2005:BHC-OS:4387

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1495 OF 2002

Anglo-French Drugs & Industries Ltd. ...Petitioner.

Versus

Roche/Anglo-French Employees' Union. ...Respondents.

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Mr. C.U. Singh with Ms.Geetanjali Prabhu i/b. Sanjay Udeshi & Co. for the Petitioner.

Ms.Hutoxi Tavadia for the Respondent.

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CORAM : DR. D.Y. CHANDRACHUD, J.

April 1, 2005.

ORAL JUDGMENT:

This petition is directed against an order of the Industrial Court dated 11th April 2002. The Industrial Court allowed a Revision Application filed by the Union against the order of the Labour Court. The Labour Court held that the Petitioner was involved in an unfair

labour practice in discharging or dismissing the workmen by way of victimization. The Labour Court held that the termination was not bona fide but in colourable exercise of the rights of the employer and in disregard of the principles of natural justice. The Petitioner was directed to reinstate the workmen with 50% back wages. The Industrial Court has in revision, directed reinstatement with full back wages and continuity of service.

2. The Petitioner was established in the then Province of Bombay in 1923. The Petitioner initially carried on the business of import and later, the manufacture of pharmaceutical drugs made on loan-licence basis for Roche Pharmaceutical India Ltd. Sometime in the year 1959 F. Hoffman-La Roche & Co. of Switzerland acquired a majority control over the foreign principal of the Petitioner. On 1st April 1961, Roche Pharmaceutical India Ltd., purchased the Bombay factory of the Petitioner. Thereafter, for the next fifteen years, the Petitioner was engaged in trading and marketing drugs and formulations manufactured at its facility at Prabhadevi, Mumbai.

Sometime in 1976, the Petitioner established a factory at Bangalore for the manufacture of bulk drugs and pharmaceutical formulations. On 1st August 1980, the factory licence at Prabhadevi came to be surrendered, after which it has been stated that no manufacturing activity took place in Mumbai.

3. On 10th December 1984, a notice was issued by the Petitioner to all its employees at Mumbai recording that the audited accounts of the Company showed a loss in 1983 consequent upon which it was necessary for the management to take immediate remedial measures. The management, it was stated, had decided to economize and streamline the expenses of the Company to eliminate the duplication of certain activities. For the first time, it was decided to centralise all the activities of the Company at one location by shifting them to Bangalore where the Company already had manufacturing and distribution facilities. The management, therefore, communicated that the workmen employed in the establishment of Mumbai would be shifted to the establishment at Bangalore in a phased manner

commencing from March 1985. Consequently all the workmen at the establishments at Parel and Worli were to stand transferred to Bangalore from a date which was to be notified independently. The workmen were informed that on transfer, they would continue to be governed by the existing terms and conditions of service. The Company, it may be noted, had establishments at the material time in Mumbai at Worli and Parel. The Administration, Personnel, Finance and Distribution Departments and Material Stores were situated at the relevant time at Parel. The Marketing and Procurement Departments were situated at Rajan House, Worli. On 21st December 1984 and 16th January 1985, individual letters of transfer were addressed to the workmen informing them of their relocation to the Bangalore Office of the Company. The workmen were informed that in the event that they did not accept transfer, the management would proceed to take appropriate action in accordance with law and would consider the payment of compensation if the workmen left service of the Company voluntarily.

4. On 8th January 1985, a strike notice was issued by the Respondent Union intimating the management that a strike would commence on and from 22nd January 1985. According to the management, an immediate flash strike was, however, launched from 8th January 1985. On 4th February 1985, the Union raised demands upon the management seeking the withdrawal of the letters of transfer and stating that there was no question of any workman complying with the orders of the transfer. This demand was admitted in conciliation on 28th February 1985. On 6th March 1985, a further letter of demand was issued by the Union demanding that the services of the employees affected by the notice of transfer dated 10th December 1984 should not be terminated by way of discharge or dismissal, retrenchment, closure or shifting as a result of or in consequence of or in any way in connection with or relating to the dispute concerning the notice of transfer that was issued by the management. The additional demand was admitted in conciliation on 12th March 1985.

5. On 4th April 1985, a notice of closure was issued by the

Petitioner of its Bombay establishments under Section 25 FFA of the Industrial Disputes Act, 1947. The notice of closure recited that the closure would be effective from 14th June 1985. The notice recited that 92 workmen were engaged in the establishments at Mumbai which were sought to be closed. The reason for the intended closure, it was stated, was that the Company had a manufacturing unit and other supportive functional departments at Bangalore and only two offices and stores in Mumbai. Hence with a view to achieving economic viability by reducing duplication of activities; for better coordination between the manufacturing and other departments and as a measure of business expediency and prudence the Company decided to consolidate and centralize all activities in one location at Bangalore.

6. The Deputy Commissioner of Labour issued a notice to show cause to the Petitioner on 6th May 1985 to explain why action should not be taken for an alleged breach of the provisions of Section 33(1) of the Industrial Disputes Act, 1947. The Petitioner submitted a

reply to the notice on 24th May 1985. In the meantime, on 10th May 1985, the strike that was commenced by the Union on 8th January 1985 was withdrawn and the management was called upon to allow all the striking workmen to resume duty. In its reply, the management stated that the workmen who were engaged in the establishments at Mumbai had already been transferred to Bangalore and that the activities of the aforesaid departments were shifted to Bangalore consequent upon which it would not be possible for the Company to provide work in the establishments at Parel and Worli.

7. A Petition was filed before this Court by the Respondent (Writ Petition 905 of 1985) in order to challenge the proposed closure, inter alia on the ground that there was a violation of the provisions of Section 33 of the Industrial Disputes Act, 1947. The petition came to be dismissed by a judgment and order dated 1st July 1985 of a Learned Single Judge on grounds of maintainability. The matter was carried in appeal and the order of the Learned Single Judge was confirmed on 13th January 1986. In the meantime, on 3rd July 1985,

after the dismissal of the petition by the Single Judge, a closure of the Bombay establishments came to be effected and the services of the workmen were terminated by orders dated 3rd July 1985. The letters of termination provided that consequent upon the shifting of the activities of the Company at Bangalore, the establishments at Bombay shall stand closed and activities discontinued permanently with effect from the date of the letters. Each of the workmen, it is admitted, was paid closure compensation and there was compliance with Section 25FFA of the Act. A circular was issued by the Company on 3rd July 1985 to its dealers, distributors and other business associates about the change of its location to Bangalore. On 19th July 1985 and 22nd July 1985 notices were published in the daily editions of the **Times of India** and the **Indian Express** in regard to the shifting of the activities to Bangalore.

8. On 27th December 1985, a complaint of unfair labour practice under Items 1(a), (b), (d) and (f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair

Labour Practices Act, 1971, was filed by the Respondent-Union. On 28th January 1986, the Conciliation Officer recorded a failure of conciliation. The management filed its Written Statement in the complaint on 30th January 1986. On 20th December 1990, this Court quashed and set aside the criminal complaint filed by the Deputy Commissioner of Labour for a breach of Section 33(1).

9. Evidence was recorded in the course of the complaint, both on behalf of the management and on behalf of the Union. After the Labour Court had decided upon the complaint, there were orders of remand by the Industrial Court. It is not necessary to burden the judgment with a copious reference to each of those orders.

10. At this stage, it may be noted that twelve individual workmen had in 1987 challenged their termination in a separate complaint (Complaint (ULP) 353 of 1987) before the Industrial Court. On 4th July 1994, the Industrial Court rejected that complaint. The order of the Industrial Court was thereupon challenged before this

Court in a Petition under Article 226 which was dismissed by a judgment and order dated 10th April 1995 of a Learned Single Judge of this Court, Mr.Justice S.H. Kapadia (as the Learned Judge then was). Before the Learned Single Judge an attempt was made to establish that the provisions of Chapter V-B of the Industrial Disputes Act, 1947 would apply. The Learned Single Judge noted that it was not in dispute that 92 workmen were employed in the establishment at Mumbai. The Court noted that the evidence on record brought forth by the management showed that the Industrial Court rightly proceeded on the basis that 92 persons had been engaged. The Petition was accordingly dismissed.

11. By a judgment and order dated 20th November 2001, the Labour Court granted reinstatement to the workmen together with 50% back wages. The order of the Labour Court was carried in revision both by the employer and by the Union. The Labour Court allowed the revision filed by the Union and granted full back wages together with reinstatement. The Industrial Court has basically

arrived at three findings. The first is that the termination of the services of the workmen is illegal since the employer acted in breach of the provisions of Section 33(1) of the the Industrial Disputes Act, 1947, by resorting to termination during the pendency of conciliation proceedings. The second finding is that since termination took place during the pendency of conciliation proceedings, the employer was guilty of victimization; that the termination was not bona fide but in colourable exercise of the right of the employer and in disregard of the principles of natural justice. The third finding was based on an advertisement which was published in a daily newspaper on 6th September 2001 by which the employer had convened interviews for medical representatives at the headquarters at Mumbai. The Court held that this showed that some work of the Company was still going on to some extent at Mumbai. Hence, the Court came to the conclusion that the closure was not justified.

12. The findings which have been arrived at in the judgment of the Labour Court, which has been confirmed in revision by the

Industrial Court (subject to the enhancement of wages), have been assailed on behalf of the management in these proceedings under Article 226. Counsel appearing on behalf of the management submits that (i) The finding in regard to the breach of the provisions of Section 33 is ex-facie contrary to the law laid down by the Supreme Court in several decisions; (ii) What Sections 33(1) (a) and Section 33(2)(a) proscribe is the alteration of conditions of service applicable to the workmen immediately before the commencement inter alia of conciliation proceedings; (iii) The termination of service in the present case was consequent upon closure and once it is established on the basis of evidence that there was a closure, the provisions of Section 33 would not stand attracted to a termination which was in accordance with the fundamental right of the employer to close down, so long as the closure was in compliance with the statutory provisions of Section 25FFA of the Industrial Disputes Act, 1947; (iv) The witness who deposed on behalf of the Union specifically admitted the factum of closure of the departments in Mumbai. Once the factum of closure was admitted, this could not have been counteracted by a

stray reference to an advertisement published in the newspapers for the recruitment of medical representatives in the year 2001; (v) The closure was never challenged by raising an industrial dispute or by adopting appropriate proceedings before the Industrial Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971; (vi) The workmen had also not taken any steps to challenge the orders of transfer. The termination of service in the present case was brought about by a closure of the departments in which the workmen were engaged in Mumbai and that being the position, the findings which are arrived at by the Labour Court and by the Industrial Court are perverse and warrant interference under Article 226.

13. On behalf of the Respondent, Counsel urged that (i) There was no provision for transfer of service in the contract of employment with the workmen. The establishment at Bangalore came into existence in 1976 and that therefore, those appointed prior to 1976 could not in any event have been transferred as a condition of

service.; (ii) The closure of the establishment was a punitive action for refusal to accept transfer and must be read and treated as a termination for misconduct; (iii) No disciplinary enquiry was adopted by the employer against the workmen for disobeying orders of transfer; (iv) The shifting of departments had begun even prior to the effective date of closure which was 3rd July 1985 and the reasons which were advanced on behalf of the management would amount to rationlisation within the meaning of Section 9-A of the Industrial Disputes Act, 1947 read with the Fourth Schedule; and (vi) Evidence of the management's witness would show that the shifting to Bangalore was malafide, because there was no place for absorbing all the 92 workmen in Mumbai in the establishment at Bangalore. Consequently, it was urged that no case was made out for the interference of this Court under Article 226.

14. The first issue which arises before the Court is, the determination of the question as to whether there was a breach on the part of the management of the provisions of Section 33 of the

Industrial Disputes Act, 1947. Sub sections 1 and 2 of Section 33 provide as follows:

> "33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.- (1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall-
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> (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or
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> (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.
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> (2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute (or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman -
>
> (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

15. The embargo in sub-section (1) and sub-section (2) of Section 33 is on the employer taking certain measures during the pendency of any conciliation proceedings or proceedings before an Arbitrator, Labour Court, Tribunal or National Tribunal in respect of an industrial dispute. Under clause (a) of sub-section (1) of Section 33, an employer shall not, in regard to any matter connected with the industrial dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings. Under clause (b) of sub-section (1), the employer is precluded from discharging or punishing whether by dismissal or otherwise, any workman concerned in such dispute for any misconduct connected with the dispute. The

embargo, can be lifted if the employer obtains the express permission in writing of the authority before which the proceeding is pending. The provisions of clauses (a) and (b) of sub-section (1) of Section 33 would show that they apply in respect of matters which are connected with the industrial dispute. In contrast, sub-section (2) of Section 33 deals with action taken by an employer in matters not connected with the industrial dispute. Clauses (a) and (b) of sub-section (2) are broadly similar to clauses (a) and (b) of sub-section (1), but in so far as is material for the present purposes, sub-section (2) empowers the employer to take such action as is adverted to in clauses (a) and (b) subject to the fulfillment of certain conditions. Those conditions, which are listed in the proviso are that the employee has to be paid wages for one month and an application for approval has to be filed with the authority before whom the proceeding is pending.

16. The settled principle of law is that the provisions of Section 33(1) and (2) are mandatory. This is reiterated in the decision of a Constitution Bench of the Supreme Court in **Jaipur Zila Sahakari**

Bhoomi Vikas Bank Ltd. v. Shri ram Gopal Sharma, 2002(1) CLR 789. The point which arises for consideration in the present case is as to whether the provisions of Section 33 would stand attracted to a case where the termination of service is brought about by a closure of the establishment. This point is no longer res integra. It has been dealt with as far back as in 1957 in a judgment of the Constitution Bench of the Supreme Court in **Banaras Ice Factory Ltd. vs. Their Workmen,** 1957 I LLJ 253. The Supreme Court considered in that case, the provisions of Sections 22 and 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950 which were *pari materia*. In clause (a) of Section 22 of the Act, it was provided that during the period of thirty days allowed for the filing of an appeal or during the pendency of any appeal under the Act, no employer shall alter, to the prejudice of the workmen concerned in such appeal, conditions of service applicable to them immediately before the filing of such appeal. Similarly, clause (b) provided that the employer shall not during the aforesaid period discharge or punish whether by way of dismissal or otherwise, any workmen concerned in such appeal, save with the express permission

in writing of the Appellate Tribunal. Clauses (a) and (b) of Section 22 were thus *pari materia* to clauses (a) and (b) of sub-sections (1) and (2) of Section 33 of the Industrial Disputes Act, 1947. The Supreme Court held that clause (a) applies to a running or existing industry only; when the industry itself ceases to exist, it is otiose to talk of an alteration of the conditions of service of the workmen to their prejudice, because their services have come to an end. In other words, the alteration referred to in clause (a) must be an alteration in the conditions of service to the prejudice of the workmen concerned in an existing and running industry. While referring to the underlying objects of the statutory provision, the Supreme Court held thus:

> "Those objects are capable of fulfillment in a running or continuing industry only, and not in a dead industry. There is hardly any occasion for praying for permission to lift the ban imposed by S.22, when the employer has the right to close his business and bona fide does so, with the result that the industry itself ceases to exist. If there is no real closure but a mere pretence of a closure or it is mala fide, there is no closure in the eye of law and the workmen can raise an industrial dispute and may even complain under S.23 of the Act."

These observations in the decision in **Banaras Ice Factory** were explained in the subsequent decision in **Tea Districts Labour Association, Calcutta vs. Ex-employees of Tea Districts Labour Associations**, AIR 1960 SC 815. Mr.Justice P.B. Gajendragadkar (as the Learned Chief Justice then was) held that the observations in **Banaras Ice Factory** do not lay down that wherever a closure is mala fide it must be deemed to be unreal and non-existent. The Supreme Court held thus :

> "What this Court has said is that in cases of pretence of closure no closure in fact has taken place and for the purpose of S.23 of the Act with which the Court was dealing a mala fide closure may conceivably be treated as falling in the same class as a pretence of closure. But in the present case the fact are not in dispute. There has been a closure and the agencies have been closed and their business has been wound up. If it is found that the closure was not bona fide the consequences would be the liability of the employer to pay the higher compensation under S.25-FFF of the the Industrial Disputes Act, 1947. But it is difficult to see how when the two agencies have in fact been closed the finding about mala fides can justify the conclusion that the said two agencies should be deemed to continue and how the award can make an order on that basis." (emphasis supplied).

The provisions of Section 33 of the Industrial Disputes Act, 1947 were

revisited in a judgment of two Learned Judges of the Supreme Court in **National Engineering Industries Ltd. v. Hanuman,** AIR 1968 SC 33. The Standing Order in that case laid down that a workman would lose his appointment unless he returned within eight days of the expiry of leave and furnished an explanation to the satisfaction of the authority. The Tribunal had in a decision which was cited before the Supreme Court, held that where a Standing Order does provide for automatic termination of service, Section 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950 would not apply. The Supreme Court held that the decision of the Tribunal laid down the correct position in law and that the position would be the same under Section 33 of the Industrial Disputes Act, 1947. Hence, if the services of a workman would stand terminated automatically under a Standing Order in a given eventuality, there was no question in such a case of the contravention of Section 33 of the Act. In **Kalinga Tubes Ltd. V.Their Workmen,** AIR 1969 SC 90, a Bench of three Learned Judges of the Supreme Court held that the closure has to be genuine and bona fide in the sense that it should be a closure in fact,

and not a mere pretence of closure; the motive behind the closure was immaterial and what was required to be scrutinized was whether the closure was in fact, effective.

17. From the evidence which has emerged on the record, the basic fact which has been established is the closure of several departments of the Company in its Mumbai establishment with effect from 3rd July 1985. The factum of closure stands admitted in the evidence of the two witnesses who deposed on behalf of the Union. The evidence of the first witness was to the effect that the Administration, Personnel and Distribution Departments and the Material stores were situated at Parel establishment. The witness himself was working in the Finance Department. The Marketing and the Material Procurement Departments were situated at Rajan House, Worli. In the course of his cross-examination, the witness made the following admissions :

> "It is correct to say after 3rd July, 1985 no any employee was working in the Finance Deptt. I am not aware whether Finance Manager was working at Bombay after 3rd July

> 1985 Administration, Personnel, Distributions Department and Material Stores were closed after 3rd of July 1985. Similarly Marketing and Materials procurement department were also closed from 3rd of July 1985."

The second witness who deposed on behalf of the Union, similarly accepted the factum of closure of the Marketing Department in which he had been engaged as a Junior Clerk. :

> "It is true that the Marketing Deptt. Is shifted to Bangalore. It is also true that the marketing activities at Bombay is closed. All the activities which were carried out in the Rajan House were closed, w. e. f. 3-7-1985. It is true that in pursuance of the closure notice our services were terminated w. e. f. 3-7-1985."

18. On the face of this clear evidence, it was impossible for the Labour Court to come to any conclusion other than that the closure of departments in the Mumbai establishments stood established as on 3rd July 1985. The Labour Court placed reliance on a stray advertisement which had appeared in the newspapers on 6th September 2001 for the recruitment of Medical Representatives for which interviews were to be held at the Head Office at Mumbai. The

Labour Court inferred therefrom that this shows that the working of the Company was still going on “to some extent” at Mumbai. Purely on the basis of this, the Labour Court concluded that the closure was not justified. With respect, the reasoning of the Labour Court suppers from a clear perversity. For one thing it was not the case of the Company that all the activities at Mumbai had been closed. The witness who deposed on behalf of the management stated that the registered office of the Company continued to remain in Mumbai. Under Section 2(cc) of the Industrial Disputes Act, 1947 “closure” is defined to mean the permanent closing down of a place of employment or part thereof. Second, the workmen who deposed in evidence, squarely admitted that several departments of the Company had been closed at Mumbai and on and from 3rd July 1985, no employee had been engaged in the Finance, Administration, Personnel and Distribution Departments and that the Material Stores were closed together with the Marketing and Material Procurement Departments. That being the position, in the face of the clear evidence on the record, there was neither any warrant nor any

justification for the Labour Court to hold that either that there was no closure or that the closure was not justified. The law on the subject to which a reference has already been made earlier, is absolutely clear. What Section 33(1)(a) of the Industrial Disputes Act, 1947 proscribes is the alteration to the prejudice of the workmen concerned in the industrial dispute, of the conditions of service applicable to them immediately before the commencement of such proceedings. The closure of a place of employment or a part thereof in accordance with statutory provisions which recognise and regulate the right of the employer cannot possibly be regarded as an alteration in the conditions of service applicable immediately before the commencement of the proceedings. The decision in **Banaras Ice Factory** (supra) is an authority for the proposition that an alteration of the conditions of service presumes the existence of a live industry and where a closure has taken place there is in such a case, no question of the conditions of service being altered. This would equally apply to a closure of a part of a place of employment in view of the provisions of Section 2(cc). **Kalinga Tubes** laid down the principle

that it is the factum of closure and not the motive for the closure that is relevant. What the decision in **Tea Districts Labour Association** emphasies is that the Court must have regard to whether there is a closure in fact and not a mere presence of closure. Finally, it may be material to advert to the decision of the Supreme Court in **L. Robert D' souza Vs. Executive Engineer, Southern Railway, (**1982) 1 SCC 645, where the Supreme Court held that when a workman is retrenched, it cannot be said that a change in his conditions of service is effected. In the present case, therefore, once the factum of closure has been established, as it was in view of the clear admissions of the workmen themselves, there was no occasion for the Industrial or Labour Courts to hold that the dispensation of the services of the workmen under and in pursuance of the closure amounted to an alteration of their conditions of service within the meaning of Section 33 of the Industrial Disputes Act, 1947.

19. Counsel appearing on behalf of the Respondents placed reliance on the judgment of the Supreme Court in **Kundan Sugar**

Mills vs. Ziauddin, (1960) 18 Factories Journal Reports 108 in support of the proposition that where there is no express agreement between the employer and workmen providing for a right of transfer, it cannot be held that an employer has the inherent or implied right to transfer his workmen where he chooses to start a business subsequent to the date of employment, especially when the new business is treated as a different entity and is governed by different service conditions. The principle which was laid down in the aforesaid decision will, however, not advance the case of the Respondent because the challenge in the course of the proceedings before the Labour Court was a challenge to the termination of service in a complaint under Item (1) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The orders of transfer had never been challenged. The contention of Counsel was that the employer ought to have convened a disciplinary enquiry since the workmen failed to comply with the orders of transfer, but instead of doing this, a closure of the establishment was resorted to which was a punitive measure

against the refusal of the workmen to accept the transfer. There is no basis in the aforesaid submission. The employer was entitled to resort to the action of closure so long as the action was consistent with the statutory provisions which regulated that right. Notice was given by the employer on 4th April 1985 and the establishments at Mumbai came to be closed with effect from 3rd July 1985 after the Learned Single Judge of this Court dismissed on 1st July 1985 a petition by the Union challenging the closure notice. The Petition was dismissed on the ground of maintainability. But what is material in the present case is that despite a failure report, the closure was never challenged either by raising an industrial dispute or by taking recourse to the remedies before the Industrial Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. There was an individual challenge by 12 workmen which failed both in the Industrial Court and in this Court. Essentially what was challenged was a consequence which arose upon the closure viz., the termination of service that was brought about by the closure. Once there was a closure in fact, and the

closure was brought about by due compliance with the relevant provisions of law, the Labour Court clearly transgressed its jurisdiction in arriving at a finding which it did. The Labour Court arrived at the conclusion of victimization based on the evidence of management's witness in para 10 of the notes of cross-examination. The witness stated therein that on 10th May 1985, the workers had offered themselves for work and it was true that they were not allowed to report for duty at Mumbai as by that time the activities of the Bombay establishments had been shifted to Bangalore. The wages of the staff in the Administration and Personnel Departments were paid as the activities of those departments had not been completely shifted. This part of the evidence does not establish a case of victimization. The workmen had issued a strike notice on 8th January 1985 and had thereafter proceeded on strike. The management issued a notice of closure under Section 25FFA on 4th April 1985 and it is thereafter on 10th May 1985 that the strike was withdrawn and the workers sought to join duties. At that stage, the process of shifting the departments of the Company to the establishment at Bangalore had begun since

the work of shifting was carried out phasewise. As the evidence shows the departments were closed on 3rd July 1985. That being the position, the finding of victimization is not borne out by the evidence on record and is clearly based on no evidence at all.

20. For all these reasons, I am of the view that the orders of the Labour Court and of the Industrial Court are unsustainable and that the Petition has to be allowed. The petition is allowed in terms of prayer clause (a). There shall be no order as to costs.

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