast changing society and not lag behind. It must shake off the inhibiting legacy of its colonial past and assume a dynamic role in the process of social transformation. We cannot therefore mechanically accept as valid a legal rule which found favour with the English courts in the last century when the doctrine of laissez faire prevailed. It may be that even today in England the courts may be following the same legal rule which was laid down almost a hundred years ago, but that can be no reason why we in India should continue to do likewise. It is possible that this legal rule might still be finding a place in the English text books because no case

like the present one has arisen in England in the last 30 years and the English courts might not have had any occasion to consider the acceptability of this legal rule in the present times. But whatever be the reason why this legal rule continues to remain in the English text books, we cannot be persuaded to adopt it in our country, merely on the ground that it has been accepted as a valid rule in England. We have to build our own jurisprudence and though we may receive light from whatever source it comes, we cannot surrender our judgment and accept as valid in our country whatever has been decided in England. The rule enunciated in re: Bradford Navigation Company case (supra) does not commend itself to us and though it has been followed by a single Judge of the Bombay High Court in re Edward Textiles Limited (supra), we do not think it represents correct law.

We may also mention that on behalf of the appellants some reliance was placed on Rule 34 of the Companies (Court) Rules 1959 in support of their contention that not only the creditors and the contributories but also other persons are entitled to appear at the hearing of a winding up petition and the workers cannot therefore be excluded. This Rule provides that every person who intends to appear at the hearing of a winding up petition, whether to support or to oppose it, shall serve on the petitioner or his advocate notice of his intention at the address given in the advertisement and such notice shall be in form No. 9 and where such person intends to oppose the winding up petition, the grounds of his opposition or a copy of his affidavit if any shall be furnished along with the notice. The appellants contended that under this Rule any one who wants to appear in a winding up petition can do so, provided he serves on the petitioner or his advocate, notice of his intention at the address given in the advertisement and complies with the other requirements of this Rule and therefore if the workers desire to appear at the hearing of the winding up petition, they are entitled to do so. The answer given on behalf of respondent Nos. 6 to 9 to this contention was that Rule 34 is applicable only after a winding up petition is admitted and an order is made for advertisement of the winding up petition and it has no application at the stage when the winding up petition is before the court only for the purpose of deciding whether or not it should be admitted and advertised. It was also urged on behalf of respondent Nos. 6 to 9 that in any event Rule 34 does not confer a right on any and every person to appear at the hearing of the winding up petition, intends so to appear he must take various steps set out in that Rule beginning with service of notice on the petitioner or his advocate before he can be heard on the winding up petition. We are inclined to agree with this contention of respondent Nos. 6 to 9. It is obvious that the object and purpose of Rule 34 is not to confer a right on any one to appear at the hearing of the winding up petition but merely to provide the procedure to be followed before a person who is otherwise entitled to appear in a winding up petition can be heard in support or opposition of the winding up petition. This rule cannot therefore be relied upon by the appellants as conferring a right on the workers to appear at the hearing of a winding up petition. But, one thing is clear that this Rule does postulate that apart from the creditors and contributories there may be other persons who are entitled to appear at the hearing of the winding up petition because it is not confined in its application to the creditors and contributories but uses the generic impression "every person" and to this limited extent it does undoubtedly lend some support to the contention of the appellants.

We are therefore of the view that the workers are entitled to appear at the hearing of the winding up petition whether to support or to oppose it so long as no winding up order is made by the court. The workers have a locus to appear and be heard in the winding up petition both before the winding up

petition is admitted and an order for advertisement is made as also after the admission and advertisement of the winding up petition until an order is made for winding up the company. If a winding up order is made and the workers are aggrieved by it, they would also be entitled to prefer an appeal and contend in the appeal that no winding up order should have been made by the Company Judge. But when a winding up order is made and it has become final, the workers ordinarily would not have any right to participate in any proceeding in the course of winding up the company though there may be rare cases where in a proceeding in the course of winding up, the interest of the workers may be involved and in such a case it may be possible to contend that the workers must be heard before an order is made by the court. We think that even when an application for appointment of a provisional liquidator is made by the petitioner in a winding up petition, the workers would have a right to be heard if they so wish because the appointment of a provisional liquidator may adversely affect the interest of the workers. But we may make it clear that neither the petitioner nor the court would be under any obligation to give notice of such application to the workers. It would be for the workers to apply for being heard and if they do so, they would be entitled to appear and be heard on the application for appointment of provisional liquidator. The workers therefore in the present case had a right to be heard before the provisional liquidator was appointed by the Company Judge but the circumstance that the workers were not so heard would not have the effect of vitiating the order appointing provisional liquidator, because on the view taken by us, it would be open to the workers to apply to the court for vacating that order and it would be for the court after considering the material produced before it and hearing the parties to decide whether that order should be vacated or not.

We accordingly allow the appeals, set aside the order, dated 14th September 1981 made by a Single Judge of the High Court and confirmed by the Division Bench on 13th September 1981 and direct that the three Unions shall be entitled to appear and be heard in the winding up petition. There will be no order as to costs of these appeals.

CHINNAPPA REDDY, J. I agree with my brother Bhagwati. I wish to add a few words not because I have much more to say, nor ever hope to say what he has said, more felicitously but because my brother Venkataramiah has disagreed and my regard for him compels me to add a few words of explanation.

> "... you take my life when you do take the means whereby I live" (Shakespeare: The Merchant Venice).
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> This indeed is the cry of the workers of Ramakrishna Industries (P) Ltd. who desire to be heard before the bread is taken out of their mouths. A battle royal appears to be raging between two rival groups of shareholders of the company. A petition for winding-up the company has been presented by one group of shareholders. And an application for the appointment of a provisional liquidator too. Quite apart from Sec. 445 (3) of the Companies Act which provides that the order for winding-up shall be deemed to be notice of discharge of the officers and employees of the company, except when the business of the company is continued, it is plain that the future of the workers is at stake and their right to work is in jeopardy as a result of the

presentation of the winding-up petition. Unlike the shareholders, to most of whom the shares they hold represent mere investments and to some of whom, the means to control the affairs of the company, to the workers, the life of the company is their own and its welfare is theirs. They are so intimately tied up that their interest in the survival and the well being of the company is much more than the interest of any shareholder-be he an investor, a 'corporate commander' or a corporate manipulator. How then is it possible that these persons-the workers whose very existence may be under threat of extinction-are to be denied a hearing, even if sought, when a petition for winding-up is presented to a court. It is said that the Companies Act does not contemplate a hearing to the workers. Only contributories and creditors may be heard it seems. Workers may not be allowed to throng the company court, only those who buy, sell and control shares and the usurers, the stockbrokers and the money brokers. Those who invest money may be heard, those who invest their lives may not be heard. No. The Companies Act does not prohibit a hearing to the workers. The Companies Act does not say who may be heard. The Companies Act does not provide for all situations. The Company Judge must decide some matters. He must use his imagination. He must use his discretion. But, without transgressing any legal norms Company Law is not a field in which 'finality is to be expected'. The law 'falls to be applied to a growing and changing subject matter'. This is recognised in the report of the Jenkins Committee in the United Kingdom and in this country, in the Statement of Objects and Reasons to the Companies Amendment Act of 1974. So, when new situations arise, as indeed they are bound to arise having regard to the complexities of growth and change, the Company Judge cannot retreat into the Corporate shell but must expand and expound. He must take the bull by the horns. as it were. He must recognise and expose the reality of the workers' interest and the dubiety of the interest of the others. He must acknowledge the transformation which corporations are presently undergoing from capitalist contrivances into socialist instruments.

No doubt, it was the creative genius of the bourgeoisie that invented the corporations and the companies, invested them with a corporate soul and a juristic personality and called them legal entities in order to meet the growing and complex demands of modern industry and management, to conduct business and commercial activities more conveniently and efficiently, and essentially to foster, consolidate and stabilise the capitalist system of society under whose aegis alone the exploiting class could thrive and continue to exploit the working class. Corporations became the symbol of competitive capitalism. But the historical processes continue at work. The movement is now towards socialism. The working classes, all the world over, are demanding 'workers' control' and 'Industrial Democracy'. They want security and the right to work to be secured. They want the control and direction of their lives in their own hands and not in the hands of the industrialists, bankers and brokers. Our constitution has accepted the workers' entitlement to control and it is one of the Directive Principles of State Policy that the State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any

industry. It is in this context of changing norms and waxing values that one has to judge the workers' demand to be heard.

And, what do the workers want? They want to be heard lest their situation be altered unheard. They invoke natural justice, so to claim justice. They invoke the same rule which the courts compel administrative tribunals to observe. Can courts say natural justice need not be observed by them as they know how to render justice without observing natural justice? It will surely be a travesty of justice to deny natural justice on the ground that courts know better. There is a peculiar and surprising misconception of natural justice, in some quarters, that it is, exclusively, a principle of administrative law. It is not. It is first a universal principle and, therefore, a rule of administrative law. It is that part of the judicial procedure which is imported into the administrative process because of its universality. "It is of the essence of most systems of justice-certainly of the Anglo-Saxon System-that in litigation both sides of a dispute must be heard before decision. 'Audi Alterum Partem' was the aphorism of St. Augustine which was adopted by the courts at a time when Latin Maxims were fashionable". 'Audi Alterum Partem is as much a principle of African' as it is of English legal procedure; a popular Yoruba saying is: 'wicked and iniquitous is he who decides a case upon the testimony of only one party to it" (T.O. Elias: The Nature of African Customary Law). Courts even more than administrators must observe natural justice.

It is said that the Companies Act does not confer any special rights on the workers, they are virtual strangers to the Act and so why should they be heard in the petition for winding-up ? The duty to hear those asking to be heard is not dependent on the vesting of any right under the very statute in respect of which jurisdiction is being exercised by the court, but on any right whatever which may come under threat. Surely it is not the law that rights other than those created by a particular statute may be taken away in proceedings under that statute without affording a hearing to those desiring to be heard. If the statute says only so and so will be heard and no other, of course, no other will be heard. If the statute does not say who may be heard, but prescribes the procedure for the hearing, that procedure must be followed by every one who want to be heard and what applies to one will apply to the other. If creditors and contributories desire to be heard and are heard, so shall workers. After hearing the workers, the court may say that, on the facts and circumstances of the case, it is not necessary to hear them further; but they cannot be turned away at the very threshold. It may be that it is not for them to support or oppose the winding-up petition for any of the traditional reasons. But they may make suggestions which may avert winding-up, save the company and save their own lives. They may have suggestions to make for restructuring the company or for the transfer of the undertaking as a running business. The workers themselves may offer to run the industry forming themselves into a society. They may have a myriad suggestions to make, which they can do if they are allowed to be heard. If every holder of a single share out of thousands may be heard, if every petty creditor may be heard, why can't

the workers be heard ? It is said that once the workers are allowed to enter the Company Court, the flood gates will be opened, all and sundry will join in the fray and utter confusion will prevail. These are dark forebodings for which there is no possible justification. The interest of the workers is limited. It is the interest of the others, those that battle for control and for power that may create chaos and confusion. It must not be forgotten that the court is the master of the proceedings and the ultimate control is with the court. Parties may not be impleaded for the mere asking or heard for the mere seeking. The court may well ask the reason why, if some one seeks to be heard. Workers will not crowd the Company Court and the Court will not be helpless to keep out those whom it is not necessary to hear. It is said that workers will not be allowed to intervene in a partition or a partnership action to oppose partition or dissolution of partnership and so why should they be allowed to intervene in a winding-up petition. That is begging the question. There is no reason why workers may not be allowed, in appropriate cases, to intervene in partition and partnership actions to avert disaster and to promote welfare. As we said, impleading and hearing are not for the mere asking and seeking.

Re Bradford Navigation Company and passages from textbooks for which the case is the source of authority were relied upon, to urge that none but contributories and creditors may be heard in winding-up petition. Re Bradford Navigation Company is a relic of an alien past. Fortunately it is not a binding precedent. While we have learnt and borrowed a great deal from British Jurisprudence, we have been drawing the line now and then, here and there, because their law, their jurisprudence suits their genius and ours must develop according to our genius. Our needs are different; our social, political and economic bases are different; our aspirations are different; our systems are different; the stages of our development are different. We have a written constitution which is omnipresent when our laws are made, tested, interpreted or executed. We look to the constitution for guidance and inspiration when we interpret the laws. The 42nd Amendment of the Constitution has introduced new lights into the Constitution. The Constitution is now openly socialist. The Directive Principles of State Policy repeatedly emphasise the role and interest of the workers. Article 43-A, also introduced by the 42nd Amendment contemplates workers' participation in the management of industry. Other Directive Principles require the State to make provision for securing the right to work, for securing just and humane conditions of work and for securing the right to an adequate means of livelihood. The State is enjoined to direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Obviously, it is nationalisation that is in view and nationalisation must mean the setting up of public corporations and the transformation of private corporations into public corporations. Truly the Constitution envisages workers' control and nationalisation as two of the roads to socialism. Private corporations hitherto regarded as bastions of private property and leaders of capitalist economy are

undergoing transformation and, are surely acquiring the character of public institutions. The public interest element is now quite a predominant factor in the Companies Act itself. There are several provisions in the Companies Act which take notice of the element of public interest. There are other enactments like the Monopolies and Restrictive Trade Practices Act, the Industries Regulation and Development Act, under whose provisions, the activities of a company may be scrutinised in the public interest. There are a host of other legislations involving employment and welfare of labour, to which the managements of companies are subject. The transformation of a company's character from private to public is going on right before our eyes even as the institution of private property is also losing its diathesis. It is in this context of ferment and development that we must consider the problem before us. There is no sanctity attached to the age of a judgment or to the circumstance that the decision is that of an English Court from where we have borrowed most of our company law. Re Bradford Navigation Company was decided in the heydays of laissez faire at a time when individualism dominated every field and the public interest was but a slow runner. Now the position is reversed. Laissez faire has long been dethroned and all interests are increasingly subordinated to the public interest. Corporations are themselves assuming a public character and function like mini States but surely they will not be allowed to function as slave States where the voice of the slave may never be heard.

In Britain itself corporate law and labour law have changed considerably and are still changing. Courts no longer view trade unions with suspicion, as conspiracies as they once did. The right to work, the right to collectively bargain and the right to strike are well recognised. After nationalisation of certain important and crucial industries by the successive Labour Governments, workers' participation in management has become a reality and today a considerable measure of workers' control of management has been achieved in industry.

There are now persistent demands that Company Law too should recognise the interest of workers in a company. Prof. Gower in his "The Principles of Modern Company Law" says:-

"One section of the community whose interests as such are not afforded any protection, either under this head or by virtue of the provisions for investor or creditor protection, are the workers and employees of the taken over company. This is a particularly unfortunate facet of the principle that the interest of the company means only the interest of the members, and not of those whose livelihood is in practice much more closely involved".

Again he says, later, "The vexed question of the relationship between the employees and the company which employs them is, in fact, a dominant theme in the current debate which flows over from company to labour law. It is generally accepted that it is unreal for company law to ignore, as at present our law largely does, that the workers are as much, if not more, a part of the company as

the members of it".

That is the way the wind is blowing in Britain and there is, therefore, good reason for holding that the rule in Bradford Navigation Company is not valid in the present times.

I may conclude by a reference to the following observations made in another connection by D.A. Desai, J in Panchmahals Steel Ltd. v. Universal Steel Traders(1).

> "Time-honoured approach that the company law must safeguard the interest of investors and shareholders of the company would be too rigid a framework in which it can now operate. New problems call for a fresh approach . . . As Prof. De Wool of Belgium puts it, the company has a three-fold reality-economic, human and public-each with its own internal logic. The reality of the company is much broader than that of an association of capital; it is a human working community that performs a collective action for the common good. In recent years, a debate is going on in the world at large on the functions and foundations of corporate enterprise. The "preservationists" and the "reformers" are vigorously propounding their views on the possible reform of company, the modern trend emphasising the public interest in corporate enterprise".

The case itself is an instructive one and demonstrates how an imaginative Company Judge may help to restructure and infuse new life into a company whose life is ebbing out, within the four corners of the statute and keeping in view the interests not merely of the creditors and the contributories but also the interests of the workers.

Viewed from any angle, of natural justice, of the constitution or of the expanding theory of company law, there, appears to be no obstacles to a Company Judge hearing the workers, when asked, after a winding up petition is presented. I agree with the order proposed by Bhagwati, J.

VENKATARAMIAH, J. I had the privilege of reading the draft judgment prepared by my learned brother, Bhagwati, J. but I regret my inability to agree with him.

Messrs Ramakrishna Industries (P) Ltd. (hereinafter referred to as 'the Company') which is carrying on its business at Coimbatore in the State of Tamil Nadu is a closely held private limited company governed by the Indian Companies Act, 1956 (hereinafter referred to as 'the Act'). The Company's paid up capital is Rs. 15,95,000 divided into 1595 equity shares of Rs. 1,000 each, the bulk of which is held by the members of a Hindu family whose relationship is as follows:

> V. Rangaswami Naidu = Chinnammal (wife) (deceased) (deceased) (7 shares) (10 shares) V. Kamalammal =R. Venkata- P.R. Rama- = Mrs. Raje-
>
> (wife) swami Naidu Krishnan swari (164 shares) (20 shares) (34 shares) Ramakrishnan (85 shares) V. Radha- V. Mano- V. Rajkumar krishnan haran (148 shares) (164 shares) (146 shares) =Thulasi = Anusuya K. Prabhu R. Baba

Chandersekhar S.R.K. Prasad (160 shares) (168 shares) (161 shares) The group of R. Venkataswami Naidu holds 642 shares and the group of P.R. Ramakrishnan is holding 608 shares. 17 shares stand in the name of late V. Rangaswami Naidu and his wife and 300 shares are held by V. Rangaswami Naidu Educational Trust. R. Venkataswami Naidu and P.R. Ramakrishnan are trustees for life of V. Rangaswami Naidu Educational Trust having control over the shares held by the Trust. They are also treated as Life Directors. Only 5 shares stand in the name of others. V. Kamalammal, Mrs. Rajeswari Ramakrishnan, V. Radhakrishnan V. Manoharan, K. Prabhu and R. Baba Chandersekhar are directors and V. Rajkumar is the Managing Director of the Company. The Company is thus under the exclusive control and management of the members belonging to one family. Serious differences having arisen amongst them regarding the management of the affairs of the Company, P.R. Ramakrishnan, his wife and sons filed a petition being Company Petition No. 30 of 1981 on the file of the High Court of Madras on July 13, 1981 for the winding-up of the Company under section 433(e) and (f) of the Act on the ground that it was just and equitable to do so in view of the alleged deadlock that had arisen in the administration of the affairs of the Company. The petition charged the members belonging to the group of R. Venkataswami Naidu with acts of misconduct, waste and malversation, a detailed reference to which is unnecessary for purposes of this case. Along with the above petition, the petitioners therein filed Company Application No. 843 of 1981 praying for the appointment of a Provisional Liquidator and Company Application No. 844 of 1981 for an interim order restraining the Company and other respondents from borrowing moneys from bankers and other financial institutions without prior permission of the Court and from otherwise alienating the assets of the Company pending disposal of the said application. The learned Company Judge passed an interim order on July 13, 1981 itself restraining until further orders the eleven respondents named in the application from borrowing any moneys from banks, financial institutions or others without prior permission of the Court and from alienating and/or creating any charge or encumbrance over any of the assets of the Company in its various enterprises. The above interim order was passed even though on the same date application was opposed by the counsel for the respondents therein. The case was adjourned for further consideration to August 10, 1981. On August 19, 1981, the above interim order was made absolute in the following terms :-

"In the result there will be an injunction restraining respondents 1 to 6 from borrowing any moneys from banks, financial institutions or others and from alienating and/or creating any charge or encumbrance over any of the assets of the first respondent company in its various enterprises except that the first respondent company is entitled to honour any pending contract entered into by the company with third parties before the presentation of the application, all its existing commitments vis-a-vis its staff and labourers, electric charges, central excise duty, LIC premium, payments due to employees cooperative stores, telephone bills and sales-tax dues, availing the existing bank facilities with any of its bankers, subject to the condition that the particulars for all these payments and the source from which

> such payments were to be met, are furnished in detail to the applicants. It is again made clear that the company is always at liberty to approach court for further directions and that the applicant's right to impugn any such transaction under section 536(2) is left untouched".

In the meanwhile three trade unions viz. the Coimbatore District National Textile Employees' Union, Coimbatore; the Coimbatore District Engineering Workers' Union, Coimbatore and the National Textile Workers' Union (INTUC), applicants in Company Application Nos. 880, 881 and 883 of 1981 respectively applied to the Court to implead them as respondents to the winding up petition i.e. Company Petition No. 30 of 1981 alleging that their interests had been adversely affected by the interim order which according to them had the effect of preventing the management of the Company from paying amounts due to workers and also making payments for securing supplies to the stores from which the workers were buying articles of food and other provisions. These applications were opposed by the petitioners in the winding-up petition stating that the trade unions being neither creditors nor shareholders had no locus standi to be impleaded as respondents to the petition. It may be mentioned here that the Company Petition for winding-up had not yet been advertised at that stage and Rule 34 of the Companies (Court) Rules, 1959 was not attracted. The Company Judge dismissed these applications filed by the trade unions for impleading them as respondents by his order dated September 14, 1981. Against that order only the National Textile Workers' Union (INTUC) filed an appeal before the Division Bench of the High Court being OSA No. 148 of 1981. That appeal was dismissed by the Division Bench on September 30, 1981. The petition for special leave to appeal (Civil) No. 1961 of 1981 was filed before this Court under Article 136 of the Constitution by the National Textile Workers' Union (INTUC) on November 6, 1981. The said Special Leave Petition came up for orders before a Bench of three Judges on November 19, 1981. On that date notices were issued to the respondents. The High Court was permitted to pass its orders on the application for appointment of a provisional liquidator which was pending before it but it was ordered that in the event of a provisional liquidator being appointed, he should not take any steps which would prejudically affect the workers. The above order was further modified by this Court on December 1, 1981. The petition was posted for hearing and disposal before a Bench of five Judges as the matter involved an important question of law relating to the locus standi of the trade unions to be impleaded as respondents to a winding-up petition and their right to oppose or support it.

Petitions for Special Leave to Appeal (Civil) Nos. 10248 and 10249 of 1981 filed respectively by the Coimbatore District National Textile Employees' Union and the Coimbatore District Engineering Workers' Union directly against the order of the Company Judge dated September 19, 1981 rejecting their applications for being impleaded as parties to the Company Petition are also heard along with the above Petition for special leave to appeal (Civil) No. 9661 of 1981.

At the outset it should be noted that the company law in force in India i.e. the Act, as in England, is an amalgam of certain principles of the law of contract, of the law of persons and of the law of partnership which require the partners of a firm to be just and faithful towards each other. A company is an association of persons for some common object or objects. A Company has a legal personality. It is an artificial person as opposed to a natural person. It comes into existence on its registration in accordance with law. The memorandum of association and the articles of association

of a company which are filed at the time of its registration are considered as the constitutional documents which contain the fundamental terms which govern it. The memorandum contains conditions some of which are basic to its existence even though they may be alterable by following the prescribed procedure. The articles which contain the terms relating to the internal regulation may be altered by the members by passing appropriate resolution. The articles are, however, subject to the terms of the memorandum. Both these documents should, however, conform to the Act. The actions of the company are subject to the doctrine of ultra vires whose purpose is to protect investors in the company and to protect the interests of its creditors. The directors of a company are its agents and they stand in a fiduciary relationship to the company. The duties of good faith which are imposed by this fiduciary relationship are virtually identical with those imposed on trustees. The directors are generally expected not to place themselves in a position where their duties towards the company conflict with their personal interests. A company ceases to be in existence on its dissolution which follows the winding-up proceedings which may be either by the Court or voluntary winding-up (either members' voluntary winding-up or creditors' voluntary winding-up) or winding up subject to supervision of the Court. There are detailed provisions in the Act governing the different winding-up proceedings referred to above. The principles of administrative law which concern the control of governmental power have not much relevance to the administration of the affairs of a company, the primary purpose of administrative law being the imposition of checks on the powers of government or its officers so that they may not either abuse their powers or go out of their legal bounds. In particular, the proceedings relating to winding- up by Court are subject to the orders of higher courts in appeal and are not amenable to interference by superior courts as in the case of actions of government or its officers. The winding-up proceedings by Court are governed by the Act and the Rules made thereunder.

We have been taken through various English text books on Company Law such as 'Palmers Company Law', 'Gore Browne on Companies', 'Buckley on the Companies Acts' and Gower's Principles or Modern Company Law. In none of them there is any statement to the effect that officers and employees (who are not creditors or contributories) of a company for whose winding-up a petition is filed would be entitled as of right to be impleaded as parties and to contest the petition. There is also no authority of English Courts recognising such a right in any trade union. It is not also shown that any such right of a trade union is recognised by the Indian law which more or less corresponds to English law in this regard The decision of the Bombay High Court In re. Edward Textile Ltd.(1) is a clear authority for the proposition that any rate trade unions have no locus standi to oppose a winding-up petition.

We shall proceed to decide this case on the assumption that the application for impleading was made in fact on behalf of the workers and not by the trade unions.

The main argument urged in support of these appeals is that because under section 445(3) of the Act the passing of a winding-up order of a company by the Court amounts to a notice of discharge to the officers and the employees of the Company, except when the business of the company is continued, the officers and employees should be afforded an opportunity to contest a winding-up petition after being impleaded as parties and if possible avoid the winding-up of the company. To appreciate this contention, it is necessary to refer to some of the provisions of the Act. Section 433 of the Act sets

out six circumstances in which a company may be wound up by the Court. A company may be wound up by the Court on one or more of the following grounds, namely, (a) if the company has by special resolution, resolved that the company may be wound up by the Court, (b) if default is made in delivering the statutory report to the Registrar or in holding the statutory meeting, (c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year, (d) if the number of members is reduced, in the case of a public company, below seven, and in the case of private company below, two, (e) if the company is unable to pay its debts and (f) if the Court is of opinion that it is just and equitable that the company should be wound up. Section 439 of the Act provides that an application to the Court for the winding-up of a company shall be made by way of a petition presented to the Court subject to the provisions of that section. A petition for winding-up of a company may be filed by all or any of the following viz. the company, its creditors including any contingent or prospective creditors or by any contributory. Such a petition can be filed by the Registrar of Companies and in a case falling under section 243, by any person authorised by the Central Government Sub-section (2) of section 439 of the Act treats certain classes of persons as creditors for purposes of that section. Sub-section (3) of section 439 treats the holder of a fully paid up share also as a contributory even though he may not be liable to contribute any further sum to the assets of a company in the event of its being wound up and a contributory may file a petition for winding-up provided he is not debarred from doing so by sub-section (4) of section 439. The Registrar can file a petition under clauses (b), (c), (d), (e) and (f) of section 433 of the Act subject to the conditions specified in section 439 except in cases where he is authorised under section 439(1)(f) Sub-sections (6), (7) and (8) of section 439 of the Act refer to the other conditions governing the filing of a winding-up petition.

When a company has passed a special resolution resolving that the company may be wound up by the Court, the employees and workers can have hardly any ground to object to the winding-up of the company. The position is the same when any of the defaults mentioned in clauses (b) and (c) of section 433 of the Act are committed by the company. The officers and employees of the company also cannot get over the deficiency in the required number of members of a company referred to in clause (d) of section 433. When a company is unable to pay its debts, a creditor may move a petition for the winding-up of the company. Such a creditor cannot be compelled to prove his claim not merely against the company but also against the officers and employees. When there is a deadlock in the management of the company arising out of disputes amongst the directors or where some directors without any justification exclude some other directors from the management of the company, it would be unreasonable to expect the excluded directors to fight the case both against the directors who are responsible for their exclusion and also against the officers and employees who are neither creditors nor contributories but who may be supporting the contesting directors. The law on the question as to who can be heard as of right in a winding-up proceeding is set out in paragraph 1028 in Volume 7 of Halsbury's Laws of England (4th Edition) thus:

> "....Only the petitioner, the company, and creditors and contributories are entitled to appear on the petition; other parties have no right to be heard, and, even if court of first instance elects to hear them as amici curiae, they have no right of appeal."

The above passage is based on the decision of the English Court in In re. Bradford Navigation Company(1) where Sir W.M. James, L J. observed at page 601 thus:

> "I am of opinion that this preliminary objection must prevail. It appears to me that the Appellants' argument is based upon a misconception of what a winding-up order and what a winding-up petition is. It is a substitute for a suit for winding-up a partnership. It is a power applicable by the Act of Parliament to corporations as well as to unincorporated societies. Partners have a right to file a bill one against the other, and to have the usual decree for the administration of the partnership property, and for the settling of the partnership accounts and liabilities. In the case of large companies, winding-up was thought to be a more convenient course than a common partnership suit, but in every other respect it is the same. In a common partnership suit nobody can be made a party, or can be heard, except the partners themselves, and, originally, a winding-up was the same thing. Contributories were the only persons who could be heard; but as creditors were interfered with by the operation of the winding-up, the Act of Parliament has made a winding-up a matter both for creditors and contributories. A creditor may present a petition for winding-up, and both creditors and contributories are heard upon that; but it is new to me to say that any person who has an interest in, or a right to or in respect of, some of the property of the company, large or small, has right to appear as a litigant here, because that company chooses to apply for an order with respect to itself. In this case the company was desirous of being wound up. I am of opinion that the winding-up order does not in the slightest degree derogate from any right whatever which any member of the public has with respect to this canal The winding- up will deal with such rights as the partners in the partnership can deal with themselves. The Court will deal with it just as the partners themselves could have dealt with it"...In the Court below the Court might very well say to a person so situated, "I should be glad to hear you as amicus curiae, if you have an interest, that I may know what public grounds there are." There the Court might use its discretion, and think it right to hear such an objection; but when it comes before me on a Petition of Appeal from the Order, then the Appellant must show that he fills some character in which he has a right to litigate with the company. I am of opinion that he does not fill any such character, and that the Petition of Appeal must be refused with costs."

This decision may be of the last century but there is hardly any justification to depart from it even now unless compelled by the statute to do so.

That only the company, creditors and contributories (apart from the Central Government or the Registrar when they choose to intervene under the express provisions of law) are entitled to participate in the winding-up proceedings is emphasised by sections 447 and 557 of the Act. They read:

> "447. Effect of winding-up order-An order for winding-up a company shall operate in favour of all the creditors and of all the contributories of the company as if it had

been made on the joint petition of a creditor and of a contributory."

"557. Meetings to ascertain wishes of creditors or contributories.-(1) In all matters relating to the winding-up of a company, the Court may-

(a) have regard to the wishes of creditors or contributories of the company, as proved to it by any sufficient evidence;

(b) if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs; and

(c) appoint a person to act as chairman of any such meetings and to report the result thereof to the Court.

(2) When ascertaining the wishes of creditors, regard shall be had to the value of each creditor's debt.

(3) When ascertaining the wishes of contributories, regard shall be had to the number of votes which may be cast by each contributory."

That a company, the Official Liquidator, the liquidator, creditors and contributories alone can effectively participate in and contest the winding-up proceedings is clear from some of the other provisions of the Act governing the winding-up proceedings. Under section 450(2) of the Act before appointing a provisional liquidator, the Court has to given notice to the company and give a reasonable opportunity to it to make its representations, if any, unless, for special reasons to be recorded in writing, the Court thinks fit to dispense with such notice. The Court may, under section 466 of the Act at any time after making a winding-up order, on the application either of the Official Liquidator or of any creditor or contributory, make an order staying the winding-up proceedings on being satisfied that there are good reasons to pass such an order. Section 478(3) authorises any creditor or contributory in addition to the Official Liquidator to take part in the public examination of promoters, directors etc. held for the purpose of enquiring into the conduct of such promotees or directors in connection with the promotion or formation or the conduct of the business of the company. Section 517 of the Act provides that in a voluntary winding-up, an arrangement entered into by the company and the creditors as provided therein is binding on the creditors and any creditor or contributory who is aggrieved by such arrangement may appeal to the Court. Under section 518, the liquidator or any contributory or any creditor may apply to the Court in a voluntary winding-up proceeding to determine any question arising in the winding-up of a company. Under section 542 of the Act on the application of the Official Liquidator or the liquidator, or any creditor or contributory of the company the Court may, if it thinks fit and proper so to do, declare that any persons who were knowingly parties to the carrying on of business of the company with intent to defraud creditors or any other person shall be personally responsible for all or any of the debts or liabilities as the Court may direct. The Court can exercise power to assess damages against delinquent directors of a company which is ordered to be wound-up under section 543 on the

application of the Official Liquidator, or of the Liquidator, or of any creditor or contributory made within the prescribed time. In the case of a voluntary winding-up under section 546 any creditor or contributory may apply to the Court with respect to exercise of any power by the liquidator under section 546(1). Section 549(1) of the Act provides that at any time after the making of an order for the winding-up of a company by or subject to the supervision of the Court, any creditor or contributory of the company may, if the Supreme Court, by rules prescribed so permit and in accordance with and subject to such rules but not further or otherwise, inspect the books and papers of the company. Any creditor or contributory may under section 556 apply to the Court to enforce the duty of liquidator to make returns etc. These and other provisions of the Act show that only the company, the Official Liquidator, liquidator, creditors, contributories or the Registrar have a statutory right to participate as of right in the winding-up proceedings as provided in the Act. The workers or their trade unions have not been given any such right.

The words 'every person' in Rule 34 of the Companies (Court) Rules, 1959 (which is almost similar to the corresponding English Rule) do not entitle a worker who is neither a shareholder nor a contributory to support or oppose a winding-up petition under that Rule because they refer only to a person who is otherwise entitled to do so under the Act. We should also bear in mind that an anamolous result that may flow from the acceptance of the case of the workers is that whereas in a winding-up by Court they may get an opportunity to contest the petition, the voluntary winding-up proceedings or winding-up under the supervision of the Court would go on without any such contest although in all cases ultimately the workers will be discharged from service. A construction which leads to such a discriminatory result should be avoided.

When once we extend the right to contest a winding-up petition to workers either on the principle of equity or of administrative law, on the same principle it would logically follow that all others who may have dealings with such as commission agents, selling agents etc. whose contracts with the company are going to be terminated by reason of its liquidation also have to be allowed to contest the winding- up proceedings. Such a claim is not permissible. On this question, it may be useful to refer to the case of Ex Parte Maclure. In that case a person entered into an agreement with an insurance company to act as their agent for five years, and to transact no business except for the company, in consideration of which he was to receive a fixed salary and also a commission of 10 percent, on all business transacted. Before the five years expired the company was wound up voluntarily. It was held, affirming the decision of Romilly M.R., that the agent was not entitled to prove against the company for the loss of his commission during the remainder of the term of five years. James L.J. said: "I am clearly of opinion that the Master of the Rolls was right.....It is the case of a person engaging a servant, and saying, 'I engage you for five years, I will pay you 500 a year for that period-that sum is secured to you-and then, in order to give you an inducement to carry on the business effectually, properly, and prudently, I will give you 10 per cent, commission upon the net profits to be earned by that business. I am of opinion that this was a contract which did not give the servant the right to determine what the extent of the business was to be. He could not call upon the directors to issue new policies to accept new premium, or to take new risks, if they were not minded to do it. He could not say, 'Such a person has brought in a policy of insurance, and you must accept that." Because if he had a right to say 'You must carry on the business' he would also have a right tc say 'You must carry on the business in the usual and proper manner,' and that would be giving a

servant the right of controlling the master in the mode in which he chose to carry on his business. Now, I am quite satisfied that the meaning of the contract was nothing of the kind. It was never intended to give the servant the right of dictating as to the extent of business, whether more or less, or nothing, but be simply took the chance of the company finding it a profitable business and carrying it on. The company had a right to reduce the business to a minimum ; and if they had a right to reduce it to a minimum, they had a right to reduce it to nothing-as far as he was concerned."

It is because of some doubts that had been expressed earlier about the continuance of the employment of the employees of a company ordered to be compulsorily wound up that section 445(3) was enacted making it clear that the passing of the order of winding-up amounts to a notice of discharge of the employees concerned. Section 445(3) corresponds to the termination of service brought about by the abolition of a post under a Government or by the closure of a business, neither of which as the law stands today requires compliance with the principles of natural justice. It may, however, attract section 25-FFF of the Industrial Disputes Act; 1947 in appropriate cases.

In the Act, there are specific provisions dealing with the rights of employees of a company. Sections 417 to 420 of the Act deal with employees' securities and provident funds and clauses (b) to (f) of section 530(1) deal with preferential payments to be made to the employees of a company in liquidation from out of its assets. Section 635-B of the Act deals with the protection to which the employees are entitled during investigation into the affairs of a company. Rule 152 of the Companies (Court) Rules, 1959 (read with Form No. 67) relates to proof of arrears of workmen's wages. The right to resist a winding-up petition is not one such right.

It is true that public interest which may include within its scope interests of employees of a company has to be kept in view by the Court as observed in Bhalchandra Dharmajee Makaji and Ors. v. Alcock, Ashdown and Co. Ltd. and Ors.(1) in exercising certain powers under the Act. Sections 388-B, 394, 396, 397 and 408 of the Act do refer to the concept of public interest. These provisions deal with the power of the Central Government to remove managerial personnel from office on the recommendation of the High Court, compromises, arrangements and reconstruction of companies and power of the Court and the Government to prevent oppression or mismanagement of affairs of a company. They do not, however, state that trade unions can as of right intervene in the proceedings arising under them.

It is not correct to say that there is no other remedy at all for workmen who are likely to be affected by the winding-up order made by the Court. Section 15-A of the Industrial (Development and Regulation) Act, 1951 (Act No. 65 of 1951) which applies to textile industry as well confers power on the Central Government to carry out investigation into the affairs of a company in liquidation. It reads :

> "15-A. Power to investigate into the affairs of a company in liquidation-(1) Where a company, owning an industrial undertaking is being wound up by or under the supervision of the High Court, and the business of such company is not being continued, the Central Government may, if it is of opinion that it is necessary, in the interest of the general public and, in particular, in the interests of production, supply

or distribution of articles or class of articles relatable to the concerned scheduled industry, to investigate into the possibility of running or restarting the industrial undertaking, make an application to the High Court praying for permission to make, or cause to be made, an investigation into such possibility by such person or body of persons as that Government may appoint for the purpose.

(2)Where an application is made by the Central Government under sub-section (1), the High Court shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or in any other law for the time being in force grant the permission prayed for."

The provisions of Chapters III-AA and III-AB of the Industrial (Development and Regulation) Act, 1951 confer on the Central Government powers regarding management or control of industrial undertakings owned by companies in liquidation and power to provide relief to certain industrial undertakings including those to which Chapter III-A is applicable. Chapter III-AC of that Act deals with the power of the Central Government in respect of liquidation and reconstruction of companies. In particular, section 18-FD(1) of that Act inter alia provides that if, on receipt of the report submitted by the authorised person, the Central Government is satisfied in relation to a company, owning the industrial undertaking, which is being wound up by the High Court, that its assets and liabilities are such that in the interests of its creditors and contributories the industrial undertaking should be solid as a running concern, as provided in section 18-FE thereof it may by order decide accordingly. Sub-section (2) of section 18-FD of that Act states that notwithstanding anything contained in sub-section (1) thereof the Central Government may prepare a scheme for reconstruction of a company if it is satisfied having regard to all relevant circumstances mentioned therein that it is proper to do so. When such a scheme is prepared, the Central Government has to send it to the registered trade unions, if any, of the employees concerned for their suggestions and objections. (See section 18-FF(3)). Any scheme finally approved would prevail notwithstanding anything contained in sections 391 to 394-A (both inclusive) of the Act. It is open to the workers or their trade unions to move the Central Government to take appropriate steps under the aforesaid provisions in order to protect the interests of the workers who are likely to be affected by the winding-up orders.

Article 43A of the Constitution clearly states that the State shall take steps by suitable legislation or in any other way to secure the participation of workers in the management of undertakings, establishments or other organisation engaged in any industry. The High-powered Expert Committee on Companies and MRTP Acts headed by Justice Rajinder Sachar of the Delhi High Court has also made certain recommendations about provisions to be made for workers' participation in management of companies. (Vide paragraphs 18.127 to 18.143 of the Report). Parliament may take early steps to implement some of the recommendations made by the said Committee. It is significant that there is no recommendation made even in this Report about the right of trade unions to contest winding-up petitions. If the workers are issued shares then they would no doubt be entitled to participate in the winding-up proceedings as contributories. This may be one way of solving the problem by legislative means. Another way of providing a forum to the workers representative in matters relating to the winding-up of a company is to amend section 292 of the Act

as suggested in para 11.27 and para 18.137 of the Report of the Sachar Committee. Those paragraphs are reproduced below for ready reference:

> "11.27 The workers' representation on company Board makes it necessary to provide that companies must ensure that certain decisions are necessarily taken at the Board level and the Board do not delegate the powers in respect of these matters to committees or other functionaries in the organisation, otherwise the participation of workers at the Board level is likely to prove ineffective. The powers and functions which cannot be delegated by the Board, and which must be within the exclusive jurisdiction of the Board to take policy decision are in respect of the following matters:-
>
> (a) winding-up of the company;
>
> (b) changes in the memorandum and articles of association;
>
> (c) changes in the capital structure of a company (e.g. as regards the relationship between the Board and the shareholders a reduction or increase in the share capital; as regards the relations between the Board and senior management, the issue of securities on a takeover or merger);
>
> (d) disposal of a substantial part of the undertaking;
>
> (e) the allocation or disposition of resources to the extent not covered in (a) to (d) above; and
>
> (f) the appointment, removal, control and remuneration of management, whether as members of the Board or in their capacity as executives or employees.

The suggestion regarding (a) to (e) above is on the same line as the present power of the Board to declare dividend. In other words, the shareholders will not be able to exercise powers mentioned in (a) to (e) above unless recommended by the Board. We would, therefore, suggest that section 292 be amended to provide for the exercise of the foregoing powers of the Board of a company which is required by law to ensure participation of workers in management."

> "18.137 In order to ensure effective participation by workers' representatives at the Board level section 292 should be amended to provide that certain decisions are necessarily taken only at the Board level and no delegation to Committees of the Board or to other functionaries is made."

These suggestions emphasise that at present workers have no right to contest winding-up proceedings.

It is also open to Parliament to make a law on the lines of sections 63 to 69 of the Employment Protection Act, 1975 passed by the Parliament in the United Kingdom to give any additional protection necessary for workmen who are likely to be affected adversely by the winding-up proceedings. (See Palmer's Company Law (22nd Edn. Vol. I, p.

919)). Parliament may also consider the introduction of a provision corresponding to section 74 of the Companies Act of 1980 passed by the British Parliament. Such steps may mitigate any hardship that may be caused to the workers as a consequence of the winding-up of a company.

It has to be emphasised that the privilege of making suggestions to the Court in the public interest is different from the right to be impleaded as a party with the concomitant right to enter into contest with the other parties and of taking an order in appeal before higher courts. The latter right has to be conferred expressly by the statute on any person who wishes to exercise it. Under the existing law, the workers or their unions may make any suggestions to the Court at any stage but they cannot claim to be impleaded as parties to the winding-up petition as of right.

The decision of this Court in Fertilizer Corporation Kamgar Union (Regd.), Sindri and Ors. v. Union of India and Ors.(1) does not lend any support to the case of the trade unions. In that case which attracted the principles of administrative law the petitioner trade union pleaded that Article 14, Article 19(1)(g) and Article 311 of the Constitution had been violated by the sale of the plant and equipment of a factory in which its members were working. Ultimately the petition was dismissed by this Court. One of the distinguishing features of that case is that the factory involved in that case was in the public sector and owned by the Government against which a petition under Article 32 of the Constitution was maintainable. Chandrachud C.J. observed in the course of his judgment at pages 60-61 thus:

> "Secondly, the right of Petitioners 3 and 4 and of the other workers to carry on the occupation of industrial workers is not, in any manner affected by the impugned sale. The right to pursue a calling or to carry on an occupation is not the same thing as the right to work in a particular post under a contract of employment. If the workers are retrenched consequent upon and on account of the sale, it will be open to them to pursue their rights and remedies under the Industrial laws. But the point to be noted is that the closure of an establishment in which a workman is for the time being employed does not by itself infringe his fundamental right to carry on an occupation which is guaranteed by Article 19(1)(g) of the Constitution. Supposing a law were passed preventing a certain category of workers from accepting employment in fertiliser factory, it would be possible to contend then that the workers have been deprived of their right to carry on an occupation. Even assuming that some of the workers may eventually have to be retrenched in the instant case, it will not be possible to say that their right to carry on an occupation has been violated. It would be open to them, though undoubtedly it will not be easy, to find out other avenues of employment as industrial workers. Article 19(1)(g) confers a broad and general right which is available to all persons to do work of any particular kind and of their choice. It does not confer the right to hold a particular job or to occupy a particular post of

> one's choice. Even under Article 311 of the Constitution, the right to continue in service falls with the abolition of the post in which the person is working. The workers in the instant case can no more complain of the infringement of their fundamental right under Article 19(1)(g) than can a Government servant complain of the termination of his employment on the abolition of his post. The choice and freedom of the workers to work as industrial workers is not affected by the sale. The sale may at the highest affect their locum, but it does not affect their locus, to work as industrial workers. This is enough unto the day on Art. 19(1)(g)."

On the question of locus standi of workers to maintain the petition, the learned Chief Justice observed at pages 65-66 thus:

> "That disposes of the question as regards the maintainability of the writ petition. But, we feel concerned to point out that the maintainability of a writ petition which is correlated to the existence and violation of a fundamental right is not always to be confused with the locus to bring proceedings under Article 32. These two matters often mingle and coalesce with the result that it becomes difficult to consider them in water-right compartments. The question whether a person has the locus to file a proceeding depends mostly and often on whether he possesses a legal right and that right is violated. But, in an appropriate case, it may become necessary in the changing awareness of legal rights and social obligations to take a broader view of the question of locus to initiate a proceeding, be it under Article 226 or under Article 32 of the Constitution. If public property is dissipated, it would require a strong argument to convince the Court that representative segments of the public or at least a section of the public which is directly interested and affected would have no right to complain of the infraction of public duties and obligations. Public enterprises are owned by the people and those who run them are accountable to the people. The accountability of the public sector to the Parliament is ineffective because the parliamentary control of public enterprises is "diffuse and haphazard". We are not too sure if we would have refused relief to the workers if we would have found that the sale was unjust, unfair or mala fide."

Krishna Iyer, J. in his concurring opinion observed at pages 70-71 thus:

> "A pragmatic approach to social justice compels us to interpret constitutional provisions, including those like Arts. 32 and 226, with a view to see that effective policing of the corridors of power is carried out by the court until other ombudsman arrangements-a problem with which Parliament has been wrestling for too long-emerges. I have dwelt at a little length on this policy aspect and the court process because the learned Attorney General challenged the petitioner's locus standi either qua worker or qua citizen to question in court the wrong doings of the public sector although he maintained that what had been done by the Corporation was both bona fide and correct. We certainly agree that judicial interference with the Administration cannot be meticulous in our Montesquien system of separation of

> powers. The court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the Directorate of a Government company has acted fairly, even if it has faltered in its wisdom, the court cannot, as a super-auditor, take the Board of Directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules, of public administration."

A reading of the aforesaid passages shows that the Court was concerned in that case with operations in a public sector company and the activities of the Government. These observations cannot have any relevance to a case involving the affairs of a company which is governed only by express provisions of company law and other relevant statutes.

As the law stands today, workers cannot contend that a factory owned by and individual proprietor, on his death, should not be divided amongst his heirs, even though they may lose their jobs. They cannot resist a partition suit, in which one of the items of property in respect of which relief is claimed is the factory in which they are working, filed by a junior member of Hindu joint family against the manager contending that the said factory is the separate property of the manager and should not, therefore, be partitioned merely because they may be discharged from service in the event of the suit being decreed. They cannot resist the suit for dissolution of a firm which owns the factory in which they are working even though at the distribution of the assets of the firm, the factory may have to be dismantle and sold. The position cannot be different in the case of a company which is wound up by the Court. As the law stands today, the workers in a factory owned by a company do not have any hand in the birth of a company, in its working during its existence and also in its death by dissolution. If the law expressly says that a memorandum of a company should be signed by some future employees of the company, or that there should be workers' representatives on its board of directors or that the company should not be wound up without consulting the wishes of the workers, then they can certainly claim all such rights. Workers' participation in the affairs of a company or the ushering in of an industrial democracy is quite a laudable object. That is the reason for enacting Article 43-A of the Constitution which requires the State to take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry. The Legislature has not taken any concrete steps in this regard. But, can the Court step in and introduce drastic amendments into the company law ? Surely, it cannot. Even though there is no express statement in our constitutional law incorporating in it the doctrine of separation of powers, in the interpretation of the Constitution this Court has broadly adopted the said doctrine. (See Smt. Indira Nehru Gandhi v. Shri Raj Narain (1). Even though by virtue of its power of interpretation of law the Court in an indirect way is making law, it should be stated that there are well recognised limitations on the power of the Court making inroads into the legitimate domain of the Legislature. If the Legislature exceeds its power, this Court steps in. If the Executive exceeds its power, then also this Court steps in. If this Court exceeds its power, what can people do ? Should they be driven to seek an amendment of the law on every such occasion ? The only proper solution is the observance of restraint by this Court in its pronouncements so that they do not go beyond its own legitimate sphere.

It is true that there are now new kinds of weapons like consumers' protection agitations against big companies whose activities are likely to affect the life of the community adversely. But, for those agitations to be effective the Legislature should wake up and make appropriate laws under which the consumers can bring action against erring companies. In the absence of any such law, this Court cannot issue directions to the companies on the basis of complaints from the members of the public.

There are several areas where it is necessary for the Legislature to make law. A reading of the provisions in Part IV of the Constitution shows that many of them are still to be implemented by the passing of appropriate legislation. Article 41 of the Constitution dealing with the right to work, Article 43 dealing with living wages etc for workers, Article 44 which insists upon the introduction of a uniform civil code for all citizens and Article 47 dealing with the duty of the State to raise the level of nutrition and the standard of living of the people are some of the articles which have to be implemented either by the Legislature or by the Executive.

Would this Court compel the Executive by issuing a writ to implement the policy underlying Article 41, Article 43 and Article 47 without being backed up by necessary laws ? Would this Court enforce a uniform civil code in respect of all citizens, without the aid of an appropriate legislation even though the concept of equality is enshrined in the Constitution and Article 44 specifically requires the State to endeavour to secure for all citizens a uniform civil code ? It may not do so The only solution for many of these social problems is to appeal to the appropriate organs of the State to do their assigned job in the best interests of the Community. It is wrong to think that by some strained construction of law, the Court can find solution to all problems.

In this very case, when arguments were going on I suggested that it may be appropriate to issue notice to the Company Law Administration of the Union of India so that the Court could have the benefit of the views of the Government. It was not, however, acceded to by the majority. The presence of the Union Government in the present case as a party might have brought to its attention the need for initiating necessary legislation, if it really felt that it was advisable to do so, for providing an opportunity to workers of a company also to contest the winding-up proceedings. It is, however, a matter for regret that no tangible steps appear to have been taken to amend the Act even though the Sachar Committee Report which contains many recommendations which when implemented would make the companies which are centres of economic power accountable to the society at large and make them fall in line with the current views on their social responsibilities, was forwarded to the Government more than four years ago.

It may be that the employees or their trade unions are interested in requesting the Court to dispose of the factory as going concern so that their employment may not be affected. How are they interested in supporting one set of directors against whom charges of waste, misappropriation and mismanagement are made by the other set who are alleged to have been totally excluded from management by attempts amounting to oppression ? In the instant case the trade unions concerned have filed almost a common statement containing their grounds of objection along with their notice to appear in the proceedings filed under Rule 34 of the Companies (Court) Rules 1959 pursuant to the advertisement issued by the Court. The grounds of objection filed by the Coimbatore District National Textile Employees' Union are set out below in extenso :

1. That the Company Petition is not maintainable under the Companies Act, 1956, hereinafter referred to as the `Act'.

2. That no case has been made out by the petitioners under section 433(f) of the Act.

3. That, on the facts and circumstances of the case, it is not just and equitable that the company should be wound up.

4. That another remedy is available to the petitioners and hence the Company cannot be wound up by virtue of section 443(2) of the Act.

5. That the objector craves leave to reserve his right to amplify and elaborate the above grounds in the counter affidavit to be filed to the company petition."

It is seen from the foregoing that the trade unions are only interested in supporting the cause of the respondents against whom allegations are made by the petitioners in the Company Petition by making certain general submissions, without traversing the various allegations made in it. The respondents who are already on record and who are actually contesting the petition are capable of looking after their interests and need not rely upon the support of the trade unions who are neither creditors nor contributories and who do not know the details of the internal administration of the affairs of the Company. The petitioners in the Company Petition would be in a more disadvantageous position if they have to face the opposition of the trade unions also. Such a situation should not be created by extending the area of controversy by a liberal interpretation of the provisions of law when there are no compelling reasons to do so.

The High Court has in this case passed necessary orders in order to protect the interests of the employees in Company Application No. 844 of 1981 and in C.M.P. No. 11159 of 1981. The order passed in Company Application No. 844 of 1981 is already set out above.

In C.M.P. No. 11159 of 1981 the High Court has passed the following order:-

"This is a petition filed by the appellants in O.S.A. No. 128 of 1981 for permitting the first appellant/company to raise with its Bankers viz., Bank of Baroda, Coimbatore, a temporary loan of an amount not exceeding Rs. 5,25,000 for the purpose of paying bonus to the workers of Jothi Mills, as per the Memorandum of settlement entered into between the Company and its workers under section 18(1) of the Industrial Disputes Act, 1947 on 10.10.1979 by pledging or charging the assets of the Company.....Though in form the appellants have prayed for raising of a loan for honouring the commitment of Rs. 5,25,000 towards bonus for the workers of Jothi Mills by pledging or charging the assets of the company during the argument the learned counsel for the appellants was willing to avail of the existing facilities in the Central Bank as provided in the order Itself. Though for availing the existing bank facilities there is no need for any specific direction from this Court as the order appealed against itself gives such liberty, the learned counsel for the appellants by

> way of abundant caution requires such an interim direction in this petition. The learned counsel for the respondents pointed out that availing of the existing facilities referred to in the order of Shanmukhan, J., is a facility that was available as on 13.7.1981 we think the learned counsel for the respondents is well-founded in this contention. (sic) But even so if the Banks as on 13.7.1981 the petitioners are entitled to avail the same in order to honour the commitment relating to bonus for workers. Since the order under appeal itself permits the petitioners to avail of the existing Bank facilities with any of its Bank though the application in form asked for raising of the loan with the Bank of Baroda, Coimbatore, we make it clear that it is open to the petitioners to avail of the Bank loan facilities with the Central Bank within the limits prescribed as on 13.7.1981. This is the only clarification that need be given in this petition and no further orders are necessary."

(emphasis added) These orders show that the High Court has kept in its view the interests of workers while giving directions in the case from time to time and that there is no longer any ground to complain about. According to the petitioners in the winding- up petition the occasion for the complaint of the workers had been cleverly engineered by the contesting respondents. Be that as it may, as the orders of the High Court stand today the workers can always approach it by way of a company application for appropriate orders whenever they feel that their working conditions are adversely affected during the pendency of the proceedings. It is not necessary that the workers or the trade unions should be impleaded as parties to the Company Petition enabling them to contest the winding-up petition. Their presence on record is not necessary for complete and effectual adjudication of the winding-up petition. The trade unions are, therefore, neither necessary nor proper parties to the winding-up petition on the facts and in the circumstances of this case including the element of public interest involved in any liquidation proceeding.

Before concluding it should be stated that it is not correct to hold that the order of the High Court `smacks of elitism' or `sounds like a relic of feudal age' or is an `obnoxious' one. The High Court has decided the case in accordance with the prevailing view in the country. No case in which a different view is taken is cited before us. Nobody disputes the proposition that law should not be static. It should no doubt grow but it should have its legitimate birth and in a case like this in the precincts of the Legislature. It should be the result of the exercise of legislative judgment, particularly when a departure from express provisions of a statute or an established practice is to be made. Judges are not expected to know all aspects of every such matter. A discussion involving a comprehensive view of all interests which are likely to be effected by any decision which makes a serious departure from a well-settled principle of law would not take place before a court where only the parties to a case or their lawyers are heard. Members of the public also would not know what is happening in courts. The publicity which a proceeding in the Legislature would receive is not given to the proceedings in Court. Even the elected representatives of the people who are charged with the duty of making laws may not know what is happening in a court of law. Therefore, it is always better to leave such matters to the decision of the Legislature, instead of the court, sometimes by a majority of one assuming power to make a new law.

It is no doubt true that the view of the High Court is also in conformity with the view prevailing in England. That does not mean that the High Court has surrendered its judgment to a foreign practice, because that is the very view which is being followed till now in the Indian courts. We should not forget that the very concept of company law is foreign to our country. It originated in Great Britain and our company law contained in successive Acts passed by the Indian Legislature is modelled on British law and experience. There is a large body of company jurisprudence which is common to all the Commonwealth countries. There may, however, be some local changes but the pattern appears to be common. The practice of relying on foreign decisions whatever may be their age only when they are in conformity with what we wish to hold and of condemning them only on the ground that they are ancient foreign decisions when they do not accord with our views is not correct. A foreign decision (even though it may not be binding) is either worthy of acceptance or not depending upon the reasons contained in it and not on its origin or age. There is no reason why we should not follow a well reasoned foreign decision unless it is opposed to our ethics, tradition and jurisprudence or otherwise unsuited to Indian conditions. Can we say that the law of habeas corpus which has found its way into India from England is bad only because it came from a foreign country or has an ancient origin ? The writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari referred to in Art. 32 and Art. 226 of the Constitution of India, the rule of promissory estoppel, the principle of audi alterum partem and many other principles which are applied by the Indian courts are all of foreign origin. Even the socialist principle is not entirely of Indian origin. It is difficult to shut our eyes to realities of life.

Moreover, it is difficult even though it may not be impossible to administer the company law as it is now in force in India without the aid of the principles laid down by some of the leading English cases like Salomon v. Salomon & Co.(1) laying down the principle of corporate personality, Ashbury Railway Carriage & Iron Co. v. Riche(2) dealing with the rule of ultra vires, Royal British Bank v. Turguand(3) laying down the rule of `indoor management', Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd.(4) which establishes the liability for negligent mis-statements in prospectuses, Foss v.

Harbottle(1) and Burland v. Earle(2) dealing with the principle of `the fraud on a minority' and Ebrahimi v. Westbourne Galleries(3) dealing with the application of the `just and equitable' principle in ordering the winding-up of a company. A reading of the decision of this Court in Needle Industries (India) Ltd. & Ors. v. Needle Industries Newey (India) Holding Ltd. & Ors.(4) rendered by Chandrachud, C.J. shows the importance of foreign decisions in deciding case arising under the Indian Company law which out of necessity has to keep pace with the well established principles prevailing in many other parts of the world for sustaining international trade and commerce. Adoption of an universal system of mercantile law and obedience to the conventions of the International Labour Organisation constitute two important compulsions of modern international economic life. It may be that the workers who are likely to be affected by the winding-up need a larger protection. That can be done only by legislative action. This Court cannot, however, make any order which will conflict with the existing law.

In the result the appeals fail and are dismissed. No costs.

BAHARUL ISLAM, J. I have carefully read the judgments prepared and orders proposed by my Brothers Bhagwati and Venkataramiah JJ. I entirely agree with Bhagwati J. and regret my inability to agree with Venkataramiah J. Any provision of any statute has to be interpreted keeping in view the letter and spirit of the Constitution. Any interpretation that is not in consonance with the letter and spirit of the Constitution is obnoxious and unacceptable.

In the winding-up proceedings in question, the National Textile Workers' Union filed the petition before the High Court with a prayer to be heard before any order for winding-up was passed. The reason was the workers' apprehension of termination of their services in case of winding up of the Company. It is true, there is no express provision in the Companies Act giving the workers any right to be heard in a winding up proceeding before the Court. There is no express bar either. Learned counsel for Respondents Nos. 6 to 9, in support of his contention that the workers had no right to be heard in a winding up proceeding, cited Halsbury's Laws of England, volume 7 page 614 para 1028 (4th Edition). The learned author has stated the law on the subject thus :

> "Only the petitioner, the Company and creditors and contributories are entitled to appear on the petition ; other parties have no right to be heard, and even if the Court at the first instance elects to hear them as amici curiae, they have no right of appeal."

This statement of the law has been made on the authority of the judgment in Bradford Navigation Co. rendered as early as 1870: (1970) 5 Ch. A, Page 600).

Learned counsel also cited Palmer Company Precedents (17th Edition) Vol. 2, page 77, in which the law to the above effect was stated. Learned counsel has submitted that the Company Law in India is the same as in the Company Law in England. The law cited may be good law for England with altogether a different system of economy ; but is abhorrent to India, particularly after the Constitution (42nd Amendment) Act, 1976, by which the "Socialist" and "Secular" concepts have been added and incorporated into the Preamble of our Constitution. Our `Democratic Republic' is no longer merely `Sovereign' but is also `Socialist' and `Secular'. A Democratic Republic is not Socialist if in such a Republic the workers have no voice at all. Our Constitution has expressly rejected the old doctrine of the employers' right to `hire and fire'. The workers are no longer ciphers ; they have been given pride of place in our economic system. The workers' right to be heard in a winding-up proceeding has to be spelt out from the Preamble and Articles 38 and 43-A of the Constitution and from the general principles of natural justice.

AMARENDRA NATH SEN, J. I have read the judgment of my learned brother Bhagwati, J. and also the judgment of my learned brother Venkataramiah, J. I cannot persuade myself to agree with the judgment of my learned brother Bhagwati, J. I agree with the judgment and order proposed by my learned brother Venkataramiah, J. I shall indicate my reasons for the view that I have taken.

The material facts of this case have been set out in the judgment of my learned brother Bhagwati J. and also in the judgment of my learned brother Venkataramiah, J. The arguments advanced from the Bar have been considered by both of them. It does not, therefore, become necessary for me to reproduce them in this judgment.

Whether the employees of a Company in their capacity as employees can claim as a matter of right to appear and be heard in a petition presented to court for the winding-up of the Company, is the question for decision in this case.

The right of an employee in his capacity as such to be heard in a proceeding for winding-up of a company has been canvassed as a proposition of law. The contention urged on behalf of the trade unions representing the workers of the company is that whenever a petition is presented to a Court for the winding up of a company, the employees of the company have the right to appear and be heard in the said proceeding.

The principal argument advanced on behalf of the trade unions representing the workers is that the employees of a company are equal partners of the management of the company, if not the more important one, and the company, in view of the socio-economic role it plays and it has to play in the country, can no longer be considered to be the concern of the members of the company. Further, the argument is that the employees very materially contribute to the working of a company and help the company in effectively playing its socio-economic role and promoting the interests not only of the company, but also the larger interests of the nation and an order of winding up seriously affects the interest of the employees, virtually taking away the means of their livelihood. It has been submitted that as an order of winding up of the company affects so seriously the interests of the employees, the employees must have a say and must be heard in a proceeding for winding up before the Court.

I have earlier observed that the arguments advanced from the Bar on behalf of the trade unions have been noted at length by my learned brothers Bhagwati and Venkataramiah, JJ. The arguments no doubt express noble sentiments which I share ; but, in my opinion, the arguments fail to establish that the employees have a right to appear and be heard in a petition presented to a Court for the winding up of a company. If the right is to be conceded to employees on these grounds it must logically follow that every employee of a company, whether he is a worker within the meaning of the Industrial Disputes Act or he is a member of the management staff, must enjoy the same right to appear and be heard in every such proceeding for the winding up of the company. An order for winding up affects all the employees of a company, whether they are workers belonging to any trade union or not or whether they are officers of the company, high or low, not being members of any union or association. Further if the right to participate in a winding up proceeding is to be judged from the view point of the interest of any party who may be prejudicially affected as a result of an order of winding up being made, various other parties who have trade relations with the company must necessarily be held to have the same right to be heard in a winding up proceeding. It is common knowledge that various persons, apart from the employees of the company, also depend for their survival on the supplies of various materials, ingredients and components to the company and with the liquidation of a company, all such persons who are making their living out of their dealings with the company have to go without occupation and have to face disaster. Persons having existing contracts with the company are also seriously prejudiced when an order of winding up of the company is made.

If the test of injury and adversely affecting the interests are considered to be sufficient to entitle a party to a hearing in a proceeding on the footing that they are persons aggrieved, no suit for

dissolution of a partnership can also be decided without impleading the employees of the firm and various other parties having trade relations with the firm, as the dissolution of a firm may prejudicially affect the interests of the employees or the various other persons dealing with the firm.

It has to be borne in mind that a company can only be wound up in accordance with the provisions of the Indian Companies Act. The right to have a company wound up is a right created by the Statute. The entire proceeding in relation to the winding up of a company is regulated by the statute, namely, the Indian Companies Act (hereinafter referred to as the Act) and the procedure to be followed is further supplemented by the provisions contained in the rules made under the Act known as the Companies (Court) Rules, 1959 (hereinafter referred to as the Rules).

The various modes of winding up of the company, under what circumstances a company may be wound up by Court and who are the persons competent to present a petition to Court for the winding up of the company and who are the persons entitled to be heard on such a petition, are provided for in the Act and in the Rules.

It has to be borne in mind that apart from the right of the Court to order the winding up of a company in an appropriate case, the Act recognises that a company may go into liquidation without any intervention by the Court and also under the supervision of Court, provided the necessary conditions laid down in the Act in this regard are complied with. Where the Company goes into liquidation without reference to court or under the supervision of the Court, the employees of the company who have to meet the same fate of losing their employment, as and when the company is wound up by the Court, do not and cannot have any voice or say in the procedure to be adopted for the liquidation of the company.

In the case of winding up of any company by Court, the parties who can move the Court for winding up of the company are specifically mentioned in the Act and only such persons are competent to present the winding up petition. The procedure to be followed on such a petition for winding up of the company being presented to court and the parties who are entitled to be heard on the petition are dealt with and provided for in the Act and the Rules. The right of appearance and of being heard in a winding up proceeding has been conferred on persons whom the Legislature considered to be necessary or proper parties for effective adjudication of the proceeding before the Court. The Act provides that a creditor to whom a company is indebted in a sum exceeding Rs. 500 and whose debt has not been paid by the company notwithstanding the statutory notice being served on the company is entitled to present a petition for the winding up of the company and in such a case, the creditor whose debt cannot be properly disputed, is entitled to an order of winding up on the ground of insolvency of the company. If a company is commercially insolvent and is unable to pay its debts, the company has necessarily to be wound up and the employees of the company can have hardly anything to say in such a case for assisting the Court in deciding the matter.

My learned brother Venkataramiah, J. has referred to the various provisions of the Act and also to relevant Rules, which go to indicate that no such right of the employees to appear and participate in a winding up proceeding is recognised. Rule 34 of the Rules on which strong reliance was placed by the learned counsel appearing on behalf of the trade unions, is not of any assistance. The said Rule

reads as follows:-

> "Every person, who intends to appear at the hearing of a petition, whether to support or oppose the petition, shall serve on the petitioner or his advocate, notice of his intention at the address given in the advertisement. The notice shall contain the address of such person, and be signed by him or his advocate, and same as otherwise provided by these rules shall be served (or if sent by post, shall be posted in such time as to reach the addressee) not later than two days previous to the day of hearing, and in the case of a petition for winding up not later than five days previous to the day of hearing. Such notice shall be in Form No. 9, with such variations as the circumstances may require, and where such person intends to oppose the petition, the grounds of his opposition or a copy of his affidavit if any, shall be furnished along with the notice. Any person who has failed to comply with this rule shall not except with the leave of the Judge, be allowed to appear at the hearing of the petition."

This particular Rule appears in Part I and in Part I of the Rules, general provisions are made. This Rule only lays down the procedure to be followed by any person who intends to be heard at the hearing of a petition, whether to support or oppose the petition, and this Rule does not deal with the competence or right of any particular person to appear at the hearing of any petition nor does this rule create any right in any person. Part III of the Rules makes specific provisions with regard to winding up by Court. Rule 9B in Part III reads:-

> "Every contributory or creditor of the company shall be entitled to be furnished by the petitioner or by his advocate with a copy of the petition within 24 hours of his requiring the same on payment of the prescribed charges."

For properly and effectively adjudicating upon any winding- up petition, the parties must necessarily know the grounds contained in the petition on which the Court has been moved for the winding-up of the company to make representation with regard to the same. Rule 9B requires that copies of the petition in terms of the said rules are to be furnished to every contributory or creditor of the company and the said rule makes no mention of the employees of the company. I agree with my brother Venkataramiah, J. that on a proper consideration of the relevant provisions of the Act and also of the Rules, an employee of a company in his capacity as such does not have any right to appear and be heard in a petition presented to Court for the winding-up of the company. It will be noticed on an analysis of the provisions of the Act that from the stage of the formation of the company till the very last stage of its dissolution, company jurisprudence does not recognise any right of an employee in his capacity as an employee of the company in the matter of formation of the company, its functioning and its ultimate winding-up.

The Act, however, makes necessary provisions as to deposit of employees' security monies with a Scheduled Bank in S. 417 of the Act. The Act also makes suitable provision in Section 418 about Provident Funds of Employees. Necessary provisions for preferential payment of wages or salary of an employee in case of winding-up of a company have been made in Section 530 of the Act. For safeguarding what the Legislature considers to be public interest, the Legislature in various sections

of the Act has made suitable provisions casting various obligations on the company with penal consequences and has conferred powers on the Government.

The introduction of Art. 43A in the Constitution which reads-"The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry"-does not affect the position in any way. Participation in the management of a company does not by itself create any right in any such person to appear and be heard in a winding-up petition. Unless otherwise named personally as a party to a winding-up petition, no person merely on the ground that he happens to be in the management of the company is entitled as a matter of right to appear and be heard in a winding-up proceeding. Persons in management of the company may, if they are so authorised, appear and participate in a winding up proceeding on behalf of the company and representing the company. They will, however, be entitled to appear if they are members or creditors of the company in such capacities, but not as members of the management. A director of a company must of necessity be a member of the company, as provided in the Act.

It is worth mentioning that the Indian Companies Act is based on the English Companies Act and both the Acts contain more or less similar provisions. The provisions of the Indian Companies Act with regard to the winding-up of the Company are almost alike to the provisions contained in the English Companies Act. As early as 1870 the English Court in Re: Bradford Navigation Co.(1) held on a consideration of the provision of the English Act that no person had a right to be heard against a petition for winding-up of a company except creditors and contributories. It is no doubt true that this decision, still holds good and is considered to be good law, as will be evident from the comments in authoritative text books on the subject. In Halsbury's Laws of England (4th Edn.), Vol. VII at p. 614, it has been laid down-"Only the petitioners, the company, and creditors and contributories are entitled to appear on the petition; other parties have no right to be heard, and, even if the Court of first instance elects to hear them as amici curiea, they have no right of appeal." In Palmer's Company Precedents (7th Edn), Part II, the following observations appear at p. 77:-

> "Any creditor or shareholder may appear to support or oppose the petition. But no one else can do so, even if he has an indirect interest in the continued existence of the company."

On the basis of the decision in Re: Bradford Navigation Co. (supra), the following comments have been made at p. 546 in Buckley on the Companies Act, 14th Edn. Vol. I :-

> "The only persons entitled to be heard are the company, the creditors and contributories. The Court may, in its discretion hear other persons who have an interest in order to learn what public grounds there are in favour of, or in opposition to, the winding up but such persons can be heard only as amici curiae, and cannot appeal."

Various legislations for the benefit and welfare of the employees have since been passed in England and the Company Act in England also did undergo various changes from time to time. The

employees of a company in England are affected in the same way as the employees of a company in India when an order for winding up of the company is made. It cannot be said that workers in England are not conscious of their status and position and of the important role they play in the proper functioning of a company and in England there are also the trade unions of the workers for defending, protecting and improving the conditions and rights of the workers. Despite all these, the right of an employee or any trade union representing the workers to participate and be heard in a winding-up petition is not recognised in England.

I have to observe that Mr. Ramamurthi, learned counsel appearing for one of the trade unions, has placed very strong reliance on the following observations of this Court in the case of Hind Overseas Private Limited v. Raghunath Prasad Jhunjhunwala and Ors.(1):-

> "Although the Indian Companies Act is modelled on the English Companies Act, the Indian Law is developing on its own lines. Our law is also making significant progress of its own as and when necessary. Where the words used in both the Acts are identical, the English decisions may throw good light and reasons may be persuasive. But as the Privy Council observed long ago in Ramanandi Kuer v. Kalawati Kuer(2).
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> It has often been pointed out by this Board that where there is a positive enactment of the Indian Legislature, the proper course is to examine the language of that statute and to ascertain its proper meaning uninfluenced by any consideration derived from the previous state of the law or of the English Law upon which it may have been founded.
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> If it was true in the twenties it is more apposite now that the background conditions and circumstances of the Indian society, the needs and requirements of our country call for a somewhat different treatment. We will have to adjust and adapt, limit or extend, the principles derived from English decisions, entitled as they are to great respect, suiting the conditions of our society and the country in general always, however, with one primary consideration in view that the general interests of the shareholders may not be readily sacrificed at the altar of squabbles of directors of powerful groups for power to manage the company."

These observations, to my mind, are of no assistance in deciding the question involved in this appeal. These observations were made in different context. These observations, however, indicate that where the provisions of the Indian Act and the English Act are alike, the decisions of the English Courts throw good light and the reasons may be persuasive, it is no doubt true that the decisions of the English Courts do not have a binding effect and the proper course for this Court while considering or interpreting an enactment of the Indian Legislature is to examine the language of the Statute to ascertain its proper meaning unifluenced by any consideration derived from the provisions of the English Law upon which it may have been founded. Principles of construction of a statute are well settled.

It is significant to note that no decision of any Court in India could be cited where the claim of an employee in his capacity as an employee to participate and be heard in a petition for winding up of the company as a matter of right has been accepted. On the other hand, the settled legal position in this country so far has been that no employee could claim any such right. It is interesting to note that though in this country also the provisions of the Companies Act have undergone various changes from time to time and various enactments for the welfare of the workers have been passed from time to time, the Legislature in our country did not consider it proper or necessary to amend the provisions of the Indian Companies Act to confer any such right on the workers.

I, however, wish to make it clear that although an employee of a company as an employee of a company cannot claim to appear and be heard in a petition for winding-up of the company as a matter of right, yet in any appropriate case the Court in a winding-up proceeding may require or permit any employee to appear at any stage of a winding-up proceeding and hear him, if the Court be of the opinion that the employee or the employees should be heard in the interests of administration of justice and for proper disposal of any matter. It appears that in this very case, the Court at an earlier stage of the proceeding had, in fact, heard the employees and redressed their just grievance.

With these observations I agree with the order proposed by my learned brother Venkataramiah, J.

H.L.C. Appeals allowed.