1995 (1) G. L. H. 1066
B. N. KIRPAL, C. J. AND H. L. GOKHALE, J.

Rajya General Kamdar Mandal and Others ...Petitioners
Versus
Vice-President, Packart Press, Division of Ambalal Sarabhai Enterprises, Baroda and Others ...Respondents

Special Civil Application No. 8004 of 1993* (with Civil Application No. 57 of 1995)

D/- 17/18-4-1995 *[@page1066]*

* Special Civil Application under Article 226 of Constitution of India challenging the vires of Section 25 O(3) of Industrial Disputes Act. 1947 and the order of appropriate Government granting permission for closure.

(A) Industrial Disputes Act, 1947 - S. 25 O(5) - Appropriate Government declining to review the earlier order granting permission for closure - By the same order also declining to refer the matter to Tribunal for adjudication - Illegal - Appropriate Government may review the order itself but if it is not inclined to review its order, it must refer the matter to Tribunal for adjudication.

The section therefore, will have to be harmoniously construed and hence it becomes necessary to read into the subsection that this review will necessarily mean taking another view or alternative view on the matter on merits. In case the authority is not inclined to review the order, the sub-section provides that the authority may refer the matter to the Industrial Tribunal for adjudication. The sub-section undoubtedly states that the appropriate Government *"may"* review or refer the matter to the Industrial Tribunal for adjudication. However in the context of the above discussion *"may"* will have to be read as *"shall"*. The idea in making the aforesaid provision in the sub-section is to provide an adjudicating forum to the applicant who is aggrieved by the refusal or grant of the permission for closure and which order is not being reviewed, Looking at it from the viewpoint of the employer it is clear that he is required to , apply for the prior permission for the closure of the undertaking only because of this provision under the Act, in the absence of which he was not required to apply to any authority for the closure of his undertaking. After he so applies he tries to satisfy the appropriate authority under sub-section (2) with respect to his reasons in support thereof. If the authority rejects the application of the employer, the employer must have a remedy inbuilt in the statute itself and hence this sub-section will have to be read as providing for a review of the earlier order rejecting the application or providing for a reference for adjudication to the Industrial Tribunal. Any interpretation to the contrary will result into a situation wherein a forum which is created under the sub-section will be denied to the parties, on the Government repeating its earlier decision on a *suo motu* review. When the fundamental right to carry on business of profession is restricted, an appropriate remedy has to be provided in the statute, it will have to be read as a mandatory requirement, otherwise it will be rendered illusory and ineffective. (Para 11)

(B) Industrial Disputes Act, 1947 - S. 25 O(3) - Constitutional Validity - Point not pressed - No opinion expressed.

Mr. Mansuri states that he does not press for this challenge to the provisions of sub-section (3) of S. 25-O of the Act and in that view of the matter that question is not gone into. (Para 19)

(C) Industrial Disputes Act, 1947 - S. 25-0 (2), (4), (5) and (8) - Wages for the period during which the matter is pending with appropriate Government or referred to the Tribunal for adjudication - Workmen not entitled to wages by way of interim arrangement - Tribunal to decide about consequential relief of wages or compensation.

The entitlement to full wages or grant of appropriate compensation is in the nature of consequential reliefs. It will be in the fitness of things that the Tribunal to whom the reference is made under sub-sec. (5) of S. 25-O of the Act should also consequently decide on the grant of wages or compensation which are provided in the very

section. When the reference is heard, it will be for the Tribunal to decide what reliefs ought to be given to the workmen in either of the situations. In the event the Tribunal *[@page1067]* confirms the order permitting closure passed by the Government, the workmen will be entitled to compensation as provided in sub-section (8) of S. 25-O of the Act. The Tribunal will also be required to examine as to whether the workmen were paid any idle wages after the order of appropriate Government dated 5th August 1993 and particularly after the disconnection of power on 6th February 1994 as claimed by respondent No. 1 in their Civil Application (though disputed by workmen). These observations do not mean cither acceptance or rejection of this submission since we have not gone into the same. Mr. Buch states that much more amount has been paid to the workmen than what was payable to the workmen by way of retrenchment compensation. This is disputed by Mr. Mansuri. This aspect of the matter will also be required to be gone into by the Tribunal at that stage. Mr. Buch has made a statement that the respondent will not insist on the recovery of the amount paid to the workmen in case it is found that excess amount has been paid to them as idle wages than what they arc entitled to by way of compensation. The Tribunal will consider this aspect of the case and in the event the decision to close down is approved, the amount of idle wages, if any, already paid to the workmen concerned, will be adjusted towards the closure compensation payable under sub-section (8) of S. 25-O of the Act. This is because work and wages appear to have been provided to the workmen as per the understanding of the parties about the stay order in this matter. Needless to state that no wages be paid to the workmen if the work is not available hereafter which Mr. Buch is maintaining. He further states that the workmen need not report for duty every day hereafter since no work is available and they arc free to seek other engagements. On the other hand, if the order passed by the State Government is upset and it is held that the closure was not warranted, the workmen will be entitled to full wages for the entire period as per the provisions of sub-section (6) of S. 25-O of the Act. In that case respondent No. 1 will be entitled to adjust the entire wages paid to the workmen earlier; though no wages will be deducted for absence and/or work done hereafter elsewhere since that will be done in view of the suggestion coming from respondent No. 1. (Para 18)

(D) Interpretation of statutes -"May" when can he read as "shall" -Mandatory or directory provision - Provision for remedy of reference of dispute to quasi-judicial forum for adjudication Mandatory Appropriate Government cannot decline to make a reference.

We are not in a position to agree with the above view expressed by the said Full Bench and in our view, as indicated above, after proper construction of the relevant section in the light of judgment of the Supreme Court in the case of *Excel Wear* (supra), the word "may" appearing in sub-section (5) of S. 25-O of the Act, will have to be read as "shall". That is the only way when an effective remedy can be said to have been provided to the party aggrieved by the original order of the appropriate Government. (Para 13)

Cases Referred :

1. Excel Wear v. Union of India, AIR 1979 SC 25 (Para 5)
2. Narendrakumar v. Union of India, AIR 1960 SC 430 (Para 5)
3. State of Bihar v. K. K. Mishra, AIR 1971 SC 1667 (Para 6)
4. Union of India v. Stumpp Schedule & Somappa Ltd. 1989 Vol. LLJ 4 (Kant) (Para 13)
5. Straw Products Ltd. v. Union of India & Ors. 1987 Vol. 1 LLJ 469 (MP.) *[@page1068]* (Para 13)
6. D. C. M. Ltd. v. Union of India, AIR 1989 Delhi 193 (Del-FB) (Para 13)
7. Workmen of Meenakshi Mills Ltd. v. Meenakshi Mills Ltd. 1992(3) SCC 336 (Para 17)
8. Papnasam Labour Union v. Madura Coats Ltd. & Another JT 1995 (1) SC 71 (Para 17)

Appearances :

Mr. M. S. Mansuri with Ms. Heena Desai, Advocates for the petitioners
Mr. M. D. Buch Advocate for Mr. K. S. Nanavati, Advocate for the respondents

PER H. L. GOKHALE, J. :-

1. This petition under Article 226 of the Constitution of India requires an interpretation of sub-section (5) of Section 25-O of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The petitioner also seeks to challenge the vires of sub-section (3) of the said Section.

2. The facts, leading to the present petition are as follows : The respondent No. 1 herein is the Vice-President of Packart Press, a Division of Ambalal Sarabhai Enterprises Ltd. (hereinafter referred to as Company or employer).. The second respondent is the Commissioner of Labour and Specified Authority of the appropriate Government under Section 25-O of the Act. Respondents Nos. 3 and 4 are State of Gujarat and Government of India respectively. The petitioner is a Trade Union representing the workmen working in the said Packart Press. Respondent No. 1-Company prints the necessary packing materials and supplies the same to Ambalal Sarabhai Enterprises Ltd., which is its parent company. The Packart Press is stated to be employing about 150 workmen. For various reasons the first respondent-Company was not in a position to carry on its business and, therefore, preferred an application dated 8th April 1993 to the Specified Authority concerned for closure as required under Section 25-O of the Act. The specified authority granted the said application by its order dated 9th June 1993, effective from 15th July 1993. The petitioner Union preferred an application for the review of the said order or for making reference under sub-section (5) of Section 25-O of the Act, though it pressed only for reference before the authority concerned. The said application was made on 10th June 1993 and it came to be rejected by the said authority by its order dated 19th June 1993. The petitioner-Union challenged the said order by filing writ petition in this Court, being Special Civil Application No. 6695 of 1993. This Court by its order dated 1.4th July 1993 set aside the order dated 19th June 1993, remanded the matter to the Specified Authority with a direction to reconsider and decide the application for review afresh latest, by 26th July 1993 in accordance with law. The Court directed the respondents to maintain the status quo as on the date of the order until 30th July 1993. As recorded in the judgment, the points with respect to the validity of sub-section (3) of Section 25-O of the Act and the order dated 9th June 1993 were not argued before the Bench and the Court declined to express any opinion on the validity of both of them.

3. Thereafter the specified authority concerned afforded an opportunity of hearing to the parties concerned but again by its order dated 5th August 1983 *(sic.)* rejected the review application and confirmed the order dated 9th June 1993. By the same order it also declined to refer the matter to the Tribunal for adjudication. It is this composite order passed by the specified authority which is *[@page1069]* challenged in this petition before this Court; alongwith the order dated 9th June 1993 and the validity of sub-section (3) of Section 25-O of the Act. This petition came to be admitted on 1st October 1993 after hearing both the parties. By the same order, interim stay of impugned order was also directed to be maintained, though *ad interim ex parte* stay had been obtained from 9th August 1993 onward. Civil Application No. 57 of 1995 is filed by the first respondent-Company on 28th December 1994 seeking to vacate the interim relief. It states that the Company has no work, the electric supply is cut off from 6th February 1994 and that it is required to pay idle wages. We are told that wages are paid till December 1994. It is further stated in the application that heavy dues towards rent, excise, etc. over Rs. 45 lacks have also mounted up. The landlord has given notice of legal action in view of arrears of rent. This application is also heard alongwith the main petition.

4. Various submissions were advanced by Mr. Mansuri, learned Counsel for the petitioner-Union in support of the petition. He pointed out on facts that a number of applications were made to the authority concerned and a number of documents were brought to the notice of the said authority but they do not seem to be reflected in the first order granting closure as well as one declining review and reference. He, therefore, submitted that the orders arc vitiated on account of non-application of mind. Mr. Buch, learned Counsel appearing for respondent No. 1 controverted the submissions of Mr. Mansuri. It is however not necessary for us to go into these aspects primarily because the other submission of Mr. Mansuri with respect to the interpretation of sub-section (5) of Section 25-O of the Act will clinch the controversy before us. By the impugned order dated 5th August 1993, the Specified authority has refused to review the order passed earlier and has also declined to refer the controversy for adjudication to the Tribunal. Mr. Mansuri submits that under sub-section (5) of Section 25-O of the Act the Specified authority has no such option. The authority may either review the order when such application for review is made, meaning thereby take a decision on merits contrary to the one which is taken earlier, or refer the controversy for adjudication to the Industrial Tribunal. We are in agreement with Mr. Mansuri for the reasons indicated below.

5. In this connection it is relevant to note that Chapter V-B of the Act (wherein Section 25-O appears) makes special provisions relating to lay-off, retrenchment and closure in certain establishments. They are establishments wherein not less than one hundred workmen are employed on an average per working day for the preceding twelve months, so states Section 25-K of the Act. The sections in this Chapter create certain additional restrictions on employer's right to lay-off (Section 25-M); right to retrench workmen (Section 25-N) and right to close down an undertaking (Section 25-O). Penal provisions are made in Sections 25-Q and 25-R for the breaches of the above sections. These provisions being in the nature of restrictions on the employer's right to carry on its business or profession, have to be read in a strict manner. Section 25-O of the Act as it initially stood, was challenged before the Supreme Court of India in the case of *Excel Wear* v. *Union of India and Ors.* reported in AIR 1979 SC 25, wherein a Constitutional Bench of the Supreme Court held that the fundamental right to carry on a business guaranteed under Article 19(1)(g) of the Constitution includes the right to close it down when it becomes necessary to do so. The Court held that "the right to close a business is an integral part of the *[@page1070]* fundamental right to carry on a business. But as no right is absolute in its scope, so is the nature of this right. It can certainly be restricted, regulated or controlled by law in the interest of the general public (Paragraph 21)". In Paragraph 20, however, the Court noted the observations of the Supreme Court made earlier in *Narendrakumar* v. *Union of India,* reported in A. I. R. 1960 SC 430 and quoted the same as follows : "The greater the restriction, the more the need for strict scrutiny by the Court."

6. Section 25-O of the Act, as it then stood, was assailed on various grounds. In Paragraph 22 of the judgment, a reference is made to the various submissions made on behalf of the employers. One very relevant submission, namely submission (viii), was that "there is no provision of appeal, revision or review of the order even after sometime." Accepting the said submission and noting that no remedy existed in the Section as it then stood, the Supreme Court observed in paragraph 27 as follows:

"27. The order passed by the authority is not subject to any scrutiny by any higher authority or tribunal either in appeal or revision. The order cannot be reviewed either. We are again asked to read into the provisions that successive applications can be made either for review of the order or because of the changed circumstances. But what will the employer do even if the continuing same circumstances make it impossible for him to carry on the business any longer? Can he ask for a review?"

The Court further observed at the end of paragraph 30 as follows:

"What we are concerned with at the present juncture is to see whether the law as enacted suffers from any vice of excessive and unreasonable restriction. In our opinion it docs suffer."

The other relevant submission was submission No. (XV), namely that "reasonableness of the impugned restriction must be examined both from the procedural and substantive aspects of the law." The Supreme Court accepted the said submission quoting with approval in paragraph 31 the earlier observations in State of Bihar v. K. K. Mishra, reported in AIR 1971 SC 1667.

7. It is material to note that Section 25-O, as it originally stood, was amended in the light of the aforesaid decision of the Supreme Court by Amending Act No. 46 of 1982 and in para 2 (viii) of the Objects and Reasons of the said Amending Act, it is recorded as follows after referring to the aforesaid judgment of the Supreme Court:

"(viii). Taking into consideration the observations of the Supreme Court in *Excel Wear* case, (1978) 4 SCC 224; 1978 SCC (L and S) 509; AIR 1979 SC 25) it is proposed to recast the provisions relating to closure of industrial establishments as contained in the Act to provide for the following, namely :-

(a) The employer will have to apply to Government to obtain permission for closure ninety days before the intended dale of closure and a copy of such application will have to be served by him on the representatives of the workmen also;

(b) On receipt of such application. Government, after giving a reasonable opportunity of being heard to the applicant and the representatives of the workmen, and after taking into consideration the guidelines laid down

in the provision, may grant or refuse to grant the permission asked for. *[@page1071]* Permission shall be deemed to have been granted it" no order of' the Government granting or refusing to grant permission is communicated within the specified period;

(c) The order of the Government granting or refusing to grant permission is being made final subject to a review by the Government or a reference to the Industrial Tribunal;

(d) Where an undertaking is permitted to be closed down, the workmen shall be entitled to closure compensation equivalent to fifteen days average pay for every completed year of continuous service or part thereof in excess of six months."

Thus the idea was to do away with the vice of procedural and substantive unreasonableness from the restrictions of Section 25-O of the Act and to provide an internal remedy. It is relevant to note that in para 2(viii)(c) above it is specifically stated that now the order of the Government granting or refusing to grant permission is being made final subject to a review by the Government or a reference to the Industrial Tribunal.

8. In this behalf it is necessary to compare the section as it stood before the amendment with the amended one. The section prior to its amendment and after its amendment reads as follows:

Section 25-O (old)	Section 25-O (new)
NINETY DAYS NOTICE TO BE GIVEN OF INTENTION TO CLOSE DOWN ANY UNDERTAKING :	PROCEDURE FOR CLOSING DOWN AN UNDERTAKING.
1. An employer who intends to close down ab *(sic.)* undertaking of an industrial establishment to which this chapter applies shall *serve,* for previous approval at least ninety days before the date on which the intended closure is to become effective, a notice in the prescribed manner, on the appropriate Government stating clearly the reason for the intended closure of the undertaking : Provided that nothing in this section shall apply to an undertaking set up for the construction of buildings bridges, roads, canals, dams or for other construction work.	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 *(sic.)* 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 the buildings, bridges, roads, canals, dams of for other *[@page1072]* construction work.
2. On receipt of a notice under sub-section (1) the appropriate Government may, if it is satisfied that the reasons for the intended closure of the undertaking are not adequate or sufficient or such closure is prejudicial to the public interest, by order, direct the employer not to close down such undertaking, and for reasons to be recorded	2. Where an application for permission has been made under Sub-Section (1) the appropriate Government, *after making such inquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, to the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interest of the general public and all other relevant factors, by order 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 a notice has been served on the appropriate Government by an employer under Sub-section (1) of Section 25FFA and the period of notice has not expired at the commencement of the Industrial Dispute (Amendment) Act, 1975, such employer shall not close down the undertaking but shall within a period of fifteen days from such commencement, apply to the appropriate government for permission to close down the undertaking.	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. Where an application for permission has been made under sub-section (3) and the appropriate government does not communicate the permission or the refusal to grant the permission to the employer with in 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.	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 [@page1073] date of such order.*
5. Where no application for permission under Sub-section (1) is made, or where no application for permission under Sub-section (3) is made within the period specified therein or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had given to him.	5. *The appropriate Government 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 (2) or refer the matter 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.*
6. Notwithstanding contained sub-section (1) and sub-section (3) the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do by order, direct that the provisions of sub-section (i) or sub-section (3) shall not apply in relation to such undertaking for such period as may be specified in the order.	6. Where application for permission under sub section (1) is made within the period specified therein or where the permission for closure has been refused the closure of the undertaking shall be deemed to be illegal from the date of closure and and *(sic.)* the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking has not been closed down. *[@page1074]*
7. Where an undertaking is approved or permitted to be closed down under sub-section (1) or sub-section (4) every workman in the said undertaking	7. Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional

who has been in continuous service for not less than one year in that undertaking immediately before the date of application for permission under this section shall be entitled to notice and compensation as provided in Section 25N as if the said workman had been retrenched under that section.	circumstances as accident in the undertaking 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 undertaking for such period as may be specified in the order.
	8. Where an undertaking is permitted to be closed down under sub-Section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that under taking immediately before the date of application for permission under this section shall be entitled to receive compensation which shall be equivalent to fifteen days' averages pay for every completed year of continuous service or any part thereof in excess of six months. (Emphasis supplied.)

9. When the Section as it stood prior to its amendment is compared with the section after its amendment, it is seen that under new amended section some salient changes have been brought out. Thus under new sub-section (2) certain guidelines have been provided with respect to inquiry to be conducted by the State Government while considering the application for closure and (i) genuineness and adequacy of the reasons for closure, (ii) interest of general public and (iii) all over relevant factors are to be borne in mind by the Government while deciding the said application, which has to be decided after giving reasonable opportunity of being heard to the employer, the workmen and also to the persons interested in such closure, which is an additional category mentioned in this sub-section. New subsection (3) in the amended section, is by *[@page1075]* and large on par with the initial subsection (4) which provides that if the application is not decided within the time of sixty days, stipulated therein, the permission shall be deemed to have been granted. The amended sub-sections (4) and (5) bring about a change which is as per clause in *Excel Wear* case (supra), namely to provide a remedy where the application for closure is decided one way or the other. In Section 25-O as it originally stood, there was no provision for the review of the decision arrived at by the appropriate authority nor one for a reference to the Industrial Tribunal. The absence of such a provision was a vice noted in the section as it stood prior to its amendment, by the Supreme Court in the *Excel wear* case (supra) and to take care of the situation arising therefrom a specific provision has now been made in sub-sections (4) and (5) of Section 25-O of the Act. The new sub-section (4) provides that the order of the appropriate Government granting or refusing to grant permission is final and binding on the parties, subject to the provision of subsection (5). It is also provided in subsection (4) that such order shall remain in force for a period of one year from the date of the order. Then comes sub-section (5) which provides that either on the application made by the employer or any workman or on its own motion the appropriate Government may review its order granting or refusing to grant permission to close down, passed under sub-section (2) or refer the matter to the Industrial Tribunal for its adjudication.

10. It was submitted by Mr. Buch, learned Counsel appearing for respondent No. 1 that the amended section has provided an adequate remedy and when it is provided that the order passed under sub-section (2) may be reviewed, it may include an order refusing to review the order passed earlier and at the same time declining to refer the matter to the Industrial Tribunal for adjudication. It was the submission of Mr. Buch that the two remedies under the said sub-section are alternative to each other and it was not necessary that in every matter the authority must refer the controversy to the Industrial Tribunal for adjudication. The authority may take up the application for consideration for review and taking up the application for consideration was itself sufficient, no matter whether finally the original decision was reviewed or not.

11. As against the aforesaid submission Mr. Mansuri submitted that such an interpretation of this sub-section will make the remedy otiose. It is submitted that the review contemplated under this sub-section implied that

the order passed earlier was expected to be altered. Mr. Mansuri made this submission also on the footing that the right to apply, for review was restricted not only to the employer or the workmen but was also retained in the Government itself. Once the right to review is expressly retained with the Government on its own motion, it is necessarily implied that the Government intended to take another view, else there was no occasion or necessity for providing for such a *suo motu* review on the part of the Government. The two parties to whom this right to apply for review is given are on par with the Government when it comes to Government reviewing the order passed by it earlier. The section, therefore, will have to be harmoniously construed and hence it becomes necessary to read into the sub-section that this review will necessarily mean taking another view or alternative view on the matter on merits. In case the authority is not inclined to review the order, the sub-section provides that the authority may refer the matter to the Industrial Tribunal for adjudication. The sub-section undoubtedly states that the appropriate Government *"may"* review or refer the matter to the Industrial *[@page1076]* Tribunal for adjudication. However in the context of the above discussion *"may"* will have to be read as *"shall"*. The idea in making the aforesaid provision in the sub-section is to provide an adjudicating forum to the applicant who is aggrieved by the refusal or grant of the permission for closure and which order is not being reviewed. Looking at it from the viewpoint of the employer it is clear that he is required to apply for the prior permission for the closure of the undertaking only because of this provision under the Act, in the absence of which he was not required to apply to any authority for the closure of his undertaking. After he so applies he tries to satisfy the appropriate authority under sub-section (2) with respect to his reasons in support thereof. If the authority rejects the application of the employer, the employer must have a remedy inbuilt in the statute itself and hence this sub-section will have to be read as providing for a review of the earlier order rejecting the application or providing for a reference for adjudication to the Industrial Tribunal. Any interpretation to the contrary will result into a situation wherein a forum which is created under the sub-section will be denied to the parties, on the government repeating its earlier decision on a *suo motu* review. When the fundamental right to carry on business or profession is restricted, an appropriate remedy has to, be provided alongwith such a restriction and when the same is provided in the statute, it will have to be read as a mandatory requirement, otherwise it will be rendered illusory and ineffective.

12. There is another aspect of the matter. If the submission canvassed by Mr. Buch is accepted, it will result into an initial order rejecting the application and a second order on review confirming the same order and at the same time refusing to refer the controversy for adjudication to the Industrial Tribunal. Now, in which type of the situation the appropriate authority should follow this method or refer the matter for adjudication is not provided in the sub-section and the interpretation canvassed by Mr. Buch will lead to an exercise of the power based on caprice and whim of the authority concerned. When will the authority refer the matter for adjudication and when it will not, will be left to the unguided and uncontrolled discretion of the appropriate authority. Needless to state that this was not what was contemplated when Section 25-O was amended.

13. A number of authorities have been cited by the learned Counsel for both the parties but the controversy herein does not appear to be so squarely raised in those matters. Reliance has been placed on the decision of a Division Bench of the High Court of Karnataka, in the case of *Union of India* v. *Stumpp. Schedule & Somappa Ltd.,* reported in 1989 II LLJ 4, wherein the earlier judgment of a learned single Judge of the Court reported in 1985 II LLJ 543, was reversed. In a different context this judgment upheld the validity of provisions of Section 25-O of the Act. It states that non-provision of an appeal will not render the law unreasonable, the second decision on which reliance has been placed is the decision of a Division Bench of the High Court of Madhya Pradesh in the case of *Straw Products Ltd.* v. *Union of India & Ors.* reported in 1987 I LLJ. 469. Although this decision also deals with a different aspect of Sections 25-N and 25-O of the Act, it observes in paragraph 16 that "the remedy under sub-section (5) of Section 25-O and sub-section (6) of Section 25-N of review by the State Government or reference of the matter to the Tribunal for adjudication gives a wider scope for interference" when required. A Full Bench of Delhi High Court also had an occasion to consider the validity of *[@page1077]* Section 25-O of the Act in the case of *D. C. M. Limited* v. *Union of India and Others,* AIR 1989 Delhi 198. In paragraph 52 of the said judgment there is a reference to the right to obtain an order of reference under sub-section (5) of Section 25-O of the Act. In the latter part of the said paragraph, the Full Bench has observed as follows:

"we cannot read the statute that it is obligatory on the appropriate Government to either review the earlier order failing which it shall make a reference. Such a construction does not fit in the scheme of I. D. Act. The word

"may" cannot be read as "shall" for an order of reference of the matter to the Tribunal."

Mr. Buch very much pressed these observations into service, but what is material to note is that except these passing observations in this paragraph there is no discussion in the entire judgment on this aspect. This paragraph also begins by stating *"some arguments have been advanced as to the construction of sub-section (5) of Section 25-O"* (Emphasis supplied.). We are not in a position to agree with the above view expressed by the said Full Bench and in our view, as indicated above, after proper construction of the relevant section in the light of judgment of the Supreme Court in the case of *Excel Wear* (supra), the word "may" appearing in sub-section (5) of Section 25-O of the Act, will have to be read as "shall". That is the only way when an effective remedy can be said to have been provided to the party aggrieved by the original order of the appropriate Government.

14. In the view that we are taking with respect to sub-sections (4) and (5) of Section 25-O of the Act, it becomes necessary to refer the matter for adjudication. The order of the Labour Commissioner dated 5th August 1993 in review confirming the earlier order dated 9th June 1993, without referring it for adjudication to the Industrial Tribunal is required to be interfered with. Accordingly, the order dated 5-8-1993, (at Annexure M to this petition) is hereby quashed and set aside to the extent it refuses to refer the matter for adjudication to the Industrial Tribunal. We cannot direct the appropriate authority to change its mind and so review the order passed earlier. However since the appropriate Government is not inclined to review its earlier order, it is expected to refer the matter for adjudication. Accordingly, we direct the respondent No. 2-Commissioner of Labour to refer the matter concerning the closure of respondent No. 1-Company for adjudication to the concerned Industrial Tribunal in Baroda, within 15 days of receipt of Writ of this Court. We are expressing no opinion with respect to the legality or validity of the order dated 9th June 1993 just as the earlier Bench had not expressed it in deciding the Special Civil Application No. 6695 of 1993. That will be done by the Tribunal. The Tribunal will be required to decide following two issues :

(a) whether the order of the appropriate Government dated 9th June granting permission to close the undertaking is just, legal and proper and whether the application of respondent No. 1 dated 8th April 1993 to close down the Industrial establishment should be granted or refused? and

(2) what consequential order and relief in either case?

15. Then comes the question as to what should be the arrangement in the intervening period. Sub-section (4) of Section 25-O provides that the order of the appropriate Government granting or refusing to grant permission shall be final *[@page1078]* and binding on all the parties subject to the provisions of sub-section (5) which has been interpreted above as providing for a review or a reference to the Industrial Tribunal. Mr. Mansuri submits that since the order under sub-section (4) is subject to review or reference to the Industrial Tribunal, the employer-employee relationship between the parties will have to be deemed as continued so long as the reference is not decided by the Industrial Tribunal. So far as this submission is concerned, if it was limited to this extent only, there would not have been much difficulty. The order of the Labour Commissioner dated 5th June 1993 refusing to review the earlier order has been challenged in the present petition and the interim stay of the said order as well as the earlier order dated 9th June 1993 permitting closure was granted by the Division Bench of this Court, while admitting the petition on 1st October 1993. Mr. Mansuri is asking for full wages in the intervening period on the strength of the said stay order. Mr. Buch for the respondents on the other states that the workmen have been paid wages upto December 1994, even though for some time there was no work (which is disputed by Mr. Mansuri) and though electricity was disconnected on 6-2-1994. He stated that wages cannot be legitimately claimed without work. The interim stay of the orders granted by this Court would only mean that the relationship between the parties continues. It cannot mean anything more than that.

16. In our view, Section 25-O gives sufficient guidelines in that behalf. Under Section 25-O of the Act, the employer who is desirous of closing his undertaking is required to make application giving reasons for the proposed closure under sub-section (1) of Section 25-O of the Act at least 90 days before the intended closure. Such an application is required to be decided by the appropriate Government as per the provisions of sub-section (2) thereof and if no decision granting or refusing to grant the permission to close down the establishment, is communicated within sixty days from the date of the application for closure it shall be

deemed to have been granted on the expiry of the said period of sixty days. If such application for closure is not made, or where the permission for closure has been refused, sub-section (6) provides that the closure of the undertaking shall be deemed to be illegal right from the date of the closure and the workmen are entitled to all the benefits under the law as if the undertaking had not been closed down. The employer will have to pay wages during this period of 60 days when the application for permission is pending or even thereafter if his application comes to be refused by the appropriate Government within that period, since as a result thereof, there is no closure of the undertaking.

17. On the other hand, where the undertaking is permitted to be closed down under sub-section (2), the workmen become entitled to receive closure compensation as provided in sub-section (8) of Section 25-O of the Act. The admission of the petition and grant of interim stay by this Court would only mean that the orders of interim stay by this Court would only mean that the orders passed by the Labour Commissioner are under challenge in this Court and on account of the stay, the relationship between the parties subsists and the closure has not become final. That relationship will continue to subsist until the closure permission is reviewed by the appropriate Government or until the reference is decided by the Industrial Tribunal on reference being made by the Labour Commissioner. No doubt it is true that the Industrial Tribunal is required to *[@page1079]* give the award under the proviso to subsection (5) of Section 25-O within thirty days of the reference. That is, however, rather difficult. The employer is subjected to an inquiry before the appropriate Government on his application for closure with a view to look into the genuineness and adequacy of the reasons thereof in the interest of the industry, the workmen and the general public. That application is required to be made 90 days before the intended date of closure and it is deemed to be granted if not decided in 60 days, unless the application is specifically granted or rejected. When this decision of the appropriate Government is referred for adjudication and the award is awaited, the effect of sub-section (4) will be that during this pendency the initial decision permitting closure will remain in abeyance and will not be construed as having attained finality. But that does not mean that the employer will be required to pay wages during the process of adjudication in every case although the permission to close down has been granted initially. That will again lead to unreasonableness. In *Workmen of Meenakshi Mills Ltd.* v. *Meenakshi Mills Ltd.* 1992 (3) SCC 336 the Supreme Court held Section 25-N containing similar provision to be valid. Thereafter in the *Papnasam Labour Union* v. *Madura Coats Ltd. and Anr.* (Judgments Today 1995(1) SC 71) the Supreme Court was required to consider the validity of Section 25-M and it observed in para 19 thereof as follows :

"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 concerned authority which is reasonably expected to be alive to the problems associated with the concerned industry 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 upto 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 number of labour force such employer has to face such consequence on some occasions and may have to suffer some hardship for some time but not exceeding two months* within which his cause for a lay off is required to be considered by the concerned authority 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 subsection (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." (Emphasis supplied.)

In view of this position, the words of sub-section (4) of Section 25-O which provide that the order granting or refusing to grant permission is final, subject to the provisions of sub-section (5) cannot be read to mean the *ipso facto* liability to pay wages during the process of adjudication before the Tribunal even though the permission for closure is initially granted by the appropriate *[@page1080]* Government.

18. The entitlement to full wages or grant of appropriate compensation is in the nature of consequential reliefs. It will be in the fitness of things that the Tribunal to whom the reference is made under sub-section (5) of Section 25-O of the Act should also consequently decide on the grant of wages or compensation which are provided in the very section. When the reference is heard, it will be for the Tribunal to decide what reliefs ought to be given to the workmen in either of the situations. In the event the Tribunal confirms the order permitting closure passed by the Government, the workmen will be entitled to compensation as provided in sub-section (8) of Section 25-O of the Act. The Tribunal will also be required to examine as to whether the workmen were paid any idle wages after the order of appropriate Government dated 5th August 1993 and particularly after the disconnection of power on 6th February 1994 as claimed by respondent No. 1 in their Civil Application (though disputed by workmen). These observations do not mean either acceptance or rejection of this submission since we have not gone into this same. Mr. Buch states that much more amount has been paid to the workmen than what was payable to the workmen by way of retrenchment compensation. This is disputed by Mr. Mansuri. This aspect of the matter will also be required to be gone into by the Tribunal at that stage. Mr. Buch has made a statement that the respondents will not insist on the recovery of the amount paid to the workmen in case it is found that excess amount has been paid to them as idle wages than what they are entitled to by way of compensation. The Tribunal will consider this aspect of the case and in the event the decision to close down is approved, the amount of idle wages, if any, already paid to the workmen concerned, will be adjusted towards the closure compensation payable under subsection (8) of Section 25-O of the Act. This is because work and wages appear to have been provided to the workmen as per the understanding of the parties about the stay order in this matter. Needless to state that no wages be paid to the workmen if the work is not available hereafter which Mr. Buch is maintaining. He further states that the workmen need not report for duty every day hereafter since no work is available and they are free to seek other engagements. On the other hand, if the order passed by the State Government is upset and it is held that the closure Was not warranted, the workmen will be entitled to full wages for the entire period as per the provisions of sub-section (6) of Section 25-O of the Act. In that case respondent No. 1 will be entitled to adjust the entire wages paid to the workmen earlier; though no wages will be deducted for absence and/or work done hereafter elsewhere since that will be done in view of the suggestion coming from respondent No. 1.

19. Mr. Mansuri states that he does not press for his challenge to the provisions of sub-Section (3) of Section 25-O of the Act and in that view of the matter that question is not gone into.

20. In view of the mandate of the Legislature that the Tribunal has to pass the award within a period of thirty days from the date of the reference, it is expected that the Tribunal will proceed with the reference as expeditiously as possible and the period of 30. days will be computed from the date on which the reference made by the Labour Commissioner is received by the Tribunal. The provision for reference under sub-section (5) of Section 25-O is concerning closure of large establishments and hence it is expected that the matter will be taken up on *[@page1081]* priority. We understand that 30 days is too short a period but the Legislature has provided this period while providing that the employer has to apply for closure 90 days in advance of the intended closure and the appropriate Government has to decide it in 60 days. This shorter period has been provided so that the decision on the employer's application for closure is taken at the earliest. That is also thought desirable from the point of view of the industry as well as labour. The Tribunal will, therefore, take up the matter practically on day to day basis; will try to avoid procedural delays, avoid adjournments to the extent possible and will adopt methods such as taking affidavits instead of examination-in-chief. The expectation is that, the Tribunal will proceed with the matter expeditiously and will endeavour to dispose of the reference within 30 days from the receipt of the reference order. Both the parties are expected to fully co-operate in this endeavour and without their co-operation such a speedy disposal will not be possible.

21. The result of the aforesaid discussion is that although the 1st respondent-employer applied for the closure of its industrial undertaking way back on 8th April 1993 and although the said application was granted by the appropriate Government under sub-. section (2) of Section 25-O of the Act on 9th June 1993, the reference on the application dated 10th June 1993 made on behalf of the aggrieved workmen is being directed now in April 1995. In spite of the order of this Court in earlier writ petition, directing a proper reconsideration of the application for reference, same order as passed earlier was maintained by the Government, namely declining review as well as reference. In the meanwhile orders of status quo have been passed as stated earlier from time to time. The workmen have been provided work and have also been paid wages for substantial part thereafter.

It has been the condition of the workmen that they have gainfully worked, whereas, it has been the contention of the respondent-Company that for quite some time the workmen have been required to be paid idle wages. Whatever it may be, the first respondent-Company has paid the wages until December 1994 and since the matter was not reaching for final hearing, it finally filed Civil Applications No. 57 of 1995 for vacating the stay order pointing out its difficulties. It is an admitted position now that the wages are not being paid from December 1994 and it is the contention of the Company that no work is available though the same is disputed by the workmen. Had a reference been directed way back in August 1993 much of the present difficulties could have been avoided. The order passed by the appropriate Government granting permission to close down would have been scrutinised by now by the appropriate Industrial Tribunal and the parties would have known about their legal rights.

22. Be that as it may, no different courses can be adopted even now. It is therefore that the reference is being directed with a further direction for an endeavour to dispose it of as expeditiously as contemplated by the Legislature. For the reasons stated above, we are not making any order regarding wages till the disposal of the reference before the Tribunal. This does not mean that the Tribunal or this Court cannot direct payment of interim wages in such cases but we are not going into that aspect in the present case. It will always be desirable that the main reference itself is decided as expeditiously as contemplated in the statute so that unnecessary hardships to both the parties due to passage of time are avoided. *[@page1082]*

23. In the result, impugned order dated 5th August 1993 is quashed and set aside to the extent it declines reference on petitioner's application dated 10th June 1993. The respondents Nos. 2 and 3 are directed to refer for adjudication of the Industrial Tribunal at Baroda the two issues as referred to in para 14 above. The respondents Nos. 2 and 3 to refer the matter concerning the closure of respondent No. 1 Company for adjudication accordingly within 15 days from the receipt of Writ of this Court and the Tribunal is expected to dispose of the reference expeditiously as indicated hereinabove. Rule is accordingly made absolute to the aforesaid extent, with no order as to costs.

In view of the aforesaid order the Civil Application also stands disposed of accordingly.

(AKC) Order accordingly.