Supreme Court of India
Process Technicians And ... vs The Union Of India & Ors on 10 March, 1997
Author: M S Manohar.
Bench: Cji, A.M. Ahmadi, Sujata V. Manohar

PETITIONER:
PROCESS TECHNICIANS AND ANALYSTS' UNION

Vs.

RESPONDENT:
THE UNION OF INDIA & ORS.

DATE OF JUDGMENT: 10/03/1997

BENCH:
CJI, A.M. AHMADI, SUJATA V. MANOHAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Mrs. Sujata V. Manohar. J.

Bharat Petroleum Corporation Ltd., the second respondent in this appeal has about 12,000 employees. Out of these about 1850 employees are working in the refinery division of the second respondent. Process Technicians and Analysts' Union which is the appellant-Union has a membership of about 411 employees in the refinery division of the second respondent-corporation.

Prior to 1976 there were two companies; one was Burmah shell Refineries Ltd. which was an Indian company and the other was Burmah Shell oil Storage and Distributing Company which was a foreign company registered in the United Kingdom and was a marketing company. On or about 24th of January, 1976, the entire share capital of Burmah Shell Refineries Ltd. was purchased by the Government of India and Burmah shell Refineries Ltd. became a Government Company, and later a Public Sector Undertaking. The Burmah Shell oil Storage and Distributing Company which was a foreign company was acquired by the Central Government by enacting the Burmah Shell (Acquisition of Undertakings in India) Act, 1976. After the acquisition of the Burmah Shell oil Storage and Distributing Company, both these companies were merged and a notification was issued under Section 7 of the said Act vesting the undertakings of the Burmah Shell Oil Storage and Distributing Company in Burmah Shell Refineries Ltd. The name of the said company was changed

on or about 1st of August, 1977, to Bharat Petroleum Corporation Ltd. Upto 24th of January, 1976, there were approximately 220 Burmah Shell workmen who were working in the Refinery Company. After 24th of January, 1976, some of these employees continued with the Government Company. Fresh workmen were employed thereafter by the Government/Public Sector Company on a temporary basis on consolidated salaries.

In February 1978 Petroleum Employees' Union filed U.L.P.38/1978 under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, claiming on behalf of post-nationalisation workmen in the refinery or Bharat Petroleum Corporation Ltd. benefits of Pre-Nationalisation Wage Settlements signed by the then unions with Burmah Shell Refineries Ltd. Those settlements were dated 21.2.1973, 31.10.1973 and 16.8.1974.

By a letter dated 27th of February, 1981 addressed by the Government of India to the second respondent- corporation, the attention of the second respondent was invited to existing directions to the effect that the Wage Scales/Service Conditions which were prevalent before the take-over of the company cannot be granted to the employees recruited subsequently and that the second respondent- corporation should recruit all new entrants after take-over of the company on consolidated wages. It was in compliance with this directive that the second respondent-corporation had engaged employees after nationalisation on a temporary basis and on consolidated salaries.

During the pendency of U.L.P. 38/1978, there were other litigations between the employees and/or unions of these employees and the second respondent-corporation pertaining to service conditions of the employees. These are, however, not relevant for the present purposes. On 29th of April, 1987, U.L.P. 38/1978 was allowed in favour of the employees. The Industrial court held that the second respondent- corporation was a successor-in-interest of Burmah Shell Refineries Ltd. and that the settlement of 16th of August, 1974 continued to apply to employees recruited after nationalisation (hereinafter referred to as `post- nationalisation employees'). It was also held that the letter from the Government of India to the second respondent-corporation dated 27-2-1981 was of no legal effect and legislation was required if it was intended that the same service conditions would not apply to post- nationalisation employees. This decision was challenged by the second respondent by filing a writ petition being Writ Petition No. 1835 of 1987 in the Bombay High Court on or about 1st of July, 1987. The writ petition prayed for a writ of certiorari to quash the judgment dated 29th of April, 1987 in U.L.P. 38 of 1978. By an interim order of the same date the application of the settlement of 16th of August, 1974 was stayed for the past period but for prospective period from 1.7.1987 the said settlement of 1974 was made applicable to all workmen of the refinery who were complainants in U.L.P. 38 of 1978.

On 2nd of July, 1988, Bharat Petroleum Corporation Ltd. (Determination of conditions of Service of Employees) Ordinance, 1988, was promulgated. Under Section 3 of the ordinance power was vested in the Ministry of Petroleum, Government of India to determine service conditions under a scheme comparable with the employees of other public sector companies. The Ordinance was replaced by The Bharat Petroleum Corporation Ltd. (Determination of Conditions of Service of Employees) Act, 1988, being Act 44 of 1988 (hereinafter referred to as 'the Act of 1988). The relevant provisions of Section 3 of the said Act are as follows:

"3(1): Where the Central Government is satisfied that for the purpose of making the conditions of service of the officers and employees of the Corporation comparable with the conditions of service of the officers and employees of other public sector companies, it is necessary so to do. it may, notwithstanding anything contained in the Industrial Disputes Act, 1947 or any other law or any agreement, settlement, award or other instrument for the time being in force, and notwithstanding any judgment, decree or order of any court, tribunal or other authority, frame one or more schemes for the purpose of determination of the conditions of service of the officers and employees of the Corporation.

(2) x x x x x x x (3) The Central Government may make a scheme to amend or vary any scheme made under sub-section (1). (4) The power to make any scheme under sub-section (1) or sub- section (3) shall include--

(a) the power to give retrospective effect to any such scheme or any provision thereof; and

(b) the power to amend, by way of addition, variation or repeal, any existing provisions determining the conditions of service of the officers and employees of the Corporation in force immediately before the commencement of this Act.

(5) Every scheme made under sub- section (1) or sub-section (3) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the scheme, or both Houses agree that the scheme should not be made, the scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without or erejudice to the validity of anything previously done under that scheme.

Pursuant to the power given under Section 3, the central government on of about 29th of April, 1989, framed a scheme by a notification of that date. being the Bharat Petroleum Corporation Ltd. (Determination of Conditions of Service of Post-Nationalisation Refinery Employees) Scheme, 1989 (hereinafter referred to as `the Scheme of 1989'). The Scheme was made retrospective and clause 1 (2) of the Scheme provided that the Scheme shall be deemed to have come into force on and from the 24th day of January, 1976. The Scheme laid down conditions of service for the employees covered by the Scheme for five different periods; (1) the period from 24th of January, 1976 to 31st December, 1979; (2) 1st of January, 1980 to 31st December, 1983; (3) 1st January, 1984 to 31st December, 1987; (4) 1st January, 1988 to 31st December, 1991; and (5) after 31st of December, 1991, unless the conditions are altered, varied or repealed by any other scheme.

Two unions of the employees of the second respondent- corporation, namely, the appellant union and Petroleum workmen's Union filed Writ Petition No. 3549 of 1988 in the Bombay High Court

challenging the constitutional validity of the Bharat Petroleum Corporation (Determination of Conditions of Service of Employees) Act, 1988. Another writ petition being writ petition No. 3619 of 1988 was filed by another union, namely, Bharat Petroleum Corporation (Refinery) Employees' Union challenging the constitutional validity of the said Act of 1988. After the coming into force of the said Scheme of 1989, these writ petitions were amended to challenge the validity of the said Scheme which was framed on 29th of April, 1989. These writ petitions were heard together. By a common judgement and order, a Division Bench of Bombay High Court has dismissed these writ petitions and has upheld the constitutional validity of the said Act of 1988 and the Scheme of 1989.

The present appeal is filed by the appellant-union from the judgment and order of the Division Bench of the Bombay High Court in writ petition No. 3549 of 1988. Similarly, an appeal was also filed from the said judgment and order by the Petroleum workmen's Union who was a joint petitioner in the said Writ petition No. 3549 of 1988. An appeal was also filed by the Bharat Petroleum Corporation (Refineries) Employee's Union before this Court from the said judgment and order in writ Petition No. 3619 of 1988. The other two appeals, however, have been disposed of before us by earlier orders in view of the settlements arrived at by the said two unions with the second respondent-corporation on or about 17th May, 1996. The appellant-union, however, has not reached a settlement with the corporation.

After the dismissal of the said writ petitions by the Bombay High Court by the impugned judgment and order, writ petition No. 1835 of 1987 which had been filed by the second respondent-corporation challenging the judgment and order of the Industrial court in U.L.P. 38 of 1978 was allowed by the Bobmay High Court by its judgment and order of the Industrial court dated 29th of April, 1987 in U.L.P. 38 was set aside.

During the pendency of this appeal before us, the Central Government, Ministry of Petroleum and Natural Gas, by a notification dated 24th of September, 1996 has notified a scheme further to amend the Bharat Petroleum Corporation Ltd. (Determination of conditions of Service of Post-Nationalisation Refinery Employees) Scheme, 1989. The amended Scheme is known as the Bharat Petroleum Corporation Ltd. (Determination of Conditions of Service of Post- Nationalisation Refinery Employees) Amendment Scheme, 1996 (hereinafter referred to as 'the Scheme of 1996'). It is deemed to have to come into force on and from the 1st day of January, 1992. Under Clause 3 of the Amended Scheme, it applies to all clerical and labour employees who have joined the refinery of the Corporation on or after the 24th day of January, 1976, whose jobs are set out in Part-B of the Fourth Schedule provided that the Scheme shall cease to have effect in respect of the employees who shall opt or consent to be governed by the terms and conditions as may be mutually agreed with the Corporation. As a result, the employees who are governed by the settlements which have now been entered into on or about 17th of May, 1996, will not be governed by the Amended Scheme of 1996. While the employees who are members of the appellant-union, who have not signed such settlements. will now be governed by the Amended Scheme of 1996. The validity of this Amended Scheme of 1996 is also challenged before us.

The appellant-union contends that Section 3 of the Bharat Petroleum Corporation Limited (Determination of Conditions of Service of Employees) Act, 1988 confers unguided and arbitrary

powers on the Central Government to frame schemes. Hence Section 3 of the Act of 1988 must be struck down. Section 3, however, clearly provides within itself the guidelines for framing the scheme under that section. Thus Section 3(1) stipulates that the Central Government should be satisfied, that for the purpose of making the conditions of service of the officers and employees of other public sector companies, it may frame one or more schemes for the purpose of determination of the conditions of service of the officers and employees of the corporation. It can do this notwithstanding anything contained in the Industrial Disputes Act, 1947 or any other law, agreement, settlement, award or other instrument for the time being in force, and notwithstanding any judgment, decree or order of any court, tribunal or other authority. The power to frame the scheme, therefore, can be exercised for the purpose of making the service conditions of the second respondent's employees comparable with those of other public sector companies. This is not unguided power. The guidelines are contained within Section 3 itself.

It is next submitted that under Section 3(2) while framing any scheme under sub-section (1) of Section 3, it shall be competent for the Central Government to provide for the continuance, after the commencement of any such scheme, of such of the emoluments and other benefits as were payable to the officers and employees of the Corporation immediately before Burmah shell Refineries became a government Company or before the appointed day under the Burmah Shell (Acquisition of Undertakings in India) Act, 1976. It is submitted that by reason of Section 3(2) different service conditions can be permitted for the pre- nationalisation employees of Burmah Shell Refineries or Burmah Shell oil Storage and Distributing Company who have become employees of the second respondent-corporation as result of the nationalisation. This, according to the appellant, violates Article 14 of the Constitution as it discriminates between two sets of employees of the second respondent-corporation.

This submission, however, ignores the entire historical background of creation of the second respondent-corporation. Prior to 1976 the employees of Burmah Shell Refineries as well as Burmah Shell Oil Storage and Distributing company of India Limited enjoyed salaries and emoluments and had the benefit of a wage structure which was very different from that of other public sector undertakings. When Burmah Shell Refineries became a Government Company, and when the Burmah Shell oil Storage and Distributing Company of India Limited was taken over under the Burmah Shell (Acquisition of Undertakings in India) Act, 1976, the employees of the second respondent-corporation, were given protection of their wages. Section 9 of the Burmah shell (Acquisition of Undertakings in India) Act, 1976, in this connection, provides that these employees shall hold office or service under the Central Government or the Government Company, as the case may be, on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to them, had there been no such vesting. It is to protect the conditions of service of these pre-nationalisation employees that Section 3(2) of the 1988 Act provides that a scheme framed under section 3(1) may provide for the continuance of the salary and other benefits received by the pre-nationalisation employees. This was done to treat the pre-nationalisation employees was a dwindling group. originally, there were about 200 such employees who were entitled to their pre-nationalisation service benefits. By the time these appeals came to be filed their numbers had dwindled to 10. We are now informed that there is only one employee now left who is entitled to pre-nationalisation emoluments. In this context, it cannot be

said that the provisions of Section 3(2) violate Article 14 of the Constitution.

In the case of Life Insurance Corporation of India &777 Ors. v. S.S. Srivastava & Ors. (1988 Supp SCC 1), a distinction had been made in the age of retirement between employees transferred to a Government Corporation from its predecessor private company and employees directly recruited by the Corporation. The age of retirement for transferred employees was fixed at 60 years and the age of retirement for those directly recruited to the Government Corporation was fixed at 58 years. It was held that the transferees and direct recruits formed two distinct classes and providing different ages of retirement was not discriminatory. This Court noted that the transferred, employees belonged to a diminishing cadre. Ultimately, the cadre would consist only of directly recruited employees. Secondly, a separate classification for transferred employees had become necessary on account of historical facts and the need for treating these employees in a fair and just way. This Court referred with approval to the decision of the Calcutta High Court in Maninder Chandra Sen v. Union of India & Ors. (AIR 1973 Cal. 385), in which the classification of railway employees into two categories, namely, those who joined on or before March 31, 1938 for purposes of fixing the age of superannuation was upheld. The classification was upheld as it was based on historical facts, and as necessary for treating the employees in the just and fair way.

In the case of B.S. Yadav & Anr. v. Chief Manager, Central Bank of India & Ors. (1987 [3] SCC 120), this Court upheld rules fixing 60 years as the age of superannuation for those inducted prior to bank nationalisation, but 58 years for those inducted after that date. These rules were held as not violative of Articles 14 and 16 of the Constitution. The Court said that the classification of the employees into these two categories was a valid classification involving justice and fairness. There was good reason to make a distinction between the employees who had entered service prior to nationalisation and those who joined thereafter. At the time of nationalisation the corresponding new banks did not have their own employees to run the wide business taken over under the Act. There was, therefore, necessity to secure the services of the employees of the former banking companies without causing much dissatisfaction to them. There was also need for standardising the conditions of service of all such employees belonging to the 14 banks. Hence the age of retirement of the new entrants was fixed consistent with the conditions prevailing in almost all the sectors of public employment.

The considerations which have impelled the provisions of Section 3(1) and 3(2) in the 1988 Act are very similar to those cited in B.S. Yadav's case (supra). In the case of Imperial Bank of India Pensioners' Association & Ors. v. State Bank of India & Ors. (1989 Supp.[1] SCC 236), This Court upheld a distinction made between the India-based and London-base pensioners of Imperial Bank of India which was later taken by the State Banks of India. The Court said that such a distinction did not violate Articles 14 and 16 of the Constitution. It said that London-based employees constitute a class by themselves and there was no discrimination within the same class. The contention of the appellant, therefore, in this regard, cannot be sustained.

The appellant has drawn our attention to the Statement of Objects and Reasons of the 1988 Act. Paragraph 3 of the Statement of Objects and Reasons accompanying the said Act points out that the Bharat Petroleum now consists of three categories of employees. They are the employees of the Burmah Shell Refineries who continued to serve in that company even after it became a government

Company; the employees of Buramh Shell whose services were transferred to Burmah Shell Refineries under the provisions of the 1976 Take-over Act. and the employees recruited by Bharat Petroleum after it became a Government Company. In paragraph 4 it is pointed out that out of the first two categories of employees mentioned above, a few have not agreed to abide by the public sector wage policy and, therefore, continue to enjoy the emoluments and other conditions of service to which they were entitled under the aforesaid companies even after the Burmah Shell. The emoluments and other conditions of service of the third category of employees mentioned above and who were recruited by Bharat Petroleum were, however, sought to be regulated after taking into consideration the conditions of service applicable to employees in other public sector companies in accordance with the wage policy of the Government of Public Sector. This was with a view that there should be, as far as possible, parity in the conditions of service of Public Sector Companies.

The Statement of objects and Reasons goes on to point out that since the service conditions of this large category of employees were less favourable than the employees of Burmah Shell Refineries and Burmah Shell, a dispute was raised by them which was taken to the Industrial Court. The Industrial Court has held that in view of the provisions Section 18(3) of the Industrial Disputes Act, 1947, these employees are also entitled to the same conditions of service as are applicable to other two categories of Employees. The Statement goes on to say, "The award of the Industrial Tribunal if given effect to in Bharat Petroleum will amount to giving a higher wage structure in this Corporation alone and other employees in similar undertakings may demand that they should also get the benefits of the higher scales of pay on the principle of equal pay for equal work. This may eventually result in high wage islands and depart radically from the public sector wage policy." As the continuance of the conditions of service of the employees of the former company was due to historical reasons and as the conditions of service of the employees of Bharat Petroleum were arrived at as a result of settlements make between the company and the workmen, the demand of post-nationalisation employees for parity with the employees of the former company may have to be conceded in view of the provisions of the Industrial Disputes Act and the award of the Industrial Tribunal. Any attempt to make the conditions of service comparable with the conditions of service of other public sector companies can only be done by legislation. Such a legislation could provide for determination of comparable conditions of service for all the categories of employees of Bharat Petroleum but at the same time provide for protection to those pre- nationalisation employees of their conditions of service.

It is to achieve this objective that the Act of 1988 came to be enacted. The appellant contends that the entire basis of the Act is unfounded because there is no such thing as public sector wage policy. It contends that wage structures in different public sector undertakings are different. The appellant has submitted charts of wages in different public sector companies. There is, for example, a chart showing the wages of the lowest category if workmen of the second respondent in the refinery compared with other public sector units at different levels at starting, 5th, 10th and maximum level. At the beginning the total wages in RCF, for example, are Rs. 2421/-, which at the 5th level go upto Rs. 2559/-, and at the 10th level to Rs. 2693/-. In comparison, under the 1989 BPCL Refinery Scheme, the total at the beginning is Rs. 2323/-, at the 5th level it is Rs. 2399/-, and at the 10th level it is Rs. 2480/-. In BPCL Marketing Division, the comparable figures are Rs. 2630/-, Rs. 2814/- and Rs. 3062/-. we are not referring in detail to these charts which have been submitted and which we

have perused. The contention of the appellant that the figures in different public sector unions do not tally is correct. But what we have to see is not the actual figure but the pattern or the structure of the wage, or what the respondents describe as the public sector wage pattern.

The respondents have explained the fundamental rationale behind evolving a public sector wage patter, which is to achieve consistency and uniformity in the wage structure of the public sector enterprises so as to ensure that the wages drawn by various public sector companies are not so disproportionate with one another as to create any imbalance in the public sector. Towards this end, the Government of India has issued, from time to time, directives and orders to public sector enterprises to maintain uniform it and consistency in that wage pattern. For this purpose the Department of public Enterprises has been set up to ensure, inter alia, parity of public sector wages. The method of computation of dearness allowance etc. is in identical for all the public sector enterprises. The components of the total wage packet consist of a basic salary scale which is formulated by merging a portion of the dearness allowance with the pre-existing basic salary at the beginning of each wage settlement period, which is currently a period of five years. The basic salary scale has a minimum and maximum value which is arrived at by providing for increments. The second component is dearness allowance which is linked to the All India Consumer price Index Simla Series (Base 1960=100). All public sector enterprises follow the same industrial D.A. pattern. The third component is house rent allowance which is payable at the rate of 30% of the basic salary in the metropolitan cities, 25% of basic salary in other A class cities, 15% of basic salary in B1 and B2 class cities and 7-1/2%/10% for C class cities and unclassified areas. The other components are city compensatory allowance and wage revision which generally take place now every five years. The respondents have prepared a table of emoluments drawn by the employees in the public sector oil companies for the highly skilled category at the maximum of the scale as of now. In HPCL Refinery, the total emoluments are Rs. 11,964/-, in IOC Refinery it is Rs. 11,574/- and in the BPCL Refinery it is Rs. 12.386/-. The essential features, therefore, of the public sector wage pattern are variable industrial D.A. payment of H.R.A./C.C.A. based on Department of public Enterprises guidelines, linkage of revision in wages to productivity, permissible limits to rise in wages and adoption of the principle of region-cum-industry as the basis for any wage revision. The respondents have pointed out that the wage structure of the pre-nationalisation Burmah Shell Refineries was at complete variance with this wage pattern. Hence it needed to be changed.

The scheme of 1989 which has been framed under the Act of 1988 is for the purpose of introducing the public sector wage pattern in the second respondent-corporation for post- nationalisation employees. It would not, therefore, be correct to say that there is no such thing as a public sector wage pattern. The variations pointed out by the appellant are a result of revisions being made in different public sector enterprises at different times and under different settlements. In fact the disparity in the wages paid by the second respondent in its Marketing Division and its Refinery Division is also on account of the differences in the settlements which the second respondent has arrived at with its employees in the Marketing Division. We are informed that the employees of the Marketing Division were the first group of employees of the second respondent who agreed to a change-over to the public sector wage pattern under the Settlement of 1986. The revision in their wages thereafter is in accordance with the pattern so adopted for the Marketing Division. The Refinery Division, however, did not agree to such a settlement and hence there are some differences

in the wages paid in these two divisions. Such differences cannot nullify the basic intention of the second respondent to bring about parity in the wage pattern of their employees with the wage pattern in other public sector undertakings especially in the oil sector which is the relevant sector.

The appellant has challenged the power given under Section 3 of 1988 Act to frame a scheme retrospectively. The appellant has also challenged the 1989 Scheme framed under the said Act on the ground that it has been made applicable retrospectively from 24th of January, 1976. The appellant has contended that the Scheme cannot be made operative retrospective from 24th of January, 1976 when the Act under which it is framed came into force only on 2nd of July, 1988. This submission is based on a misconception. Under sub-section (4) of Section 3 of the said Act an express power is given to the Central Government to give retrospective effect to any scheme framed under sub-section (1) or sub-section (3) of Section 3. The retrospective operation which is given to the Scheme of 1989 is, therefore, under a statutory power so given to the Central Government. Since the scheme regulates the conditions of service of post-nationalisation refinery employees, it must necessarily cover the post-nationalisation period which began from 24th of January, 1976. It is open to the legislature to make retrospective laws. Therefore, the statutory scheme which has been made retrospective in exercise of statutory power expressly granted to the Central Government cannot be faulted on that ground.

The appellant further contends that the Industrial court by its order dated 29.4.1987 in U.L.P. 38 of 1978 held that the Settlement of 16th of August, 1974 which was arrived at by the Burmah Shell Refinery with its employees would apply to the employees recruited after nationalisation by the second respondent. It was to override this decision of the Industrial Court that the Bharat Petroleum Corporation Ltd. (Determination of Conditions of Service of Employees) Act, 1988, came to be enacted. In fact, the Statement of Objects and Reasons which has been set out earlier clearly shows that as a result of the decision of the Industrial Court there would be a high wage island in the public sector in the form of high wages being paid to the employees of the Refinery Division of second respondent which may lead to imbalances in the public sector. It was to overcome such imbalance that the Act was being passed. Section 3(1) of the Act clearly provides that a scheme which may be framed under Section 3(1) can "be framed notwithstanding anything contained in the Industrial Disputes Act or any other law, settlement of other instrument for the time being in force and notwithstanding any judgment, decree or order of any court. tribunal or other authority." The scheme of 1989 is accordingly framed with retrospective effect from 24th of January, 1976 and it provides for detailed conditions of service of the employees for five different periods. The appellant contends that the Act of 1988 and the Scheme of 1989 are designed to overcome the judgment of the Industrial court. such legislation, according to the appellant, is invalid.

Learned counsel for the appellant has placed strong reliance upon the decision of the Court in the case of A.V. Nachane and Anr. v. Union of India & Anr. (1982 (2) SCR 246) in support of his contention that a statute such as the 1988 Act, and the Scheme of 1989 formed under it, are invalid in so far as they are retrospective because they are aimed at setting aside the judicial decision of the Industrial Court. This cannot be done by legislation. This contention, however, does not bear any detailed scrutiny. As far back as in 1969, in the case of Shri Prithvi cotton Mills Ltd, & Anr. v. Broach Borough Municipality & Ors. (1970 (1) SCR

388) a Bench of five judges of this Court examined the efficacy of a validating Act which retrospectively validated the levy of a tax. It said that ordinarily a court holds a tax to be invalidly imposed because the power to tax is wanting or the statue or the rules or both are invalid or do not sufficiently create jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Observing that there are several methods of doing this, the Court said that the legislature may, by following one method or the other, neutralise the effect of an earlier decision of the court which becomes ineffective after the change of the law. If the legislature has the power over the subject-matter and competence to make a valid law, it can, at any time, make such a valid law and make it retrospectively so as to cover even past transactions.

A Bench of seven judges of this Court was required to consider the validity of the Life Insurance Corporation (Modification of Settlement) Act, 1976 in the case of Madan Mohan Pathak v. Union of India & Ors. etc. (1978 (3) SCR

335). Life Insurance Corporation had arrived at a settlement with its employees relating to the terms and conditions of service of Class III and Class IV employees including bonus payable to them. Under one of the clauses of this settlement, an annual cash bonus was payable by the Life Insurance Corporation to all Class III and Class IV employees. This settlement was valid for a period of four years from 1st of April, 1973, In 1976, the payment of Bonus (Amendment) Act which was enacted considerably curtailed the rights of employees to bonus. Although this Act was not applicable to the employees of the Life Insurance Corporation, the Corporation issued administrative instructions not to pay cash bonus to its employees. Thereupon, the employees moved the Calcutta High Court for a writ directing the Life Insurance Corporation to pay a cash bonus in accordance with the terms of the settlement. A Single Judge of the High Court allowed the writ petition. While a Letters Patent Appeal was pending, Parliament passed the Live Insurance Corporation (Modification of Settlement) Act, 1976. The effect of the Act was to deprive Class III and Class IV employees of the Life Insurance Corporation of bonus payable to them under the settlements. After the enactment, the Letters Patent Appeal which was filed by the Corporation was not pursued by the Corporation under the belief that after the Act was passed, there was no necessity for proceeding with the appeal. As a result, the writ of mandamus issued by the Single Judge of the Calcutta High Court remained in tact. The Associations of employees filed writ petitions before this Court challenging the constitutional validity of the Life Insurance Corporation (Modification of Settlement) Act, 1976. This Court said that the real objective of this Act was to set aside the result of the mandamus issued by the Calcutta High Court, Bhagwati, J., who delivered the majority judgment said that irrespective of whether the impugned Act was constitutionally valid or not, the Corporation was bound to obey the writ of mandamus issued by the High Court. Section 3 of the impugned Act merely provided that the provisions of the settlement shall not have any force or effect. But the writ of mandamus issued by the High Court was not touched by the impugned Act. The judgment continued to subsist and the Corporation was bound to honour it. The majority held that the impugned Act which took away the rights of the employees to receive bonus was violative of Article 31(2). The observations of Bhagwati J. (as he then was) are in the context of the L.I.C. being bound to obey the writ of mandamus issued by the High Court. Also, Section 3 of the impugned Act did not override any judgment or order of my court. The position in the case before us is very different and we shall examine it a little later.

After the above decision, L.I.C. issued notices terminating the settlement and issued a notification changing staff regulations. The validity of the two notices and the notification issued for the purpose of nullifying any further claim to annual cash bonus was challenged by the workmen in the case of The Life Insurance Corporation of India v. D.J. Bahadur & Ors. (1981 (1) SCR 1083) and this Court had directed the Corporation to give effect to the terms of the settlement of 1974 relating to bonus until superseded by a fresh settlement, industrial award or relevant legislation.

On January 31, 1981, the Life Insurance Corporation (Amendment) Ordinance, 1981, was promulgated which was later replaced by an Act. Sub-section (2)(c) which was added to Section 48 provided that the provisions of clause (cc) of sub-section (2) and sub-section (2)(B) and any rule made under clause (cc) shall have effect notwithstanding any judgment, decree or order of any court, tribunal or other authority, the Industrial Disputes Act etc. New statutory rules also were promulgated. Of these, Rule 3 was given retrospective operation with effect from July 1, 1979. It provided that the employees shall not be entitled to any cash bonus. The validity of Life Insurance Corporation (Amendment) Ordinance and Act of 1981 and the 1981 Rules were challenged in the case of A.V. Nachane (supra). The court said that the effect of the two judgments in Madan Mohan Pathak's case and D.J. Bahadur's case (supra) was clear. Rule 3 operating retrospectively cannot nullify the effect of the subsisting writ issued in D.J. Bahadur's case (supra) which directed the Life Insurance Corporation to give effect to the terms of the 1974 settlement relating to bonus until superseded by a fresh settlement. industrial award or relevant legislation. The impugned Act of 1981 and the rules were relevant legislation. However, in view of the decision in Madan Mohan Pathak's case (supra) these Rules in so far as they seek to abrogate the terms of the 1974 settlement relating to bonus can operate only prospectively, i.e. from the date of publication of the rules.

We fail to see how these decisions help the appellant in the present case. The decision in A.V. Nachane`s case (supra) on which strong reliance is placed by Mr. Phadnis, learned senior counsel for the appellant, has turned upon an existing writ of mandamus which was issued by the Calcutta High Court and which the court said would have to be obeyed. This was the reason why only prospective operation was given to the Rules of 1981 in A.V. Nachane's case (supra). In the present case, there is no writ of mandamus or any other writ issued by the High Court in favour of the appellant directing the second respondent to apply the pre- nationalisation settlements of 1974 to the post- nationalisation employees. Even the judgment and order of the Industrial Court has been set aside by the High Court in writ Petition No. 1835 of 1987. The retrospective operation given to the scheme framed under the present Act, is within the legislative competence of Parliament. Since the scheme provides for the conditions of service of all employees who joined the second respondent-corporation after 24th of January, 1976. it necessarily lays down these terms and conditions operative from 24th of January. 1976. The scheme also provides emoluments which are higher than the emoluments which the post-nationalisation employees were receiving prior to the coming into effect of the scheme. The scheme also brings into effect the avowed purpose of the 1988 Act which is to make the wage pattern in the second respondent-corporation conform to the wage pattern of public sector undertakings. A legislation which imposes retrospectively a wage pattern may thereby discontinue the application of any earlier settlement by an express legislative provision to that effect. Such legislation is within the legislative competence of Parliament. The ratio of Nachane's case (supra) does not apply in the present circumstances.

The decisions in Madan Mohan Pathak's case (supra) and Nachane's case (supra) have been recently explained by this Court in two judgments. The first of these is Comorin Match Industries (P) Ltd. v. State of T.N. (1996 [4] SCC 281) where this Court has reiterated the ratio laid down Shri Prithvi Cotton Mills' case (supra). The court has observed that in Madan Mohan Pathak's case (supra) what was sought to be done was to reverse a decision of a court of law given in the exercise of judicial power by legislation. This was not permissible. The Court also said that Nachane's case (supra) was a sequence to the decision in Madan Mohan Pathak's case (supra) and the principles laid down in Shri Prithvi Cotton Mills' case (supra) had not been overruled or doubted by the majority view in Madan Mohan Pathak's case (supra).

The second case is P. Kannadasan and Ors. v. State of T.N. & Ors. (1996 [5] SCC 670). Referring to the doctrine of separation of powers this Court said that where an Act made by State legislature is invalidated by the courts on the ground that the State legislature was not competent to enact it, the State legislature cannot enact a law declaring that the judgment of the court shall not operate; it cannot overrule or annul the decision of the court. But this does not mean that the legislature which is competent to enact that law cannot enact that law. Similarly, it is open to a legislature to alter the basis of the judgment while adhering to the constitutional limitation. In such a case the decision of the Court become ineffective. The new law cannot be challenged on the ground that it seeks to circumvent the decision of the Court. The Court observed that this is what is meant by "checks and balances" inherent in a system of Government incorporating the concept of separation of powers. Referring to the decisions in Madan Mohan Pathak's case (supra) and Nachane's case (supra), this Court said that these two cases do not affect the above principle in any manner.

Since these two decision have been explained at length in the cases of P. Kannadasan as well as Comorin Match Industries (P). Ltd. (supra) we need not reiterate the same position. In any case, these two decisions have no bearing on the present case when there is no subsisting order of the Court which is sought to be overturned by the impugned 1988 Act or 1989 Scheme.

The other challenges to the Scheme of 1989 are similar to the challenge to the Act of 1988. It is contended that under the Scheme there is discrimination between pre- nationalisation and post-nationalisation employees of the refinery. The distinction made between these two categories of employees does not violate Article 14, for the reasons which we have already set out in connection with the provisions of the 1988 Act. It is also submitted that the wages given to the refinery employees under the 1989 Scheme are different from the wages and emoluments received by the employees of the Marketing Division employees. however, were the first to reach settlements with the second respondent agreeing to the application of public sector wage pattern to their wages and emoluments. As a result under the settlements which are arrived at, the Marketing Division has been receiving emoluments and revised emoluments from time to time. Since the refinery employees did not reach any settlement with the second respondent they are now being governed by the Scheme which was framed by the Central Government under the Act of 1988. It is in these circumstances that there is difference between the wages received by the employees of the two different departments of the second respondent. Each of these employees constitutes a distinct class which is receiving different pay packets because of different circumstances which have affected the wage structure of each class. This cannot be considered as discrimination under Article 14.

The next challenge is to the Scheme of 1996 which has been framed while the present appeal was pending before this Court. The Scheme of 1996 excludes from its ambit those employees who have entered into settlements with the second respondent pending the disposal of this appeal. These settlements cover approximately 77% of the employees in the refinery. There are two settlements: one arrived at with the Bharat Petroleum Corporation Refinery Employees' Union and the other with the Petroleum Workers' Union. Both these settlements are dated 17.5.1996. They were signed pursuant to memoranda of understanding dated 25.3.1996 and 5.4.196. In view of these memoranda this Court passed orders on 26.4.1996 disposing of the appeals filed by these two unions. While doing so this Court recorded that learned Solicitor General had stated at the Bar that he had instructions to convey to the Court that the Government of India had studied the memoranda of understanding and would exclude the employees who are covered by these memoranda of understanding from the operation of the 1989 Scheme with effect from 1.1.1992 which is the effective date of the two memoranda of understanding. This Court, therefore, in its above order of 26th of April, 1996 gave a direction to the Central Government to forthwith take action to exclude the employees covered under the two memoranda of understanding from the operation of the 1989 Scheme with effect from 1.1.1992. The Central Government has accordingly amended the 1989 Scheme in 1996 expressly excluding the employees who have arrived at the above settlements from the operation of the amended scheme with effect from 1.1.1992. The appellant submits that this is discriminatory. We fail to see how the distinction made between those employees who have entered into a settlement and those employees who have not entered into a settlement can be considered as discriminatory. The second respondents have even now stated before us that they are willing to sign a similar settlement with the appellant union. The appellant union, however, has declined to do so. Having declined to do so the appellant to do so. Having declined to do so the appellant cannot complain of discrimination. The amended Scheme of 1996 grants further benefits to the employees of the appellant union who are the only group of employees in the refinery not covered by the settlements. by giving them further increases in the manner set out in the amended scheme. The appellant cannot compare the benefits which they get under the amended scheme with the benefits which other employees have got under settlements may be the result of negotiations between the employer and the employees. There are various considerations which go into finalising such settlements on the part of the employer. These include (1) industrial peace so that the workers can concentrate on their work without agitations (2) putting an end to expensive litigation between the employer and the employees and establishment of goodwill and harmony between the employer and the employees leading to better functioning of the establishment. These considerations are very different from considerations which govern the framing of a statutory scheme by the Central Government. Such a scheme must necessarily bear in mind the wage pattern in other public sector undertakings. The considerations for framing the amended scheme are different. Those who are governed by a statutory scheme cannot compare themselves with employees who have entered into a negotiated settlement with their employer. The charge of discrimination under Article 14, therefore, cannot be sustained in this regard.

It is also pointed out by the appellant that the amended scheme of 1996 now covers only 400 and odd employees who are members of the appellant union. They should not have been singled out. There is, however, no question of singling out any one set of employees out of a large group. The employees who are members of the appellant union being the only set of employees who have not

entered into a settlement with their employer, have necessarily to be provided for under a statutory scheme. Such a scheme, therefore, has been framed and the employees cannot complain that they have been singled out. They cannot expect a statutory scheme to give them the benefits of the settlements which the other employees have entered into with the employer. The amended scheme of 1996 is not framed by the employer. It is framed by the Central Government under the statutory provisions of the 1988 Act. The amended scheme of 1996 gives substantial additional benefits to the employees. It is in valid exercise of statutory powers, and is brought into effect from 1.1.1992 since the earlier scheme covered periods upto 1.1.1992.

In the circumstances, we agree with the reasoning and conclusion of the High Court. We further hold that the amended scheme of 1996 is also a valid exercise of power under the Act of 1988. The appeal is therefore, dismissed with costs.