

PETITIONER:  
TATANAGAR FOUNDRY CO. LTD.

Vs.

RESPONDENT:  
THEIR WORKMEN

DATE OF JUDGMENT:  
27/10/1969

BENCH:  
RAMASWAMI, V.  
BENCH:  
RAMASWAMI, V.  
DUA, I.D.

CITATION:  
1970 AIR 1960                      1970 SCR (3) 8  
1969 SCC (2) 713

ACT:  
Industrial Dispute-Closure and lock out-Distinction between.  
Industrial Disputes Act (14 of 1947), s. 25FFF-Closure for  
reasons not beyond the control of the employer--Compensation  
payable to workmen.

HEADNOTE:  
The appellant informed the respondents, its workmen, of its  
decision to close its business. The reasons for the closure  
were : (i) financial condition of the appellant, (ii)  
nonavailability of orders for supply of goods; and (iii)  
non-cooperation of the respondents in certain matters. The  
dispute whether the closure was justified was referred to  
the Industrial Tribunal. The Tribunal held on the evidence  
: (1) that the appealed's undertaking was closed down  
completely and that there was a final and irrevocable  
termination of the business; (2) but that the closure. was  
not bona fide and was a lock out; and (3) that the closure  
was not due to unavoidable circumstances beyond the control  
of the appellant.

In appeal to this Court,

HELD : (1) In the case of a closure, the employer does not  
merely close down the place of business, but he closes the  
business finally and irrevocably. The closure has to be  
genuine bona fide and effective, and not a mere pretence.  
The motive however, behind the closure is immaterial. In  
the present case the circumstances showed that there had  
been in fact a closure of the business, and therefore, the  
further finding of the Tribunal that it was a lock-out  
should be set aside. [10 F-H; 11 B-D]

Management of Express Newspapers Ltd. v. Workers & Staff  
employed under it and Ors. [1963] 3 S.C.R. 540, Tea District  
Labour Association v. Ex-Employees of Tea Districts Labour  
Association, [1960] 3 S.C.R. 207, 213, Andhra Prabha Ltd. v.  
Secretary, Madras Union Of Journalists, [1967] 3 S.C.R. 901  
and Kalinga Tubes Ltd. v. Their Workmen, A.I.R.  
1969 S.C. 90, followed.

(2) As the closure was not due to circumstances beyond the  
control of the appellant the respondents were entitled to  
compensation under the main clause of s. 25FFF of the  
Industrial Disputes Act, 1947. [12 C-D)

## JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 697 of 1968. Appeal by special leave from the award dated September 15, 1967 of the Industrial Tribunal, Bihar, Patna in reference No. 4 of 1967.

B. Sen, B. P. Maheshwari and R. K. Maheshwari, for the appellant.

A. K. Nag and S. S. Khanduia, for the respondents.

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The Judgment of the Court was delivered by Ramaswami J. This appeal is brought by certificate from the award of the Industrial Tribunal, Bihar dated September 15, 1967.

The appellant, Tatanagar Foundry Co., Ltd., is incorporated in the State of West Bengal and owns two manufacturing establishments one located at Belur in the State of West Bengal and the other in Jamshedpur in Bihar. The appellant carries on its business at Belur but has now closed its business at Jamshedpur with effect from November 20, 1966. At the time of the closure the appellant employed 1360 workmen in its Jamshedpur establishment where it was producing cast iron pipes, specials and heavy grey iron castings including ingots, moulds etc. On September 20, 1966 the appellant issued a notice in respect of its business at Jamshedpur that due to shortage of orders and other economic reasons, about 120 workmen are being retrenched and the Commissioner of Labour, Government of Bihar, Patna was duly notified of the said retrenchment. On September 22, 1966 the Labour Superintendent, Government of Bihar, Jamshedpur, held conciliation proceedings at which the appellant agreed to retain the services of 14 of the retrenched workmen and the union agreed to the retrenchment of the remaining workmen. On or about October 12, 1966 by a notice of the same date, the appellant desired to retrench about 400 workmen, but at the intervention of the Superintendent of Labour the notice was temporarily withdrawn with a view to discuss the matter with the union. Accordingly a meeting was fixed on October 21, 1966 between the appellant and the union at Jamshedpur but the said meeting could not take place. On October 29, 1966 the appellant by a notice laid off nearly 600 workmen for want of supplies of good quality raw IF material. In a letter dated November 8, 1966 the Superintendent of Labour, Jamshedpur wrote that the General Secretary of the union had put up a proposal for running the Jamshedpur establishment of the appellant on a cooperative basis and requested Mr. G D. Agarwalla, Director of the appellant to place the matter before the Board of Directors of the appellant. At their meeting on November 17, 1966 the Board of Directors considered the letter dated November 8, 1966 of the Labour Superintendent and resolved that if the State Government should be desirous of running the Jamshedpur plant on a cooperative basis Sri G. D. Agarwalla was authorised to conduct negotiations with the State Government of Bihar. But no further communication was received from the Government of Bihar indicating its willingness or intention to run the Jamshedpur branch of the appellant. At its meeting on November 17, 1966 the Board of Directors of the appellant considered the situation in the Jamshedpur plant and decided that it should be closed as early as possible and Mr. 6Sup./70-2

Agarwalla was authorised to take necessary steps to effect the closure. Pursuant to the decision of the Board of Directors Mr. Agarwalla issued a notice dated November 19, 1966. By the said notice the workmen of the appellant were -informed of its decision to close the business at Jamshedpur for good with effect from November 21, 1966 for the reasons explained in the notice. All the workmen were also informed that their services were no longer required after November 21, 1966 and the workers should consider themselves as discharged with effect from the said date. On February 3, 1967 the Government of Bihar referred the following dispute to the Industrial Tribunal, Bihar for adjudication under s. 10(1) (d) of the Industrial Disputes Act, 1947 (14 of 1947):

"Whether the closure of the Tatanagar Foundry Co. Ltd., Jamshedpur is justified? If not, to what relief and compensation the workmen are entitled?"

By its award dated September 15, 1967 the Industrial Tribunal held that it was satisfied that the closure of the Jamshedpur business of the appellant was not a closure but a lock out in the disguise of a closure and directed the reinstatement of the workmen with full wages for the period they have been out of employment.

In support of this appeal it was argued in the first place that the Industrial Tribunal had no jurisdiction to go into the question whether the closure of the Jamshedpur business was justified or not for financial or other reasons. The contention was that the Tribunal having found that the factory had in fact closed down it had no jurisdiction to go into the question whether the closure could have been avoided. In our opinion the argument is well founded and must be accepted as correct. The distinction between a lock out and a closure has been explained by the decision of this Court in the Management of Express Newspapers Ltd. v. Workers & Staff employed under it and others(1). It was pointed out in that case that in the case of a closure the employer does not merely close down the place of business but he closes the business itself finally and irrevocably. A lockout on the other hand indicates the closure of the place of business and not closure of the business itself. In the present case the totality of facts and circumstances would lead to the conclusion that the undertaking at Jamshedpur was closed down completely and was a final and irrevocable termination of the business itself. But the Tribunal has come to a finding that the closure of the business was not bona fide but the closure was done in order to victimise the work-men. As regards the financial position the Tribunal took the view -that on the whole the financial condition of the company in 1966

(1) [1953] 3 S.C.R. 540.

11 has not worsened to such an extent as to reasonably constitutes good ground for closing the business altogether. It might have been a ground for reorganising the company or rationalising it by retrenchment or otherwise but it could not, be a ground for winding up the business altogether. In our opinion the finding of the Tribunal on this point is defective in law. It is now well established that in the case of a closure the employer does not merely close down the place of business but he closes the business finally and irrevocably. The closure has to be genuine and bona fide in the sense that it should be a closure in fact and not a mere pretense of closure. (see the decision of this Court in Tea District Labour Association v. Ex-Employees of Tea Districts

Labour Association(1). The motive behind the closure is immaterial and what is to be seen is whether it is an effective one. (see the decision of this Court in Andhra Prabha Ltd. v. Secretary, Madras Union of Journalists ( 2 ) and Kalinga Tubes Ltd. v. Their Workmen ( 3 ) . Taking into account the entire set of circumstances and facts in the present case we are of opinion that there has been in fact a closure of the Jamshedpur business and the finding of the Tribunal that there was a lock out is defective in law and must be set aside.

The next question is whether the workmen were entitled to compensation under s. 25FFF of the Industrial Disputes Act which states :

"(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 sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched :

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be -paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.-An undertaking which is closed down by reason merely of financial difficulties (including financial losses) or accumulation of undisposed of stocks or the expiry of the period of the lease or the licence granted to it where the period of the lease or the licence expires on or after the first day of April, 1967 shall not be deemed to have been closed down on

(1) [1960] 3 S.C.R. 207, 213.

(3) A.T.R. 1969 S.C. 90.

(3) [1967] 3 S.C.R. 901.

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account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section."

The Tribunal has found that the appellant was not right in its contention that the closure was due to unavoidable circumstances beyond its control. According to the appellant the main reasons for the closure are : (1) financial condition of the appellant, (2) non-availability of orders for supply of goods; (3) non-cooperation from the workmen in standardisation of the working force and for reduction of the high percentage of rejection. The Tribunal has gone into the oral and documentary evidence adduced by the parties and reached the conclusion that the closure of the business was not due to unavoidable circumstances beyond the control of the appellant. We see no reason for interfering with the finding of the Tribunal on this aspect of the case. The result, therefore,, is that the workmen are entitled to compensation under the main clause of s. 25FFF of the Industrial Disputes Act, 1947.

We accordingly modify the award of the Industrial Tribunal dated September 15, 1967 and allow the appeal to the extent indicated. There will be no order as to costs.

V.P.S.

Appeal partly allowed.

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JUDIS