

Simpson and Co. Limited Vs. Joint Commissioner of Labour and ors.

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Court : Chennai

Decided On : Jan-07-1977

Reported in : (1977)ILLJ161Mad

Judge : Mohan, J.

Appellant : Simpson and Co. Limited;lotus Mills Limited

Respondent : Joint Commissioner of Labour and ors.;joint Commissioner of Labour and ors.

Judgement :

Mohan, J.

1. This writ petition is to quash the order dated 30th July, 1976 made by the Joint Commissioner of Labour, Madras-5 (first respondent) in Lay-Off Application No 2 of 1916.

2. The short facts are as follows : The petitioner is engaged in engineering industry and has among others, a plant called Plant No. II at Sembiam, Madras-11.

3. Amendment to the Industrial Disputes Act (hereinafter referred to as the Parent Act) was enacted by the Parliament called the Industrial Disputes Amendment Act of 1976 Central Act 32 of 1976)(hereinafter referred to as the Amendment Act). One of the sections introduced by the Amendment Act was Section 25M. The

broad feature of Section 25M was that it required an establishment covered by the new Chapter V (B) within which the establishment should apply for permission to effect lay-off of its workmen when such lay-off was due to shortage of power or natural calamities. By Sub-section (2) of Section 25M it was provided where workmen of such establishment has been laid-off before the commencement of the Amendment Act, and such lay-off continues on such commencement, the employer should apply to the authority specified in Sub-section (1) within a period of 15 days from such commencement of the Act, to continue the lay-off. On such an application being made, the authority who is constituted under the Act either grants or refuses permission after considering the merits of the case. A deeming provision has also been enacted under Sub-section (4) of S 25M that if such permission or refusal is not communicated within a period of two months from the date on which the application is made, it will be deemed the permission has been granted. Sub-section 5 of Section 25M states that if no application for permission is filed within the specified period the lay-off shall be deemed to be illegal.

4. Due to various operational and economic reasons the petitioner had to effect lay-off in the Carriage Department and Light Engineering Section of its Plant No. II from November, 1974 to February, 1975, The said lay-off had continued till 5-3-1976 and the said lay-off had come to an end by 31-7-1976. The petitioner filed its application with the first respondent on 19-5 1976. The same was returned for rectification of certain defects which were accordingly rectified and the application was represented once on 26-5-1976 and again on 2-6-1977. The first respondent gave a notice of the proposed enquiry into the said application. A personal hearing was given on 26-7-1976 and again on 28-7-1976. By the impugned order dated 30th July, 1976, the first respondent held that the application for permission to continue the lay-off had not been made within a period of 15 days from the date of the commencement of The Amendment Act and, therefore, it could not be entertained.

5. He further held that the application could be taken as having been, made only on 2-6-1976 since it was only on that date a complete application satisfying the requirement of Section 25M read with Rule 60 B of the Tamilnadu Industrial Rules was received by him. Hence he rejected the contention of deeming permission

under Sub-section (4) of Section 25M. In the result, the permission was refused.

6. In attacking the order, the following grounds are raised in the affidavit in support of the writ petition :

(i) The first respondent has committed an error of law in holding that the application made by the petitioner for permission to continue the lay-off was not made within the time specified in Section 25M(2) of the Amendment Act, 1976. Even though the Act came into force on 5-3-1976, it is common ground that the authority under Sub-section (1) himself was constituted only on 22-3-1976 and the rules laying down the matters to be mentioned in the application were published only on 5-5-1976. That being so the first respondent ought to have held that the application made by the petitioner on 19-5-1976 was made within the time granted by law.

(ii) The first respondent erred in holding that the application should have been made within 15 days from the commencement of the Act, namely, 5-3-1976. It is common ground that even the first respondent was specified as the authority to consider the grant of permission only on 22-3-1976. It is thus clear that no application could have been made by any person before at least that date since the section requires that the application should be made only to a specified authority.

(iii) The first respondent ought to have seen that only on 22-3-1976 the State Government had given notice of the draft amendment to the rules under the Industrial Disputes Act dealing with the particulars and requirements of an application under Section 25M. The rules themselves were officially published only on 5-5-1976. Therefore, the first respondent ought to have accepted the contention of the petitioner that the Act itself did not come into force till 5-5-1976 is vitiated by an error of law apparent on the face of the record.

(iv) The first respondent erred in thinking that merely because Section 25M did not say that the application should be made 'in a prescribed manner', the application could have been made in any manner that the employer chose, in the light of the facts which happened the petitioner is justified in making the application only after

the constitution of the specified authority by the appropriate Government and after the framing of the necessary rules in that connection.

(v) The first respondent erred in stating that merely because certain returns were made for some alleged defects the application itself was not 'made' on 19-5-1976.

(vi) The first respondent ought to have seen that on general principles, even if it is assumed that the defects pointed out were of any substance (which is denied) still once the so-called defects were rectified the application should be deemed to have been made on the date on which it was actually filed, namely, 19-5-1976, there being no question that the petitioner diligently complied with the requisitions made by the first respondent, while returning the application.

(vii) The first respondent ought to have held that the application for permission was lawfully made on 19-5-1976 and the same not having been expressly refused within two months from 19-5-1976 the permission applied for should be deemed to have been granted on 19-7-1976.

7. In the counter-affidavit filed on behalf of the first respondent, the facts are admitted to be correct. Concerning the various grounds it is answered as follows:

8. It is not an error to hold that the application should be made within 15 days of the commencement of the Act, viz., 5-3-1976, which is the plain meaning of the section and which is a statutory requirement. While no doubt the Authority was appointed on 22-3-1976, the application was not filed even within 15 days of this date. Even assuming the inability existed on 5-3-1976 it did not exist after 22-3-1976 and there was no excuse for not filing the application within 15 days of 23-2-1976.

9. The publication of the rules or the date on and from which those rules came that force have absolutely nothing to do with the date on which the provisions of the Act came into force.

10. Section 1, Sub-section (2) of the Industrial Disputes (Amendment) Act clearly specifies 'that this Act shall come into force, on such date, as the Central Government may by notification in the Official Gazette, appoint.' The Government

of India have in their notification published in the Gazette of India dated 5-3-1976 in Part I at pages 241-247, specified that the provisions of the Act shall come into force on 5-3-1976. That being so, it cannot be held that the Act itself did not come into force till 5-5-1976, as contended by the petitioner in this writ petition and there is, therefore, no error of law. It is not correct to contend that the first respondent erred in thinking that because Section 25IVT did not specify the manner in which the application should be made, it could have been made in any manner the employer chose. It is a question of interpretation and in view of the first respondent, that was the proper interpretation..

11 There is nothing in the section to construe that the application should be made only after the framing of the necessary rules and in any case, such u construction will not be justified, just to overcome the delay. The absence of the words 'in the prescribed manner in this section is sufficiently indicative of the obligatory nature of the employer to prefer an application immediately after the commencement of the Act within a period of 15 days or at least within a period of 15 days from the constitution of the Authority, regardless of any particular form of filing the application being prescribed or not.

12. The rule-making power conferred under Section 38 of the Industrial Disputes Act, under which the draft rules were published on 22-3-1976, has nothing to do with the mandatory requirement of an employer to make an application under Section 25M(2) of the Amendment Act, 1976, for continuing the lay-off on the date of commencement of the Act, viz., 5-3-1976 within 15 days of such commencement. The Act nowhere specifies that the employer should await the publication of the rules, for making an application under Section 25M(2). In any case non-publication of the Rules cannot be an excuse for not making an application within the time specified. The petitioner's action was, therefore, not correct nor legal.

13. Section 25M(1) only says that previous permission to lay-off workmen should be granted by such Authority as may be specified by the appropriate Government by notification in the Official Gazette. It doc-; not say that the Authority should be appointed on the date on which the Act came into force or the rules should be

published on the date on which the Act came into force. In fact Section 38(1) of the Industrial Disputes Act, 1947 only requires that appropriate Government may subject to the condition of previous publication make rules for the purpose of giving effect to the provisions of the Act.

14. The allegation that the finding of the Joint Commissioner of Labour that the application which has been made on 19-5-1976 was made only on 2-6-1970 on the ground of alleged returns is not correct. The reasons for this finding have been clearly set out while dealing with Issue No. 3 in the order. Although the Application was originally made on 19-5-1976 it was defective and was returned to the petitioner on 22-5-1976 for the following effects:

(1) The date from which permission is required to continue the lay-off has not been specified in Form Q-3,

(2) Sufficient number of copies of application for service on the workmen have not been received.

(3) None of the Annexures has been signed :

(4) Under item 6 of the Annexure, details of annual production year-wise for the preceding 3 years and production figures for the preceding 12 months from the date of application have not been furnished.

(5) In respect of L.E S. items (vide Annexure D) figures upto January, 1975, i.e., for 2 years and 7 months only have been furnished instead of for 2 years.

Similar information (as in items 4 and 5 above) is required under item 20 also.

15. The application which was represented on 27-5-1976 was also defective since sufficient number of copies for service on workmen were not received and the date from which permission to continue the lay-off was required was not specified, while returning this application on 3.1-5-1976 the petitioner was asked to present a fresh application after rectifying the defects and it was presented on 2-6-1976.

16. When it was represented, the date of such representation was taken into account as the date of application. If this was not done, the danger would be that

by mere efflux of time, viz., of 2 months, contemplated in Sub-section (4) of Section 25M, the employer would have the indirect benefit of a permission being accorded even without an express order given by the Authority after applying his mind on the facts of the case. Moreover, when an application does not conform to the provisions of the rules, it cannot be treated as a proper application made in accordance with the rules and will have to be rejected and that was what was done in this case.

17. The advancement that the effective application once rectified should be deemed to have been made on the date on which it was originally filed, viz., 19-5-1976, is baseless. It cannot stand the test of law, as it will nullify the requirements of Section 25M(4) since the time taken for rectification of defects and representation will make it impossible for the Authority to give his decision within the period of two months, as other formalities like service of application on the workmen and making enquiry on the parties will also have to be complied with within the statutory time limit of two months, which could be impossible, if the above contention were to be accepted.

18. Mr. V.K. Thiruvengkatachari, the learned Counsel for the petitioner, draws my attention to the following provisions of the Principal Act, viz., Section 1(3), 2(a) and Section 38, the rule-making section. He also refers to the Amendment Act (Central Act XXXII of 1976) which deals with four kinds of applications, viz.,

- (1) Under Section 25 M(1) permission to lay-off;
- (2) Under Section 25M(2) permission to continue the lay-off;
- (3) Under Section 25N(2) permission for retrenchment;
- (4) Under Section 25-O(1) permission for closure.

For not filing the continuance application penal consequences would be attracted under Section 25M(4) in that the lay-off is held retrospectively legal and full pay will have to be paid to the workers. Prosecution also may be launched under Section 25-O.

19. Having regard to tins background, Mr. V.K.T. Chan argues in any State the employer could make an application of any one of the above four kinds, only when the State had notified the authority and the Stale Rules had been promulgated. In the instant case on 22-3-1976 the Joint Commissioner of Labour was appointed as the Authority under Section 25M(1). The rules had been promulgated on 5-5-1976. Therefore, the date of commencement for the purpose of the Amendment Act in Tamilnadu will be 5-5-1976. This is because the Act contains no provision other than these applications mentioned above.

20. Though the application filed on 19-5-1976 was returned for some technical compliances and ultimately came to be represented on 2-6-1976, 19-5-1976 must be held to be the proper date, since the rule has been substantially and fully complied with. The rule as to furnishing copies for service is directory and not mandatory. A similar provision under the Representation of Peoples Act of 1951 was treated to be mandatory in view of the specific wording of Section 85 of the Act which says :

the Election Commission shall dismiss the petition.

Further, these provisions could not be questioned by reason, of Article 329 of the Constitution of India. However, in the instant case the provision relating to furnishing copies for service is not in the Act. itself. Therefore, in so far as there is no section in the Act making it mandatory it could even be questioned as unconstitutional, but it is not necessary for this purpose. In support of this submission, the learned Counsel cites the decision reported in Ch. Subbarao v. Member, Election Tribunal, Hyderabad A.I.R. 1961 SC 1027.

21. In Writ Petition No. 3686 of 1976, the application was made on 19-5-1976. The order was passed on 30th July, 1976. Therefore, by deeming provision under Sub-section (5) of S 25N, since no order was made within two months the permission must be deemed to have been granted.

22. It cannot also be said that the writ petitioner (the employer) has been lacking in bona fides. From 1-8-76 the workmen are being paid full wages. From 8-9-1976 they are on actual service. As to lay-off period, i.e. November, 1974 to February,

1975 when lay-off was made on 31-7-1976 when lay-off ended (full pay given as from 1-8-1976) the result of the lay-off application 2/76 should have been treated as an application made in time on 19-5-1976, and permission to continue the lay-off must be deemed to have been given because there is no order prejudicially affecting the workmen. The workmen were free, of so advised, to apply to Government to refer the dispute whether the lay-off between November, 1974 to February, 1975 and 31-7-1976 was justified. The question whether the union had previously raised any such dispute as to the lay-off could be one of the relevant matters for Government's consideration in deciding to refer or refusing to refer the dispute, apart from other factors such as delay and the merits of the employer's case. Since this is justifiable issue the proper remedy would be, therefore, to raise an industrial dispute. In support of this submission he relies on the decision reported in *Workmen, F.T. & R. Co v. F.T. & R. Co.* 1976 LIC 1154.

23. If the contention of the writ petitioner is accepted in that the application which was filed on 19-5-1976 was a valid application and within time the employer will be saved from :

1) the confiscatory or penal consequences following from Section 25M(1) stating the lay-off ab initio illegal with liability for back period full wages ; and

2) prosecution under Section 250.

24. The Authority to make the rules is conferred under Section 38. Sub-section (1) is general while Sub-section (2) is particular and the general power is not controlled by the particularisation under Sub-section (2) as laid down in the decision reported in *Padmabhan v. State of Madras* I.L.R. 1956 Mad 1272. In the absence of prescription by rules the intention of the Legislature is not fully effectuated and the power is incomplete and cannot be exercised. For instance under Section 25N(1)(c) notice in the prescribed manner is contemplated for retrenchment. Again in Section 25O(1) notice in the prescribed manner is required for closure.

25. If those two sections enjoin notice in the prescribed manner the framing of the rules are necessary. Hence the date of commencement should be only 5-5-1976

when the rules came to be published finally. There cannot be a different date of commencement for various sections. In support of this submission the learned Counsel relied on the decisions reported in *Nemi Chand v. Secretary of State for India*, I.L.R 34 Cal 511; and *Collector of Customs v. Lala Gopikrishna Gokitldoss*, : AIR1955 Mad187 .

26. When the Amendment Act became law on 16-2-1976 by the Presidential assent, what exactly is the meaning to be ascribed when it is stated that it shall come into force on a later date to be notified by the Government. In such a case, the relevant question to be asked is, is not a formal notification necessary even for Tamilnadu if the date prescribed by the Central Government, viz., 5-3-1976 is not applicable. In the submission of the learned Counsel, the later date is provided exactly for the promulgation of the rules and the appoint-merit of authorities. When the Act and the Rules are brought into force together on the same date the Rules can be used to interpret the Act as laid down in the decisions reported in *In re The Delhi Lawn Act. 1912*, etc., : [1951]2SCR747 ; *Rajnarain Singh v. The Chairman, Patna Administration Committee, Patna and Anr.* : [1955]1SCR290 ; and *The State of Bombay and Anr. v. The United Motors (India) Ltd., and other; v.* : [1953]4SCR1069 . The Central Rules show that the form giving the particulars required is important to supplement the provision to apply because it is the form which asks for various data which normally an applicant will not include'. Similar intention is manifested under the draft Tamilnadu Rules dated 23-6-1976. It is open to question whether a formal notification under Section 1(2) for Tamilnadu, is not necessary. In the instant case it is enough if the date 5-5-1976 is fixed as the proper date for the commencement of the Act.

27. Mr. B.R. Dolia, learned Counsel appearing for the workmen's union submits the framing of the rule is not a condition precedent for complying with the provisions of Section 25M. Under Section 22M(2) the Authority was specified on 22-3-1976. Therefore, nothing prevented the management to apply to the Authority specified under the Tamilnadu rules made on the said date. The section does not say the application must be in the prescribed form unlike Section 25(N)(1)(c) or 25M(4). Even in a case where the section requires a prescription under the rules, the rules were held to be regulatory. This is reported in *Gopalakrishna Pillai v.*

State of Kerala (1976) K.L.T. 754. The instant case is worse because there is no prescription under the section. The same view was taken in the decision reported in Surajmull v. Income tax Commissioner : AIR1961 Cal578 .

28. Section 25N(1)(c) and Section 25-0 speak of future retrenchment and closure. Only for them, the application in the prescribed manner is contemplated while not to a case of continued retrenchment or continued closure. Section 25-0(3) states when a notice has been served for closure and the period mentioned under the notice has not expired on the commencement of the Amendment Act such employer shall not close down the undertaking but within the period of 15 days apply to the Government for permission to close down the undertaking. Under those circumstances can the Government refuse to grant permission stating that the rules had not been framed? Such an interpretation would work great injustice as refusal to accord the permission till the rules are so framed, would cause severe financial strain to the employer. Same is the case of retrenchment as contemplated under Section 25N(4). In such a case if permission to retrench is to await the framing of the rules, the employer may find it impossible to carry on. Section 25N(7) and Section 25F do not depend upon the framing of the rules at all. From the date of commencement of the Act, viz., 5-3-1976 these sections will come into play. Therefore, the contention that the framing of the rules is necessary for giving effect to the provisions of the Amending Act, cannot be accepted.

29. In every case of lay-off all that the employer is required to state is the reason for such a lay-off or the justification. The law relating to the same is well-settled as seen from the decision reported in Workers of Dewan Tea Estate V. Their Management : (1964)ILLJ358SC . Therefore, there is no basis for the employer to state that he is handicapped by the absence of the rules and the prescribed form.

30. The learned Government pleader adopts the arguments of Mr. B.R. Dolia.

31. Having regard to the above arguments, the following two questions arise for my determination:

(1) What is the date of commencement of the Amendment Act and whether the framing of the rules under Section 38 of the Act by the Government of Tamilnadu is necessary for the purpose of working of the Amendment Act?

(2) Can the application of the petitioner dated 19-5-1976 be considered to be a valid application though it was returned for certain technical compliances and represented after complying with those requirements?

32. For answering the above two questions, the following background and the relevant sections and dates require to be noticed:

33. The Industrial Disputes Act (Central Act 14 of 1947) received the President's assent on 17-3-1947. Section 1(3) of the Act states that it shall come into force on the first day of April, 1947, Section 3n confers the rule-making power on the appropriate Government. Section 2(a) defines the 'appropriate Government' as follows]

appropriate Government means-

(i) in relation to any industrial dispute concerning any industry carried on by or under the Authority of the Central Government or by a railway company (or concerning any such controlled industry as may be specified in this behalf by the Central Government) or in relation to an Industrial Dispute concerning the Industrial Finance Corporation of India established under Section 3 of the Industrial Finance Corporation Act, 1943 (15 of 1948) or the Employees' State Insurance Corporation established under Section 3 of the Employees' State Insurance Act, 19-18 (34 of 1948), or the 'Indian Airlines' and 'Air India' Corporations Established under Section 3 of the Air Corporations Act, 1953 (27 of 1953), or the Life Insurance Corporation Act, 1956 (31 of 1956), or the Agricultural Refinance Corporation established under Section 3 of the Agricultural Refinance Corporation Act, 1963 (10 of 1963) or the Deposit Insurance Corporation established under Section 3 of the Deposit Insurance Corporation Act, 1961 (47 of 1971) or (the Unit Trust of India established under Section 3 of the Unit Trust of India Act, 1963)(52 of 1963) or (a banking or an insurance company, a mine, an oil-field), a Cantonment Board) or a major port, the Central Government, and

(ii) in relation to any other industrial dispute, the State Government;

The Industrial Disputes Amendment Act (Amendment Act XXXII of 1976) received the Presidential assent on 1f-2-1976. Under the rule-making powers the Central Government framed the draft rules on 30th February, 1976. Ten days time was given for making representations. Ultimately, the rules came to be finally published in the Government of India Gazette dated 5-3-1976. The effect of it would be the Act came into force on 5-3-1976. The Chief Commissioner of Labour was specified as the authority under Sub-section (1) of Section 25M and Sub-sections (1) and (7) of Section 25N.

34. In so far as it relates to Tamilnadu, by a publication in the Tamilnadu Government Gazette, Extraordinary, part II dated 22-3-1976 the following authorities were, appointed :

For the purpose of Section 25M(1) the Joint Commissioner of Labour. For the purpose of Section 25N(1)(c), the Com-missioner of Labour. For the purpose of Section 25N(7), the Commissioner of Labour.

On that very date, viz., 22-3-1976 in the Tamilnadu Government Gazette, Extraordinary, Part II the draft rules were published. Two weeks time was granted for representation. The final rules came to be published under the Tamilnadu Government Gazette, Part in, I A, dated 5-7-1976. Rule 60S prescribes for an application for permission to lay-off under Section 25 W.

The said rule reads :

(1) Application for permission to lay-off any workman under Sub-section (1), or for permission to continue a lay-off under Sub-section (2), of Section 25M shall be made in Form 'Q-3' and delivered to the authority specified under Sub-section (1) either personally or by registered post acknowledgment due and where the application is sent by registered post, the date on which the same was delivered to the said authority shall be deemed to be the date on which the application was made, for the purposes of Sub-section (4) of the said section.

(2) The application for permission shall be made in triplicate and sufficient number of copies of the application for service on the workmen concerned shall also be submitted along with the application.

(3) The employer concerned shall furnish to the authority to whom the application for permission has been made such further information as the authority considers necessary for arriving at a decision on the application, as and when called for by such authority, so as to enable the authority to communicate the permission or refusal to grant permission within the period specified in Sub-section (4) of Section 25M.

(4) Where the permission to lay-off has been granted by the said authority, the employer concerned shall give the Commissioner of Labour a notice of commencement and termination of such lay-off in Forms 'Q-1' and 'Q-2' respectively and where permission to continue a lay-off has been granted by the said authority the employer shall give to the Commissioner of Labour a notice of commencement of such lay-off in Form 'Q-1' in case such a notice has not already been given under Sub-rule (1) of the Rule 60A and a notice of termination of such lay-off in Form 'Q-2'.

(5) The notice of commencement and termination of lay-off referred to in Sub-rule (4) shall be given within the period specified in Sub-rule (1) of Rule 60A

Form 'Q-3' is as follows :

To be submitted in triplicate with additional number of copies for services on the workmen concerned.

Form of application for permission to lay-off workmen in industrial establishments to which provisions of Chapter V-B of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), apply.

To.....

(The authority specified under Sub-section (1) of Section 25M of the Act.

Sir,

Under Sub-section (1)/Sub-section (2) of Section 25M of Industrial Disputes Act, 1947 Central Act 14 of 1947), read with Sub-rule (1) of Rule 60B of the Tamil Nadu Industrial Disputes Rules, 1958, I/we hereby apply for permission to lay-off/permission to continue the lay of...workmen of a total of...workmen employed in my/our establishment with effect from..... for the reasons set out in the Annexure.

Permission is solicited for the lay-off/ to continue the lay-off of the said workmen.

Such of the workmen permitted to be laid-off will be paid such compensation, if any, to which he is entitled under Sub-section (6) of Section 25M read with Section 25C of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

Yours faithfully,

(Signature)

Strike out whatever is inapplicable.

(Please give replies against each item)

Annexure.

(Please give replies against each item),

Item number.

1. Name of the undertaking with complete postal address, including telegraphic addresses and telephone number.

2. Status of undertaking -

(i) Whether Central Public Sector, State Public Sector/Foreign Majority Company/Joint Sector, etc.

(ii) If belongs to large industrial house, please indicate the controlling group, and if a foreign majority company, indicate the extent of foreign holdings.

(iii) Whether the undertaking is licensed/registered and if so, the name of licensing registration authority and licence/registration certificate numbers.

3. (a) Names and addresses of the affected workmen proposed to be laid-off/names and addresses of the workmen laid-off before the commencement of the Industrial Disputes (Amendment) Act, 1976 (Central Act 32 of 1976) and the dates from which each of them have been laid-off.

(b) The nature of the duties of the workmen referred to in sub. item (a), the units/section/shops where they are working and the wages drawn by them.4. Items of manufacture and scheduled industry/industries under which they fall.

5. Details relating to installed capacity, licensed capacity and utilised capacity.

6. (i) Annual production, item-wise for preceding three years.

(ii) production figures, month-wise for the preceding twelve months.

7. Work-in-progress, item-wise and value-wise.

8. Any arrangements regarding off-loading or sub-contracting of pro. ducts or any components thereof.

9. Position of the order book, item-wise and value-wise for a period of six months, and one year, next following and for the period after the expiry of the said one year.

10. Number of working days in a week with the number of shifts per day and the strength of workmen per each shift.

11. Balance sheets, profit and loss accounts and audit reports for the last three years.

12. Financial position of the company.

13. Names of the inter-connected companies or companies under the game management.

14. (i) The total number of workmen and the number of employees (category-wise) other than workmen as defined under the Industrial Disputes Act, 1947 (Central Act XLV of 1947) employed in the undertaking.

(ii) Percentage of wages of work, men to the total cost of production.

15. Administrative, general and selling cost in absolute terms for year in the last three years and percentage thereof to the total cost.

16. Details of lay-offs resorted to in the last three years (other than the lay-off for which permission is sought) including the periods of such lay-offs, the number of work-met involved in each such lay-off and the reasons thereof.

17. Anticipated savings due to the proposed lay-off/ lay-off for the continuance of which permission is sought.

18. Any proposal for effecting savings on account of reduction in-

(i) managerial remuneration ;

(ii) sales promotion cost; and

(iii) general administration expenses.

19. Position of stocks on last day of each month in the proceeding twelve months.

20. Annual sales figures for the last three years and month-wise sales figures for the preceeding twelve months, both item-wise and value-wise.

21. Reasons for the proposed lay-off/ lay-off for the continuance of which permission is sought.

22. Any specific attempts made so far to avoid the 'proposed lay-off/layoff for the continuance of which permission is sought.

23. Any other relevant factors with details thereof.

(Strike out whatever is inapplicable.)

35. Section 25M(1) throws a prohibition on lay-off, Section 25M(2) which is important for our purposes, reads as follows;

Where the work men (other than badly workmen or casual workmen) 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 continue the layoff.

In the first case, the lay-off commenced in November, 1974 long before the Amendment Act. To continue such lay-off the employer will have to apply within a period of 15 days from the commencement of the Amendment Act of 1976 to the authority specified under Sub-section (1) for permission to continue the lay-off. The Amendment Act having received the Presidential assent on 16-2-1976 would have normally come into operation on that day (vide Section 5 of the General Clauses Act--Central Act X of 1897). But Sub-section (2) of Section 1 of the Amendment Act states that the Amendment Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. The notification is dated 5-3-1976. Therefore, the Act had come into force on that day. Nevertheless, the authority for the purpose of Section 25 M(2) has not been specified for Tamilnadu till 22-3-1976, when alone by the Gazette publication, the Joint Commissioner of Labour was constituted as the authority for the purpose of Section 25M. Therefore, Mr. Dolia contends that once the authority is specified, an obligation was cast on the employer to make an application to the said authority within 15 days from the date of the specification of the authority. He places strong reliance on the decision reported in *Gopalakrishna Pillai v. State of Kerala*, (1976) K.L.T. 755. That was a case in which Section 85 of the Kerala Municipal Corporation Act, 1961 is stated at page 756 thus :

85, Special superior appointments :

The council may, subject to such rules as may be prescribed appoint -

(a)...

(b) engineers, architects or experts in town improvement or towns planning for the purpose of preparing, executing or supervising any scheme or work undertaken by the corporation.

On the basis of this section, it was urged the power of appointment could be exercised by the Commissioner only after the rules had been framed by the Government at the exercise of the power was subject to rules. Emphasis was placed on the words 'subject to such rules as may be prescribed'. This contention was negated holding :

The power contained in Section 85 is to be regulated by such rules as are either already made or may be made in future. But they cannot be construed as a condition precedent to the exercise of the power itself. The Rules are regulatory of the power but their existence is not a pre-condition of the operation of the power under statute. Therefore, Section 85 cannot be interpreted to mean that the power conferred thereby remains suspended until Rules are made and become operative which such Rules are current.

One of the cases relied on in this decision, viz., *Surajmull v. The Commissioner of income-tax*. : AIR1961 Cal578 , is also pressed into service. In that case, the question was whether till rules were framed under the Income-tax Act of 1922 under Section 37(2) whether the power to search and seize could be exercised. The question was posed as follows :

(3) Assuming that the provisions of Sub-section (2) of Section 37, are intra vires, the particular authorisation issued in this case by the Commissioner, the respondent No. 1, and the action taken thereof, should be struck down because : (i) The provisions of Sub-section (2) of Section 37 are 'subject to any rules made in this behalf.' At the relevant time, no rules had been made. Regarding the expression used, it must be held that the provisions of this Sub-section can only come into operation after rules have been framed.

The answer is contained in paragraph 67 of the judgment at page 595 in the following terms -

It will be necessary to clear the ground by deciding point No. 3(i) first. If Sub-section (2) never come into operation until rules were framed in this behalf, then indeed, it is unnecessary to proceed further, because the two authorizations were made and the search and seizure effected, at a point of time, when no rules had been framed, and consequently, the entire operation would be contrary to law. It will be observed that the expression used is 'subject to any rules made in this behalf. This should be contrasted with the expression used in Section 10(7) which lays down that the profits and gains of any business of insurance and the tax payable thereunder shall be computed-'in accordance with the law contained in the schedule to this Act.' In Section 58(j)(3) the expression is 'subject to such rules as the Central Board of Revenue may make in this behalf, There must be some difference between these expressions. Where the expression used is 'in accordance with the rules' there is no difficulty. In such a case, the rules must come first, otherwise there cannot be anything, 'in accordance' with it. But where the expression is 'subject to rules'. I do not see why the rules must necessarily come first. The particular provision may itself lay down the law, which may be supplemented or modified by statutory rules framed in that behalf. Where, of course, it is found that the existing provisions in a statute cannot possibly be given effect to, without the framing of rules, that is a different matter. If, however, it is possible to give effect to the provisions as they stand, then I do not see the justification in holding that the provision does not come into force until rules are framed simply because it has been made 'subject to any rules made in this behalf. In my opinion, it is possible to give effect to the provisions of law contained in Sub-section (2) of Section 37, even without rules. Consequently, this argument fails. Our attention has been drawn to Section 41 of the Arbitration Act, 1940 which lays down that 'subject to the provisions of this Act and Rules made thereunder', the provisions of the Code of Civil Procedure should apply to all proceedings before the Court, etc. It has never been argued that the Code did not apply until rules were framed.

In adopting the same line of arguments, the learned Government Pleader in this connection relies on the decision reported in *Dargah Committee v. State of Rajasthan*. : [1962]2SCR265 . In paragraph 7 at page 578 the validity of a demand without prescribing a form for making a demand was dealt with and answered as

follows:

Mr. Chatterjee also attempted to argue that the proceedings under Section 234 taken against the appellant by respondent 2 were incompetent because a demand has not been made by respondent 2 on the appellant in the manner prescribed by rule as required by Section 234. It does not appear that rules have not been framed under the Regulation and so no form has been prescribed for making a demand under Section 222(1). Therefore, the argument is that unless the rules are framed and the form of notice is prescribed for making a demand under Section 222(1) no demand can be said to have been made in the manner prescribed by rules and so an application cannot be made under Section 234. There are two obvious answers to this contention. The first answer is that if the revisional application made by the appellant before the High Court was incompetent this question could not have been urged before the High Court because it was part of the merits of the case and so cannot be agitated before us either. As soon as it is held that the Magistrate was not an inferior criminal Court the revisional application filed by the appellant before the High Court must be deemed to be incompetent and rejected on that preliminary ground alone. Besides on the merits we see no substance in the argument. If the rules are not prescribed then all that can be said is that there is no form prescribed for issuing a demand notice; that does not mean that the statutory power conferred on the Committee by Section 222(1) to make a demand is unenforceable. As a result of the notice served by respondent 2 against the appellant-respondent 2 was entitled to make the necessary repairs at its cost and make a demand for reimbursement of the said cost. That is the plain effect of the relevant provisions of the regulation ; and so, an amount which was claimed by virtue of Section 222(1) does not cease to be claimable just because rules have not been framed prescribing the form for making the said demand. In our opinion, therefore, the contention that the application made under Section 234 was incompetent must be rejected.

These are all cases in which the powers conferred under the respective enactments do not remain suspended to await the framing of the rules. But the problem arising in the instant case, in my view, should be considered in a different perspective. Can the law work without rules would arise only when 'ex hypothesi'

the law is in force (emphasis supplied). On the contrary, when the question is, 'what is the law in force', the enquiry should be different. In other words, when the law is not an existing law, but is brought into force by a future notification a different test will have to be applied. It may be asked why has the Parliament provided under Sub-section 2 of Section 1 that the Amendment Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. Is it without any significance ?

36. The following cases throw a good deal of light on this aspect:

In re The Delhi Laws Act, 1972, etc., (: [1951]2SCR747) it was held :

Within these limits of subjects and area the local Legislature is supreme and has the same authority as the Imperial Parliament, or the Parliament of the Dominion, would have had under like circumstances to confer on a municipal institution or body of its own creation authority to make bye-laws or resolutions as to subjects specified in the enactment, and with the object of carrying the enactment into operation and effect.

It is obvious that such authority 'is ancillary legislation' and without it an attempt to provide for varying details and machinery to carry them out might become oppressive or absolutely fail... It was argued at the Bar that the Legislators committing important regulations to agents or delegates effaces itself. That is not so. It retains its power in tact and can whenever it pleases destroy the agency it has created and set up another or take the matter directly into its own hands. How far it shall seek the aid of subordinate agencies and how long shall continue them are matters for the Legislature and not for the Courts of law to decide.

37. In the decision reported in The State of Bombay and Anr. v. The United Motors (India) Ltd., and Ors. : [1953]4SCR1069 , it was held :

The Act and the rules having been brought into operation simultaneously, there is no obvious reason why the rules framed in exercise of the power delegated by the Legislature should not be regarded as part of the 'law' made by the State. (See observations at page 862 in Delhi Laws Act case, (1951) 1 S.C.R. 747. That

position might be different if the rules had come into operation sometime later than the charging sections of the Act, for, in that case, it is arguable that if the legislation, with: excluding the two classes of sales or purchases, was beyond the competence of the Legislature at the date when it was passed the exclusion subsequently effected by the rules cannot validate such legislation. But, as already stated, that is not the position here, and the learned Judges below fell into an error by overlooking this crucial fact when they say 'if the Legislature had no competence on the date the law was passed, the rules subsequently framed cannot confer competence on the Legislature.

38. In the decision reported in *Rajnarain Singh v. The Chairman, Patna Administration Committee, Patna and Anr.* : [1955]1SCR290 , it was held:

In each case, the Central Legislature had empowered an executive authority under its legislative control to apply, at its discretion, laws to an area which was also under the legislative sway of the Centre. The variations occur in the type of laws which the executive authority was authorised to select and in the modifications which it was empowered to make in them. The variations were as follows :

(1) Where the executive authority was permitted, at its discretion, to apply without modification (save incidental changes such as name and place), the whole of any Central Act already in existence in any part of India under the Legislature sway of the Centre to the new area :

This was upheld by a majority of six to one.(2) Where the executive authority was allowed to select and apply a Provincial Act in similar circumstances :This was also upheld, but this time by a majority of five to two.

From the above cases it follows when the Act and the Rules brought into force together on the same date the rules can be used to interpret the Act.

39. The object of prescribing a later date as under Section 1(2) of the Amendment Act is to postpone the application of the law, to set up a machinery to be provided only under the Tamilnadu Rules finally published on 5-5-1976. Both the learned Counsel for the workmen (Mr. B.R. Dolia) and the learned Government

Pleader would cling on to that date, viz., 22-3-1976 which is the date of constitution of the authority and on the basis of the decisions reported in *Gopalakrishna Pillai v. State of Kerala* (1976). K.L.T. 755 would contend that is the date of the Act. I am unable to accept this argument for two reasons:

(1) The argument fails to take note of the publication of the Draft Rules on 22-3-1976 itself thereby manifesting an intention on the part of the Legislature to supply the details which are necessary for making valid application.

(2) Secondly, the cases relied on do not afford any assistance since they relate to laws which are in force and not to a case where the law is to come into force on a future notified date. Therefore, the argument of Mr. Y.K.T. Chari in this regard merits acceptance.

40. No doubt, the law relating to retrenchment came to be succinctly laid down in the case reported in *Workers of Dewan Tea Estate V. Their Management* : (1964)ILLJ358SC , in that the employer will have to give proper reasons of justifications for lay-off. But in the absence of the form all that he could have done is to merely make a request giving the reason for the lay-off to continue such lay-off. Under those circumstances what is it, the authority can decide P Section 25 M(3) requires making of an inquiry. On that mere request for sanction it is hardly possible for the authority to pass a judicial order after making an enquiry. When the draft rules were published on 22-3-1976 Rule 60B required the employer to apply for Form Q3. That form, which I have extracted above, requires the furnishing of very many details which the employer would not have and could not have furnished. Only on such details being furnished, an enquiry as contemplated under Section 25 M(3) could be made and the grant of refusal of permission would be a considered order on the materials furnished in Form 'Q 3'. It is also relevant to refer to the corresponding Central Rules. They would show that the form giving the particulars required, is necessary for the effective application of the provisions because that requires various data which will not be furnished by any applicant, however vigilant or earnest might be.

41. On the publication of the draft rules in the Tamilnadu Government Gazette on 22-3-1976 certainly it is well open to the employer to entertain the belief that

having regard to the proposed Rule 60 B, he was required to submit in the relevant form. That application under Sub-rule 2 will have to be made in triplicate. Even after this it is open to the authority to call upon the employer to furnish such information as might be necessary. Besides, the detail as to the manner in submitting the application either personally or by registered post under Sub-rule (1) is also stated. In view of all these, I am totally unable to accept the contention raised on behalf of the respondents that mere constitution of authority on 22-3-1976 would mean that is the date of commencement for reckoning the 15 days period of limitation during which the application to continue the lay-off under Section 25 M (2) will have to be filed.

42. The next contention urged on behalf of the respondents is Section 25 M(2) does not contain the words like Section 25 N(1)(c), such as notice 'in the prescribed manner' or Section 25O(1) 'a notice in the prescribed manner'. It may be so. Nevertheless, this argument carried no force since it does not take note of the publication of the draft rule on 22-3-1976, which is very important for our purposes. More than above these, this interpretation of the respondents would mean certain sections coming into force on 22-3-1976 while others like S 25N(1)(c) or Section 25O(1) would come into force on 5-5-1976. I am unable to see any warrant for this submission since the Legislature has not manifested any intention either directly or indirectly to this effect.

43. Merely because Section 25N(1)(c) or Section 25-O speaks of future retrenchment or closure it cannot mean that for the purpose of those two sections the Act must be considered to come into force on 5-5-1976. The rule of uniformity would require, the commencement of the Act is certain which in my view is only 5-5-1976,

44. My attention was also drawn to Section 25N(4) and Section 25O(3) and on this basis the argument is raised that when such applications are made the Government cannot refuse to give permission since the rules have not been framed. A careful reading of these two sub sections show that it is an obligation on the part of the employer to make the application within 15 days of the commencement of the Amendment Act, which would undoubtedly be 5-3-1976. The

language of this Sub-section is very clear in its terms. If the employer does not fulfil his obligation he will be exposing himself even to the risk of prosecution. Therefore, these two sections do not help in deciding the issue as to the date of commencement for the purpose of the other sections,

45. I see great force in the argument of Mr. V.K.T. Chari that if it were held the date of commencement is 5-5-1976, absolutely no prejudice is caused to the workers. On the contrary, if it is construed the other way, certain penal (civil) consequences would follow and the lay-off is deemed illegal from the date of the lay-off under Section 25M(5). In addition, the prosecution also may be launched under S 25Q for the illegal lay-off, This is an added reason for holding that the date of commencement is 5-5-1976. Thus I answer question No. 1 holding the date of commencement is 5-5-1976 and the framing of the rules is necessary for the purpose of working the Amendment Act.

46. Question No. 2 : The application was filed on 19-5-1976. But it was returned for certain technical compliances. For instance furnishing proper number of copies for service. They were complied with and duly represented. I am of the view that the rule is merely directory and cannot be construed as mandatory. For instance in the decision reported in *Arunachala v. Muthusadasiva* I.L R. 1950 Mad 651, a similar rule relating to filing of certified copy of the decree along with the execution petition was held to be not mandatory. Of course in a case which arose under the representation of Peoples Act in *Ch. Subbarao v. Member, Election Tribunal, Hyderabad*, : [1964]6SCR213 , a similar provision was held as mandatory having regard to the language of Section 35 of the Representation of Peoples Act of 1951 which is to the following effect :

85. If the provisions of Section 81 or Section 82 or Section 117 have not been complied with the Election Commission shall dismiss the petition.

Section 81(3) requires an election petition to be accompanied by as many copies thereof as there are respondents in the petition. That case, therefore, stands on a different footing. This apart, there has not been any lack of bona fides on the part of the petitioner in that it cannot be said that he purposely delayed the representation to gain some undue advantage. This is because from 1-8-1976 the

workmen are being paid full wages. From 8-9-1976 they have been on actual service. So much so, there is no unjust or unfair consequence for the workmen if the application is to be treated as an application made on 19-5-1976. This I conclude answering question No. 2 that the application filed on 19-5-1976 was a valid application and is within time.

47. Having regard to the above findings it is not necessary for me to consider whether by the operation of the deeming provision, it should be held the petitioner had been granted permission, since there is no refusal within the period of two months under Section 25N(4) of the Act.

48. For all the above reasons. I have little hesitation in quashing the impugned order, which is accordingly quashed and rule nisi is made absolute. The matter will stand remitted to the first respondent for fresh consideration and disposal on merits in the light of the observations made above, within two months from today (7-1-1977). He should also go into the question whether the petitioner will be entitled to the benefit of the deeming provision under Section 25N(4) of the Act. However, I make no orders as to costs' W.P. Nos. 3687, 3546 and 3547 of 1976 :

49. In view of my above judgment in Writ Petition No. 3686 of 1976, these writ petitions are also allowed and the matters will stand remitted to the first respondent for fresh disposal on merits. No costs. W.P. Nos. 3686 and 3687 of 1976 :

50. In these two writ petitions I passed interim orders enabling each of the workmen to be paid a sum of R. 300. Now that the matter has been remitted to the first respondent, ultimately if he agreed with the contention of the employer he will also pass orders concerning the mode of recovery of this amount of Rs. 300 from the respective employees.