Before Harinder Singh Sidhu, J.

GBA WORKERS UNION—*Petitioner*

versus

CHANDIGARH ADMINISTRATION AND ANOTHER—

Respondents

CWP No.5966 of 2021

March 15, 2022

Constitution of India, 1950—Art.226—Industrial Disputes Act, 1947—Ss.25-N(1)(b), 25-N(4), 25-O (3) and 25-M (3)—Petition filed by registered recognized Union to quash the order that on application under Section 25 N(1)(b) filed by private limited Company, engaged in manufacture of hosiery and knitting needles, seeking permission to retrench its 37 workmen— Permission deemed to have been granted on expiry of sixty days from date of filing—Ground for retrenchment—Due to Corona Virus—Demand of products reduced—Company decided to reduce production with proportionate reduction in work force—On principle of 'last come first go'—Labour Commissioner sent a notice to petitioner-Union for conciliation—Five meetings held—Matter not finalized—Failure report sent to Secretary Labour who addressed a communication dated 22.01.2021 to Petitioner-Union about receipt of notice regarding retrenchment—25.01.2021 fixed as date of hearing/enquiry—On 01.03.2021, impugned order passed—Held, if decision not communicated within 60 days of the application for retrenchment, permission is deemed to have been granted—No infirmity found in impugned order—Petition dismissed.

Held that, in all the above cases the Hon'ble Supreme Court while considering Section 25-N(4), Section 25-O (3) and 25-M (3), which are the relevant deeming provisions, has held that the permission sought for shall be deemed to have been granted, if the decision is not communicated within the mentioned period. Further it is clear from these decisions that existence of the "deeming provision" was an essential element in adjudging that the restrictions imposed for retrenchment, closure and lay off were reasonable and hence the provisions were constitutionally valid.

(Para 44)

Further held that, the deeming provisions are unqualified. There is no exception provided that the time will cease to run or "be arrested" on an enquiry being initiated or for any other reason. No such exception has been recognized by Hon'ble Supreme Court in any of the above cases.

(Para 45)

Further held that, in the present case also, as the decision was not communicated within 60 days of the application for retrenchment, the permission is deemed to have been granted. Thus there is no infirmity in the impugned order dated 01.03.2021.

(Para 48)

Further held that, this petition is dismissed.

(Para 49)

Further held that, it is clarified that this Court has not gone into the validity of the grounds for retrenchment. This decision is only limited to examining the legality of the order dated 01.03.2021.

((Para 50)

K.L. Arora, Advocate
for petitioner.

Aditya Jain,
for respondent No.1 – UT Chandigarh.

Chetan Mittal, Senior Advocate with
Vivek Sethi, Advocate
for respondent No.2- Company.

HARINDER SINGH SIDHU, J.

(1) This petition has been filed for directions to quash the order dated 1.3.2021 (Annexure P-6) wherein it is stated that on the application dated 01.12.2020 under Section 25 N(1)(b) of the Industrial Disputes Act, 1947 (in short 'the Act') filed by respondent No.2-Company seeking permission to retrench its 37 workmen, the permission is deemed to have been granted on expiry of sixty days from the date of its filing.

(2) The petitioner is a registered and recognized Union of respondent No.2. Respondent No.2 is a private limited Company engaged in manufacture of hosiery and knitting needles. Respondent No. 1 is Chandigarh Administration through the Secretary Labour.

(3) As per the averments in the petition on 01.12.2020 Respondent No.2- Company submitted an application under Section 25N(1) (b) of the Act before the Assistant Labour Commissioner-cum-Conciliation Officer (for short 'the Labour Commissioner') for permission to retrench 37 workmen.. The ground for retrenchment was that due to Novel Corona Virus (Covid-19), the demand of the products of the company had reduced in the local and global market. There was large accumulation of the product at the warehouses of the Company, therefore, the Company had decided to reduce its production with proportionate reduction in its work force, i.e. 37 workers on the principle of 'last come first go'. On receipt of the application the Labour Commissioner sent a notice to the petitioner-Union for appearing before him for Conciliation. Some workers of the petitioner-Union appeared before the Labour Commissioner. Five meetings were held before the Labour Commissioner. However, the matter could not be finalized and a failure report was sent to the Secretary Labour. The Secretary Labour addressed a communication dated 22.01.2021 to the petitioner-Union informing about receipt of notice regarding retrenchment from respondent No.2-Company. He fixed 25.01.2021 as the date of hearing/enquiry in the matter. Though notice was received by only one worker, namely Ankit Puri and the petitioner Union, 25 workers appeared before the Secretary, Labour on that date i.e. 25.01.2021. On 01.03.2021, the impugned order was passed.

(4) In the petition, the order dated 01.03.2021 (Annexure P-6) has been assailed on the following grounds:

i) There is violation of provisions of Section 25-N(1)(a)(b). The Retrenchment Notice dated 01.12.2020 was sent by the Management along with the application for permission to retrench dated 01.12.2020. The requirement of three months' notice or wages in lieu thereof has not been complied with.

ii) The order is violative of Section 25-N(2). The application for permission filed by respondent No.2 on 01.12.2020 was served only on the Union. It was not simultaneously served on each individual worker, proposed to be

retrenched.

iii) The order is a non-speaking order. It does not take into consideration the interest of workmen. No reasons for grant of permission have been mentioned.

iv) The order is in breach of provisions of Section 25-N(3). Respondent No.2 – employer had submitted application for permission to retrench on 01.12.2020. Thereafter, the Government entered into an enquiry. The enquiry was made on 25.01.2021. Instead of finalizing the enquiry the impugned order was passed on 01.03.2021. i.e. after 90 days of the application for permission. This is illegal as once the enquiry is initiated the period for the purposes of Section 25 N(4) `stops running' and `is arrested'. The deeming permission provision does not come into play.

v) The action is violative of Section 25-N(6). After receipt of the application the appropriate Government had entered into an enquiry. On 25.01.2021, the Secretary, Labour conducted an enquiry. As the 60 days period had expired, respondent No.1 was required to refer the matter to Industrial Tribunal for adjudication, which was not done.

vi) The documents/particulars required to be submitted along with the application seeking permission to retrench had not been submitted by respondent No.2. Hence it was an incomplete application.

vii) There is no justification to retrench the workmen as the Company is running in profit. The petitioners who have put in 10 -20 years of service have been retrenched leaving them high and dry in the advanced years of their life causing them and their families acute hardship.

(5) Detailed reply on behalf of respondent No.2 has been filed,controverting the averments in the petition.

(6) Giving the background of the decision to retrench the workers, it is stated that respondent No.2 is engaged in the business of manufacturing high-class industrial knitting and sewing machine needles. It is an Indian subsidiary of Groz- Beckert Group, Germany (GBG) which is a leading provider of industrial needles, precision components and fine tools as well as systems and services for the production and joining of textiles. Respondent No.2 was established in India in 1960. It is one of the largest employer in Chandigarh. It has two manufacturing facilities in India i.e. at 133-135 and 177A Industrial Area, Phase-I, Chandigarh.

(7) On account of the adverse impact of US-China Trade War and the Pandemic and subsequent lock-downs, the demand for the

products of the Company had decreased. The stocks of the manufactured goods had significantly increased, leaving no option with respondent No.2, but decided to retrench 37 workmen along with 15 employees from the Staff Category on account of excess man power. Accordingly, respondent No.2 filed application before Labour Commissioner, UT, Chandigarh seeking permission to retrench 37 workers. Simultaneously, each of the 37 workers were issued three months notice in writing as per Section 25-N(1)(a).

(8) After filing of the retrenchment application, several rounds of discussions were held between representatives of respondent No.2 and the petitioner Union before the concerned Labour Authorities including Labour Commissioner, UT Chandigarh, and Secretary, Labour, UT Chandigarh. During the pendency of those proceedings, the petitioners filed CWP No. 22297 of 2020 praying for directions to the Labour Commissioner, UT Chandigarh to not act on the retrenchment application. That petition was dismissed as withdrawn with liberty to avail of an alternative remedy. However, instead of pursuing the alternative remedy, the petitioners filed CWP No.3886 of 2021 seeking directions to the Labour Commissioner and Secretary Labour to decide the application. Respondent No.2 was intentionally not impleaded as a party in the said petition. CWP No.3886 of 2021 was disposed of vide order dated 24.02.2021 on an undertaking of the Labour Commissioner that an order on the retrenchment application would be passed on or before 28.02.2021. The order is reproduced below:-

> "This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.
>
> Prayer in this writ petition is for direction to respondent No. 2 to consider application dated 01.12.2020 filed by respondent No. 3 under Section 25- N of the Industrial Disputes Act, 1947 (for short – 'the Act') and pass appropriate order in accordance with Section 25- N(3) of the Act. Respondent No.3 has sought permission to retrench
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> 37 workers from respondent No.2, vide said application dated 01.12.2020 (Annexure P-4B). Apprehension raised in this writ petition is that despite having heard the workmen and the respondent – company, respondent No.2 may not pass the appropriate order and section 25-N(4) of the Act may come to operation.

Learned counsel for respondents No.1 and 2, on instructions from Sh. Varun Beniwal, Assistant Labour Commissioner, UT,Chandigarh submits that application under Section 25-N of the Act, moved by respondent No.3 is under consideration of the authority and appropriate order shall be passed before 28.02.2021.

In view of the specific stand of respondents No.1 and 2, no further order need be passed in this writ petition, which is accordingly, disposed of.

(9) Thereafter, on 01.03.2021 the impugned order was passed which is reproduced :

'CHANDIGARH ADMINISTRATION

No. MISC. HII (2)-2021/2381 Dated : 1.3.2021ORDER

(10) An application under Section 25 N (1) (b) of the Industrial Disputes Act, 1947 was filed on 1.12.2020 by M/s Groz Beckert Asia Private Limited, Chandigarh. As per Section 25 N (4) of the Industrial Disputes Act, 1947 the permission is deemed to have been granted on expiry of sixty days from the date of its filing.'

(11) It is stated that the undertaking of the Labour Commissioner to pass an order on the retrenchment application was made in ignorance of the statutory provisions, because on the date the undertaking was given i.e. 24.02.2021, the 60 days period prescribed under Section 25-N(4) had already expired and the permission stood deemed granted on 30.01.2021. It is stated on the strength of the deemed approval in terms of Section 25-N(4) of the Act, respondent No.2 retrenched the 37 workers w.e.f. 26.02.2021 and also paid the full and final dues (except gratuity) to the said workers. The aforesaid full and final dues were duly accepted by them without any protest.

(12) Subsequently, in compliance with the order dated 24.02.2021 respondent No.1 passed the impugned order dated 01.03.2021 holding that as per Section 25-N(4) of the Act 'deemed approval' stood granted on 30.01.2021. 28.02.2021 happened to be Sunday. The order was passed the very next day i.e. 01.03.2021.

(13) Refuting the averment of the petitioners that the retrenchment notices were not issued to the workmen, it is stated that respondent No.2 had handed over physical copies of the retrenchment application to all the 37 workers as also to the petitioner-Union. The workers refused to accept the notice of the retrenchment from officials

of respondent No.2. Thereafter, respondent No.2 displayed the retrenchment application along with all annexures on the notice board of the Company.

(14) It has been asserted that it is admitted in the writ petition that the retrenched workers participated in the discussions with the Authorities regarding the retrenchment application. The petitioner Union also represented the 37 retrenched workers in all the Forums. Hence, the petitioner is estopped from raising the plea that the retrenchment notices had not been served on the 37 affected workers.

(15) In the reply by respondent No.1 – Secretary, Labour Department, Chandigarh it is stated that in fact on 24.02.2021, the day the order was passed in CWP No. 3886 of 2021, the authorities had already become functus officio qua the application filed by the Management under Section 25N (1) as the time prescribed under Section 25N(4) of the Act had already expired. It is asserted that in view of the deeming provision in Section 25 N(4) any order passed by the authority would have been in the teeth of the relevant provisions and be patently illegal.

(16) Replication has been filed by the petitioner, wherein, primarily, the averments have been made that the grounds of retrenchment stated in the application filed by respondent No. 2 are non-existent and there was no justification for the retrenchment. It is stated that the factory remained closed only for 39 days. The production was reduced only for a short period of 2½ months when the Company ran two instead of usual three shifts. All three shifts started operating from 16.03.2021. The Company was granted permission by the Director, Industries vide order dated 24.04.2021 to continue with its manufacturing operations. Thus, the manufacturing process of the Company remained suspended only for a short period of 2½ months. It is stated that the financial position of the Company does not warrant retrenchment. It is further stated that it is apparent from the Balance Sheet and Profit & Loss Account that profit of the Company has been increasing every year during the years 2016-17 to 2019-20. The sales have also increased during these years. The sales remained low from April, 2020 to July, 2020. However, the sale figures reached normal levels of the pre-covid period during 9/2020 and 10/2020. The stock position as on 10/2020 was also almost the same as the pre-covid period. It has also been stated that the principle of 'last come first go' has been breached while

retrenching 37 workmen. The respondents have also recruited 4-5 fresh workers through Contractor after retrenching 37 workers.

(17) Based on the aforesaid pleadings, the primary contention of Sh. Arora Ld. counsel for the petitioner is that the retrenchment of the 37 workers is wholly unjustified. He argued that in deciding an application for retrenchment filed by the employer the competent authority is required to hear the employer, the workmen concerned and the persons interested in such retrenchment, and after duly considering the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, pass an order in writing giving reasons for granting or refusing permission. The same having not been done the retrenchment of the workmen is illegal. As regards the stand of the respondents that the no order having been passed on the application of respondent No.2 within 60 days, permission is to be deemed to have been granted as per Section 25-N(4) of the Act, the contention of Shri Arora is that the said provision would be attracted only in a case where after the filing of the application seeking permission for retrenchment no enquiry is initiated by the Government. However, where an enquiry is initiated by the Government within the period of 60 days, there can be no question of 'deemed permission'. In such a case, the Government is mandated to pass an order. He contended that on the initiation of the enquiry, the 60 days period prescribed under Section 25-N(4) ceases to run.

(18) Reliance has been placed on a decision of a Division Bench of Karnataka High Court in ***Jayhind Engineering, Unit-i*** versus ***State of Karnataka***[1]**.** In that case, the Court was considering an analogous provision under Section 25-O of the Act which specifies the procedure for closing down an undertaking. Sub-section (3) of Section 25-O is analogous to Section 25- N(4). As per Section 25-O(3), where an application seeking prior permission for closure has been made by an employer under sub-section (1) of Section 25-O and the appropriate Government does not communicate the order of granting or refusing to grant permission to the employer within 60 days from the date on which the application is made, the permission applied for shall be deemed to have been granted on the expiration of the period of 60 days. Construing the aforesaidprovision, a Ld. Single Judge of the Karnataka High Court had held that while the Authority

[1] 2004 AIR Kant R 771

was in seisin of the application under Section 25-O and enquiry was proceeded with as required by Section 25-O(2), the deeming fiction under Section 25-O(3) could not be relied on to nullify the enquiry itself. The Division Bench affirmed the decision of the Ld. Single Judge by observing as under:-

> **"10.** We do not find any infirmity in the said conclusion reached bythe learned Single Judge. No doubt, as contended by Sri Vijayashankar that when an application is made seeking closure of the industrial unit, the State Government is required to make an order expeditiously. The observation of the Supreme Court in the caseof Indian Hume Pipe Company, Ltd. relied upon by Sri "Vijayashankar also supports our view that the application is required to be disposed of expeditiously. But, that does not mean that the application should be disposed of in a mechanical manner and without application of mind. Sub-section (2) of S. 25-O of the Act makes it obligatory on the part of the State Government, on receipt of the application, to conduct such an enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer and the persons interested in such closure, to make an order either refusing to grant permission or granting permission. While making such an order, the State Government is required to keep in mind the genuineness and adequacy of the reasons stated by the employer and the interest of general public and other relevant factors. Therefore,the nature of the enquiry contemplated under Sub-sec. (2) of S. 25-O of the Act envisages that some reasonable time, necessarily has to be taken, by the State Government in the course of the enquiry. Therefore, for any valid reasons, if the enquiry goes beyond sixty days from the date of the application filed seeking for closing down of an undertaking of an industrial establishment and in that situation if it is to be held that since no order was made refusing to grant permission, the deemed permission in terms of Sub-sec.(3) of S. 25-O of the Act is granted to the employer, it would lead to adverse results seriously affecting the rights of the workmen and the general public. Acceptance of such a contention would totally frustrate the very object of an enquiry contemplated under Sub-sec.(2) of S. 25-O of the Act before an order is made either granting or refusing to grant permission While

> interpreting the provisions of law, the Court cannot be oblivious to the consequences of such an absurd result. Therefore, we are of the view, as rightly found by the learned Single Judge, once an enquiry notice is issued on receipt of the application by the State Government, the running of the period of sixty days under Sub-sec. (3) of S. 25-O of the Act is arrested. Therefore, the second submission of Sri Vijayashankar is also liable to be rejected as one devoid of any merit."

(19) He stated that SLP Civil No.11255-11256 of 2004 filed against the aforesaid decision, was dismissed. Mr.Arora asserted that the ratio of the aforesaid judgment would be applicable in the present case as well.

(20) The contentions of Mr.Arora have been controverted by Mr.Chetan Mittal, Ld. Senior Counsel for respondent No.2. He argued that the provisions of Section 25-N(4) are clear and unambiguous. If no order on the application is communicated to the employer within 60 days the permission is deemed to have been granted. He states that one of the major grounds for sustaining the constitutional validity of Section 25-N by the Supreme Court was that a specific time limit has been prescribed for passing an order on the application seeking permission to retrench the workers. He further argued that in the present case no order under Section 25-N(3) has been passed, hence this Court is not required to go into the merits or the justification for retrenchment. The petitioner, if aggrieved of the order of 'deemed permission' has a remedy to raise an industrial dispute.

(21) Mr.Mittal has relied on various decisions of Hon'ble Supreme Court ***Workmen*** versus ***Meenakshi Mills Ltd.***[2] ***Papnasam Labour Union*** versus ***Madura Coats Ltd***[3], ***State of Haryana*** versus ***Hitkari Potteries Ltd***[4] ***Empire Industries Ltd.*** versus ***State of Maharashtra***[5] and a decision of the ***Orissa High Court OCL India, Ltd.*** versus ***State of Orissa***[6] Section 25-N specifies the conditions precedent to retrenchment and is reproduced below:

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[2] (1992) 3 SCC 336
[3] .(1995) 1 SCC 501
[4] .(2001) 10 SCC 74
[5] (2010)4 SCC 272
[6] 2002 SCC OnLine Ori 63

Section 25-N. Conditions precedent to retrenchment of workmen

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

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

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

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

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

(4) Where an application for permission has been made under sub- section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer

within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

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

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

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

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

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

(9) Where permission for retrenchment has been granted under sub- section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of

retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months."

(22) As decisions of Hon'ble Supreme Court construing the analogous provision in Section 25-O have been cited, the relevant provisions of Section 25-O are reproduced below:

"25-O. Procedure for closing down an undertaking.—(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, damsor for other construction work.

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

(3) Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall, be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the appropriate Government granting or

> refusing to grant permission shall, subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.
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> xxx xxx xxx"

(23) The provisions of of Section 25-N were considered in detail by a ConstitutionBench of Hon'ble Supreme Court in ***Workmen*** versus ***Meenakshi Mills Ltd.***[7] while examining the Constitutional validity of Section 25-N.

(24) The Court observed that the underlying objective of Section 25-N, in introducing prior scrutiny of the reasons for retrenchment, was to prevent avoidable hardship to the employees resulting from retrenchment by protecting existing employment and check the growth of unemployment which would otherwise be the consequence of retrenchment in industrial establishments employing large number of workmen. It is also intended to maintain higher tempo of production and productivity by preserving industrial peace and harmony. It held that Section 25-N thus seeks to give effect to the Directive Principles of the Constitution. Therestrictions imposed by Section 25-N on the right of the employer to retrench the workmen were therefore to be regarded as having been imposed in the interests of general public.

(25) The Court then proceeded to consider whether the said restrictions incorporated in Section 25-N could be considered to be reasonable restrictions. While doing so the Court also explained the import and rationale of the various restrictions as under:

> **"28.**Sub-section (1) of Section 25-N contains provisions similar to those contained in Section 25-F with one modification that the period of notice which is required to be given for retrenchment ofa workman in an industrial establishment covered by Section 25-Kand falling within Chapter V-B is three months instead of one months' notice required under Section 25-F. The need for a period of notice is indicated by sub-section (3) of Section 25-N because within a period of three months from the date of service of the said notice, the appropriate Government or authority is required to communicate the permission or refusal to grant the permission for retrenchment to the

[7] (1992) 3 SCC 336

employer after making such enquiry as it thinks fit under sub-section (2). The consequence of failure to keep this time schedule is indicated in sub-section (3) wherein it is provided that in case the Governmentor authority does not communicate the permission or the refusal to grant the permission to the employer within three months of the date of service of the notice, the Government or the authority shall bedeemed to have granted the permission for such retrenchment on the expiration of the said period of three months. The change which has been brought about by sub-section (2) of Section 25-N is that instead of an adjudication by a judicial tribunal into the validity and justification of retrenchment after the order of the retrenchment has been passed under Section 25-F, an enquiry is to be made after the service of notice of retrenchment and before the retrenchment comes into effect and said enquiry is to be made by the appropriate Government or authority specified by it, maintaining status quo in the meanwhile."

xxx xxx xxx

57. In order to validly retrench the workmen under Section 25-N, apart from obtaining permission for such retrenchment under sub-section (2), an employer has also to fulfil other requirements, namely, to give three months' notice or pay wages in lieu of notice to the workmen proposed to be retrenched under clause (a) of sub-section (1), pay retrenchment compensation to them under clause (b) of sub-section (1) and to comply with the requirement of Section 25-G, which is applicable to retrenchment under Section 25-N in view of Section 25-G. An industrial dispute may arise on account of failure on the part of the employer to comply with these conditions and the same can be referred for adjudication under Section 10. **In addition, an industrial dispute could also be raised by the workmen in a case where retrenchment has been effected on the basis of permission deemed to have been granted under sub-section (3) of Section 25-N on account of failure on the part of the appropriate Government or authority to communicate the order granting or refusing the permission for retrenchment**

within a period of three months from the date of the service of notice under clause (c) of sub-section (1) because in such a case, there has been no consideration, on merits, of the reasons for proposed retrenchment by the appropriate Government or authority and reference of the dispute for adjudication would not be precluded. What remains to be considered is whether an industrial dispute can be raised and it can be referred for adjudication in a case where the appropriate Government has either granted permission for retrenchment or has refused such permission under sub-section (2) of Section 25-N. Since there is no provision similar to that contained in sub-section (7) of Section 25-N attaching finality to an order passed under sub-section (2) it would be permissible for the workmen aggrieved by retrenchment effected in pursuance of an order granting permission for such retrenchment to raise an industrial dispute claiming that the retrenchment was not justified and it would be permissible for the appropriate Government to refer such dispute for adjudication though the likelihood of such a dispute being referred for adjudication would be extremely remote since the order granting permission for retrenchment would have been passed either by the appropriate Government or authority specified by the appropriate Government and reference under Section 10 of the Act is also to be made by the appropriate Government. Since the expression 'industrial dispute' as defined in Section 2(k) of the Act covers a dispute connected with non-employment of any person and Section 10 of the Act empowers the appropriate Government to make a reference in a case where an industrial dispute is apprehended, an employer proposing retrenchment of workmen, who feels aggrieved by an order refusing permission for retrenchment under sub-section (2) of Section 25-N can also move for reference of such a dispute relating to proposed retrenchment for adjudication under Section 10 of the Act though the possibility of such a reference would be equally remote. The employer who feels aggrieved by an order refusing permission for retrenchment thus stands on the same footing as the workmen feeling aggrieved by an order granting permission for retrenchment under sub-section (2) of Section 25-N

> inasmuch as it is permissible for bothto raise an industrial dispute which may be referred for adjudication by the appropriate Government and it cannot be said that, as compared to the workmen, the employer suffers from a disadvantage in the matter of raising an industrial dispute and having it referred for adjudication. The grievance about discrimination in this regard raised by the learned counsel for the employers is thus unfounded. The fourth contention is, therefore, rejected."

(26) While referring to Section 25-N(4) the Court clearly held that theconsequence of failure to keep the time schedule is indicated in sub-section (3) wherein it is provided that in case the Government or authority does not communicate the permission or the refusal to grant the permission to the employer within three months of the date of service of the notice, the Government or the authority shall be deemed to have granted the permission for such retrenchment on the expiration of the said period of three months.

(27) In ***Orissa Textile & Steel Ltd.*** versus ***State of Orissa,***[8] the question for consideration before the Supreme Court was the constitutional validity of Section 25-O of the Industrial Disputes Act, 1947 as amended by Amendment Act 46 of 1982.

(28) The Court adverted to the decision in ***Excel Wear*** versus ***Union of India***[9] where it was held that the right to close down a business was an integral part of the fundamental right to carry on business as guaranteed under Article 19(1)(g) of the Constitution. It was held that there could be a reasonable restriction on this right under Article 19(6) of the Constitution. It was held that the law could provide to deter reckless, unfair, unjust and mala fide closure. In Excel Wear the restrictions imposed by Section 25-O were held to be unreasonable for various reasons, one of which was that there was no deemed provision for according approval in the section.

(29) After the decision in **Excel Wear** Section 25-O was amended in 1982. The Court then made a comparison between the un-amended Section 25-O, the amended Section 25-O and Section 25-N. It held that in substance the amended Section 25-O was akin to Section 25-N (which was considered in **Meenakshi Mills** case). It contained many new provisions and substantially amended the other

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[8] (2002) 2 SCC 578
[9] (1978) 4 SCC 224

provisions. It was opined that though Meenakshi Mills case dealt with retrenchment, the same principles would apply as a closure also has the effect of termination of service, though of all the workmen. Also both Section 25-N and Section 25-O are in Chapter V. It negatived the contention that the principles laid down in Meenakshi Mills case have no relevance in deciding the constitutional validity of (amended) Section 25-O.

(30) The Court then discussed the various grounds on which un-amended Section 25-O had been struck down in Excel Wear and how those grounds ceasedto exist after the amendment of 1982.

(31) Specific reference was made to the absence of deeming provision in Section 25-O which was one of the grounds for declaring it unconstitutional in Excel Wear case. It observed that with the incorporation of a deeming provision the defect had been cured.

> **"13.** Now sub-section (3) of the amended Section 25-O provides that if the appropriate government does not communicate the order within a period of 60 days from the date on which the application is made, the permission applied for shall be deemed to have been granted. Thus this defect has also been cured."

(32) In ***Empire Industries Ltd.*** versus ***State of Maharashtra***[10] Hon'ble Supreme Court again considered the scheme of Section 25-N and observed that Sub-section (4) has the provision of deemed permission. The Court also observed that the subject of retrenchment is fully covered by the provisions of Section 25-N. The relevant observations are as under:

> **"**40**.** As may be seen from Section 25-N, it has a complete scheme for retrenchment of workmen in industrial establishments where the number of workers is in excess of hundred. Clauses (a) and (b) lay down the conditions precedent to retrenchment and provide for three months' notice or three months' wages in lieu of the notice to the workmen concerned and the prior permission of the appropriate Government/prescribed authority. Sub-sections (2) and (3) plainly envisage the appropriate Government/prescribed authority to take a quasi-judicial decision and to pass a reasoned order on the employer's

[10] (2010) 4 SCC 272

application for permission for retrenchment after makinga proper enquiry and affording an opportunity of hearing not only to the employer and the workmen concerned but also to the person interested in such retrenchment. **Sub-section (4) has the provision of deemed permission.** Sub-section (5) makes the decision of the Government binding on all parties. Sub-section (6) gives the Government the power of review and the power to refer the employer's application for permission to a tribunal for adjudication. Any retrenchment without obtaining prior permission of the Government is made expressly illegal by sub-section (7) with the further stipulation that the termination of service in consequence thereof would be void ab initio. Sub-section (8) empowers the Government to exempt the application of sub-section (1) under certain exceptional circumstances and sub-section (9) provides for payment of retrenchment compensation to the workmen concerned.

41. The procedural details for seeking prior permission of the appropriate Government for carrying out retrenchment under Section 25-N are laid down in Rule 76-A of the Industrial Disputes (Central) Rules, 1957. The application for permission for retrenchment is to be made in Form PA and that requires the employer to furnish all the relevant materials in considerable detail.

42. It is, thus, seen that the subject of retrenchment is fully covered by the statute. It is not left open for the employer to make a demand in that connection and to get the ensuing industrial dispute referred for adjudication in terms of Section 10(1) of the Act."

(33) In ***Papnasam Labour Union*** versus ***Madura Coats Ltd.***[11] Supreme Court was considering the constitutional validity of Section 25-M of the Industrial Disputes Act, 1947 as it stood after the Industrial Disputes (Amendment) Act, 1976 insofar as it required prior permission to effect lay-off.

(34) The relevant provisions of Section 25-M of the Industrial Disputes Act are as under:

"25-M. Prohibition of lay-off.— (1) No workman (other

[11] (1995) 1 SCC 501

than a badli workman or a casual workman) whose name is borne on the muster-rolls of an industrial establishment to which this Chapter applies shall be laid off by his employer except with the previouspermission of such authority as may be specified by that appropriate Government by notification in the Official Gazette, unless such lay-off is due to shortage of power or to natural calamity.

(2) Where the workman (other than badli workman or casual workman) of an industrial establishment referred to in sub-section (1) have been laid off before the commencement of the Industrial Disputes (Amendment) Act, 1976 and such lay-off continues at such commencement, the employer in relation to such establishment shall, within a period of fifteen days from such commencement, apply to the authority specified under sub-section (1) for permission to continuethe lay-off.

(3) In the case of every application for permission under sub- section (1) or sub-section (2), the authority to whom the application has been made may, after making such inquiry as he thinks fit, grantor refuse, for reasons to be recorded in writing, the permission applied for.

(4) Where an application for permission has been made under sub- section (1) or sub-section (2) and the authority to whom the application is made does not communicate the permission or the refusal to grant the permission to the employer within a period of two months from the date on which the application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of two months."

xxx xxx xxx"

(35) Holding the provision to be Constitutionally valid the Court observed as under:

"18. In our view, the aforesaid observations in upholding the validityof Section 25-N squarely apply in upholding the validity of Section 25- M. It is evident that the Legislature has taken care in exempting the need for prior permission for lay-off in Section 25-M if such lay-off is necessitated on account of power failure or natural calamities because such reasons being grave, sudden and explicit, no further scrutiny

is called for. There may be various other contingencies justifying an immediate action of lay-off but then the Legislature in its wisdom has thought it desirable in the greater public interest that decision to lay-off should not be taken by the employer on its own assessment with immediate effect but the employer must seek approval from the authority concerned which is reasonably expected to be alive to the problems associated with the industry concerned and other relevant factors, so that on scrutiny of the reasons pleaded for permitting lay-off, such authority may arrive at a just and proper decision in the matter of according or refusing permission to lay-off. Such authority is under an obligation to dispose of the application to accord permission for a lay-off expeditiously and, in any event, within a period not exceeding two months from the date of seeking permission. It may not be unlikely that in some cases an employer may suffer unmerited hardship up to a period of two months within which his application for lay-off is required to be disposed of by the authority concerned but having undertaken a productive venture by establishing an industrial unit employing a large labour force, such employer has to face such consequence on some occasions and may have to suffer some hardship for sometime but not exceeding two months within which his case for a lay-off is required to be considered by the authority concerned otherwise it will be deemed that permission has been accorded. In the greater public interest for maintaining industrial peace and harmony and to prevent unemployment without just cause, the restriction imposed under sub-section (2) of Section 25- M cannot be held to be arbitrary, unreasonable or far in excess of the need for which such restriction has been sought to be imposed.

19. It may be pointed out that sub-section (3) requires recording of reasons for the decision taken, and a copy of the order is required to be communicated to all concerned. **Further, by force of sub-section (4), permission sought for shall be deemed to have been granted, if the decision is not communicated within the mentioned period. Procedural reasonableness has been taken care of by these provisions.** As regards substantive reasonableness, we feel satisfied, as the power in question would be

> exercised by a specified authority and as it can well be presumed that the one to be specified would be a high authority who would be conscious of his duties and obligation. If such an authority would be informed that lay-off is required because of, any sudden breakdown of machinery, which illustration was given by Dr Ghosh to persuade us to regard the restriction as unreasonable, we have no doubt that the authority would act promptly and see that the establishment in question is not put to loss for no fault on its part. As every power has to be exercised reasonably, and as such an exercise takes within its fold, exercise of power within reasonable time, we can take for granted that the statutory provision requires that in apparent causes (like sudden breakdown) justifying lay-off, the authority would act with speed."

(36) Referring to Section 25-M(5) it was held that by force of sub-section (4), permission sought for shall be deemed to have been granted, if the decision is not communicated within the mentioned period.

(37) In ***State of Haryana*** versus ***Hitkari Potteries Ltd.***[12] Hon'ble Supreme Court upheld the order of the High Court wherein it was held that permission to close down the company under Section 25-O was deemed to have been granted on account of the failure of the Government to communicate the order granting or refusing to grant permission to the employer within a period of 60 days from the date on which such application was made.

(38) The short order of the Hon'ble Supreme Court is reproduced below:

> **"1.** An application was made by Respondent 1 (hereinafter referred to as "the respondent") under Section 25-O of the Industrial Disputes Act (for short "the Act") for permission to close down the Company on 15-1-1998. On 2-4-1998 a letter was sent on behalf of the Government to the respondent to the effect that the application filed by it is defective in certain aspects and is hence rejected.
>
> a. Under Section 25-O(3) of the Act if the Government does not communicate the order granting or refusing to grant

[12] (2001) 10 SCC 74

permission to the employer within a period of 60 days from the date on which such application is made, permission applied shall be deemed to have been granted on the expiration of the said period of 60 days.

b. In the present case the application was not disposed of within a period of 60 days from 15-1-1998 and a communication was sent only long after expiry of that period on 2-4-1998. In that view of the matter the view taken by the High Court that necessary permission as contemplated under the provisions of Section 25-O of the Act is deemed to have been granted appears to us to be correct and certain provisions have been made by the High Court in its order regarding protection of rights of the workmen as claimed by them before the Court. In that view of the matter no useful purpose would be served in going into various questions raised herein, the orders were made by the High Court on 15-1-1999 and no steps were taken to obtain any interim order either from that Court or from this Court till 23-7-1999. We think the order made by the High Court should be sustained and no interference is called for. The appeal is disposed of accordingly."

(39) In all the above cases the Hon'ble Supreme Court while considering Section 25-N(4), Section 25-O (3) and 25-M (3), which are the relevant deeming provisions, has held that the permission sought for shall be deemed to have been granted, if the decision is not communicated within the mentioned period. Further it is clear from these decisions that existence of the "deeming provision" was an essential element in adjudging that the restrictions imposed for retrenchment, closure and lay off were reasonable and hence the provisions were constitutionally valid.

(40) The deeming provisions are unqualified. There is no exception provided that the time will cease to run or "be arrested" on an enquiry being initiated or for any other reason. No such exception has been recognized by Hon'ble Supreme Court in any of the above cases.

(41) In view thereof it is not possible to agree with the view of the Karnataka High Court in **Jayhind Engineering** case relied on by Mr. Arora.

(42) In ***OCL India, Ltd.*** versus ***State of Orissa***[13] an application was submitted by the petitioner Company on 27.02.2001 to the Labour Commissioner under Section 25-N(1) seeking permission to retrench 270 workmen out of 860 workmen, which was received by him on 01.11.2001. The Labour Commissioner issued notices on 21.11.2001 to the concerned parties to appearbefore him on the dates mentioned in the notice. The Trade Union filed a writ petition assailing the said notices. While issuing notice on 11.12.2001 the High Court directed that any decision taken by the Labour Commissioner would be subject to the result of the writ petition. The Labour Commissioner heard the matter on various dates. On 29.12.2001, the Labour Commissioner reserved the orders to await the final order in the writ petition. The writ petition was disposed of as not pressed on 24.01.2002. Thereafter, the Labour Commissioner communicated the orders on 30.01.2002 refusing permission to the Company to retrench 270 workmen. The Company filed a writ petition assailing the order dated 30.01.2002 on the ground that the Labour Commissioner having failed to communicate the order on the application seeking permission for retrenchmentwithin 60 days of its receipt, the permission for retrenchment shall be deemed to have been granted under Section 25-N(4) of the Act and the impugned order refusing permission having been communicated after the expiry of 60 days was un- sustainable in law. It was contended on behalf of the Labour Commissioner thatthe order on the application was reserved on 29.12.2001 in view of the orders of the High Court, making the proceedings before the Labour Commissioner subject to the decision of the writ petition. The Court perused the records and found that as a matter of fact the Labour Commissioner had passed an order on 29.12.2001, but the same had not been communicated in view of the pendency of the writ petition. It was only after the dismissal of the writ petition that the final order was communicated on 30.01.2002. The Court held that the order having been communicated after 60 days was of no effect as the permission would be deemed to have been granted. It was observed as under:-

> **"6.** There is no dispute that the application of the management, dated 27 October, 2001, seeking permission to retrench 270 workmen was received by the Labour Commissioner on 1 November, 2001. In viewof Sub-sec. (4) of S. 25 N, the Labour Commissioner was required to communicate his order within a period of 60 days, i.e., by 30

[13] 2002 SCC OnLine Ori 63

December, 2001. Although he passed an order in the file on 29 December, 2001, he did not communicate the same to any one. He ultimately communicated the order on 30 January, 2002 which is beyond the period of 60 days.

7. It is relevant to extract Sub-sec.(4) of S. 25-N which is as under:

"(4) Where an application for permission has been made under Sub-sec.(1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days."

(43) A bare perusal of the above provision would clearly show that if the specified authority (in this case the Labour Commissioner) does not communicate the order granting or refusing to grant permission to the employer within the period of 60 days from the date of said application permission applied for shall be deemed to have been granted on the expiry of the said period of 60 days. It embodies a legal fiction. In other words, it has created a fiction of "grant of permission" on the failure of the specified authority to communicate its order within a period of 60 days from the date of making the application by the employer."

(44) In the present case also, as the decision was not communicated within 60 days of the application for retrenchment, the permission is deemed to have been granted. Thus there is no infirmity in the impugned order dated 01.03.2021.

(45) This petition is dismissed.

(46) It is clarified that this Court has not gone into the validity of the grounds for retrenchment. This decision is only limited to examining the legality of the order dated 01.03.2021

(47) Hon'ble Supreme court in **Meenakshi Mills** has held that an industrial dispute can be raised by the workmen in a case where retrenchment has been effected on the basis of permission deemed to have been granted under sub-section (3) of Section 25-N on account of failure on the part of the appropriate Government or authority to communicate the order granting or refusing the permission within

the stipulated time because in such a case, there has been no consideration, on merits, of the reasons for proposed retrenchment by the appropriate Government or authority and reference of the dispute for adjudication would not be precluded.

(48) It would be open to the petitioner to take such recourse.

Shubreet Kaur