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**(1968) 03 CAL CK 0029**  
**In the Calcutta High Court**

Jewell Filter Co. Ltd.

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision :** 21-03-1968

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 10, 25FFF

**Citation :** (1969) 1 CALLT 329 : (1969) 2 LLJ 221

**Hon'ble Judges :** B.C. Mitra, J

**Bench :** Single Bench

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## Judgement

B.C. Mitra, J.—The petitioner is a sterling company incorporated under the English Companies Act with its registered office in London. It has an Indian branch at Nos. 28 and 30, Chittaranjan Avenue, Calcutta, and a workshop at No. 109, Foreshore Row, Howrah. It carries on business as water purification engineers. The total number of employees of the petitioner in its Calcutta and Howrah establishments were 88 in all. At a meeting of the board of directors of the company held at its registered office in London the following resolution was passed:

It was resolved to close down all Jewell Filter Company, Ltd.'s, activities and thereafter to take the company into voluntary liquidation.

2. Pursuant to this resolution the branch office in Calcutta decided to close down permanently, its activities in India both at the Calcutta and Howrah establishments, and a notice to that effect was put up on the notice-boards at the company's offices in Calcutta and Howrah on 26 December 1967. By this notice the workmen were informed that they would be paid their dues in accordance with the provisions in the Industrial Disputes Act on 29 December 1967. Certain conciliation proceedings were started by respondent 3 regarding the proposed closure of the petitioner's business.

3. On 29 December 1967, individual notices were sent to workmen of the petitioner of both its Calcutta branch office and the workshop, that their services

would not be required from the close of 31 December 1967, and they would be paid one month's salary in lieu of notice besides other dues.

4. The petitioner received a letter dated 29 December 1967, from the Joint Labour Commissioner, West Bengal, requesting the petitioner to defer closure of the branch office at Calcutta for the present. The petitioner thereupon decided to defer the closure till 1 February 1968. Further conciliation proceedings were held but no settlement was arrived at such proceedings. Individual notices were thereafter sent by the petitioner to its employees that the activities of the branch office at Calcutta and also of the workshop at Howrah would be closed from 31 January 1968, and that the services of the employees would not be required upon the expiry of 31 January 1968. The employees were also advised that they would be paid one month's salary in lieu of notice, retrenchment compensation u/s 25FFF of the Industrial Disputes Act and also other dues, between 22 and 25 January 1968. Further conciliation proceedings were held but without any result. Thereafter a meeting was held by the Labour Minister of the Government of West Bengal in his chamber on 27 January 1968, when a request was made by the Labour Minister to the representatives of the petitioner to defer the closure of the activities of the petitioner's business in India up to 31 March 1968. This request of the Minister was conveyed to the petitioner by a letter dated 27 January 1968. The petitioner, however, did not comply with the request of the Labour Minister, and closed down its activities in India with the close of the business on 31 January 1968. The petitioner's contention is that the services of the employees stood terminated with effect from 1 February 1968, on account of bona fide closure of the petitioner's business. It is also contended by the petitioner that there was no talk or suggestion of a lockout of the petitioner's establishments in India.

5. On 2 February 1968, the petitioner received two notices issued by respondent I, both of which were dated 1 February 1968. One of these notices was an order of reference to the eighth industrial tribunal u/s 10(1) of the Industrial Disputes Act.

6. The issue framed in this order is as follows:

(1) Whether the lockout of the company with effect from 1 February 1968 is justified? What relief, if any, are the workmen entitled to?

7. The second notice is an order u/s 10(3) of the Industrial Disputes Act prohibiting the continuance of any strike or lockout in connexion with the industrial disputes which may be in existence on the date of reference.

8. It is with regard to these two notices that a rule nisi has been obtained by the petitioner from this Court for appropriate writs and orders directing the respondents not to give effect to the said notices and also prohibiting them from enforcing the same and proceeding with the adjudication upon the issue framed.

9. In order to appreciate the contentions of the parties it is necessary to refer to

certain other materials. Three companies were incorporated In England, namely, the petitioner-company, Paterson Engineering Company, Ltd. and Candy Filters Ltd. all of whom were engaged in the manufacture of water-treatment plants. All these companies were controlled by a holding company known as Laverstoke Investment Trust, Ltd. London.

10. The other two companies had subsidiary companies incorporated in India under Indian Companies Act. The petitioner, however, was not incorporated as a company in India but carried on its business in India as a branch of the sterling company in London.

11. The contention of respondents 5 and 6 in the affidavit-in-opposition is that all the three English companies were run and managed under one common integrated management. Letters addressed to one company were replied to by one of the other two companies. In 1962 it is contended, there was a proposal for integration or amalgamation of the three companies and all the employees were then assured by a memorandum that they would be absorbed in the Integrated company. It is next contended that since 1952 the affairs of the petitioner's company, Paterson Engineering Company (India) (Private), Ltd., and Candy Filters (India) (Private), Ltd., were carried on in a completely integrated manner under one common management and that the offices of the said companies had been and still are operationally and financially interlinked. It is alleged that one Sri Robinson, and after him one Sri P.T. Ensor, used to look after and control the affairs and business of the petitioner as well as the said two other companies; and since 1966 one Sri S.Y. Gore assumed charge and control of all the three companies. It is further alleged that materials purchased in the name of one company were taken over by the other, orders in the name of one company were executed by the other, and expenses incurred by one company were debited to the other. There are other allegations in the affidavit-in-opposition in support of the contention that the management of the three different companies was in the hands of the same persons.

12. In 1967 a charter of demands was placed before the management of the companies and one of the demands made was that there should be a common basis for bonus for the employees of both the petitioner company and the Paterson Engineering Company (India) (Private), Ltd. on the ground that the two were financially and operationally interlinked. Since 1963 all the business and profits of the petitioner-company are alleged to have been diverted to Paterson Engineering Company (India) (Private), Ltd.

13. It is in the facts mentioned above that it is contended on behalf of the workmen that the petitioner had in fact declared a lockout under the guise of a closure. It is contended also that it will be open to the company to contend before the industrial tribunal, before whom the reference is now pending that there has been a closure, and if the tribunal is satisfied about the genuineness of such closure, the award will go in favour of the petitioner.

14. There is, however, one other allegation in the affidavit-in-opposition which is more serious. It is alleged that the petitioner is trying to deal with and dispose of stocks and assets so that even if ultimately the workmen succeed in the application they will be left helpless and without any remedy. The petitioner is alleged to be trying to divert its entire stock to Paterson Engineering Company (India) (Private), Ltd. surreptitiously, and is removing the stock, plants and machinery to the other godown or store.

15. It is in the facts mentioned above that Sri S. Banerjee, learned Counsel for the petitioner, contended that what has happened is a genuine and bona fide closure, and that it is not a lookout as claimed on behalf of the workmen, on the basis of which the two impugned notices have been Issued by respondent 1. The petitioner, it was contended, had a right to close its business and neither respondent 1 nor respondents 5 and 6 had the right to challenge the closure and claim relief on the basis that the closure is not a closure but a lockout. The owners of an undertaking, be they individuals or a company incorporated under the Companies Act, it was contended, had the undoubted right to close the undertaking. This right, it was argued, could not be questioned or challenged either by the employees or the Government. When an undertaking is closed, it was argued, there could be no industrial dispute with regard to such an undertaking. The petitioner in this case, it was submitted, had of its own agreed to pay to the employees all their dues arising out of retrenchment or termination of service, under the Industrial Disputes Act, 1947. In that view of the matter there could be no order of reference u/s 10 of the Industrial Disputes Act. Furthermore, it was argued, that the question whether what had happened was a closure or a lockout was beyond the Jurisdiction of the industrial tribunal. The issue framed to respondent 1 was whether the lockout with effect from 1 February 1968 was justified. The industrial tribunal had no jurisdiction to decide if the closing down of the undertaking arose out of a lockout or a closure. The issue, it was argued, presumed that there was in fact a lockout, and the only question for the decision of the tribunal was if the lockout already declared was justified. It was therefore beyond the jurisdiction of the industrial tribunal to go into the question if the closing down of the undertaking was a lockout or closure. The only question before the tribunal under the order of reference, it was submitted, was justification of the lockout from 1 February 1968. If the industrial tribunal came to the conclusion that it was a case of closure and, made an award on that basis, such an award would be illegal as it would be entirely beyond the jurisdiction and competence of the tribunal.

16. It is well-settled that in the case of a bona fide closure of a business or undertaking, there cannot be any industrial dispute within the meaning of the Industrial disputes Act, 1947. This is so, because on a closure of a business or undertaking the relationship of employer and employee ceases. But if there is no bona fide closure of a business, and what has happened is a cessation of the activities of the business or undertaking, it will be open to the employees to contend that there is no closure but a lookout under the guise of closure. It has

therefore to be seen if on the materials in this petition the cessation of the activities of the petitioner is a genuine, bona fide closure of business, or a temporary stoppage of activities amounting to a lockout.

17. In order to get over the difficulty that on the materials it might be held that there has been a bona fide closure of the petitioner's business, it has been contended on behalf of the workmen that although the petitioner may have closed its business and undertaking, yet it is carrying on the same in the same manner and to the same extent, In the name of its counterpart, namely, Paterson Engineering Company (India) (Private), Ltd. which company holds 100 per cent of the shares of Jewell Filter Company, Ltd. London, of which the petitioner is a branch. In other words, the contention is that since Paterson Engineering Company, Ltd. of London, holds 100 per cent of the shares of Jewell Filter Company, Ltd., London, the former Is the full owner and the proprietor of the latter and therefore although the latter's branch in Calcutta has been closed down, it should be held that there is no closure, because the same business and undertaking is being carried on by the owner and proprietor of the petitioner's business in Calcutta. It is, therefore, contended that the closure of the petitioner's business is by no means a bona fide closure as the same business and activity is continuing and is being carried on by Paterson Engineering Company (India) (Private), Ltd. This argument has been sought to be further reinforced by the fact that the holding company In London, namely, Leverstoke Investment Trust, Ltd. has the controlling interest both in the petitioner's company in London as also Paterson Engineering Company, Ltd. London, of which the Indian counterpart is a subsidiary. It is argued that the same set or group of people are carrying on business under different names and they have chosen to shut down one unit, without really intending to close the business, and are carrying on the same business and activity through another unit, namely, Paterson Engineering Company (India) (Private), Ltd. These facts, it was argued, could not but lead to the conclusion that there was no bona fide closure of the business.

18. It is now well-settled that If there is a closure of an undertaking there can be no industrial dispute on any matter connected with the business and undertaking closed. It is also well-settled that the Industrial Disputes Act, 1947, applied to an existing industry and not a dead industry. The contention of the workmen in this case is that there was no closure of the undertaking but what had happened was a lockout in the guise of a closure. It is, therefore, necessary to see if this contention is sound and can be upheld.

19. The correspondence disclosed by the petitioner and the respondents clearly indicates that the petitioner had decided to close down its undertaking. In the letter dated 12 January 1968, the petitioner informed the Labour Commissioner that the notice of closure already given would stand and the retrenchment as notified would come into effect from 31 January 1968. The subject-matter of the letter as indicated at the head is closure of the petitioner. There la a reference to

the offer made for taking over of the company as a going concern by a co-operative. The next letter dated 18 January 1968, is also addressed to the Labour Commissioner and the subject of the letter is closure of the petitioner. It records the discussion with the Labour Commissioner who made a request to postpone closure of the petitioner's business as it was the view of the Labour Minister that at least three months' notice should be given for the purpose. It also records that a notice of closure was put up in December 1967, to make the closure effective from 31 December 1967. The letter then further goes on to record that a request was made to postpone the closure by a month and in spite of difficulties in doing so the petitioner agreed to that proposal. It is further recorded that the establishment would stand closed as from 1 February 1968, and the operation of the company would be limited to winding up of its assets and liabilities. The next letter is dated 8 January 1968, addressed by the company to the Regional Employment Officer in which it is stated that the company will be permanently closed down as from 1 February 1968. The next letter is one dated 13 January 1968 from the petitioner to the Employment Officer, Government of West Bengal, in which it is stated that the petitioner will close down permanently from 31 January 1968. The next one is a letter dated 31 January 1968, from the petitioner to the manager, Employees' State Insurance Corporation, by which intimation is given that the petitioner would close down permanently at the close of the business on 31 January 1968 and the petitioner's office in Calcutta and workshop at Howrah would cease to function from the next day. On 1 February 1968, the petitioner wrote to the Chief Inspector of Factories, informing the latter that the petitioner had closed down as from the close of the business on 31 January 1968, and the workshop at Howrah had ceased to function as from that day. On 19 February 1968, the petitioner wrote to the Commercial Tax Officer that the company had ceased all its activities in India with effect from 31 January 1968. On 20 February 1968, the petitioner wrote to the Incometax Officer that it had closed down its activities as from 1 February 1968, and requested the latter to note the closure of the petitioner. On 12 February 1968, the petitioner wrote to the Executive Engineer, Watersupply Division, that the company had closed its activities as from 1 February 1968, and therefore it was no longer possible for the petitioner to accept any fresh commitment. On 12 February 1968, the petitioner wrote to the Assistant Director of Supplies, Directorate-General of Supplies and Disposals, regarding supply and fabrication of mechanical equipment and stated that the petitioner had closed down its activities permanently from 1 February 1968, and it was no longer possible for the petitioner to undertake any fresh commitment and it was suggested that the requirements should be obtained from other sources. On 15 February 1968, the petitioner wrote to the general manager, the Mysore Sugar Company, Ltd., stating that the company had closed down its activities in India and the petitioner wanted to be excused for its inability to quote and suggested that the requirements should be obtained from, other sources. There is a similar letter dated 16 February 1968, from the petitioner to the Assistant Purchasing Officer, Tata Iron and Steel Company, Ltd. There are

several other letters from the petitioner-company to different parties with whom the petitioner had business relations, and in all these letters the petitioner made it clear that it had closed down its undertaking from 1 February 1968, and was therefore unable either to submit quotations or supply materials. These letters make it abundantly clear that the petitioner not only intended to but had in fact closed down its undertaking. This is not a case where a decision is taken suddenly in an emergency to close down a business or undertaking. The numerous letters addressed to various parties make it clear that the closure of the petitioner's undertaking and activities was a bona fide genuine closure. Long-established business ties with different parties would not have been snapped permanently had it not been for the petitioner's firm decision to close down its undertaking and activities in India. It is not only letters from the petitioner mentioned above which indicate that the petitioner intended to close down its business. There are letters from the parties with whom the petitioner had business relations, which confirmed the view that the closure was a bona fide closure. For instance, on 12 March 1963, the Director General of Supplies and Disposals, Government of India, wrote to the petitioner that as the petitioner had closed down its activities permanently, its name had been removed totally from the list of approved contractors maintained by the Director-General. Furthermore, there is a letter dated 31 January 1968, from respondent 6, which has been disclosed by the respondents, in which it is stated that the employees formed a co-operative society which was under registration and the union submitted to the petitioner that the assets and liabilities of the petitioner would be transferred to the co-operative society. It is further stated that a conference was convened by the Labour Minister on 25 January 1968, where the co-operative proposal as well as the postponement of closure up to 31 March 1968 was discussed and that one of the directors of the petitioner agreed to defer the closure and assured that the co-operative's proposal would be favourably considered. In the last paragraph of this letter there is an appeal to the two Ministers, to whom the letter was addressed, to intervene so that the closure of the company effective from 31 January 1968, was deferred till the proposal of co-operative was finalized. This letter leaves no room for doubt that the petitioner was going to permanently close down its undertaking and activities in India and it was for that reason that a co-operative of the workers was sought to be incorporated to take over the petitioner's undertaking as a going concern and a request was also made to postpone the closure until 31 March 1968.

20. The correspondence to which I have referred in the preceding paragraphs leave no room for doubt that there was a closure of the business and undertaking of the petitioner permanently. The workers of the petitioner and officials including Ministers of the State Government understood it to be such. The proposal for formation of a co-operative society could only be made on the understanding that there was going to be a closure of the petitioner's undertaking and business. Repeated requests for postponement of the closure to enable the co-operative society to be formed and registered for the purpose of

taking over the assets and Liabilities of the petitioner could only be made on the basis that the petitioner's undertaking was to be closed down. Such proposal could not be made, and indeed would be inconsistent with a lockout declared by the management of the petitioner. The contention of respondents 5 and 6 in this application that there was no closure but a mere lockout in the guise of a closure must therefore be rejected.

21. The industrial tribunal which derives its power and jurisdiction from the Industrial Disputes Act, 1947, cannot deal with questions arising out of a closure, including the question of payment of compensation for termination of the services of workmen on bona fide closure of business. This question has been well-settled by the several decisions of the Supreme Court, namely, Banaras Ice Factory Limited Vs. Its Workmen, ; Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union, and Hari Prasad Shivshanker Shukla v. A.D. Divelkar 1957 I L.L.J. 243. It is also well-settled that the Industrial Disputes Act applied to an existing industry and not to an industry which has been closed down. This being the position in law, if the closure of the petitioner's business and undertaking is a bona fide closure, the tribunal which derives its jurisdiction from the Industrial Disputes Act, 1947, would have no jurisdiction either to enter into the reference or to adjudicate upon the two questions referred to it by respondent 1. If the closure is bona fide, a decision on the questions referred to it by the tribunal would be entirely beyond its jurisdiction and it ought not to be allowed to proceed with the reference at all.

22. If there is a closure in fact, and in the fact of this case I have no doubt that there has been a closure, it cannot be said that the closure is unreal or non-existent, even assuming that the closure is a mala fide closure. In other words, even if the closure of the business and undertaking has been brought about, induced or inspired by ulterior motives, the closure must be held to be a closure in fact and cannot be held to be an unreal or non-existing closure. This question has been settled by the Supreme Court in Tea Districts Labour Association, Calcutta Vs. Ex-employees of Tea Districts Labour Association and Another, , on which reliance was placed by the learned Counsel for the petitioner.

23. The learned Advocate-General (for respondents 5 and 6) strongly relied upon the decision of the Supreme Court in The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others, , for the proposition that the tribunal should go into the question if there has been a lockout or a closure, even though the issue framed was whether the lockout of the company with effect from 1 February 1965 was justified. In that case it was held that if the action taken by the employer was not a lockout but a closure bona fide and genuine, the dispute which the workers might raise in respect of such a closure would not be an industrial dispute at all; but if in fact and in substance what had happened was a lockout under the guise of a closure, and a dispute was raised in respect of such action, it would be an industrial dispute. It was further held that if an industrial tribunal proceeded to assume jurisdiction over a non-industrial



dispute, that could be successfully challenged before the High Court by a petition for an appropriate writ, and that even if the dispute was tried by the industrial tribunal, the latter should at the very commencement examine as a preliminary issue the question as to whether the dispute referred to it was an industrial dispute or not and the decision of this question would inevitably depend upon the view which the tribunal might take as to whether the action taken by the employer was a closure or a lookout. It was further held that if the finding of the tribunal was that the action of the employer was a closure, there would be an end to the proceeding before the tribunal, but if the finding was that the action amounted to a lookout which had been disguised as a closure, the tribunal would be entitled to deal with the reference. The finding which the tribunal might make on this preliminary issue, it was held, was a finding on a jurisdictional fact and it was only when the jurisdictional fact was found against the employer, that the tribunal would have jurisdiction to deal with the merits of the dispute. Relying upon this decision it was argued that it was open to the tribunal to go into the question if there was a lookout or a closure, even though the issue framed called upon the tribunal only to find out if the lookout with effect from a particular date was justified. The jurisdictional question, namely, whether the dispute was an industrial dispute or not, it was argued, should be determined by the tribunal first, and if the tribunal came to the conclusion that it was not a bona fide closure but a lookout in the guise of a closure, the tribunal would then and then only go into the merits of the dispute.

24. Before dealing with the contention of the learned Advocate-General on this question I should refer to two other later decisions of the Supreme Court on which reliance was placed by the learned Counsel for the petitioner and in which the observations of the Supreme Court mentioned above came up for consideration. These two decisions are *Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others*, and *The Andhra Prabha Ltd. and Others Vs. Secretary, Madras Union of Journalists and Others*, .

25. In *Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others*, , four issues were framed in the reference to the industrial tribunal and the material issue is issue (3) Which runs as follows:

Whether the strike of the Delhi Cloth Mills and the lookout declared by the management on 24 February 1966 are justified and legal and whether the workmen are entitled to wages for the period of the lookout?

26. The reference to the tribunal was made following a strike and a lookout. In considering the jurisdiction of the tribunal to go into the questions which are not strictly within the limits of the issues framed, the Supreme Court, upon interpretation of Section 10(4) of the Industrial Disputes Act, 1947, and in particular of the word "incidental" used in that sub section, held that the tribunal must confine its adjudication to the points of dispute referred to it and matters incidental thereto, and that the tribunal was not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically

mentioned and anything which is incidental thereto. The word "incidental" was held to mean something happening as a result of or in connexion with the dispute or associated with the dispute and that something "incidental" could not cut at the root of the main thing to which it was an adjunct. It was also held that the issue was framed on the basis that there was a strike and a lockout and it was for the industrial tribunal to examine the facts leading to the strike and the lockout and to come to a decision as to whether one or the other or both were justified. Referring to its earlier decision In *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, , it was held that In that case there was enough material on the record to show that the company had been trying for some time past to transfer its business elsewhere and the action of the management which followed the strike was in fact a closure and not a lockout. It was further held that the facts in *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, , were very special and the decision must be limited to those special facts.

27. The next decision of the Supreme Court on which reliance was placed by the petitioner was *The Andhra Prabha Ltd. and Others Vs. Secretary, Madras Union of Journalists and Others*, . In that case the appellant was a private company carrying on business of printing and publishing newspapers. The directors of the company passed a resolution to sell its machinery to another company and there was an agreement to that effect. One clause in the agreement provided that the employees of the vendor-company should be taken over into the service of the purchaser-company. The company informed its workers that it sold its right of publishing newspapers and on the next day the workers adopted a resolution to go on a strike. Thereafter a closure notice was published and it was mentioned that the management had intimated to the workers that it had sold its rights of editing and printing. The workers were notified that the management had decided to close the undertaking and publication of all newspapers at Madras and to dispense with the services of the workmen. Notice was given that they would be paid their wages for the period during which they worked. It was held that whatever might have been the motive for the closure it was an effective one from April 1959 on which date the closure notice was published. On the question, namely, where two companies had same shareholders or directors if one is the benamidar of the other, it was held that in industrial law a new company which is an independent legal entity cannot be called a benamidar for another older organization because there was in both companies a person or family of persons who could guide the destinies of the two companies.

28. From the decisions of the Supreme Court discussed above it is clear that a writ petition can be moved in this Court challenging the jurisdiction of a tribunal to adjudicate upon a dispute referred to it under S. 10 of the industrial Disputes Act. Secondly, it is clear that the tribunal must confine its adjudication to the issue framed and cannot enlarge the scope of its inquiry and adjudication to matters which are not connected with or incidental to the dispute referred. The third point that has been made clear is that if there is a closure of a business or

an undertaking in fact, the motive which actuated such a closure would not make any difference to the existence of the closure as such and that a closure actuated by mala fide motive must nevertheless be held to be a closure. A mala fide closure might make the employer liable to pay the higher compensation u/s 25PFF of the Act.

29. The learned Counsel for the petitioner also contended that the petitioner had not only closed down the place of business but the business itself and that all its activities in India had ceased. It is not a case, it was argued, where there has been merely a closing down of the place of business. It was argued that as the petitioner's decision to close down the business and undertaking was final and irrevocable, the cessation of activities by the petitioner must be held to be a closure and not a lockout. For this proposition reliance was placed on a decision of the Madras High Court in Chinnappan (H.) Vs. Kaleeswarar Mills Ltd. and Others, .

30. I shall now refer to one other contention of the learned Advocate-General that although the petitioner had decided to close down its business and undertaking, it was still carrying on some business for the purpose of winding up its affairs and therefore it could not be said that there had been a total closure of the petitioner's undertaking. In support of the contention that a closure should be complete in the sense that there was no work remaining to be done after the termination of the employment of the workmen, reliance was placed by the learned Advocate-General on a decision of the Madras High Court in McKenzies Ltd., Madras Vs. The Presiding Officer, Labour Court, Madras and Another, . To my mind, the question in this case is a larger and a broader question, namely, If there has been a closure of the petitioner's business and undertaking in fact, the tribunal would have jurisdiction to enter into the reference and adjudicate upon the issue framed, as there can be no industrial dispute upon a closure of a business or undertaking. If there is a closure in fact and the petitioner had given notice to its constituents, as it had done in this case, that it was not undertaking any new business, the mere fact that the activities of the petitioner are carried on for the purpose of winding up of its establishment and business, would make no difference to the position in law. If the decision of the management to close down its business permanently and irrevocably is final, it must be held to be a dead industry and the industrial tribunal cannot have any jurisdiction to deal with any question arising out of such a closure. This position in law had been made amply clear by the decision of the Supreme Court to which I have already referred.

31. There remains only one other question to be dealt with, namely, the contention of the respondents that the petitioner's business and undertaking is still being carried on by Paterson Engineering Company (India) (Private), Ltd., and that there is a common board of directors for both the petitioner and the Paterson Engineering Company (India) (Private), Ltd. This question has been raised in the affidavit-In-opposition though it was not pressed by the learned

Advocate-General in his argument. The contention is that the closure of the petitioner's business cannot be held to be a bona fide closure because the same business is being carried on by the same group of persons who constitute the board of directors of the petitioner-company and also of Paterson Engineering Company (India) (Private), Ltd. In my view there is no substance in this contention. The two companies are distinct legal entities and the mere fact that the two companies have a common board of directors cannot merge the two distinct legal entities of the incorporated companies into one. This point has also been settled by the Supreme Court in *The Andhra Pradesh Union of Journalists and Others Vs. Secretary, Madras Union of Journalists and Others*, in which it has been held that in industrial law a new company which is an independent legal entity cannot be called a benamidar for another older organization because there was in both companies a person or family of persons who could guide the destinies of the two companies. The petitioner is a branch of a company incorporated in England and in law it is a distinct and separate legal entity, even though all its shares are held by Paterson Engineering Company, Ltd. In my view the closure of the petitioner's business and undertaking cannot be said to be unreal or non-existent merely because the business which the petitioner was carrying on is now being carried on by Paterson Engineering Company (India) (Private) Ltd.

32. It was argued by the learned Advocate-General that the order of reference is an administrative order and this Court in its writ jurisdiction should not interfere with the order. In my view there is no force in this contention. It is true that the order of reference is an administrative order. But if by virtue of this order the industrial tribunal proceeds to assume jurisdiction in a matter in which it ought not to assume such jurisdiction, appropriate writs and orders should be issued by this Court to stop the industrial tribunal from dealing with matters which are beyond the jurisdiction conferred upon it by statute.

33. In the facts of this case it must be held that there has been a bona fide closure of the petitioner's business and undertaking permanently and irrevocably. There is nothing on record to show that the closure is a sham mala fide event, intended only to act as a "cover and a cloak to a temporary suspension of the petitioner's business. The offer made on behalf of the respondents 5 and 6 to form a co-operative society for the purpose of taking over the petitioner's business and undertaking as a going concern, could have been made only on the basis that the petitioner's business and undertaking was going to be closed down permanently.

34. The industrial tribunal is a creature of the statute. Its jurisdictions and powers are derived from the Industrial Disputes Act, 1947. The decisions of the Supreme Court discussed earlier make it clear that it must confine itself to the issue framed, and cannot travel beyond the issue and enlarge the scope of its inquiry and thereby include in its adjudication matters in which it has no jurisdiction. The issue framed in this case is whether the lockout of the company, with effect from 1 February 1968, is justified. Respondent 4 cannot, in my view,

enlarge the scope of the inquiry arising out of the issue framed so as to adjudicate upon the question if there has been a closure of the petitioner's business and undertaking. As I have said earlier, on the materials in this case I have no doubt that there has been a closure of the business and undertaking of the petitioner permanently, and not merely a closure of the petitioner's place of business. On the issue as framed respondent 4 has no jurisdiction to enlarge the scope of its enquiry and adjudicate upon the question of closure, even though such a finding would be on a jurisdictional fact. As in my view there has been a closure of the petitioner's business and undertaking respondent 4 has no jurisdiction to entertain or adjudicate upon the issue referred to it by respondent 1 and respondent 1 has no jurisdiction to make the order u/s 10(3) of the Industrial Disputes Act, 1947, prohibiting the continuance of a strike or lockout.

35. So far as the workmen of the petitioner are concerned, they have been offered full compensation u/s 25FFF and the petitioner is ready and willing to pay such compensation to such of the workmen as have not accepted such compensation already.

36. Sri P.P. Ghosh, learned Counsel for respondent 1, also contended, relying upon the decision of the Supreme Court In The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others, , that the tribunal should go into the question if there has been a lockout or a closure, even though it had been directed by the issue as framed to adjudicate only upon the question whether the lockout of the company from 1 February 1960 was justified and to what relief the workmen are entitled. I cannot accept this contention for reasons which I have discussed earlier in this judgment.

37. For the reasons mentioned above this rule is made absolute. Let a writ in the nature of mandamus be issued directing the respondents not to give effect to or act upon the order dated 1 February 1968, No. 517-I.R./IR/10L-34/68 and the order dated 1 February 1968, No. 518-IR./IR/10L-34/68. Let a writ in the nature of prohibition be issued directing the respondents and each of them not to enforce and give effect to the said two orders and respondent 4 not to proceed with the adjudication in the reference made to it by respondent 1. Each party to pay its own costs.