(1982) 04 BOM CK 0041

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No. 2741 of 1980

Vasantrao Dattaji Dhanwatey and Another		APPELLANT
	Vs	
Union of India and Another and Shamrao Dattaji Dhanwatey and Others, Intervenors		RESPONDENT

Date of Decision: April 28, 1982

Acts Referred:

- Companies Act, 1956 - Section 2(10), 3(1)
- Constitution of India, 1950 - Article 19(1), 226
- Industries (Development and Regulation) Act, 1951 - Section 18AA(1), 24, 3
- Partnership Act, 1932 - Section 43, 47

Citation: AIR 1984 Bom 181 : (1983) 85 BOMLR 56 : (1983) ILR (Bom) 1222

Hon'ble Judges: Joshi, J; Ginwala, J

Bench: Division Bench

Judgement

Ginwala, J.

The petitioner who are two the 8 partners of a firm which inter alia carries on the business of Printing and Lithography at Nagpur in the name and style of "M/s Shic Raj Fine Arts Litho works, subbahs Road, Nagpur (hereinafter referred to the Undertaking) challenge the order passed by the Central Government (Respondent No.1) on 23-8-1989 u/s 18Aa(1)(b) of the Industries (Development and Regulation) Act. 1951 (hereinafter referred to as the I.d.r. Act) authorising the Development corporation of Vidarbha Ltd. (respondent No. 2))(hereinafter referred top as the authorised person) to take over ther management of the said Industrial Undertaking for a period of three years as also the order passed by it on 29-8-1980 u/s 18FB of the I.D.r. Act suspending all contracts etc. to which the said undertaking all is a party of for a period of one year. The remaining six partners have come on record as interveners disputing the locus standi of the petitioners ot maintain this

petition under Article 226 of the Constitution,

2. the facts which are little in dispute are that the said firm consists of 8 partners out of whom the two petitioners together hold 1|4 ther share while the six intercessors hold the remaining 3|4 the share. The duration of the partnership was at will it came to be dissolved by notice sometime in January 1974. Thereafter the petitioners filed a suit being Special Civil Suit No.9 of 1874 in the court of Civil Judge Senior Division , Nagpur (hereinafter referred) .... Of partnership and accounts. This suit is still pending . After the institution of the suit one R. N. Pendharkar came to be appointed as Receiver in or about the month of March 1974 and he continued to work as such till August 1978. Pendharkar had submitted his resignation under his report dated 27-3-1978 and had asked to be relieved on 1-4-1978. It appears that the matter regarding appointment of receiver came up to this court in A. O. No. 20 of 1978 and under an order passed by this court petitioners No. 1 and one S.P. Gharpure came to the be appointment as joint received on or about 9-8-1978. Within a few days of his appointment Gharpure resigned on 21-8-1978 and one H. a. Knan. Joint receiver along with petitioner No. 1 . These two receivers were functioning at the time when in the first impugned order came to be passed on 23-8-1989. This order is in the following terms:
MINISTRY OF INDUSTRY

(Department of Industrial Development)

ORDER

New Delhi , the 23rd August 1980

S.O. 634 (E)|18AA|IDRA|80 -

3. Where as Messrs. Shivraj fine ARt Litho Works, nagpur (hereinafter referred to as the said industrial undertaking) is engaged in a scheduled industry, namely , "printing including litho printing industry."

4. And, whereas, from the documentary and other evidence in its satisfied, in relation to the said industrial undertaking, that it has been closed for a period of not less than three months and such closure is prejudicial to the concerned scheduled industry and that the financial condition of the said industrial undertaking and the condition of the plant and machinery of the undertaking are such that it is possible to re-start the undertaking and such that it is possible to re-start the undertaking and that such re-starting is necessary in the interest of the general public.

Now, therefore, in exercise of the powers conferred by Clause (b) of subsection (I) of Section 18AA of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government Corporation of Vidarbha Limited Nagpur (hereinafter referred to as the authorised reason) to take over the industrial undertaking, subject to the following terms and conditions namely-

the authorised person shall comply with all the directions issued from time to time by the Central Government:

the authorised person shall hold office for a period of three years from the date of publication of this order in the official gazette.

The Central Government may terminate the appointment of the authorised person earlier if it consider it necessary to do so.

This order shall have effect for a period of three years from the date of its publication in the official Gazette.

No. 2(15)80CUS)

V. RAMKRISHNA, Additional

Secy."

5. The authorised person took over the management of the Undertaking on 24-8-1980. Subsequently on 28-8-1980 the Central Government passed the second order u/s 18FB(1) of the I. D. R. Act suspending for one year all contracts, agreements, settlements etc. to which the Undertaking was a party or which may be applicable to it.

6. Before embarking on the merits of the petition, it will be convenient at this stage to dispose of certain preliminary objections which have been raised by the respondents to the maintainability of the petition. In this connection we may first refer to the pleadings of the parties which have a bearing on this question. This is what the petitioners aver in paragraph 23 of the petition regarding their right to maintain the petition:

"The petitioners respectfully submit that the impugned orders Annexures U and V issued by the Union of India, respondent No. 1 to the petition, are orders which are patently invalid, ex-facie, illegal and really amount to an abuse of the exercise of the powers vested in the Central Government under the Act. The impugned orders are patently without jurisdiction and demonstrate the grossest misuse and abuse of the powers vested in the Central Government in depriving the petitioners and the partnership firm of its valuable properties, not in accordance with law, but in terms clearly derogatory to the provisions, of the Act. The petitioners submit that the impugned fundamental right to carry on their business and avocation and to hold property, and taking over of the management of the unit via the orders issued by the Central Government, respondent No. 1, really amounts to divesting the petitioners of their fundamental and constitutional right to carry on their own avocation in their own manner, particularly when the provisions of the Act could not permit and authorise respondent No. 1 to issue the orders impugned in the present petition."

7. In para 10 (vii) (b) and (c) of the return filed on be half of the Central Government it has been alleged that it would be futile to entertain the petition on merits, since in the suit for dissolution of partnership none of the partners including petitioner No. 1 has shown his desire of continuing the business of printing and that everyone is after winding up the business, settling the accounts and taking his respective share in the assets after they are sold. It is further alleged that petitioner No. 1 is aggrieved only to the extent of his being deprived of the remuneration of Rs. 1,000/- per month which he was getting as Receiver. However, this is sought to be explained on the ground that continuance of the undertaking with the authorised person will not affect his right as the receivership is conterminous with the suit and the suit can be taken to its logical end without putting petitioner No. 1 in the position of a Receiver. In paragraph 14 of its return the Central government has further contended that the petition is not maintainable for non-joinder of the remaining six partners who are necessary parties to the petition since the partnership which was at will has been dissolved by notice. The authorised person in his return separately filed has in addition contended that there was no question of the impugned orders affecting the fundamental rights of the petitioners under Articles 19(1)(f) and 31 of the Constitution as on the date when the said orders came to be passed these articles did not exist on the statute book.

8. At the time of hearing Mr. A. S. Bobade, the learned counsel for the Central Government, submitted that the partnership being at will stood dissolved on the day notice to that effect was given by the petitioners as contemplated by Section 43 of the Indian Partnership Act petitioners had no right to continue the business of the firm except so far as it may be necessary to wind up the affairs of the firm, as provided in Section 47 of the said Act. Thus according to Mr. Bobade, the petitioners having lost the right to continue the business of the undertaking by virtue of the dissolution of the partnership, they could not complain of breach of their fundamental rights to carry on the business guaranteed under Article 19(1)(g) of the Constitution as alleged by them in the petition.

9. Mr. Natu, the learned counsel appearing for the authorised person, submitted that by the impugned orders the petitioners have not been prevented from carrying on the business of printing and lithography through the undertaking as they had ceased to carry on that business after the suit was filed. He further contended that the petitioners had not made any grievance that they would be prevented from selling the undertaking for winding up of the affairs of the firm and settling accounts. He also submitted that the petitioners were holding a minor share in the firm but those partners who hold the major shares have not taken any objection to the impugned action.

10. As stated above the remaining six partners have been allowed to come on record as intervenors. In the affidavit filed by one of them for himself and four other intervenors, some allegations have been made against petitioner No. 1. We are,

however, not concerned with them in this petition. Suffice it to say that according to these intervenors, the petitioners have no right to file the petition as they have no authority to do so from all the other partners and they do not represent the firm which stands dissolved. It is also alleged that the petition is bad for non-joinder of necessary parties. Petitioner NO. 1 in his counter affidavit has averred that the petitioners have filed the present petition as aggrieved persons in their own individual rights on account of the injury suffered by them in respect of their properties, namely, the assets of the firm in each of which they hold a proprietory right and share.

11. In so far as the objection on the ground of non-joinder of parties is concerned, in our opinion it does not survive in view of the fact that the other partners have now become parties to the petition though as interveners. Even otherwise, as we shall presently point out, the petitioners have a right to file the writ petition if their individual right in property is affected. It cannot be gainsaid that the petitioners have a share in the undertaking and if the impugned orders in any way jeopardise it, the petitioners can seek redress by invoking the jurisdiction of this Court under Art. 226 of the Constitution.

12. It is true that on the day the impugned orders were passed, Articles 19(1)(f) and 31 which guaranteed to a citizen the right to acquire, hold and dispose of property, had ceased to exist and the citizens of this country were denuded of this fundamental right thought by the insertion of Article 300A it is now recognised as a legal right. It may be that in the circumstances stated by the respondents the impugned orders do not deprive the petitioners of their fundemental right to carry on the trade or business of printing and lithography. However, it has to be remembered that the power which has been conferred on a High Court under Article 226 of the Constitution as it stands now is not restricted to issue writs for enforcement of fundamental rights only but such writs can be issued "for any other purpose".

13. The rule in regard to locus standi has undergone a radical change by the decision of the Supreme Court in S.P. Gupta Vs. President of India and Others, . However, for the purposes of this petition we need not go that far. We may only refer to the statement of the traditional rule by Bhagwati J. in paragraph 14 of the report in the following words:

"The traditional rule in regard to locus standi is that judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right or legally protected interest by the impugned action of the State or a public authority or any other person or who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by any such action. The basis of entitlement to judicial redress is personal injury to property, body, mind or reputation arising from violation actual or threatened of the legal right or legally protected interest of the person seeking such redress." It would thus be clear that

even under the traditional rule judicial redress is available to a person who has suffered a legal injury by reason of violation of his legal right or legally protected interest by the impugned action of the State. Hence the petitioners would be entitled to seek redress under article 226 if they are able to show that they have suffered a legal injury due to the management of the undertaking being taken over by the Central Government under the Act. Admittedly the petitioners hold 1/4th share in the undertaking. They have a right to enjoy the fruits of this share. Since a suit for dissolution of partnership and accounts has been filed each partner is entitled to have the surplus distributed after applying the property of the firm in payment of debts and liabilities of the firm, as provided in Section 46 of the Partnership Act. The petitioners would not be able to exercise this right during the operation of the impugned order since by virtue of Section 18B(1)(d) of the Act all the propesty, effects and actionable claims to which the undertaking is entitled is deemed to be in custody of the authorised person. In theory it may be that the undertaking can be sold even during such custody, as contended by Mr. Natu, but it can easily be seen that this is not possible in practice. Who would like to invest in the property which has to remain in the custody and control of a third person not amenable to him, for an indefinite period? Hence if the impugned order is not legal it would violate the right of the petitioners at least to have their share in surplus of the assets on dissolution. In this sense the petitioners would suffer a legal injury for which they are entitled to seek redress under Article 226 of the Constitution. It has not field this petition in his capacity as Receiver of the undertaking but only as a partner. In view of what we have said above we do not find any force in the submissions made by the counsel for the respondents. The preliminary objections are, therefore, overruled.

14. Coming in the consideration of the petition on merits we may at the outset refer briefly to the scheme and provisions of the I. D. R. Act and certain legislative changes in order to appreciate the grounds on which the impugned orders are challenged. The Act has been placed on the statute book on 31-10-1951 to bring under Central control the development and regulation of a number of important industries the activities of which affect the country as a whole and the development of which must be governed by economic factors of all India import, and the planning of future development on sound and balanced lines. In came into force on 8-5-1952. Clauses (d), (f) and (I) of Sec. 3 define "industrial undertaking". "owner" and "scheduled industry" respectively. Chapter II makes provision for the establishment, constitution and function of Central Advisory Council and Development Councils. Chapter III as originally enacted comprised of Sections 10 to 18 providing for registration of existing industrial undertakings and licensing of new industrial undertakings and empowering the Central Government to cause investigation to be made into scheduled industries or industrial undertakings and to give directions to industrial undertakings on completion of such investigation. Chapter IV consisting of Sections 19 to 32 contains miscellaneous provisions.

15. By the Industries (Development and Regulation) Amendment Act, 1953, (Act 26 of 1953), certain important provisions were incorporated in order to overcome some difficulties which had come to light in the course of working of the Act. Sections 10A and 11A were inserted in Chapter III empowering the Central Government to revoke registration of industrial undertakings in certain cases and requiring licence for production or manufacture of new articles. Chaps. IIIA and IIIB were also added. Chapter IIIA which then contained Sections 18a to 18F empowered the Central Government to assume direct management or control of an industrial undertaking in certain cases. Section 18A confers this power while sections 18B to 18F make ancillary provisions. u/s 18A the Central Government can take over management of an industrial undertaking if it fails to comply with directions issued to it in pursuance of an investigation under Chapter III or of an industrial undertaking in respect of which an investigation has been made, is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest. It would, therefore, appear that Chapter IIIA as it was inserted by the Amending Act of 1953 applied only to those undertakings in respect of which investigation had been made u/s 15.

16. Thereafter some minor amendments were effected in the Act, till under the Industries (Development and Regulation) Amendment Act, 1971 (Act 72 of 1971) which came into force on 1-11-1971, some major amendments were carried out. We would briefly refer to those with which we are concerned in this petition. Clause (j) was added to Section 3 which contains definitions. It is as under:

"(j) words and expressions used herein but not defined in this Act and defined in the Companies Act. 1956 (1 of 1956), have the meanings respectively assigned to them in that Act."

17. Section 15A was added to Chapter III empowering the Central Government to investigate into the affairs of a company in liquidation. Section 18AA was added to Chapter IIIA empowering the Central Government to take over an industrial undertaking without investigation under certain circumstances. Since this is the section the implication of which we are called upon to consider in this petition, we would better reproduce it here:

"18-AA. Power to take over industrial undertakings without investigation under certain circumstances.-

Without prejudice to any other provision of this Act, if, from the documentary or other evidence in its possession, the Central Government is satisfied, in relation to an industrial undertaking, that-

the persons in charge of such industrial undertaking have, by reckless investments or creation of encumbrances on the assets of the industrial undertaking, or by diversion of funds, brought about a situation which is likely to affect the production of articles manufactured or produced in the industrial undertaking and that

immediate action is necessary to prevent such a situation or

it has been closed for a period of not less than three months ((whether by reason of the voluntary winding up of the company owning the industrial undertaking or for any other reason) and such closure is prejudicial to the concerned scheduled industry and that the financial condition of the company owning the industrial undertaking and the conditions of te plant and of such undertaking are such that it is possible to re-start the undertaking and such re-starting is necessary in the interests of the general public, it may, by a notified order authorise any person or body of persons (hereafter referred to as the "authorised person") to or any part of the industrial undertaking or to exercise in respect of the whole or any part of the undertaking such functions of control as may be specified in the order.

18. The provisions of sub-section (2) of Section 18-A shall, as far as may be apply to a noticed order made under subsection (1) as they apply to a notified order made under sub-section (1) of Section 18-A.

19. Nothing contained in sub-section (1) and sub-section (2) shall apply to an industrial undertaking owned by a company which is being wound up or under the supervision of the Court.

20. Where any notified order has been made under sub-section (1), the person made under sub-section (1) the person body of person having, for the time being, charge of the management or control of the industrial undertaking whether by or under the orders of any court or any contract , instrument or otherwise, shall, notwithstanding anything contained in such order, contract instrument or other arrangement, forthwith make over the charge of management or control, as the case may be, of the industrial undertaking to the authorised person.

21. The provisions oof SEction 18-B to 18-E (both inclusive) shall, as far as may be, apply to or in relation to, the industrial undertaking in respect of which a section (1), as they apply to an industrial undertaking in relation to which a notified order has been issued u/s 18-a.

22. There more Chapter were also added, viz. Chapter III AA. IIIAB, III AC consisting of Section 18-FA to 18FH making provisions respectively for (a) management or control of undertakings owned by companies in liquidation, (b) power to provide relief to certain industrial undertakings and (c) liquidation or reconstruction of companies. There are some of thee provisions of the Act with which we have to deal in this

23. At the outset we may state that the order made u/s 18-AA(1)(b) on 23-8-1980 is really the order under challenge as the order made on 28-8-1980 u/s 18-FB is only consequential to the first and stands or falls with it. Mr. V. r. Manohar the learned counsel for the petitioners, has set out three grounds in support of the challenge to the impugned order. The first ground urged by him is that the provisions contained

in Section 18-AA(1)(b) of the I,D.r. ACt can be invoked only against an industrial undertaking owned by a company which is incorporated under the Companies ACt, 1956 and not against an industrial undertaking like the one in the present case owned by a partnership firm. In the alternative he submitted that if a firm is construed as a company within the meaning of the said clause, the power conferred by that clause will not be available against a firm which is in the process of being wound up, because of sub-section (3) of Section 18-AA(1)(b) can be made by the Central Government only when it is satisfied from the documentary or other evidence im its possession with regard to the circumstances enumerated in that clause and that there neither was nor there could be any data or material with the Central Government in relation to the present undertaking to the effect that its closure was prejudicial to the scheduled industry concerned, namely, litho printing, that the financial condition of the firm owning the undertaking was such that it was possible to re-start the undertaking it was possible to re-starting was necessary in the intnerest of general public. According to Mr. Manohar, if these conditions were lacking, the Central Government had no power to make the impugned order. Lastly he submitted that before making the impugned order no hearing was given to the owners or management and thus to the impugned order was made in breach of principles of natural justice.

24. Elaborating the first ground Mr. Manohar argued that Clauses (b) of sub s. (1) Sec. 18-AA in the above terms refers to an industrial undertaking owned by a company . Though the word ''company'' is not defined in the as given in Section 2(10) read with Section 3(1)(I) of the Companies ACt, 1956 will have to be incorporated in thee I.D.R. ACt to mean a company formed and registered under the Companies ACt, 1956 or an existing company as defined in Clause (ii) of Section 3(1) of the latter ACt. According to Mr. Manohar, if that is so, Section 18-AA(1)(b) will apply only to that undertaking which is owned by a company incorporated or deemed to have been incorporated under the Companies ACt but not an individual, firm or any other body or association of individuals. Referring to the explanation to Section 24 of the I.D.R. Act, where to ''company'' is defined for the purposes of that section to mean any body corporated including a firm or other association of individuals, Mr. Manohar submitted that wherever the legislature intended to enlarge the scope of the meaning of that word it made its intention clear by giving such a definition. He, therefore, urged that in the absence of any which such special definition given in Section 18-AA that word as occurring therein would have to be understood in the sense of a company as contemplated ly the Companies Act and cannot be understood to include any other body or association of individuals. He further submitted that the question of construing or interpreting clauses does not arise as thee legislative intent is quite clear and if there is any legislative omission it cannot be cured by judicial interpretation. He argued that if there is at all any doubt about the sense in which that word has been used, sub-section (3) of Section 18-AA dispels it. Thus, according to Mr. Manohar, the Central Government lacked authority

to act u/s 18-AA(1)(b) in the present case as thee undertaking is not owned by a company but by in firm.

25. On the other hand it is contended by the learned counsel for the respondents that the word ''company has been loosely used in Section 18-AA(1)(b) to mean a group of more than the one had and not in the sense of a company incorporated under the Companies Act,. It is submitter that this word will have to the be attributed a proper meaning keeping in view the context in which is used in the said clause and the scheme and that the definitions given in Section 3 of the said Act are not absolute and inflexible and by the very opening words of that section., must yield to the context in which a particular term has been used . The learned counsel argued that construction should always be to save a statue and avoid voidity and that the construction which is sought to be put by the petitioners on the said word will result in the provision violating ARt. 14 of the Constitution as ownership of the undertaking sought to be taken over under that provision has no relation with the object of taking over. In relation to the explanation to Section 24 of the I.D.R. Act it has been submitted that such provisions are always made in a statute by always of practice in legislative drafting and cannot afford any assistance in construing the word ''company'' occurring in other parts of the statute. Thus, according to the learned counsel for the respondents, that word as used in Clause (b) of Section 18-AA(1) takes in its folds a partnership firm also, and hence the Central Government had the requisite authority to make the impugned order.
26. .It would be apparent from perusal of Clauses (b) of sub-section (1) of Section 18-AA that the power conferred on the Central Government to take over the management of an industrial undertaking is subject to and dependent on its satisfaction with regard to thee existence of certain circumstances which are enumerated in that clause. They are :

that the undertaking has been closed for a period of not less than three months (whether by reason of the voluntary winding up of the company owning the industrial undertaking or for any other reasons)

such closure is prejudicial to the concerned scheduled industry.

the financial condition of the company owning the undertaking is such that it is possible to re-start the undertaking, and

the condition of the plant and machinery of the undertaking is such that it is possible to -start the undertaking , and

the restarting is necessary in the interest of general public.

27. These are in fact conditions precedent for the exercise of the power. The language in which this clause is couched marks it abundantly clear that all the conditions without exception must exist before the power is exercised and thee absence of any of them would rob the Government of its power. They can be

broadly classified into two groups, the first two relate to closure and the last three to the possibility and necessity of re-starting. It is needless to say that each group in itself is compact. In so far as the second group is concerned the financial condition of "the company" owning the industrial undertaking is one of the factors to be considered. The controversy which we face would perhaps have bot arisen had the word ''company;'' not been used in the third condition , and instead the word ''person'' had been used. What is being submitted on behalf of the petitioners is that the use of the word ''company'' gives a clear indication that the said clause is intended to operate only on undertaking owned by a company as defined in the Companies ACt, since in cases oof other undertaking the third condition would not be available, thus leaving out one of the five conditions which are cumulatively necessary or the exercise of the power. It is in this context that it is necessary to see in what sense that word has been used: that is in the sense of a company as defined in the companies Act a contended by the petitioners of in the wider sense of a group of persons as submitted on behalf of the respondents.

28. The word ''company'' has not been specifically defined in the I.D.R. ACt either as enacted originally or as amended subsequently except in Clause (a) of the explanation to Section 24. But that the definition is restricted to that section only and is not meant for application to other provisions of the ACt. Now as seen above clause (j) was added to Section 3 of the I.D.R. Act by amending Act 72 of 1971, under which words and expressions used in the I.D.R. Act but not defined therein and defined in the Companies Act, 1956 would have the same meanings assigned to them in that Act. As we have seen above, ''company'' is not generally defined in the I.D.r. Act. It is defined in Section 2(10) of the Companies Act mean a company as defined in Section (1) of Section 3 of that Act defines company to mean ''a company formed and registered under this Act and an existing company as defined Section 3(j) of the I.D.R. Act company wherever used in that Act would mean a company formed and registered under the Companies Act, 1956 or an existing company as defined in clause (ii) of Section 3(1) of that Act, of course "unless the context otherwise requires", since. Section 3 of the I.D.R. Act is prefaced by these word. Having regard to these provisions , therefore, prima facie it would appear that the word ''company'' has been used in Section 18-AA(1)(b) in the sense in which it is defined in the Companies Act. What remains to be seen is whether the legislature intended to use it there a in larger, wider or different sense.

29. If all that the legislature intended to lay down was the consideration of the financial condition of the owner of the undertaking irrespective whether it is owned by an individual, a body corporatem, or a body or association of induvidual, would it not have used the expression ''financial condition of the owner of the industrial undertaking of "financial condition of the person owning the industrial undertaking." It is significant in this connection to note owning the industrial in this connection to note that ''owner'' has been defined in Section 3(f), in relation to an industrial undertaking to mean "the person who, or the authority which has the

ultimate control over the affairs of the undertaking , and, where the said affairs are entrusted to a manager, managing, director or managing agent, such Manager, managing director or managing agent shall be deemed to be the owner of the undertaking. It will be seen that this is a very comprehensive defination which takes into its fold all sorts of owners. This word has been used by the legislature in Section 10, 11-A and 13, which deal with registration and licensing of certain industrial undertaking. The word "person has been defined in Clauses (42) of Sec, 3 of the General Clauses Act. 1897, to included "any company or association or body of individuals , whether incorporated or not". If the legislature intended to apply the third condition to an undertaking owned by an individuals besides a company as such, of the use of the word ''person'' instead of ''company'' would have adequately met the requirement. This word is more precise and appropriate and though it is not defined in the I. D.R. Act or the companies Act, it will have to be read in the sense in which it is defined in Section 3(42) of the General Clauses Act by virtue of the opening words of Section 3 of the that Act. In fact, it has been used in this sense in Section 3(d), 3(f) and 11 amongst ohters. Hence if the legislature has used the word ''company'' in preference to ''owner'' or ''person'' it can legitimately be inferred that this use is deliberate. In ths connection it is pertinent to note that clause (j) was added to Section 3 of the I.D.R. Act by the same amending Act by which Section 18-AA and Chapters III-AA and III AC which deal with undertakings owned by companies were added. In the context also it could be said that when the legislature used the word ''company'' in Section 18-AA it was aware of its significance. It is not, therefore, possible to uphold the contention of the respondents that thee word ''company'' has been loosely used in the said clause. It is difficult to conceive that the legislature would resort tot he word ''company'' to express the sense of ''individual or group of individuals particularly when ''company'' is snot understood in that sense in common usage. It is be presumed that the legislature of uses words in their known and ordinary siginification.

30. It is true that the meaning given, to a word or expression in the definition clause of the status will not apply in all possible contexts in which it is used in that statue if the definition clause is prefaced by by words like ''unless there is anything repugnant to the subject or context. It follows that unless the context the word or expression wherever it occurs in the statue must be undertaking in the sense in which it is defined in the definition clause. (See Ltd. Pritarm Singh. If the word ''company'' has to be given it due meaning with reference to the context in which it is used in clause (b) of Section 18-AA(1), it cannot be read in isolation but will have to be read along with other words in that clause. The use of that word in the other parts of the same clause and the same section will also have to taken into consideration in order to bring in a harmonious construction.

31. The word ''company'' occurring in the said clause will have to be construed im relation to the expression "the company owning the industrial undertaking. This very expression has been used at two places in the said clause viz. In the first and

third conditions. It is needles to say that it will have to be attributed the same meaning at both places. Now this expression as it occurs first in the bracketed portion clearly indicates that it refers to a company which is incorporated as such . The phrase "by reason of the voluntary winding up of" which precedes the said expression make this abundantly clear. If ''company has been used in a wider sense as urged by the respondents to included individuals or unincorporated to group of individuals one would not expect the use of the words ''voluntary winding up'' which it may be noted are used in Section 425(1) of the Companies Act, 1956 in relation to the modes of winding up of a company governed by the section (3) of Section 18-AA the words used are ''an industrial undertaking owned by a company which is being wound up by or under the supervision of the Court''. This clearly indicates the concept of ''company'' as contemplated by the companies Act. Apart from this the assemblage of words viz. ''company'' owning an industrial undertaking or compaany'' owning the indistrial undertaking finds place in several other provisions of the I.D.r. Act, for example, Section 3(aa), 15-A, 18-FD, !*FE and 18-FF. A careful reading or these provisions would show show that ''company'' as occuring in the above said collection of words has been used in the sense of a company incorporated under the provisions of the Companies Act. There is no reason to hold that the legislature intended to use that the word in a different sense in clause it in the defined sense whenever it occurred in the said phrase in other parts of the Act.

32. There is intrinsic evidence in the I.D.R. Act itself to show that the legislature makes a distinction between an individual, a firm and a company and uses appropriate words for them rather company as suggested by the respondents. The explanation to Section 18A is in the following words.

"Explanation : - The power to authority body of persons under this section to take over the management of an industrial undertaking which is a company includes also a power to appoint any individuals also a firm, or company to be the managing agent of the industrial undertaking on such terms and conditions as the Central Government may think fit. The use of the words "individual. Firm or company" in the above explanation is significant. Again the word ''company'' occurs in sub-section (2) and (3) of Section 24 of the I.D.R. Act, which deals with penalties. Clause (a) of the Explanation ot this section defines ''company'' as follows;

33. "company " means any body corporate and includes a firm or other association of individuals "

34. It is pertinent to note that the legislature has confined this definition to Section 24 only. This shows that the legislature gave a special definition where it want to use the word in wider connotation or in a sense different from the one normally accepted. The learned counsel for the respondents, however, try to explain this definition by referring to similar definitions in Section 32 of the Apprentices ACt, 1961, section 23 of the bonded Labour System (Anbolition) Act, 1976, Section 9 of the Collections of Statistics Act, 1953 and section 29 of the Payment of Bonus Act,

1965. It is argued that the draftsmen include such a definition of ''company'' in provisions dealing with offences by companies as a measure of legislative practice. In this connection wwe have been referred to para 757 in the 7th Volume of the 4th Edition of Halsbury''s Laws of England and decisions in R.v. I.C.R. Haulage Ltd. (1944) 1 All ER 691 and Tesco Supermarkets Ltd. v. Nattrass (1971) 2 AII ER 127.. We do not find any support from them for the reason for including such definition of ''company'' in provisions dealing with offences by companies. They at the most may be taken to explain the reason behind enactment of provisions similar to sub-section (2) and (3) of Section 24 of the I.D.R. Act. We do not see how these authorities help the respondents in getting over help the respondents in getting over the argument based on the definition given in the ex.....

35. It has been urged on behalf of the respondents that construing the said clause in the way the petitioners wanted to construed it would expose it to a challenge under Article 14 of the Constitution as the object of the legislation being betterment of scheduled industries, these could be no reasonable distinction between industrial owned by companies and those owned by others. It has been always be to save to statute rather than frustrate itis has also been said that a statue has to be interpreted to prevent mischief , and that literal construction is not always the only interpretation of a provision of a statute and the Court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used in a provision of a status . for these propositions reliance is sought to be place on certain observations of the Supreme Court in M. Pentiah and Others Vs. Muddala Veeramallappa and Others, , R.L. Arora Vs. State of Uttar Pradesh and Others, and Virajlal Manilal and Co. and Others Vs. State of Madhya Pradesh and Others, . However, at the same time we must bear in mind the following principles which have been adumbrated by the supreme Court in some of its decisions In Kanai Lal Sur Vs. Paramnidhi Sadhukhan, while referring to the observations made by the Barons of the Exchequer in Heydons''s case regarding the interpretation of the provisions of welfare enactments the Supreme Court observed :

"however, in applying these observations to the provisions of any statutte, it must always the be none in mind that the first and the primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself . If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act.

The words used in the material provisions of the statue must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can

legitimately arise . When the material words are capable of two construction, one of which is likely to defeat or impair the polciy of the Act, whilst the other construction is likely to assist the achievement of the said policy, then the Courts would prefer to adopt the latter construction.

It is only such cases that it becomes relevant to consider the mischief and defect which the Act purports to remedy and correct.

Again in Nalinakhya Bysack Vs. Shyam Sunder Haldar and Others, it has said.

"It must be borne in mind, as said Lord Halsburty in Commr for Special purpose of Income tax v Pemsel (1891) AC 531, that it is not competent to any Court to proceed upon the assumption that the Legislature has made a mistake. The Court must proceed on the footing that thee legislature intended what it is has said Even if there is some defect in the phraseology used by the Legislature the Court cannot, as pointed out in Crawford v. Spooner (1846) 6 Moo . of an ACt or add and amend or by construction make up deficiencies which are kept in theACt. Even where there is causs omissus, it is, as said by Lord Russell of Killowen in Abdullah Ashgar Ali v. Ganesh Das, AIR (20) 1933 PC 63 for others than the Courts to remedy the defect".

36. Lastly in Sri Ram Ram Narain Medhi Vs. The State of Bombay, it reiterated :

"If the language of the enactment the is clear and unambiguous it would not be legitimate for the Court to add any words thereto and evolve therefrom some sense which may be said to carry out the supposed intention of the Legislature. The intention of the legislature is to be gathered only from the words used by it and no such liberties can be supposed intentionof the Legislature".

37. The principle which can be deduced from several judicial pronouoncements may be summarised thus. The primary of purpose of interpretation or construction of a statue is to ascertain the intention of the Legislature Since language is the medium through which the legislature manifests its intention, the question of construing or interpreting a statue will arise only when the language used by the Legislature does not yield a clear and unequivocal intention, but is obscure anmbigoius, uncertain clouded or susceptible of more than one meaning or shades . If the words employed plainly., clearly, precisely and without any ambiguity manifest the intention of the Legislature the Courts must accepts them and give full effect to them regardless of the consequences . Any departure from thus rule will amount to treading on the field reserved for the Legislature Words may be modified or varied where their impact as doubtful or obscure. But departing from the ordinary meaning of precuse words used because of an absurdity or manifest injustice would be usurping the function of the Legislature.

38. In our opinion the word company as used the in said clause is not capable of any dual meaning calling for its interpretation or construction . As we have pointed out above even considering the context in which it has been used it is plain and clear

that the Legislature had in mind a company as defined in the Companies ACt. Even if we were to look to the object of the provision the result would not be different . As we have pointed out above. Section 18AA was inset by the Amending Act of 1971, Now it is significant to note that all the provisions which were added to the IDR Act by this Act, except a solitary section viz. Section 18FB, pertain to companies imcorporated and registered under the Companies Act Probably in order ot leave no doubt about its intention the Legislature added clause to Section 3 for the first time by this very Amending Act. In this context it would not be possible to hold this that the Legislature intended to use te word in altogether a different sense . It would be pertinent to refer to the Statement of Objects and Reasons annexed to the Bill Para 3 thereof which states the and reason behind enacting Section 18AA is ins the following words.

39. With a view to ensuring speedy action by Government it has been provided in the Bill that if the Government has evidence to the effect tahat the assets of the company owning the industrial undertaking are being frittered away or the undertaking has been closed for a period not less than three months nad such closure is prejudicial to the concerned Scheduled industry and that the financial condition of the company owning the industrial undertaking and the condition of the plant and machinery installed in the undertaking and the condition is such that the it is possible to restart the undertaking and such restarting is in the public interest Government may take over its management without any investigation".

40. would appear that the object in enacting section 18AA is to bring within its purview undertakings owned by companies which satisfy the conditions laid down therein . In the absences of any date before us it is difficult to predict ad to what would be the effect of r4estricting the said clause to undertaking owned by companies with the meaning of the Companies ACt on its constitutional validity . It may be that such companeis have been put a in class apart form other owners of undertakings because in the case of the former evidence with regard to circumstances necessitating ther take over would be readily available from there records or otherwise, without requiring an elaborate or formal investigation which might be necessary in case of other owners.

41. We are, therefore of the view that clause (b) of sub-section (1) of Section 18AA of the I.D.R. Act is means to apply to an industrial undertaking which is owned by a company as defined in Section 2(10) read with Section 3(1) of the Companies Act. 1956 Since in the present case the undertaking taken over is owned by a firm, the Central Government lacked the power or authority to act under the said clauses and take over its the management . In this view of the matter the impugned orders have to be quashed.

42. Thus then brings us to the other two grounds urged by Mr. Manohar In view of our finding of the first grounds in fact it is not necessary to record out opinion on these two grounds as the petition can be allowed on that grounds alone . However,

since we have heard the parties on these two grounds also at length we think it desirable to record our vies on them also assuming that Section 18AA(1)(b) was available to the Central Government in the present case.

43. In so far as the second is concerned as we have stated in para 13 above it is the contentionof the petitions that the alleged satisfaction of the Central Government with regard to the existence of three out of the five circumstances enumerated in Clauses (b) of Section 18AA It is not and could not have been based on any material Mr. Manohar, referring to the averments in paras 4 to 15 of the petition and relevant annexures thereto strenuously urged that the financial condition of the firm owning the undertaking was so bwd at the time when the impugned order was passed that It would not have been possible to re-start it. He submitted that in spite of these clear allegations and averments in the petition supported by various documents no effort had been made by the Central Government to place before thus Court the material on which it had reached its satisfaction with regard to the financial condition of the firm. He also pointed out that no material had been set forth in support of the alleged satisfaction with regard tothe other two circumstances According to Mr. Manohar, since the existence of all the circumstances enumerated in the said clause is a condition precedent to the exercise of the power thereunder and since the material set out by the petition negatives the existence of the one of the circumstances at least. The Central Government must be said to have acted without authority in passing the impugned order.

44. On the other hand, it has been urged on behalf of the respondent that the kind of satisfaction contemplated by section 18AA 1 cannot be subject of judicial review and thus Court cannot enquire whether such satisfaction was reached with on the basis of any material or evidence with the Central Governmetn and the latter is not bound to disclose that material . It is submitted that there was adequate and sufficient material with the Central Government for being satisfied with regard tothe existence of the various circumstances stated in the said clause and particularly about the financial condition of the undertaking i. It has been argued that what is required for the purpose of the said clause is not that the financial condition of the undertaking must be sound enough to restart it but it is enough if with the aid of Section 18FB, of the I D R ACt the undertaking can be set going.

45. The question whether the satisfaction of the Central Government with regard to the existence of ther circumstances necessary for taking action under sub-section (1) of the Section 18AA of the I.D.R. ACt of subject to judicial review has been considered by the Supreme Court in Swadeshi Cotton Mills Vs. Union of India (UOI), In that case the Central Governmetn in exercise of the power conferred on it by clause a of sub-section (1) of Section 18AA of the I. D. R. Act ordered the taking over of the management of certain industrial undertaking belonging to the Swadesh Cotton Mills co Ltd., The said company challenged this order by a writ petition filed before the Delhi High Court One of the contentions before the High Court was that

no prior hearing was given to the persons affected before the impugned order was passed . This question came to be referred to a Bench consisting of five empowered this question as follows.

"(1) Section 18-AA(1)(b) excludes the giving of prior hearing to the party who would be affected by order there under

Section 18-f expressly provides for a post-decisional hearing to the owner of the industrial undertaking , the management of which is taken over u/s 18-AA to have the order made u/s 18-AA cancelled on any relevant ground.

As the taking over of management u/s 18-AA is not vitiated by the failure to grant prior hearing the question of any such vice being cured by a grant of a subsequent hearing does not arise ".

46. The majority held that the satisfaction of the Central Government with regard to the necessity of taking immediate to action is purely of subjective and hence it is outside the scope of judicial review . It was contended before the Supreme Court on behalf of the appellants in appeal that this view of the High Court was wrong while upholding this contention the majority of the learned Judges in the Supreme Court observed.

47. ''5'' We find merit in this contention It cannot be laid down as a general proposition that whenever a statute confers a power on an administrative authority and makes the exercise of that power conditional on the formation of an opinion by that authority in regard to the existence of an immediacy, is opinion in regard to that preliminary fact is not open to judicial scrutiny at all While it may be conceded that as element of subjectivity is always involved in the formation of such an opinion , but, as was pointed out by this Court in The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, , the existence of the circumstances from which the inferences constituting the opinion , as the sine quinine for action, are to be drawn, must be demonstrable and the existence of such "circumstances". If questioned, must be proved at least prima facts.

48. 58 Sec 18-AA (1) (a), in terms requires that the satisfaction of the Government in regard to the existence of the circumstances or conditions precedent set out above including the necessary of taking immediate action must be based on evidence in the possession of the Government in regard to the existence of any of the conditions, (I) and (ii), is based on no evidence, or on irrelevant evidence or on an extraneous consideration it will vitiate the order of take voer'' and the Court will be justified in quashing such an illegal order on judicial review in appropriate proceedings . Even where the statute conferring the discretionary power does not, in terms, regulate or hedge around the formation of the opinion by the statutory authority in regard to the existence of preliminary jurisdictional facts with express checks, the authority has to form that opinion reasonable like a reasonable person.

49. 64 For the reasons already stated, it is not possible to subscribe to the proposition propounded by the High Court that the satisfactions of the Central Governmetn in regard to condition (ii) I.e. the existence of ''immedicacy'' though sub-section is not open judicial review at all" (See paras 57 58 and 64 of the apply with equal force to clause (b) of Section 18-AA(j) , was the exercise of the power under that clause as in cl (a) also depends upon the satisfactions based on documentary or other evidence with regard to the existence of the circumstances specified therein . The Court would, therefore, be justified in quashing an order made in exercise of the power under Cl (b) if it finds that the satisfaction of the Government in regard to any of the five conditions specified therein is based on (a) no evidence or (b) on irrelevant evidence or (c) on an extraneous consideration. It is true that the Court cannot examine the adequacy or sufficiency of the material or evidence to hold id the requiste satisfaction to hold if the requiste satisfaction can be reached on the basis of such material or evidence on the basis sof such material of evidence However, as a part of the judicial review the Court can always go into the question whether there was in fact material or eviidence, apart from its adequacy or sufficiency, for the formation of the requisite opinion. We, therefore, of the do not find any substance in the contention urged on behalf of the respondents that we cannot go into the question of the existence of such material or evidence . The question , therefore, which falls for our consideration is whether there was evidence documentary or otherwise for before, the Central Governmet for its satisfaction that (I) the closure of thee undertaking was prejudicial to the schedule industry concerned,(ii) the financial condition of the firm owning fit was such that it was possible to restart the undertaking and (iii) the restarting was in the interest of the general public.

50. In paragraphs 4 to 15 of the petition of the petitioners have referred to the reports or applications which had been made be the receivers from the time to time to the Civil Court from 17-6-1975 to 28-2-1980 in support of their contention that the financial condition of the undertaking was going from bad to worse day by day and the liabilities were on the increase making it difficult to run it. Copies of these reports are at Annexure B to H and J,K and M to Q on 21-9-1978 the Civil Court had passed an order authorising the receivers to raise a loan of Rs. Three Lakhs Copy of this order of is at Annexure I In para 15 of the petition the petitioners have given the figures of the liabilities which according in the said para in the following terms.

"To gove figures at the birds eys view , the petitioners submits that as on 30th June 1980, approximately the liabilities tuned to title over Rupees 35,00,000|- the liability for the payment of the Sales Tax, Income Tax Maharashtra State Electricity Board ad the Municipal Corporation dues turned to Rs.17,29,000|- the liabilities toward out to approximately Rs. 19.00.000|- the liability of the loans incurred inclusive of the bankers tuning to Rs. 11,00,000|- and on the top of it the total amount of losses incurred after the filing of the Special Civil Suit No 9 of 1974 during the argument of Shri R,N, Pendharkar, the Receiver and till be he vacated his office in JUne 1978

tuned to approximately Rs. 40.00.000|- Thus the liabilities so far financial in nature worked out to approximately Rs. 1,17.00.000|- till 30th June 1980 . The petitioners of herewith also file a copy of the report of the Chartered Accountant, Shri, M M Jain, showing the economic position of the partnership firm. The report dated 10th DEcember 1979 being Annexure -S exhibited herewith".

51. The allegations with respect to the absence of material in regard to the existence of the abovesaid three circumstances are contained in sub-paras (iii) to (vi) of para 24 of the petition In para 24 (iii) it has been specifically alleged that there could not have been and there was no material before the Central Government for basing its satisfaction on the said circumstances and referring tothe averments in paras 4 to 15 of the petition of the it has been said that it was abundantly clear that the financial conditions of the partnership firm was "more than worse and no reasonable or prudent person on the material available could ever sensibly reach to the conclusion that the partnership firm was in a financial position to restart the undertaking is such that is it possible to restart the undertaking is blatantly false recital supported by no material or data and hat the Central Government was not and could not be in possession of any conclusion . In para 24 (v) it has been averred that the Central Government "carried out of no investigation for ascertaining and determining the financial condition of the partnership firm and specially its press with the result that there was no evidence whatsover in the possession of respondent No 1 before it issued the impugned order" Similar averments have been made with regard to the other two circumstaces.

52. In spite of these clear averments and allegations in the petitions, the CEntral Government in the has not place before us "the documentary and other evidence'' which as received in the impugned order is in its possession on the basis of which it has reached the requisite satisfaction In para 1 of its return the Central Government has merely stated that each and every allegation contained in paras 1 to avoid burdening the record'' Again in para 5 it has defied "each and every allegations as to absence of an enquiry non-application of mind or absence of any date or material before it" In para 10 (iii) it has asserted that "these was abundance of documentary evidence that thee closure was prejudicial to the concerned scheduled industry and that the financial condition of the industrial undertaking and the condition of the plant and machinery was such that it was possible to restart the undertaking under the regulatory scheme of the Industrial (Development and Regulation) Act 1951" It has been repeated din para 10 (v) that enquiries were made or got made and the respondent had adequate material and ot evidence to be satisfied "as it was" No such data, material or evidence has been placed before us in support of these averments.

53. On the other hand certain averments made by the Central Government In its return go to show that it admits the allegations of the petitioners in regard to the financial condition of the firm In para 10 (iv) it is said.

54. Due to funds among the partners, financial position of the undertaking deteriorated , especially from, 1975-76, resulting in the closure of the undertaking first from 11-4-1979, and finally from 17-5-1979. All the efforts to reopen the undertaking failed liabilities of about Rs. 12 Lakhs towards Statutory dues of workers alone wages provident fund gratuity , premium ESI contributions etc. Besides liabilities to the extent of Rs. 50 Lakhs had been incurred towards various creditors and authorities . It was thus in public interest to restart the undertaking.

55. Due to the financial mismanagement and diversion of funds large liabilities were earlier created in the undertaking The undertaking was however fully workable in terms of current operations given sufficient commercial printing business With temporary suspension of past liabilities arrangement for supply of working funds to and sound management in was possible to restart the undertaking and work it viably "

56. All this would indicate that ever according to the Central Government the financial condition of the firm owning the undertaking was not good at the time of take over What has been stated in Clauses above would make it clear that the undertaking could not have been restarted on the basis of the financial position as obtaining at the time of take over and for doing so the various conditions stated at the end of this clause had to be created. In our view the above averments contained in the return of the Central Government coupled with the averments in the petitioners would go to show that either there was no evidence in its possession with regard to the financial condition of the firm of the there was any it was adverse . We have therefore, no hesitation holding that the satisfaction of the Central Government in regard to the existence of the condition of relation at least to the financial position of the undertaking was based on no evidence and hence also the impugned order is vitiated and requires to tbe quashed.

57. With this we come to the third ground Admittedly the petitioners and particularly petitioners No 1 in his appeal as Receiver or any of the affected person had not been afforded an opportunity was being heard before the impugned order was made Mr. Bobade for the Central Government urged that in the scheme of the I D R Act pre-decisional hearing was not a must and that the persons affected as would be heard even after the order as provided by Section 18F .. He was prepared to give such a hearing to the petitioners if they so desire even a this stage . He even submitted that ir view of the letters which petitioners No.1 had written to the Secretary of the Industries Energy and Labour Department of the Government of Maharashtra or 28-3-2980 (Annexure R 1) and to the Prime Minister on 4-5-1980 (Annexure R 2) it is clear that the opportunity of saying why management of the undertaking should not be taken over

58. As pointed out in para 28 above the Delhi High Court had held in the Swadeshi Cotton Mills case that Section 18AA(1)(a)(b) excluded the giving or prior hearing to the party who would be affected by order thereunder and that the Section 18f

expressly provides for a post decisional hearing to have the order made u/s 18-AA cancelled on any relevant ground . This view taken by the majority in the Delhi High Court has not been approved by the Supreme Court in appeal . It was upheld the contention of the counsel for the appellant that the so-called right of a post-decisional hearing available to the aggrieved owner u/s 18F is illusory as in its operation and effect the power of review of any conferred there under is prospective and not retrospective being strictly restricted to and dependent upon the post take over circumstances . It has observed that the post decisional hearing available to the aggrieved owner is not an appropriate substitute for a hearing at the aggrieved owner is not an appropriate substitute for a fair hearing at the predecisional stage and tha the Act does not provide any adequate remedial hearing or right or redress to the aggrieved party even where his undertaking has been arbitrary taken over on insufficient grounds (SEe paras 80 and 81 of the report cited supra While dealing with the question whether the language of ..... of Section 18-AA(1) of the IDR Act expressly for by inevitable implication excludes the application of the .... Alteram partem rule at the predecisional stage the majority of learned Judges observed as follows.

59. From a plain reading of S 18-AA, It is clear that it does not expressly in unmistakable and unequivocal terms exclude the application of the audi alteram ram ... rule dat the pre-decisional stage The question, thereore, is natrowed down to the issue, whether the phrase "that immediate action is necessary" excludes absolutely, by inevitable implication, the application of this cardinal canon of fair play in all cases where Section 18-AA(1)(a) may be invoked In our opinion, for reasons that follow, the answer to this question must be in the negative

60. 91 In sum, for fall the reasons afore said, we are of the view that it is not reasonably possible to construe Section 18-AA(1) as excluding either expressly or by inevitable intendment, the application of the audi alteram partem rule dof natural justice at the pre takeover stage, regardless of the facts and circumstances of the particular case

61. It is possible to say that these conclusions are founded on the language of clause (a) of Section 18-AA(1) of the Act But in our view they will apply with greater force to Clause (b) where no immediate action is contemplated and the Central Government has sufficient time to give hearing to the persons affected it is true, as has been observed by the Supreme Court, the question as to what extent and in what measure the audi alteram partem rule will apply at pre-decisional stage will depend upon the degree of urgency, if any, evident from the facts and circumstances of the particular case In the case before us it is not contended by the Central government that it was not possible for it to give a pre-decisional hearing to the persons affected because of the urgency of the situation On the other hand from the latter (Annexure R-3) which the then Chief Minister of this State had written to the Union Minister of State for Industry on 5-8-80 in reply to the letter of the latter

dated 2-7-1980 it appears that the question of taking over the management of the present undertaking was engaging the attention of the Central Government even prior ton July. 1980 It appears from averments in para 24 (iv) (b)of the return filed by respondent No 2 that some steps in this direction had been taken as early as January. 1980 Hence it cannot be said that because of the urgency of the matter it was not possible for the matter it was not possible for the Central Government to give a hearing to the persons affected regard sto the intended taking over the management Had such as opportunity been given the persons concerned could have explained as to how it was not possible to re-start the undertaking because of the financial condition of the firm or why the closure was not prejudicial to the scheduled industry concerned or why it was not necessary to re-start the undertaking in public interest what the rule of natural justice required in the circumstances of the case was not only that the owner should have been an opportunity to explain the evidence against it but also an opportunity to be informed of the proposed action of take over and to represent why it should not be taken over it is true that petitioner No 1 had written letters

62. letters to the Prime Minister and the Secretary as stated above But from these letters it is not

63. not possible to say that he was aware of the impending take over or evidence on the basis of which the action was proposed to be taken so as to enable him to explain the same It would not have been possible for him to submit any effective explanation in the absence of the knowledge of the grounds on which the action was to be taken assuming that he had an inkling of such an action Since in the facts fand circumstances of the present case there has been failure to observe the rule of natural justice with regard to hearing at the pre-decisional stage the impugned order is liable to be struck down and quashed on this ground alone Had we not held against the respondents on the first two grounds. We would have considered the desirability of passing the final order in the manner done by the Supreme Court in Swadesh Mills case in view of the commitment made by Mr Bobade on behalf dof the Central Governmenrt.

64. While concluding his argument Mr. Natu for respondent No 2 had submitted that the latter as the authorised person had built up built up a good business for the undertaking and now that the unexpired period for which the happened order will remain in forced is only 1 1/2 years we should not disturb the status quo He further submitted that if we were inclined to allow the pettion,adequate time may be granted to the respondent to take further steps. Since we find that the impugned order suffers from various vices it will not be possible to allow it to live its full life However, on our quashing the order it may not be possible for the respondents to hand over management to the person or persons concerned immediately as they will have to

65. wind up their affairs in our opinion three months time should be adequate for this purpose.

66. Before we part with this case we would like to make a few observations to keep the record straight In Para 17 of the petition the petitioners alleged that Mr V P Sathe who was formerly President of the Union of employees of the undertaking and also Member of Parliament had on numerous occasions openly proclaimed that he would see that the management of the undertaking is taken over by the Government at any cost and that he was instrumental in introducing the Bill for the amendment of the I. D. R. Act so as to extend its operation to the litho printing industry, in order to carry out the said threat In para 18 of the petition, the petitioners have further alleged that after his reelection to the Lok sabha and becoming a Minster with cabinet rank in the central Government Mr Sathe taking advantage of his position prevailed upon the Government and managed to take over the management of the undertaking "as an ultimate fulfilment of his desire objective and ferbam unfulfilled for last few yeare." Again in para 24 (x) of the petition it his been alleged that "the impugned order is a clear example of grossest misuse of the power on the part of the Central Governemnt, the exercise of the power being mala fide and at the instance of Shri V P Sathe, who was long after the taking over of the unit and at whose instance in clear violation of the statutory provisions of the Act, the taking over has been effected" With all these personal allegations against Mr Sathe he was not impleaded in the petition to give him a chance to put up his say in the matter Of course, the respondents have stoutly denied and refuted these allegations in their respective returns. At the time of hearing no submissions were advanced on behalf of the petitioners on the basis of these allegations against Mr. Sathe Suffice it to say that we were not called upon to pronounce on the veracity of these allegations.

67. In the result the petition is allow here by quashed and both the respondents are hereby directed to hand over management of the said undertaking to the Receiver or Receivers for the time being or any other persons concerned, up to 31st July, 1982 In the circumstances of the case there shall be no order as to costs.

68. Petition allowed.