Supreme Court of India
Lal Mohammad And Ors vs Indian Railway Construction Co. ... on 4 December, 1998
Bench: S.B. Majmudar, M. Jagannadha Rao

CASE NO.:
Appeal (civil) 6069-6073 of 1998

PETITIONER:
LAL MOHAMMAD AND ORS.

RESPONDENT:
INDIAN RAILWAY CONSTRUCTION CO. LTD AND ORS.

DATE OF JUDGMENT: 04/12/1998

BENCH:
S.B. MAJMUDAR & M. JAGANNADHA RAO

JUDGMENT:

JUDGMENT 1998 Supp (3) SCR 343 The Judgment of the Court was delivered by S.B. MAJMUDAR, J. Leave granted in these Special Leave Petitions, We have heard learned counsel for the rival parties finally in these appeals and they are being disposed of by this judgment. These appeals on special leave bring in challenge the common judgment and order passed on 24th February, 1998 by the Division Bench of the High Court of Judicature at Allahabad in five special Appeals allowing the same and dismissing their writ petitions. Appeals before the Division Bench arose out of the common judgment rendered by the learned Single Judge of the High Court on 7.12.1993, allowing writ petitions filed by the petitioners concerned as the writ petitions challenged identical orders of retrenchment passed by the Respondent management against the concerned petitioner-workmen. In order to appreciate the nature of controversy posed for out consideration in these appeals, it will be necessary to note relevant background facts.

Background Facts P:

While narrating these facts we will refer to the present 25 appellants as original writ petitioner-workmen and the respondents as the company. Respondent no. 1- company is a construction company wholly owned by the Government of India. It is carrying on various construction projects through out the country and abroad. At-the relevant time when the writ petitioner-workmen were employed, Respondent no. 1 company and Respondent no 2, it's Regional Manager had undertaken and were monitoring a project of construction of railway line of 54 KMs known as Rihand Nagar Project in the State of Uttar Pradesh, It is the case of the 25 petitioner-workmen who were listed in Annexure P-1 in the SLP paper book that the respondent-company offered employment to these workmen in Rihand Nagar project on different dates during the period spread over from 26th December, 1983 up to 24th December, 1985 and were assigned different jobs of work at the Rihand Nagar project. The writ petitioners were appointed as clerks, account clerks, store clerks, store cashier, non-technical supervisors; site supervisee etc. The petitioners contended that they were appointed in the service of the Respondent company and were drafted to work in the Rihand Nagar project in the Rihand area at different sites. It is their

contention that initially they were required to undertake training and were, therefore, treated as appointed on ad-hoc basis. Subsequently they were wrongfully not made regular employees of the Respondent company though they were placed on regular time scale as such. That their services were liable to be transferred to any project of the Respondent company in India. In short, they contended that though initially they were made to work in the Rihand Nagar project at different sites they became full-fledged employees of the company and were treated for a number of years as such till August and September, 1993 when some of the petitioners were served with retrenchment notices dated 20th August, 1993 and others on 4th September, 1993. These notices were identical in nature. It was recited in these notices that as most of the work in Rihand Nagar project was over and there was no other work available for the employees concerned on this project or any other project of the company namely, IRCON, they were rendered surplus and hence retrenchment benefits under Section 25-F(b) of the Industrial Disputes Act, 1947 (for short 'the Act') were being offered as per the details given in the notices. They were advised to collect their other dues namely, provident fund, gratuity, leave salary etc, in accordance with rules of the company in force at the time of project. These retrenchment notices were challenged by the petitioner and other workmen by filing five writ petitions under Article 226 of the Constitution of India against common respondents who were respondents in these appeals, being the company and its Project Manager respectively. We will mention at this stage that the five writ petitions were filed before the High Court covering large number of workmen totalling upto 43. Writ Petition Mo. 18561 was filed by 16 writ petitioners, writ petition no. 32500 was moved by 7 writ petitioners and writ petition no, 32651 was filed by 18 writ petitioners while writ petition no, 34786 of 1993 and writ petition no. 44416 were filed by one petitioner each. However, in the present appeals only 25 original writ petitioners have brought in challenge common order passed against them by the Division Bench of the High Court. The aforesaid writ petitions were heard in common by the learned Single Judge of the High Court as noted earlier. It was contended by the writ petitioners that they were workmen of the company and not of any particular project and that their services were transferable anywhere within the country. The Respondent company had issued fresh advertisement for recruitment of new hands and therefore; the retrenchment notices were unjustified and un- called for; That their retrenchments were illegal and also violative of Articles 14,16 and 2.1 of the Constitution of India inasmuch as the Respondent company was a government company which was a "State" within the meaning of Article 12 of the Constitution of India. They also challenged their termination orders on the additional ground that the respondents had illegally invoked the provisions of Chapter V-A of the Act and that in fact Chapter V-B of the said Act applied as more than hundred workmen were being employed by the respondents and therefore, the respondents, before retrenching the writ petitioners were required to follow the provisions of Section 25-N of the Act, which were not followed and hence the termination orders were ex-fade null and void on that ground also.

The Respondent company resisted the writ petitions and submitted that the writ petitioners were only ad-hoc employees. They were not regularly appointed after following due procedure of recruitment rules and were employed only at the Rihand Nagar Project and as the project came to an end, the writ petitioners were liable to be retrenched and were accordingly retrenched on closure of the project after complying with the provisions of Section 25-F of the Act. It was also contended that Section 25-N of the Act did not apply to the facts of the present cases as the Rihand Nagar Project of the company, where the writ petitioners were employed, was not an 'industrial

establishment' as defined by Section 25-L of the Act read with Section 2(m) of the Factories Act, 1948 (for short 'Factories Act') as it was not a 'factory' at all. It was also vehemently contended that the writ petitioners were not employees of the company from the inception of their entry in service but they were recruited solely for the purpose of Rihand Nagar Project and their services were terminated after the said project got closed and they could not urge for being absorbed in any other project of the company. It was also submitted that the retrenchment orders were not arbitrary or illegal as submitted by the writ petitioners.

Learned Single Judge, who heard these five writ petitions in common, came to the conclusion that the Respondent company had employed the writ petitioners initially on ad-hoc basis but subsequently their services were regularised and they were absorbed in the services of the company on permanent basis. That all the writ petitioners had worked with the Respondent company for nearly nine years and in a few cases even more than that and that even if Rihand Nagar Project had come to an end such permanent employees like the writ petitioners could have been engaged in other projects as their services were transferable through out the country. It was further held that as the Respondent company is a "State" within the meaning of Article 12 of the Constitution of India, following the ratio of some of the judgments of this Court to which reference will be made hereinafter, the Respondent company was required to absorb the writ petitioners at one of other projects instead of throwing them out of the job on the specious plea that the project in which they were employed was oh the verge of completion. The learned Single Judge lastly addressed himself to the question whether Section 25-N applied to the facts of the present cases. Repelling the contentions on behalf of the Respondent company that section 25-N will-not apply because it is not a 'factory', it was held that the project in question where the writ petitioners were working at the time when two retrenchment notices were served, was a 'factory' within the meaning of Section 2(m) of the Factories Act read with Section 25-L of the Act and as admittedly, provisions of Section 25-N were not complied with in the present cases, all the retrenchment notices were null and void. In the result the learned Single Judge quashed the notices of termination dated 20th August, 1993 and Orders of termination dated 4.9.1993 issued to writ petitioners concerned. They were ordered to be continued in their job and were to be paid Salary due to them.

The aforesaid common order of the learned Single Judge of 7th December, 1993 resulted in special appeals before the Division Bench of the High Court as noted earlier. The Division Bench of the High Court allowed these appeals of the Respondent company by taking the view that Section 25-N of the Act did not apply to the facts of the present case on two grounds; (i) that for construction company like Respondent No. I if the procedure of section 25-O of the Act for closing down an undertaking had not to be followed, then ipso facto for retrenching workmen when project came to an end, there was also no question of following the procedure of section 25-N even on the basis that the workmen at the project were more than hundred in number. (ii) Secondly it was also held that in any case section 25-N of the Act would not apply as Respondent no. I company was not a 'factory' as it was not an industrial establishment as contemplated by Section 25-L of the Act read with Section 2(m) of the Factories Act. So far as petitioner nos.3 and 7 in writ petition no. 32500 of 1993 were concerned, it was observed that the writ petitioners were not 'workmen' under the Act, and therefore, the Act could have no application to them. It was further held that the writ petitioners were employees of the company which was carrying on the business of the construction work; and

the concept of regular employees did not exist under the industrial law. The question of absorption would arise only in government service and not in service of the company. It was further held that as the project in which the writ petitioners were employed was completed; their retrenchment in accordance with the provisions of Act was perfectly valid and they could not be absorbed in any other project. The question of regularising their services did not arise. As a result of these findings, the appeals of the Respondent company were allowed and writ petitions were dismissed. That is how the 25 writ petitioners who are aggrieved by the decision of the Division Bench are before us in these appeals on grant of special leave;

Rival Contentions :

Shri Sudhir Chandra, learned senior counsel for the appellant-writ petitioners contended that Division Bench had patently erred in law in taking the view that Section 25-N of the Act was not applicable to the facts of the present case. It was submitted that the petitioners at the time of impugned retrenchment were working on a project which employed more than hundred workmen. That this was not in dispute. Consequently, Section 25-N of the Act directly got attracted. That the Division Bench of the High Court was in error when it took the view that provisions of Section 25-O of the Act could be pressed in service for considering the applicability of Section 25-N to Respondent no. 1 construction company. It was also submitted that the Division Bench equally erred in taking the view that Respondent no. 1 company was not an 'industrial establishment' and that it was not a 'factory' within the meaning of the Factories Act In support of this submission judgments of this Court and other Courts were pressed in service to which we will make a reference hereinafter. It was also contended that the Division Bench itself held that if Section 25-N of the Act applied, the retrenchment orders would obviously be bad but it wrongly held that Section 25-N was out of the picture. It was next contended that Respondent company is a 'State' within the meaning of Article 12 of the Constitution of India. Therefore, it could not arbitrarily discharge old employees like the writ petitioners who had been working for a number of years and it could have absorbed them in any other project. That its refusal to do so violated Articles 14, 16 and 21 of the Constitution of India. That the rule of hire and fire could not be resorted to by the Respondent company which is a wholly owned government of India undertaking and was as good as Central government. That it was incumbent on it to absorb permanent employees like the writ petitioners in any other project if the Rihand Nagar Project had come to an end. In support of these contentions, reliance was placed on a number of decisions of this Court to which we will refer hereinafter. It was vehemently contended that the documentary evidence which was considered by the learned Single Judge and which is of clinching nature as it is offered by Respondent no. 1 company itself, conclusively establish that the writ petitioners were regular employees of the company and were not employees of any project as such. It was therefore, submitted that the decision, rendered by the learned Single Judge was quite justified, legal and proper and could not have been interfered with by the Division Bench in appeals.

Shri Dushyant Dave, learned senior counsel for the Respondent company on the other hand submitted that the writ petitioners were ad-hoc employees. Till the date of their retrenchment they were never regularised and absorbed in the services of the company. That they were recruited for the project in question in the Rihand Nagar region and once the project came to an end they had no right to continue in service in the project concerned and they were, therefore, rightly retrenched as

per the impugned orders on closure of the undertaking. It was also contended that highly disputed questions of fact arise for consideration of these proceedings. That such disputed questions of fact could not be gone into under Article 226 of the Constitution of India and the petitioners should have been relegated to the remedy of raising an industrial dispute. It was also contended that Whether the Respondent company's Rihand Nagar Project was 'factory' or not also required consideration of disputed questions of fact. In any case, the entire project spread over 59 KMs where railway line was being laid and on which project the writ petitioners-workmen were employed, cannot be held to be a 'factory'. That no manufacturing process was being carried on in the said project. Placing reliance on various judgments of this Court, Shri Dave, learned senior counsel for the respondent, submitted that the Division Bench of the High Court was justified in taking the view that Section 25-N did not apply to the facts of the present case and that the retrenchment orders were validly passed after complying with provisions of Section 25-FFF read with Section 25-F of the Act and that writ petitioners could not be ordered to be absorbed in any other projects of the company which were separate and independent establishments of the company spread over different parts of the country. It was, therefore, submitted that the appeals deserve to be dismissed.

Shri Dave also submitted that in any case after the judgment of the Division Bench, the respondents have issued fresh notices of termination of services of petitioners which squarely fall within the scope of Section 25- FFF and even on that ground the appeals are liable to be dismissed. He, however, fairly stated that whatever amounts were paid to the petitioners till the date of these fresh notice will not be recovered from them even if it is held that earlier retrenchment notices of August & September, 1993 were valid.

In rejoinder, learned senior counsel for the appellants, reiterated the main contentions urged by him in support of the appeals and repudiated the contentions canvassed by learned senior counsel, Shri, Dave, for the respondents. He also submitted that fresh notices of retrenchment are not under Section 25-FFF but are only in continuation of earlier invalid notices of 1993 and are issued as a corollary to the judgment of the Division Bench. If that judgment goes, these consequential notices must also go. In the light of these rival contentions, the following points arise for consideration :

(1) Whether Section 25-N of the Industrial Disputes Act applies to the facts of the present case;

(2) If yes, what are the legal consequences thereof in connection with the impugned termination notices of August & September, 1993;

(3) Whether the present 25 writ petitioner-appellants were employed only for Rihand Nagar Project or they were employees of the company from the very inception of their service;

(4) Even if Section 25-N of the Act is not applicable, whether the termination orders were violative of Articles 14,16 and 21 of the Constitution of India and consequently impugned retrenchment orders of 1993 under Section 25-F of the Act were liable to be set aside being arbitrary, illegal and not justified;

(5) Whether fresh notices of termination issued after decision of the Division Bench are legal & valid; and (6) What final orders?

Point No. 1 :

So far as this point is concerned, it will be necessary for us to have a look at the relevant statutory provisions as applicable to the facts which are no longer in dispute between the parties. It has to be kept in view that the writ petitioners contended before the High Court in writ petitions as well as in special appeals that they were 'workmen', governed by the provisions of the Act. It is, of course, true that the Division Bench in the impugned judgment has noted that two of the writ petitioners cannot be said to be 'workmen'. Shri Dave, learned senior counsel for the Respondent company, fairly stated that it is not the contention of the Respondent in these proceedings that the writ petitioners or any of them are not 'workmen' with in the meaning of Section 2(s) of the Act We, therefore, proceed on the footing that all the 25 writ petitioners-appellants before us are 'workmen' governed by the Act. In fact it is on that basis that the Respondent company had issued impugned termination notices to these workmen invoking Section 25-F of the Act. It is also not in dispute between the parties that these workmen-writ petitioners, at the relevant time when the impugned termination orders were passed against them, were working in Rihand Nagar Project which employed more than hundred workmen. In the light of these admitted facts, we have to see whether Section 25-F or Section 25- FFE of the Act as invoked by the Respondent company would get attracted or Section 25-N of the Act would apply. We, therefore, have to look at the relevant provisions of the Act dealing with 'lay off and 'retrenchment'. Chapter V-A of the Act deals with "lay-off and retrenchment of the industrial workmen". Section 25-F provides conditions precedent to retrenchment of workmen and lays down that "no workman employed in any industry who has been in continuous service for not less than one years under an employer shall be retrenched by that employer until the employer fulfils the conditions laid down in clauses (a),(b) and (c) of the Act of the said section". It is pertinent to note that in the impugned retrenchment notices of 1993 it has been expressly averred that the concerned workmen were being served with retrenchment notices as per Section 25-F (b) of the Act. It is also not in dispute between the parties that if Section 25-F applied to the facts of the present case, then the procedural requirement of the said section were complied with by the Respondent company. At present, while considering this point, it is not necessary for us to examine the further question whether the impugned notices under Section 25-F were otherwise illegal, unjustified or arbitrary. That aspect will be covered by point no. 4. For the present it is sufficient to note that it is the contention of the Respondent company that Section 25-F read with 25-FFF had been complied with and no further requirement of law as laid down in the Act was to be followed by the company. Learned counsel for the appellant writ petitioners on the other hand, submitted that as total number of workmen employed at the Rihand Nagar Project was more than hundred, neither Section 25-F nor Section 25- FFF found in Chapter V-A of the Act would apply but only provisions found in Chapter V-B of the Act relating to the procedure for 'retrenchment' in such establishments would get attracted.

We, therefore, turn to consider the relevant Sections in Chapter V-B. Section 25-K of the Act lays down that "provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which

not less than [one] hundred workmen were employed on an average per working day for the preceding twelve months". It is not in dispute between the parties as noted earlier that in 1993 when the impugned termination notices were issued to the writ petitioners, they were working in Rihand Nagar project wherein more than hundred workmen were employed. Therefore, the moot question which would arise is whether the Respondent company was an 'industrial establishment 'so as to be covered by the sweep of Chapter V-B. For answering this question the definition in Section 25-L becomes relevant. It lays down that "for the purpose of this Chapter V-B,-(a) 'industrial establishment' means-(i) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948)". We are not concerned with other sub-clauses (ii) and (iii) Section 25-L. As far as application of Chapter V-B is concerned, the real question that arises is whether the Respondent company can be said to be an 'industrial establishment' being a 'factory' within the meaning of Section 2(m) of the Factories Act when it engaged itself in laying railway track over an area of 54 KMs in the Rihand Nagar Project. The next relevant provision for our consideration is Section 25-N in Chapter V-B which requires to be extracted in full as its applicability or otherwise will have a direct impact on the final result of these proceedings :

"25-N- Conditions precedent to retrenchment of workman-(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer Until,

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, of the workmen has been paid in lieu of such notice wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workman concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is

made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate Government or the specified authority may, either oh its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication :

Provided that where a reference has been made to a Tribunal under this sub- section, it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub- section (4), every workman who is employed in that establishment immediately before the date of application for permission under this Section shall be entitled to receive, at the time of retenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

We may note at this stage that both the learned Single Judge as well as the division Bench of the High Court have accepted the legally fatal consequences of non-compliance of Section 25-N if it was applicable. It is not: in dispute between the parties that if Section 25-N applied then admittedly Respondent no. 1 company had not followed the procedure laid down therein before issuing impugned retenehment orders of 1993. Consequently, the bone of contention between the contesting parties centres round the question whether Section 25-N of the Act was at all attracted in the facts of the present cases.

As noted earlier, the Division Bench of the High Court in the impugned judgment has taken the view that Section 25-N is not applicable on twin reasons. Firstly, it observed, as noted earlier, that if the procedure for closing down of an undertaking governed by Chapter V-B as laid down by Section

25-O of the very same chapter gets excluded for an undertaking dealing with construction of buildings etc. or for other construction work then ipso facto the said exclusion would also apply to retrenchment of workmen of that very establishment governed by Chapter V-B of the Act. For coming to this conclusion the High Court has also pressed in service provisions of Section 25-FFF sub-section (2) of the Act. The second reason given by the Division Bench for excluding Section 25-N as noted earlier is that Respondent company in any case is not an 'industrial establishment' as defined by Section 25-L(a) of the Act being not a 'factory' as defined by the Factories Act. The learned Single Judge on the other haad, has taken a contrary view about the applicability of Section 25-L read with Section 25- N of the Act. It becomes, therefore, necessary for us to closely examine the twin reasons given by the Division Bench of the High Court in the impugned judgment for excluding applicability of Section 25-N of the Act. We accordingly proceed to do so.

So far as the first reason which appealed to the Division Bench of the High Court in the impugned judgment for excluding the applicability of Section 25-N of the Act is concerned, it has to be noted that Section 25-O on its own language deals with the procedure for closing down an undertaking and it is for such a concern which is closed down that the proviso to sub- section (1) thereof would come into play. It is not in dispute between the parties that the Rihand Nagar Project on which the appellants were working at the relevant time was an undertaking which was dealing with construction of railway line spread over 54-KMs and the question is whether by the impugned notices of 1993 procedure of Section 25-O was pressed in service by the respondent. Learned senior counsel for the Respondent states that it is not the case of the Respondent that procedure of Section 25-O was invoked by the respondent, as according to him, Chapter V-B itself did not apply as held by the Division Bench of the High Court in the impugned judgement. We shall deal with this aspect when we consider the second reason given by the Division Bench of the High Court for excluding the applicability of Section 25-N. Suffice it to say that so far as the first reason is concerned, the proviso to Section 25-O cannot be transplanted by any judicial interpretation to be a proviso to Section 25-N which deals with entirely a different topic of conditions precedent to retrenchment of workmen. It is obvious that retrenchment presupposes the termination of surplus workmen in a going concern which is not closed down. If the concern itself is closed down all the workmen would be terminated by closure and on such for closure for calculating the compensation payable to them as closure compensation, the amount of compensation may be computed by adopting the measure for compensation as if it was retrenchment and to that extent Section 25-FFF may be pressed in service by the closed undertaking. However, if the impugned notices of 1993 are treated to have effected only retrenchment of workmen of an ongoing project or establishment, we fail to appreciate how the proviso to Section 25-O sub-section 1 can be pressed in service by any process of judicial interpretation; such an intrepretation would go against the very legislative intent in enacting Section 25-N(1) which does not contain any such proviso. The first reason which appealed to the High Court for ruling out the applicability of Section 25-N to an understanding set up for construction work therefore, cannot be countenanced.

That takes us to the consideration of the second reason which weighed with the High Court for dispensing with the applicability of Section 25-N in the present case. As noted earlier, sub-section (1) of Section 25-N lays down the procedure as conditions precedent to retrenchment of workmen employed in an 'industrial establishment' to which Chapter V-B applies. Section 25-N is in Chapter

V-B, We have, therefore, to turn to Section 25-L which lays down the requirements of 'industrial establishment governed by Chapter V-B. It is a definition section which lays down that for the purpose of Chapter V-B an industrial establishment amongst others would mean "(i) a factory as defined in clause(m) of Section 2 of the Factories Act, 1948 (63 of 1948)". This is not an inclusive definition. Therefore, all its requirements have to .be met by an establishment so as to fall in Chapter V-B.

We are not concerned with other parts of the said definition. It, therefore, becomes necessary to find out as to whether Rihand Nagar project of the Respondent company was in 'industrial establishment' meaning thereby whether it was a. '.factory' as defined in clause (m) of Section 2 of the Factories Act., 1948, It is obvious that if it was not such a 'factory', it would not be an 'industrial establishment' governed by Chapter V-B. Consequently, the workmen employed therein would not be covered by Section 25-N sub-section (1). Definition of the term 'factory' as found in Section 2(m) of the Factories Act, 1948, reads as under :

"factory" means any premises including the precincts thereof -

(1) whereon ten or more workers are working, of were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but doe$ not include a mine subject to the operation of [the Mines Act, 1952 (XXXV of 1952], or [a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place];

[Explanation [1]-For computing the number of workers for the purposes of this clause all the workers in [different groups and relays] in a :day shall be taken into account;] [Explanation II-For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof;] In the light of the aforesaid definition, in order that the project in question can be treated to be a 'factory', the following requirements of the definition have to be fulfilled :

(i) In the premises, including the precincts thereof, ten or more workmen must be Working where manufacturing process is carried out with the aid of power, or

(ii) where twenty or more workmen must be working at the relevant time and in any part of such premises manufacturing process is being carried on without the aid of power; or

(iii) In any case manufacturing process must be carried on in any part of the premises; SO far as the first and the second requirements are concerned, it cannot be disputed that at the relevant time when the impugned notices of 1993 were served on the appellants more than hundred workmen

were Working in the premises. Consequently, the question whether the construction of railway line was being done with the aid of power or without the aid of power pales into insignificance. Therefore, the remaining (iii) requirement for applicability of the definition of the term 'factory' which becomes relevant is whether any 'manufacturing process' Was being carried on in the premises or any part thereof. Consideration of this aspect will require fulfilment of twin conditions, namely, i) whether the project was having any 'premises' where the work was being carried on by these workmen; ii) whether the work which was carried on by them amounted to a 'manufacturing process'. The term "premises" is not defined by the Act, but the term 'manufacturing process' is defined in Section 2(k) of the Factories Act as under :

"manufacturing process" means any process for -

(0 making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or [(ii) pumping oil, water, sewage or any other substance, or; (iii) generating, transforming or transmitting power, or [(iv) composing types for printing, printing by letter press, litography, photogravure of other similar process or book binding;]

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; [or] [(vi) preserving or storing any article in cold storage;] The definition of the term "worker" also becomes relevant in this context. It is defined in Section 2(1) of the Factories Act as under :

"worker" means a person [employed, directly or by or through any agency (including a contractor) with or Without knowledge of the principal employer, whether for remuneration or not] in any manufacturing process or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process [but does not include any member of the armed forces of the Union]"

We shall first deal with the question whether Rihand Nagar Project of the Respondent was having any 'premises'. Mr. Dave, learned senior counsel for the Respondent placed strong reliance on a decision of this Court in Workmen of Delhi Electric Supply Undertaking v. The Management of Delhi Electric Supply Undertaking, [1974] 3 SCC 108, for submitting that the definition of the term 'factory' in Section 2(m) of the Factories Act, 1948 requires fixed site. In para 18 of the Report, it is observed that "the factory must occupy a fixed site or premises". In that case, the question was whether the sub-stations and zonal stations of Delhi Electric Supply Undertaking where no manufacturing process was being carried out could be considered to be a' factory'. Answering it in the negative it was held that "after the electricity is generated when the current passes through the transmission lines and reaches the sub-stations no further 'manufacturing process' of electricity takes place". While answering the said question, reliance was placed on the observations of Halsbury's Laws of England, 3rd Edition, Volume 70 to the effect that a 'factory' must occupy a fixed site. Reliance was also placed on the observations of this Court in an earlier judgment in Nagpur Electric Light & Power Co. Ltd v. Regional Director, Employees State Insurance Corporation Etc., [1967] 3 SCR 92, for supporting the same proposition on the same lines. Mr. Dave, invited our

attention to an earlier Constitution Bench Judgment of this Court in Ardeshir H. Bhiwandiwala v. The State of Bombay, [1961] 3 SCR 592, wherein at page 595, interpreting the very same definition, it was observed that "premises" has gradually acquired the popular sense of land or buildings and ordinarily the word "premises" is a generic term meaning "open land or land with buildings or buildings alone". Relying on the aforesaid judgments, it was contended by Shri Dave, learned senior counsel for the Respondent that on the facts of the present case, Rihand Nagar Project which was concerned with construction and laying down of railway lines spread over 54 KMs, can not be said to constitute a 'factory' as it had no fixed site.

It is difficult to accept this contention. It is true that the word "premises" as found in the definition must have a fixed site but as held by the Constitution Bench judgement of this Court in Ardeshir H. Bhiwandiwala, (supra) the term "premises" not only covers building but even open land can also be a part of premises. It is easy to visualise that when railway line is to be constructed over an area of 54 KMs, it can not be constructed overnight. The whole exercise would be carried out in a phased manner. For laying railway line number of workmen, supervisors and other clerical staff will have to attend the site where the railway line is to be laid. That site on which the railway line is to be laid will necessarily have space for storage of loose rails, sleepers, bolts etc. All these articles will have to be laid and fixed on a given site before any part of the railway track becomes ready. Consequently, construction of railway line would necessarily imply fixed sites on which such construction activity gets carried on in a phased manner. Every time when such construction activity is carried on it must necessarily be on. a given fixed site where all the workmen concerned would work for the purpose of laying down railway line at that site. Thus, even though the railway line is to be laid over 54 KMs. of land every part of the said land would consist of a 'factory' at a given point of time as from time to time in a phased manner entire railway line will have to be laid. Once the entire work is finished, then a stage would be reached when the construction activity would come to an end and the premises thereof may cease to be a 'factory' but so long as construction work is being carried out in phases every part of the land on which such construction activity takes place would form a part and parcel of the 'premises' as such. Railway line cannot be laid except on a fixed site, It is not, therefore, possible to accept the submission of learned senior counsel Shri Dave that Rihand Nagar project which was to carry out the construction work of railway line Up to 54 KMs. had no fixed site to operate upon and therefore, was not a 'premises'. All the 54 KMs. of land were phase-wise factories for construction Of railway lines over them. The reasoning adopted by the High Court and which was tried to be supported by Shri Dave on this aspect therefore, cannot be countenanced. The two decisions relating to 'electric lines' not being factories are distinguishable in as much as the court was not considering the situation at the time of laying the lines but was dealing with a situation long after the laying of lines and whether it constituted to be 'factory'. In the present case, we are dealing with the situation where the railway lines are being laid and not the position after that stage is completed.

Then comes the more important question whether any 'manufacturing activity' was being carried on in Rihand Nagar Project where the appellant workmen were working at the relevant time. In order to answer this question we have to closely examine the definition of the term 'manufacturing process' as found in Section 2(k)(i) of the Factories Act. A mere look at the said provision shows that "any process by which any article or substance is adapted for its use can fall within the sweep of

'manufacturing process'. It cannot be disputed that while railway lines are being constructed on a given site no article or substance is being made or repaired, maintained, finished etc. However, only relevant clause of the definition which has to be seen is whether at the Rihand Nagar Project of the Respondent company the process of construction of railway line amounted to adapting any article or substance with a view to its use. It cannot be seriously disputed that raw-materials like railway sleepers, bolts and loose railway rails when bought by the respondent-company front open market and brought on site were articles visible to eyes and were movable articles. These articles were adapted for their use. Their use was for ultimately laying down a railway line. In that process sleepers, bolts and rails would get used up. if that happens, the definition of 'manufacturing process' dealing with adaptation of these articles for use would squarely get attracted; However, Shri Dave, learned counsel for the Respondent submitted that the ultimate product of this exercise or process is the bringing into existence a railway track which is embedded in the earth which cannot be sold, transported, delivered or disposed of like a movable property. To that extent Shri Dave is right. However, as the definition is worded, it cannot be said of necessity that any end product which results after adapting any raw-material article or substance "with a view to its use" must necessarily result into a movable final product or a commodity. It has to be kept in view that the definition of 'manufacturing process' in Section 2(k) of the Factories Act has nothing to do with manufacturing of goods which may attract excise duty under the Central Excise and Salt Act, 1944 which deals with excise duty chargeable on manufacturing of goods where the end product must be a movable commodity attracting the charge of excise leviable at the factory gate when it is removed by the manufacturer therefore. Such is not the scheme of the definition of the term 'manufacturing process' as found in Section 2(k) of the Factories Act. For this definition end product may be goods or otherwise. Shri Dave, learned counsel for the Respondent strongly relied upon the decision of a Constitution Bench of this court in Ardeshir H. Bhiwandiwala (supra) wherein it was observed that "when me salt is being manufactured frorn water in salt works, the finished article is salt. It does not enter the salt work as "salt". It enters as brine which, under the process carried out, changes its quality, and becomes salt, a marketable article." Shri Dave submitted that the Constitution Bench in that case held that salt works would be a 'factory' as open land on which sea water was stored treated to be a part of the "premises" wherein process of manufacturing of salt was carried on and water was changed into marketable commodity salt. Placing reliance on the said decisions, it was submitted by Shri Dave that therefore, the end product must be marketable. It is difficult to appreciate this contention. The Constitution Bench in that case was concerned with entirely a different part of the definition of the term 'factory' as found in Section 2(k) of the Factories Act, namely, 'making an article-or substance with a view to its sale.' No question arose in that case about adapting raw-material which is admittedly an article 'with a view to its use' or creating another product. The aforesaid observations were made by the Constitution Bench for bringing the manufactured article salt within the sweep of the definition. The term adapting the article or substance with a view to its use' therefore, did not fall for consideration before the Constitution Bench in the facts of that case. We. therefore, are not in a position to sustain even the second reason given by the High Court in the impugned judgment to the effect that no 'manufacturing process' was being carried out in the project in question. Even accepting the contention of learned counsel Shri Dave for the Respondent that the final product namely, construction of railway line embedded in earth was not the subject matter of sale, transfer, delivery or disposal, still the raw-materials which were adapted for their use with a view to construction railway line which was the final product could be said to have fallen

within the sweep of the definition of the term 'manufacturing process' as found in Section 2(k) of the Factories Act. Once that conclusion is reached, the result becomes obvious. All the appellant workers would squarely attract the definition of the term 'workmen' as found in Section 2(1) of the Factories Act as they were working for remuneration in a manufacturing process carried out by the project in question. It must, therefore, be held that all the requirements of the term 'factory' as defined by Section 2(m) of the Factories Act are satisfied on the facts of the present case.

We may also mention one submission of learned senior counsel for the appellants. Placing reliance on a decision of this Court in Zaffar Mohammad v. The State of West Bengal. AIR (1976) SC 171, it was submitted that an "article" means "a piece of goods or property" meaning thereby, it should be a tangible substance. As we have already discussed earlier, raw materials like bolts and fails before they are embedded in earth can not but be treated as articles or commodities. In the tight of the this conclusion, therefore, Section 25-L of the Act also is found to have applied to the construction activity carried on by the Rihand project at the relevant time. It must be held to be an 'industrial establishment' which is a 'factory' as defined in clause (m) of Section 2 of the Factories Act. Consequently, Section 25-N would get squarely attracted to such a project. Second reason given by the High Court for ruling out the applicability of Section 25-N is, therefore, found to be un-sustainable.

Before, parting with discussion on the point, we may note one submission of learned senior counsel for the appellants. In his submission the proviso to Section 25-O sub-section (1) itself postulates the legislative intent that but for the said proviso even construction activities undertaken by the undertakings would be covered by Chapter V-B of the Act and therefore, it can be said to be an 'industrial establishment' i.e. a factory. Shri Dave, learned senior counsel for the Respondent tried to repel this contention by submitting that Section 25-N deals with 'industrial establishments 'to which Chapter V-B applies while Section 25-0 deals with the undertaking of an 'industrial establishment'. It is, therefore, possible that an 'industrial establishment' may be a 'factory' as defined by Section 25-L of the Act still one of its undertakings which may not by itself be a 'factory' but still may get covered by Chapter V-B and therefore, Section 25-O would apply to such an undertaking and only such undertakings of the industrial establishment which are factories that are sought to be exempted by the proviso to Section 25-O sub-section (1). He gave an illustration for highlighting his contention. For, example, a cement company, which manufactures cement may be a 'factory' covered by Section 25-L of the Act where manufacture of cement takes place. It may undertake construction activities through one of its limbs or undertakings at a different place. This may result into a situation where the industrial establishment as such may be a 'factory' but its unit or construction undertaking may not be a 'factory' and still would be covered by Chapter V-B and would attract Section 25-O but for the provisos In short, it was contended that the proviso to subjection (I) of Section 25 -O necessarily does not operate in the same field in which the main parent establishment may operate. We find considerable force in the aforesaid contention of Shri Dave, It must, therefore, be held that before Section 25-N can be held applicable to an 'industrial establishment' the establishment itself must be found to be a 'factory' as defined by Section 25-L before provisions of Section 25-N can be pressed in service qua such an 'industrial establishment,' and for deciding this question the provisions of Section 25 (O)(1) or its proviso would not offer any assistance.

However, as we have seen above, the establishment of the Respondent company squarely falls within the definition of the term 'factory' for the purpose of applicability of Section 25-N of the Act. The first point for consideration, therefore, has to be decided in the affirmative in favour of the appellants and against the respondent.

So far as this point is concerned, the legal effect of the violation of Section 25-N will have to be appreciated in the light of the recitals in the impugned notices; Identical termination notices were served on all the applicants: We may refer to one of such notices :

This is to inform you that most of the work in Rihand Nagar Project has been completed and there is no further work available for you on this project or on any other project of IRCON,

2. You are, therefore, rendered surplus at the said project. Retrenchment benefits in accordance with Section 25F(a)(b) of the I.D. Act, 1947 are enclosed as per the details given below :-

(a) Salary for the period 1.9.93 to

4.9.93 Rs. 321.00

(b) Notice pay Rs. 2,408.00

(c) Retrenchment compensation Rs. 9,632,00

Rs. 12,361.00

3. Pending grant of clarification by the Hon 'ble High Court of Judicature at Allahabad, if need be, in accordance with order dated 27th May 1993 of the Hon 'ble High Court, you are placed on panel in the order of seniority. Employment at other projects will be offered to you as and when vacancy befitting the work done by you at this project or suitable for your working arises at any of the Company's project in India. Offer of employment will be made in accordance with seniority, you have acquired at this project.

4. Your dues up to 4.9.93 are hereby paid. You will cease to have lien of employment at this project with effect from 4.9.93.

5. You are advised to collect your other dues namely PF, gratuity, Leave salary etc. in accordance with the Rules of the Company as in force at the project.

6. Your name on Panel is kept with address furnished to us. You may leave permanent address with us, if you so to ensure delivery of communication to you from other project offices of the company. For any correspondence, you may be in touch with Corporate Office at Palika Bhawan, Sector-13, R.K. Puram, New Delhi 110066.

Yours faithfully, sd/-(C.R.Morty) Regional Manager 1RCON/ Rihand End : As above"

A conjoint reading of all the recitals of this notice shows that it is not the case of the Respondent that on 20th August, 1993 when this notice was served, the entire project had closed down. On the contrary it is stated in black & white that most of the work in Rihand project had been completed and therefore, no further work was available for being offered to the addressee at this project or any other project of IRCON. He was rendered surplus, consequently, he was being offered retrenchment benefits in accordance with Section 25-F (a)(b) of the Act. The third paragraph of the said notice also clearly indicates that employment was to be offered in any other project of the company for the retrenched workman if vacancy arises. This is in consonance with Section 25-H of the Act which deals with re- employment of retrenched workmen. It reads as under ;

"25-H-Re-employment of retenched workmen -

Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an Opportunity [to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons."

It is not possible to agree with the submission of Shri Dave for the Respondent that paragraph 3 has been mentioned in the notice because of the order of the High Court in a pending writ petition. Even if the High Court might have directed the Respondent to take steps to offer suitable employment to the retrenched workmen the question of putting them on a panel in the order of seniority and offer of employment according to seniority would not have arisen but for applicability of Section 25-H. The valiant attempt made by Shri Dave, learned counsel for the Respondent to treat this notice as one under Section 25-FFF cannot be countenanced even for a moment. Section 25-FFF reads as under "25-FFF-Compensation to workmen in case of closing down of undertakings-(l) Where an undertaking is closed down for any reason whatsoever, 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 Section 25-F, as if the workman had been retrenched :

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of Section 25-F shall not exceed his average pay for three months.

[Explanation-an undertaking which is closed down by reason merely of-

(i) financial difficulties (including financial losses); or

(ii) accumulation of undisposed of stock; or

(iii) the expiry of the period of the lease or licence granted to it; or

(iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account

of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.] It is true that the said provision applies in cases where the undertaking is closed down and when compensation has to be afforded to the workers of the closed undertaking in accordance with the provisions of Section 25-FFF as if the workmen had been retrenched but for issuing a notice under Section 25-FFF it has to be clearly stated in the notice that the undertaking is closed down as a whole and that the workmen will have to be terminated and only compensation has to be paid as per Section 25-FFF read with Section 25-F. No question will arise in such a case to treat the workmen excess qua the other staff which can continue to be employed. It is impossible to agree with Shri Dave that the notice in substance be read as one under Section 25-FFF when the notice did not even mention that the entire Rihand project had been closed down by that date. Closing down of most of the work of a project is not equivalent to closing of the project as a whole. It was also nowhere stated that the notice was being given under Section 25-FFF read with Section 25-F(a)(b). Shri Dave was, however, right when he contended that notice of termination has to be read in the light of then existing fact situation and that in order to constitute closure of a unit, it is not necessary that the entire industry or business of other units should be closed. He rightly placed reliance on two judgments of this court in Management of Hindustan Steel Ltd. v. The Workmen & Ors,, [1973] 3 SCC 564 and in Workmen of the Indian Leaf Tobacco Development Co. Ltd., Guntur v. Management of the Indian Leaf Tobacco Development Co. Ltd, Guntur, [1969] 2 SCR 282. However, the moot question would survive as to whether in 1993 when the impugned notices were issued, the Respondent had in fact closed down the undertaking, namely, Rihand project. On the express wording of the impugned notice, as we have noted earlier, it is impossible to reach that conclusion when the notice itself states that most of the work is over and not that the entire project is over. In this connection, Shri Dave also invited our attention to a Constitution Bench judgment of this Court in Hariprasad Shrivshankar Skukla v. A. D. Divikar. [1957] SCR, 121, wherein it was observed that :

"The word retrenchment as defined in s. 22(oo) and the words '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 bond fide closure of industry or on change of ownership or management thereof."

This judgment cannot be of any assistance to Shri Dave as the wording of the notices in question do not lead to the conclusion that they were issued because the entire project was closed. Reliance was then placed by learned senior counsel Shri Dave for the respondents on a decision of a three member Bench of this Court in Hindustan Steel Works Construction Ltd & Ors. v. Hindustan Steel Works Construction Ltd. employees' Union Hyderabad & Anr., [995] 3 SCC 474. This decision cannot be of any assistance to him for the simple reason that in the facts of that ease, the workers concerned were employed by a Government company solely for its works at Hyderabad and its project at Hyderabad had admittedly come to an end and the workers were retrenched. Absorption in another project of the company at Visakhapatnam was effected for those workmen who as per their appointment orders were liable to be absorbed elsewhere in any other project of the company. In the said case, the question of applicability of Section 25-N was expressly kept open. The aforesaid decision rendered on its own facts, therefore, can not be of any assistance to Shri Dave in the

present case. Shri Dave then invited our attention to a decision of a two member Bench Of this Court in H.P. Mineral & Industrial Development Corporation Employees' Union V. State of H.P. & Ors.,[1996] 7 SCC 139. In that case when the concerned workmen were retrenched Section 25-N as amended in 1984 was not available on the statute book On facts if was found that termination of the services of the workmen was brought about as a result of the closure of the undertaking and consequently only Section 25-FFF was applicable. The said decision also cannot be of any avail to Shri Dave. Similarly, a decision of this Court in Management of Dandakaranya Project, Koraput v. Workmen through Rehabilitation Employees' Union & Anr., [1997] 2 SCC 296, also cannot be of any assistance to Shri Dave for the simple reason that in the said case the entire Dandakaranya Project was dosed down and the N.M.R. Workers who were working were held entitled only fo compensation under Section 25-FFF of the Act, It cannot be disputed, if the entire project is closed down and if the employees are only of the project they would be entitled to compensation under Section 25-FFF and if they are more man hundred workmen in mat project, additional requirement of following Section 25-D procedure may also have to be complied with if the industrial undertaking is not covered by the proviso to sub-section (1) of Section 25-O. It must, therefore, be held that the impugned notices of 1993 are retrenchment notices and not closure notice as tried to be submitted by Shri Dave. Once that conclusion is reached, as the workmen who were subjected to the impugned notices were stated to be retrenched from the project which employed more than hundred workmen at the given point of time, it was not Chapter V-A but only Chapter V-B which got attracted for retrenching such large body of workmen from the project. Hence, the procedure of Section 25-N had to be followed. As we have already held that Section 25-N would apply to the facts of the present case while deciding point no. 1, the net effect of the aforesaid conclusion of ours is that the impugned retrenchment notices which were issued without following the conditions precedent to retrenchment of such workmen as required by Section 25-N are necessarily to be treated to be void and of no legal effect. Point No. 2 is therefore, answered by holding that the impugned notices on account of non compliance of Section 25-N of the Act had no legal effect and were null and void and the employer-employee relationship between the parties did not get snapped and all the 25 appellants, therefore, continued to be in the service of the Respondent despite such null and void notices. Conclusion to the same effect as reached by the learned single Judge who allowed the writ petitions only on this ground must be held to be well sustained and has to be confirmed and the contrary decision of the Division Bench is required to be set aside, Point No. 3 will be considered along with Point No. 5. Point No. 4 :

This point arises for consideration in the alternative if Section 25-N of the Act is not applicable. But as we have found that Section 25-N was applicable at the relevant time when the impugned notices of 1993 were issued, this point would not survive for our consideration. We .may also mention in this connection that neither the learned single Judge nor the Division Bench .of the High Court had considered the applicability of Articles 14, 16 and 21 for voiding the impugned notices and or for upholding the same on the ground of non-applicability of these relevant articles. Shri Sudhir Chandra, learned senior counsel for the appellants was right when he contended that he had cited a catena of decisions of this Court before the High Court for showing that the Respondent company was a 'State' within the meaning of Articles 12 and it could not have arbitrarily thrown out the appellants from service after they have put in more than 10 years in the project and they should have been absorbed elsewhere as regular employees. The aforesaid contention of learned counsel for the

appellants would have required a closure scrutiny but for the fact mat once the impugned notices of 1993 are held to be null and void being violative of Section 25-N, this contention becomes of academic nature. We, therefore, do not think it fit to dilate on the same and leave, this point un-answered.

Points Nos. 3 & 5 :

This takes us to the consideration of points nos. 3 and 5. So far as point no. 3 is concerned, once we have held mat the impugned termination notices of 1993 were violative of Section 25-N of the Act, the question whether the 25 writ petitioner-appellants were employed only at Rihand Nagar project or they were employees of the company from the very inception of their services also becomes academic. This is for the simple reason that even assuming that Rihand Nagar Project Was the employer of the appellants and they were employed only for that project as the procedure of Section 25-N was not followed their retrenchment had become void. This is because the Rihand project itself was, on the date of impugned notices, not completely over. Therefore, the said finding of ours gets sustained even on the assumption that the appellants were employees only for the project and of the project and not of the company.

We must, however, state that voluminous documents on record were pressed in service by learned counsel for the appellants to buttress his contention that these workmen were employees of the company as the appointment orders themselves showed that their service were transferable to any part of the company's establishments in India and they were only asked to report at Rihand Nagar Project, as the employer-employee relationship was between the Respondent company on the one hand and the appellants on the other hand. Shri Dave, learned senior counsel on the other hand submitted that these workmen were employed for the Rihand project and Were not employed by the company as such. As discussed earlier, this question which would have required serious consideration is not necessary to be gone into at this stage and hence no finding is required to be reached one way or the other on this question while considering the legality of the impugned notices of 1993.

However, this question will assume importance when we come to the discussion on point and 5 which centres round the subsequent development which took place during the pendency of the special leave petition in this court after the impugned decision was rendered by the Division Bench of the High Court. Shri Dave, learned senior counsel for the Respondent company brought to our notice a subsequent event. He submitted that on 24th March, 1998 all these appellants were served with fresh notices of termination by way of office order No. 3/1/98 A specimen copy of one of such notice reads as under :

"On completion of the Project works, the services of the under-mentioned employees of Ex-Anpara-Rihand Project were dispensed with w.e.f. 4th September, 1993 (A.N.) vide Office Order No. 9/93, dated 04-09-1993 on tendering of salary in lieu of notice and retrenchment compensation as admissible under the provisions of the I.D. Act.

2. Subsequently, pursuant to the order of the Hon' ble Allahabad High Court dated 07-12-1993 and 06-04-94 on the WPs No. 32651 /93; 18561 /. 93; 34786/93-44416/93 & 32500/93 they were, however, allowed to continue on the job; subject to the final decision of the special appeals filed by the Company against the said order.

3. As the special appeals filed by the Company against the said impugned order on the above mentioned WPs have since been finally allowed by the order of the Hon 'ble DB of the Allahabad High Court dated 24-02-98 and the Writ Petitions stand dismissed they are no longer entitled to continue in employment and accordingly their services shall stand dispensed with from the date of issue of this letter.

4. Notwithstanding that all concerned petitioners were offered salary in lieu of notice and retrenchment compensation etc., at the time of their original date of termination and further all of them have been paid salary and all other dues up to date beyond their original date of termination i.e., 4th September, 1993 in compliance with the aforesaid order of the Hon 'ble High Court of Allahabad date 07-12-93 and 06-04-94, all concerned employees are being paid herewith up to date pay, one month pay in lieu of notice, retrenchment and gratuity through Bank Drafts for amount shown against each towards full and final settlement as per the provisions under Section 25(F) of the l .D. Act.

5. As regards other dues such as CPF, Bonus, Miscellaneous dues, if any, all concerned are advised to collect the same from the Manager (Accounts), Rear-Party of Ex-Anpara Project at the above address since the project stands finally closed down we.f. 6th February, 1998.

s d/ (S.K.Sood) Joint General Manager Rea-Party, Ex-Anpara Project."

It is obvious that these notices were served on the appellants during the pendency of special leave petitions and therefore, they could not have been challenged by the appellants before the High Court in the writ petitions filed earlier by them and from which the present proceedings arise. It is also true that these notices indicate in express terms that Anpara Rihand project was finally closed down with effect from 6th February, 1998 and accordingly, the services of the workmen concerned stood dispensed with from the date of issue of notice i.e. from 24th March, 1998. Learned senior counsel for the appellants vehemently contended that these notices are issued consequent upon the impugned order of the Division Bench of the High Court and if the impugned order of the High Court is quashed and set aside these notices would not survive. He, however stated that on a conjoint reading of the clauses of these notices it may prima facie appear that they were closure notices but according to him the said project is still not fully closed and some work is still being carried out there. Placing reliance on tender notice issued by the Respondent company subsequent to the impugned notices of 1998 it was submitted that some work in the project is still continuing. Shri Dave, learned counsel for the respondent, on the other hand, contended that the work of laying down railway line is over and only some maintenance work pursuant to the agreement with the railway authorities is being undertaken for affixing ballast on the railway track wherever necessary. In any case these rival contentions raising disputed questions of fact will have to be thrashed out in the light of appropriate pleadings and evidence to be lead in this connection. We may, however,

state that as we have already held that the Rihand project where the appellants worked was covered by Chapter V-B of the Act, even for closing down such an undertaking to which Chapter V-B applies, procedure to Section 25-O would get attracted subject to the proviso to Section 25-O(l). Hence, even assuming that the aforesaid notices of 24th March, 1998 could be said to have been issued under Section 25-O of the Act, a further question would squarely arise whether appellants were workmen attached to the project or were employees of the company which admittedly is not closed and is a going concern. If the appellants are found to be employees of the company, then the notices of 1998 would go out of the sweep of Section 25-O of the Act and would not also fall within the scope of Section 25-FFF as tried to suggested by Shri Dave. In such an eventuality, question of applicability to proviso to Section 25-O(1) also would not be of real assistance to shri Dave who submitted that the procedure of Section 25-O would not be applicable to such a project which was set up for construction of railway lines. In such a case these notices will still remain retrenchment notices and get widened by non-compliance of Section 25-N. Learned counsel for the appellants is also right when he contends that even if these 1998 notices are closure notices a moot question would arise whether the appellants were the employees of Anpara Rihand project or were employees of the Respondent company. It is obvious that if they are employees of the Respondent company itself then impugned notices of 24th March, 1998 would have no legal effect qua appellants as the Respondent company cannot be said to have closed down. If on the other hand, it is held that the appellants were employees of Rihand project and were not employees of the company then the notices of 24th March, 1998 would effectively bring their services to an end under Section 25-O of the Act if it is found that the entire project had in fact in closed down: Learned counsel for the appellants also submitted in the alternative that as the Respondent company is a 'State' within the meaning of Article 12 of the Constitution of India and the appellants being employees of the company, their services could not have been arbitrarily terminated even assuming that the Anpara Rihand project was closed and consequently Section 25-O read with Section 25-FFF of the Act could not have applied in the case of the appellants as they were not employees of the project but employees of the company as such and therefore, their termination would remain arbitrary and discriminatory and would violate Articles 14, 16 and 21 of the Constitution of India. These question of facts which are highly disputed cannot be answered in the present proceedings at this stage for the simple reason that these impugned notices of 24th March, 1998 which have given fresh cause of action to the appellants are not made subject matter of any writ petition till date. The appellants have not got opportunity to put forward all their contentions for challenging these notices. Similarly, Respondent has also not got an opportunity to put forward its contentions in defence of these notices. In short, for deciding the legality of these notices of 24th March, 1998 proper stage is still not reached. In the present appeals we are only concerned with the legality and validity of impugned retrenchment notices of 1993. We have already held that those notices are void being violative of Section 25-N of the Act On that finding, the decision rendered by the learned single Judge of the High Court allowing writ petitions of the appellants has to be confirmed and the contrary decision of the Division Bench in appeals has to be set aside as observed earlier. Still, however, the question remains as to what proper order can be passed in these proceedings especially in the light of subsequent events centering round notices of 24th March, 1998. In our view interest of justice would be served by setting aside the impugned order of the Division Bench of the High Court and by confirming the decision rendered by learned single Judge dated 7th December, 1993 subject to fresh opportunity to be given to parties to have their say regarding the notices of March, 1998. The order

passed by the learned single Judge in disposing of these writ petitions finally will be required to be set aside and the writ petitions of the 25 writ petitioners will be required to be restored to the file of the High Court for the limited purpose as indicated hereunder.

All the 25 appellants will be given an opportunity to amend their writ petitions by inserting relevant submissions for challenging the impugned notices of 24th March, 1998 as issued to them by the Respondent company. All the relevant averments legally permissible for adjudicating the said notices will be permitted to be inserted in the writ petitions by necessary amendments. In the said amended petitions the respondents will be entitled to file their reply by way of counters. Thereafter the appellants as well as the respondents will be permitted to produce all relevant supporting material in connection with their respective cases centering around the legality of the notices dated 24th March, 1998. The remanded writ petitions will thereafter be decided by High Court in accordance with law on the basis of the evidence on record as well as further evidence that may be lead by the parties. Only on the aforesaid limited question regarding the legality and efficacy of the notices, dated 24th March, 1998 will have to be decided in the remanded proceedings.

In view of the aforesaid discussion and in the light of our finding that Chapter V-B applies to respondents' Anpara-Rihand project, in the remanded proceedings in the restored writ petitions of the present 25 appellants, the following questions would squarely arise for consideration of the High Court:

(i) Whether Anpara Rihand nagar project is subjected to a factual closure as mentioned in the impugned notices of March, 1998 or whether the project is not still completed;

(ii) In the light of the answer to the aforesaid question a further question would arise whether impugned notices of March, 1998 were in fact and in law closure notices as per Section 25-0 read with Section 25-FFF of the Act or whether they still remain retrenchment notices and hence would be violative of Section 25-N of the Act.

(iii) Even if it is held that the Anpara Rihand nagar project is in fact closed down whether the 25 appellants were employed in the project or they were employees of the Respondent company entitling them to be absorbed in any other project of the company and consequently whether the impugned notices have not effected any snapping of employer employee relationship between the appellant on the one hand and the Respondent company on the other;

(iv) Even apart from the aforesaid questions Whether the impugned notices are violative of the guarantee of Articles 14, 16 and 21 of the Constitution of India on the ground that the termination of services of the 25 appellants was arbitrary and discriminatory, Respondent company being a 'State' within the meaning of Article 12 of the Constitution of India, Appropriate orders may be passed by the High Court in the remanded writ petitions accordingly. We make it clear that we express no opinion on the merits of the aforesaid controversies between the parties. Whatever other questions of fact and law may arise in the light of the amended pleadings of parties may also have to be decided in these proceedings.

As the appellants are out of service after the order of the Division Bench, we deem it fit to observe that the remanded writ petitions may be placed for disposal before a Division Bench to avoid delay due to further tiers of appellate proceedings. The remanded writ petitions may be disposed of by the appropriate Division Bench to which the writ petitions may be assigned by the Hon 'ble Chief Justice of the High Court as expeditiously as possible preferably within six ninths from the receipt of the copy of this order at the High Court's end. The Office shall send a copy of this order to Registrar of the High Court at the earliest for being placed before the Hon 'ble Chief Justice of that High Court for doing the needful in this connection.

Accordingly, these appeals are allowed, the impugned common judgment of the Division Bench is set aside and the Judgment and Order passed by the learned single Judge in the writ petition dated 7th December, 1993 are confirmed. However, the final order of the learned single Judge disposing the writ petitions is set aside and the 25 appellants' writ petitions are restored to the file of the High Court for being disposed by a Division Bench in the light of the observations contained herein above.

In the facts and circumstances of the case, there will be no order as to costs.