

(1997) 10 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 2362 of 1994 with Writ Petition No. 47 of 1996

Ambika Silk Mills Co. Ltd. and another

APPELLANT

Vs

Maharashtra General Kamgar Union and others

RESPONDENT

Date of Decision : 21-10-1997

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 30

Industrial Disputes Act, 1947 — Section 2, 25

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 21, 28

Citation : (1998) 2 ALLMR 609 : (1998) 2 BomCR 148 : (1998) 79 FLR 1 :
(1999) 3 LLJ 1095 : (1998) 1 MhLj 568

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : K.K. Singhvi, S.A., M.M. Verma, P.M. Palshikar and N.M. Ganguli, for the Appellant;

Final Decision : Allowed

Judgement

R.M. Lodha, J.—These two writ petitions are between the same parties and the issues involved are inter-connected and, therefore, both the writ petitions have been heard together and are disposed of by this common judgment.

2. Writ Petition No. 2632 of 1994 has been filed by Ambika Silk Mills Company Limited ("the employer company") dissatisfied with the judgment/order passed by the Industrial Court on 19-8-1994 in Complaint (ULP) No. 1124 of 1986 and Complaint (ULP) No. 171 of 1987 whereby the Industrial Court declared that the employer has committed unfair labour practice under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "MRTU & PULP Act") and also declared that the notice dated 6-1-87 issued by the employer terminating the services of the workmen was illegal, void ab initio, inoperative and directed the employer to reinstate the workmen whose services were terminated by notice dated 6-1-87 and further consequential orders. On the other hand, the Writ Petition No. 47 of

1996 is preferred by Maharashtra General Kamgar Union aggrieved by the award dated 30-6-1995 whereby the Industrial Tribunal, Bombay permitted closure of the employer undertaking with effect from 3-9-1986 and the employer was directed to pay gratuity as per law taking into consideration the date of termination as 7-1-1987 and also to pay compensation on the basis of principles enunciated u/s 25-N of the Industrial Disputes Act upto the date of termination i.e. 7-1-1987.

3. The Ambika Silk Mills Company Limited ("the employer company") is a company incorporated under the Companies Act, 1956 having its office in Bombay. The employer company is an art silk industry and is covered by the provisions of the Bombay Industrial Relations Act, 1946. On 3-9-1986 at about 6.40 a.m. two floors of the main factory building collapsed suddenly. The said two floors of the main factory consisted of finishing department, folding screen, printing machines, gray folding, print winding, finished folding and art-studio amongst others. Due to said collapse of two floors, the aforesaid departments of the employer company along with equipment and other utilities including the power sub station were completely destroyed. Two-third portion of the dyeing and processing department also collapsed. The said departments became totally non-functional. The machines were damaged and the factory was rendered unworkable. The Auto Weaving section located on the ground floor and first floor of the factory building which was used for storing caved in completely and due to that the first floor was required to be pulled down at the earliest. The roofing of the process House was damaged beyond repair and the building structure became unsafe for inhabitation and for rendering any production work. According to the employer company, as a result of collapse of the factory building, the entire factory became non-functional. The said collapse, according to the employer company, was on account of the natural calamity/accident beyond their control. At that time, the employer company had in its employment about 757 employees on the muster rolls of the company. As a result of the said accident, the Factory Inspectorate of the State Government ordered the employer company not to carry out any manufacturing activities unless clearance was obtained from the authorities. The Electrical Inspectorate, Industries, Energy and Labour Department of the Government of Maharashtra also restrained the employer company from energising the electrical fixation of the said factory undertaking. The Senior Ward Officer of G-South of the Municipal Corporation of Greater Bombay by communication dated 19-9-1986 directed the employer company to take up the work of removal of the dangerous over-hangings of the collapsed portion early under the supervision of registered structural engineer and the employer company was restrained from taking up any reconstruction work of the collapsed portion until approval from the Executive Engineer Proposal (City) was obtained. The employer was directed not to start the mill till no objection certificate was obtained from competent authorities. The Assistant Electrical Inspector by communication dated 24-9-1986 directed the employer company to keep the electrical supply off to avoid any mishap and it was

permitted only to take temporary supply only to the administrative block. The Inspector of Factories, Bombay, visited the site and made his report on 31-10-1986. On 10-11-1986 the employer company made an application purported to be u/s 25-O(7) of the Industrial Disputes Act, 1947 (for short "I.D. Act") in continuation to the earlier application which was also made u/s 25-O(7). In the said application the employer company brought to the notice of the State Government that on account of accident/natural calamity due to collapse of factory building and due to the reasons beyond the control of the management, the State Government may be pleased to direct that the provisions contained in section 25-O(1) of the I.D. Act shall not apply in relation to the employer company's industrial establishment with effect from 3-9-1986. The State Government was requested that because of the exceptional circumstances resulting in collapse which was unanticipated and beyond the control of the management, the plant has stopped functioning completely and, therefore, appropriate order be passed by the State Government in exercise of their powers u/s 25-O(7) and direct that the provisions of section 25-O(1) shall not apply in relation to the closure of the factory establishment of the employer company with effect from 3-9-1986 for a period of three years. On 11-11-1986 in continuation of the earlier applications, the employer company requested the State Government to pass appropriate order in exercise of their powers u/s 25-O(7) on consideration of the facts sympathetically. The State Government in exercise of its powers u/s 25-O(7) on 19-12-1986 granted the permission to the employer company u/s 25-O(7) and directed that for the reasons stated in the order the provisions of sub-section (1) of section 25-O of the Industrial Disputes Act will not apply in relation to the undertaking of the employer company for the period of three years from the date of the accident i.e. 3-9-1986. The employer company was directed to settle the legal dues of the affected workmen expeditiously and according to law and also directed the employer company that they shall provide employment to the affected workmen when the factory re-starts. It would be relevant here to mention that the Maharashtra General Kamgar Union, though is neither representative nor approved union under the Bombay Industrial Relations Act, 1946, filed a complaint of unfair labour practice u/s 28 read with item 9 of Schedule IV of the MRTU & PULP Act against the employer company in the Industrial Court on 10-12-1986. In the complaint it was stated that the employer company is governed by the Bombay Industrial Relations Act and that the Mill Mazdoor Sabha is representative Union for silk textile and processing industry under the Bombay Industrial Relations Act, 1946. Earlier the employees were members of the Mill Mazdoor Sabha but now the employees on mass left Mill Mazdoor Sabha in 1982 and joined the complainant union. It was stated in the complaint that the employees are not paid their wages for September 1986 though the contract of employment was subsisting and they were ready and willing to do their normal work. According to the complainant, the employer company has not closed legally and, therefore, the employer company be directed to pay wages and other benefits to the employees for the month of September 1986 and thereafter during the subsistence of the

contract of employment and they be further restrained from selling, transferring, alienating, shifting, parting with possession of, dealing with or disposing of in any manner whatsoever, in favour of any one whomsoever the plant, machinery, machinery parts, spare parts, equipments, tools, implements of works, raw materials, semi-finished and finished goods and all other assets laying and being in the premises of the factory situate at 11-12, Senapati Bapat Marg, Mahalaxmi, Bombay. Coming back to the order on 19-12-1986 granting permission u/s 25-O(7), it may be noted that on 6-1-1987 the employer company displayed a notice on the notice board about closure of the undertaking of the employer company. It was mentioned in the notice that the legal dues will be paid to all the employees accordingly. The notice dated 6-1-1987 came to be challenged by Maharashtra General Kamgar Union by filing separate complaint which was registered as Complaint (ULP) No. 171 of 1987. The said complaint was filed by the Maharashtra General Kamgar Union u/s 28 read with Item 1 (a) and (b) and Item 6 of Schedule II and Item Nos. 5, 9 and 10 of Schedule IV of the MRTU & PULP Act and it was prayed that it be declared that the employer company has engaged in unfair labour practice under the MRTU & PULP Act and it be held that the services of the employees terminated vide notice dated 6-1-1987 were in violation of the provisions of section 25F, 25-FFA, 25-FFF(1) of the I.D. Act and also violative of provisions of agreement/settlement dated 3-8-1985 and, therefore, the termination of the workmen was non est, illegal, inoperative and the employer company be directed to reinstate the workmen whose services have been terminated by the notice dated 6-1-1987 and pay them full back wages as per agreement/settlement dated 3-8-1985 until their services were lawfully terminated and other consequential reliefs. It may be stated here that by the order dated 19-12-1986 the State Government had directed that the provisions of sub-section (1) of section 25-O of the I.D. Act shall not apply in relation to the undertaking of the employer company for a period of three years from 3-9-1986 and before expiry of three years, on 29-5-1989, the employer company again made an application to the State Government requesting extension of period of exemption. By the order dated 13-9-1989, the State Government passed the order in exercise of the powers conferred by sub-section (7) of section 25-O that the provisions of sub-section (1) of section 25-O of the I.D. Act shall not apply in relation to the employer company for a further period upto 31-8-1991 subject to the condition that the management of the undertaking shall offer employment to the affected workmen on restarting of the undertaking. In the meantime, the Bombay Municipal Corporation by communication dated 12-8-89 refused to process the plans submitted by the employer company on the ground that at the relevant time the F.S.I. permissible in industrial Zone was 0.5 and unless the State Government now granted permission for additional F.S.I., the plans submitted by the employer company could not be processed. Before the extended exemption time could expire on 31-8-1991, the employer company made another application for exemption to the State Government u/s 25-O(7) on 25-5-1991. On the said application, the State Government extended exemption upto 31-3-1993 subject to the condition that the employer company shall offer

employment to the affected workmen on restarting the undertaking and that the employer company should submit quarterly return to the Government in respect of the offers made/steps taken by them for restarting the undertaking. On 28-12-1992, the employer company made yet another application before the exempted period was to expire and exemption was sought u/s 25-O(7) for a further period of five years with effect from 31-3-1993. The application made by the employer company on 28-12-1992 for exemption u/s 25-O(7) was however refused by the State Government vide order dated 19-8-1993. In the communication sent by the State Government it was stated that the request for extension of exemption granted u/s 25-O(7) for further five years cannot be granted and that the request for permission to close down the mill as per the provisions of the I.D. Act may be made to the Government and decision on merits can be taken thereon by the Government. The employer company on 5-7-1993 then made an application u/s 25-O(1) for closure of the undertaking. The State Government on 30-8-1993 rejected the said application. However, it was observed in the order dated 30-8-1993 that to bring the long pending issues to a satisfactory conclusion, the employer company shall not be precluded from making an application for review of this order so that the matter could be considered fully on its merits. Accordingly, the employer company made an application for review of the order dated 30-8-1993 on 9-9-1993. The review application was made u/s 25-O(5) of the I.D. Act. The said application for review was heard by the Secretary, Labour, Industries, Energy and Labour Department, Government of Maharashtra on 5-3-1994 and 23-3-1994 when the representatives were present on behalf of the employer company and also Shri P.N. Samant (Dada Samant) Vice President, Maharashtra General Kamgar Union, Ghatkopar, Bombay. After hearing the representatives of the employer company and the Maharashtra General Kamgar Union, by the order dated 28-4-1994 the State Government referred the question for adjudication to the Industrial Tribunal, Bombay. The Industrial Tribunal, Bombay by the impugned award dated 30-6-1995 granted permission for closure of the factory with effect from 3-9-1986 as observed above and directed the employer company to pay gratuity as per law taking into consideration the date of termination as 7-1-87 and employer company was also directed to pay the compensation on the basis of principles of section 25-N i.e. 15 days salary to the workmen for each completed year upto the date of termination i.e. 7-1-1967. In the meanwhile, the Industrial Court where the complaints filed by the Maharashtra General Kamgar Union were pending, after recording the evidence, by the judgment/order dated 19-8-1994 allowed the complaints filed by the union and declared that the employer company has committed unfair labour practice under item 9 of Schedule IV of the MRTU & PULP Act and it further declared that the notice dated 6-1-1987 issued by the employer company terminating the services of the workmen was illegal, void-ab-initio and inoperative and directed the employer company to reinstate the workmen whose services were terminated vide notice dated 6-1-1987 and further consequential orders.

4. I have heard the learned Counsel for the parties at quite some length.

5. Mr. K.K. Singhvi, the learned Senior Counsel appearing for the employer company urged that the two complaints filed by Maharashtra General Kamgar Union were not maintainable and competent because the Maharashtra General Kamgar Union was neither representative union nor approved union under the Bombay Industrial Relations Act. Mr. Singhvi, the learned Senior Counsel would submit that the employer company is governed by the provisions of the Bombay Industrial Relations Act and Mill Mazdoor Sabha is the representative union which only has competence to file the complaints for the alleged unfair labour practices. In support of his contention he relied upon the Division Bench judgment of this Court in *Shramik Utkarsha Sabha v. Raymond Woollen Mills Ltd.*, and *ore.*, 1992 (1) C.L.R. 273 and the judgment of the Apex Court in that very case i.e. *Shramik Uttarsh Sabha Vs. Raymond Woolen Mills Ltd. and others*, .

6. On the other hand, Mr. Ganguli, the learned Counsel appearing for the Maharashtra General Kamgar Union submitted that the alleged unfair labour practice relating to termination of the employees was not concerned in collective bargaining and, therefore, even if the Maharashtra General Kamgar Union was not representative union or approved union, it could maintain the complaint. Mr. Ganguli sought to distinguish the judgment of the Apex Court in *Raymond Woollen Mills* by submitting that in the said Judgment the Apex Court has not held that in matters pertaining to individual disputes between the employee and employer, an unrecognised union cannot maintain the complaint. In support of his contention Mr. Ganguli particularly referred to paragraph 15 of judgment of Apex Court in *Raymond Woollen Mills Ltd.*, (*supra*).

7. In *Shramik Utkarsha Sabha v. Raymond Woollen Mills Ltd.*, & *ors.* 1992 (1) C.L.R. 273 the Division Bench of this Court was dealing with the question relating to right of representation of the representative union under the Bombay Industrial Relations Act in employers complaint of unfair labour practice against the representative union and the question was whether the representative union has right to represent its members under the MRTU & PULP Act. The Division Bench of this Court held that an unequivocal right is established that the representative union under the Bombay Industrial Relations Act has the sole privilege of representing employees in an industry and that right is not taken away or in any manner affected in proceeding under MRTU & PULP Act. The Division Bench held thus :

"12. A legal right was still sought to be established on behalf of the appellant union by referring to certain provisions of the B.I.R. Act, as well as Act No. 1 of 1972. We are dealing with this point notwithstanding our finding given above. It was contended that merely because the respondent No. 2 is a recognised and representative union it cannot deprive other Trade Unions from representing the employees who are its members under Act No. 1 of 1972. In this context reliance was heavily placed upon sub- section (2) of section 21 of the Act No. 1 of 1972 and section 27-A of the B.I.R. Act. It was urged that the two provisions read

together the recognised union like respondent No. 2 have a right to represent the employees only to the extent specified therein. In particular it was submitted that the right of a recognised union to represent employees under the B.I.R. Act was unlimited but it is not so under the Act No. 1 of 1972. We will shortly point out that the submissions are devoid of any merits and must be rejected.

13. It is not in dispute that the respondent No. 2 is a recognised and an approved union under the provisions of Chapter IV of the B.I.R. Act and they have been conferred a right to be the representative of employees to appear or act on their behalf, first in the order of preference u/s 30 of the B.I.R. Act except for one exception and that is as provided in section 33-A. It deals with the appearance of person in proceedings in which the dispute is between the employees and employees. Therefore, no doubt is left that a recognised and an approved union has every right to appear and act in every proceeding irrespective of the fact whether these employees are members of the union or not with certain exceptions as carved out also u/s 27-A of the B.I.R. Act. That section specifically provides that no employee shall be allowed to appear and act in any proceeding under the B.I.R. Act except through the representative of employees and the representative of employees is provided for in section 30 of the Act. A representative Union is first in the order of preference. No doubt, section 27-A also provides for some exceptions because the section begins by the words "Save as provided in section 32, 33 and 33-A" with which we are not presently concerned. An unequivocal right is hence established that the representative union have the sole privilege of representing employees in an industry and that right is not taken away or in any manner affected in proceedings under Act No. 1 of 1972. For all purposes a recognised union continues to be a representative union continues to be a representative union and shall remain as such till the recognition is lost or revoked.

14. Sub-section (2) of section 21 on which reliance is heavily placed on behalf of the appellant is quoted below.

"21(1)

21 (2) Notwithstanding anything contained in the Bombay Act, no employee in any industry to which the provisions of the Bombay Act for the time being apply, shall be allowed to appear or act or allowed to be represented in any proceeding relating to unfair labour practices specified in items 2 and 6 of Schedule IV of this Act except through the representative of employees entitled to appear u/s 30 of the Bombay Act."

A representative union has been given a special right to appear and act on behalf of an employee in proceedings in relation to unfair labour practices specified in Items 2 and 6 of Schedule IV of the Act of 1972, the reason being that some other employee or employees not appearing in the proceeding can upon adjudication of the complaint be adversely affected. Item 2 deals with the abolition of work of regular nature being done by the employees and to give such

work to contractors as a measure of breaking strike. Similarly Item 6 relates to employment of badlis, casual or temporaries and to continue to employ as such for years together with the object of depriving such employees the status and privileges of permanent employees. It is not necessary to elaborate on these items as either of them are self explanatory. The section authorises only the representative union to appear and act in such proceedings. But simply because such power has been specifically conferred no inference can be drawn that In proceedings other than those relating to unfair labour practices specified in items 2 and 6 of Schedule IV, the representative union cannot represent the employees. Such an interpretation as sought to be put forth cannot be accepted. The right of the employees working in the industry to which the provisions of B.I.R. Act apply to be represented by the representative union remains unfettered and it does not change for the reason that the proceedings are under Act No. 1 of 1972 . The status and privilege of the representative union remain unchanged. The supremacy of the representative and approved union is well recognised in *Balmer Lawrie Workers Unions, Bombay & anr. v. Balmer Lawrie & Co. Ltd., & ors*, 1985 (1) C.L.R. 103. The respondent No. 1 - Company was hence justified in filing the Complaint (ULP) No. 22 of 1991 against the representative Union. It is also made clear that nothing prevented the said Company to file such a complaint even against other Trade Unions provided they are satisfied that those unions were responsible for engaging in or have engaged in such unfair labour practices complained of by them.

15. We may also add that sub-section (2) of section 21 of the Act No. 1 of 1972 curtails not only the right of an employee to appear and act or allowed to be represented in proceeding or unfair labour practices stipulated therein but also prohibits the right of Trade Unions other than the representative Union. It is difficult for us to draw the conclusion that the proceedings other than that stipulated in sub-section (2) of section 21, the representative Unions has legal right to appear and act on behalf of the employees and that right could be exercised by other trade unions in the field."

8. The aforesaid judgment passed by the Division Bench of this Court was challenged by the Union before the Apex Court, The Principal question canvassed before the Apex Court was whether a representative union under the Bombay Industrial Relations Act, 1946 has the exclusive right to represent the employees of the concerned industry in complaints relating to unfair labour practices under the MRTU & PULP Act other than those specified in Items 2 and 6 of Schedule IV. The Apex Court considered the relevant provisions of the Bombay Industrial Relations Act and the MRTU & PULP and Act held that the provisions of B.I.R. Act and MRTU & PULP Act cannot be said to operate in different fields and rather there is commonality in their objects and their provisions and that they operate in tandem and complement each other in respect of industries to which the B.I.R. Act has been made applicable. The Apex Court held that a union other than a representative union cannot appear in proceedings relating to all unfair labour practices other than those specified in items 2 and 6 of Schedule IV. The relevant

discussion made by the Apex Court in the report i.e. *Shramik Uttarsh Sabha Vs. Raymond Woolen Mills Ltd. and others*, is made in paragraphs 11, 12, 13, 14 and 15 which read thus:

"11. Ms. Jaishing, learned Counsel for the appellant, submitted that the B.I.R. Act and the MRTU & PULP Act operated in different fields. The former did not deal with the subject of unfair labour practices, which was dealt with by the latter. Since the object of the latter was to prevent unfair labour practices, it allowed access to courts to any union, recognised, representative or otherwise, to any employee and even to a labour officer to ensure that an unfair labour practice was prevented. Since an unrecognised union could file a complaint, there was nothing incongruous about it being heard as a respondent. Section 21 was emphasised, and it was submitted that exclusively was conferred only in regard to Items 2 and 6 of Schedule IV of the MRTU & PULP Act and an unrecognised union could appear in complaints in respect of all other unfair labour practices. Having regard to the provisions of section 29 of the MRTU & PULP Act, whereby any order passed would be binding on the appellant and its members, they had a right to be heard by the Industrial Court before any order could be made against them.

12. Mr. A.H. Desai, learned Counsel for the first respondent, submitted that the right of a representative union to represent the employees in an industry to which the B.I.R. Act applied remained unfettered and did not change by reason of the fact that the proceedings had been adopted under the MRTU & PULP Act. Learned Counsel for the second respondent adopted the arguments advanced on behalf of the first respondent.

13. The MRTU & PULP Act takes note of the provisions of the B.I.R. Act. Many of its definitions are stated to be those contained in the B.I.R. Act. Chapter III, which deals with the recognition of unions, states, in section 10(2), that its provisions do not apply to undertakings in industries to which the provisions of the B.I.R. Act apply. The B.I.R. Act was enacted to provide for the regulation of the relation of employers and employees in certain matters and to consolidate and amend the law in relation to the settlement of industrial disputes. The MRTU & PULP Act was enacted to provide for the recognition of trade unions for facilitating collective bargaining for certain undertakings; to state their right and obligations; to confer certain powers on unrecognised unions; and to define and provide for the prevention of unfair labour practices; and to constitute courts in this behalf. It cannot, therefore, be said that the B.I.R. Act and the MRTU & PULP Act operate in different fields. There is commonality in their objects and their provisions. The obvious intent of the legislature which enacted them was that they should operate in tandem(tandem) and complement each other in respect of industries to which the B.I.R. Act had been made applicable. The two statutes must be read together.

14. Section 21 of MRTU & PULP Act, upon which emphasis was laid on behalf of the appellants, states that no employee in an undertaking to which provisions of

the Industrial Disputes Act applies shall be allowed to appear or act or be allowed to be represented in any proceeding relating to the unfair labour practices specified in items 2 and 6 of Schedule IV except through the recognised union. It is important to note that the reference is to employees in an undertaking to which the Industrial Disputes Act applies and not to employees in an undertaking to which the B.I.R. Act applies. Apart therefrom, the section permits an employee, not an union other than the recognised union to so appear. The provisions of section 21 do not, therefore, lead to the conclusion that an union other than a representative union can appear in proceedings relating to all unfair labour practices other than those specified in items 2 and 6 of Schedule IV.

15. It is true that an order of the Industrial Court in the concerned proceedings would bind all employees of the first respondent even though there may be some among them who owe allegiance not to the representative union but to the appellant. The objective of the provisions of the B.I.R. Act and the MRTU & PULP Act, read together, and the embargo placed upon representation by anyone other than the representative of the employees, who, for the most part, is the representative union, except in matters pertaining to an individual dispute between an employee and the employer, is to facilitate collective bargaining. The rationale is that it is in the interest of industrial peace and in the public and national interest that the employer should have to deal, in matters which concern all or most of its employees, only with a union which is representative of them. It may be that a union which was representative of the employees may have in the course of time lost that representative character; it is then open, under the provisions of the B.I.R. Act, for a rival union to seek to replace it."

9. The legal position is thus no more *res integra* and the Apex Court in unequivocal terms has laid down that the union other than a representative union cannot appear in proceedings relating to all unfair labour practices other than those specified in Item Nos. 2 and 6 of Schedule IV. The right of the representative union to represent the employees in an industry to which the B.I.R., Act applies remains unfettered and that right of the representative union is not changed by reason of the fact that proceedings have been adopted under the MRTU & PULP Act. There is no dispute that the Maharashtra General Kamgar Union, the complainant union, is not the representative union under the B.I.R. Act. There is also no dispute that the employer company and its undertaking is governed by the provisions of the B.I.R. Act. Rather in the complaints filed by the complainant union, it is admitted that the employer company and its undertaking is governed by the provisions of B.I.R. Act. It is also admitted in the complaint filed by the complainant union that Mill Mazdoor Sabha is the representative Union under the B.I.R. Act. In this fact situation and the legal position laid down by the Apex Court, the two complaints filed by the complainant union which is not the representative union or the approved union are not maintainable under law and cannot be held to be competent. I do not find any merit in the contention of Mr. Ganguli that since the alleged unfair labour practice in the two complaints related to the termination of the individual employees, if the

complaint could be maintained by individual employees, the unrecognised union could also maintain the complaint. Paragraph 15 of the judgment of the Apex Court in the report afore-quoted does not support the contention of Mr. Ganguli. Rather it would be seen that the grievance in the complaints related to all or almost large number of employees and, therefore, such grievance ought to have been espoused by the union which is representative of them and the complainant union, namely, the Maharashtra General Kamgar Union had no locus standi in the matter and could not maintain the said complaints. I, therefore, have no hesitation in holding that the two complaints filed by the complainant union, namely, Maharashtra General Kamgar Union were not maintainable and, therefore, liable to be dismissed on that count alone.

10. Even on merits, I find that the judgment passed by the Industrial Court on 19-8-1994 cannot be sustained. The principal grievance in the Complaint (ULP) No. 171 of 1987 raised by the complainant union was that the notice dated 6-1-1987 issued by the employer company terminating the services of the workmen was illegal, void ab initio and inoperative. It would be seen that on 3-9-1986 two floors of the factory building collapsed and as a result thereof the large number of sections of the factory were rendered unworkable. There were restraint orders from various departments of the Government including Inspectorate of Factories on 9-10-86. Thereafter the employer company made applications u/s 25-O(7) before the State Government seeking exemption from applicability of section 25-O(1). On 19-12-1986, the State Government in exercise of its power under sub-section (7) of section 25-O directed that for the reasons stated in the order the provisions of sub-section (1) of section 25-O of the I.D. Act shall not apply in relation to the said undertaking for the period of three years from the date of accident and the said undertaking shall settle all the legal claims of the entire workmen expeditiously and in accordance with law and that they shall provide the work to the affected workmen when the factory restarts. The order dated 19-12-1986 passed by the State Government was within the competence u/s 25-O(7) whereby the provisions contained in section 25-O(1) of the I.D. Act were excluded from applicability to the employer company's industrial establishment. The State Government in its order dated 19-12-1986 observed that the employer company undertakes to pay all legal dues and compensation to all the workers as per law as a result of closure for the period of three years and provide employment to the affected workmen on priority basis when the factory restarts. The employer company and the union were heard and after considering the entire material on record the State Government formed the opinion having regard to the exceptional circumstances as explained and was satisfied that owing to such exceptional circumstances of an accident on 3-9-1986 it was necessary to direct that the provisions of sub-section (1) of section 25-O of the I.D. Act shall not apply in relation to the undertaking of the employer company for a period of three years from the date of the accident and necessary permission for the closure of the said undertaking was granted for the specified period of three years. Upon passing of the said

order by the State Government on 19-12-1986, the notice dated 6-1-1987 was issued and displayed by the employer company on the notice Board. The said notice obviously was issued when permission for closure by the State Government was operative and exemption granted u/s 25-O(7) was holding the field. Thus, the action taken by the employer company in issuing the notice dated 6-1-1987 was in accord and conformity with the permission granted by the State Government in its order dated 19-12-1986 and, therefore, could not have been held to be an unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act.

10. Section 25-O of the I.D. Act reads thus:

"(25-O. Procedure for closing down an undertaking.- (1) An employer who intends to close down an undertaking of an industrial establishment to which this chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

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

(2) Where an application for permission has been made under sub-section (1), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for all shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a

tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this subsection, it shall pass an award within a period of thirty days from the date of such reference.

(6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such under taking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under subsection (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.)"

11. The employer company was an industrial establishment at the relevant time employing not less than 100 workmen and therefore the special provisions relating to lay off, retrenchment and closure in Chapter V-8 were applicable to it.

12. Under sub-section (1) of section 25-O the employer who intends to close down the undertaking of an industrial establishment to which Chapter V-8 applies is required to apply in prescribed manner for prior permission to the appropriate Government at least 90 days before the intended closure setting out the reasons for the intended closure of the undertaking. The copy of such application is required to be sent simultaneously on the representatives of the workmen in the manner prescribed. The proviso appended to sub-section (1) to section 25-O is not relevant for the present purposes. Sub-section (2) to sub-section (6) of section 25-O makes a provision for consideration of such application made by the employer undertaking under subsection (1) of section 25-O by the State Government, grant or refusal of such order, the review of the order passed by the appropriate Government and reference to the Tribunal for adjudication. Sub-section (7) of section 25-O begins with non obstante Clause and it says that notwithstanding anything contained in the provisions of sub sections (1) to sub-section (6) of section 25-O, the appropriate Government may upon its satisfaction of exceptional circumstances such as accident in the undertaking or death of the employer or such like eventuality direct that the provisions of sub-

section (1) of section 25-O shall not apply in relation to such undertaking for such period as may be specified in the order. Thus, a power is conferred on the appropriate Government that in the event of exceptional circumstances - an accident in the undertaking or death of the employer or such like eventuality, it may direct the provisions of sub-section (1) of section 25-O shall not apply. The employer company invoked the power of the appropriate Government under sub-section (7) of section 25-O and the appropriate Government was satisfied that due to the exceptional circumstances and the accident, the provisions of section 25-O(1) relating to procedure for closing down shall not be applicable to the employer company for a period of three years from the date of accident, obviously, therefore, on the basis of the order passed by the appropriate Government the employer company was not required to follow the procedure as contemplated u/s 25-O(1) and it was open to employer company to straightaway proceed for closure of the undertaking. Accordingly it issued the notice on 6-1-1987 which definitely was in accord and conformity with the order passed by the State Government on 19-12-1986. Mr. Ganguli, the learned Counsel appearing for the union, however, submitted that by the order of the State Government the exemption was only granted as far as section 25-O(1) was concerned. However, the employer was not exempted from following the procedure u/s 25-FFA of the I.D. Act. According to Mr. Ganguli, by virtue of provisions contained in section 25-J of the I.D. Act, the provisions of section 25-FFA are also attracted and since there was no redemption sought under sub-section (2) of section 25-FFA nor granted, there was no valid closure and the notice dated 6-1-87 terminating the services of the employees was illegal.

13. I am afraid, the contention raised by Mr. Ganguli has no merits and is devoid of any substance. As already observed by me, the employer company in its employment had more than 100 workmen employed at the relevant time and, therefore, special provisions provided in Chapter V-8 relating to lay-off, retrenchment and closure were applicable.

14. Section 25-J is part of Chapter VA and it reads thus :

"25-J. Effect of Laws inconsistent with this Chapter.---(1) The provisions of this Chapter shall have effect notwithstanding anything in consistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946):

Provided that where under the provisions of any other Act or rules, orders or notifications issued thereunder or under any standing orders or any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act; the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.

(2) For the removal of doubts, it is hereby declared that nothing contained in this

chapter shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this chapter.

15. Section 25-J provides that provisions of Chapter V-A shall have over-riding effect over all inconsistent provisions contained in any other law. However, the provision contained in section 25-FFA(1) is exactly identical to the provision contained in section 25-O(1) and the provision contained in section 25-FFA(2) is exactly identical and para materia to the provision contained in sub-section (7) of section 25-O. There is no inconsistency in the provision contained in section 25-O(1) and 25-O(7) on the one hand and section 25-FFA(1) and 25-FFF(2) respectively. Section 25-J only deals with the effect of law inconsistent with Chapter V-A. There being no inconsistency in the provisions of section 25-O(1) and section 25-O(7) with the provisions of section 25-FFA(1) and section 25-FFA(2) respectively, the provision of section 25-J is not of any help to the complaint union.

16. "Closure" is defined in section 2(cc) of I.D. Act which means the permanent closing down of a place of employment or part thereof. The order, therefore, passed by the State Government in exercise of its powers under sub-section (7) of section 25-O shall have to be read with reference to closure as defined in section 2(cc) which means permanent closing down of a place of employment or part thereof. Though the order was passed by the State Government permitting the employer company to close down the undertaking for a period of three years from the date of accident yet so long as that order holds and during that time if the services of the employees have been terminated and brought to an end in accordance with law, such closure would in law be permanent closure and it cannot be said by any stretch of imagination that the employer has indulged in unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act. The entire approach of the Industrial Court in that regard, therefore, was wholly misconceived and directed by irrelevant consideration which cannot be sustained.

17. Adverting to the writ petition filed by the union challenging the award, it may be observed that in view of my aforesaid discussion, nothing substantial remains in the writ petition filed at the instance of the union challenging the award.

18. Even otherwise, it would be seen that the Industrial Tribunal on reference being made has considered the entire facts and circumstances of the case in right perspective and did not commit any error in reaching the conclusion that having regard to the genuineness and adequacy of the reasons stated by the employer and also the interest of general public and all other relevant factors including the interest of the employer and the employee the case for permission was made out for the closure of the undertaking. Mr. Ganguli, the learned Counsel for the complainant union urged that reference made by the State Government to the Tribunal was illegal and improper having been made without

hearing the complainant union. In support of his contentions he relied upon the decisions of the Madras High Court in *Workmen of Kemp (I) Ltd. (represented by Kemp Employees Union, through its General Secretary), Coimbatore v. Government of Tamil Nadu (represented by Secy., Labour & Employment Dept Madras & Ors.)*, 1991(2) C.L.R. 275 and the judgment of this Court in *Maharashtra General Kamgar Union Vs. Star Oxides and Chemicals Ltd. and another, .*

19. In *Workmen of Kemp (I) Ltd. (represented by Kemp Employees Union, through its General Secretary), Coimbatore v. Government of Tamil Nadu (represented by Secy., Labour & Employment Dept) Madras & ore.*, 1991 (2) C.L.R. 275, the Division Bench of the Madras High Court held thus :

"25. In this instant case, the workmen had the benefit of an earlier order, dated 9 June 1990, in their favour. They could not be referred to the Tribunal to suffer an adjudication, without first being put on notice by the appropriate Government, with regard to its intention to "reopen" the whole issue. When the Government chose to look into its earlier order at the instance of the management, in all fairness, it should have heard the workmen who were participants in the earlier enquiry resulting in an order, which was adverse to the interest of the management. The Tribunal does not have any power to set aside the earlier order, dated 9 June 1990, as the correctness of that order is not the subject-matter of reference. The order of reference was made on the review application and for all intent and purposes, a fresh consideration of the matter would be called for. Of course, the finality of the order passed u/s 25-O(2) read with section 25-O(4) is subject to the exercise of power u/s 25-O(5) of the Act, but that does not in any way improve the matter so far as the appellant is concerned, nor does it do away with the necessity of putting the workmen on notice before making the order of reference."

20. The learned Single Judge of this Court in *Maharashtra General Kamgar Union Vs. Star Oxides and Chemicals Ltd. and another*, held thus:

"17. In the petitioner's case, the petitioner was not even given notice by the Appropriate Government/the Competent Authority that it was exercising its power under sub-section (6) of section 25-N of the Act or that, despite the earlier order dated 5th January, 1994, the matter was being referred for adjudication to the Industrial Tribunal under sub-section (6) of section 25-N. Consequently, the impugned order of reference is bad in law, vitiated and liable to be interfered with."

21. The legal proposition propounded in the aforesaid two judgments if applied on facts, it would be seen that in the present case the order of reference was passed by the State Government after hearing the representative of employer company as well as the representative of the union and, therefore, there is no merit in the contention of the union that the order of reference was made by the appropriate Government u/s 25-O(5) without hearing the union. A perusal of the

order would show that it was fixed for hearing on 5-3-1994 and 23-3-1994 when Shri P.N. Samant (Dada Samant) .Vice President of the Maharashtra General Kamgar Union, Ghatkopar, (Complainant Union) was present and after hearing him the order dated 28-4-1994 referring the matter for adjudication to the Industrial Tribunal was passed, Mr. Ganguli, the learned Counsel for the union also urged that under the proviso of section 25-O(5) the Industrial Tribunal would cease to have jurisdiction to adjudicate the reference after thirty days of making of reference and therefore the award passed by the Industrial Tribunal was without jurisdiction and cannot be sustained. The contention of Mr. Ganguli is that proviso of section 25-O(5) is mandatory in the scheme of section 25-O. In support of his contention Mr. Ganguli relied upon the judgment of the Apex Court in Vazir Glass Works Ltd. Vs. Maharashtra General Kamgar Union and another, .

22. The Apex Court in Vazir Glass Works Ltd., held thus :

"28. After giving our careful consideration to the facts and circumstances of the case the submissions made by the learned Counsel for the parties, it appears to us that it is quite evident from the Scheme of various subsections of section 25-O of the Act that whenever an application for closure of an industrial unit is made by an employer, the State Government before whom such application is made is required to dispose of such application within sixty days from the date of making the applications and communicate its decision within the said period of sixty days so that an employer does not suffer any hardship on account of failure on the part of the State Government to dispose of such application for permission for closure expeditiously. In order to impel the State Government to dispose of such application expeditiously not exceeding sixty days, provision has been made that if the decision of the State Government on the application for permission to close an industrial unit is not communicated within the said period of sixty days, it will be deemed that such permission has been granted. Since the decision on the application for permission for closure is to be taken by the executive authority namely the State Government and since no provision for statutory review before other authority has been made the legislature has incorporated the provision of review by the State Government of its decision on the application for closure either on its own motion or on the basis of the application to be made by the aggrieved party.

29. As the decision made by the State Government on the question of closure of an industrial unit cannot but bring about serious consequence affecting productivity, employment opportunities etc., the decision taken on the application for closure, has been made operative for one year only, so that after such period, if an employer still desires that the industrial unit should be closed, it may make a fresh application for permission to close the said unit. It is quite obvious that in such application not only the factors which were indicated in the previous application in justification of closure of the industrial unit but other factors emerging with the passage of time may be placed before the State Government for taking decision on the application for permission to close. In order to evade

any unmerited hardship meted out to an aggrieved party on account of improper or incorrect decision made by the State Government on the application for permission to close, even during the period of one year when the decision of the State Government remains operative the review application may be made by the party aggrieved. Even apart from such application, the State Government may also initiate suo moto proceeding to review its decision. If the State Government passes any order on such review application, such order will supersede the initial order made on the application for permission to close.

30. Since the decision made on an application for permission for closure is to remain operative only for a year. In our view, it will be only proper to hold that an order by way of review either on the aggrieved party's application or on own motion of the State Government, must be made within the said period of one year. Otherwise, the right to make fresh application for permission to close after expiry of one year from the date of rejection of permission for closure will lose its relevance. It also appears to us that anomalous situation may arise if the application for review, when presented within the said time frame of one year is allowed to be decided even after the expiry of the said time frame of one year when the order passed by the State Government has already ceased to be operative. As an illustration, it may be indicated that a party aggrieved makes an application for review of the order of the State Government within a year during which the order is operative, but for some reason, such application is not disposed of within one year. After expiry of one year, the aggrieved party makes a fresh application for permission to close and on such application an order is made by the State Government or the party obtains a deemed order. This order on a fresh application, subject to any review of the same, will remain in force for one year. If the State Government is permitted to pass order on the review application made against the first order when the right to make fresh application and to obtain an order has already accrued, any order on review to be enforceable must conform to the order passed or deemed to have been passed on subsequent application for permission to close. Any other order is not conceivable because an order by way of review supersedes the order reviewed but not the subsequent order on a fresh application made and such subsequent order being operative for the next one year cannot be passed by any order of review of the earlier order.

31. Although it has not been expressly indicated within what period a review application validity made is to be disposed of, but the provision that order on an application for closure would remain in force for one year and in the absence of any embargo to make fresh application for such permission after expiry of one year even if a review application remains pending, makes it abundantly clear that in the scheme of section 25-O, the review application is to be made before expiry of the said time frame of one year and such application is to be disposed of within such time frame otherwise such review application will become infructuous. The argument that a party should not be made to suffer simply on account of failure on the part of a statutory authority to dispose of review

application within a time frame and thereby rendering it infructuous, is not tenable because after expiry of the said time frame of one year, the party aggrieved has a right to make a fresh application by incorporating all the material factors germane for consideration of its application for permission to close. Including the factors indicated in review application. Neither the general principle of retaining jurisdiction to dispose of review application validly made nor the principle that an authority if clothed with the power of review will not become functus officio after expiry of the time frame of one year but will retain its authority to dispose of the pending review application will arise in the context of the scheme of section 25-O."

23. In Vazir Glass Works Ltd., the Apex Court was seized with the question whether decision of the State Government is reviewable only within one year from the date of decision of the application u/s 25-O(1) and whether such review application has to be filed within one year and if the review application filed within one year becomes infructuous if not disposed of within one year. The Apex Court considered the scheme of various sub sections of section 25-O of the Act and held that since the order on an application for the closure would remain in force only for one year and in the absence of any embargo to make fresh application the review application has to be made before the expiry of the time frame of one year and such application is to be disposed of within such time frame otherwise such review application will become infructuous. The Apex Court did not deal with the question where the application for review was made within one year from the date of decision of the State Government on the application u/s 25-O(1) and the State Government made the reference of the matter to the Tribunal for adjudication also within one year of its decision but the Tribunal passed the award beyond 30 days from the date of such reference and beyond one year from the date of decision of the State Government u/s 25-O(1). Proviso appended to sub-section (5) of section 25-O makes a provision that the Tribunal shall pass an award within a period of 30 days from the date of such reference but such time frame cannot be held to be mandatory and it cannot be said that the Tribunal would become functus officio and cease to have any jurisdiction in the matter if it fails to pass the award within 30 days from the date of such reference. A reference which was validly made to the Tribunal will not be rendered invalid if the Tribunal fails to pass the award within 30 days for the circumstances which may be beyond the control of the parties as well as beyond the control of the Tribunal. A reference made by the State Government to the Tribunal for adjudication u/s 25-O(5) may not be adjudicated within a period of 30 days for varied reasons and in case the award is passed by the Tribunal beyond 30 days, it cannot be said that such award would be rendered without jurisdiction. The observations made by the Apex Court in Vazir Glass Works Ltd., regarding making of an application for review and decision thereof within one year from the date of decision on the application u/s 25-O(1) cannot be extended to the reference made to the Tribunal by the appropriate Government under sub-section (5) of section 25-O. Take a case where reference is made by the State

Government u/s 25-O(5) to the Tribunal on the last day of one year from the date of decision of the refusal or grant of permission passed u/s 25-O(1). In that situation obviously the adjudication by the Tribunal shall be beyond the period of one year from the date of decision by the State Government u/s 25-O(1).

24. It would be advantageous to refer to the Division Bench judgment of this Court in *Association of Engineering Workers Vs. Indian Hume Pipe Company Ltd. and others*, where the Division Bench of this Court was considering sub-section (6) of section 25-N which is identical to the provision of section 25-O(5). The Division Bench of this Court while considering the question whether the provision contained in proviso to sub-section (6) of section 25-N is mandatory or not, held that the requirement that award may be made within 30 days from making of the reference is directory and not mandatory. The Division Bench held thus :

"9. This question can also be considered from another angle. Under subsection (4), a legal fiction is provided about the grant of permission on the expiry of the period of sixty days. By sub-section (6) a review is provided by the appropriate Government or the specified authority, either on its own motion or on the application made by the employer or any workman. Then the sub-section provides that an appropriate Government or specified authority may review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication. The words "refer the matter" and "for adjudication" are important. What is sought to be referred is the matter and not the question of legality of the order. In the context, the expression "refer the matter" will mean refer the application for permission made by the employer for adjudication. The Tribunal is expected to pass an award. The term "Award" is defined by section 2(b) to mean an interim or final determination of any industrial dispute or of any question relating thereto. The provision providing for a period of thirty days for adjudication indicates that a long-drawn process is not contemplated, though the nature and extent of inquiry must depend on the facts of each case. This has been done so as to avoid delay in adjudication with a view to ensure speedier justice in the matter. It means that the period of thirty days was considered by the legislature as reasonable for the adjudication of the matter referred. But that does not mean that after the expiry of the said period, ipso facto the reference lapses or the Tribunal becomes functus officio.

10. It will not be fair to assume that, if it is held that the provision is directory and not mandatory, the Industrial Tribunal will not act with expedition. The Tribunal is expected to perform its duty within the said period. It is only in exceptional cases where it is found that it is impossible to complete the adjudication proceedings within the prescribed period that the Tribunal can complete the proceedings beyond the said period. Exception cannot be permitted to become a rule. The Tribunal is expected to adhere to the time schedule unless it becomes impossible to adjudicate the matter within the prescribed period. The Tribunal is also expected to record reasons in writing as to why the proceedings

could not be completed within the time prescribed by the legislature. However only because time is prescribed by the legislature, it cannot be held that after the expiration of the said period, the Tribunal has no jurisdiction to adjudicate the matter referred to it. If the contentions raised by the petitioner is accepted that the Tribunal becomes functus officio after the expiration of thirty days, it will result in injustice and general inconvenience. To say the least, it will defeat the very object of Sub-section (6) of section 25-N which contemplates a reference of the matter to the Tribunal for adjudication. To hold that after the expiry of the period of thirty days, the reference lapses and the Tribunal become functus officio, will amount to a premium on negligence or inaction and will work serious inconvenience or injustice to the persons who have no control over the Tribunal which is entrusted with a public duty. In our view, it would not promote the main object of the legislature viz. adjudication of the matter by the Tribunal. Therefore the Tribunal was wholly right in coming to the conclusion that the said provision is directory and the Tribunal does not become functus officio, nor will the reference lapse, only because the period of thirty days is over. In the view which we have taken, it is not necessary to make a detailed reference to the various decisions cited before us at the Bar."

25. I have also no hesitation for the reasons aforestated in holding that the proviso in section 25-O(5) that the Tribunal shall pass an award within 30 days from such reference is directory and not mandatory and, therefore, the award passed by the Industrial Tribunal on 30-6-1995 cannot be rendered bad in law on that count.

26. Mr. Ganguli, the learned Counsel for the Maharashtra General Kamgar Union also urged that the employer did not lead any evidence to show that there were genuine and adequate reasons for closure nor the Tribunal considered the interest of general public and other relevant factors.

27. It cannot be said that no material was placed before the Tribunal to find out the adequacy and genuineness of reasons and other relevant factors including the public interest. The Tribunal has extensively considered the available material and found that the collapse of the building on 3-9-86 resulted in damage of the 75% of the building and that due to that accident and closure of the mill because of subsequent circumstances namely the restrictions imposed by the Municipal Corporation, the Inspector of factories and by Electrical Inspector, it was not possible and feasible for the employer company to restart the mill. In paragraph 30 of the award the Tribunal has summed up the consideration of the circumstances which read thus :

"30. Therefore, taking into consideration following facts that (1) factory building collapsed on 3-9-1985 due to the accident, (2)(a) the lease of the land on which the first party's factory was built expired on 13-8-1988 after the period of 35 years from 14-6-1953.

3) that the sub lease of the first party has not been renewed by the lessor as

their lease has not been renewed by the trustee of Khimji Bhagwandas Charity Trust.

4) that the Municipal authorities are not ready to approve plans for reconstruction unless documents evidence regarding clear title of the land on which the building is to be built up is produced.

5) that the warning had been administered by the Chief Inspector of Factories, Maharashtra State and the Bombay Municipal Corporation that no manufacturing process should be carried on in the premises unless the construction is carried on as per plans approved by B.M.C. and fresh certificate of stability in Form-1 (A) under Factory Rules, 1963 obtained from the competent authority.

6) it is not possible for the first party to obtain the certificate referred to in the previous paras in respect of the collapsed factory building as even these portions of the factory building which do not show any visible sign of distress are regarded as suspect by the experts.

7) that Electrical Inspector, Industries, Energy and Labour Dept. of the Government has restrained the first party from energising the electrical installation.

8) that all utilities and other infrastructure such as power etc. have ceased to exist.

It is further noted that, the Government by its order dated 19-12-1986 granted permission for closure, for specific period and later adjudicated the dispute to this Tribunal. Therefore, once the permission is granted for specific period, then it is very much necessary in the interest of justice that permission for permanent closure should be granted to the party No. 1 employer."

28. The Tribunal also held that it cannot be said that the application made by the employer company was mala fide or actuated with ulterior motive and that after taking into consideration all the aforesaid facts and circumstances which were found to be genuine and adequate and in the interest of the workers and employer rightly held that application for closure made by the employer company was justified and deserved to be granted.

29. I do not find any infirmity in the award dated 30-6-1995 warranting interference by this Court in extra ordinary jurisdiction.

30. Consequently, the Writ Petition No. 2362 of 1994 is allowed and the order/judgment passed by the Industrial Court on 19-8-1994 is quashed and set aside and as a result thereof the Complaints (ULP) No. 1124 of 1986 and Complaint (ULP) No. 171 of 1987 stand dismissed. The Writ Petition No. 47 of 1996 filed by the Maharashtra General Kamgar Union is dismissed and the award dated 30-6-1995 is maintained. No costs.

31. Petition dismissed.