

**(2002) 11 BOM CK 0059**

**In the Bombay High Court**

**Case No : Writ petition No. 3639 of 1997**

Anchor Industries Employees" Union

APPELLANT

Vs

Anchor Industries and Others

RESPONDENT

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**Date of Decision : 01-11-2002**

**Acts Referred:**

Constitution of India, 1950 — Article 227

Industrial Disputes Act, 1947 — Section 25FFF, 25G, 25O

**Citation : (2003) 3 BOMLR 698**

**Hon'ble Judges : S. Radhakrishnan, J**

**Bench : Single Bench**

**Advocate :** S.K. Singhvi, i/.b., Anand Chavare, for the Appellant; J.P. Cama instructed by Aditya Chitale, for Respondent No. 1, Haresh pai, for Respondent Nos. 2 and 3 and C.U. Singh, instructed by Sanjay Udeshi and Co. for Respondent Nos. 4, 5, 6, 9, 16, 19, 21, 22 and 23, for the Respondent

**Final Decision : Dismissed**

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## **Judgement**

1. By this Petition filed by the Employees Union, the Union is challenging an order dated 30th December, 1995 passed by the Industrial Court, Maharashtra, Mumbai, whereby the Industrial Court has dismissed the complaint (ULP No. 337 of 1980 filed under the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971. (hereinafter referred to as MRTU & PULP Act).

2. By the aforesaid Complaint (ULP) No. 337 of 1980 the Petitioner Union had contended before the Industrial Court that the Respondent No. 1 Company had indulged in an illegal lockout under the guise of closure whereby the Respondent No. 1 Company had violated the provisions of Section 25-O of the Industrial Disputes Act. In the aforesaid complaint, after regarding of evidence and after a full fledged hearing, the same ultimately came to be dismissed by the Industrial Court on 30th December, 1995.

3. It appears that on 3rd January, 1980 there was a strike in the establishment of Respondent Nos. 1 to 27 protesting against the illegal discharge of certain

employees. On 27th March, 1980 in all the establishments of Respondent Nos. 1 to 27 notices were put up mentioning that they were closing their establishments. Finally on 16th June, 1980 a common settlement was entered into between the Petitioner Union and the Respondent Nos. 1 to 27 whereby the above establishments being the Respondent Nos. 1 to 27 were restarted. After a lapse of about two months, on 23rd August, 1980 the Petitioner Union had served a Charter of Demands upon the Respondent Nos. 1 to 27. The Petitioner Union contends that in pursuance of the aforesaid Charter of Demands, the Respondent Nos. 1 to 27 again closed down all their establishments on 3rd December, 1980. Aggrieved thereby the Petitioner Union has filed a Complaint before the Industrial Court. The said complaint was dismissed by the Industrial Court on 15th March, 1983. The Petitioner Union had challenged the said dismissal of the complaint before this Court by filing a Writ Petition. Ultimately, this Court by its order dated 6th November, 1990 had allowed the Writ Petition and set aside the order of dismissal dated 15th March, 1983 and had remanded back the said matter to the Industrial Court to be heard afresh. Pursuant thereto, fresh affidavits were filed by the Petitioner Union and the Respondents. Various records & documents were also filed by both sides before the Industrial Court. It appears that on 29th June, 1994 the Petitioner Union had filed an application for production of certain documents. Sine no decision was taken by the Industrial Court in the said application, the Petitioner Union had approached this Court, whereupon this Court had directed the Industrial Court to decide the said application before 30th October, 1995 and to decide the main complaint itself within a period of eight weeks from that day. In pursuance thereof, the Industrial Court disposed of the said complaint (ULP) No. 337 of 1980 on 30th December, 1995 whereby the Industrial Court has rejected the complaint filed by the Petitioner Union. Aggrieved thereby the present Petition has been filed by the Petitioner Union.

4. Mr. Singhvi, the learned Counsel for the Petitioner Union has strongly contended that the Industrial Court has ignored the evidence produced before it with regard to the functional integrity of Respondent Nos. 1 to 33. Mr. Singhvi has further contended that the Respondent Nos. 1 to 33 are integral & interdependent, and as such, the aforesaid closure was a ruse and in fact the same amounted to an illegal lockout. Mr. Singhvi has contended that the Industrial Court had not properly appreciated the evidence on record and had come to a wrong conclusion and dismissed the said complaint. According to Mr. Singhvi, the Industrial Court had not applied proper tests with regard to the functional integrity as laid down by the various judgments of the High Court and the Supreme Court. Mr. Singhvi took me through the aforesaid judgment of the Industrial Court dated 30th December, 1995 and also took me through various record which were tendered before the Industrial Court.

5. Mr. Singhvi, in support of his contentions, has referred to and relied upon the judgment of the Hon'ble Supreme Court in the case of Food Corporation of India Workers Union Vs. Food Corporation of India and another, . In this case, Mr.

Singhvi pointed out that the tribunal was only required to consider the material placed before it and there was no need for the tribunal to find out whether there was any evidence and that was "duly proved", "legally proved" or proved "beyond reasonable doubt". In the case the Hon''ble Supreme court has clearly held that the Tribunal in such matters, will have to marshal and consider the "material" placed before it and that there was no need to prove the facts as per the Evidence Act, inasmuch as the Tribunal is not a Court. Mr. Singhvi thereafter referred to and relied upon another judgment of the Hon''ble Supreme Court in the case of *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, . In the said judgment, the Hon''ble Supreme Court has held that it is for the Industrial Tribunal to adjudicate from the facts whether there was a closure or not and it was not for the High Court at the initial stage to satisfy itself whether there was a case of closure or the case of illegal lockout. Finally in the said judgment, the Hon''ble Supreme Court has made it clear that such an adjudication should be left to the special Tribunal constituted by the Act and the High Court should not try to determine the same by way of a preliminary issue. The above judgment may not be of much assistance to the learned Counsel for the Petitioner inasmuch as in the instant case the Tribunal has finally decided the complaint based on the material produced before it, and after a detailed hearing being given, the Tribunal has come to the conclusion that that the Petitioner Union could not establish any unfair labour practice as sought to be alleged.

6. Mr. Singhvi thereafter referred to and relied upon the judgment of the Hon''ble Supreme Court in the case of *Workmen of I.L.T.D. Company v. I.L.T.D. Company* - 1970 I L.L.J. 843. In this judgment, the Hon''ble Supreme Court has held that the closure of 8 Depots by the Company even if it is held not to amount to closure of business of the Company, cannot be interfered with by an Industrial Tribunal, if, in fact, that closure was genuine and real. This judgment also will be of no help to the learned Counsel for the Petitioner Union. Mr. Singhvi thereafter referred to and relied upon the judgment of the Supreme Court in the case of *J.K. Synthetics v. Rajasthan Trade Union Kendra and Ors.* - 2001 I C.L.R. 1058. Referring to this Judgment, Mr. Singhvi has pointed out that the Hon''ble Supreme Court has held that in order to come to the conclusion whether or not retrenchment was justified, the Industrial Tribunal necessarily had to first decide whether or not there was a closure. It may be noted here that in the aforesaid case relied upon by Mr. Singhvi, the closure had taken place prior to 1984 and as such, Mr. Cama, the learned Counsel for the Respondent No. 1 has very strongly contended that the said judgment will have no application in the instant case.

7. Mr. Singhvi thereafter referred to and relied upon the judgment of our High Court in the case of *Industrial Perfumes Ltd. v. Industrial Perfumes Workers Union* - 1998 II CLR 273. Referring to paragraph No. 8 of the aforesaid judgment, Mr. Singhvi has contended that the Court can even go behind the reasons of closure. The Court can lift the veil to see what lies behind it. Thereafter referring and relying upon the judgment of the Hon''ble Supreme

Court in the case of Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others, , Mr. Singhvi has contended that the Court has jurisdiction to lift the veil to see the truth in the said facts and circumstances. Mr. Singhvi therefore contended that in the instant case the Industrial Court has failed to appreciate various material produced before it in the proper perspective and has come to a wrong conclusion and dismissed the complaint filed by the Petitioner Union. Mr. Singhvi has submitted that, exercising the jurisdiction under Article 227 of the Constitution of India, this Court ought to interfere and set aside the impugned order of dismissal of the Complaint passed by the Industrial Court.

8. Mr. Singhvi has submitted that all the aforesaid 22 establishments belong to the Respondent No. 1 and the closure as sought to be done by the Respondent No. 1 was not justified and fair and it amounted to an illegal lockout. According to Mr. Singhvi all the establishments are inter-connected to the Respondents and also they are inter-dependant.

9. Mr. Cama, the learned Senior Counsel for Respondent No. 1 Company on the other hand, has pointed out that the Respondent No. 1 is not directly or indirectly connected with the other establishments and as such, there is no question of functional integrality or inter-dependency between them. Mr. Cama has pointed out that the Petitioner Union should have produced documents and evidence to show that there is a functional integrality or inter-dependency between them, which material was not produced by the Petitioner Union should have produced documents and evidence to show that there is a functional integrality or inter-dependency between them, which material was not produced by the Petitioner Union. Mr. Cama has pointed out that merely because there was a common stockist or selling outlets would not necessarily mean that it would amount to functional integrality or inter-dependency between the Respondents. According to Mr. Cama, the Respondent No. 1 Company was dissolved long ago and has closed down its manufacturing activities and is only doing trading activities. According to Mr. Cama, all the employees of the Respondent No. 1 have been duly paid off their terminal benefits and that the closure being genuine there is no question of all illegal lockout.

10. Mr. Cama took me through the evidence and the various documents produced before the Industrial Court and has pointed out that in fact, there is no evidence whatsoever about the manufacturing activities continued by the Respondent No. 1 either in Mumbai or in Gujrat. The learned Counsel also brought to my notice the finding of the Industrial Court in Paragraph No. 48 of its judgment which reads; "there is absolutely no iota of evidence about the manufacturing activities being continued by the Respondent No. 1 either at Bombay or at Gujrat, as alleged". Mr. Cama also emphasised that all the establishments are having separate licence and their staff members are also different. They are having different rolls and musters. All the above establishments file separate Income Tax returns and that all the establishments are having separate Provident Fund Account Numbers and the separate E.S.I.

Account Numbers. Mr. Cama pointed out that all the establishments are manufacturing their products under the trade name and trade mark of "Anchor", but all are different establishments and are not common. He also pointed out that the Petitioner Union, in fact, had entered into 22 different settlements with the aforesaid 22 establishments and not by a common settlement. This fact supports the contention of the learned Counsel for respondent No. 1 Company, in the sense that all the 22 establishments are separate, and as such, the Petitioner Union had insisted upon 22 different settlements and not a single one. Mr. Cama also pointed out that certain electric meters were originally provided by the Respondent No. 1 Company and the bills continue in the name of Respondent No. 1 Company, that does not mean that all the establishments also continue to be that of Respondent No. 1. Mr. Cama, the learned Counsel for the Respondent No. 1 has also pointed out various admissions of one Shri. Krishna Dhas on behalf of the Petitioner union, in his cross-examination wherein the said witness has in unequivocal terms admitted that the Respondents had their own employees & their own machineries. The said witness has also admitted that the various Respondents have separately entered into separate settlements, and Respondents have separate licences under the Bombay Shops and Establishment Act, separate sales tax numbers, separate Income Tax assessment numbers etc. He has admitted that even the enquiry conducted by the P.F. Commissioner indicate that all the establishments are separate and separate code numbers have been given to all the establishments and to their respective employees. Under these facts and circumstances, Mr. Cama, the learned Counsel for the Respondent No. 1 has contended that the Respondent No. 1 has no direct control or supervision over the other establishments except to insist on their maintaining of certain quality while producing the goods. It has come on record that the Respondent No. 1 was carrying on manufacturing activity only upto 1979. Thereafter, the said firm was dissolved and one of the partner namely, Ramji Lalji Shah took over the trade mark of the dissolved firm "M/s. Anchor Industries". So the trade mark being the brand name was allowed to be used only by one partner and not by the other partners.

11. It is also pertinent to note that the documentary evidence with regard to the dissolution of Respondent No. 1 firm, has been accepted by all the statutory authorities, Income Tax authorities, sales-tax authorities, P.F. Authorities, E.S.I. Authorities, and now to contend that the Respondent No. 1 still exists and that there is no closure, would be rather absurd. Mr. Cama has pointed out that the industrial court by a very detailed order and after considering all the documents & records made available to it, has come to the conclusion that the closure was bonafide and the same was not a device or pretence to terminate the services of the workers. Mr. Cama has pointed out that the Industrial Court has considered all the documents produced by the Respondent No. 1 whereby all the dues of P.F. Commissioner, Sales Tax Authorities, E.S.I. Authorities etc. have been cleared off and that the employees of Respondent No. 1 have been paid off their terminal benefits fully.

12. Mr. Cama, the learned Counsel for the Respondent No. 1, in support of his contentions has strongly referred to and relied upon the judgment of the Hon"ble Supreme Court in the case of Isha Steel Treatment, Bombay Vs. Association of Engineering Workers, Bombay and Another, . Paragraph Nos. 8 and 9 of the said judgment are relevant, which read as under:

"8. It is not necessary that in order to effect closure of business the management should close down all the branches of its business. In Management of Hindustan Steel Ltd. Vs. The Workmen and Others, this Court has held that the word "undertaking" used in Section 25-FFF seems to have been used in its ordinary sense connoting thereby any work, enterprise, project or business undertaking. It is not intended to cover the entire industry or business of the employer. Even the closure or stoppage of a part of the business or activities of the employer would seem in law to be covered by the said provision. In deciding the above case this Court relied upon its earlier decision in Workmen of the Indian Leaf Tobacco Development Co., Ltd., Guntur Vs. The Management of Indian Leaf Tobacco Development Co. Ltd., Guntur, . In that case the Court observed that a genuine closure of depots or branches, even though it did not amount to closure of the business could not be interfered with by an Industrial Tribunal. It further held that the closure was stoppage of part of the activity or business of the management and such stoppage is an act of management which is entirely in the discretion of the management. The Court further observed that no Industrial Tribunal could interfere with the discretion exercised in such a matter."

9. It was, however, argued in this case on behalf of the workmen that since the Provident Fund accounts of the employees and the Employees State Insurance accounts of the two units had common numbers with the authorities concerned and settlements containing similar terms (copies which are not produced before us) had been entered into in 1974 between the management and the workmen of the two units, it should be held that the two units had functional integrality between them. We are of the view that even these factors are not sufficient to hold that the two units were one and the same notwithstanding the fact that the nature of the business carried on in them was the same. In Indian Cable Co. Ltd. v. Its Workmen (1962) 1 LLJ 409 this Court has held that the fact that the balance sheet was prepared incorporating the trading results of all the branches or that the employees of the various branches were treated alike for the purpose of provident fund, gratuity, bonus and for conditions of service in general could not lead to the conclusion that all the branches should be treated as one unit for purposes of Section 25-G of the Act."

13. Mr. Cama, the learned Counsel for the Respondent No. 1 has also brought to my notice the memo of settlement entered upon between the various employees and the proprietors of various individual companies. In fact, it is pertinent to note that one Mr. Krishna Dhas who was the President of the Union has signed the same. The settlement also clearly indicates that each is a different establishment and not inter-dependent and that there is no functional integrality

between them. Mr. Cama therefore contends that this is a case wherein this Court ought not to exercise the jurisdiction under Article 227 of the Constitution of India to interfere with the impugned order of the Industrial Court as there is no error apparent on the face of the record, and it is not the case wherein the Industrial Court has come to the conclusion based on no evidence or that the said order is so grossly perverse necessitating the interference by this Court.

14. Mr. Pai the learned Counsel appearing on behalf of the Respondent Nos. 2 and 3 also strongly supported Mr. Cama. In support of his arguments, Mr. Pai referred to and relied upon the judgment of the Hon'ble Supreme court in the case of Indian Hume Pipe Company Ltd v. Their workmen 1969 I LLJ SC 242. Mr. Pai pointed out that the Tribunal cannot go into the issue whether it is the bonafide closure or that the closure was on certain malafide or oblique purpose. He referred to the following passages in the aforesaid judgment:-

"In our opinion, it was not open to the tribunal to go into the question as to the motive of the appellant in closing down its factory at Barakar and to enquire whether it was bonafide or malafide with some oblique purpose, namely, to punish the workmen for the union activities in fighting the appellant. It has been laid down by this Court in a series of decisions that it is not for industrial tribunals to enquire into the motive to find out whether the closure is justified or not. As far back as 1957, it was observed by their Court in Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union, that

"... where the business has been closed and it is either admitted or found that the closure is real and bonafide, any dispute arising with reference thereto would, as held in K.N. Padmanabha Ayyar Vs. State of Madras and Others, , fall outside the purview of the Industrial Disputes Act. And that will a fortiori be so, if a dispute arises - if one such can be conceived - after the closure of the business between the quondam employer and employees."

The use of the expression bonafide in the above quotation does not refer to the motive behind the closure but to the fact of the closure. The question about the bonafides of the closure had to be examined in the case of Tea Districts Labour Association, Calcutta Vs. Ex-employees of Tea Districts Labour Association and Another, ; There two agencies of the appellant at Koraput and Berhampur were closed by the appellant and that was the finding of the tribunal. This Court held that once it was established that the agencies had in fact been closed, the finding about the malafides of the closure would not "justify the conclusion that the said two agencies should be deemed to continue" and allow the tribunal to make an award on that basis.

In Hatisingh Mfg. Co. Ltd. and Another Vs. Union of India (UOI) and Others, , it was observed (at p.8) that:

"... Loss of service due to closure stands on the same footing as loss of service due to retrenchment, or in both cases the employee is thrown out of employment suddenly and for no fault of his and the hardships which he has to face are,

whether unemployment is the result of retrenchment or closure of business, the same. If the true basis of the impugned provision is the achievement of social justice, it is immaterial to consider the motives of the employer or to decide whether the closure is bonafide or otherwise."

Reference may also be made to *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, . In this case the main question was whether there was a closure or a lockout and it was observed by this Court (at p.231):

"... If the action taken by the appellant is not a lockout but is a closure, bonafide and genuine, the dispute which the respondents may raise in respect of such a closure is not an industrial dispute at all. On the other hand, if, in fact and in substance, it is a lockout, but the said action has adopted the disguise of a closure, and a dispute is raised in respect of such an action, it would be an industrial dispute which industrial adjudication is competent to deal with..."

The question of the motive of the employer in closing an establishment had to be examined by this Court again in *The Andhra Prabha Ltd. and Others Vs. Secretary, Madras Union of Journalists and Others*, . It was pointed out there that there might be more than one motive working in the mind of the employer leading him to close his establishment and it was not for the industrial tribunal to examine that question meticulously and decide on the bonafides of the motive.

In view of these decisions our conclusion is that once the tribunal finds that an employer has closed its factory as a matter of fact, it is not concerned to go into the question as to the motive which guided him and to come to a conclusion that because of the previous history of the dispute between the employer and the employees the closure was not justified. Such a closure cannot give rise to an industrial dispute."

15. As rightly pointed out by Mr. Cama, Mr. Pai has contended that the Petitioner Union has failed to establish that there is a functional integrality or inter-dependency between the Respondents. Hence, he has submitted that this Court ought not to interfere with the impugned order and should dismiss the writ petition. Mr. Singh, the learned Counsel for the other Respondents also adopted the arguments of Mr. Cama and Mr. Pai.

16. After having heard the learned Counsel for the parties and after having perused the documents produced before the Industrial Court and the judgment of the Industrial Court, I find that there is no dispute that the Respondent No. 1 Company being a partnership firm was dissolved in the year 1979 and one of its partner Mr. Ramji Lalji Shah has been given the right to use the trade mark "Anchor Industries". In fact, the Petitioner Union could not bring on record any evidence to the effect that after 1980 any manufacturing activity is being carried on by the Respondent No. 1. On the contrary, the material on record clearly shows that all the employees of Respondent No. 1 were duly paid off their wages and the said Respondent No. 1 was duly closed. The other establishments are all

being Respondent Nos. 2 to 23 are independent establishments which are having independent registration with various statutory authorities. It may be noted that the P.F. Commissioner had conducted a detailed enquiry as to whether there is a functional integrality and has found that there is no substance in the same. In fact, even today, all the establishments have different P.F. Code numbers and their employees are also different. Merely because all those 22 establishments are manufacturing products with the trade name "Anchor Industries" does not mean that there is functional integrality with Respondent No. 1. As has been rightly pointed out by Mr. Cama, the learned Counsel for Respondent No. 1 that the Respondent No. 1 being the trading unit and not the manufacturing unit, is insisting upon proper quality being maintained by the said 22 establishments which are manufacturing products with the name "Anchor Industries". In fact the evidence of Mr. Krishna Dhas on behalf of the Petitioner Union, in his cross-examination has clearly admitted to the various facts as set out hereinabove, which totally belies the claim of any functional integrality or interdependence.

17. Under the aforesaid facts and circumstances, I do not find any case being made out by the Petitioner Union to exercise the jurisdiction under Article 227 of the Constitution of India to interfere with the well reasoned order dated 30th December, 1995 of the Industrial Court rejecting the complaint filed by the Petitioner Union under the MRTU & PULP Act. I do not find any error apparent on the face of the record or any perversity or jurisdictional error to interfere with the above judgment. Hence, the Petitioner stands dismissed, however with no order as to costs.

18. Parties to act on an ordinary copy of this order duly authenticated by the Personal Secretary or the Associate.