

PETITIONER:
THE ANDHRA PRABHA LTD. & ORS.

Vs.

RESPONDENT:
SECRETARY, MADRAS UNION OF JOURNALISTS & ORS.

DATE OF JUDGMENT:
04/05/1967

BENCH:
MITTER, G.K.
BENCH:
MITTER, G.K.
WANCHOO, K.N. (CJ)

CITATION:
1967 AIR 1869 1967 SCR (3) 901
CITATOR INFO :
R 1968 SC1002 (8)
R 1969 SC 90 (8)
RF 1970 SC1960 (3)

ACT:
Industrial Disputes-Company publishing newspapers-Sale of
rights of publishing newspapers to other companies-When
amounts to closure.

HEADNOTE:

On April 13, 1959, it was resolved by the Board of Directors of the Express Newspapers (P) Ltd. that the company should sell the proprietary rights of printing and publishing its daily and weekly newspapers to the Indian Express (Madurai) (P) Ltd., Madurai, and to Andhra Prabha (P) Ltd., Vijayawada. In the purchaser-companies, the chairman of the Board of Directors of the vendor-company and members of his family held 4000 out of 4200 shares. On April 22, 1959 there was an agreement between Andhra Prabha (P) Ltd. and the Express Newspapers whereby it was agreed that all the employees employed by the vendor-company in connection with the publications purchased by the purchaser-company would be taken into the service of the purchaser-company without any change in their conditions of service. The workers of the Express Newspapers who were protesting against the sale to the company at Vijayawada on the ground that at an earlier stage assurance had been given that the publication of the papers would not be shifted from Madras to Vijayawada, were informed of the sale to and the agreement with the company at Vijayawada. They were also informed that the services of those workers who were not willing to join the purchaser-company at Vijayawada would be terminated on the usual terms as the Express Newspapers had no work to offer to them. The workers then gave a notice of strike and struck work from April 27, 1959. On April 29, 1959 the management of Express Newspapers gave a notice of closure and closed the company, and on the next day, the Government of Madras referred to the Industrial Tribunal the two questions namely, (1) whether the transfer of the publication of the news paper and weekly to Vijayawada was justified, and (2) whether the strike and lock-out were justified. Though the company closed its undertaking of publishing the newspapers

and weeklies on April 29 as it had very valuable property it retained some persons, one of whom was a reporter. to look after the property, and the teleprinter service in Madras continued to be used till the end of October 1959 by the Madurai and Vijayawada companies.

The Tribunal held that there was no evidence of the alleged assurance not to shift to Vijayawada and that the strike was unwarranted. The Tribunal however held, that the suspension of business at the inception, that is on April 29 was a lock out, but became a genuine closure only by the end of October 1959.

The workers as well as the Management appealed to this Court.

HELD : There was a genuine closure even on April 29 and the scheme of dispersal of the original undertaking was not mala fide. Ever) if there had been no strike there would 'have been a closure to give effect to the scheme and the strike only precipitated matters. [912C-D]

The new company which was an independent legal entity could not be called a daughter company or benemidar of the older Organisation,
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merely because, there was in both companies a person or family who could guide the destinies of the two companies. Further, the fact that there was a reporter among the persons retained to look after the property could not lead to the inference that the company did not close down its business but kept it going to take it up whenever it wanted. Similarly, the failure to inform the competent authority under the Employers' Provident Fund Act of the termination of the employment of 700 workers was an omission, but that could not mean that the workers continued to be in the service of the company. With regard to the teleprinter service, it had been paid for upto October and the fact that the Madurai and Vijayawada companies used it till the end of October, 1959 would not by itself or in conjunction with other circumstances of the case justify the conclusion that the company retained the teleprinter service for its own use. [94 B-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1078 and 1079 of 1965 and 9 of 1966.

Appeals by special leave from the Award dated July 31, 1963 of the Special Industrial Tribunal, Madras in Industrial Dispute No. 1 of 1962.

N.C. Chatterjee and R. Ganapathy Iyer, for the appellants (in C.As. Nos. 1078 and 1079 of 1965) and the respondents (in C.A. No. 9 of 1966).

S.Mohan Kumarainangalam, M. K. Ramamurthi, Shyamala pappu, Nagaratnam and Madan Mohan, for the appellant (in C.A. No. 9 of 1966) and respondents Nos. 1 and 2 (in C.As. Nos. 1078 and 1079 of 1965).

R.Thiagarajan, for respondent No. 3 (in C.A. No. 9 of 1966).

The Judgement of the Court was delivered by Mitter, J. These are three appeals from an award dated July 31, 1963 made by the Special Industrial Tribunal, Madras. At the time when the reference was made, the parties to this dispute were on the one hand, the workers and the staff and the working journalists employed under the Express Newspapers (P) Ltd. and on the other hand, the private limited company called the Express Newspapers (P) Ltd. The

latter, hereinafter referred to as the Company, owned and published newspapers and periodicals from Madras. These may be split into three groups. The first group comprised of the Indian Express (daily), Sunday Standard (Weekly) and Screen (Weekly) : all these were published in English. The second group consisted of Andhra Prabha (daily) and the Andhra Prabha Illustrated Weekly (weekly) : these were published in Telugu language. The third group consisted of two papers Dinamani (daily) and Dinamani Kadir (Weekly) : these were in Tamil language. (One Ram nath Goenka was the Chairman of the Board of Directors of the company incorporated in 1946. He was also one of the directors of Express News paper

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Ltd. which owned and controlled a press and paper at Delhi. The group of newspapers at Madras does not seem to have prospered much before 1956. It started making sizable profits from that year.

The reference which was made by the Government of Madras on April 30, 1959 under S. 10(1) (d) of the Industrial Disputes Act contained two questions :

(1) Whether the transfer of the publication of 'Andhra Prabha' and 'Andhra Prabha Illustrated Weekly' to 'Andhra Prabha (P) Ltd.', in Vijayawada is justified and to what relief the workers and the working journalists are entitled ?

(2) Whether the strike of the workers and working journalists from 27th April, 1959 and the consequent lockout by the management of the Express Newspapers (P) Ltd. are justified and to what relief the workers are entitled ?

This was later transferred by an order dated November 3, 1962 to the Special Industrial Tribunal which has made the award. Before that date however the matter had come up to this Court in appeal from Writ Petitions filed in the Madras High Court on the 1st May, 1959 and 5th May, 1959 challenging the validity of the order made under S. 10(3) and the jurisdiction of the Industrial Tribunal to adjudicate upon the dispute on the ground that there was no lockout but a closure of the company's business. This Court in the Management of Express News papers Ltd. v. Workers and Staff (1) held that the preliminary enquiry as to jurisdiction should be made by the Industrial Tribunal itself taking into account all facts which are relevant and material.

On the application of the workmen for addition of parties, the Andhra Prabha Ltd., the Indian Express Newspapers (Madurai) Ltd. and the Express Newspapers Ltd., a public company were added as parties before the Special Tribunal.

As the dispute which the Special Tribunal had to adjudicate upon was not the first of the kind between the company and its workers, it is necessary to take note of a few facts which are to be found in the judgment of this Court dated August 2, 1962 mentioned above. This narration, according to the Court in the former judgment, forms the background of the present dispute between the parties. In March 1957, a dispute arose between the parties on certain points including bonus. This was referred for industrial adjudication ending in an award in 1957. In March 1958 the company notified its intention to retrench 69 workmen and this led to another dispute which was referred for adjudication. The unions made certain complaints to the State Govern-

(1) [1963] 3 S. C. R. 540.

p.167-14

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ment which led to the intervention by the Home Minister of the State but without any success. On October 30, 1958 the company gave notice to the workmen and working journalists that it was going, to close down its business at Madras with effect from December 1, 1958 on the allegation inter alia that there were persistent labour troubles and indiscipline on the part of labour. The Home Minister again intervened and this time with success. On November 6, 1958 a settlement was arrived at between the Management and the employees and journalists in the presence of the Labour Commissioner of Madras. The terms of agreement were reduced into writing and the only ones which may be noted are:

(1) All the employees retrenched on 30-4-1958 would be reinstated with continuity of service.

(10) In view of the settlement the Management would withdraw the notice of closure and announce the same on the notice board.

The settlement was to be operative for 2 1/2 years. According to the workers, Mr. Goenka gave an assurance on 6-11-1958 that he would not shift the publication of any of the papers mentioned from Madras to Vijayawada during the said period.

On the former occasion, when the matter was before this Court reference was made to this assurance and this Court held that this was a subject which the Industrial court would have to go into. According to the Management it was felt in November 1958 that the Telugu papers should be published from Vijayawada. an additional consideration for the same being the suggestion, of the Press Commission in regard to the diffusion of control of newspapers. Leaving out of consideration the intention of Ram nath Goenka at or about that time, we may proceed to note the events which followed thereafter. On January 17, 1959 notice was given of an extraordinary general meeting of the shareholders of the company to consider certain resolutions. The meeting was actually held on February 11, 1959 and one of the resolutions passed was that the company should cease to carry on business as proprietors of the various newspapers and that in pursuance thereof the company would close or transfer and sell its various publications at Bombay, Madras, Madurai and Delhi to other parties and sell, hire out or otherwise dispose of its printing plant and machinery and equipment and also licence or lease out its premises at various places. Another resolution authorised the directors -to take all steps necessary for the closing or sale and transfer of various publications as they may think fit and at such and on such terms as they might consider best. The

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workers must have got scent of this and the Secretary of the Express Newspapers Employees' Union (hereinafter referred to as the Secretary) addressed a letter to the Chairman of the company on March 31, 1959 to the effect that the employees had come to learn that four units of the rotary machine at Madras had 'been dismantled and removed to Vijayawada with a view to starting an edition of the Andhra Prabha there. Reference was also made to the assurance alleged to have been given before the Home Minister to drop the proposal to shift the Andhra Prabha and a discussion with the addressee was asked for. It appears that there was a reply to this letter on 2nd April which is however not included in the record. On April 13, 1959 the Board of Directors of the company passed certain resolutions. One of them was that

the company would sell and transfer and the Indian Express (Madurai) (P) Ltd. would purchase as a going concern, the proprietary rights of printing and publishing The Madurai edition of the English daily newspaper known as the Indian Express, the Madurai Edition of the English weekly known as the Sunday Standard and the Madurai edition of the Tamil daily known as Dinamani (inclusive of the Sunday edition). Another resolution passed was to the effect that the company would sell and the Andhra Prabha (P) Ltd. Vijayawada would purchase as a going concern the proprietary rights of printing and publishing- Andhra Prabha and Andhra Prabha Illustrated Weekly together with the option to purchase from the company the right to print, edit and publish the English newspaper known as the Sunday Standard for circulation in the State of Andhra Pradesh only on 'terms and conditions set out in the draft agreement. A third resolution was to the effect that the company would sell to the Andhra Prabha (P) -Ltd. Vijayawada the items of machinery set out in the schedule to the draft agreement for a price of Rs. 1,75,000/- on the terms set out in the draft agreement. On April 15, 1959 an agreement was actually entered into between the company and the Andhra Prabha (P) Ltd. to the effect that the vendor had agreed to sell and the purchaser had agreed to buy the goods set out in the schedule thereto as soon as convenient and the price payable would be Rs. 1,75,000/- within one week of the purchaser getting the machinery. On April 20, 1959 the General Secretary of the Madras Union of Journalists wrote to the Director of the company complaining that the writer had not heard in regard to the issue raised in the letter of 31st March. The letter proceeded to record that the journalists had not been told exactly what the Management proposed to do but they had heard that a new company called the Andhra Prabha (P) Ltd. had, been registered at Vijayawada and arrangements were being made to split up the other two Madras papers, namely, the Indian Express and Dinamani into two separate companies. According to the writer, this had created a state of tension. On, the same

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day, the Madras Union of Journalists at a meeting passed a resolution condemning the action of the Management in announcing and effecting the sale of the Andhra Prabha daily and the Andhra Prabha Illustrated Weekly to a new company at Vijayawada which had been done surreptitiously, and as a result thereof all the employees concerned might not be absorbed by the new company. A complaint was also made that the sale was really benami and a threat was held out that unless the Management -desisted from the above course of "mala fide closure and break-up of the Madras establishment and purported sales to benami companies the employees would be compelled to go on strike as and from a date to be fixed by the joint action committee set up under the resolution." On 21st April a letter was sent to the Director of the company from the Convener, Joint Action -Committee in which it was said that unless a satisfactory reply -was sent regarding the matters mentioned in the resolution within 72 hours, the joint action committee would be compelled to carry -out the mandate of the workers calling for a strike.

On April 22, 1959 there was an agreement in writing between Andhra Prabha (P) Ltd. and the company to the effect that the ,first named company had agreed to purchase and the company had agreed to sell as a going concern the proprietary rights as ,editors, proprietors etc. of the Andhra Prabha (Telugu daily) and the Andhra Prabha

Illustrated Weekly together with the option to purchase from the vendor the right to print, edit and publish the English newspapers, the Indian Express and the English weekly, the Sunday Standard. The consideration for the sale of the proprietary rights in Andhra Prabha and Andhra Prabha Illustrated Weekly was fixed at Rs. 25,000/-. Clause 11 of the agreement provided that :

"all employees now employed by the vendor in connection with the aforesaid two publications shall be taken over into the service of the purchaser company as and from the taking over date."

Clause 12 provided that the transfer of the two undertakings would be on the terms that every workman and employee who had been in continuous service for not less than one year in the undertaking of the vendor immediately before the taking over date would be taken over by the purchaser as and from such date -on the terms and conditions that the services of the workmen and the employees had not been and would not be deemed to be interrupted by such transfer and the terms and conditions applicable to the workmen and the employees after such transfer would not in any way be less favourable to them than those applicable before the transfer and the purchaser would be legally liable to pay the workmen and employees, in the event of retrenchment, compensation on the basis that his or their services had been conti-

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nuous and uninterrupted by such transfer. On April 23, 1959 the Director of the company wrote a letter to the Joint Action Committee to the effect that the Management had sold their right of editing, publishing etc. the Andhra Prabha daily and the Andhra Prabha Illustrated Weekly to a new company in Vijayawada assigning the reason therefor that it was in the interest of the Telugu speaking people that it should be produced and published from a Telugu centre. The terms and conditions with regard to the absorption by the new company of all staff and worker& connected with the business of the two newspapers were also mentioned therein. Lastly, it was said that with regard to such of the staff as were not willing to go to Vijayawada their services with the company would be terminated as the company had no work to offer to them but they would be paid all their dues. On April 24, 1959 the Convener, Joint Action Committee, characterised the Director's reply of the 23rd as highly unsatisfactory and stated that a resolution had been adopted to the effect that the workers would go on strike at any time after the expiry of 24 hours. On the next day the Director informed the Union that the contemplated strike would be illegal and unjustified. On 27th April the Convener wrote to the Director stating that the Management had rejected their demand to maintain the status quo regarding the publication of the three newspapers from Madras, specially Andhra Prabha. In addition false charges of sabotage and threats and arrest had been made and consequently the workers were compelled to give effect to the decision of 24th April i.e. to go on strike. The watch and ward staff were however instructed to stay on duty.

It is necessary to note at this stage that according to the Management some acts of sabotage and gross indiscipline were committed on April 26, 1959, namely, the mutilation and destruction of one full page and two galleys of Dinamani matter and removal of switch keys from three motor cars left in front of the office building. According to the statement of Ramnath Goenka before the Tribunal :

"During the whole of the 28th of April the

labourers demonstrated before the office and prevented ingress and egress of staff members from the office building.

I then decided to close down and issued a statement through the Hindu informing every one of this."

A notice to the above effect was published on the notice board of the company on the 27th and a copy of it was sent by the Director to the Convener.

The strike of the workers started at 4.30 p.m. on 27th April and publication of all papers was stopped. Notice to the above:

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effect was given in the Hindu regarding the Indian Express Dinamani and Andhra Prabha. On the 29th of April the closure notice was published in the Hindu in which it was mentioned that the Management had intimated the workers by letter dated 23rd April. that they had sold their right of editing,, printing and publishing Andhra Prabha and Andhra Prabha Illustrated Weekly to the Vijayawada company. The substance of the agreement between the two companies with regard to the workers was also mentioned in this notice. The workers had been notified that the Management had decided to close with immediate effect the undertaking and publication of all the seven newspapers at Madras and to dispense with the services of the workmen and the working Journalists. Notice was also given that they would be paid their wages for the period during which they had worked, besides one month's salary in lieu of notice prescribed under s. 25F. and compensation as laid down under the Act. Such compensation amounting to one of Rs. 7 lakhs was actually paid later on.

On the 30th April the Management informed the Commissioner of Police with regard to the developments and published another notice in the Hindu regarding the closure stating that most of the machinery had already been sold for cash and the building of the company advertised for rent. On the same day. -the Madras Government issued a notice under S. 10(3) of the Industrial Disputes Act prohibiting the continuance of the strike, and the lockout. This was followed by the two Writ Petitions in the Madras High Court already mentioned.

After the matter was decided by this Court in August 1962. the adjudication was taken up by the Special Industrial Tribunal before which some witnesses including Ramnath Goenka were examined and a large number of documents tendered in evidence. The central question with regard to the first issue was, whether Ramnath Goenka had given a verbal assurance in November 1958 that there would be no shifting of the venue of the publication of any of the papers from Madras to Vijayawada for 2 1/2 years. The Tribunal scrutinised the evidence both oral and documentary in great detail and observed that it was not satisfied that Ramnath Goenka had given any verbal assurance imputed to him. The Tribunal further held that an assurance of the nature could not be inferred from the circumstances of the case with the result that the first part of the first issue was answered in the affirmative with the necessary consequence that the workers could not be held entitled to any relief because of the transfer of these two publications.

of the three appeals, the first two are by the Andhra Prabha Ltd. and Indian Express Newspapers (Madurai) Ltd. and the

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second by the public company styled the Express Newspapers

Ltd. the third appeal is by the employees of the Express Newspapers Ltd. against its management.

No attempt was made before us to show that the Tribunals conclusion about the absence of the verbal assurance or the conference to be drawn in respect thereof from the circumstances was wrong. The substance of the argument on behalf of the employees was that there was really no closure but the transfer was in effect from a parent company to daughter companies and in this connection reliance was placed on the judgment of this court in Kays Constitution Co. v. Its Workers and the earlier decision in Workmen v. Dahingeapar Tea Estate (2) In the Kay's Construction Co.'s(1) case a private limited company was incorporated to continue and carry on the business activities of a proprietary concern. The former proprietor, his wife and the manager employed in the former business were three out of five directors of the new company. The dispute in regard to the refusal by the new company to continue some former employees in service was referred for adjudication to an industrial tribunal. It was contended on behalf of the workmen that the alleged closure by the : proprietor was not genuine or real and that the new company was successor-in-interest of the proprietor and hence was bound to continue to employ the former workmen. It was also contended that there was in effect a lockout and the workmen concerned were entitled to reinstatement. The tribunal found 'hat the closure of the former business on the alleged financial grounds was not genuine, and that the company, though in law a separate entity, was formed to carry on and continue the former business under a different name and the refusal by it to employ some of the old employees amounted to a lockout with the result that a reinstatement of the workmen was ordered. The appeal by the company to the Supreme Court was dismissed. This Court held that a case like the one before it could not be decided principally on the consideration of the abstract point of law -as to whether and when a successor in business is bound to continue in employment the workmen employed by the former owner and having regard to the material findings of fact recorded by the tribunal, the validity of the award could not be questioned on abstract legal grounds.

In the Dahingeapar Tea Estate case(2) there was an agreement between Dahingeapara Tea company (the vendor) and Nihli Jute Baling Company Ltd. (the purchaser) whereby the vendor agreed to sell absolutely and the purchaser -to buy a,% Ind from January 1, 1954 the entire tea estate known as Dahingeapar tea estate with all its gardens, bushes, machinery and appur-

(1) [1958] 2 L.L.J. 669.

(2) [1958] 2 L.L.J. 498.

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tenances etc. at or for the sum of Rs. 9,50,000/-.. The purchaser was to have the option of taking such members of the staff as it would in its absolute discretion consider useful and sufficient for running it. The members of the staff as would be selected by the purchaser would be given fresh appointment and any liability whatsoever for their past services, including bonus, gratuity etc. would be on the vendor's account. The dispute which was referred for adjudication was, whether the transfer of the management could put an end to the services of the staff of the tea estate and whether the agreement of transfer would deprive -the members of the staff of their rights of service under the original contracts of service and of continuity of their services. The second question was, whether the outgoing

management was justified in proposing to terminate the services of the members of the staff from the time when the management of the tea estate had changed hands and whether the incoming management was justified in refusing to maintain the continuity of service. The tribunal found that the garden was sold as a going concern, that the services of the staff continued up to January 4, 1954, that retrenchment had not been necessitated by or on account of reasons of trade and that the transfer could not effect a change in the service conditions of the staff. The result was that the purchaser was held to be not justified in refusing to maintain the continuity of service. The award directed that those of the members of the former staff who had been kept out of service in the garden in question from the time the new management had taken over charge but who would be willing to be reinstated in their former posts on the previous terms and conditions of their service be reinstated in their former posts and that those of the members of the old staff who had been kept out of service in the garden and had not since taken any employment elsewhere be paid their salaries for the period of their forced unemployment which was caused at the instance of the purchaser. The Labour Appellate Tribunal set aside the award made by the tribunal. This Court in appeal did not find it necessary to determine the larger question as to whether, on a transfer of business as a going concern, the incoming management becomes a successor to the outgoing management and if so, to what extent the incoming management must recognise the right of labour already accrued as to gratuity bonus etc. and to continuity of service. It was further observed that it was not the function of the industrial tribunal to decide the abstract question of law, whether on a transfer of management consequent on a sale, the services of workmen were automatically put an end to. But it was held that there was a dispute which could be referred for adjudication and the reference being competent the tribunal had jurisdiction to go into it and there was no reason for the Appellate Tribunal displacing the findings of the Industrial tribunal.

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It will be noticed that these two decisions were given before the amendment of the Industrial Disputes Act by the inclusion (of s. 25FF, and s. 25FFF. Now the two sections govern such cases. Under s. 25FF where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of S. 25F as if the workman had been retrenched. This section however is not to apply to a workman if his service had not been interrupted by such transfer, the terms and conditions of his service after transfer are not in any way less favourable to him than those applicable to him immediately before the transfer and the new employer is, under the terms of such transfer, legally liable to pay to the workman in the event of his retrenchment, compensation on the basis that his service has been continuous and had not been interrupted by the transfer.

Under s. 25FFF (1) where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject

to the provisions of Subsection (2), be entitled to notice and compensation in accordance with the provisions of s. 25F as if the workman had been retrenched. We are not concerned with sub-s. (2) in this case. The result is that if there is in fact a closure, s. 25FFF will come into play. In this case, however, it must be stated that the new company, Andhra Prabha (P) Ltd. agreed to take over all employees at the time employed by the vendor in connection with the two publications as and from the date of taking over without any break in the continuity of their service and on the same term,,; and conditions as before.

It is impossible to lay one's finger on the exact cause for Ramnath Goenka making up his mind to transfer a part of the undertaking to Vijayawada and another part to Madurai. It may be because he really felt that the Telugu papers would do better if printed and published at Vijayawada. It may also be that he wanted to circumvent the recommendation of the Press Commission with regard to the wages payable by the bigger units of newspapers. Again there can be no doubt that he did not like the agitation of the employees and probably thought that by the dispersal of the units the scope for agitation would be minimised. He was undoubtedly taking all steps in this regard as the resolutions passed by the shareholders of the company in February 1959, followed by the resolution of the Board of Directors and the agreement for sale of some machinery to the Andhra Prabha

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(P)Ltd. on the 15th of April 1959 would show. The workers probably were nettled by the fact that they had not been consulted in regard to all this. While it is not possible to say that the alleged acts of sabotage and indiscipline said to have taken place on April 26, 1959 were of a very serious nature, Goenka stated in his evidence before the tribunal that after the demonstration of the laborers before his office on the 28th of April and their prevention of ingress and egress of the members of the staff to and from the office building he decided to close down his undertaking at Madras.

On the evidence before the tribunal 'Lo which our attention was drawn by counsel on both sides, it appears to us that while the Management might have taken into confidence the employees and discussed with them the scheme for the dispersal of the undertaking the decision to go on strike was unwarranted and disastrous. Even if there had been no strike on the 27th of April. it seems to us that the scheme of dispersal would have been given effect to afterwards although it was the strike which precipitated matters.

The Tribunal has found that there was a closure but that took place not in April 1959 but in November, 1959. In arriving at this conclusion the tribunal relied on several factors. The first of these is that Andhra Prabha Illustrated Weekly came to be printed at the Dinamani press by the Indian Express (Madurai) Ltd. and located in the block of buildings belonging to Express Newspapers Ltd. situate in Mount Road Madras in pursuance of an agreement dated 30th September 1960 between the Indian Express Madurai (P) Ltd. and the Andhra Prabha (P) Ltd. The Tribunal further found that it was on the 2nd of September 1960 that the offset rotary press and allied equipment belonging to Express Newspapers (P) Ltd. and located in the Express Estate Mount Road Madras were hired to the Indian Express Madurai (P) Ltd. From this the tribunal concluded that "the Andhra Prabha daily and the Andhra Prabha Illustrated Weekly as also the Indian Express Madurai edition and Dinamani daily edition could have made use of the off-set rotary

press at the Express Estate Madras on occasions when the use of the off-set rotary press became necessary till the machines were hired to the Madurai company under Ex. M-46". In our opinion the existence of the off-set rotary press at the Express Estate Madras until they were hired out to the Indian Express Madurai (P) Ltd. does not warrant the conclusion that the company could have made use of the rotary press when it wanted to. We have got to judge things by what was done and not by what could have been done. Again the circumstance that some of these journals came to be published sometime after May 1959 under new declarations

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made by publishers respectively on behalf of the Andhra Prabha (P) Ltd. and the Indian Express Madurai (P) Ltd. cannot be taken into consideration for finding against the closure of the company's undertaking in April 1959. The Tribunal appears to have placed some reliance on the fact -that Ramnath Goenka admitted having advanced a sum of Rs. 3 lakhs to the Madurai Company as also diverse sums totaling Rs. 27 lakhs to other companies including the two daughter companies (at Vijayawada and Madurai) up to the end of December 1960. The Tribunal found that (a) ultimately the Indian Express Bombay Ltd. purchased all the shares of Andhra Prabha (P) Ltd. and Indian Express Madurai (P) Ltd. and became a public company towards the end of 1960 : ('b) Before the company became a public company, Ramnath Goenka and the members of his family held 4000 out of 4200 shares : (c) till May 1959 the company which owned the entire group of newspapers published by the same Management at three branch offices one in Delhi, a second in Madurai and the third in Bombay. As a result of the splitting up, the position was that the Express Newspapers (P) Ltd. in Delhi took up the Delhi publications, the Indian Express Bombay (P) Ltd. took up the publications published by the company from Bombay. the Indian Express Madurai (P) Ltd. took up the publications issued from Madurai and Andhra Prabha (P) Ltd. Vijayawada took up the two Telugu publications. According to the Tribunal "it was only the Madurai company and the Vijayawada company that relied upon the support of the parent company after May 1959 for printing and publishing the papers acquired by them." The Tribunal further found that this position continued for some time after May 1959 inasmuch as "(1) The teleprinter service installed in the Express Estate building Mount Road continued to be used till the end of October 1959 and out of nine circuits comprised in the teleprinter service, seven were routed through Madras and these were allotted to the Madurai company for a period of three months commencing from 1st November 1959. (2) Photographic materials used in the processing department maintained by the company up to October 1959 were purchased by the public company for the benefit of the two daughter companies; (3) Thirty-two of the former employees of the company including a reporter were retained in the service of the company after April 1959; (4) No intimation was sent to the Commissioner or other competent authority under the Employees' Provident Fund Act of the termination of employment of 700 workmen and working journalists, and (5) After April 1959 a common advertising department for the two daughter companies was maintained at the Express Estate building as could be seen from certain circulars issued in December 1959".

From all this the Tribunal inferred that the suspension of the business was a lockout at the inception and became a genuine

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closure only in October-November, 1959. Before us, reliance was placed by Mr. Mohan Kumaramangalam on some of the above factors and the main plank of his argument was that in fact the parent company launched and financially helped the other companies which were really benamidars for the parent company. We do not think that even in Industrial law a new company which is an independent legal entity can be called a benamidar for another older Organisation because there was in both companies a person or family of persons who could guide the destinies of the two companies. The Express Newspapers (P) Ltd. was later transformed into a public company and it would not be proper to describe the relationship of the Vijayawada and the Madurai companies as daughter companies or as benamidars of the company. We have to bear in mind that the company i.e., Express Newspapers (P) Ltd. did not come to an end in April 1959. It only closed its undertaking of publishing several newspapers and weeklies. It had very valuable property on its hands after April 1959 and some persons had to be retained in service to look after the property. The fact that one of them was a reporter cannot lead to the inference that the company did not close down its business but could take it up whenever it wanted to. Further, the failure to inform the Provident Fund authorities was an omission but that cannot mean that the workers continued to be in the service of the company or were meant to be taken back into its service as soon as they became submissive to Ramnath Goenka. With regard to the teleprinter service, we were told that it had been paid for up to a certain date and the fact that the Madurai and Vijayawada companies used the teleprinter service till the end of October 1959 would not either by itself or taken in conjunction with the other circumstances, justify the conclusion that the company retained the teleprinter service for its own use, if necessary.

To all intents and purposes, the business of the company was closed from the 29th of April 1959 and whatever might have been the motive behind the closure it was an effective one from April 1959 and we see no reason to hold with the Tribunal that the closure became effective sometime in November 1959.

On behalf of the employees an application has been made for leading additional evidence. In this application events which took place after the publication of the award are relied on as going to show that the discontinuance of the publications from Madras was a mere ruse and a device adopted by the company to coerce and intimidate the employees and that publication of the newspapers had been commenced soon after the publication of the award. We do not think it necessary to go into this matter at any length because a break of over four years had intervened in between and what the company does after the lapse of this long

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period cannot and ought not to be taken into consideration in order to find out whether the closure was a real one or was a mere device as suggested by the employees. The evidence on record shows that Ramnath Goenka's plan was not to give up the business of newspaper publications altogether but he wanted to distribute his business to different places. Whatever may be the motive behind such plan, he had only carried out that plan into effect after the publication of the award and this cannot lead us to the conclusion that the closure was an assumed one. In our view, the strike was not justified and the Management was entitled to close the undertaking on 29th April, 1959.

In the result, there will be no order on this

application. The appeals by the companies are allowed and the finding on the second issue and the award set aside. Appeal No. 9 of 1966 by the workmen will have to be dismissed in view of the above. There will be no order as to costs in all the appeals.

V.P.S.

Appeal No. 9 of '66, dismissed and
Nos. 1078 and 1079 of '65 allowed.

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JUDIS