

(1963) 04 BOM CK 0021

In the Bombay High Court

Case No : Award, in Reference (IT) No. 160 of 1962

Investa Machine Tools and Engineering Company Ltd.

APPELLANT

Vs

Its Workmen

RESPONDENT

Date of Decision : 29-04-1963

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(5), 22, 25F, 25FFF

Citation : (1963) 04 BOM CK 0021

Hon'ble Judges : P.D. Sawarkar, J

Bench : Single Bench

Judgement

1. This industrial dispute was referred to me under S. 10(1)(d) read with S. 12(5) of the Industrial Disputes Act, 1947, by the Industries and Labour Department order No. AJI-4962-Lab-II dated 4 September 1962. The demands of the workmen are as follows :

"(1) Should the factory management start transfer of its activities from Bombay to Chinchwad gradually or completely, all the existing staff and workmen be given an opportunity to serve in the same position without any loss of their existing or future privileges and rights to the new place of work.

(2) Should any employee, for valid reasons, be unable to serve the company in its new place of activities, such employee be given retrenchment compensation amounting to a minimum of fifteen days' pay (wage and dearness allowance) for every years of service completed, calculated on the basis of the average pay of his last year of service, one month's notice or pay in lieu thereof, payment in cash for any unused privilege leave to the credit of such employee, company's full contribution to his provident fund. In calculating the service of an employee, six months and above to be treated as one year."

2. In order to understand the demands, some past history of the dispute would be relevant. This company was incorporated in 1942. It is a large unit of the engineering industry with a paid-up capital of Rs. 60,00,000. It manufactures

plants, machinery, tools, equipments, etc. It employs 490 workmen. The company states in its written statement as follows :

"3. From its inception the company has been financially going through had times. From 1946 to 1956 excepting the years 1951 and 1952 the company went on incurring losses. As against total losses of Rs. 10,38,900 in this period, the total profits of the years 1951 and 1952 were only Rs. 2,25,200. It was only in the year 1957 that the company turned the corner and began making small profits. The highest profit made by the company was in the year 1959 of Rs. 6,16,895 but the profits have been again started going down ... The company has not also been able to build up any reserve fund and on the other hand the liabilities on account of secured and unsecured loans up to 1961 have been Rs. 41,00,746 . . .

4. While the company has been thus struggling, it has been obliged to take a decision of closing their present factory in Bombay. For the past several years the present site and premises have been found to be a handicap to the proper functioning of the factory. They are also situated in the residential area and are without any scope of expansion. The company has also been constantly called on to meet objections under the municipal, factory and steam boiler and smoke nuisance laws ... The company, therefore, was forced to take a decision to close their present factory in Bombay and open a new factory at Chinchwad in Poona district ... the last municipal licence granted to the factory dated 28 November, 1957 for the period ending 31 March, 1964 has laid down a mandatory condition that the factory shall be shifted from the present site before 31 March 1964."

3. In short, on account of a variety of reasons such as location in residential area, shortness of space, continued losses and so on, the company decided to close down the factory in Bombay and go to Chinchwad and open a factory there. Having made this decision, the company put up a notice on its notice board on 26 November, 1960. It is reproduced in the statement of claim of the Machine Tools and Engineering Workers' Union. The noticed stated as follows :

"INVESTA MACHINE TOOLS AND ENGINEERING COMPANY, LTD. November 26, 1960. Notice (Under S. 25FFF, Industrial Disputes Act, 1947)

4. The management of Investa Machine Tools and Engineering Company, Ltd., hereby notify all workmen and members of the staff that, due to unavoidable circumstances beyond its control, the company's factory at Pais Street, Clerk Road, Bombay-11, will be closed down completely by about the end of December 1962. The gradual process of closure by reduction of its establishment and activities at its factory will commence from about 1 March 1961. As and when the company is obliged to terminate the services of any of its employees, those who have put in continuous service of not less than one year with the company shall be given one month's notice or wages for one month in lieu of notice, and compensation equivalent to 15 days' average pay for each completed year of service. Such compensation however shall not exceed his average pay for three months.

5. This notice is intended to give to employees the longest possible intimation of the closure of the factory and so to help minimize the the inconvenience which might be caused to them.

For Investa Machine Tools and Engineering Company, Ltd. (Signed) J. V. PANDIT, Manager."

6. It is clear that this notice was put up with the intention of informing the workmen that the management were going to close down the factory and that all workmen would be paid compensation as if they were retrenched but not exceeding three months' wages as prescribed in S. 25FFF. Immediately thereafter, the Engineering Mazdoor Sabha sent the following demand to the company :

"The company should withdraw its notice dated 26 November 1960. In case closure is effected, the workmen should be given alternate jobs on the same service conditions as available to the workmen in the company. In case the company is unable to provide jobs to the workmen and the services of the workmen are terminated, they should be paid gratuity, retrenchment compensation, unemployment compensation and such other relief as may be necessary. The workmen should be paid all dues on account of service in the company."

7. The Machine Tools Engineering Workers' Union also sent a charter of four demands to the company on 10 December, 1960. The first demand was that the notice dated 26 November, 1960 should be withdrawn. The second and third demands are now before this tribunal and they are reproduced above. The fourth demand was that should the company continue its establishment in Bombay or expand its activities, employees who were sent away on the ground that they could not in its new place of activity, should be given the first opportunity to serve in Bombay in their old scales of pay. This demand is not referred to me.

8. While this was going on, the company had already applied to the Government of Bombay (as it then was) to acquire land at Chinchwad for a factory. Government instituted an inquiry and was satisfied that the acquisition was "needed for the shifting of the company's existing factory from Bombay to Poona, as per the municipal directions and in pursuant (sic) to the Government's decentralization efforts and its future expansion" [see p. 182 of Bombay Government Gazette, Part I Supplement, dated 3 March, 1960, p. 181 : Ex. C. 4]. Government acquired a suitable plot at Chinchwad admeasuring a little over 100 acres and gave it to the company built a factory, installed new machinery, engaged requisite number of workmen and went into production as from 1 April, 1961. At the time of the filing of the written statement (November 1942) this new factory had 216 employees including 182 new employees. When Sri Gawade submitted his arguments (March 1963), the number of workmen had risen to 300. And while the Chinchwad factory was fully working, the Bombay factory too with all its original complement was working as usual. No part of the machinery

from the Bombay factory was taken to Chinchwad. Almost a negligible number of employees from the Bombay factory resigned from the Bombay factory, applied for employment in the Chinchwad factory and were taken up. The management granted them continuity of service. The wage-structure at Chinchwad is necessarily lower than the wage-structure in Bombay. In Bombay the workmen get a separate dearness allowance. At Chinchwad the wage is consolidated and no separate dearness allowance is paid. Now the company wants to close down its Bombay factory gradually. It proposes to pay its workmen compensation at the rate specified in S. 25F but not exceeding three months' wages as specified in S. 25FFF. So the point at dispute is, would S. 25F apply to the termination of the services of the workmen or would S. 25FFF come into operation ? In other words, is the termination of the services of the workmen due to closure or due to surplusage ? After this point is decided, the next point would be, will it be possible for the company to give an opportunity to all the existing staff in Bombay to serve at Chinchwad "in the same position without any loss of their existing or future privileges rights ?" And finally, if any workman from the Bombay factory is not able to go to Chinchwad for some reason which he considers to be valid, will he be entitled to any compensation ? If so, what should be the quantum of such compensation ? These are the three points that fall to be considered in this reference.

9. As one reads the facts of the present case, the first impression that is created on one's mind is that this is a case which is on all fours with the case of Ruston & Hornsby where, too, the company had a factory in Bombay and where the factory was closed, and a new factory was started at Chinchwad. But a careful perusal of the decisions in that case brings out the subtle but very vital difference between the facts of that case and the facts of the instant case. Let us see what the facts in Ruston case were. Three decisions are reported in the first volume of the Labour Law Journal for the year 1956. Certain proceedings were pending before the Labour Appellate Tribunal. The company wanted to terminate the services of 142 employees. It therefore applied for permission under S. 22 of the Industrial Disputes (Appellate Tribunal) Act. The Labour Appellate Tribunal granted permission. Some workmen filed a writ petition to the Bombay High Court. The decision of the Division Bench of the High Court is reported in 1956 I L.L.J. 14. The decision of the Labour Appellate Tribunal was dated 16 June 1955. The decision of the Bombay High Court was dated 30 June, 1955. The company proposed to start its Chinchwad factory as from 1 July 1955. Be it noted that at that time S. 25FFF had not been enacted. It was enacted in June 1957 [see the Industrial Disputes (Amendment) Act, 1957 (18 of 1957), published in the Gazette of India Extraordinary, Part II, dated 8 June, 1957, at pp. 213-215 = 1957 II L.L.J. 8 - Information]. It came into force retrospectively on 28 November 1956. In their decision, their lordships observed :

Page 16. - "It appears consequently that when the company said that they were closing their Bombay factory and starting a much bigger factory in Poona, the question which arose before the Labour Appellate Tribunal for determination was

not whether there was any need for the company to employ the workmen in Bombay but whether a prima facie case had been made out for termination of the services of the workmen, i.e., whether there was any difficulty in regard to the company employing the workmen in similar jobs in the new Poona factory ..."

10. After the decision of the Bombay High Court, the company again applied to the Labour Appellate Tribunal for a further hearing in the light of the observations of the High Court. The Labour Appellate Tribunal heard the parties and gave their decision on 15 July, 1955 which is published in 1956 I L.L.J. 78. The Labour Appellate Tribunal observed :

Page 79. - "The employees contend that they should be transferred to Poona on the same terms and conditions which obtained in Bombay. It is, however, common knowledge that the total emoluments for comparable categories are lower in Poona than in Bombay and, therefore, an "immediate difficulty in regard to the company employing the workmen in similar jobs in the new Poona factory" arises."

" It was the workmen's contention that they would accept the terms prevailing at Poona but would reserve the right to agitate for the continuance of their present terms as if on transfer. This would obviously lead to an unsettled state of affairs in the new business which is opening in Poona and would have a disruptive effect on labour in the new establishment."

11. So saying, the Labour Appellate Tribunal granted the company permission to retrench the employees.

12. This decision was once more challenged before the Bombay High Court in a writ petition. A division Bench of the High Court gave its decision on 18 August, 1956 I L.L.J. 246. Before the Labour Appellate Tribunal the company had offered certain terms on which it was prepared to re-employ the Bombay workmen in their Chinchwad factory. Their lordships observed :

Page 250. - "Well, it is not for us to decide whether workmen should or should not accept these terms, but if they have not chosen to accept them, they cannot then say that no case for their retrenchment has been made by the second respondents (the company). What the employees have been insisting upon (p. 251) is that they should be treated as if they were transferred from Bombay to Chinchwad. Normally, words have not much magic, but in this case the word "transfer" has undoubtedly some magic because that is the one word on which the parties have not succeeded in agreeing, and the reason is obvious because by insisting on the word "transfer" the employees want to introduce in the controversy which may arise in future their right to receive higher wages because they have been transferred from the Bombay factory to Chinchwad factory."

13. The above extracts will show how the facts of the case in Ruston & Hornsby differed from the facts of the instant case. In the first place, in 1955, when the above decisions were given, there was neither S. 25FFF in the Industrial Disputes

Act, 1947. There was, therefore, no occasion to deal with the distinction between retrenchment on account of surplus labour and retrenchment on account of closure. Secondly, in Ruston case there was, what Sri Gawade described, a snap action. The Bombay factory closed down on 30 June, 1955 and the Chinchwad factory opened on 1 July, 1955. That is not the case here. In our case both the Bombay and Chinchwad factories are working with all the requisite complement of labour. The Chinchwad factory went into production on 1 April, 1961. Thirdly, the Ruston & Hornsby Company wanted to shift some of their machinery to Chinchwad. In our case no machinery is yet taken away from Bombay. Fourthly, no jobs are waiting in the Chinchwad factory for the workmen of the Bombay factory as was the case in Ruston & Hornsby. If any Bombay factory employee resigns from the Bombay factory and applies for the employment in the new Chinchwad factory, the company is prepared to consider his suitability and employ him, if suitable, and even give him continuity of service which, under law, it is not bound to do. The three decisions cannot, therefore, lend us much assistance in solving the problem posed in the present case.

14. Several other authorities were cited before me but none deals directly with the questions in issue. Sri Gawade referred to the case *Kundan Sugar Mills Vs. Ziyauddin and Others*, . The mills owned a sugar mill at Amroha. In 1951 the management purchased another sugar mill in another district. Later on they closed the second mill and started it at a place called Bulandshahr. The management then transferred the workmen to the new mill. The workmen resisted the transfer. They were chargesheeted and ultimately dismissed. Upon a reference, the tribunal held that the company had the right to transfer the workmen. On appeal the Labour Appellate Tribunal held that the management had no such right. On a second appeal to the Supreme Court their lordships held that there was no express terms of the contract of service between the management and the employees that the latter should serve in any future concerns which the company might acquire or start. It was also found that the conditions of service at Amroha and at Bulandshahr were different. There was also disparity in the rate of bonus at the two places. The accounts were separately maintained. The two mills were at different places. Their lordships therefore held that the two concerns were separate entities and upheld the decision of the Labour Appellate Tribunal. Sri Gawade used the decision to urge that if the company does not possess the right to transfer its employees from one concern to another, the converse that the employees have no right to claim such a transfer would be the logical inference. I must say that Sri Gawade is quite right. The case now before me is stronger than the case of *Kundan Sugar Mills*. There the mills had to fill in a number of vacancies at Bulandshahr. In our case there are no vacancies at Chinchwad.

15. Sri Gawade referred to the case of *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, . For a long time disputes of various types were going on between the management and the employees. The company decided to transfer the publication of one of its

publications, viz., Andhra Prabha from Madras to Vijayawada. Soon after this decision, Andhra Prabha (Private), Ltd., was incorporated in Hyderabad. The board of directors resolved to sell, as a going concern, to this private limited concern the proprietary rights of publishing and printing the Andhra Prabha and the Andhra Prabha Illustrated Weekly. Some employees were to be transferred to Hyderabad. The workmen resisted this move. There was an exchange of notices. The employees went on strike. Two days later the management declared closure of their business at Madras. They offered to pay to the workmen compensation under S. 25FFF. The union declared that this was not a genuine closure but a reprisal lockout. When the dispute was referred to the industrial tribunal, a writ petition was filed in the Madras High Court by the management that the tribunal could not go into the question of closure. The management filed another writ petition against the order of Government prohibiting the workmen from going on strike and the management from declaring a lockout. The learned Judge who heard the writ petitions held that as the case was that of a closure, it would not constitute an industrial dispute. His lordship also held that as this was not an industrial dispute Government could not prohibit the closure.

16. There were Letters Patent appeals. The decision of the Division Bench, given on 13 October, 1959, is published in *The Workers and Staff employed under the Express Newspapers (Pr.) Ltd. and Others Vs. The Management of the Express Newspapers (Pr.) Ltd. Madras and Others*, . Their lordships agreed with the single Judge that under the fundamental rights guaranteed by the Constitution [Art. 19(1)(g)], a man had the right to relinquish his business, to close it down, to split it up, to sell it or to do what he liked with it. But, said their lordships, there was a vital difference between a closure and a lockout :

Page 360. - "In the case of a closure, it is not merely the closing down of the place of business. The business itself is relinquished clearly and unmistakably and the legal personality of the concern comes to an end. The essence of the "lockout" on the contrary, is that the place of business is closed down, that workers are shut out, that the employer does certain acts with the intention of forcing the workers to certain terms, and is either continuing the business really throughout, or intends to recommence his activities as soon as his object has been achieved.

17. Their lordships observed that in this particular case it was necessary to record evidence for ascertaining whether it was a genuine closure or only a lockout disguised as a closure.

18. The above decision was taken in appeal to the Supreme Court. Their lordships agreed with the Division Bench of the Madras High Court. They held that if the case was that of a genuine closure, the dispute raised by the workmen would not be an industrial dispute at all. Their lordships also observed :

Page 232. - "The theoretical distinction between a closure and a lockout is well-settled. In the case of a closure, the employer does not merely close down the

place of business, but he closes the business itself; and so that closure indicates the final and irrevocable termination of the business itself. Lockout, on the other hand, indicates the closure of the place of business and not the closure of the business itself."

19. So, now, we know what constitutes a closure. Sri Ram Desai invited my attention to an earlier decision of a single Judge of the Madras High Court in the case of McKenzies Ltd., Madras Vs. The Presiding Officer, Labour Court, Madras and Another, , given on 9 December, 1959, where his lordship said that in order that one could speak of "closure" it should be complete in the sense that there is no work remaining to be done after termination of the employment of the workmen. The distinction between the retrenchment when the termination is only of particular workmen or a particular proportion of workmen and the case where on closure the business itself ceases to exist is in fact that in the latter case the services of all the workmen are terminated.

20. Sri Gawade referred to a decision of a single Judge of the Kerala High Court given only a fortnight previous to the Madras decision where quite the contrary view was expressed - John v. Coir Yarn Textiles, Ltd., Alleppey 1960 I L.L.J. 304. In that case, on account of adverse trade conditions and the restriction imposed on the import of coir products by the foreign countries, the business of the company was drastically cut and it resulted in heavy losses. The company decided to wind up its business and also dispense with the services of the bulk of workmen. The company was compulsorily wound up under the orders of the High Court. The liquidator retrenched some of the workmen and continued some of them in service for completing pending orders. Subsequently, the rest of the workmen were retrenched by the liquidator in two stages with the permission of the High Court. The workmen claimed retrenchment compensation under S. 25F. The liquidator restricted the claims to retrenchment compensation to S. 25FFF on the ground that they were retrenched on account of closure of the undertaking due to unavoidable circumstances. His lordship observed :

Page 307. - "The closing down of an undertaking need not be, and rarely is all on a sudden and a matter of an instant; it can be, and often is, in stages and spread over some time."

21. This decision was presumably not published when the Madras High Court decided the case of McKenzies Ltd., Madras Vs. The Presiding Officer, Labour Court, Madras and Another, . I would respectfully adopt the reasoning of the Kerala High Court. Let me give an illustration. Suppose a concern decides to close down. It has been ten orders to complete and a complement of 1,000 workmen. After completing each order it terminates the services of 100 workmen. According to McKenzies case the terminating of 900 workmen on completion of nine orders would fall under S. 25F whereas the termination of the last batch of 100 workmen would fall under S. 25FFF. This would obviously appear to be illogical. So long as the decision to close down is genuine, closure by stages would appear to be normally inevitable. The Supreme Court has

nowhere stated in the decision in Express Newspapers that for a bona fide closure there must be a "snap action."

22. Sri Ram Desai referred me to the decision of the Division Bench of the Bombay High Court in New Gujarat Cotton Mills Limited Vs. Labour Appellate Tribunal, . In that case, the official liquidator sold the assets and goodwill of the Gujarat Cotton Mills to the New Gujarat Cotton Mills. The new company did not re-employ the employees of the old company. The labour court and the industrial court held that the new company was not the successor in business of the old company and that therefore the new company was under no obligation to employ the workmen of the old company. On appeal, the Labour Appellate Tribunal held that the new company was such a successor in business and remanded the case to the labour court for a decision on the question whether the employees were entitled to claim a relief from the new company. When the matter went up to the High Court their lordships observed :

Page 197. - "The tribunal (i.e., the Labour Appellate Tribunal) observed that in such a case the Court must carefully consider whether the refusal to give re-employment is capricious or industrially unjustified on the part of the successor in business or whether the successor can show cause for such refusal founded on reasonable and bona fide grounds such as want of work, inability of the applicant to carry out the available work efficiently, late receipt of the application for re-employment in view of prior commitments or any other cause which in the opinion of the Court makes it unreasonable to force a successor in business to give re-employment to all or any of the employees of the old concern."

23. With these observations of the Labour Appellate Tribunal their lordships of the Bombay High Court agreed. I do not see how this case helps Sri Ram Desai. On the contrary, it helps Sri Gawade's stand.

24. What are the facts in our case ? The Chinchwad factory went into production over two years ago. It has its own labour force. The service conditions there are different from those in the Bombay factory. The decision to close the Bombay factory was taken long ago. All workmen were given advance information. Now that the Chinchwad factory has gone into production, the company wants to close down the Bombay factory by stages. The workmen are asked to resign and apply for re-employment at Chinchwad. If the applicant is found suitable, he may be taken up on terms and conditions prevailing at Chinchwad. As their lordships said in Ruston & Hornsby case, no one can force the workmen to accept re-employment on the company's conditions. But if they do not, they cannot turn round and say that the company has failed to prove a case of bona fide closure. It is clearly impossible for the company to re-employ the Bombay workmen for their Chinchwad factory. The disinclination to re-employ them is neither capricious nor industrially unjustified.

25. Both Sri Ram Desai and Sri Bandiwdekar invited my attention to reports of the chairman of the company to the shareholders. I reproduce a few extracts :

Exhibit C. 2 - Annual report, 1959, p. 2, Para. 3. - "The directors" report explains the reasons why your boards has decided to move the company"s workshops out of the Bombay area to Chinchwad. We are convinced that restricting production to only one type of lathe and two types of drills, which is all that can be done in the present congested shops, we cannot make any further headway. The quality of our products and the turnover will increase only if we can get new equipment for which there is no room in the present shops."

Paragraph 4. - "So long as our workshops remain where they are, there is going to be no future for the company ..."

Paragraph 6. - This is what your directors proposed to achieve by shifting the works to Chinchwad and in planning the expansion."

26. Annual report, 1960, p. 3, Para. 8. - "So long as we remain in Bombay, we will remain a small unit, but by the beginning of the next year, we will have at Chinchwad a new factory laid out with room for expansion and well-equipped, capable of producing modern and more advanced types of machine tools of improved quality."

27. Annual report, 1961, p. 6, Para. 2. - "I believe that we can, with confidence, look forward to better results in the future. A substantial part of the work being done at Bombay will be transferred before the end of 1962 to Chinchwad. In planning the new factory, economy and convenience in production have received special attention. Ample room has been left for expansion."

28. From these statements in the reports it was urged that the company"s intention was clear. It had decided to move out of Bombay with the sole object of expanding. True. But the word "expansion" has no magic about it. A company closes down its small and old-fashioned factory after its large and modern factory built in another zone of the State has gone into production. Does that not amount to closure of the old factory ? Is the machinery of the old factory taken to the new site and installed there ? Is the labour force of the old factory taken to the new factory ? Is not the new factory situated in a region where service conditions are different where the wage-structure is lower than those prevailing in the region in which the old factory was situated ? If that be so, then surely the new factory must be deemed to be surely the new factory must be deemed to be a district legal entity for purposes of Chap. VA of the Industrial Disputes Act.

29. I have carefully considered the circumstances which necessitated the decision of the directors to build a new factory at Chinchwad and I have come to the conclusion that the circumstances were beyond their control. How could they hope to prosper in a congested workshop where they had space enough to manufacture just one type of lathe and two types of drills ? Admittedly the factory was situated in a residential area and sooner or later the municipality was going to insist on its being removed to an industrial is a copy of the permission granted by the municipality to the company to establish and work its factory. The very first paragraph lays down that the permission was being given only up to 31

March 1964. The unions were quite confident that the period would be extended. These are, if I may say so, the pious hopes of the unions for their own ends. The second restriction was on working hours. No night shift could be worked in a residential area. The permission could be revoked or suspended if the factory was found "creating nuisance from noise, smoke, dust, fluff, effluvia, odour, vibration or any other cause." Which factory, I should like to know, could work without causing noise or letting out smoke or dust or causing vibrations. All these restrictions curbed the company's freedom. On top of that was Government's plan of decentralization. That was one of grounds for acquiring for the company the land at Chinchwad. All these factory were beyond the control of the company. I am, therefore satisfied that the company's decision to terminate the services of the workmen in the Bombay factory as if they were retrenched and to pay them retrenchment compensation up to a maximum of three months' wages, was perfectly in accordance with law.

30. Turning to the two demands that are referred to me, I consider them to be some-what hypothetical. And even if they are not considered to be so, they are incapable of being granted. The "existing staff and workmen" cannot be given an opportunity to serve at Chinchwad, and that too "in the same position without any loss of their existing or future privileges and rights." In Ruston case, regarding a similar demand, the Labour Appellate Tribunal said :

"This would obviously lead to an unsettled state of affairs in the new business which is opening in Poona and would have a disruptive effect on labour in the new establishment."

31. With those observations the Bombay High Court agreed. Same would be the result in the instant case if demand (1) was to be conceded. The several authorities cite by Sri Gawade and discussed by me above, lay down that once the tribunal comes to the conclusion that what is referred to it is a dispute concerning a genuine and bona fide closure, the dispute would not be an industrial dispute. Their lordships of the Supreme Court observed in the case of *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, :

"It is also true that even if the dispute is tried by the industrial tribunal, at the very commencement the industrial tribunal will have to examine as a preliminary issue the question as to whether the dispute referred to it is an industrial dispute or not, and the decision of this question would inevitably depend upon the view which the industrial tribunal may take as to whether the action taken by the appellant is a closure or a lockout. The finding which the industrial tribunal may record on this preliminary issue will decide whether it has jurisdiction to deal with the merits of the dispute or not. If the finding is that the action of the appellant amounts to a closure, there would be an end to the proceedings before the tribunal so far as the main dispute is concerned. If on the other hand the finding is that the action of the appellant amounts to a lockout which has been disguised as a closure, then the tribunal will be entitled to deal with the reference."

32. In our case, there is no question about the honesty of the decision of the company to close down the Bombay factory. Motive to victimize the workmen is only vaguely suggested in Para. 7 of the statement of claim of the Machine Tools and Engineering Workers" Union. Once we come to the conclusion that this is a genuine case of closure, no further discussion need be entered into. The workmen will be entitled to get such reliefs as they have a right to claim under S. 25FFF. The tribunal has no right to enhance those benefits by directing the company to pay to the workmen retrenchment compensation under S. 25F. The Bombay High Court made this point very clear in their decision in the case of K.T. Rolling Mills Private Ltd. and Another Vs. M.R. Meher and Others, . I cannot, therefore, direct the company to give the Bombay factory workmen an opportunity to serve at Chinchwad on their existing service conditions. The company has every right to terminate their services under S. 25FFF. It is for the workmen to accept or not accept the company"s offer of re-employment on certain terms. Demand (1) is, therefore, rejected.

33. As regards demand (2), my view is that it must be rejected in any case. If the company offers to employ the Bombay workmen at Chinchwad on certain conditions, and if the workmen do not accept those terms for any reason whatsoever, they must be deemed to have voluntarily declined to be re-employed. In such case they must rest content with whatever relief they might be entitled to under law. They certainly cannot say :

"we shall decide whether to go to Chinchwad or not. If for some reason which we deem to be valid we do not want to go to Chinchwad, you must pay us

(1) retrenchment compensation under S. 25F,

(2) one month"s notice pay,

(3) all leave wages,

(4) company"s full contribution to our provident fund."

34. They would only be entitled to get what law authorizes them to get. Under these circumstances, demand (2) is rejected.