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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 9th October, 2018
Pronounced on: 27thNovember, 2018

\+ **CM No.41298/2018 in W.P.(C) 10596/2018**
CM No.41304/2018 in W.P.(C) 10605/2018

PTI EMPLOYEES UNION ..... Petitioner
Through: Mr. Colin Gonsalves, Sr. Adv. with Ms. Aditi Gupta, Adv.

versus

PRESS TRUST OF INDIA LTD. ..... Respondents
Through: Mr. A.K. Mata, Sr. Adv. with Mr. N.B. Joshi, Adv.

FEDERATION OF PTI EMPLOYEES UNIONS ..... Petitioner
Through: Mr. Colin Gonsalves, Sr. Adv. with Mr. S.D. Thakur, Adv.

versus

PRESS TRUST OF INDIA & ANR ..... Respondents
Through: Mr. A.K. Mata, Sr. Adv. with Mr. N.B. Joshi, Mr. Karan Gaur and Mr. Anurag Ranjan, Advs.
Mr. Akshay Makhija, CGSC for R-2.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

O R D E R

% 27.11.2018

1. By the following Notice, dated 29th September, 2018, 297 employees, working with the respondent, were retrenched, with immediate effect:

" THE PRESS TRUST OF INDIA LIMITED

Registered Office: P.T.I. Building, 4, Parliament Street, New Delhi-110001

NOTICE

New Delhi
Dated: 29-09-2018

The following employees whose names appear on the list displayed with this notice had been retrenched from the employment of the Press Trust of India Ltd with immediate effect. Retrenchment Letters are sent to each individual the registered post on the entire amount as detailed in the Retrenchment Letter is transferred in their bank accounts. Scanned copy of the Retrenchment Letters and related documents are available at url:http://www.ptinews.com/ communication.pdf and the same can be downloaded from the said page. Scanned copy of the Retrenchment Letters is also placed at the desk and each individual whose name appears on the display list is required to collect the same under receipt.

Sd/-
Mr. M.R. Mishra
Chief Administrative Officer"

2. This writ petition assails the above-extracted Notice, dated 29th September, 2018 (or, rather, Notices, as individual Notices were sent to each of the retrenched employees). The employees retrenched by the impugned Notice, it may be noted, span the length and breadth of the country, in all the offices of the respondent. Consequent to the relief of striking down the said Notices, as contained in the writ petition, is, needless to say, the relief that the said workmen be allowed to continue to work will be on the same terms, as existed prior to the issuance of the impugned Notices.

3. CM 41298/2018 and CM 41304/2018 have also been filed, by the petitioner, seeking interim stay of operation of the impugned Notice, dated 29th September, 2018.

4. Notice, on the writ petition, stands issued on 9th October, 2018, returnable on 11th February, 2019.

5. Protracted arguments, by Mr. Colin Gonsalves, learned Senior Counsel appearing for the petitioners, and by Mr. A. K. Mata, learned Senior Counsel and Mr. N.B. Joshi, learned Counsel appearing for the respondents, were heard, on CM 41298/2018 and CM 41304/2018, wherein interim relief was sought. Learned counsel on both sides were agreeable to the interlocutory application for stay, being disposed of, on the basis of the said arguments. As such, orders, on the application for stay, were reserved on 9th October, 2018. This order decides the aforementioned stay applications.

6. Mr. Colin Gonsalves, learned Senior Counsel appearing for the petitioner-Union, urges the following submissions, by way of challenge to the impugned Notice:

(i) All the centres of the respondent constitute one "establishment" and, the number of employees employed in such "establishment" being in excess of 100, their retrenchment, without prior permission of the Government was impermissible. Mr. Gonsalves explains this point thus:

(a) Section 2(d) of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (hereinafter referred to as "the Working Journalists Act") defines "newspaper establishment" thus:

> "(d) "newspaper establishment" means an establishment under the control of any person or body of persons, whether incorporated or not, for the production or publication of one or more newspapers or for conducting any news agency or syndicate and includes newspaper establishments specified as one establishment under the schedule;
>
> Explanation.—For the purposes of this clause,—
>
> (a) different departments, branches and centres of newspaper establishments shall be treated as parts thereof;
>
> (b) a printing press shall be deemed to be a newspaper establishment if the principal business thereof is to print newspaper;"

(b) S.No.1 in Schedule to the Working Journalists Act reads as under:

> "1. For the purposes of clause (d) of section 2,—
>
> (1) two or more newspaper establishments under common control shall be deemed to be one newspaper establishment;"

(c) Mr. Gonsalves relied on the following recital, contained in the 69th Annual Report of the respondent for the year 2017, as indicating that all offices of the respondent constituted one common interrelated network:

> "PTI once again proved to be the pre-eminent News service in India with its fact-based and balanced reportage, thereby fulfilling its core commitment to serve its diverse subscribers. PTI's English-language service, the Hindi service Bhasha and the prolific photo service asserted their dominance in the Indian media scene. The English service captured nearly 98% of quotes in newspapers by the Hindi services impact was an average of 93% in the year gone by. PTI's Photo service, which competes with a host of agencies included foreign services, registered more than 90% of play in the newspapers. These figures only tell half the story, as PTI's impact on the websites that subscribe to us is increasingly growing. Among the strengths of PTI service are the foreign correspondence for report from virtually every corner of the Earth, digging out stories of Indian interest from a plethora of news. The other segments that add feathers to our Other Entertainment and Lifestyle test, whose stories are among widely picked, and the Sports desk that outshines all competitors."

(d) From the Working Journalists Act, Mr. Gonsalves proceeded, next, to Chapter V-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the ID Act"), titled "Special Provisions relating to Lay-off, Retrenchment and Closure in Certain Establishments". Section 25-K(1) of the ID Act which delineates the

peripheries of the applicability of Chapter V-B thereof, in the following terms:

> **25K. Application of Chapter VB.—**(1) The provisions of this Chapter shall apply *to an industrial establishment* (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.
>
> (Emphasis supplied)

The submission of Mr. Gonsalves is, therefore, that, if all offices of the respondent could be treated as one "establishment", they definitely employ more than 100 workmen, so that Chapter V-B of the ID Act would apply thereto.

(e) "Industrial establishment", Mr. Gonsalves points out, is defined, for the purposes of Chapter V-B of the ID Act, in Section 25-L(1) thereof, thus:

> "**25L. Definitions.—**
>
> For the purposes of this Chapter,—
>
> (a) "industrial establishment" means—
>
> (i) *a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948)*;
>
> (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952); or

(ii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

(Emphasis supplied)

(f) Mr. Gonsalves peregrinates, next, to Section 2(m) of the Factories Act, 1948 (hereinafter referred to as "the Factories Act"), which defines "factory" thus:

'(m) "factory" means any premises including the precincts thereof-

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which *a manufacturing process is being carried on with the aid of power*, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which *a manufacturing process is being carried on without the aid of power*, or is ordinarily so carried on,-

(Emphasis supplied)

(g) That takes Mr. Gonsalves on to Section 2(k) of the Factories Act, which defines "manufacturing process" in the following terms:

"(k) "manufacturing process" means any process for-

(i) *making, altering*, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating *or adapting any article or substance with a view to its use, sale, transport, delivery or disposal*, or

(ii) pumping oil, water, sewage or any other substance; or

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding;

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels;

(vi) preserving or storing any article in cold storage;"

(h) Conjointly reading all the above provisions, Mr.Gonsalves would submit that:

(i) news, which the respondent, in its various offices, makes, alters, treats and adapts, is entitled to be regarded as an "article" or "substance", within the meaning of Section 2(k) of the Factories Act,

(ii) the process of such making, alteration, treating or adaptation (by whichever name the process may be called, as Mr. Gonsalves would submit), amounts to a "manufacturing process", within the meaning of the said Section 2(k),

(iii) the premises in which such activity takes place, i.e. the various offices of the respondent,

therefore, qualify as a "factory", within the meaning of Section 2(m) of the Factories Act,

(iv) per consequence, the said factories, cumulatively seen, constitute an "industrial establishment", as defined in Section 25-L(1) of the ID Act, and

(v) resultantly, by operation of Section 25-K of the said Act, the provisions of Chapter V-B thereof, applied to the respondent.

(i) In the above backdrop, Mr. Gonsalves invokes Section 25-N(1)(b) of the ID Act. Sub-section (1) of Section 25-N of the ID Act (which sets out the "Conditions precedent to retrenchment of workmen") may be reproduced thus:

> "(1) No workman employed in any industrial establishment to which this Chapter applies , who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,
>
> > (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
> >
> > (b) the prior permission of the appropriate government or such authority as may be specified by that government by notification in the Official Gazette (hereafter in this section referred to as

> the specified authority) has been obtained on an application made in this behalf."

(j) The submission of Mr. Gonsalves is that, prior permission of the appropriate government, not having been obtained on an application made by the respondent, as required by clause (b) of Section 25-N(1) of the ID Act, the retrenchment of the workmen belonging to the petitioner-Union, by the impugned Notice, was unsustainable in law.

(ii) The second submission of Mr. Gonsalves proceeds on the following reasoning:

(a) Section 9-A of the ID Act reads as under:

"**9-A. Notice of change**

> No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-
>
> (a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
>
> (b) within twenty-one days of giving such notice:
>
> **PROVIDED** that no notice shall be required for effecting any such change-

> (a) where the change is effected in pursuance of any settlement or award; or
>
> (b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Services Regulations, Civilians in Defense Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply."

(b) Clauses 10 and 11, in the Fourth Schedule to the ID Act, read as under:

> "10. Rationalisation, standardization or improvement of plant or technique which is likely to lead to retrenchment of workmen;
>
> 11. Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, not occasioned by circumstances over which the employer has no control."

(c) Mr. Gonsalves also draws my attention, in this context, to Clause 10 of the "Statement of Reasons" issued by the respondent, to justify its decision to retrench its workman. The said Clause reads as under:

> "This work is such that a normal literate person can easily do it. Despite training, the persons who were redeployed into this role from the 3

> departments have unfortunately not been able to make error-free contributions. In view of the matter, this role is better performed by specialised agency for a fraction of the cost. This exercise is critical for the court functioning of the PTI as it is based on this exercise that key editorial decisions need to be taken and the strategy prepared. The frequency of the story pick-up, they use and re-use of the story/photo/feature/peace helps in developing/ augmenting/adding content/ categories and the strengthening the content within those categories. This data requires an accurate and comprehensive capture. The next step is to mine the data with algorithms to provide actionable information from quality data analysis. Thus "impact" can no longer be treated as a department in which to "adjust" employees who were not sufficiently skilled for the role."

(d) Mr. Gonsalves has also relied on a Press Statement, released on 5th October, 2018, which, too, cites "rationalisation", as the justification for retrenchment of the affected workmen in the present case.

(e) In view of the mandate of Section 9-A of the ID Act, read with Clauses 10 and 11 of the fourth Schedule thereto, Mr. Gonsalves would submit that the impugned exercise, of *en masse* retrenchment of workmen, as effected by the respondent, falls foul of the said provision. Mr. Gonsalves has sought to rely, in support of his submission, on the judgements of the Supreme Court in ***Tata Iron & Steel Co. Ltd. v. Workmen*, *(1972) 2 SCC 383*** and ***Lokmat Newspapers (P) Ltd. v. Shankarprasad, (1999) 6 SCC 275***.

(iii) For his third submission, Mr. Gonsalves takes me to the following recital, again to be found in the Statement of Reasons, issued by the respondent to support its decision:

> "The three affected departments are engineering, transmission and tenders. *Every member of the transmission and attender departments has been retrenched.* PTI being an organisation sensitive to minimising job losses has conducted a huge exercise prior to finally taking a decision to retrench. As part of this exercise, a possibility though remote has arisen of retailing some persons from the engineering department provided that they are able to sufficiently re-skilled themselves to fulfil the rules which would be assigned to them."
>
> (Emphasis supplied)

Thus, Mr. Gonsalves points out, two departments, i.e. the transmission and attender departments of the respondent, stand completely closed down. In this context, he draws my attention to clause (cc) in Section 2 of the ID Act, which defines "closure" in the following terms:

> "(cc) "closure" means the permanent closing down of a place of employment or part thereof;

Mr. Gonsalves now invokes sub-sections (1) and (6) of Section 25-O of the ID Act (which is titled "Procedure for closing down an undertaking"), which read as under:

> "(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate government, stating clearly the reasons for the intended closure of the

undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

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

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"(6) Where no application for permission under sub-section (l) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down."

Mr. Gonsalves, therefore, submits that, the closure of the transmission and attender departments of the respondent, having been effected without complying with the mandate of Section 25-O (1) and (6), such closure stands vitiated in law.

(iv) Mr. Gonsalves next contends that the impugned action is violative of Section 16-A of the Working Journalists Act, which reads thus:

"**16A. Employer not to dismiss, discharge, etc., newspaper employees.—** No employer in relation to a newspaper establishment shall, by reason of his liability for payment of wages to newspaper employees at the rates specified in an order of the Central Government under section 12, or under section 12 read with section 13AA or section 13DD, dismiss, discharge or retrench any newspaper employee."

Section 12 of the Working Journalists Act reads thus:

> "**12.Decision of Board to be binding on all employers -** The decision of the Board shall be binding on all employers in relation to newspaper establishments and every working journalist shall be entitled to be paid wages at a rate which shall, in no case, be less than the rate of wages fixed by the Board**.**

Mr. Gonsalves refers, in this connection, to para 11 of the Statement of Reasons, issued by the respondent to justify the impugned decision, which may be reproduced as under:

> "11) News agencies are governed by a special Act namely the Working Journalists and Other Newspaper Employees (condition of service) and Miscellaneous Provisions Act 1955. Under the same Act, the Central Government appointed Wage Boards both for journalists as well as non-journalists employees. The wages that are determined by the Wage Board and as are notified by the Central Government in the official gazette are in law payable to such employees.
> Infra a chart showing the impact of the current Wage Board popularly known as the Majithia Wage Board report on the PIT. The proportion of salary cost to gross revenue is 100% today. Correspondingly, the reserves and surplus of the PTI have dipped. Huge arrears of salaries were paid out. The net impact is that PTI is in operational losses. Its operational revenue is being augmented by rental income that PTI earns. It was never envisaged by the working journalist or by any other law that the cost of its core activity would have to be borne by subsidies of rental income.

(Amount in Lakhs)

Wage Board Cost (Gross)	6082.09	6472.76	6566.67	6620.85	3781.01

% Increase	-6%	-1%	-1%	75%	
No. of staff retired	536 86	622 52	674 50	724 50	774

As has been stated hereinabove, PTI has very limited access to funds. Operationally, it only has its subscriber revenue unlike other media houses whose major revenue stream is advertisement revenue. Over the years, recognizing PTI's importance as a news service and is critical for preserving democracy in the country, and given the fact that it is a not-for-profit Company, the government has leased out land at concessional rates to PTI. However, these leases come with the condition that the PTI constructs a building there upon in the defined timeframe failing which the lease is cancelled. Hitherto before, PTI used to generate surplus from its revenue, which were used to construct buildings on such leased plots. Part of the building was used by PTI for its own purpose and other parts were given out for rent. It is this rental income, which has today subsidized its operating cost.

As stated earlier, as more and more media houses are achieving higher degree of sophistication, their newsgathering and content creation capabilities are overtaking PTI's capabilities in the field. This is especially true of large cities where more and more subscribers have their own teams. For PTI to servive, it needs to increase its spread and reach to the smallest towns of the country. This requires huge investment, which is critical for PTI to survive, In several places, PTI has plots of lands but lacks its resources to build, their own. It runs the risks of those leases been cancelled. Additionally, to run offices, PTI is paying rent to accommodate its staff in those towns in rented

premises. If PTI is to have a sustainable model, it requires funds.

An analysis of existing manpower in the PTI today show that roughly only 1/3rd of the company's manpower are journalist and the other 2/3rd are support functions. In a news agency, which unlike newspaper has no activity such as printing, distribution, circulation management, advertisement spaces selling, such a skew of numbers in favour of non-journalist is unsustainable. If PTI has to survive, as stated earlier, its journalistic output must drastically increase. This too comes at a huge financial cost.

As stated earlier, with the advancement of new media, PTI which has so far been creating primary content in written form will today needs to diversify into audio visual content. Studies have shown that the world over physical paper newspapers is steadily lessening circulation and numbers. This means that more news is being consumed either digitally or through audiovisual media. If PTI does not upgrade itself, it will survive. This too comes at a huge cost.

The total annual manpower cost in the three affected departments for the year 2019-20 is projected at ₹ 30437 lakhs which is likely to show a year on year increase of 8 percentage. The total one-time cast of retrenching all persons in these three departments. Is approximately ₹ 68 Crores.

To clarify, despite the department title "Engineering", affected employees are not highly educated. Across the three departments, most employees fall within the category of matriculation or high school graduates. The experience that they have over the years has also not been conductive to personnel retrained, re-skilled or redeployment in other functions. As stated earlier, the need of PTI today is to increase the proportion of journalists to non-journalists. The affected employees are not capable of being re-skilled or retrained into journalistic tasks. Further as more journalists are taken on, not only more funds are required, even space is fast becoming a constraint."

The contention of Mr. Gonsalves is, therefore, that, the impugned retrenchment exercise, being prompted by the decision of the Majithia Wage Board, and the order issued by the Central Government in that regard, was impermissible, in view of Section 16-A of the Working Journalists Act.

(v) Mr. Gonsalves next relies on Sections 25-F and 25-G of the ID Act, particularly Section 25-G, which reads as under:

> **"25G. Procedure for retrenchment**
>
> Where any workman in an industrial establishment who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, *the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman*."
>
> (Emphasis supplied)

Mr. Gonsalves seeks to point out that, from the Seniority List of employees in the respondent-establishment, at page 124 of the paper book in WP(C) 10605/2018, it would be apparent that, while all employees, who were entitled to the benefits of revised wages under the Majithia Wage Board, stand retrenched, contractual employees, junior to them in the seniority list, who were employed later, had been retained. This, Mr. Gonsalves would submit, squarely infracts Section 25-G of the ID Act.

(vi) The sixth, and last submission, of Mr. Gonsalves, is that the impugned decision of the respondent is also violative of Section 25-H of the ID Act, which may be reproduced thus:

> *"25H. Re-employment of retrenched workmen*
>
> Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons."

Mr. Gonsalves draws my attention, once again, in this regard, to para 10 of the Statement of Reasons, provided by the respondent to justify the impugned decision, which already stands reproduced hereinabove; specifically to the recital, therein, that the role being performed by the retrenched workmen "is better performed by specialised agency for a fraction of the cost". Mr. Gonsalves would submit that, in view of Section 25-H of the ID Act, it is not permissible for the respondent to retrenched its regular workmen in order to outsource its activities.

7. For all these reasons, Mr. Gonsalves would submit that the decision, of the respondent, to retrench 297 of its workmen, as communicated by the impugned Notices, cannot sustain in law.

8. Mr. Mata, learned Senior Counsel appearing for the respondent, arguing *per contra*, advances, at the outset, the following preliminary objections, to the very maintainability of the writ petition:

(i) Mr. Mata first draws attention to the representation, dated 4th October, 2018, preferred by the petitioner-Union, against the impugned decision of the respondent, submitting that, as there was an equally efficacious alternative remedy available to the petitioner, it could not be permitted to maintain the present writ petition, till it had exhausted the same. He, in fact, submits that, in response to the representation of the petitioner-Union, the Deputy Labour Commissioner had fixed a hearing on 10th September, 2018. Mr. Mata submits that the petitioner has not approached this Court with clean hands, as the factum of invocation, by him, of the alternative remedy available in the statute, has been suppressed in the writ petition.

(ii) The 2nd preliminary objection, of Mr. Mata, to the maintainability of this writ petition, is on the ground that the respondent is not a "state", within the meaning of Article 12 of the Constitution of India. For this proposition, he relies on an order, dated 20th May, 2013, passed by the learned Single Judge of this Court in ***Sarwam Kumar v. PTI***, which reads thus:

> "1. This writ petition is filed against the respondent-Press Trust of India Ltd which is not a State as per Article 12 of the Constitution of India.
>
> 2. Accordingly, counsel for the petitioner prays for and is granted liberty to withdraw the petitioner so that petitioner can file appropriate independent proceedings

in a competent forum/Court for claiming the reliefs which have been prayed in this writ petition.

3. Dismissed as withdrawn with the aforesaid liberty."

(iii) The 3rd preliminary objection of Mr. Mata is that the submissions of the petitioner involve disputed issues of fact, which cannot be adjudicated in a writ petition, far less good, any interim relief be granted.

9. On merits, Mr. Mata, choosing to address the last submission of Mr. Gonsalves, first disputes the genuineness and validity of the Seniority List filed as Annexure P-7 to the writ petition. Without prejudice thereto, Mr. Mata submits that a reading of the impugned Notice dated 29th September, 2018, would itself disclose that the respondent had complied with the "Last come, First go" principle contained in Section 25-F and 25-D of the ID Act. He also relies, in this context, on the letters issued to the individual workmen.

10. Mr. Mata seeks to discount the very applicability of Chapter V-B for the ID Act, to the respondent-establishment, on the ground that it could not be treated as being engaged in any "process of manufacture with the aid of power"; neither Mr. Mata would submit emphatically, can news, *per se*, be regarded as an "article" or "substance" within the meaning of Section 2(k) or 2(m) of the Factories Act. Mr. Mata would submit that it would be absurd to treat the respondent as "manufacturing" news, its only activity being collation of newsworthy information, which could not be treated as a

process of "manufacture". With Chapter V-B of the ID Act, being thus revealed as inapplicable to the respondent-establishment, Mr. Mata would submit that the reliance, by Mr. Gonsalves, on Sections 25-L, 25-N and 25-O of the ID Act, was completely misconceived.

11. As regards the applicability of Section 9-A of the ID Act, Mr. Mata submits that the scope of Serial No. 10, in the Fourth Schedule to the said Act is limited to rationalisation, standardisation or improvement of plant or technique. In the absence, therefore, of any improvement in the plant of the respondent, or in the techniques adopted by it, Mr. Mata would submit that the applicability of Serial No. 10 would stand ruled out. Serial No. 11, in Mr. Mata's submission, is anyway inapplicable, as retrenchment of workmen is contemplated, statutorily, only in Serial No. 10 of the Fourth Schedule, thereby excepting it from the scope of Serial No. 11 thereof.

12. Turning, thereafter, to Section 16-A of the Working Journalists Act, Mr. Mata stresses the use of the words "by reason of liability for payment", as used in the said provision. Mr. Mata's submission is that the respondent had complied with the mandate of the Majithia Wage Board, and discharged the liability, which the Award consequent thereon, imposed on it. There could, therefore, in Mr. Mata's submission, be no question of the retrenchment of the 297 workman of the respondent, as effected by the impugned Notice, being so effected "by reason of" any liability for payment, devolving on the respondent by virtue of the Majithia Wage Board Award.

13. The last submission of Mr. Mata is that the petitioner is, essentially, seeking a mandatory injunction at the interlocutory stage, which is ordinarily never to be given, save and except in the rarest of rare cases. The present case, Mr Mata would submit, is not one such. For this proposition, Mr. Mata relies on ***Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan, (2013) 9 SCC 221***.

14. Mr. Joshi, appearing for some of the other respondents, adopts the submissions of Mr. Mata. He, too, disputes the maintainability of the writ petition, contending that, apart from the fact that the respondent is not a "state", it does not discharge any public function, either, its activities being limited to collection, collation and editing of news.

15. Mr. Joshi finally submits that the PTI is akin to any other news organisation, and that no writ petition, therefore, would be maintainable against it. He submits that, while it may be true that the function discharged by the PTI, i.e. dissemination of news, is a function of public importance, but we cannot delegate this function as a "public function", so as to expose PTI to Article 226 of the Constitution of India.

16. Arguing in rejoinder, Mr. Colin Gonsalves, learned Senior Counsel, submits thus:

(i) The activities of PTI would satisfy not only clause (i), but also clause (iv) of Section 2(k) of the Factories Act. He draws my attention to the fact that the activities of PTI are far more

extensive, in their scope, than mere collection and transmission of news to newspapers. He submits that PTI is involved in taking photographs, as well as processing and developing the same, as is apparent from the fact that, when such photographs are published or printed in newspapers, a clear caption, indicating that a photograph was sourced from the PTI, always figures at the foot thereof. He has submitted a flowchart, setting out the manner in which the photographs, after they are taken, are treated, till the stage of their onward transmission to newspapers. He also points out that PTI publishes various periodicals and journals, and is also involved in graphics. He draws my attention to the Annual Report of the PTI, which indicates that a substantial part of the revenue, generated by the PTI, is contributed by PTI's photo service and news service. These activities, according to Mr. Gonsalves, would clearly fall within the ambit of the expressions "making", "ordering" and "adapting", of "articles" or "substances", within the meaning of Section 2(k) of the Factories Act. Inasmuch as these activities are carried out within some part of the premises of the respondent, Mr. Gonsalves would submit that the premises of the respondent, *ipso facto*, would qualify as a "factory", within the meaning of Section 2(m), drawing attention, in this regard, to the words "in any part thereof", as contained in the said definition. Mr. Gonsalves relies, in this regard, on paras 14 and 24 of the judgment of the Supreme Court in ***Delhi Gymkhana Club v. E.S.I.C., (2015) 1 SCC 142***.

(ii) Insofar as the issue whether the PTI discharges a "public function" or not, Mr. Gonsalves relies on paragraphs 7 to 10 of the synopsis accompanying the writ petition, which read thus:

> "7. The petitioner has approached this Court under Article 226 of the Constitution as the Respondent satisfies the public function test inasmuch as PTI is a worldwide news distribution agency which is the leading agency in the country. It collects and distributes news to all government offices, AIR, Doordarshan, news channels, news websites, newspapers, a wide spectrum of private organisations including scientific organisation, research organisations, business organisations and so on. The PTI also supplies news to all the Embassies and Ministries. PTI has an extensive news service abroad all across the world. Therefore, the Respondent though a private body, performs a public function which is critical for society today namely the distribution of news at the earliest possible moment and, therefore, PTI is amenable to writ jurisdiction. Petitioner relies on ***Zee Telefilms Ltd. vs. Union of India (2005 4 SCC 649)***.
>
> 8. In its own words the PTI in Civil Suit No.671/2017 filed in the court of District Judge, Patiala House, has claimed that:
>
> > "The Plaintiff is India's premier news agency which is described by the newspapers and other audio visual media as the lifeline for providing national and international news services round the clock. The Plaintiff has over 450 newspapers subscribing to its services apart from all radio and television networks, national and international news agencies who rely on the Plaintiff to provide round the clock news coverage. Now, with the advent of new technology, many web networks have also added to the list of the subscribers of the Plaintiff. Plaintiffs Delhi office alone has about 520 subscribers which include all national

> newspapers. Apart from electronic and print media, the subscribers of the Plaintiff also include Government subscribers including the Rashtrapati Bhawan, Prime Minister's Office, All Ministries, Government Departments and wings, the three Services, foreign missions and foreign correspondents based in India and Dellii."
>
> 9. That the PTI has public status can be gauged from the fact that it is exempt from the payment of income tax by a special notification issued by the Ministry of Finance under Section 10 clause 22 B of the Income Tax Act.
>
> 10. Furthermore, PTI has received concessional land in five cities: New Delhi, Kolkata, Hyderabad, Jaipur and Bengaluru on which buildings have been constructed and huge rents are received by PTI. It has also received plots of lands in Ranchi and Bhopal, which it has failed to developed for more than ten years. The annual rent for the land allotted to PTI in New Delhi's 4 Sansad Marg is only Rupees 9,160.45 (Rupees Nine thousand one hundred sixty and forty five paisa). The annual rent received from the aforementioned five buildings is Rs. 62 Crores per annum."

In this context, Mr. Gonsalves also relies on paragraphs 31 to 33, 74, 78 to 80, 136, 138, 142 and 149 to 157 of the judgment of the Supreme Court in ***Zee Telefilms Ltd v. U.O.I., (2005) 4 SCC 649***. Reliance was also placed, by Mr. Gonsalves, on paras 12 to 14 of ***Ramesh Ahluwalia v. State of Punjab, (2012) 12 SCC 331***.

(iii) Reiterating his submission that Sections 25-N and 25-O of the ID Act stood infracted, Mr. Gonsalves placed reliance on

para 47 of the judgment in ***Empire Industries Ltd v. State of Maharashtra, (2010) 4 SCC 272.***

(iv) No response had been provided, by the respondents, to the submission, of the petitioner, that the various units of the respondent constituted a single "newspaper establishment". Reliance was placed, for the said purpose, on paras 7 to 10 of ***S. G. Chemicals & Dyes Employees Union v. Management, (1986) 2 SCC 624.***

(v) Insofar as the denial, by the respondents, on the genuineness, of the Seniority List, on which the petitioner had placed reliance, Mr. Gonsalves submits that, irrespective of the genuineness, or otherwise, of the Seniority List, there could be no dispute regarding the dates of recruitment reflected therein, which established that the "Last come, First go" principle had been violated. He drew my attention to Rule 77 of the Industrial Disputes (Central) Rules, 1957, which required the employer to prepare a list of all workman, in the particular category, from which retrenchment was contemplated, arranged according to the seniority of their service in that category, and to place a copy thereof on the notice board at a conspicuous place, in the premises of the industrial establishment, at least seven days before the date of retrenchment. In case the Seniority List, on which the petitioner was relying, was not a genuine seniority list, Mr. Gonsalves would submit that there was clear violation of Rule 77 of the ID (Central) Rules which, in fact, would not

have been complied with, even till now. Compliance, with the "Last come, First go" Principal, Mr. Gonsalves would submit, was mandatory, as held by the Supreme Court in ***Mackinnon Mackenzie & Co. Ltd v. Mackinnon Employees Union, (2015) 4 SCC 544***. For the proposition that compliance with Rule 77 of the ID (Central) Rules, was also mandatory, Mr. Gonsalves further relies on Rule 81 of the said Rules, and the judgment of the High Court of Bombay in ***Navbharat Hindi Daily v. Navbharat Shramik Sangh, 1984 Mh LJ 483***.

(vi) In connection with his reliance on Section 9-A of the ID Act, Mr. Gonsalves referred me to the dictionary definitions of "rationalise" and "technique".

(vii) Mr. Gonsalves further submitted that the impugned retrenchment order was also illegal, as, in the individual orders of retrenchment, reasons therefor were not stated, as required by Section 25-F(a) of the ID Act. He relied, for the said purpose, on para 9 of ***Mohan Lal v. Management of M/s Bharat Electronics Limited, (1981) 3 SCC 225.***

(viii) Contesting the plea, of the respondent, that the writ petition was not maintainable on account of the availability, to the petitioner, of an alternate remedy, Mr. Gonsalves relies on the judgment of the Full Bench of the High Court of Rajasthan in ***Bhanwarlal v. Rajasthan State Road Transport Corporation, 1985 I LLN 391***.

17. Mr. Kohli, submitting effectively by way of surrejoinder, advanced the following arguments:

(i) The submission, of Mr. Gonsalves, that there had been infraction of Rule 77 of the ID (Central) Rules, as no Seniority List, as required therein, had been issued or displayed by the respondent, was denied. Reference was made, in this regard, to a Notice, dated 21st September, 2018, which stated that "the seniority list of designation/category of employees (regular) falling in the department of the tenders, Transmission and Engineering" was enclosed. He also invited my attention to documents indicating that the said list had been displayed. Mr. Kohli submitted that, of the three categories of workmen referred to, in the said Seniority List, two categories of workmen had been completely retrenched and the third category was retrenched in part, applying the "Last come, First go" principle.

(ii) The submission of Mr. Gonsalves, that the reasons for retrenching the 297 workmen were not made known, was refuted by referring to the "Statement of Reasons", which, it is submitted, was conveyed along with each individual notice of retrenchment. Mr. Kohli sought to submit that retrenchment of the workmen was resorted to, only as a last measure, when it was found that the said workmen, despite being offered adequate training, were not able to make error free contributions to the functioning of the respective departments. He pointed out

that para 10 of the Statement of Reasons clarified that, in view of the inability, of the said workmen, to measure up to the requisite standards, it had been found that the role was better performed by a specialised agency for a fraction of the cost. As such, Mr. Kohli would submit, the decision to retrench the 297 workmen was taken, only because, doing so had become imperative, and not for any other reason. In this context, Mr. Kohli also sought to distinguish the judgement of the Supreme Court in ***Navbharat Hindi Daily (supra)***, on which Mr. Gonsalves had relied, by pointing out that, in the said case, retrenchment of the workmen had taken place three months after the upgradation of the undertaking whereas, in the present case, the respondents had waited for as many as 20 years. In fact, Mr. Kohli would submit, the upgradation had also taken place pursuant to the demands of the workers themselves.

(iii) Mr. Kohli also disputes the applicability of Entries 10 and 11 in the fourth Schedule to the ID Act, pointing out that "retrenchment" figured, not in Entry 10, but only in Entry 11. As such, Mr. Kohli would submit that Entry 10 of the fourth Schedule had no application to cases of retrenchment.

(iv) Mr. Kohli reiterated the submission that the respondent was not engaged in performing any "public functions", asserting that the activity carried out by the respondent was no different from that carried out by any private newspaper such as the Times of India or Hindustan Times.

(v) Mr. Kohli also drew my attention to paras 197 and 198 of the judgment of the Full Bench of the High Court of Rajasthan in ***Bhanwarlal (supra)***, which holds that, ordinarily, Sections 10 and 11A of the ID Act created a bar to entertainment of writ petitions for contravention of Chapter V-A thereof. He points out that, in ***Bhanwarlal (supra)***, there was no disputed issue of fact involved; moreover, the respondent-Corporation, in that case, was "state", within the meaning of Article 12 of the Constitution of India.

(vi) Finally, Mr. Kohli submits that the Majithia Wage Board, too, did not contemplate news agencies as being "factories". He sought to distinguish the judgment of the Supreme Court in ***Delhi Gymkhana club (supra)*** on the ground that, in that case, the manufacturing process had taken place in the premises of the organisation, so that there was "functional integrality" between the said function and the core function of the organisation itself.

18. A glance of the submissions of learned Senior Counsel, as recorded hereinabove, would reveal that they are comprehensive and exhaustive in nature, spanning the entire spectrum of the controversy involved in the writ petition. This Court is, however, at present, not concerned with adjudicating the dispute in the writ petition, which is listed for hearing on 11th February, 2019. What has to be decided, today, is whether the facts of the case, and submissions advanced at

the bar, make out a case for grant of injunction, staying the operation of the impugned decision to retrench 297 workmen, or not.

19. The Supreme Court has, in its recent order, dated 31st July, 2017 in ***M/s AZ Tech (India) v. Intex Technologies India Ltd***, cautioned against this Court returning detailed findings at the interim stage. Though the said note of caution was sounded in the case of an intellectual property dispute, there is no reason why it should not equally apply in a case such as the present. As such, it would not be advisable for this Court, despite the amplitude of the arguments advanced before it, by learned Senior Counsel for both sides, to return findings, even tentative thereon, at this stage. The Court is – and should be – concerned only with examining whether the requisite, and well entrenched indicia, governing the issue of grant, or refusal, of the prayer for interlocutory injunction, stand established, or not.

20. These indicia, it is by now trite, are three in number, namely (i) existence of a *prima facie* case, (ii) whether the balance of convenience would be in favour of grant of such an injunction, or not, and (iii) whether non-grant of injunction would result in irreparable loss to the party seeking the injunction. So well-established, indeed, these principles are, that it is hardly necessary to refer to any judicial authorities in support thereof.

21. A "*prima facie* case" was defined by the Supreme Court, in ***Martin Burn Ltd v. R. N. Banerjee, AIR 1958 SC 79***, in the following words:

> "A *prima facie* case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the case were believed. While determining whether a *prima facie* case had been made out or not the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence."

22. This Court, too, has defined the expression "*prima facie* case", in ***Krishan Lal Kohli v. V. K. Khanna, AIR 1993 Del 356***, specifically in the context of grant of injunctions as "that which raises substantial question, of course *bona fide* which needs investigation and ultimately a decision on merits". A classic exposition, to guide the approach of the court, while applying the above three tests and considering, thereby, the issue of grant, or refusal, of interlocutory injunction, is to be found in the following words, from the judgment of K. Ramaswamy, J., in ***Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719***:

> "The phrases, "prima facie case", "balance of convenience" and "irreparable loss" are not have a rhetoric phrases for incantation, but words of wit and elasticity, to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always hedged with sound exercise of judicial discretion to meet the ends of justice."

23. These words, needless to say, would well guide this Court, while examining whether, in the present case, interim injunction, staying the operation of the impugned decision to retrench 297 workers ought, or ought not, to be granted.

24. Tested on the touchstone of the above judicial authorities which define the expression '*prima facie* case', and guided by the principles contained in ***Dalpat Kumar (supra)***, I am of the opinion that the submissions of Mr. Gonsalves do make out a *prima facie* case, and also satisfy the requisite indicia for grant of interlocutory injunction.

25. I may at once observe that, of the three criteria which are required to be fulfilled for grant of injunction, the facts of the present case clearly satisfy the criteria relating to balance of convenience and irreparable loss. The 297 workmen, who have been sought to be retrenched by the impugned Notice, have admittedly been working for the respondent since long – on the respondent's own showing, at any rate for more than 20 years. Balancing the cases of the petitioners and the respondent, it is obvious that irreparable loss would ensue to the petitioners, rather than to the respondent, were the impugned Notices be allowed to take effect. The 'balance of convenience', if it were to be examined, necessarily requires the Court to balance the convenience – rather, inconvenience – that would ensue to the parties, were injunction to be, or not to be, granted. Viewed thus, the consideration of balance of convenience, coupled with the consideration of irreparable loss, would favour injuncting the respondents from acting on the impugned notice, pending adjudication of the rights of the petitioners in the present writ petition, rather than allowing the notices to be given effect.

26. Having said that, fulfilment of the criteria of balance of convenience and irreparable loss is not sufficient to justify grant of

interim injunction. It would, additionally, have to be examined whether the party seeking injunction, i.e. the petitioners in the present case, have a *prima facie* case for grant of such injunction.

27. Mr. Gonsalves has, essentially, alleged infraction, by the issuance of the impugned Notice, of:

(i) Sections 25-F, 25-G, 25-H, 25-N, 25-O, all contained in Chapter V-B of the ID Act,
(ii) Section 9-A of the ID Act, and
(iii) Section 16A of the Working Journalists Act.

28. Applying the law laid down by the Supreme Court in ***Delhi Gymkhana Club (supra)***, there appears, *prima facie*, to be substance in submission of Mr. Gonsalves's contentions that the various officers of the respondent, put together, constitute an 'establishment', employing more than 100 employees. *Prima facie*, therefore, Chapter V-B of the ID Act would apply, given the activities of PTI, to which Mr. Gonsalves has drawn my attention, and to which reference is made in para 16(i) *(supra)*. The arguments of 'functional integrality', propounded by Mr. Kohli as a response to the said submission of Mr. Gonsalves, *prima facie* does not command immediate acceptance.

29. In Chapter V-B, Mr. Gonsalves invokes Section 25-N, and 25-O of the ID Act. On facts, there has, *prima facie*, been infraction of Section 25-N, which contains a detailed procedure, mandatorily to be followed while retrenching workmen who have worked with the establishment, continuously for one year or more – into which

category the 297 retrenched workmen in the present case, undisputedly fall. Indeed, the respondent has not, on facts, contended that the requirements of Section 25-N stand satisfied, contesting, instead, the very applicability of Chapter V-B of the ID Act to PTI.

30. Similarly, there is also, *prima facie*, infraction of Section 25-O of the ID Act, as two departments of PTI, namely the transmission and attender departments, undisputedly, stand closed, and such closure has been effected without following the procedure contemplated by Section 25-O.

31. Similarly, apropos Section 9A of the ID Act, the attempt of Mr. Mata, to escape the rigor of the said provision, by contending that Serial No. 11 of the fourth Schedule to the said Act has no application, because 'retrenchment of workmen' is specifically referred to, in Serial No. 10 thereof, also does not commend immediate acceptance. If Serial No. 10 of the fourth Schedule, refers to 'retrenchment of workmen', Serial No. 11 refers *inter alia*, to 'reduction ..... in the number of persons employed .....in occupation or process or department or shift'. As such, the impugned action of the respondent, in retrenching the 297 workmen, would *prima facie* attract both Serial No. 10 and Serial No.11 of the fourth Schedule of the ID Act. Similarly, the material, on which Mr. Gonsalves has relied, also indicates that the retrenchment of the 297 workmen was related to 'rationalization, standardisation or improvement of plan or technique'. The reliance, by Mr. Gonsalves, in this context, on the definitions of 'rationalization' and 'technique', as contained in the dictionary, is

also, *prima facie* well taken, inasmuch as, 'rationalization' is defined as 'to make (a company or industry) more efficient *by dispensing with superfluous personnel or equipment*' and 'technique' is defined as 'a way of carrying out a particular task' or 'a procedure that is effective in achieving an aim'.

32. The submission, of Mr. Gonsalves, that the impugned Notice violates Section 9A of the ID Act, too, therefore, merits acceptance, *prima facie.*

33. Insofar as the submission relating to Section 16A of the Working Journalists Act is concerned, I do not intend to enter into the said issue at this juncture as the parties have adopted rival stands and, without further hearing and deliberation in detail, it is not possible to opine, even *prima facie*, on the merits of either stand.

34. In any event, the above findings are sufficient to make out a *prima facie* case which, coupled with the considerations of balance of convenience and irreparable loss, suffice to make out a case for grant of interim injunction in the present matter.

35. Before parting with this order, I may also deal with the preliminary objection, of Mr. Mata, regarding maintainability of the writ petition. The reliance, by Mr. Mata, on the order of this Court, in ***Sarwam Kumar v. PTI (supra),*** is hardly sufficient to warrant dismissal of the writ petition as not maintainable. In the first place, the order in ***Sarwam Kumar v. PTI (supra)*** is clearly an order passed

on the request, of the counsel for the petitioner, in that case, to withdraw the petition with liberty to file alternate appropriate proceedings. A reading of the order does not disclose any application of mind, by the Court, even *prima facie*, to the maintainability of the writ petition. All that is stated is that PTI is not a 'state' within the meaning of Article 12 of the Constitution of India. To that, Mr. Gonsalves submits, and rightly, there can be no cavil. The law, however, is well settled, to the effect that the reach of Article 226 of the Constitution of India traverses the boundaries of the definition of 'state', as contained in Article 12 thereof. Organisations which may not, *stricto sensu*, be 'state', within the meaning of Article 12, would, nevertheless, be amenable to writ jurisdiction, where they perform public functions. **(Refer *K.K. Saksena v. International Commission on Irrigation and Drainage, (2015) 4 SCC 670*)**

36. The activities carried out by the PTI, in my view, *prima facie* bear public character, and it cannot be said, therefore, that PTI is not amenable to the jurisdiction of this Court, under Article 226 of the Constitution of India.

37. The other ground on which Mr. Mata, would seek dismissal of the present writ petition as non-maintainable is the availability of alternate remedy. Mr. Mata seeks, in this regard, to refer to the representation, made by the petitioners. An alternate remedy is one which bears statutory sanction and is, moreover, equal in efficacy, to the remedy available under Article 226 of the Constitution of India. Every alternate remedy is not a proscription to the invocation of writ

jurisdiction. Only such alternate remedies, which are equally efficacious, could justify dismissal of a writ petition, as not maintainable, owing to the existence and availability thereof. That apart, even if an equally and alternate efficacious remedy is available, the jurisdiction of a writ court, under Article 226 of the Constitution of India, does not *ipso facto* could stand effaced, as the bar of 'alternate remedy' is a self imposed restriction, the imposition of which would depend on the facts of the case and the urgency of the relief sought.

38. *Prima facie*, therefore, I am of the opinion that the petitioners cannot be non-suited, on the ground of availability of any equally efficacious alternate remedy.

39. Clearly therefore, there is a *prima facie* case, warranting consideration of the dispute on merits. The submissions of Mr. Gonsalves cannot be said to be without substance and, *prima facie*, merit acceptance at first glance, subject, of course, to detailed adjudication of the controversy.

40. In view of the fact that there is, therefore, a *prima facie* case, in favour of the petitioners, and as the considerations of balance of convenience and irreparable loss would also fructify grant of injunction as prayed for, I am of the view that, pending disposal of the present writ petitions, the operation of the impugned Notice dated 29th September, 2018, as well as the individual Notices, issued to the 297

workmen who are sought to be retrenched thereby, deserve to be stayed, pending disposal of the writ petitions.

40. The applications for *ad interim* injunction stand allowed accordingly.

Copy of this order be given *dasti* under the signatures of the Court Master.

C. HARI SHANKAR, J.

NOVEMBER 27, 2018/HJ