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lpa-159-12 & c.a.122-12

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
APPELLATE SIDE CIVIL JURISDICTION
LETTERS PATENT APPEAL NO.159 OF 2012
WITH
CIVIL APPLICATION NO.221 OF 2012
IN
WRIT PETITION NO.6004 OF 2011
WITH'
CIVIL APPLICATION NO.2323 OF 2011**

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Mr.Dattatraya Ganpat Gaikwad & Ors. ..Appellants

Versus

Sunita Devi Singhaniya Hospital and
Medical Research Centre, Thane. ..Respondent

Mr. Nitin Kulkarni with Mr.Avinash Ram Belge, for the Appellants.
Mrs. Meena Doshi, for the respondent.

**CORAM: MOHIT S. SHAH, C.J. &
N.M. JAMDAR, J.**

DATE : 25 September 2012.

ORAL ORDER (PER CHIEF JUSTICE):

This appeal under Clause 15 of the Letters Patent is directed against the judgment dated 9 November 2011 of the learned Single Judge of this Court dismissing the appellants' Writ Petition challenging the award passed by the Industrial Tribunal at Thane rejecting the Reference (IT) No.37 of 2003 made at the instance of the Shramik Sena Workers Union of which the appellants claim to be the members.

2. The Shramik Sena Workers Union had contended that the appellants were workmen employed by the respondent employer and that the appellants were engaged in the activities of laundry, canteen and other departments of the hospital which were being run by the aid of the power, where more than 10 workmen were employed in each Department. The Industrial Tribunal by the impugned judgment held

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that the workmen were already paid closure compensation in accordance with law. As regards the alleged liability of the respondent to obtain prior approval of the Government for closure of the hospital, the Tribunal held that Chapter VB of the Industrial Disputes Act, 1947 was not applicable to the respondent hospital as it was not an industrial establishment as defined by Section 25-L(a)(i) of the Industrial Disputes Act read with Section 2(m) of the Factories Act, 1948. The Tribunal held that the hospital was required to be closed down on account of the violent attack and destruction of the hospital in the year 2001. The Tribunal held that the closure was beyond the control of the hospital management and, therefore, the demand made by the workmen and the reference were not sustainable. As regards the contention that the closure was in violation of Section 25-O and N of Chapter VB of the Industrial Disputes Act, the Tribunal gave a finding that the Union had failed to prove that any manufacturing process was going on in the hospital. The Tribunal further gave a finding that there was no question of reopening the hospital and that it was not possible to grant the relief for revoking the closure notice dated 30 October 2001 and allowing the workers to report for duty.

3. The learned Single Judge of this Court has dismissed the petition after holding that it cannot be said that the respondent hospital satisfied the requirement of Section 25-L(a) of the Industrial Disputes Act, 1947 read with the definition of factory under the Factories Act.

4. The learned counsel for the appellant-workmen has submitted that when the Tribunal has already given a finding that power was being used in departments like laundry, x-ray and centralised air conditioning plants for maintaining electric generator, where more than 10 workmen were employed, the Tribunal ought to have granted the relief prayed for.

5. On the other hand, the learned counsel for the respondent hospital submitted that the very closure of the respondent hospital was challenged in another Reference made at the instance of Kamgar Utkarsha Sabha, a recognised Union. She submitted that in view of the said decision in the complaint filed by Kamgar Utkarsha Sabha being Complaint (ULP) No.517 of 2001, it is not open to the appellants to raise the contention which is already negated by the Industrial Tribunal by judgment dated 14 June 2005.

6. In the alternative, the learned counsel for the respondent management also submitted that no evidence was led on behalf of the Union or the appellants workmen that the requirement of Section 25-L(a) of the Industrial Disputes Act read with Section 2(m) of the Factories Act, 1948 were satisfied. The learned counsel has invited our attention to the oral evidence led on behalf of the Union, for which two witnesses were examined and they were both security guards positioned near the entrance gate of the hospital. It is submitted that the said witnesses could not have the personal knowledge about the number of workmen employed in the different departments like laundry, x-ray, generator plant or centralised air conditioning plant. It is submitted that in the cross examination it was specifically brought out that they were not working inside in any of the department concerned and that they were merely positioned near the entrance gate of the hospital.

7. Having heard the learned counsel for the parties, we find considerable substance in the submission made by the learned counsel for the respondent hospital that the legality of the very closure of the same respondent hospital was challenged in Complaint (ULP) No.517 of 2001 filed by Kamgar Utkarsha Sabha. By judgment dated 14 June 2005 the Industrial Tribunal at Thane dismissed the

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said complaint after giving a finding that the complainant therein was the registered trade union representing the employees employed by the respondent hospital, that the closure of the hospital was on account of the reasons over which the respondent hospital had no control and that the workmen of the respondent hospital were given notice pay as well as closure compensation. In the said judgment the Industrial Tribunal also held that the closure declared by the respondent hospital was legal and was not contrary to provisions of any law.

8. In view of the abovesaid findings in the complaint filed by the representative union, the Industrial Tribunal could not have taken a different view in the complaint filed by another Union, assuming that the complaint at the instance of Shramik Sena was maintainable.

9. We may also note the stand of the respondent management, which is not disputed by the appellants herein, that the hospital has remained closed ever since 2001.

9. In view of the above, we are not inclined to entertain this Appeal. The appeal is, therefore, dismissed.

10. In view of dismissal of the appeal, the Civil Application does not survive and the same is disposed of accordingly.

CHIEF JUSTICE

(N.M. JAMDAR, J.)