

(2026) 01 KL CK 1716

In the High Court Of Kerala

Case No : Writ Petition (C) Nos.1003 & 5381 Of 2020

Lunar Rubbers

APPELLANT

Vs

Kerala Head Load And Timber Workers And Factory Workers
Union (KTUC)

RESPONDENT

Date of Decision : 30-01-2026

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(cc), 10, 10(4), 18, 25F, 25FF, 25FFF 25H

Citation : (2026) 01 KL CK 1716

Hon'ble Judges : Mohammed Nias C.P., J

Bench : Single Bench

Advocate : E.K.Nandakumar, K.John Mathai, Joson Manavalan, Kuryan Thomas, Paulose C. Abraham, M.Gopikrishnan Nambiar, Tom Mathew, T.P.Rashmy, Sajen Thampan, Deepu Anil, Sajana P.S., Joyce Paul, Mary Sweetey Paiva, K.N.Rajani

Final Decision : Allowed

Judgement

Mohammed Nias C.P., J

1. The petitioners in W.P(C) No.1003/2020, Lunar Rubbers, and W.P(C) No.5381/2020, Viking Rubbers Pvt. Limited, are private limited companies engaged in the manufacture of hawai sheets and hawai straps used in the production of hawai chappals. They contend that the Labour Union submitted a fresh charter of demands seeking an exorbitant wage hike amounting to nearly 75% of the existing wages. Though the petitioners were willing to consider a reasonable increase, repeated settlement discussions with respondents did not yield any result. It is contended that certain workmen thereafter resorted to a 'go slow' agitation, which continued for more than a month and seriously affected the functioning and viability of the unit.

2. The petitioners in W.P(C) No.1003/2020 submit that during the relevant period, the total workforce consisted of only 27 workmen, out of whom 18 voluntarily resigned from service. With only nine workmen remaining, who were comparatively inexperienced, it became impracticable to continue manufacturing

operations. Likewise, in W.P(C) No. 5381/2020 the petitioners submitted that 4 out of 13 workers employed resigned from service. In these circumstances, and in the absence of any other viable option, the petitioners decided to close down the unit with effect from 26.04.2016.

2.1. It is contended that closure notices were issued to the remaining nine workmen. Out of them, four workmen accepted the closure compensation and gratuity without raising any objection. In respect of the remaining workmen, closure compensation under the provisions of the Industrial Disputes Act, treating them as retrenched for the limited purpose of compensation, and gratuity were duly offered by cheques, which were returned through the Union. The petitioners assert that all statutory authorities were duly informed of the closure of the factory.

2.2. The petitioners further contend that the first respondent thereafter raised an industrial dispute alleging that the petitioners had a larger workforce at the time of closure and that certain workmen were illegally terminated under the guise of closure. On failure of conciliation, the dispute was referred for adjudication, culminating in an award of the Labour Court dated 04.09.2019, by which the Court held that the termination of respondents was unjustified and directed their reinstatement in any of the business units of the petitioners with 50% back wages, continuity of service, and all consequential benefits.

2.3. The petitioners contend that the Labour Court has arrived at the above conclusion on an erroneous interpretation of the provisions of the Industrial Disputes Act, 1947, particularly Sections 2(cc), 25F, and 25FFF. It is submitted that once the factum of closure of an establishment is admitted or established, the question of retrenchment does not arise at all. In cases of closure, the only entitlement of the workmen is to closure compensation as provided under Section 25FFF, and no further relief can be granted.

2.4. The petitioners submit that the factory licence stood cancelled, clearly evidencing the closure of the undertaking, and that the right of an owner to close down an enterprise on account of losses or non-viability is a recognised statutory and constitutional right. Reliance is placed on judicial precedents to contend that when closure is established, it is not open to the Tribunal to examine the motives of the management or interfere with the decision to close down the establishment.

2.5. It is further contended that the distinction between "closure" and "retrenchment" is well settled. While retrenchment requires strict compliance with the conditions prescribed under Section 25F, closure under Section 25FFF entitles the workmen only to notice and compensation as if they were retrenched. The validity of closure does not depend upon payment of compensation or service of notice. In the present case, the respondents 2 to 6 were issued closure notices informing them of the decision to close the establishment with effect from 26.04.2016, and therefore, there was no

retrenchment but only a lawful closure.

2.6. The petitioners further contend that during closure, the workmen are not entitled to any relief beyond closure compensation and gratuity, both of which were duly offered. It is urged that the Tribunal failed to appreciate that the other establishments referred to in the claim statement are distinct legal entities, separately registered under the applicable enactments, and that there is no functional integrality between the closed unit and those establishments.

2.7. It is also contended that the other establishments were not parties to the industrial dispute, and therefore, no direction could have been issued to reinstate respondents 2 to 6 in those establishments. Reliance is placed on Section 18 of the Industrial Disputes Act to contend that awards are binding only on the parties specified therein.

2.8. The petitioners submit that even if the management owns or controls other establishments, there is no provision in the Industrial Disputes Act creating a legal obligation to provide employment to workmen of a closed establishment in another unit of the same management. In the absence of such a statutory mandate, the direction for reinstatement issued by the Tribunal is contended to be wholly without jurisdiction and unsustainable in law.

3. The respondents Nos 2 to 6, in the counter affidavit filed in W.P(C) No. 1003/2020 contend that the petitioner company, founded in the year 1982, is only one among several interconnected establishments run by the same family members, including Lunar Rubbers, Viking Rubbers, Neo Rubbers, Polymer Kerala Private Limited, Manacaud Rubber Industries, Vijay Polymer Industries, Amala Polymers and Mountain View Industries. It is asserted that all these establishments are under common ownership, management, and control, with a common head office, and that workers were routinely transferred from one unit to another depending upon the managerial requirements. The respondents allege that the formation of multiple entities was intended to avoid statutory and financial liabilities, and that the petitioner has taken inconsistent and contradictory stands regarding its relationship with these sister concerns solely to evade responsibility towards the workmen.

3.1. The respondents further contend that they were members of a recognised trade union and that their service conditions were governed by long-term settlements. Upon the expiry of the last settlement on 31.03.2015, the union sought revision of wages and benefits, which was rejected by the management. When conciliation proceedings were initiated before the Regional Joint Labour Commissioner, the petitioner, during the pendency of such proceedings, abruptly issued a closure notice with effect from 26.04.2016. It is pointed out that the closure notice issued to the workmen did not disclose any reason, while the notice sent to the Government cited "stiff and unhealthy competition" as the reason, thereby exposing the lack of bona fides and the contradictory nature of the alleged closure.

3.2. The respondents contend that the so-called closure was never genuine or bona fide. They assert that at the time of the alleged closure, there were 37 workmen and not 27 as claimed by the petitioner. Of them, only nine workmen, including the respondents, who were union members, were selectively targeted and retrenched, while the remaining workers were retained and transferred to the petitioner's sister concerns. The respondents maintain that the retrenchment was a colourable exercise of power intended to victimise union members who resisted the arbitrary dictates of the management.

3.3. The respondents deny the petitioner's allegation that statutory compensation was refused without justification, contending that the very retrenchment was illegal, mala fide, and vitiated by non-compliance with the mandatory provisions of Chapters VA and VB of the Industrial Disputes Act. They assert that the Labour Court, after considering both oral and documentary evidence, rightly concluded that the establishments were interconnected and that the plea of closure was a sham, and consequently directed reinstatement with continuity of service, 50% back wages, and consequential benefits.

3.4. The respondents further contend that the petitioner never, in fact, ceased its activities. Reliance is placed on official records from the Ministry of Corporate Affairs, proceedings of local authorities, rent agreements, balance sheets, auditor reports, and affidavits sworn by the Managing Director, all of which, according to the respondents, conclusively demonstrate that business operations continued even after the alleged date of closure. These documents are relied upon to contend that the plea of closure is demonstrably false and that the petitioner has suppressed material facts before this Court.

3.5. It is also contended that the petitioner company has always been financially viable and profitable, and that the plea of loss or inability to continue business is entirely fabricated. The respondents submit that they have been unemployed for several years as a result of the petitioner's illegal actions, that they are facing severe economic hardship, and that the writ petition is a vexatious attempt to delay implementation of a just and lawful award.

4. Heard Sri. E.K Nandakumar, the learned Senior Counsel appearing for the petitioners, instructed by Sri. Jai Mohan in W.P(C) No.1003/2020 and Sri. P. Ramakrishnan in W.P(C) No. 5381/2020 and Sri.Sreejith V.S., the learned Senior Government Pleader and Sri. Tom Mathew for the party respondents in both cases.

5. It is contended on behalf of the petitioners that the Tribunal's order to reinstate the respondents in other units is not proper as it is well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking the provisions of Section 25FFF of the Industrial Disputes Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section

25F of the Act.

5.1. It is also argued that a plain reading of the provisions contained in Section 25 FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression, as used in these sections, merely envisages computation or compensation in terms of Section 25F of the 1947 Act and not other consequences flowing therefrom. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. It is also asserted that once it is held that Section 25FFF will have no application in a case of transfer of an undertaking or closure thereof as contemplated in Sections 25F and 25FFF of the 1947 Act, the logical corollary would be that in such an event, Section 25H will have no application. The distinction is that in the case of retrenchment simpliciter, a person loses his job as he becomes surplus and in case of revival of the chance of employment, is given preference in case new persons are proposed to be employed by the said undertaking, but in the case of transfer or closure of the undertaking, the workman concerned is entitled to receive compensation only.

5.2. It is also argued that where the factum of closure is admitted or established, it is not for the Tribunal to go into the question as to the motive of the management to close down the establishment. The Hon'ble Apex Court has clearly held in *Workmen of the Straw Board Manufacturing Co. Ltd v. Straw Board Manufacturing Co. Limited* ((1974 KHC 711):1974 (1) Lab LJ (499)) that the workmen cannot question the motive of the closure once closure has taken place unless the establishment is working in some shape or form or at a different place and the closure is only a ruse or pretence. Once the court comes to the conclusion that there is closure of an undertaking, the motive of the employer ordinarily ceases to be relevant. It is also held in *Indian Hume Pipe Co. v. Their Workmen* (1969 (1) Lab LJ 242) that such a closure cannot give rise to an industrial dispute.

5.3. Another argument raised by the learned counsel for the petitioner is that the reference is made to decide on whether the retrenchment is justifiable or not, and the Tribunal thereby has no power to consider the legality of the closure. It is held by the Hon'ble Supreme Court in *Pottery Mazdoor Panchayat v. Perfect Pottery Co. Ltd and Another* (1979 3 SCC 762) that the Tribunal has no power to go behind the reference and inquire into the question whether the closure of business which was in fact effected was decided upon for reasons which were proper and justifiable.

6. Therefore, the central issue that arises for consideration is whether the reference made under Section 10 of the Industrial Disputes Act, 1947, was properly framed, having regard to the true nature of the dispute, and whether the Labour Court/Tribunal acted within the limits of the reference while passing the impugned award.

7. The question for reference in the subject matter of W.P(C) No.1003/2020 is (i) whether the retrenchment of Sri Suresh, Sri. Madhu, Sri. Jose George, Sri. Sabu Thomas and Sri. George Mathew by the management is justifiable? (ii) If not, what is the remedy the workers are entitled to?

8. The question for reference in W.P(C) No.5381/2020 is (i) whether the retrenchment of Sri. Saju Jose, Sri. Shibu George, by the management of Viking Rubbers (P) Ltd., legal and justifiable? (ii) If not, what is the remedy the workers are entitled to?

9. It was averred in the claim statement filed before the Labour Court by the respondent Union that while settlements on hiking wages and other benefits were ongoing, the Lunar Rubbers Limited and Viking Rubbers Pvt. Limited were declared as closed with effect from 26.04.2016, and the closure notice was issued on 23.03.2016. It is their specific case that the closure of the establishment was not bona fide, and only 9 employees were terminated, and others were transferred and posted at the Management's unit at Manacaud.

10. It is the consistent case of the Management that the unit was closed and the compensations were awarded, but only a few employees acknowledged it, and the reference was wrongly made by the Government as retrenchment, whereas there is no retrenchment but only closure, and since the real dispute is not referred, the Court is not competent to adjudicate the same. The Labour Court decided upon retrenchment by considering the closure as an incidental matter and concluded that there were unfair labour practices and that the closure was a sham, and ordered the management to reinstate them in service in any of the units of the management establishment.

11. It is primarily important to look into the scheme of Section 10 which makes it clear that the function of the appropriate Government in making a reference is purely administrative in character and not judicial or quasi-judicial. As held by the Patna High Court in *S.K.G. Sugar Ltd. v. Ali Hassan* (1956 Supreme (Pat) 137):1957 (2) LLJ 513) that the only condition imposed by the Act for making the reference is the opinion of the appropriate Government that an industrial dispute exists or is apprehended. No other condition is imposed for the exercise of the statutory power. The same view was later reiterated in *Western India Match Co. Ltd. v. Western India Match Co. Workers' Union* (AIR 1970 SC 1205). The sole statutory precondition for a valid reference is the formation of an opinion by the appropriate Government that an industrial dispute exists or is apprehended; the actual existence of such a dispute is not required to be conclusively established at that stage. However, while the Government is not expected to adjudicate upon the merits of the dispute, it is nevertheless incumbent that the reference correctly encapsulates the real and foundational controversy between the parties. Where the core dispute pleaded by the workmen is that the alleged closure of the establishment is sham, colourable or illusory, but the reference is framed on a different and narrower premise, on retrenchment and its remedy, the reference fails to reflect the true lis and suffers

from a jurisdictional defect going to its root. A sham closure raises serious and complex questions of fact and law, requiring adjudication by a competent Tribunal, and such questions cannot be presumed away or indirectly answered under the guise of a differently framed reference. As held in *M/s. Ariane Organochem Pvt. Ltd. v. Wyeth Employees Union* [(2015) 7 SCC 561):(2015 (145) FLR 985 (SC)], the question whether a closure or transfer is genuine or sham cannot be determined by the administrative authority while exercising power under Section 10, and must necessarily be left for adjudication by the Tribunal.

12. Once a reference is made, the jurisdiction of the Labour Court or Industrial Tribunal is strictly confined to the points of dispute specifically referred and matters incidental thereto, and the Tribunal is not free to enlarge, amend, substitute, or re-characterise the dispute on its own assessment of the pleadings or evidence. This limitation flows directly from Section 10(4) of the Act, which mandates that the Labour Court or Tribunal “shall confine its adjudication to those points and matters incidental thereto”. The position laid down in *Delhi Cloth and General Mills Co. Ltd. v. Workmen and Others* (1966 SCC OnLine SC 83) and reiterated in *Tata Iron and Steel Co. Ltd. v. State of Jharkhand* (2013 IV LLJ 431 SC) *Rajya Gramin Vikash Sansthan Adharta v. State of M.P.* (1991 (63) FLR 222), *Indo-Graphic Art & Machinery Co. v. Presiding Officer, Labour Court* (1991 (78) FJR 67: 1990 Supreme (P&H) 845), makes it abundantly clear that an adjudicating authority cannot enlarge the scope of the reference or decide foundational issues in a manner that cuts at the root of the dispute as referred. “Incidental matters” cannot cut at the root of the principal dispute nor substitute it altogether.

13. In the present case, the Labour Court, instead of confining itself to the reference as made, proceeded to adjudicate upon questions of reinstatement and continuity of service, thereby implicitly deciding issues relating to sham closure which were never referred for adjudication. This amounts to the Labour Court substituting its own formulation of the dispute in place of that of the appropriate Government, which is wholly impermissible. Jurisdiction cannot be conferred by consent, acquiescence, or by the Labour Court’s or Tribunal’s perception of substantial justice, as held by the Rajasthan High Court in *Suresh Chandra v. General Manager, RSBC Corporation* (2002 (94) FLR 843:2002 SCC ONLINE RAJ). The Labour Court, being a creature of the statute, any adjudication beyond the reference is *coram non iudice*. It is trite law that the Labour Court or Industrial Tribunal derives its jurisdiction strictly from the terms of reference and cannot travel beyond or correct a defective reference; consequently, once the reference itself was *non est* in law, the Labour Court lacked inherent jurisdiction to adjudicate upon the matter. In *Sindhu Resettlement Corporation Ltd. v. Industrial Tribunal of Gujarat* (1968 AIR (SC) 529), the Supreme Court held that where reinstatement was never the subject of demand, a reference touching reinstatement itself would be incompetent. Similarly, where the dispute relates to closure or alleged sham closure, but the reference is limited to the justification of

termination, the Labour Court has no jurisdiction to go behind the factum of closure unless the reference so permits. The distinction between the existence of jurisdiction and the exercise of jurisdiction is crucial; once jurisdiction is absent, the entire adjudicatory exercise becomes futile. This principle has been consistently reiterated in cases relating to closure, lock-out and retrenchment, including *Workmen of Indian Leaf Tobacco Development Co. Ltd. v. Indian Leaf Development Co. Ltd.* (1970 (1) LLJ 34 3: 1970 AIR (SC) 860) and *Walford Transport Ltd. v. State of West Bengal* (1977 (35) FLR 373: 1961 SCC ONLINE CAL 111).

14. The argument advanced on behalf of the respondents that the Labour Court was entitled to examine whether the closure was a "scam" or a sham also does not advance their case in the context of the present reference. As held in *Pottery Mazdoor Panchayat* (supra), unless the reference itself calls upon the Tribunal to decide whether there was in fact a closure or whether the alleged closure was only a lockout or pretence, the Tribunal has no jurisdiction to travel beyond the admitted or established fact of closure and to adjudicate upon its propriety or bona fides. The proper course in cases where workmen allege that there was in fact no closure, but only an illegal lockout or retrenchment, is for the dispute to be appropriately framed and referred by the Government.

15. A consistent line of precedents as in *Workmen of Straw Board Manufacturing Co. Ltd.* (supra), *Pottery Mazdoor Panchayat* (supra), *The Tata Oil Mills Co. Ltd. v. The Workmen of the Kanitta Establishment* (1980 LAB I.C. 355) (Kerala High Court), and in *Maruti Udyog Ltd. v. Ram Lal* [(2005) 2 SCC 638] and *District Red Cross Society v. Babita Arora* [(2007) 7 SCC 366], clearly demarcates the distinction between "retrenchment" and "closure" under the Industrial Disputes Act. Once the factum of closure of an undertaking, or of a unit lacking functional integrality with other units, is admitted or established, the employer-employee relationship comes to an end by operation of law. In such a situation, the only statutory entitlement of the workmen is to notice and compensation under Section 25-FFF, computed "as if" retrenched, solely for the purpose of quantification and not for importing the substantive incidents of retrenchment such as reinstatement, continuity of service, back wages or preferential re-employment.

16. Equally well settled is the principle that, where a closure is real and genuine, the Tribunal/Labour Court has no jurisdiction to sit in judgment over the propriety, justification or wisdom of the employer's decision to close down the undertaking. As laid down in *Pottery Mazdoor Panchayat* (supra) and *Tata Oil Mills* (supra) and reaffirmed in *Workmen of Straw Board Manufacturing Co. Ltd.*, (supra) the motive of the employer ordinarily ceases to be relevant once closure in fact is established, unless it is shown that the so-called closure is a mere pretence and that the establishment continues to function in some form or at another place. Even in such cases, the Tribunal's jurisdiction is circumscribed by the terms of reference.

17. The award passed pursuant to such a defective and jurisdictionally infirm reference is therefore a nullity, being one rendered without authority of law, irrespective of the merits of the findings recorded therein. In exercise of jurisdiction under Article 226 of the Constitution of India, the High Court is entitled to examine not merely the correctness of the award but the very validity of the reference, and where it is found that the question referred was not proper in the facts of the case and the consequential award are liable to be quashed as illegal.

18. In *Indian Tourism Development Corporation v. Delhi Administration and Others* (MANU/DE/0297/1982), a Full Bench of the Delhi High Court held that where the order of reference proceeds on an assumption, such as the existence of a lockout, and confines the adjudication to the entitlement of wages for the alleged period of lockout, the Industrial Tribunal has no jurisdiction to enlarge the scope of the reference and decide the foundational question whether there was in fact a closure and not a lockout. The Court categorically ruled that deciding whether the establishment was closed or whether there was a lockout would amount to deciding the very foundation of the dispute mentioned in the order of reference, a jurisdiction not vested in the Tribunal under the Industrial Disputes Act. The Full Bench further held that even by consent or concession of parties, the Tribunal cannot assume such jurisdiction, as its authority is strictly confined to the terms of reference under Section 10(4) of the Act. Where the real and predominant dispute, namely, whether there was at all a lockout or a closure, has not been referred, the order of reference itself becomes vulnerable and is liable to be quashed, leaving it open to the appropriate Government to make a fresh reference properly reflecting the true dispute.

19. Similarly, in *Organon India Limited v. State of West Bengal and Others* ((2003 (99) FLR 888 (Cal):(MANU/WB/0168/2003), the Calcutta High Court reiterated that the Industrial Tribunal is a creature of statute with limited jurisdiction and is not free to frame issues de hors or beyond the order of reference. It was held that where the reference presupposes termination by the management, the Tribunal cannot substitute its own view by introducing a fundamentally different issue such as abandonment of service, as such an issue cannot be treated as incidental to termination. The Court emphasized that when the order of reference does not accommodate the real controversy between the parties and is wrongly framed, the Tribunal's attempt to adjudicate by recasting the dispute amounts to a clear jurisdictional error. The High Court further held that a defect of this nature goes to the root of the matter and renders the proceedings a nullity, entitling the affected party to invoke writ jurisdiction at any stage, even during the pendency of proceedings or after the passing of the award. In such circumstances, the proper and legally permissible course is not for the High Court to reframe or enlarge the reference itself, but to strike down the defective order of reference and the consequential award, and to remit the matter to the appropriate Government for reframing the issues in a manner that truly reflects the real dispute, thereby keeping the field of adjudication open and

ensuring substantial justice.

20. The manner in which the Calcutta High Court addressed and rejected the objection of prejudice to workmen while interfering with a fundamentally misconceived reference, and the reasoning that equitable considerations cannot override jurisdictional defects in the framing of a reference, is lucidly explained in paragraphs 16 to 18 of *Organon India Limited v. State of West Bengal and Others* (supra) which are extracted hereunder:

"16. He lastly cited 1993(2) CHN 266 (*AviQUIPO of India v. State of West Bengal and Ors.*) to establish that if the Interference is caused by the Writ Court it will cause injustice to the workmen as against the management who are not in equal bargaining position. I am sorry to say that such submission cannot be accepted on a question of framing issues and particularly when the 'management' itself took the pain of bringing the cause before the Writ Court during the pendency of the proceeding without waiting for final disposal giving clear explanation about the fate of the result either way. Therefore, such action on the part of the 'management' is tested as bonafide by the Writ Court. The Tribunal cannot substitute its view holding that there was an abandonment of service by the 'workman' in the place and instead of order of reference that termination of service by the management was Justified or not would have obviously been a jurisdictional error which is the basic issue of consideration by this Court.

17. Hence, balance of convenience will be sub-served if the order of reference is struck out by giving direction upon the appropriate Government to refer the matter back keeping the rooms open for adjudication by the Tribunal in respect of abandonment of service vis-a-vis the termination by the management and that too within a specified period so that the Tribunal will be in a position to proceed with the substantial justice without any wastage of time as expeditiously as possible.

18. Thus, order of reference is struck out by this Court with a direction upon the tribunal to return the file to the appropriate Government to reframe the issues at par with the judgment and order passed by this Court within a period of one month from the date of communication of this order positively and send the matter to the Industrial Tribunal forthwith thereafter and in such case it is expected that the Tribunal will proceed as expeditiously as possible with this matter immediately after getting the order of reference without allowing unnecessary adjournments for the sake of justice."

Given the above positions of law, the order of references in the instant cases are quashed. The impugned award passed pursuant to such defective reference is also set aside. The Labour Court/Tribunal is directed to forthwith return the entire records of the case to the appropriate Government. The appropriate Government shall, within a period of two months from the date of receipt of a copy of this judgment, reconsider the matter and reframe the reference so as to reflect the real dispute between the parties, in accordance with law and in the

light of the observations contained herein, and thereafter forward the same to the competent Industrial Tribunal. Upon receipt of the fresh order of reference, the Tribunal shall proceed with the adjudication expeditiously and pass orders within three months from the date of receipt of the reference.

The writ petitions are allowed.