Supreme Court of India
M/S. Hatisingh Mfg. Co. Ltd.And ... vs Union Of India And Others on 14 April, 1960
Equivalent citations: 1960 AIR 923, 1960 SCR (3) 528
Author: S C.
Bench: Sinha, Bhuvneshwar P.(Cj), Imam, Syed Jaffer, Sarkar, A.K., Wanchoo, K.N., Shah, J.C.

PETITIONER:
M/s. HATISINGH MFG. CO. LTD.AND ANOTHER

Vs.

RESPONDENT:
UNION OF INDIA AND OTHERS.

DATE OF JUDGMENT:
14/04/1960

BENCH:
SHAH, J.C.
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SHAH, J.C.
SINHA, BHUVNESHWAR P.(CJ)
IMAM, SYED JAFFER
SARKAR, A.K.
WANCHOO, K.N.

CITATION:
1960 AIR 923 1960 SCR (3) 528
CITATOR INFO :

R	1963 SC 630	(25)
RF	1963 SC1489	(19)
E	1963 SC1811	(104)
R	1968 SC1002	(8)
R	1968 SC1138	(37)
RF	1969 SC 590	(4)
R	1970 SC 778	(9)
R	1974 SC2349	(11)
RF	1975 SC1234	(25)
RF	1979 SC 25	(12)
R	1979 SC 170	(16)
R	1984 SC1194	(27)
RF	1992 SC1033	(60)

ACT:
Industrial Undertaking, Closure of-Compensation to workmen -Constitutional validity of enactment-Industrial Disputes Act, -1947 (14 of 1947), as amended by Act 18 of 1957, S. 25FFF(1)Constitution of India, Arts. 19(1)(g), 14, 20.

HEADNOTE:

The question for determination in these petitions relates to the constitutional validity of S. 25FFF(1) of the industrial Disputes Act, 1947, inserted by Act 18 of 1957, which provides for payment of compensation to workmen on the closure of an industrial undertaking. The petitioners urged that the impugned section (1) imposed unreasonable restrictions on the freedom to carry on business guaranteed by Art. 19(1)(g), which included the right to close the business, (ii) discriminated between employers who closed their undertakings on or before November 27, 1956, and employers who closed thereafter and thus contravened Art. 14 and (iii) also penalised acts which were not offences when committed contrary to Art. 20 (1) of the Constitution:

Held, that S. 25FFF(1) of the Industrial Disputes Act, 1947, inserted by Act 18 of 1957, including the proviso and the explanation, is not violative of Arts. 19(1)(g), 14, and 20 of the Constitution and its constitutional validity is beyond question:

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Held, further, that the question whether a restriction imposed by a law on the exercise of the fundamental right guaranteed by Art. 19(1)(g) is a reasonable restriction within the meaning of Art. 19(6) of the Constitution is to be judged not by any theoretical standards or fixed patterns but in the light of the nature and incidents of the right, the interest of the general public sought to be secured and the reasonableness of the quality and extent of the restriction itself.

The clear intention of the legislature in using the words " as if the workmen had been retrenched " in S. 25FFF(1) of the Act was not to place the closure of an undertaking on the same footing as retrenchment under S. 25F. While under S. 25F of the Act no workman can be retrenched until the conditions prescribed therein are fulfilled, S. 25FFF(1) does not prohibit the closure of an undertaking without payment of compensation or service of notice, or payment of wages in lieu thereof, and lays down no conditions precedent to closure.

But termination of service due to closure of an industrial undertaking stands on the same footing as termination of service on retrenchment and it is in the interest of the general public that the unemployed workmen should be afforded some protection to tide over the period of unemployment. Since the impugned provision, with that object in view, seeks to achieve social justice, it is not material to probe into the motives of the employer or the bona fides of the closure.

Indian Hume Pipe Co., Ltd. v. Their Workmen, [196O] 2 S.C.R. 32, referred to.

Since wages in lieu of notice are normally inadequate re-compense for loss of employment, the payment of additional compensation related to the length of service of the employee cannot be said to be unreasonable.

Nor can the provision for standardisation of compensation, which does not leave it to be judicially ascertained on the basis of the employer's capacity to pay or the loss suffered by the employees, be said to be unreasonable.

Payment of gratuity, which is a retiral benefit is essentially different from statutory compensation for termination of employment due to closure of an undertaking; a provision for payment of such compensation is not to be deemed unreasonable merely because compensation for closure of an undertaking is in addition to gratuity payable under an industrial award.

Since there can be no doubt as to the constitutionality of the principal provision for compensation, the proviso must also be regarded as constitutional.

The explanation to S. 25FFF(1) of the Act does not provide that in no case of financial difficulty or accumulation of stocks coupled with other circumstances can the closure of an undertaking be regarded as due to unavoidable circumstances beyond the control of the employer. It cannot, therefore, be regarded as unreasonable for although it may be irksome to some citizens, it is in the interest of the general public.

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Mohd. Hanif Quareshi and Ors. v. The State of Bihar, [1959] S.C.R. 629 and Bijay Cotton Mills Ltd. v. The State of Ajmer, [1955] 1 S.C.R. 752, referred to.

A law which is applicable generally to all persons who come within its ambit cannot be said to be discriminatory and violative of Art. 14 of the Constitution, even though it may be retrospective in operation.

The impugned section does not make payment of compensation a condition precedent to closure and creates no criminal liability and so neither s. 31(1) nor s. 31(2) of the Act can have any application. Article 20(1) of the Constitution is not, therefore, attracted and there can be no contravention of it.

JUDGMENT:

ORIGINAL JURISDICTION :Petitions Nos. 88 and 106 of 1957 and 103 of 1959.

Petition under Article 32 of the Constitution of India for enforcement of Fundamental Rights.

G.S. Pathak, I. M. Nanavati, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and P. L. Vohra, for petitioner No. 1 (In Petns. Nos. 88 of 57 and 103 of 1959). I.M. Nanavati, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and P. L. Vohra, for petitioner No. 2 (In Petns. Nos. 88 of 57 and 103 of 1959).

B.Sen, B. K. B. Naidu and I. N. Shroff, for the petitioner (In Petn. No. 106 of 57).

M.C. Setalvad, Attorney General of India, C. K. Daphtary, Solicitor General of India, B. R. L. Iyengar and R. H. Dhebar, for respondents Nos. I and 2 (In Petn. No. 88 of

57) and the respondents (In Petn. No. 106....of 57). C. K. Daphtary, Solicitor-General of India, N. S. Bindra and R. H. Dhebar, for respondent No. 1 (In Petn. No. 103 of

59).

Janardan Sharma, for respondent No. 2 (In Petn. No. 103 of

59.) P. A. Mehta and G. Gopalakrishnan, for the Intervener. 1960. April 14. The Judgment of the Court was delivered by SHAH, J.-In these three petitions the validity of s. 25FFF(1) of the Industrial Disputes Act No. XIV of 1947 as amended by Act 43 of 1953 is impugned.

Petition No. 88 of 1957 is by a company manufacturing cotton textiles in the town of Ahmedabad. The machiney in the factory of the company was installed in the year 1893 and has not been replaced thereafter. The factory bad, it is claimed by the petitioners, become, by the passage of time, an uneconomic unit and was closed on that account on April 27, 1957. An attempt was made by the management to increase the number of spindles to make the unit economic, but without success. The company was incurring losses year after year and early in the year 1956 the Registrar of Companies,Bombay,requested the Central Government to authorise him to wind up the company. This authority was not given and the factory continued to work till April 28, 1957, on which date it was closed after notice of closure given in March, 1957. The petitioner in Petition No. 106 of 1957 was running a coal mine which he had purchased in November, 1953. The petitioner says that he made large investments in the mine, but due to flooding by underground water, the working of the mine consistently resulted in losses which aggregated to over rupees seven lakhs by February, 1957. The petitioner decided to close the mine and gave notice in that behalf 'to the employees. The petitioner paid one month's salary to the monthly paid staff and 15 days' wages to the weekly and daily rated staff, and closed the mine on February 10, 1957. Petition No. 103 of 1959 is by a company which owns a spinning and weaving factory at Jamnagar. This factory which was started in the year 1938, proved an uneconomic unit, it is claimed resulting in persistent losses which aggregated to about Rs. 28 lakhs by the end of the year 1957. In view of these losses, the weaving department of the factory was closed on February 1, 1957, and the entire factory was closed on April 24, 1957, after notice of closure to the employees.

By their petitions the three petitioners impugn the validity of s. 25FFF(1) of the Industrial Disputes Act, 1947, which requires them to pay compensation on closure of their undertakings, which they claim were due to circumstances beyond their control.

To appreciate the contentions, a brief review of the relevant legislative history may be set out:

The Parliament amended the Industrial Disputes Act, 1947, by Act 43 of 1953 and incorporated therein Ch. VA which contained ss. 25A to 25J. By this Chapter, provision was made for payment of compensation for lay-off and retrenchment, and certain incidental provisions enunciating and

regulating liability for payment of compensation were enacted. By s. 25F it was enacted that no workman employed in any industry who had been in continuous service for not less than one year under an employer shall be retrenched unless the workman had been given notice of one month's duration, or wages in lieu thereof and also had been paid at the time of retrenchment compensation equivalent to 15 days' average pay for every completed year of service or any part thereof in excess of six months. Retrenchment was defined by cl. (oo) of s. 2, as meaning termination of service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action. But the amending Act of 1953 did not expressly provide for liability to pay compensation for termination of employment on closure of an industrial undertaking. In Hariprasad Shivshankar Shukla v. A. D. Divekar (1)decided on 27-11-1956, it was held by this Court:

"The word ' retrenchment' as defined in s. 2(oo) and the word 'retrenched' in s. 25F of the Industrial Disputes Act, 1947, as amended by Act XLIII of 1953, have no wider meaning than the ordinary accepted connotation of those words and mean the discharge of surplus labour or staff by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and do not include termination of services of all workmen on a bona fide closure of industry or on change of ownership or management thereof."

The President of India on April 27, 1957, promulgated Ordinance No. IV of 1957. which amended Ch. VA of the Industrial Disputes Act, 1947. By this Ordinance, provision was made for payment with retrospective effect from December 1, 1956, of compensation to workmen on termination of employment (1) (1957) S.C.R. 121.

upon transfer or closure of an industrial undertaking. This Ordinance was later replaced with certain modifications by Act 18 of 1957 which came into force on June 6, 1957, but with retrospective effect from November 28, 1956. Section 25FFF which was incorporated by the amending Act by the first subsection confers upon every workman who has been in continuous service for not less than one year immediately before the closure, right to notice and compensation in accordance with the provisions of s. 25F, and by the proviso thereto the maximum amount of compensation payable to a workman is limited to average pay for three months when the undertaking is closed on account of circumstances beyond the control of the employer. By the explanation, an undertaking closed down on account merely of financial difficulties including financial losses) or accumulation of undisposed of stocks is not to be deemed to have been closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso. This provision for awarding compensation for termination of employment on closure of an industrial undertaking is challenged in these petitions on three grounds: (1) that it imposes unreasonable restrictions on the freedom guaranteed to every citizen by Art. 19(1)(g) of the Constitution to carry on business which freedom includes the right to close his business, (11) that it discriminates between different employers belonging to the same group placed in similar cir- cumstances and thereby contravenes Art. 14 of the Constitution, and (III) that contrary to Art. 20 of the Constitution, it penalises acts which when committed were not offences.

Re. I.

Section 25FFF(1) is impugned as imposing unreasonable restrictions upon the fundamental freedom to close down an undertaking because liability to pay compensation is made a condition precedent to closure of an undertaking even if it is effected bona fide by an employer who is unable on account of unavoidable circumstances to carry on the undertaking and also because it operates retrospectively on closure effected since a date arbitrarily fixed by the Act. It is also impugned on the ground that compensation is not related to the loss suffered by the employees by termination of employment on closure, but is awarded at standardized rates without taking into account the capacity of the employer to pay compensation to discharged employees. Sub-s. 1 of s. 25FFF reads as follows: -

" Where an undertaking is closed down for any reason every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure, shall subject to the provisions of sub-section (2) be entitled to notice and compensation in accordance with the provisions of s. 25F, as if the workman had been retrenched."

There is between the text of s. 25F and s. 25FFF(1) a significant difference in phraseology. Whereas by s. 25F- the constitutional validity whereof does not fall to be determined in these petitions-certain conditions precedent to retrenchment of workmen are prescribed, s. 25FFF(1) merely imposes liability to give notice and to pay compensation on closure of an undertaking which results in termination of employment of the workmen. Under s. 25F, no workman employed in an industrial undertaking can be retrenched by the employer until (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period has expired or the workman has been paid salary in lieu of such notice, (b) the workman has been paid retrenchment compensation equivalent to 15 days' average salary for every completed year of service and

(c) notice in the prescribed manner is served on the appropriate Government. Section 251FFF(1) however enacts that the workman shall be entitled to notice and compensa- tion in accordance with the provision of s. 25F if the undertaking is closed for any reason, as if the workman has been retrenched. By the plain intendment of s. 25FFF(1), the right to notice and compensation for termination of employment flows from closure of the undertaking; the clause does not seek to make closure effective upon payment of compensation and upon service of notice or payment of wages in lieu of notice. An employer proposing to close his undertaking may serve notice of termination of employment and if he fails to do so, he becomes liable to pay wages for the period of notice. On closure of an undertaking, the workmen are undoubtedly entitled to notice and compensation in accordance with s. 25F as if they had been retrenched, i.e., the workmen are entitled besides compensation to a month's notice or wages in lieu of such notice, but by the use of the words " as if the workman had been retrenched " the legislature has not sought to place closure of an undertaking on the same footing as retrenchment under s. 25F. By s. 25F, a prohibition against retrenchment until the conditions prescribed by that section are fulfilled is imposed ; by s. 25FFF(1), termination of employment on closure of the undertaking without payment of compensation and without either serving notice or paying wages in lieu of notice, is, not prohibited. Payment of compensation and payment of wages for the period of notice are not therefore conditions precedent to closure.

By Art. 19(1)(g) of the Constitution freedom to carry on any trade or business is guaranteed to every citizen, but this freedom is not absolute. By cl. 8 of Art. 19, operation of any existing law or any law which the State may make in so far as such law imposes in the interest of the general public reasonable restrictions on the exercise of the right is not affected. In the interest of the general public, the law may impose restrictions on the freedom of the citizens to start, carry on or close their undertakings. Whether an impugned provision imposing a fetter on the exercise of the fundamental right guaranteed by Art. 19(1)(g) amounts to a reasonable restriction imposed in the interest of the general public must be adjudged not in the background of any theoretical standards or predeterminate patterns, but in the light of the nature and incidents of the right the interest of the general public sought to be secured by imposing the restriction and the reasonableness of the quality and extent of the fetter upon the right.

By Act 18 of 1957, employers who close their undertakings after November 27, 1958, are made liable to pay compensation under s. 25FFF(1) at the prescribed rates, and this liability evidently arises even in respect of undertakings closed before the date of the enactment of the impugned section. A law which creates a civil liability in respect of a transaction which has taken place before the date on which the Act was enacted does not per se impose an unreasonable restriction. It was on November 27, 1956, that this court held that s. 25F did not support a claim for compensation for termination of employment arising out of closure of an undertaking. The Parliament, evidently, respected the interpretation put on s. 25F by this court and directed that in respect of closures effected on or before the date on which judgment was delivered by this court in Hariprasad's case, no compensation for termination of employment on account of closure of an undertaking would be awarded. It is not disputed that a number of industrial undertakings were closed down after the judgment in Hariprasad's case was delivered by this court and more than 25,000 workmen were thrown out of employment on account of such closures. The Parliament, in view of these developments enacted s. 25FFF(1) imposing liability for payment of compensation by employers who closed their undertakings since November 27, 1958.

Closure of an industrial undertaking involves termination of employment of many employees, and throws them into the ranks of the unemployed, and it is in the interest of the general public that misery resulting from unemployment should be redressed. In Indian Hume Pipe Co. Ltd. v. The Workmen (1) this Court considered the reasons for awarding compensation under s. 25F (though not its constitutionality). It was observed that retrenchment compensation was intended to give the workmen some relief and to soften the rigour of hardship which retrenchment brings in its wake when the retrenched workman is suddenly and without his fault thrown on the streets, to face the grim problem of unemployment. It was also observed that the workman naturally expects and looks forward to security of service spread over a long period, but retrenchment destroys his expectations. The object of retrenchment compensation is therefore to give (1) [1960] 2 S.C.R. 32.

partial protection to the retrenched employee to enable him to tide over the period of unemployment. Loss of service due to closure stands on the same footing as loss of service due to retrenchment, for in both cases, the employee is thrown out of employment suddenly and for no fault of his and the hardships which he has to face are, whether unemployment is the result of retrenchment or closure of business, the same. If the true basis of the impugned provisions is the

achievement of social justice, it is immaterial to consider the motives of the employer or to decide whether the closure is bona fide or otherwise. Wages in lieu of notice are normally inadequate compensation for loss of employment in an industrial undertaking. Having regard to the prevailing conditions in the employment market, it would be difficult for the workman thrown out of employment to secure employment similar to the one terminated within one month, and therefore the Parliament has thought it proper to provide for payment of additional compensation besides wages in lieu of notice. The provision for payment of such compensation in addition to wages in lieu of notice cannot therefore be characterised as unreasonable.

Compensation related to the length of service of the employee is also not unreasonable. An employee remaining employed in an industry for an appreciable length of time acquires experience and some degree of aptitude in the branch in which he is employed and his experience in that branch qualifies him to promotion and to receive wages at a higher level. By his continued employment, he reaches seniority in the cadre of employment, with chances of promotion, the benefit of which he loses by sudden termination of employment. The workman, on termination of employment, may have to compete for employment at a lower level in branches to which he may be by experience or aptitude, not fitted, or to seek employment in a job similar to the one terminated at a lower level. If, in the light of these considerations, the legislature has related the compensation payable on termination of employment to the period of service of the employee, the provision cannot be regarded as un- reasonable.

The plea of unreasonableness of the restriction imposed as flowing from the provision which standardizes compensation and does not leave it to be ascertained by a judicial tribunal in the light of the capacity of the employer and the loss suffered by the employees on termination of employment, cannot also be sustained. Instead of leaving the question to be decided in each individual case in the context of a variety of circumstances having a bearing on the amount of compensation to be awarded, the Parliament has standardized the compensation by relating it to the length of service of the employee, and thereby a definite standard for payment of compensation related to readily ascertainable data is prescribed. Standardization of compensation which dispenses with recourse to a judicial tribunal for assessing the quantum is a recognized method of awarding compensation especially where large numbers of workmen are involved in a similar situation. Absence of a provision for a judicial verdict on the quantum of compensation payable does not therefore make the law unreasonable.

Gratuity which is a kind of retiral 'benefit is essentially different from statutory compensation for termination of employment due to closure of an undertaking. The objects intended to be achieved thereby are also distinct. Therefore the argument that it is unreasonable to award statutory compensation under s. 25FFF(1) when gratuity is otherwise claimable under an award binding upon the employer must be rejected.

The impugned section providing for payment of compensation is evidently related to the object sought to be achieved by the Parliament, viz.: securing social justice. The right to receive compensation arises because the workman is exposed to undeserved want and the reasons for closure may have no direct bearing thereon. Payment of compensation which is directed to be made

at the rate of 15 days wages for every completed year of service cannot again be characterised as was sought to be done by one of the learned counsel for the petitioners as " drastic in its scope and content".

Does the impugned provision impose an unreasonable restriction because it imposes liability to pay compensation which is not related to the capacity of the employer ? Before the impugned section was enacted, the industrial tribunals undoubtedly decided the individual claims for compensation for termination of employment submitted to them on their merits and sometimes refused compensation if it was found that the closure was bona fide and was in part due to irresponsible conduct of the workmen concerned. The decisions of the industrial tribunals before the impugned section was enacted again show that even where compensation was allowed, there was no fixed standard or principle on which the compensation was awarded. Where the business is continuing its capacity to meet the obligation to pay dearness allowance, gratuity and provident fund, etc., may have to be taken into account ; the reason being that if the capacity to pay is not taken into account, the business itself may come to an end and the very purpose of industrial adjudication in the matter of fixation of wages, payment of dearness allowance and the schemes of gratuity and provident fund which are intended for the amelioration of the conditions of labour may be frustrated. But where a business is closed, the capacity to pay is not a relevant consideration. Normally, if the business is capable of meeting the obligation to pay the wages of the workmen and to meet the other expenses necessary for its continuance, it would not be closed down. Capacity to pay has therefore to be taken into account in the case of a running business in assessing liability to fix wages or gratuity or dearness allowance. Once the undertaking is closed and liability to pay compensation under the impugned section is not made a condition precedent, the amount which the workmen may be able to recover must depend upon the assets of the employer which may be available to meet the obligation. The workmen would be entitled to recover compensation only if the employer is able to meet the obligation; otherwise they would have to rank pro-

rata with the other ordinary creditors of the employer. The legislature has imposed restricted liability in cases where closure is due to circumstances beyond the control of the employer. By the proviso to sub-s. 1 of s. 25FFF, where the undertaking is closed down on account of circumstances beyond the control of the employer, the compensation to be paid to the workmen is not to exceed his average pay for three months. If the principal provision is not unconstitutional as imposing an unreasonable restriction, it is not suggested that the proviso is on any independent ground unconstitutional.

However, the explanation to s. 25FFF proviso is, it is submitted, unreasonable. The explanation provides : "An undertaking which,, is closed down by reason merely of financial difficulties (including financial losses) or accumulation of undisposed of stocks shall not be deemed to have been closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section." The effect of the impugned section along with the proviso is to classify the undertakings into two classes, viz., (1) those which are closed down on account of unavoidable circumstances beyond the control of the employer and (2) the remaining. When the closure of an undertaking is due to circumstances beyond the control of the employer, the maximum limit of compensation is average pay for three months, irrespective of the length of

service of the workmen; in the residuary class, the liability is unrestricted. The explanation is in substance a definition clause which sets out what shall not be deemed to be closures on account of circumstances beyond the control of the employer. By this explanation, employers who had to close down their industrial undertakings merely because of financial difficulties including financial losses or accumulation of undisposed of stocks are excluded from the benefit of the proviso to s. 25FFF(1). The proviso restricts the liability of employers who are compelled to close down their undertakings on account of unavoidable circumstances beyond their control, but in the view of the Parliament, in that category are not to be included employers compelled to close down their undertakings merely because of financial difficulties or accumulation of undisposed of stocks. Closure of an undertaking attributable merely to financial difficulties or accumulation of undisposed of stocks, is by the explanation, excluded from the benefit of restricted liability; but coupled with other circumstances, financial difficulties or accumulation of undisposed of stocks may justify the view that the closure is due to unavoidable circumstances beyond the control of the employer, and attract the application of the proviso notwithstanding the explanation. Where an undertaking is closed down on account of persistent losses due to no fault of the employer or due to accumulation of/stocks having regard to persistent unfavourable market conditions, the closure may normally be regarded as due to unavoidable circumstances beyond the control of the employer. By the explanation, the jurisdiction of the Tribunal which may be called upon to ascertain whether in a given case, the closure was on account of circumstances beyond the control of the employer and whether OD that account the employer was entitled to the benefit of the proviso may be restricted. But it is not provided that in no case of financial difficulty or accumu- lation of stocks coupled with other circumstances, the closure is to be regarded as due to unavoidable cir- cumstances beyond the control of the employer. It is only where the closure is " merely " on account of financial difficulties or accumulation of undisposed of stocks that the closure is not to be deemed due to circumstances beyond the control of the employer.

A state of financial difficulties or accumulation of undisposed of stocks may be temporary, it may be brought about by past mismanagement directly attributable to the employer or may even be deliberately brought about. The closure on account of financial difficulties or accumulation of undisposed of stocks is accordingly not necessarily the result of unavoidable circumstances beyond the control of the employer. That, in certain events, a statute may impose restrictions which will be irksome and may be so regarded by certain citizens as unreasonable, is not decisive of the question whether it imposes a reasonable restriction. As observed in Mohd. Hanif Quareshi and Others v. The State of Bihar (1) by Das, C. J. :

" In determining that question (the reasonableness of the restriction) the court we conceive, cannot proceed on a general notion of what is reasonable in the abstract or even on a consideration of what is reasonable from the point of view of the person or persons on whom the restrictions are imposed. The right conferred by sub-el. (g) is expressed in general language and if there had been no qualifying provision like el. (6), the right so conferred would have been an absolute one. To the person who has this right, any restriction will be irksome and may well be regarded by him as unreasonable. But the question cannot be decided on that basis. What the court has to do is to consider whether the restrictions imposed are reasonable in the interest of the general public."

Again, as observed in Bijay Cotton Mills Ltd. v. The State of Ajmer (2):

" Individual employers might find it difficult to carry on the business on the basis of the minimum wages fixed under the Act but this must be due entirely to the economic conditions of these particular employers. That cannot be a reason for the striking down the law itself as unreasonable ".

By the explanation, certain persons because of persistent losses or accumulation of stocks, find them selves unable to carry on the business, and may still not be entitled to the benefit of the proviso, but that will not be a ground for holding that the explanation is unreasonable. The tribunal called upon to decide whether the case of an employer is covered by the proviso will certainly be entitled to look into the causes which led to the financial losses or the accumulation of stocks and ascertain whether the closure was merely on account of financial losses or accumulation of stocks or was on account of circumstances beyond the control of the employer, and in assessing whether the (1) [1959] S.C.R. 629.

(2) [1955] 1 S.C.R. 752,755.

circumstances were beyond the control of the employer, the fact that the employer has suffered financial losses or there is accumulation of stocks is not required by the legislature to be excluded from consideration. The procedure for enforcement of liability to pay compensation, prescribed by s. 33(c) of the Act which makes the amount recoverable as arrears of land revenue cannot, ex facie, be regarded as unreasonable. Undoubtedly, under certain State laws, (e.g., the Bombay Land Revenue Code (Act V of 1879) for failure to pay land revenue, the defaulter may be imprisoned; but because of the special mode of recovery prescribed, the law imposing a civil liability to pay compensation for termination of employment does not become unreasonable.

On a review of the relevant circumstances we are of the view that the restrictions imposed by the impugned provision including the proviso are not unreasonable restrictions on the exercise of fundamental right of the employers to conduct and close their undertakings. The provision requiring the employers to pay compensation to their employees though restrictive of the fundamental freedom guaranteed by Art. 19(1)(g) is evidently in the interest of the general public, and is therefore saved by Art. 19(6) of the Constitution from the challenge that it infringes the fundamental right of the employers.

Be. 11:

Art. 14 of the Constitution is not violated by making by law a distinction between employers who closed their undertakings on or before November 27, 1956, and those who close their undertakings after that date. The State is undoubtedly prohibited from denying to any person equality before the law or the equal protection of the laws, but by enacting a law which happlies generally to all persons who come within its ambit as from the date on which it becomes operative, no discrimination is practised. When Parliament enacts a law imposing a liability as flowing from certain transactions prospectively, it evidently makes a distinction between those transactions which are covered by the Act and those which are not covered by the Act, because they were completed before the date on

which the Act was enacted. This differentiation, however, does not amount to discrimination which is liable to be struck down under Art.

14. The power of the legislature to impose civil liability in respect of transactions completed even before the date on which the Act is enacted does not appear to be restricted. If, as is concededand in our judgment rightly-by a statute imposing civil liability in respect of post enactment transactions, no discrimination is practised, by a statute which imposes liability in respect of transaction which have taken place after a date fixed by the statute, but before its enactment, it cannot be said that discrimination is practised. Art. 14 strikes at discrimination in the application of the laws between persons similarly circumstanced; it does not strike at a differentiation which may result by the enactment of a law between transactions governed thereby and those which are not governed thereby. If the argument that discrimination results when by statute a civil liability is imposed upon transactions which were otherwise not subject to such liability be accepted, every law which imposes civil liability will be liable to be struck down under Art. 14 even if it comes into operation on the date on which it is passed, because immediately on its coming into operation, discrimination will arise between transactions which will be covered by the law after its coming into force and transactions before the law came into force which will not naturally be hit by it. If a statute creating a civil liability which is strictly prospective is not hit by Art. 14, a law which imposes liability on transactions which have taken place before the date on which it was enacted, cannot also be hit by Art. 14. By bringing within its fold transactions before the date of its enactment, in truth, the date of the application of the Act is related back to a period anterior to the date oil which the Act was enacted.

Re.III For reasons already set out, payment of compensation and wages in lieu of notice under the impugned section are not made conditions precedent to effective termination of employment. The section only creates a right in the employees; it does not enjoin the employers to do anything before closure. Section 31(2) of the Act which imposes penal liability for contravention of the provisions of the Act can therefore have no application to failure to make payment of compensation and wages for the period of notice unders. 25FFF(1). The amending Act was it is true, passed in June, 1957, and liability to pay compensation arises in respect of all undertakings closed on or after November 26, 1956. But, if liability to pay compensation is not a condition precedent to closures, by failing to discharge the liability to pay compensation and wages in lieu of notice, the employer does not contravene s. 25FFF(1). A statute may prohibit or command an act and in either case, disobedience thereof will amount to contravention of the statute. If the statute fixes criminal liability for contravention of the prohibition or the command which is made applicable to transactions which have taken place before the date of its enactment the protection of Art. 20(1) may be attracted. But s. 25FFF(1) imposes neither a prohibition nor a command. Under s. 25F, there is a distinct prohibition against an employer against retrenching employees without fulfilling certain conditions. Similar prohibitions are found in ss. 22 and 23 of the Act. If this prohibition is infringed, evidently, criminal liabi- lity may arise. But there being no prohibition against closure of business without payment of compensation, s. 31(2) does not apply. By s. 33(c), liability to pay compensation may be enforced by coercive process, but that again does not amount to infringement of Art. 20(1) of the Constitution. Undoubtedly for failure to discharge liability to pay compensation, a person may be imprisoned, under the statute providing for recovery of the amount, e.g., the Bombay Land Revenue Code, but

failure to discharge a civil liability is not unless the statute expressly so provides, an offence. The protection of Art. 20(1) avails only against punishment for an act which is treated as an offence, which When done was not an offence.

In our view, the impugned s. 25FFF(1) including the proviso and the explanation thereto are not unconstitutional as infringing the freedom guaranteed by Art. 19 (1)(g) of the Constitution or as infringing Arts. 14 or 20 of the Constitution. On that view, the petitions fail and are dismissed with costs. There will only be one hearing fee. Petitions dismissed.