
(1974) 10 BOM CK 0004

In the Bombay High Court

Case No : Reference (I.T.) No. 325 of 1971

Bharat Barrel and Drum Mfg. Co. Private Limited, Bombay

APPELLANT

Vs

The Workmen Employed Under It

RESPONDENT

Date of Decision : 30-10-1974

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 25FFF

Citation : (1975) 2 LLJ 1

Hon'ble Judges : G.K. Patankar, J

Bench : Single Bench

Judgement

1. This is reference made by the Government of Maharashtra under S. 10(1)(d) of the I.D. Act, 1947, referring for adjudication the industrial dispute that exist between the Bharat Barrel & Drum Mfg. Co. Pvt. Ltd., Bombay and the workmen employed under it.

2. The statement of claim in this matter has been filed by the President of the Bharat Barrel Employees' Union on behalf of the workers. The order of reference shows that the demand is whether the nature of the closure declared by the company is for a temporary period and to defect the pending claims of the workers and whether the reasons for the closure are bona fide. It is further mentioned in the order of reference as to whether the said closure is legal and bona fide and if not, what further relief to be given to the workmen in addition to the wages for the period of enforced unemployment. It is also a demand that in case the closure is found legal and bona-fide then whether the workmen are entitled to compensation under the proviso to the said section ? The statement of claim is alleged to have been filed in justification of the above demands in the order of reference. It alleges that M/s. Bharat Barrel & Drum Mfg. Co. Pvt. Ltd., Bombay, purchased the plant and machine from M/s. Allen Berry & Co. Ltd. in 1951. The company has barrel manufacturing plant at Calcutta also. According to the union, the company is exceptionally prosperous and has established itself in the line of business. The service conditions of the workers, however, were poor. It

has made attempts in the past to prevent the workmen from being united. The company follows the policy of endless litigation against the workmen with a view to strangle them economically and the company realised that it cannot disrupt the unity of workmen then it resorted to an illegal mala fide and unjustified act by declaring closure from 1st November, 1971, but its notice, dated 30th September, 1971. The goods for closure in the said notice are false and concocted. The said closure is illegal and made with a view to penalise and deprive the workers of their legal dues. The company has not paid the earned wages of the workers for the month of October, 1971 and compensation due to closure. On 30th October 1971 the workers demanded their wages and launched "Satyagraha". The management then called the police force. The workers tries to obstruct the police force when the trouble sparked and the police resorted to lathi-charge, and belaboured the workmen who were calmly sitting for five hours near the gate. The union then approached the Government and hence this reference has been made to the Tribunal. According to the union, the reasons given in the notice of closure are all false, mala fide and illegal. The union denies the non-availability of raw materials to the company for manufacturing barrels. The details about this availability is given in the statement of claim but those details are not relevant for the present reference. It is next contended that the other reasons for non-placement of orders by oil companies for barrels, etc. is false and unjustified. The union has given a list of 64 companies to which barrels have been supplied by the present company. The steel has very good demand and the company adopted the policy of diverting the steel through illegal channels in the open market. The policy of the company with the customers was never good and it has always gone back from its commitments. According to the union, the third reasons given by the company for the closure, viz., "suspension of despatches and non-import of steel sheets by Hindustan Steel Ltd." is also false. The said company had imported steel but the present company did not pay earnest money. It was the act of the company itself and hence it cannot blame others falsely and make the same as a cause for its closure. According to union, therefore, the closure is illegal and the termination of services of workmen is also illegal. As the closure is illegal, the workmen are entitled to receive full wages from the company. The motive was to defeat the claim of bonus for 1971. The union has also contended that the closure in question is no closure at all in law. In short the allegation is that the closure is mala fide and the workers, therefore, be fully compensated for the same and the company be not allowed to defeat the legal dues of the workers.

3. The company first filed its preliminary written statement at Ex. C/1 and subsequently filed another written statement on merits at Ex. C/35. It contends that on 30th October, 1971, the workers gheraoed the directors and the officers of the company. The workmen formed an unlawful assembly for attacking the directors and the officers by throwing lethal instruments, sharp articles from the factory, missiles, etc., at them. The police were called. However, the situation became uncontrollable and the police officers, therefore, had to take the help of

the Reserve Police. There was a riot and indiscriminate throwing of factory articles and the machinery was ransacked and damaged. According to the company all the workmen and the members of the staff were discharged on 30th October, 1971. According to the company steel sheets for the production of barrels used to be supplied by Hindustan Steel Company and the distribution and allotment was controlled by the Government agencies. It is further contended that due to the uncertainties of getting regular supply of steel and as there were no sufficient orders for supply of barrels the company had to lay off some workers. Therefore, due to shortage of supply of steel and non-availability of orders for supply of barrels the company retrenched 46 workmen from 9th August to 7th September, 1971. The work was not found to be sufficient, and hence notice, dated 30th September, 1971 about the closure was put up. The employees after the display of the said notice adopted go-slow tactics and made working of the factory impossible. The workers did not fulfil their contract in respect of production of barrels. The atmosphere on the morning of 30th October, 1971 was grave right from the start of the first shift and it ultimately ended in riot by the workers. The directors and other officers, who were trying to go out of the factory, were threatened and attacked. One Shri Minocher, Assistant commissioner of Police had come there and he was pacifying the workers. The police party which attempted to rescue the gheraoed Directors, was also attacked by the workers and many police officers were injured. In view of these prompt action and discharged all the workers and staff members. The police then arrested some workers and they were prosecuted in the criminal Court. The company contends that the copy of the notice discharging all the workers was published in one Marathi newspaper by name "Navashakti" and in one English newspaper by name Free Press Journal. A copy of the notice was sent to the Government. There was no conciliation proceeding for this alleged demand and the reference was made by the Government without conciliation proceedings. According to the company the order of reference relates to the intended closure. However, no closure took place as contemplated in the company's notice, dated 30th September, 1971. The company's notice of discharge of all the workmen was duly displayed on the notice board and on the main entrance of the company. The company further contends that the facts mentioned in paras 1 to 8 of the statement of claim are irrelevant. The contention is that the intended closure was due to the reasons mentioned in the notice of closure dated 30th September, 1971. According to the company, in spite of the closure notice, the company was making every effort to get raw materials and secure orders for keeping the company's working going on. There was, therefore, no closure in fact and all the workers were discharged on 30th October, 1971 due to their indulging in riots and violence. The services of the workers, therefore, came to an end on 30th October, 1971. The company has referred to some incidents that took place, according to it, in March, 1972 but they are not relevant to the present matter and hence that portion of the written statement has not been summarised. According to the company, some of the ex-employees had applied for service and on their giving guarantee they were recruited. The company then

put up a notice on 11th August, 1972 calling upon the ex-employees to intimate the company, if they so desired. It started re conditioning the plant from 15th September, 1972. The company never exploited the workers as alleged. The company never made any attempt to disrupt the unity of the workers. The notice of discharge was properly given and the workers were discharged prior to the notice of closure being effective. The company never resorted to unfair labour practice. No "satyagraha" was launched but the workers threatened and attacked the directors and the officers of the company and the police. The company denies having diverted its profits to other companies, and also denies having diverted steel sheets through illegal channels. According to the company, the action it took in discharging the workers is legal and justified. Finally the company denies that there had been any actual closure. The notice dated 30th September, 1971 was about the intended closure but actually there was no closure. According to the company, all the legal dues have been paid to the workers. The services of the workers were not terminated due to closure and hence they are not entitled to any relief sought in the order of reference. The reference, therefore, be rejected.

4. It would be seen that this reference has been made by the Government of Maharashtra on the basis that the factory was closed by the employer and the services of the workmen were terminated due to the closure. In spite of this the parties have referred to so many other matters which are not absolutely relevant to the issues in question. It is an admitted position that if the fact of the closures stands admitted then this Tribunal has no jurisdiction to decide any matter except about the compensation on closure. The question as to whether the closure was legal or illegal also cannot be decided by this Tribunal. In that case the matters, which are not relevant to the points in dispute from the pleadings of both the parties have not been referred to while summarising the pleadings. It is an admitted position that while the reference is on the basis that there was a closure of the factory from 1st November, 1971, yet the company's case is that the factory was never closed. In view of the demands in reference, I propose to consider the demands on the assumption that the factory was closed as per the order of reference.

5. The first demand made is whether the nature of closure declared by the company by its notice dated 30th September, 1971 is for a temporary period and to defeat the pending claims of workmen before the various authorities. It would be evident in the light of the wording of the demand that the allegation is that the closure is mala fide. It has not been denied for the union by Shri Kamekar that the Tribunal has no jurisdiction to decide whether the closure is mala fide or bona fide. Once the fact of the closure is admitted, then its nature cannot be gone into. In that case as mentioned above, even if it is assumed that the factory was closed yet its legality or otherwise is not within the jurisdiction of this Tribunal. This would mean that the first demand is such that this Tribunal cannot decide it.

6. The second demand is whether the reasons stated in the notice of closure are bona fide. On this point also, it would be clear that even if it is assumed for the sake of argument that the reasons given are mala fide, yet the question would be whether the Tribunal can go into the question of mala fide or bona fide reasons for the closure. This demand would show that this has been made on the assumption that there was a closure. Shri Kamerkar appearing for the union also conceded that this demand is such that it cannot be considered by the Tribunal.

7. Demand No. 3 is whether the said closure is legal and bona fide. If not what further relief can be given to the workers in addition to the wages for the period of enforced unemployment. It would be evident that the nature of the closure is not within the jurisdiction of the Tribunal when once the fact of the closure is admitted. This demand will have to be read with the demand No. 4 which is about the compensation to be given to the workers if the closure is illegal and invalid. It would be evident that the workers are bound to get the compensation if their services are terminated due to closure and the fact of the closure is proved. However, the question as to whether the workers are entitled to compensation or not would depend upon the fact as to whether the services of those workers were terminated due to closure, and would also depend upon the fact as to whether there was really a closure as the company has challenged the fact of closure.

8. It is the case of the union that the services of the workers were terminated due to closure whereas the company contends that they were discharged before the alleged closure became operative. Ex. U/2 is the notice about the closure. It no doubt expressly mentions that the services of all the workers shall stand terminated due to the closure of the factory with effect from 1st November, 1971 and the workmen shall be paid compensation under S. 25FFF of the I.D. Act. Similarly, Ex. C/39 is the notice of discharge dated 30th October, 1971. It mentions that all the workmen including the operatives and other members of the staff are discharged with immediate effect. According to the company this notice was displayed on the notice board on 30th October, 1971 before the end of the second shift period and hence it was duly published as per the practice of the company of publishing such notices. It is further contended that this notice was also handed over to the newspapers Navashakti and Free Press Journal on 31st October, 1971 at about 10-30 a.m. and hence in any case the news of the discharge of all the workmen was communicated to the workers at the time when this notice was handed over to the managements of those two newspapers on 31st October, 1971 at about 10-30 a.m. and the discharge order became effective from that time. According to the company, the workers were therefore, discharged at least on 31st October, 1971 at about 10-30 a.m. and hence they were not in service of the company at the time, when the alleged closure became operative. Their services, therefore, were not terminated due to closure and they are not entitled to any relief under this reference. Hence assuming that discharge is valid, the question for consideration, therefore, would be when exactly the discharge order became effective and whether the services of the workmen were

terminated due to discharge or closure ?

9. The company has produced copies of the Marathi and English newspapers at Ex. C/37(c) dated 1st November, 1971, showing that the notice of discharge was published in the issue of 1st November, 1971. It was, therefore, urged for the company that the notice must have been given to the managements of the newspapers on 31st October, 1971 for publication. The company has, however, examined one witness Shri C. C. Jani (Ex. C/45) who is an Advocate and was previously working as Labour Adviser of the company. According to him, one Shri Banwarilal Saraf, who is the present legal adviser of the company, had approached him at 10 p.m. on 30th October, 1971 and showed him the discharge notice, Ex. c/29. He requested Shri Jani to get the said notice published in the issue of Marathi paper "Navashakti" and English paper Free Press Journal, dated 31st October, 1971. Shri Jani had account with the newspaper Free Press Journal and hence he tried, but it was not possible to get the same published in the issue of 31st October, 1971. He was informed on phone by the management of the newspaper that he should deliver the material to the office of the newspaper on 31st October, 1971 by about 10-30 a.m. so that the notice could be published both in Marathi and English newspapers as desired in their issue, dated 1st November, 1971. Shri Jani then states that he had personally gone to the office of the newspaper on 31st October, 1971 at about 10-30 a.m. and handed over the letter and the copy of the notice produced at Ex. C/30 for its publication in the issue of both the papers on 1st November, 1971. The notice was accordingly published in the issue of Navashakti and Free Press Journal, dated 1st November, 1971 (vide copies at Ex. C/37-C). It was, however, argued for the workers that the notice was published on the morning of 1st November, 1971 and hence the workers learn about the discharge on 1st November, 1971, whereas they already stood retrenched from 12 midnight in the night between 31st October, and 1st November, 1971 in view of the closure. It was, therefore, further argued by Shri Kamerkar on behalf of the workers, that when once the workers' services stood terminated on account of closure from 12 in the night on 1st November, 1971, the communication of discharge on the morning of 1st November, 1971 becomes useless. A person already retrenched cannot be discharged subsequently. It was, therefore, strenuously urged for the workmen that the services of the workers stand terminated due to closure and although this Tribunal cannot go into the question of legality or illegality of the closure, yet when the services of the workers are terminated due to closure, they would be entitled to compensation under S. 25FFF of the I.D. Act.

10. The argument advanced by Shri Kamerkar is based on the point that the order of discharge or any such order passed by the employer does not become effective unless the same is communicated to the worker. He referred to me to the Supreme Court ruling in *The River Steam Navigation Co. Ltd. Vs. Shyam Sundar Tea Co. Ltd.*, . It would be evident. According to the said ruling, that the order of dismissal or discharge becomes effective only when the same is communicated to the worker. According to Shri Kamerkar, communications

means the actual knowledge of the order by the worker. In reply to the argument for the workers Shri Mehta for the company drew my attention to the latter ruling of the Supreme Court in *State of Punjab v. Khemi Ram*, reported in All. It is a case of suspension order but the point is the same as to when such orders become effective ? It has been observed in the said ruling that when once an order is issued and it is sent out to the concerned Government servant, it must be held to have been communicated to him no matter when he actually received it. It appears that according to this ruling, when the employer sends the order to the employer and loses control over it so as not to be able to make any change therein, then the communication is complete. It has been accordingly observed in the said ruling on page 144 that once such order is sent out, it goes out of the control of such authority, and, therefore, there would be no chance whatsoever of its changing its mind or modifying the order. This ruling, therefore, was depended upon by Shri Mehta and he pointed out that when once the copy of the order was given by Shri Jani on behalf of the company to the office of the newspaper for publication, then company lost control over it and hence the order of discharge will have to be taken as having become effective from 10-30 a.m. on 31st October, 1971, that is long before the alleged closure. It was, therefore, further urged for the company that even if closure is assumed yet when the alleged closure started the workers were not in the service of the company and their services cannot be taken to have been terminated due to closure and they would not be entitled to any closure compensation under S. 25FFF or proviso to it, of the I.D. Act. This ruling only explains what is "communication" which is contemplated in the previous ruling. Further it being a latter ruling has more weight.

11. My attention was also drawn to one more observation in the said ruling. It has been observed that actual knowledge by the worker of an order where it is one of dismissal may perhaps become necessary because of the consequences which the decision of the Supreme Court in *State of Punjab Vs. Amar Singh Harika*, , contemplates. It would be evident from this observation that in the case of an employment where consequences mentioned in that ruling can be contemplated then actual knowledge may perhaps be necessary. It then automatically follows that where such consequences are not likely to flow, actual knowledge is not necessary. It would then be proper to refer to the said ruling in respect *Amar Singh Harika*. It is in respect of a Government servant. It has been observed on page 1316 para 11 that if before receiving the order of dismissal the officer concerned has exercised his power and jurisdiction to take decisions or do acts within his authority and power, would those acts and decisions be rendered invalid after it is known that the order of dismissal had been already passed against him ? It was in the above circumstances that the Supreme Court held in the above ruling that actual knowledge of the order is necessary, otherwise some complications as mentioned above would arise. The question is when such complications are not likely to arise, then what is the position ? This has been made clear in the first ruling viz., *State of Punjab v. Khemi Ram*, (1970) 21 F.L.R.

138. It has been observed therein that such consequences would not occur in the case of an officer who has proceeded on leave and against whom order of suspension is passed because in his case there is no question of his doing any act or passing any order and such act or order being challenged as invalid, and hence it was held that the communication of the order means sending out of the order and not the actual knowledge of it. It would be evident that whether the order is of suspension or dismissal, when such consequences are likely to follow, then actual knowledge is necessary and if they are not likely to follow then sending out the order to the employee would be communicated. In this ruling of *State of Punjab v. Khemi Ram*, (supra) the meaning of the word "communication" is explained and according to it, in the case of an employee when the consequences as mentioned in the ruling of *State of Punjab v. Amar Singh Harika*, are not likely to flow, the communication of the order to the employee is complete when the employer sends the order to the employee.

12. It would then be clear that in the case of the workers it cannot be said that any consequences as mentioned in the ruling of *State of Punjab v. Amar Singh Harika* (supra) are likely to flow. Even after knowing the order actually on 1st November, 1971 as argued by Shri Kamerkar for the employees, the workers could not have done anything which would have created any problem as observed in the above ruling of *State of Punjab v. Amar Singh Harika*. In that case the ruling in the *State of Punjab v. Khemi Ram* reported in 1970 (21) .F.L.R. 138, will have to be taken as completely applicable to the facts in this case. The discharge order was sent by the company to the office of the newspapers on 31st October, 1971 at about 10.30 a.m. for information of the employees. In that case, it will have to be taken in view of the said ruling in respect of *Khemi Ram* that the discharge order in this case became effective on 31st October, 1971 at 10.30 a.m. It would then further follow that the workers were discharged before their services could be terminated due to closure. The workers, therefore, cannot be said to have been retrenched due to closure in the existing circumstances. It will, therefore, have to be held that they would not be entitled to any compensation flowing due to closure. It was argued for the union that the ruling in the *State of Punjab v. Khemi Ram* (supra) contemplates sending out order by post only and hence it would not be applicable to the facts of the present case. I however, do not agree with it and hold that it only contemplates sending of the order out of the control of the employer so that he cannot make any change therein. The said ruling is applicable and the workers' services, therefore, stand to have been terminated at least from 10.30 a.m. on 31st October, 1971, due to the order of discharge.

13. It was next argued for the company that this notice at Ex. C/39 was displayed by the officials of the company on its notice board in the evening of 30th October, 1971 and hence the notice about the discharge of the workers was given to them on 30th October, 1971, according to the company. The company has examined one Shri Sayad Sarfaraz Hussain (Ex. C/40) who is one of the directors of the company. He has stated in para No. 8 of his affidavit that the

notice about it discharge of all the workers with immediate effect was put up on the notice board of the company in the evening of 30th October, 1971. This witness Shri Hussain has been sufficiently cross-examined for the workers, but nothing has come out in the cross-examination to discredit his evidence. The fact that the company tried to get the notice published in the newspapers dated 31st October, 1971 according to the evidence of Shri Jani, shows that the company was keen on making it known to the workers. This circumstances supports the statement of Shri Hussain that it was published on the notice board on 30th October, 1971 only in the evening. On this point, the evidence of the union's witness Shri Kannan Perumal Pillai (Ex. U/5) is very important. He has admitted in para No. 9 of his deposition that the practice of the company was to put up a notice on the board for the information of the workers in respect of any action taken by the company. This admission also supports the statement of Shri Hussain that discharge notice must have been put up on the notice board, as it was the admitted practice of the company to do so. This witness Shri Kannan Pillai states that he was in the factory premises upto 7.30 p.m. on 30th October, 1971, which means that several others also might be there like him. Shri Hussain says that he left the premises at 9.30 p.m. and that the notice was put up in the evening. It is, therefore, quite likely that the notice must have been put up before it was dark. Workers must be expecting that some such action would be taken because this Kannan Pillai admits that he had seen the notice board on that day. Considering the circumstances I find that the statement of Shri Hussain that the discharge notice was displayed on the notice board and on the outer gate of the factory on 30th October, 1971, is supported and I am inclined to accept the same. Further, the workers also appear to be in the factory till 7.30 p.m. on 30th October, 1971. It is, therefore, an additional circumstance showing that the workers were informed about their discharge on 30th October, 1971 only, that it long before the alleged closure.

14. The company has produced the notices published in the newspapers at Ex. C/37 (c). It would be seen that the English notice is correctly reproduced while the Marathi translation of the some in Navashakti is not exactly correct. However, if the Marathi translation also is read completed it would show that the management has discharged all the workers long before 1st November, 1971 and since the notice was published in the issue of the paper dated 1st November, 1971 it must have been handed over to the offices of those newspapers on 31st October, 1971. On this point, the evidence of Shri Jani is not challenged. Shri Mehta for the company argued that the question put to Shri Jani in the cross-examination shows that the workers were aware of the notice of discharge immediately after it was displayed on the notice board and before it was given to Shri Jani to handover to the offices of the newspapers for publication. My attention was drawn to the reply of Shri Jani in his cross-examination. It is "it is not true that I did not receive the notice on 30th October, 1971 at 10 p.m. but I received it on 31st October, 1971." This answer, according to the company, shows that according to the workers the notice was put up on the notice board

and outer gate on 31st October, 1971 and so on the same day Shri Jani must have received it. It cannot be said that this inference is not correct at all. This would support that some workers must have gone on Sunday to the factory when they also must have learn about it. Shri Hussain has stated that Sunday was a working day. Besides, the union's witness Kannan Pillai (Ex. U/5) has admitted that the workers were called on every Sunday in October, 1971 for repairs and maintenance. It is, therefore, likely that some workers at least for that purpose must have gone towards the factory when they must have learnt about the discharge order. As mentioned above, this is supported by the question put to the company's witness Shri Jani in his cross-examination. Further the union's witness Shri Pillai has admitted in his cross-examination that he had learnt about the notice of discharge published through newspapers on 1st November, 1971. This shows that in spite of some little mistake in the Marathi translation, the workers had seen the notice on 1st November, 1971 and correctly understood the same. All these circumstances show that the discharge order was published by displaying it on the notice board and the outer gate on 30th October, 1971 and in any case the communication of the discharge order as per the meaning of communication in the Supreme Court ruling in *State of Punjab v. Khemi Ram* (supra) was complete on 31st October, 1971 at about 10.30 a.m. The discharge order, therefore, in any case became effective from 10.30 a.m. on 31st October, 1971. The workers, therefore, were not in service of the company thereafter and also were not in service at the time of the alleged closure. In that case, if it is held that the company was closed as per the closure notice dated 30th September, 1971, even then the workers are not entitled to any relief as the services of the workers were not terminated due to closure. The question as to whether the discharge order which is the cause of termination is valid or otherwise would be considered afterwards. The fact remains that the services of the workers were terminated because they were validly discharged and hence as mentioned above, they would not be entitled for any relief due to closure even if it assumed that there was a closure as alleged.

15. It would then be evident that the second question as to whether the factory was really closed or not in fact would not survive. It is the contention of the company that it was not closed although the closure notice was given. According to the company, it was intended closure in view of the notice but in fact the authorities had decided in the last days of October, 1971 that the factory was not to be closed as there was enough material for continuing production at least for two or three months. In short, the case, therefore, is that the factory was not closed and hence the workers would not be entitled to anything which is only the outcome of closure. It was argued for the company that the findings on the point whether there was closure or not, is essential because that is the contention taken by the company and hence the union will have to prove that the factory was closed and hence the workers are entitled to compensation which flows out of closure. If also appears to me that this finding would be necessary to understand the exact position.

16. It is evident that the burden is on the union to prove that the factory was closed as alleged. On this point of closure the union has led no evidence and it is completely depending on the closure notice dated 30th September, 1971 produced by the company at Ex. C/3. According to Shri Mehta the circumstances existing at the time of the closure notice changed subsequently and the company by the last week of October, 1971 had no intention of closing down the factory. The company has produced number of documents. Shri Mehta drew my attention to the letters addressed to Hindustan Steel (Ex. C/37K) and addressed to Assistant and Deputy Iron and Steel Controller, Faridabad, produced jointly at Ex. C/37 (L), but these letters do not support the case of the company that the management had decided not to close down the factory. I was also referred to Ex. C/37 (N) a letter which the company has written to its Calcutta office. It no doubt shows that the company had expressed therein that some steel which was obtained had made it possible for the company to run the factory for a couple of months. However, it is not mentioned therein that the company had decided not to close the factory as per the closure notice, from 1st November, 1971. My attention was next drawn to the admission of Shri Pillai that the company had received one important order and the company worked with all the speed to complete the same, but he does not remember whether the same was completed in October, 1971. There is, however, nothing on record to show that the same was not completed. Shri Mehta for the company then drew my attention to the evidence of Shri Hussain who has stated that he and Shri Jalan and Shri Goenka had told the workers that the factory would not be closed as per the closure notice. It was next pointed out that this witness is not challenged in his cross examination on this point. Shri Kamerkar argued that if those persons had really told that the factory was not to be closed, then why it was not mentioned in the notice (Ex. C/378) that the factory would not be closed from 1st November, 1971, which, according to the company, was put on the notice board on 30th October, 1971. Shri Kamerkar further argued that if the company really had the intention of not closing the factory then it could have withdrawn the closure notice dated 30th September, 1971 at any time during the last week of October upto 30th October, 1971. There is no explanation as to why the company did not withdraw the same. It would be seen that all the circumstances discussed above are not conclusive in any way. There is, however, one notice dated 7th June, 1972 by the Director of the company in which there is an admission by the company that the factory was closed in October, 1971. The actual wording in respect of the said admission is "the suspension of the despatches of steel by Hindustan Steel Ltd., had led to the closure of the company's factory at Bombay last October." The above wording expressly mentions that the Bombay factory was closed in October, 1971. It is a notice of June, 1972 and when it mentions that the factory was closed in last October, it would only mean that it was October, 1971. It will have to be held, therefore, in the light of this notice dated 7th June, 1972 and the closure notice dated 30th September, 1971 which was not withdrawn, that the factory was closed from 1st November, 1971 and it is held accordingly. The point as to whether the workers would have been entitled

to compensation under S. 25FFF of proviso to it is made clear by the company in its order of closure that the workers would be given compensation under S. 25FFF. The same was argued for the union by Shri Kamerkar and I agree with the fact that if the services of the workers had been terminated due to closure, then they would have been entitled for compensation under S. 25FFF of the I.D. Act 1947. It has, however, been already found that the services of the workers were not terminated due to closure and hence question of compensation would not arise.

17. It was next argued that the company was justified in discharging the workers on 30th October, 1971. It cannot be denied from the evidence on the record that the police officers had tough time in the factory premises on 30th October, 1971 in maintaining law and order. It also appears clear from the evidence that a number of police officers were injured and the company's property was lying helter-skeleton when the police photographer took photographs of the situation there. The record shows that the workers had started demanding salary for the month of October, 1971 and although notice was put up that the same would be paid on 2nd November, 1971 yet that notice could not satisfy the workers. Further, the fact that the police ultimately arrested 183 workers on that day and prosecuted them is also an important circumstance to show the gravity of the situation. Shri Mehta drew my attention to the fact that an application for withdrawing the prosecution was filed before the then learned Presidency Magistrate who while rejecting the same has observed that it cannot be said that the case is without any evidence. The fact that some serious incident took place on that day within the premises of the factory is also not challenged for the workers. The management discharged all the workers assuming that they were all present there. This stand has been definitely taken in the written statement by the company and it has not even been suggested on behalf of the workers that any particular worker was not present on that day in the factory at the time. It was further argued for the company that the workers were bent upon taking such action that the working would be made impossible and they wanted then that the Government should take over the factory. It would be evident that these may things can be taken to be sufficient for the management to take section under the procedure of simple discharge. The union has not led any evidence to show that the action of discharge taken by the company was uncalled for. It would be evident from the circumstances on record that it cannot be said at this stage that the action of the management in discharging the workers was bad in law. The question before me was whether the finding about the justifiability of the discharge order would be proper? It would, however, be evident that if the order of discharge is not proper for any reason then only the workers would be entitled to closure compensation because then only their services would stand terminated due to closure. It was, therefore, taken as incidental question in view of the defence taken by the company. It would then be evident that there is nothing on the record to show at this stage that the discharge order is not proper.

18. It would then be evident that all the workers of the company were

discharged by the company on 30th October, 1971 before the closure could become effective. In that case, the services of the workers were terminated due to the discharge order passed by the company and not due to the closure. Since the termination of services of the workers is not connected with the closure, the workers would not be entitled to any compensation due to closure. The workers are therefore, not entitled to any relief sought in the order of reference. The reference, therefore, will have to be rejected and is rejected herewith.