Supreme Court of India
Shashikant Laxman Kale And Anr vs Union Of India And Anr on 20 July, 1990
Equivalent citations: 1990 AIR 2114, 1990 SCR (3) 441
Author: J S Verma
Bench: Verma, Jagdish Saran (J)

PETITIONER:
SHASHIKANT LAXMAN KALE AND ANR.

Vs.

RESPONDENT:
UNION OF INDIA AND ANR.

DATE OF JUDGMENT20/07/1990

BENCH:
VERMA, JAGDISH SARAN (J)
BENCH:
VERMA, JAGDISH SARAN (J)
VENKATACHALLIAH, M.N. (J)
OJHA, N.D. (J)

CITATION:
1990 AIR 2114 1990 SCR (3) 441
1990 SCC (4) 366 JT 1990 (3) 267
1990 SCALE (2)71

ACT:
Income Tax Act, 1961: Chapter III--Section 10--Clause (10-C) --Scope and Constitutional validity of--Public Sector Companies--Employees-Voluntary Retirement--"Golden hand-shake"to employees-Exemption from income-tax--Held clause (10-C) does not include employees of a private sector compa-ny.

Constitution of India, 1950: Article 14 Public Sector Companies-Employees-Amount received at the time of voluntary retirement--Exemption from tax under clause (10-C) of Sec-tion 10 of Income Tax Act, 1961--Exclusion of non-public sector employees from clause (10-C) and consequent denial of benefit of tax exemption--Held public sector employees constitute a distinct class--Clause (10-C) is neither arbi-trary nor violative of Article 14 Object of cluase (10-C) explained.

Taxing Statute--Constitutional validity of--Reasonable-ness of classification--Determination of--Scope for classi-fication in a taxing statute is greater--Court should look beyond obstensible classification into purpose of law and apply the test of "palpable arbitrariness"

Statutory interpretation--Statute--Determination of object and purpose--Permissible Aid--Statement of objects and reasons of the Bill--Whether can be looked into.

Finance Bill--Explanatory Memorandum--Heading-Neither determinative of object nor can camouflage the object of the Act.

HEADNOTE:

By Finance Act , 1987, clause (10-C) was inserted in section 10 of the Income-Tax Act, 1961. The effect of this clause was to grant tax exemption to employees of the public sector in respect of the amount received under the voluntary retirement scheme approved by the Central Government.

The petitioners-an employee of a private sector company and the trade-union of the said private company-flied a writ petition in this
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court challenging the validity of clause (10-C) contending; (i) the denial of benefit of tax exemption to employees of private sector company being arbitrary and discriminatory, the impugned clause was unconstitutional as violative of Article 14: (ii) the heading 'Welfare-Measures' to the Memorandum explaining the provisions in the Finance Bill 1987 proposing insertion of clause (10-C) in section 10 of the Income-Tax Act, 1961 was decisive of the object of its enactment; the tax benefit being in the nature of welfare measure the impugned clause must be so construed as to apply to all employees equally, whether of the public sector or private sector in order to uphold its validity.

Dismissing the petition, this Court,

HELD: There is a distinction between the public and private sectors. The Government or the public sector undertakings are as a distinct class separate from those in the private sector and the fact that the profit earned in the former is for public benefit instead of private benefit, provides an intelligible differentia from the social point of view which is of prime importance for the national economy. Thus, there exists an intelligible differentia between the two categories which has a rational nexus with the main object of promoting the national economic policy or the public policy. This element also appears in the impugned enactment itself wherein 'economic viability of such company' is specified as the most relevant circumstance for grant of approval of the scheme by the Central Government. This intrinsic element in the provision itself supports the view that the main object thereof is to promote and improve the health of the public sector companies even though its effect is a benefit of its employees. The economic status of employees of a public sector company who get the benefit of the provision is also lower as compared to their counterpart in the private sector. Viewed in this perspective, the very foundation of the challenge to the impugned provision on the basis of economic equality of employees in both sectors is non-existent. Once the stage is reached where the differen-

tiation is rightly made between a public sector company and a private sector company and that too essentially on the ground of economic viability of the public sector company and other relevant circumstances, the argument based on equality does not survive. This is independent of the disparity in the compensation package of employees in the private sector and the public sector. The argument of discrimination is based on initial equality between the two classes alleging bifurcation thereafter between those who stood integrated earlier as one class. This basic assumption being fallacious, the question of any hostile discrimination by granting the benefit only to a few in the same class denying the same to those left out does not arise. [465D-H; 466A-B]

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2. The purposes of the impugned legislation include reduction in the existing gap between the lower compensation package in public sector and the higher compensation package of the counterpart in private sector in addition to preventing misuse of the benefit in private sector which is not subject to the control of administration by Government like that in the public sector. One of the purposes is streamlining the public sector to cure it of one of its ailments of overstaffing. The provision is an incentive to the unwanted personnel to seek voluntary retirement thereby enabling the public sector to achieve the true object indicated. The personnel seeking voluntary retirement no doubt get a tax benefit but then that is an incentive for seeking voluntary retirement and at any rate that is the effect of the provision or its fallout and not its true object. The real distinction between the true object of an enactment and the effect thereof, even though appearing to be blurred at times, has to be borne in mind, particularly in a situation like this. [466F-H; 467A-B]

2.1 Keeping in view the true object of the impugned enactment, there is no doubt that employees of the private sector who are left out of the ambit of the impugned provision do not fall in the same class as employees of the public sector and the benefit of the fall-out of the provision being available only to the public sector employees cannot render the classification invalid or arbitrary. The other clauses in section of the Act further show that the scheme of section 10 contemplates a distinction between employees based on the category of their employer. This classification cannot, therefore, be faulted. [67B-C]

Hindustan Paper Corporation Ltd. v. Government of Kerala

JUDGMENT:

v. Union of India & Ors. etc. etc., Judgments Today 1982 (2) SC 465; L.K. Jha Memorial Lecture, delivered on the 6th December 1988, by Shri R.N. Malhotra, Governor, Reserve Bank of India, on "Growth and Current Fiscal Challenges", re- ferred to.

Hindustan Antibiotics v. Workmen, [1967] 1 SCR 652 and S.K. Dutta, 1. T.O. v. Lawrence Singh Ingty, [1968] 68 I.T.R. 272, distinguished and held inapplicable. R.D. Shetty v. International Airport Authority of India, [1979] 3 SCR 1014, cited.

2.2 In view of the simultaneous definition of 'public sector company' in the Income-Tax Act, there can be no occasion to construe this expression differently without which a private sector compa- ny cannot be included in it. It is, therefore, not possible to construe the impugned provision while upholding its validity in such a manner as to include a private sector company also within its ambit. [468C-D]

3. The principles of valid classification are that those grouped together in one class must possess a common charac- teristic which distinguishes them from those excluded from the group; and this characteristic or intelligible differen- tia must have a rational nexus with the object sought to be achieved by the enactment. [449D] Re The Special Courts Bill, 1978, [1979] 2 S.C.R. 476, referred to.

4. The latitude for classification in a taxing is much greater; and in order to tax something it is not necessary to tax everything. These basic postulates have to be borne in mind while determining the constitutional validity of a taxing provision challenged on the ground of discrimination. 1451C] P.H. Ashwathanarayana v. State of Karnataka, [1989] (Supp.) 1 S.C.C. 696; Federation of Hotel and Restaurant Association of India v. Union of India, [1989] 178 I.T.R. 97; Kerala Hotel and Restaurant Association & Ors. v. State of Kerala & Ors., A.I.R. 1990 SC 913 and 1. T.O. v. N. Takin Roy Rymbai, [1976] 103 I.T.R. 82 SC, referred to. East India Tobacco Co. v. Andhra Pradesh, A.I.R. 1962 SC 1733; Vivian Joseph Ferriera v. Municipal Corporation of Greater Bombay, AIR 1972 S.C. 845 and Jaipur Hosiery Mills v. State of Rajasthan, A.I.R. 1971 SC 1330, cited.

5. The Court should, therefore, look beyond the obsten- sible classification and to the purpose of the law and apply the test of 'palpable arbitrariness' in the context of the felt needs of the times and societal exigencies informed by experience to determine reasonableness of the classifica- tion. [453B] 5.1 It is necessary to discern the true purpose or object of the impugned enactment because it is only with reference to the true object of the enactment that the existence of a rational nexus of the differentia on which the classification is based, with the object sought to be achieved by the enactment, can be examined to test the validity of the classification. [453E-F] 5.2 There is a clear distinction between the legislative intention and the purpose or object of the legislation. While the purpose or object of the legislation is to provide a remedy for the malady, the legislative intention relates to the meaning or exposition of the remedy as enacted. While dealing with the validity of a classification, the rational nexus of the differentia on which the classification is based has to exist with the purpose of object of the legis- lation, so determined. [453H; 454A] Francis Bennion's Statutory Interpretation, 1984 edi- tion, page 237, referred to.

6. For determining the purpose or object of the legisla- tion, it is permissible to look into the circumstances which prevailed at the time when the law was passed and which necessitated the passing of that law. For the limited pur- pose of appreciating the background and the antecedent factual matrix leading to the legislation, it is permissible to look into the statement of Objects and Reasons of the Bill which actuated the step to provide a remedy for the then existing malady.

[454B-C] A. Thangal Kunju Musaliar v. M. Venkitachalam Potti & Anr., [1955] 2 S.C.R. 1196; State of West Bengal v. Union of India, [1964] 1 S.C.R. 371 and Pannalal Binjraj v. Union of India, [1957] S.C.R. 233, referred to.

6.1 To sustain the presumption of constitutionality, consideration may be had even to matters of common knowl- edge; the history of the times; and very conceivable state of facts existing at the time of legislation which can be assumed. Even though for the purpose of construing the meaning of the enacted provision, it is not permissible to use these aids, yet it is permissible to look into the historical facts and surrounding circumstances for ascer- taining the evil sought to be remedied. The distinction between the purpose or object of the legislation and the legislative intention is significant in this exercise to emphasise the availability of larger material to the Court for reliance when determining the purpose or object of the legislation as distinguished from the meaning of the enacted provision. [454F-H]

7. An explanatory memorandum is usually 'not an accurate guide of the final Act'. [455C] Francis Bennion's Statutory Interpretation, 1984 Edn. page 529,referred to.

7.1 A catch-phrase possibly used as a populist measure to describe some provisions in the Finance Bill in the explanatory memorandum while introducing the Bill in the Parliament can neither be determinative of, nor can it camouflage the true object of the legislation. It is not unlikely that the phrase 'welfare measures' was used to emphasise more on the effect of the provisions thereunder on the taxpayer for populism. [457G] & ORIGINAL JURISDICTION: Writ Petition No. 136 of 1989. (Under Article 32 of the Constitution of India). Narayan B. Shatye, Mukul Mudgal, Venkatesh Rao, Sudhir Gopi for the Petitioners.

A.B. Divan, V. Gauri Shankar, S.C. Manchanda, Ashok Sagar, Ms. Amrita Mitra, Ms. A. Subhashini, Ravinder Narain, S. Sukumaran, M.K. Shashidharan, S. Rajappa for the Respond- ents.

The Judgment of the Court was delivered by VERMA, J. This petition under Article 32 of the Constitution challenges the constitutional validity of clause (10-C) inserted in section 10 of the Indian Income-tax Act, 1961 (hereinafter referred to as 'the Act') by the Finance Act, 1987 with effect from 1.4.1987. Section 10 deals with incomes not included in total income for the purpose of taxation under the Act. The effect of clause (10-C) so inserted in section 10 of the Act is that any payment received by an employee of a public sector company at the time of his voluntary retirement in accordance with any scheme which the Central Government may, having regard to the economic viability of such company and other relevant cir- cumstances, approve in this behalf, is not included in the total income of such employee resulting in grant of tax exemption to that extent to him. The petitioners contend that the denial of this benefit to an employee of a private sector company at the time of his voluntary retirement amounts to an invidious distinction between public sector employees and private sector employees in the matter of taxation and is arbitrary and unintelligible amounting to hostile discrimination.

The initial submission on behalf of the petitioners was that the aforesaid clause (10-C) of section 10 of the Act is constitutionally invalid for this reason. However, during the course of arguments the

stand of the petitioners was modified to contend that the provision must be so construed as to apply to all employees equally, whether of the public or private sector, in order to uphold its validity. The question, therefore, is whether there is any such hostile discrimination as alleged by the petitioners and if so, is it possible to construe the provi- sion in the manner suggested on behalf of the petitioners to apply it equally to all employees of the public as well as private sectors?

The first petitioner is an employee of second respond- ent--Peico Electronic and Electricals Limited, a private sector company--and the second petitioner is a registered trade union representing the employees of the second re- spondent-company. Counsel for the second respondent-company sought to support the petitioners' case. Counsel for the first respondent supporting the validity of the provision indicated that employees of the public sector constituted a distinct class for the purpose of taxation so that there was no discrimination between employees of the same class if the real object of the provision is borne in mind. We shall refer to the arguments of the two sides in some detail later.

Chapter III of the Indian Income Tax Act, 1961 relates to "incomes which do not form part of the total income". Section 10 in Chapter III deals with "incomes not included in total income". It provides that in computing the total income of a previous year of any person, any income falling within any of the clauses therein shall not be included. The several clauses in section 10 specify different incomes which would ordinarily be included in the total income of the assessee for the purpose of taxation but for such a provision. Clause (10-C) of Section 10 is as under: "(10-C):--any payment received by an employee' of a public sector company at the time of his voluntary retirement in accordance with any scheme which the Central Government may, having regard to the economic viability of such company and other relevant circumstances, approve in this behalf."

We may now summarise the arguments advanced before us. Shri Shetye for the petitioners first contended that the reason given for enacting clause (10-C) as indicated in the memorandum explaining provisions of the Finance Bill, 1987 is that the tax benefit is given as a welfare measure. He argued, if so, all employees whether of private or of public sector are in the same class and are entitled equally to the benefit of a welfare measure for employees. His next conten- tion is that, if that be the only stated basis of the clas- sification, it has no rational nexus with the object of the provision and it violates Article 14 of the Constitution. Learned counsel for the petitioners referred to certain other clauses in section 10 of the Act which apply equally to all employees irrespective of the category of their employer, to suggest that all such measures being for bene- fit of employees, no further classification of the employees is permissible with reference to the category of their employer. It was further urged that consequently the exclu- sion of non-public sector employees is not only discrimina- tory but also arbitrary. On this basis it was contended that instead of striking down the provision as invalid which while denying the benefit to the public sector employees would not also serve any useful purpose for the private sector employees, the court should adopt a positive and constructive approach and the provision so construed as to extend its benefit to all employees irrespective of the category of their employer to uphold its validity. Shri Dewan for the second respondent, a private sector company, supported learned counsel for the petitioners. He contended that if there be any such discrimination then the question to ask is: whether the Parliament intended to confine the benefit of this welfare measure only to employ- ees of the public sector? He further

contended that it is possible to read the provision in such a manner as to extend its benefit to all employees instead of confining it only to the public sector employees.

In reply, Dr. Gauri Shankar for the first respondent contended that the employees of public sector constitute a distinct class for this purpose in view of the fact that the public sector undertakings have a distinct character and role in the national economy. He argued that to make the public sector undertakings economically more viable and thereby contribute more to the national economy, it has become necessary to streamline and trim the higher echelons by inducing the unwanted personnel to leave voluntarily with a "golden hand-shake" instead of resorting to retrenchment which involves several complication including protracted litigation which is not conducive to the wellbeing of the public sector undertakings. He argued that this problem does not exist in the private sector where the higher employees can leave or be asked to leave, without corresponding diffi- culties, experienced in the public sector. This provision is meant essentially for employees at the higher levels in the public sector undertakings whose economic status cannot be equated with their counterpart in the private sector. For this reason equating the two sets of employees for the tax benefit was urged to be unjustified, there being an intelligible differentia between them. Dr. Gauri Shankar also contended that the real object of the enactment was to streamline the public sector by reducing overstaffing at the higher level and the consequent tax exemption to the retiring employee was merely the effect or fall-out of the real object. The provision was meant to induce the unwanted personnel to seek voluntary retirement and thereby promote the real object of streamlining the ailing public sector. To support his argument, he produced material indicating the historical background and factual matrix including material to show the great disparity in the emoluments and perquisites, i.e., compensation package of the private sector and the public sector employees particu- larly at the higher levels.

The main question for decision is the discrimination alleged by the petitioners. The principles of valid classi- fication are long settled by a catena of decisions of this Court but their application to a given case is quite often a vexed question. The problem is more vexed in cases falling within the grey zone. The principles are that those grouped together in one class must possess a common characteristic which distinguishes them from those excluded from the group; and this characteristic or intelligible differentia must have a rational nexus with the object sought to be achieved by the enactment. It is sufficient to cite the decision in [1979] 2 SCR 476--In Re The Special Courts Bill, 1978--and to refer to the propositions quoted at p. 534-537 therein. Some of the propositions are stated thus:

"2. The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distin- guishing and classifying persons or things to be subjected to such laws.

3. The Constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scien- tific exclusion or inclusion of persons or things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of

classifi- cation in any given case. Classification is justified if it is not palpably arbitrary.

4. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same reme- dies should be made available to them irrespective of dif- ferences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

6. The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

7. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be rounded on' an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act.

8. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon person arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legisla- tion, provided such classification is not arbitrary in the sense above mentioned.

11. Classification necessarily implied the making of a distinction or discrimination between persons classified and those who are not members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general pub- lic. Indeed, the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality ,n no manner determines the matter of constitutionality."

(emphasis supplied) It is well-settled that the latitude for classification in a taxing statute is much greater; and in order to tax something it is not necessary to tax everything. These basic postulates have to be borne in mind while determining the constitutional validity of a taxing provision challenged on the ground of discrimination.

The scope for permissible classification in a taxing statute was once again considered in a recent decision. of this Court in P.H. Ashwathanarayana v. State of Karnataka, [1989] Suppl. 1 SCC 696. After a review of earlier deci- sions, it was stated therein as under:

"It is for the State to decide what economic and socialpoli- cy it should pursue and what discriminations advance those social and economic policies. In view of the inherent com- plexity of these fiscal adjustments, courts give a larger discretion to the legislature in the matter of its prefer- ences of economic and social policies and effectuate the chosen system in all possible and reasonable ways ..... " (emphasis supplied) In Federation of Hotel and Restaurant Association of India v. Union of India, [1989] 178 ITR 97, it was said as under:

"... The test could only be one of palpable arbitrariness applied in the context of the felt needs of the times and societal exigencies informed by experience." "... A reasonable classification is. one which includes all who are similarly situated and none who are not. In order to ascertain whether persons are similarly placed, one must look beyond the classification and to the purposes of the law."

(emphasis supplied) This Court has held in Kerala Hotel and Restaurant Association & Ors. v. State of Kerala & Ors., A.I.R. 1990 SC 913 as under:

"The scope for classification permitted in taxation is greater and unless the classification made can be termed to be palpably arbitrary, it must be left to the legislative wisdom to choose the yardstick for classification, in the background of the fiscal policy of the State to promote economic equality as well ..... ' ' "Thus, it is clear that the test applicable for striking down a taxing provision on this ground is one of palpable arbitrariness applied in the context of the felt needs of the times and societal exigencies informed by experience, and the courts should not interfere with the legislative wisdom of making the classification unless the classifica- tion is found to be invalid by this test."

(emphasis supplied) It is useful to refer also to the decision of this Court in 1. T.O. v. N. Takin Roy Rymbai, [1976] 103 I.T.R. 82 (S.C.)--wherein a similar question relating to validity of classification in another clause of section 10 of the In- come-Tax Act, 1961 arose for consideration. This Court while upholding the validity of the classification summarised the principles applied, as under:

".... it must be remembered that the State has, in view of the intrinsic complexity of fiscal adjustments of diverse elements, a considerably wide discretion in the matter of classification for taxation purposes. Given legislative competence, the legislature has ample freedom to select and classify persons, districts, goods, properties, incomes and objects which it would tax, and which it would not tax. So long as the classification made within this wide and flexi- ble range by a taxing statute does not transgress the funda- mental principles underlying the doctrine of equality, it is not vulnerable on the ground of discrimination merely be- cause it taxes or exempts from tax some incomes or objects and not others. Nor is the mere fact that a tax falls more heavily on some in the same category, by itself a ground to render the law invalid. It is only when within the range of its selection, the law operates unequally and cannot be justified on the basis of a valid classification, that there would be a violation of Article 14. (see East India Tobacco Co. v. Andhra Pradesh; Vivian Joseph Ferriera v. Municipal Corporation of Greater Bombay; Jaipur Hosiery Mills v. State of Rajasthan)"

(emphasis supplied) We must, therefore, look beyond the ostensible. classi- fication and to the purpose of the law and apply the test of 'palpable arbitrariness' in the context of the felt needs of the

times and societal exigencies informed by experience to determine reasonableness of the classification. It is clear that the role of public sector in the sphere of promoting the national economy and the context of felt needs of the times and societal exigencies informed by experience gained from its functioning till the enactment are of significance. There is no dispute that the impugned provision includes all employees of the public sector and none not in the public sector. The question is whether those left out are similarly situated for the purpose of the enactment to render the classification palpably arbitrary. It is only if this test of palpable arbitrariness applied in this manner is satis- fied, that the provision can be faulted as discriminatory but not otherwise. Unless such a defect can be found, the further question of construing the provision in such a manner as to include all employees and not merely employees of public sector companies, does not arise. It is first necessary to discern the true purpose or object of the impugned enactment because it is only with reference to the true object of the enactment that the existence of a rational nexus of the differntia on which the classification is based, with the object sought to be achieved by the enactment, can be examined to test the validity of the classification. In Francis Bennion's Statu- tory Interpretation, 1984 edition, the distinction between the legislative intention and the purpose or object of the legislation has been succinctly summarised at p. 237 as under:

"The distinction between the purpose or object of an enact- ment and the legislative intention governing it is that the former relates to the mischief to which the enactment is directed and its remedy, while the latter relates to the legal meaning of the enactment."

There is thus a clear distinction between the two. While the purpose or object of the legislation is to provide a remedy for the malady, the legislative intention relates to the meaning or exposition of the remedy as enacted. While dealing with the validity of a classification, the rational nexus of the differentia on which the classification is based has to exist with the purpose or object of the legislation, so determined. The question next is of the manner in which the purpose or object of the enactment has to be determined and the materi- al which can be used for this exercise.

For determining the purpose or object of the legisla- tion, it is permissible to look into the circumstances which. prevailed at the time when the law was passed and which necessitated the passing of that law. For the limited purpose of appreciating the background and the antecedent factual matrix leading to the legislation, it is permissible to look into the Statement of Objects and Reasons of the Bill which actuated the step to provide a remedy for the then existing malady. In A. Thangal Kunju Musaliar v.M. Venkitachalam Potti & Anr., [1955] 2 S.C.R. 1196, the State- ment of Objects and Reasons was used for judging the reason- ableness of a classification made in an enactment to see if it infringed or was contrary to the constitution. In that decision for determining the question, even affidavit on behalf of the State of "the circumstances which prevailed at the time when the law there under consideration had been passed and which necessitated the passing of that law" was relied on. It was reiterated in State of West Bengal v. Union of India, [1964] 1 S.C.R. 37 1- that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament, can be used for 'the limited purpose of under- standing the background and the antecedent state of affairs leading up to the legislation.' Similarly, in Pannalal Binjraj v. Union of India, [1957] SCR 233--a challenge to the validity of classification was repelled placing reliance on an affidavit filed on behalf of the Central Board of Revenue disclosing the true object of enacting the impugned provision

in the Income-Tax Act.

Not only this, to sustain the presumption of constitu- tionality, consideration may be had even to matters of common knowledge; the history of the times; and every con- ceivable state of facts existing at the time of legislation which can be assumed. Even though for the purpose of con- struing the meaning of the enacted provision, it is not permissible to use these aids, yet it is permissible to look into the historical facts and surrounding circumstances for ascertaining the evil sought to be remedied. The distinction between the purpose or object of the legislation and the legislative intention, indicated earlier, is significant in this exercise to emphasise the availability of larger material to the Court for reliance when determining the purpose or object of the legislation as distinguished from the meaning of the enacted provision.

We propose to utilise these permissible aids for dis- cerning the purpose or object of the legislative provision in order to examine the validity of the classification made therein.

Strong reliance has been placed on behalf of the peti- tioners on the Memorandum explaining the provisions in the Finance Bill, 1987, wherein the explanatory note relating to clause 4(a) of the Bill proposing insertion of clause (10-C) in Section 10 of the Income-tax Act, 1961 appears under the heading 'Welfare Measures'. It may be mentioned that this heading is only in the explanatory memorandum and not in the 'Notes on Clauses' appended to the 'Statement of Objects and Reasons' of the Bill. (See [1987] 165 ITR (Statutes) at pp. 119, 122 & 155). We would presently show that the petition- ers cannot draw support from this heading in the explanatory memorandum. Moreover, an explanatory memorandum is usually 'not an accurate guide of the final Act'. (See Francis Bennion's Statutory Interpretation, 1984 Ed. at p. 529). It was urged that the impugned provision being described as a welfare measure in the explanatory memorandum, the object of the enactment was the welfare of the employees and, therefore, no further classification of the employees could be made. It was argued that the heading 'welfare measures' is, therefore, decisive of the object of its enactment. In our opinion, this cannot be accepted. The Statement of Objects and Reasons (See (1987) 165 ITR (Stat- utes) at p. 119) is as under:

"The object of the Bill is to give effect to the financial proposals of the Central Government for the financial year 1987-88. The Notes on Clauses explain the various provisions contained in the Bill."

Thereafter, the Notes on clauses in the Finance Bill, 1987 are from pp. 119-151. The Note relating to this clause at p. 122 is as under:

"Clause 4 seeks to amend section 10 of the Income-Tax Act. Sub-Clause (a) of this clause proposes to insert a new clause (10-C) in this section. Under the proposed amendment, any payment received by an employee of a public sector company at the time of his voluntary retirement in accord- ance with any scheme which the Central Govern-

ment may, having regard to. the economic viability of the public sector company and other relevant circumstances, approve in this behalf, shall be exempt from tax. This amendment will take effect from 1st April, 1987, and will, accordingly apply in relation to the assessment year 1987-88 and

subsequent years."

No where in the 'Notes on Clauses' the proposal in the Bill is described as a welfare measure. It is then in the memo- randum explaining the provisions in the Finance Bill, 1987 that the provisions are divided under different heads, one of which is 'welfare measures'. The subheading relating to this proposal is mentioned as 'Exemption of compensation received by public sector employees on voluntary retire- ment'. It is mentioned in paragraph 13 of the explanatory memorandum that a number of public sector undertakings have formulated voluntary retirement schemes for their employees; that under section 10(10-B) of the Income-Tax Act any com- pensation received by a workman at the time of his retrench- ment is exempt upto the specified limit; and that this limit of exemption under section 10 (10-B) is, however, not ap- plicable in respect of compensation received under certain schemes approved by the Central Government. By enacting section 10 (10-C), the proposal obviously was to extend the same benefit to the payment made under these approved schemes as was existing for compensation under approved scheme given by section 10 (lOB). The heading of 'welfare measures' applies also to paragraph 14 in the memorandum relating to modification of provisions relating to deduction in respect of donations to certain funds etc. It is, there- fore, clear that in this explanatory memorandum the headings are fairly wide and matters collected under the same heading may be diverse not giving a true indication of the object of the provision.

It is also significant that the proposal to amend sec- tion 10 by inserting a new clause (10-C) therein was con- tained in sub-clause (a) of clause 4 of the Finance Bill, while sub-clause (b) of clause 4 of the Finance Bill pro- posed to insert a new item in sub-clause (iv) of clause (15) of section 10 to provide that interest payable by the public sector companies on certain specified bonds and debentures will not form part of the tax-payer's total income subject to the specified conditions. This was in pursuance of a series of public sector bonds being floated which are in- tended to yield tax-free return to the holders of such bonds. The effect of the amendment so made yielding tax-free return to the holders of public sector bonds is similar to the amendment by insertion of a new clause (10-C), the effect of which is to grant tax exemption to employees of the public sector in respect of the amount received under the voluntary retire- ment scheme approved by the Central Government. Both these proposals relating to the amendment of section 10 were in sub-clauses (a) and (b) of clause 4 of the Finance Bill. Ordinarily in the memorandum explaining the provisions in the Finance Bill both the sub-clauses of clause 4 should have been, therefore, mentioned under the same heading being of essentially the same nature. It is interesting to note that the proposal in clause 4(b) was mentioned in paragraph 17 of the explanatory memorandum under the heading 'Incen- tives for growth and modernisation' with the sub-heading 'Measures for raising resources for the public sector'. Admittedly, the effect of this provision was to grant a tax benefit to the holders of the public sector bonds by amend- ing section 10 in this manner but the real object for giving that benefit to the tax-payer was to provide an incentive for growth and modernisation by adopting a measure for raising the resources for the public sector. If the proposal in sub-clause of clause 4 of the Finance Bill fell in this category, there is no reason why the proposal in sub-clause

(a) of the same clause of the Bill, both sub-clauses relat- ing to amendment of section 10, can be treated differently merely because in the explanatory memorandum the two sub- clauses are under

different headings. This distribution of the sub-clauses of the same clause in the Finance Bill under different heads in the explanatory memorandum is sufficient to show that no particular significance can be attached to the heading 'welfare measures under which the proposal to insert clause (10-C) in section 10 of the Act was placed in that memorandum. We see no reason why insertion of clause (10-C) in section10 cannot also be described as incentive for growth and modernisation being a measure for improvement of the public sector. Obviously the incentive given thereby is to the employees of the public sector companies to resort more readily to the voluntary retirement scheme which would enable improvement of public sector by streamlining its staff.

A catch-phrase possibly used as a populist measure to describe some provisions in the Finance Bill in the explana- tory memorandum while introducing the Bill in the Parliament can neither be determinative of, nor can it camouflage the true object of the legislation. It is not unlikely that the phrase 'welfare measures' was used to emphasise more on the effect of the provisions thereunder on the tax-payer for populism.

In view of the fact that the challenge is based on the initial assumption of equality between all employees of the public sector and the private sector, it will be useful to refer to the nature and role of the public sector undertakings vis-a-vis those of the private sector along with the histor- ical background and surrounding circumstances leading to enactment of the impugned provision. For this purpose, we would first refer to the counter-affidavit of Shri S.K. Abrol, Officer-onSpecial-Duty, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, New Delhi, which states the reasons for insertion of clause (10-C) in section 10 of the Income-Tax Act, 1961. The coun- ter-affidavit states with reference to some other clauses of section 10 of the Act that the legislature for purposes of exemption from income-tax has always differentiated between private sector employees and those in the public sector and Government employment. It states further as follows: "As submitted in the paragraph above, sectionl 10 (10-C) was introduced by the Finance Act, 1987 w.e.f. 1.4.1987 and the legislature in its wisdom sought to restrict these benefits to only the employees in the public sector. The reason for introducing this provision is contained in the Circular of the Central Board of Direct Taxes explaining the Finance Act, 1987, relevant extract from which is reproduced hereun- der:

15.1. At present under section 10 (10B) any com- pensation received by a workmen at the time of his retire- ment is exempted upto the amount calculated in accordance with section 25F of the Industrial Disputes Act or Rs.50,000, whichever is less. The limit is, however, not applicable in respect of compensation received under certain schemes approved by the Central Government. 15.2 A number of public sector undertakings.have formulated voluntary retirement schemes for their employees. With a view to extend relief to such employees, the Finance Act, 1987, by introducing new clause (10C) in section 10, provides exemption in respect of any payment received by them at the time of their voluntary retirement in accordance with any scheme which the Central Government may approve, having regard to the economic viability of the public sector company and other relevant circumstances. This exemption will be available to any employee whether a workman or an executive.

15.3. This amendment shall come into force w.e,f. 1.4.1987 and will, accordingly, apply to assessment year 1987-88 and subsequent year.' "It is submitted that for all purposes, the private sector and the public sector have been treated differently and are known to be different classes. The Industrial Policy Resolu- tion, 1956, which reviewed the earlier Industrial Policy, clearly distinguished industries in the public sector and those in the private sector. The Industrial Policy Resolu- tion mentioned that for adoption of socialist pattern of society as the national objective, the requirement was that industries of basic and strategic importance, or in the nature of public utility service, should be in the public sector. The Industrial Policy Resolution placed the indus- tries in three different categories; ..... Thus, this categorisation of industries into public sector, private sector was on the basis of Articles 38 and 39 of the Consti- tution of India, as has been mentioned in the Industrial Policy Resolution, 1956."

"The respondent submits that there were certain basic distinctions between the undertakings in the private sector and in the public sector as has been observed by this Hon'- ble Court in the case of R.D. Shetry v. International Air- port Authority of India, [1979] 3 SCR 1014. A public sector undertaking is either established by a statute or incorpo- rated under law. Public Sector Undertakings are wholly controlled by Government not only in their policy making but also in carrying out the functions entrusted to them by law establishing it or by charter of their in corporation. As such public sector undertakings are bound by any directions that may be issued by Government from time to time in re- spect of policy matters. The entire share capital of the public sector undertakings is held by the Government and it is under the direct control and supervision of Government. The pay scales of the employees in the public sector are fixed by the administrative Ministry inconsultation with the Bureau of Public Enterprises, who exercise complete control over the actions of public sector undertakings. The public sector undertakings are answerable to the Parliament through their administrative Ministries. The entire budget of the public sector undertakings is controlled by the administrative Ministries. The Comptroller and Auditor General audits the accounts of the public sector undertak- ings and any leakages etc. are brought to the notice of Parliament. The recruitment and conduct rules of the public sector employees are subject to overall control of Govern- ment through Bureau of Public Enterprises ..... "

" ..... Section 10 (10C), while extending the benefit to employees of public sector has, as its basis, exempted incomes received from Government through public sector undertakings. The distinction is based on intelligent differentiation and the object of this differentiation is to promote the interests of the employees of public sector undertakings so as to bring this at par with the private sector employees whose emoluments and other conditions of service are not governed by any statute or are not under any control."

"The respondent submits that the legislature is aware of the differentiation between the public sector undertakings and private sector undertakings. and in its wisdom. has chosen to restrict the benefit only to the public sector employees ..... "

"The respondent submits that the extension of the benefit of section 10 (10C) of the Income Tax Act to the employees of the private sector is likely to be misused by way of fre- quent payment to the employees in the garb of voluntary retirement benefits and it will not be possible to provide

necessary safeguards in law to check such practices. This would defeat the very purpose of the Scheme of Voluntary Retirement, besides leading to large scale revenue loss." (emphasis supplied) The counter-affidavit filed on behalf of respondent No. 1 disclosing the reasons which led to the insertion of clause (10C) in section 10 of the Act confining the benefit granted thereby only to employees of the public sector indicates that the purposes of the legislation include reduction in the existing gap between the lower compensation package in public sector and the higher compensation package of the counterpart in private sector in addition to prevent- ing misuse of the benefit in private sector which is not subject to the control of administration by Government like that in the public sector. It is evident from the material produced before us that the compensation package in the public sector, particularly at the higher levels, is much lower than that in the private sector.

Some insight into the existing state of the public sector undertakings and their viability with suggestions for improvement are found in the First Dr. L.K. Jha Memorial Lecture, delivered on the 6th December, 1988, by Shri R.N. Malhotra, Governor, Reserve Bank of India, on "Growth and Current Fiscal Challenges". While giving an overview of the progress during the last four decades, the speaker referred to the 'performance of the public sector' as under: "The public sector which now accounts for about half the total national investment has made crucial contributions to the development of the economy by expanding the infrastruc- ture, establishing basic industries and producing goods and services of strategic importance. The public sector has, however, not been able to generate surpluses commensurate with its share in plan outlays."

On "planning and resources" and "financing of public sector", he said:

"An analysis of the financing pattern of public sector plan expenditures indicates that over time the shares of balance from current revenues and additional resource mobilisation have been declining while reliance on borrowed funds has been rising ..... "

Therefore, he referred to the deterioration in the finances with reference to the growing expenditure, as under:

" ..... Interestingly, about two thirds of the savings of these enterprises represent provisions for depreciation which are supposed to cover replacement costs, Though sever- al of these enterprises are operating efficiently, The savings of public sector enterprises as a group are not commensurate with the investment made in them. According to the public enterprises survey, the capital employed in the Central Public Sector Enterprises amounted to about Rs.52,000 crores at the end of 1986-87. About 100 of these units made losses amounting to Rs. 1,708 crores and 109 units were making after tax profit of Rs.3,478 crores of which Rs.2,142 crores came from the oil sector. The rate of return was 6.0 per cent before tax and 3.4 per cent after tax. If the oil sector which benefits from the oil price policy is excluded, the rate of return would be negative ..... There is imperative need for substantial improvement in the working and profitability of public sector undertakings."

Referring to the existing state of "public debt", he said: "The Long Term Fiscal Policy (LTFP) had raised concern about increasing reliance on borrowings to finance the budgetary outlays and had suggested containment of domestic borrowings including those from the Reserve Bank ..... In the

event, the level of borrowings has been much higher than that envisaged in the Seventh Plan .....This has happened de- spite the fact that some public sector enterprises, previ- ously dependent on the budget, were allowed to raise re- sources directly from the capital market through bond float- ations of the order of Rs.2,000 crores each year from 1986- 87 .....

Growing levels of borrowing by the Government and public sector undertakings raise two major concerns. First, whether the present level of Government borrowing is sus- tainable? Unless there are adequate surpluses in the revenue account which can be utilised for debt servicing, the budge- tary deficit would widen. The increased borrowings for debt servicing would create the vicious circle of progressively higher interest burdens and still higher borrowing. The second issue is whether the increasing level of Government borrowing coupled with that of public sector undertakings would result in crowding out of private sector investments. Since the total investment in the economy is shared about equally between the public and private sectors, it is impor- tant to ensure that the 'requirements of the private sector are also adequately met so that the overall growth targets of the national economy are achieved. ' ' Dealing with the efficiency issues, he said as under: "I shall now refer briefly to the efficiency issues with special reference to the public sector ..... The persist- ence of a high ICOR would, however, indicate considerable scope of improvement in efficiency .....

Cost and time over-runs are major contributors to the high ICOR ..... The public sector has rendered great service in providing infrastructure and establishing basic and strategic industries. Managerial skills in that sector are generally of a high order. The aim should there- fore be to promote productivity and profitability of this sector by introducing the requisite policy changes and improvements. One of the important aims of this sector which needs reiteration is its financial viability. Efficient use of manpower is imperative. This is difficulty to ensure if overmanning persists along with restrictive practices which resist technological change and systems improvement ..... "

(emphasis supplied) The factual matrix and historical background appearing from the above material prove that the public sector needs toning up. One of its affliction is overmanning or surplus staff, the obvious remedy of which is streamlining, by removing the non-productive and unwanted personnel, if possible, without any complication. Retrenchment is often an unsafe course to adopt.since it may lead to protracted litigation and uncertain outcome. We cannot overlook this well known, though unfortunate fact.

A safe mode to relieve the public sector of its unpro- ductive and surplus manpower is to induce those persons to seek voluntary retirement under a scheme providing some incentive or inducement for seeking voluntary retirement. Clause (10-B) of section 10 of Incometax Act, 1961, does grant tax exemption in respect of any compensation received at the time of retrenchment upto the prescribed limit. That limit, however, does not apply to compensation received under certain schemes approved by the Central Government. It is, therefore, reasonable that same benefit be also extended in respect of any payment received by an employee of the public sector on his voluntary retirement under a scheme similarly approved by the Central Government. The public sector's role visualised on advent of freedom was as an 'instrument of development and national strength', a 'key to our self-reliance', 'catalyst of social change' and for attaining 'commanding heights of the economy' in keeping with our national aim of Welfare State and a social- ist economy. Unfortunately, inspite of a strong

rationale for setting up and promoting public sector in the national economy, it has not so far fully justified the legitimate expectation and a large number of the public sector undertakings are losing concerns. A study into the causes which all the public sector has shown that one of its drawbacks is overstaffing. Streamlining the public sector to get rid of its unproductive and unwanted personnel is, therefore, a felt need. A scheme whereby such unwanted personnel can be induced to leave voluntarily granting some incentive for doing so is, therefore, ultimately beneficial to the health and prosperity of the public sector and conse- quently to the national-economy. These factors alone are sufficient to provide an intelligible differentia between public and private sectors and its rational nexus with the object of improving the performance of public sector, pro- moting national economy.

It is useful to remember that the country having opted for mixed economy, the healthy and vigorous functioning of the public sector undertakings is conducive to the benefit of the private sector as well, in addition to promoting the well-being of the national economy. A point of view emerging currently is that just as public sector undertakings are outside the purview of the Monopolies and Restrictive Trade Practices Act by virtue of the exemption conferred on them, the Income-tax Act should confer similar exemption to it from tax liability by suitable amendment in section 10 of the Act as is given to local authorities, housing boards, etc. This view is supported on the ground that the exemption from tax liability or public sector undertakings would ultimately benefit the consumers of the products of the public sector undertakings. This is not an irrelevant cir- cumstances to indicate that according to the general percep- tion, there is a distinction between the public and private sectors. In some earlier decisions of this Court, the public sector has been treated as a distinct class for the purpose of exemption under Statutes.

In Hindustan Paper Corporation Ltd. v. Government of Kerala & Ors., [1986] 3 SCC 398, a provision granting exemp- tion to Government companies and cooperative societies alone for selling forest produce at less than selling price fixed under the Kerala Forest Produce (Fixation of Selling Price) Act, 1978 was held to be constitutionally valid and not violative of Articles 14 and 19(1)(g) of the Constitution of India. It was held that the Government or public sector undertakings formed a distinct class. In this context, it was held as under:

" ..... As far as Government undertakings and companies are concerned, it has to be held that they form a class by themselves since any profit that they may make would in the end result in the benefit to the members of the generalpub- lic. The profit, if any, enriches the public coffer and not the private coffer. The role of industries in the public sector is very sensitive and critical from the point of view of national economy. Their survival very often depends upon the budgetary. provision and not upon private resources which are available to the industries in the private sector ..... "

(emphasis supplied) Similarly, in M. Jhangir Bhatusha etc. etc. v. Union of India & Ors. etc. etc., 1982 Judgments Today 2 SC 465, a concession in import duty granted to the State Trading Corporation was upheld on the ground that public policy can support the differentiation.

It is clear that the Government or the public sector undertakings have been treated as a distinct class separate from those in the private sector and the fact that the profit earned in the former is for public benefit instead of private benefit, provides an intelligible differentia from the social point of

view which is of prime importance for the national economy. Thus, there exists an intelligible differentia between the two categories which has a rational nexus with the main object of promoting the national econom- ic policy or the public policy. This element also appears in the impugned enactment itself wherein 'economic viability of such company' is specified as the most relevant circumstance of grant of approval of the scheme by the Central Govern- ment. This intrinsic element in the provision itself sup- ports the view that the main object thereof is to promote and improve the health of the public sector companies even though its effect is a benefit to its employees. As already indicated, clause (10-C) of section 10 of the Act itself mentions economic viability of a public sector company as the most relevant circumstance to attract the provision. The economic status of employees of a public sector company who get the benefit of the provision is also lower as compared to their counterpart in the private sec- tor. If this be the correct perspective as we think it is in the present case, the very foundation of the challenge to the impugned provision on the basis of economic equality of employees in both sectors is non-existent. Once the stage is reached where the differentiation is rightly made between a public sector company and a private sector company and that too essentially on the ground of economic viability of the public sector company and other relevant circumstances, the argument based on equality does not survive. This is inde- pendent of the disparity in the compensation package of employees in the private sector and the public sector. The argument of discrimination is based on initial equality between the two classes alleging bifurcation thereafter between those who stood integrated earlier as one class. This basic assumption being fallacious, the question of any hostile discrimination by granting the benefit only to a few in the same class denying the same to those left out does not arise.

We shall now refer to some other clauses of section 10 of the Act to which reference was made at the hearing in support of the rival contentions. Sub-clause (i) of clause (10) of section 10 confines the benefit thereunder only to the Government servants, defence personnel and employees of a local authority. Sub-clause (i) of clause (10-A) similarly confines the benefit to Government servants, defence person- nel and employees of a local authority or a corporation established by a statute. Clause (10-A) also makes a dis- tinction between the Government employees and other employ- ees. Clause (10-B) also removes the limit in respect of any payment as retrenchment compensation under a scheme approved by the Central Government. Some other clauses in section 10 of the Act further show that the scheme of section 10 con- templates a distinction between employees based on the category of their employer. Accordingly, clause (10-C) therein is not a departure from the existing scheme but in conformity with some clauses earlier enacted therein. Once the impugned provision contained in the newly inserted clause (10-C) of section 10 of the Income-Tax Act, 1961 is viewed in the above perspective keeping in mind the true object of the provision, there is no foundation for the argument that it is either discriminatory or arbitrary. There is a definite purpose for its enactment. One of the purposes is streamlining the public sector to cure it of one of its ailments of overstaffing which is realised from experience of almost four decades of its functioning. In view of the role attributed to the public sector in the sphere of national economy, improvement in the functioning thereof must be achieved in all possible ways. A measure adopted to cure it of one of its ailments is undoubtedly a forward step towards promoting the national economy. The provision is an incentive to the unwanted personnel to seek voluntary retirement thereby enabling the public sector to achieve the true object indicated. The personnel seeking voluntary retirement no doubt get a tax benefit but then that is an incentive for seeking voluntary retirement and at any rate that is the

effect of the provision or its fall-out and not its true object. It is similar to the incentive given to the taX- payers to invest in the public sector bonds by non-inclusion of the interest earned thereon in the tax-payer's total income which promotes the true object of raising the re- sources of the public sector for its growth and modernisa- tion. The real distinction between the true object of an enactment and the effect thereof, even though appearing to be blurred at times, has to be borne in mind, particularly in a situation like this. With this perspective, keeping in view the true object of the impugned enactment, there is no doubt that employees of the private sector who are left out of the ambit of the impugned provision do not fall in the same class as employees of the public sector and the benefit or the fall-out of the provision being available only to the public sector employees cannot render the classification invalid or arbitrary. This classification cannot, therefore, be faulted.

Some of the cases cited by the petitioners in support of the contention of equality of employees in the public and private sectors in the present context also are inapplica- ble. The decision in Hindustan Antibiotics v. Workmen, [1967] 1 SCR 652 related to wage fixation and is distinguishable. S.K. Dutta, I.T.O. v. Lawrence Singh Ingty, [1968] 68 ITR 272--was distinguished and explained in [1976] 103 ITR 82 relied on by us. Moreover, [1976] 103 ITR 82 which also related to a provision in Section 10 of Income- tax Act, 1961 itself says as under:

"Classification for purposes of taxation or for exempting from tax with reference to the source of the income is integral to the fundamental scheme of the Income-tax Act. Indeed, the entire warp and woof of the 1961 Act has been woven on this pattern."

" ..... Suffice it to say that classification of sources of income is integral to the basic scheme of the 1961 Act. It is nobody's case that the entire scheme of the Act is irrational and violative of article 14 of the Constitution. Such an extravagent contention has not been canvassed before us. Thus, the classification made by the aforesaid sub- clause (a) for purposes of exemption is not unreal or unknown. It conforms to a well-recognised pattern. It is based on intelligible differentia. The object of this differentia- tion between income accruing or received from a source in the specified areas and the income accruing or received from a source outside such areas, is to benefit not only the members of the Scheduled Tribes residing in the specified areas but also to benefit economically such areas ..... " The other submission of the petitioners is to read the provision in a manner which would cover all employees in- cluding employees of the private sector within the ambit of the impugned provision. This further question does not arise in view of our conclusion that there is no discrimination made out. We may, however, mention that the Finance Bill, 1987 while inserting a new clause (10-C) in section 10 of the Income-tax Act simultaneously inserted a new clause (36-A) in section 2 of the Act with effect from 1.4.1987 defining 'public sector company', which expression has been used in the newly inserted clause (10-C) of section 10. In view of the simultaneous definition of 'public sector compa- ny' in the Act, there can be no occasion to construe this expression differently without which a private sector compa- ny cannot be included in it. It is, therefore, not possible to construe the impugned provision while upholding its validity in such a manner as to include a private sector company also within its ambit.

Consequently, the writ petition is dismissed, but in the facts and circumstances of the case, there shall be no order as to costs.

All the interim orders shall stand vacated.

T.N.A. Petition dismissed.