
(1996) 01 BOM CK 0041
In the Bombay High Court
Case No : Writ Petition No. 356 of 1989

Prakash Murlidhar Dalal

APPELLANT

Vs

Tata Engineering and Locomotive Co. Ltd. and Others

RESPONDENT

Date of Decision : 17-01-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25, 25F, 25FF, 25FFA
Trade Unions Act, 1926 — Section 28, 7

Citation : (1996) 4 BomCR 269 : (1996) 73 FLR 1102 : (1996) 1 MhLj 654

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Judgement

R.M. Lodha, J.—Reversal of the order dated 6.7.1988 passed by the Labour Court, Amravati in Complaint (ULP) No. 7/85 at the hands of the Industrial Court, Amravati on 23-1-1989 in Revision (ULP) No. 76/88 has given rise to the present writ petition filed by the petitioner under Articles 226 and 227 of the Constitution of India.

2. The petitioner Prakash Murlidhar Dalal (for short, the "complainant-workman") was initially appointed by the order dated January 2, 1978 issued by the Tata Engineering and Locomotive Company Limited, Sales Office, 148, Mahatma Gandhi Road, Bombay-23 (for short, the "employer-company") on probation for a period of one year as Watchman at Amravati Regional Sales Office on a basic salary of Rs. 135/- in the pay-scale of Rs. 75-5-150 plus dearness allowance payable in accordance with the rules of the employer-company. According to the terms of appointment, the service of the complainant-workman was governed by the employer-company's rules and regulations in force for the time being and further amended from time to time and was transferable to any of the employer-company's establishments situated in any part of India. After completion of probation period, the employer-company by an order dated 22-2-1979 confirmed the complainant-workman in the post of Watchman. On 10th Oct., 1984, the complainant-workman was informed by the employer-company that as a result of closure of Regional Sales Office at Amravati, the service of the complainant-

workman has become surplus to its requirement and accordingly, with effect from 15-10-1984, after duty hours, he would stand relieved from service. Along with the said communication dated 10-10-1984, one month's pay in lieu of notice, retrenchment compensation @ 15 days per each completed year of service, ex-gratia payment, gratuity, provident fund, pension fund and net pay for 15 days of Oct., 84, in all amounting to Rs. 18,583.26 by way of two cheques dated 9-10-1984 were enclosed. The complainant-workman took up the matter of his retrenchment/termination by filing a complaint u/s 7 read with Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, the "ULP Act of 1971") before the Labour Court, Amravati. The grounds set up in the complaint were - that the complainant - workman was senior - most employee having experience of more than 7-9 years and other employees who were junior to him were retained in employment by the employer-company that employer-company was big company having its registered office and sales office at Bombay and Works at Jamshedpur and Pune (Pimpri) and having its Regional Offices at Bombay, Calcutta, Delhi, Madras and Zonal Offices and Sales Offices at various other places under the authority and control by Bombay Sales Office; that as per the terms and conditions of employment, the complainant-workman was liable to be transferred to any of the employer-company's establishments situated in any part of the country; that the Regional Sales Office, in fact, has not been closed at Amravati, but its operation has been transferred to other places and other employees and four other watchmen who were working with the complainant-workman at Amravati Regional Sales Office were transferred at other places; that there were vacancies in employer-company's other establishments situated at other parts of the country like Allahabad, New Spare Parts Shop at Nagpur, new establishments at Daman and other places; that the retrenchment compensation was not properly computed and not paid for the years 1976 to 1-1-1978 during which period the complainant-workman had worked on daily wages and that the employer-company being very big company and is carrying on business at various places in the country, can easily continue service of the complainant-workman.

3. The employer-company filed Written Statement before the Labour Court and admitted the facts regarding the employment and appointment of the workman, but as regards termination, reiterated the reason asserted in the termination order that termination of the complainant's services was on account of surplusage resulting from closure of the Regional Sales Office at Amravati. The employer-company denied that the complainant-workman was the senior-most amongst the watchmen employed by the employer-company at its Regional Sales Office, Amravati and that any other watchman junior to the complainant-workman was retained; that the two other watchmen who were senior to the complainant-workman at Regional Sales Office, Amravati were absorbed at Karnal and Allahabad, but the complainant-workman could not be adsorbed since there was no other vacancy; that there was no vacancy in the employer's-company's any establishment elsewhere in the country where the services of the

complainant-workman could have been considered; the rule, "last come, first go" was strictly observed and scrupulously followed; that the Regional Sales Offices of the employer-company in different parts of the country do not constitute one establishment nor a single unit and each Regional Sales Office of the employer-company is distinct Industrial Establishment and the said Regional Sales Offices have no functional integrality either amongst themselves or with the Sales Office at Bombay; that the persons working at Amravati Regional Sales Office at the time of closure, as far as possible, were absorbed, but the complainant-workman could not be absorbed for want of vacancy anywhere else and that the proper compensation was paid to the workman at the time of retrenchment/termination. Thus, the employer-company submitted before the Labour Court that the complaint filed by the complainant-workman be dismissed.

4. The parties led evidence before the Labour Court. The complainant-workman examined himself whereas on behalf of the employer-company one Kuppuswamy Murali was examined. The Labour Court, after recording the evidence tendered by the parties and upon hearing them, held that there was functional integrality between the Regional Sales Offices of the employer-company located at various places. The Labour Court also concluded that there was, in fact, on closure of establishment at Amravati, but it was transfer of operations from Amravati to Daman office. On the basis of its aforesaid findings, the Labour Court concluded that the retrenchment of the workman was malafide and under the guise of closure and accordingly, held that the workman was entitled to the relief of reinstatement at his former post with liberty to the employer-company to transfer him anywhere in any of the establishments of the employer-company. The Labour Court, thus, by the order dated 6-7-1988 directed reinstatement of the complainant-workman with full back-wages excluding the amount already paid along with retrenchment/termination order and the service of the complainant-workman was ordered to be treated as continuous.

5. The employer-company challenged the order passed by the Labour Court, Amravati on 6-7-1988 by filing Revision application u/s 44 of the ULP Act of 1971 before the Industrial Court, Amravati and the revisional court, by the order dated 24-1-1989, set aside the order passed by the Labour Court, allowed the revision application filed by the employer-company and consequently, dismissed the complaint filed by the complainant-workman before the Labour Court. The Industrial Court passed the aforesaid order by reaching the conclusion that there was in fact closure of the Regional Sales Office at Amravati and the said closure was not a mere pretext nor, in fact, the office was shifted to Daman. The Industrial Court also arrived at the conclusion that the Regional Sales Office at Amravati was an independent establishment having no functional integrality either with the other Regional Sales Offices or the Sales Offices at Bombay and there was no necessity of compliance of Section 25G of the Industrial Disputes Act.

6. Mr. Anil J. Kadu, the learned counsel for the complainant-workman reiterated

the contentions which were advanced by the complainant-workman before the Labour Court in support of his complaint and submitted that the main activity of Regional Sales Office at Amravati was sales and distribution of chesis manufactured by the Company through its Sales Office from Bombay and that the Regional Sales Offices between themselves as well as with the Sales Office at Bombay were having functional integrality. The service of the complainant-workman was transferable from Amravati to any other establishment of the employer-company in the country. Mr. Kadu also urged that there was unity of management, ownership and control by the employer-company in all its various Regional Sales Offices, other offices as well as the Sales Offices at Bombay and that the Regional Sales Office at Amravati had no power or authority of giving any employment and was solely dependent on its Head Office. The maintenance of accounts was also done and the balance-sheet drawn at the Head Office including the activity at the Regional Sales Offices, Amravati and, therefore, there was no justification for the Industrial Court to hold that there was no functional integrality between the Regional Sales Office at Amravati and other Regional Sales Offices or for that matter, between the Regional Sales Offices at Amravati and Head Office/Sales Office at Bombay. The learned counsel for complainant-workman would also urge that the employer-company was one establishment having management, control and ownership over the various Regional Sales Offices of the Company, the seniority list of the watchmen at all establishments of the employer-company was not maintained and despite that the complainant-workman was senior to many other watchmen, his services were illegally retrenched and terminated. The learned counsel for complainant-workman would also urge that no seniority lists even of the employees who were working at Amravati Regional Sales Office were prepared and produced and there was total non-compliance of rule 81 of the Industrial Disputes (Bombay) Rules, 1957 and violation of Section 25G of the Industrial Disputes Act, 1947. It was contended by Mr. Kadu, the learned counsel for complainant-workman that other employees who were working at Regional Sales Offices, Amravati were transferred and even prior to the so-called closure, one Ramlal Prajapati who was much junior to the complainant-workman was also transferred to Cochin. Thus, the learned counsel for complainant-workman contended that closure was not bona fide, but only a device found out for illegal retrenchment/termination of the complainant-workman. In support of his contentions, the learned counsel for petitioner relied upon *Swadesamitran Limited, Madras Vs. Their Workmen*, ; *M/s. Avon Services Production Agencies (P) Ltd. v. Industrial Tribunal, Haryana and others* 1979 L.I.C. 1; *S.G. Chemicals and Dyes Trading Employees' Union v. S.G. Chemicals and Dyes Trading Ltd. & Anr.* 1986 L.I.C. 863 and *K. Rajendran v. The Director (Personnel), The Project and Equipment Corporation of India Ltd., New Delhi* and another 1992 L. I.C. 909.

7. Mr. Sharad A. Bobde, the learned counsel appearing on behalf of the employer-company strenuously urged that though compliance of Sections 25F and 25G of the Industrial Disputes Act has been scrupulously made and the said provisions

have been faithfully followed, yet since the services of the complainant-workman became surplus by virtue of closure of Regional Sales Offices at Amravati, even compliance of Section 25G was not required. The learned counsel for employer-company supported the reasons given by the Industrial Court while interfering with the order passed by the Labour Court and urged that the Regional Sales Office at Amravati was an independent unit and establishment of the employer-company having no functional integrality with the other Regional Sales Offices situated at various parts of the country and/or with the Sales/Head Office at Bombay and, therefore, no seniority list of the watchmen employed by the employer-company at various offices was required to be maintained and so far as Regional Sales Offices at Amravati was concerned, the complainant-workman was junior-most at the time of closure and, therefore, there was no merit in the grievance raised by the complainant-workman challenging the order of termination/retrenchment. Mr. Bobde relied upon the decisions reported in *Workmen of the Indian Leaf Tobacco Development Co., Ltd., Guntur Vs. The Management of Indian Leaf Tobacco Development Co. Ltd., Guntur*, *Management of Hindustan Steel Ltd. Vs. The Workmen and Others*, *Workmen of the Straw Board Manufacturing Co. Ltd. v. M/s. Straw Board Manufacturing Co. Ltd.* 1974 L.I.C. 730, *M.K. Dalal v. The State of A.P. & Ors.* 1974 L.I.C. 499 and *Isha Steel Treatment, Bombay Vs. Association of Engineering Workers, Bombay and Another*, .

8. There is no dispute that the complainant-Workman was appointed as Watchman by the employer-company at its Amravati Regional Sales Office by the order dated 2-1-1978 on probation for a period of one year and his service was governed by employer-company's rules and regulations in force for the time being and from time to time and that the workman was liable to be transferred to any of the employer-company's establishments situated in any part of India. The appointment order dated 2-1-1978 was issued by the employer-company at Bombay. There is also no dispute that on successful completion of the probation period, by the order dated 22-2-1979, the complainant-workman was confirmed as Watchman in the employer-company. The complainant-workman examined himself before the Labour Court and deposed that all the appointments in the employer-company are made from the Head Office at Bombay and similarly, the termination orders as well as the transfer orders of the employees are also effected by the Head Office. The payments for wages to the employees working at Amravati were also received from the Head Office and the Branch Manager at Amravati Regional Sales Office was not authorised, to transfer or terminate the employees. The Regional Sales Office at Amravati used to receive truck chasis for distribution to the various dealers in the Maharashtra and like Amravati Regional Sales Office, there were other Regional Sales Offices employer-company at Bhopal, Cochin, Allahabad etc. At the time he joined his service at Amravati, four employees, viz. M.D. Burde, V.M. Konde, S.D. Moharil and J.S. Badase were working with him at the Regional Sales Office, Amravati and one Ramlal Prajapati joined at Amravati in April 1983. All other employees who were working with him

were transferred at various places inasmuch as Shri Burde was transferred to Karnal, Shri Konde to Allahabad, Shri Moharil to Bombay Head Office and Shri Badase to Daman. Ramlal Prajapati was transferred to Cochin, according to complainant-workman, prior to the so-called closure of the Regional Sales Offices at Amravati. The complainant-workman reiterated that the persons junior to him who were working at the Branch Offices as well as the Head Office were retained and there were other vacancies at various offices/shops of the employer-company. The workman reiterated that no notice of closure was received by him and he received only the order of termination. In his cross examination he reiterated, the Manager at Amravati Regional Sales Office had no powers to recruit employees, transfer them or terminate their services; the Regional Manager had no authority to send the chesis on his own accord; the Regional Offices were not maintaining accounts and preparing balance-sheets concerning their establishments. He admitted that presently there was no Regional Sales Office at Amravati.

9. The employer-company, on the other hand, examined Kuppuswamy Murali. He admitted that he had no personal knowledge in respect of the conditions laid down at the time of appointment of complainant-workman before 1983. He never visited the Regional Sales Offices at Amravati since his appointment upto the closure of the said office. He had no personal knowledge in respect of mode of functioning of the Amravati Regional Sales Office. He did not know the exact date of closure of Amravati Office. He did not know, whether there were documents on record to show that the Regional Sales Office at Amravati had been closed except the order of retrenchment of the complainant-workman. He had no notice of closure was ever served on any of the employees. He further admitted that the employees Shri Kadar and Shri Konde were transferred before the closure at Amravati. He further admitted that all the four watchmen working at Amravati Regional Sales Office were appointed by the Head Office and that the Manager was not entitled to appoint permanent watchman nor he had any power to transfer any employees working under him. He admitted that Shri Moharil who was typist at the Regional Sales Office, Amravati was first transferred to Bombay and presently he was working at Nagpur. According to him, Shri Badase was transferred to Daman as Driver. As regards Ramlal Prajapati, he deposed that Shri Prajapati was initially appointed as Watchman at their Regional Sales Office at Imphal and then transferred to Amravati and before closure of the Amravati Regional Sales Office, he was transferred to Cochin. He further deposed that two of the watchmen who were working at Amravati Regional Sales Office have been absorbed at Allahabad and Karnal. According to him, every Regional Sales Office has independent sales tax number and that the Regional Sales Office was in no way dependent upon any other Regional Sales Office and due to closure of Amravati Office, the functioning of other Regional Sales Office has not affected in any manner. He admitted that there is no seniority list maintained on all India basis, because all the offices are not one integral single unit.

10. The evidence of Kuppuswamy would clearly show that he had no personal

knowledge of functioning of the Regional Sales Office at Amravati and, therefore, his evidence is not of much help to the employer-company. On the other hand, the appointment order of the complainant-workman reveals that he was selected by the employer-company for appointment as watchman by the order dated 2-1-1978. The service of the complainant-workman was to be governed by the employer-company's rules and regulations for the time being and from time to time and he was also liable to be transferred to any of the company's establishments situated in any part of India. However, on transfer, the complainant-workman's service was to be governed by the employer-company's rules and regulations applicable to the establishment in which he was posted. On successful completion of probation period, the workman-complainant was confirmed on the post of watchman and significantly, another confirmation memo dated 22-2-1979 issued by the Bombay Office shows that he was confirmed in the post of watchman. It is not mentioned therein that it is for the Amravati Regional Sales Office. On the basis of the available evidence, it is also seen that the Head Office has entire control over the Regional Sales Office at Amravati and that there was unity of management by the employer-company over its Head Office, Regional Sales Office and other offices. The service of the workman was transferable at any of the establishments of the employer-company and this fact has not been denied. The termination/retranchment order pertinently sets up the ground that as a result of closure of Regional Sales Office at Amravati, the service of the complainant-workman has become surplus to the requirement of the employer-company and accordingly, with effect from 15-10-1984, the complainant-workman was relieved from service.

11. The Industrial Court principally while setting aside the order of the Labour Court, held that since there was genuine closure of Amravati Regional Sales Office of the employer-company, the application of Section 25-G of the Industrial Disputes Act did not arise and issue of functional integrality did not have much significance and the question whether any employee junior to the complainant-workman was retained or not, did not really survive, but still went on to examine the said question about the functional integrality and the question as to whether any employee junior to the complainant-workman was retimed or not, and held that there was no functional integrality between the various Regional Sales Offices and the Amravati Regional Sales Office as well as between the Head Office and Amravati Regional Sales Office since each office constituted a single unit and that the complainant being the junior-most employee at Amravati, the order of termination/retranchment did not suffer from any infirmity.

12. It is very difficult to appreciate the reasons given by the Industrial Court while interfering in its revisional jurisdiction with the order passed by the Labour Court inasmuch as even if it be assumed that the closure of the Regional Sales Office at Amravati did not suffer from any malice, so far as complainant workman was concerned, or that any ulterior motive led to such closure of Regional Sales Office of the employer-company at Amravati, yet if the Regional Sales Office at Amaravati of the employer-company was not an independent establishment by

itself and was having functional integrality with the Head Office of the employer-company or the other Regional Sales Offices of the employer-company, the non-compliance of rule 81 of the Industrial Disputes (Bombay) Rules, 1971 or for that matter not maintaining the seniority lists of the watchmen employed by the employer-company and consequently resulting in breach of Section 25-G would definitely vitiate the order of termination/retrenchment. The employer of the complainant-workman was not the Regional Sales Office, but the employer-company having its Head Office at Bombay. The service of the complainant-workman was transferable and he could be transferred from Amravati Regional Sales Office to any other establishment of the employer-company and that would further show strongly that the complainant-workman was not an employee of the Regional Sales Office as such, but was an employee of the employer-company whose service was at the disposal of the employer-company and could be posted at any of the establishments of the employer-company. Not only that, the confirmation order confirming the complainant workman in the post of the watchman, does not show that his appointment was only as Watchman for Amravati Regional Sales Office. This being the factual position and could not be disputed by the employer-company and is rather clearly borne out from the available material, would clearly show that even if the closure of the Amravati Regional Sales Office was bonafide, but on the basis of such closure, which was not an independent unit by itself and when the complainant-workman was an employee of the employer-company being appointed in the post of watchman in the company, in the absence of scrupulous adherence to the provisions of Section 25-G of the Industrial Disputes Act and rule 81 of the Industrial Disputes (Bombay) Rules, 1957, his service could not have been terminated.

13. Rule 81 of the Industrial Disputes (Bombay) Rules, 1957 reads as under :-

"81. Maintenance of seniority list of workmen - The employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated arranged according to the seniority of their service in that category and cause a copy thereof to be posted on a Notice Board in conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment."

14. Under rule 81 of the said Rules, it is incumbent on the employer to prepare a list of all workmen in the particular category and when retrenchment is contemplated, list of all workmen in such category has to be arranged according to the seniority of service and such copy is required to be posted on the notice board in conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment. The provisions contained in rule 81 of the Rules are for the benefit of workman and to obviate the discrimination which may be done by an employer while retrenching the workman and, therefore, for strict adherence of "last come first go" mandatorily requires that the employer should maintain seniority list of workmen in the particular category and such list should be posted on a notice board in

conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment. The provision contained in rule 81 for effective compliance of Section 25-G is mandatory and its breach, at least of non-preparation of seniority list of particular category of workman would definitely vitiate any order of retrenchment of a workman since in the absence of seniority list, compliance of Section 25-G cannot be checked and verified. Admittedly, in the present case, no seniority list of workmen appointed by the employer-company has been maintained and, therefore, also not published by posting it on the notice board in conspicuous place of the industrial establishment at least seven days before the retrenchment of the workman-complainant. Not only that no seniority list of the watchman employed by the employer-company on all India basis was maintained, but also no seniority list of the workmen or watchmen even employed at Amravati Regional Sales Office was maintained.

Thus, total disregard and non-compliance of rule 81 of the Industrial Disputes (Bombay) Rules, 1957 in the facts and circumstances has vitally affected the retrenchment/termination order.

15. In para 16 of its order, the Industrial Court has observed that the complainant-workman had admitted that three other watchmen at Amravati, viz. S/Shri Korde, Burde and Kadar were senior to him and that all of them were transferred when the closure took place and that at the time of closure, the complainant-workman was junior-most at Amravati. Firstly there is no such unequivocal admission by the complainant-workman that he was junior-most watchman at Amravati. Secondly, even otherwise, the fact remains that no seniority list of the watchmen was maintained nor it was published as contemplated by rule 81 of the Industrial Disputes (Bombay) Rules, 1987 and, thus, the best evidence which could have shown that "last come, first go" was followed by employer-company was not there and as a result thereof itself, it could be said and held that there was no compliance of Section 25G of the Industrial Disputes Act, 1947 and resultantly, the order of termination/retrenchment of the complainant workman could not stand.

16. There is no dispute that the complainant-workman has given notice to the employer-company to file seniority list of the watchmen, but despite such notice, no seniority list of the watchmen employed by the employer-company either on the all India basis or the Regional Sales Office, Amravati was produced. The finding recovered by the Industrial Court that the employer-company could not be expected to prove negative and no adverse inference can be drawn against the employer-company for not filing the seniority list, is wholly misconceived, because once the order of retrenchment/termination was challenged by the complainant-workman, the burden lay on the employer-company to prove compliance of mandatory provision of law and the facts relating to "last come, first go" being in special knowledge of the employer-company could be demonstrated by maintenance of seniority list of the workmen in the "watchmen" category of the employer-company.

17. Coming now to the question of functional integrality between the Amravati Regional Sales Office and the other Regional Sales Office of the employer-company and so also between the Amravati Regional Sales Office and the Head Office/Sales Office at Bombay, suffice it to observe that even if there may not be any functional integrality between the Amravati Regional Sales Office and other Regional Sales Office of the employer-company, but the facts which have come on record, amply demonstrate that the Head Office/Sales Office at Bombay and the Regional Sales Office at Amravati were having functional integrality and the employer-company has unity of control, management and ownership over them.

18. Much emphasis was placed by the learned counsel for employer-company on the judgment of the Apex Court in *Isha Steel Treatment, Bombay Vs. Association of Engineering Workers, Bombay and Another*, and it was urged that on the basis of the said judgment, it should be held that the Regional Sales Office at Amravati could not be said to be integral part of the Head Office/Sales Office at Bombay of the employer-company. In *Isha Steel Treatment's* case, the Apex Court held as under :-

"6. The first question which arises for consideration in this case is whether the two units should be treated as having functional integrality. In the *Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd.*, , this Court had occasion to consider a similar question. At page 507 this Court considered the above question as follows :-

"20. After giving due consideration to all the aspects pointed out by the learned counsel for the appellants, we are unable to hold that the R. Mill is not an independently functioning unit that there is any functional integrality as such between the R. Mill and the S. Mill. The fact of the unity of ownership, supervision and control and some other common features which we have noticed above, do not justify a contrary conclusion on this aspect in the present case. There is considerable force in the submission of Mr. Chitale that the R. Mill is a different line of business and the closure of the S. Mill has nothing to do with the functioning of the R. Mill. The matter may be absolutely different when in an otherwise going concern or a functioning unit some workmen's services are terminated as being redundant or surplus to requirements. That most of the conditions of service of the two mills were substantially identical can be easily explained by the fact that being owned by the same employer and the two units being situated in close proximity, it will not be in the interest of the management and peace and well-being of the company to treat the employees differently creating heart burning and discrimination. For the same reason, there is no particular significance in this case even in the application of the standing orders of the company to the employees of the R. Mills which, because of the non-requisite number of employees employed in the latter, is not even required under the law to have separate standing orders. It is, in our opinion, a clear case of closure of an independent unit of a company and not a closure of a part of an establishment."

7. In the above decision this Court has held that the unity of ownership, supervision and control that existed in respect of the two mills involved in that case and the fact that the conditions of the service of the workmen of the two mills were substantially identical were not by themselves sufficient in the eye of law to hold that there was functional integrality between the two mills. It held that it was clear case of closure of an independent unit and not of a part of an establishment. The decision of the learned single Judge of the High Court that the fact that the two units were situated at a distance of 200 meters, the fact that both the units were controlled by the same employer and that the business of heat treatment processing carried on in the two units was identical had left no room for doubt that the two units were really integral cannot be sustained. The decision in *S.G. Chemicals and Dyes Trading Employees' Union Vs. S.G. Chemicals and Dyes Trading Limited and Another*, is not of much assistance to the workmen. The management in that case was running its business in pharmaceuticals at three places. The Pharmaceutical Division was at Worli, the Laboratory and Dyes Division was at Trombay and the Marketing and Sales Division was at Churchgate. In 1984 the company which was managing the said three divisions of business was sold out. As the buyers proposed to handle the future sales of the company through their own distribution channels, they found that the services of the staff working at the Churchgate office were no longer required. Therefore, the management closed down the office at Churchgate. The question was whether there was functional integrality between the office at the Churchgate and the factory at Trombay. This Court on a consideration of the material before it in that case, held that the functions of the Churchgate division and the Trombay factory were neither separate nor independent but were so integrally connected as to constitute the Churchgate and the Trombay factory into one establishment, because the Churchgate division used to purchase the raw material required by the Trombay factory for producing or processing the goods, it used to market and sell the goods so manufactured or processed by the factory and it also used to disburse the salary and other employment benefits and maintain accounts, etc. of the workmen. These were considered to be integral parts of the manufacturing activities of the factory at Trombay, because the factory could never have functioned independently without the Churchgate division being there. It is not the case of the workmen in the present case that the II Unit could not continue to function after the closure of the I Unit. As already mentioned, the II Unit is continuing to function as usual even now notwithstanding the stoppage of the activities at the I Unit. The question of application of S. 25-G of the Act arises only when the services of the workmen are retrenched. In *Santosh Gupta Vs. State Bank of Patiala*, it is laid down that if the termination of service of a workman in a given case falls either under S. 25-FF or under S. 25FFF of the Act it would not be a termination falling under S. 25-FF and S. 25-FFF retrenchment included every kind of termination of service except those not expressly included in S. 25-F or not expressly provided for by other provisions of the Act such as Ss. 25-FF and 25-FFF. Hence if the case is one of genuine closure then the question of applying S. 25-G of the Act which is

applicable to a case of retrenchment would not arise.

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

19. It will be seen that in the case of *Isha Steel Treatment v. Association of Engineering Workers and another* (supra), there was no rule or practice of transferring workmen from one factory to the other and, therefore, taking into consideration the evidence tendered by the parties and the finding recorded by the Industrial Tribunal that the two units of the Firm viz. Isha Steel Treatment, one unit comprised of factory for the purpose of carrying on the business of metal processing and the other unit established almost after 12 years of establishment of first unit, were independent units having separate factory licences, separate stores, separate accounts, separate balance-sheets, separate must-roll and no rules regarding inter-transferability of workmen were independent of each other, the Apex Court held that there was no justification for the High Court to take a different view that there was no bonafide closure of an independent unit of business. In the present case, the complainant-workman was appointed by the employer-company on the post of watchmen and there was clear stipulation in the terms of appointment that he could be transferred in any other establishments of the employer-company in the country. The stipulation of transfer clearly distinguishes the present case from the case of *Isha Steel Treatment v. Association of Engg. Workers & Anr.* (cited supra) and further taking into consideration the other factors such as, unity of management, ownership and control over the Regional Sales Office at Amravati by the Head Office, it cannot be said that the Regional Sales Office at Amravati was an independent unit by itself and because of its closure, the workman could be retrenched without compliance of Section 25G and Rule 81 of the aforesaid Rules.

20. In *S.G. Chemicals and Dyes Trading Employees' Union v. S.G. Chemicals and Dyes Trading Ltd. & another* 1986 L. I.C. 863, the Apex Court held as under :-

"15. Section 25-O applies to the closure of "an undertaking of an industrial establishment" and not to the closure of "an industrial establishment". S. 25L, however, defines only the expression "industrial establishment" and not the expression "an undertaking of an industrial establishment". It also does not define the term "undertaking". S. 25L does not require that "an undertaking of an industrial establishment should also be an "industrial establishment" or that it should be located in the same premises as the "industrial establishment". The term "undertaking" though it occurs in several sections of the Industrial Disputes Act, as for instance, Ss. 25FF, 25FFA and 25FFF, is not defined anywhere in the Act. Even the new Cl. (Ka) which was inserted in S. 2 by the Amendment Act, 1982, defines the expression, "industrial establishment or undertaking" and not the term "undertaking" simpliciter. It would appear from the opening words of Cl. (Ka), namely, "industrial establishment or undertaking" means an "establishment or undertaking" in which any industry is carried on", that the term "undertaking" in that definition applies to an industrial undertaking. It would thus appear that the words "undertaking" wherever it occurs in the Industrial Disputes Act, unless specific meaning is given to that term by that particular provision is to be understood in its ordinary meaning and sense. The term "undertaking" occurring in S. 25FFF fell for interpretation by this Court in *Management of Hindustan Steel Ltd. Vs. The Workmen and Others*, . In that case, this Court held (at page 310).

"The word undertaking as used in S. 25FFF seems to us to have been used in its ordinary sense connoting thereby any work, enterprise, project or business undertaking. It is not intended to cover the entire industry or business of the employer as was suggested on behalf of the respondent. Even closure or stoppage of a part of the business or activities of the employer would seem in law to be covered by this sub-section. The question has indeed to be decided on the facts of each case."

The above passage was cited with approval and reiterated in *Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd.*, .

16. It is thus clear that the word "undertaking" in the expression "an undertaking of an industrial establishment" in S. 25-O means an undertaking in its ordinary meaning and sense as defined by this Court in the case of *Hindustan Steel Limited*. If an undertaking in its ordinary meaning and sense is a part of an industrial establishment so that both taken together constitute one establishment, S. 25-O would apply to the closure of the undertaking provided the condition laid down in S. 25K is fulfilled. The tests to determine what constitutes one establishment were laid down by this Court in *The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen*, . The relevant passage is as follows.

"What then is one establishment in the ordinary industrial or business sense? The question of unity of oneness presents difficulties when the industrial establishment consists of parts, units, departments, branches etc. If it is strictly unitary in the sense of having one location and one unit only, there is little

difficulty in saying that it is one establishment. Where however, the industrial undertaking has parts, branches, locations, near or distant, the question arises what tests should be applied for determining what constitute "one establishments". Several tests were referred to in the course of arguments before us, such as geographical proximity, unity of ownership, management and control, unity of employment and conditions of service, functional integrality, general unity of purpose etc. It is, perhaps, impossible to lay down any one test as an absolute invariable test for all cases. The real purpose of these tests is to find out the true relation between the parts, branches units etc. If in their true relation they constitute one integrated whole, we say that the establishment is one; if on the contrary they do not constitute one integrated whole, each unit is then a separate unit. How the relation between the unit will be judged must depend on the facts proved, having regard to the scheme and object of the statute which gives the right of unemployment compensation and also prescribes disqualification therefor. Thus, in one case the unity of ownership, management and control may be the important test; in another case functional integrality or general unity may be the important test may be the unity of employment. Indeed, in a large number of cases several tests may fall for consideration at the same time".

These tests have been accepted and applied by this Court in different cases, for instance, in *The Honorary Secretary, South India Millowners' Association and Others Vs. The Secretary, Coimbatore District Textile Workers' Union*, *Western India Match Co. Ltd. Vs. Their Workmen*, and *Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd.*, . In *Western India Match Company's* case the Court held on the facts that there was functional integrality and interdependence or community or financial control and management of the sales office and the factory in the appellant company and that the two must be considered part of one and the same unit of industrial production. In *the Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd.*, the Court held (at page 713) (of SCR) : (at p. 1137 at AIR) :

"The most important aspect in this particular case relating to closure, in our opinion, is whether one unit has such componential relation that closing of one must lead to the closing of the other or the one cannot reasonably exist without the other. Functional integrality will assume an added significance in a case of closure of a branch or unit."

17. What now falls to be ascertained is whether the undertaking of the Company namely, the Churchgate Division, formed part of the industrial establishment of the Company, namely, the Trombay factory, so as to constitute the Trombay factory and the Churchgate Division one establishment. If they did and the total strength of the workmen employed in to Churchgate Division and the Trombay factory was one hundred or more, then section 25-O would apply. If they do not, then the section which would apply would be section 25FFA. This is question of

fact to be ascertained from the evidence led before the Industrial Court. At the relevant time the number of employees in the Worli Division was 110, in the Churchgate Division was 90 and in the Trombay Division was 60, aggregating in all to 260. The Worli Division does not fall for consideration in this Appeal because the evidence in the case is confined to the Trombay factory and the Churchgate Division and does not refer to the Worli Division except in passing. The evidence clearly establishes that the functions of the Churchgate Division and the Trombay factory were neither separate nor independent but were so integrally connected as to constitute the Churchgate Division and the Trombay factory into one establishment. Until 1965 the Company had its various departments, such as pharmaceutical sales, dyes and chemical sales, laboratory (which is now in the Trombay factory), accounts, purchases, personnel and administration and other departments housed in Express Building, Churchgate, while its factory was situated at Tardeo. In 1965 the factory as also the laboratory were shifted to Trombay and in 1971 the Pharmaceutical Sales Division was shifted to Worli. Even after the Company began carrying out its operation at three separate places, namely at Worli, Churchgate and Trombay all the purchases of raw material, required for the Trombay factory were made by the Churchgate Division. The Churchgate Division also looked after the marketing and sales of the goods manufactured and processed at the Trombay factory. The statistical work of the Company, namely product wise sales statistics, industrywise sales statistics, partywise sales statistics, sales forecast statistics, collection forecast statistics sales outstanding statistics and other statistical work, was also done in the Churchgate Division. The orders for processing of dyes and instructions, in respect thereof were issued from the Churchgate Division to the Trombay Factory. The work of making payment of salaries, overtime, conveyance allowances, medical expenses, leave, travel allowance, statutory deductions such as for provident fund, Income Tax, professional tax etc. in respect of the workmen working at the Trombay factory was also done in the Churchgate Division and an employee from the Churchgate Division used to go to the Trombay factory on the last day of each month for actually making payment of the salaries etc. The work of purchasing statutory items, printing forms, etc. for the Trombay factory and the Worli Division was also done by the Churchgate Division and the maintenance of the Express Building at Churchgate and of the factory at Trombay was done by personnel in the Churchgate Division. The Churchgate Division also purchased uniforms, raincoats and umbrellas for the workmen working in the Trombay factory in addition to the workmen working in the Express Building. The services of the workmen working in the Trombay factory were transferable and workmen were in fact transferred from the Trombay factory to the Churchgate Division.

18. While the Union examined eight witnesses, P.S. Raman, Executive (Administration) of the Company was the only witness examined by the Company. Raman has admitted in his evidence that the marketing and sales operations of the dyes processed at the Trombay factory were done in the

Churchgate Division, that personnel from the Churchgate Division were sent to the Trombay factory in connection with the technical matters relating to the factory, that the procurement of raw materials and the work of technical advice on processing and standardization of goods manufactured and processed at the Trombay factory as also the final marketing of the finished products of the Trombay factory were all done by the Churchgate Division. He has further admitted that the supply of stationery to the Trombay factory was largely done from the Churchgate Division and that the ultimate decision with regard to the workload, assignments of job etc. were taken by the top management of the Company at the Head Office of the Company in Express Building. Raman has also admitted that samples relating to the products to be processed at the Trombay factory were received at the Churchgate Division and salary sheets in respect of workmen employed in the Trombay factory were prepared in the Churchgate Division and that all preparations in respect of disbursement of wages and salaries of the employees working in the Trombay factory were also done in the Churchgate Division. Raman's evidence further shows that there were no accountants at the Trombay factory and all the work relating to the accounts of the Trombay factory was done at the Head Office and Raman himself had to go to Trombay sometimes in connection with the work of the factory. It is thus clear from the evidence on the record that the Trombay factory could never have functioned independently without the Churchgate Division being there. A factory cannot produce or process goods unless raw materials required for that purpose are purchased. Equally, there cannot be a factory manufacturing or processing goods unless the goods so manufactured or processed are marketed and sold. The one without the other is a practical impossibility. Similarly, no factory can run unless salaries and other employment benefits are paid to the workmen nor can a factory function without the necessary accounting and statistical data being prepared. These are integral parts of the manufacturing activities of a factory. All these factors existed in the present case and there can be no doubt that the Trombay factory and the Churchgate Division constituted one establishment. The fact that, according to the Company, a major part of the work of the Churchgate Division was that of marketing and selling the products of the Ranoli factory belonging to Ambalal Sarabhai Enterprises Limited is irrelevant. The Trombay factory could not have conveniently existed and functioned without the Churchgate Division and the evidence shows a complete functional integrality between the Trombay factory and the Churchgate Division of the Company. The total number of workmen employed at the relevant time in the Trombay factory and the Churchgate Division was one hundred and fifty and, therefore, if the Company wanted to close down its Churchgate Division, the section of the Industrial Disputes Act which applies was section 25-O and not section 25-FFA."

21. Considering the question whether there was functional integrality between the office at Churchgate and factory at Bombay, the Apex Court held that the functions at the Churchgate Division and Trombay factory of M/s. S.G. Chemicals & Dyes Trading Limited were neither separate nor independent, but were so

integrally connected as to constitute one establishment. In the present case, except that the chesis manufactured by the employer company were distributed through the Regional Sales Office at Amravati, all the activities were carried, controlled, supervised and managed from the Head Office at Bombay and it was the Head Office of the employer-company who was sending funds for disbursement of salary to the employees working at Amravati and so also the other employment benefits, the accounts were also maintained at Head Office and there was no independent decision-making power with the manager at Amravati Regional Sales Office. All these factors demonstrate that the Regional Sales Office at Amravati was integral part of the Head Office at Bombay and merely because by closure of Amravati Regional Sales Office, the activities at the other Regional Sales Office were not affected, the Regional Sales Office at Amravati cannot be said to be not an integral part or dependent on the Head Office of the employer-company. Therefore, the judgment of the Apex Court in *Isha Steel Treatment v. Association of Engineering Workers & Anr.* (cited supra) cannot be said to have any application in the facts and circumstances of the present case and rather, the case at hand is nearer to the decision of the Apex Court in *S.G. Chemicals and Dyes Trading Employees' Union v. S.G. Chemicals and Dyes Trading Ltd. & Anr.* (cited supra).

22. Though no one test or factor can be decisive in reaching the conclusion whether the Regional Sales Office at Amravati is dependent on the Head Office of the employer-company or is an independent establishment by itself, the cumulative effect of various facts and circumstances which have come on record including the transfer of employees employed by the employer-company throughout the country, unity of management, ownership and control, maintenance of accounts and balance-sheets, no independent power of appointment, transfer or termination to the Manager at the Amravati Regional Sales Office and such other like factors, lead to an irresistible conclusion that the Regional Sales Office at Amravati was not an independent unit or independent establishment for that purpose.

23. Even if the finding recorded by the Labour Court that there was no closure of Amravati Regional Sales Office, but in fact, its activities were shifted to Daman Office, may not be very sound since Daman Office had started working prior to the closure of Amravati Regional Sales Office, still for the reasons stated by the Labour Court while considering points 1 to 3, it cannot be said that the ultimate conclusion reached by the Labour Court was grossly erroneous or bad in law or on facts warranting interference by the revisional Court in its power u/s 44 of the ULP Act of 1971. The Labour Court observed that one of the watchmen who was transferred from Amravati to Allahabad at the time of closure had died and, therefore, there was vacancy at Allahabad and this fact was not specifically denied by the employer-company. The retrenchment of the complainant-workman in breach of Section 25-G of I.D. Act was not justified and in my view, the Labour Court rightly allowed the complaint and directed reinstatement of the complainant-workman at his former post with liberty to transfer him at any other

establishment in India. The order passed by the Labour Court was just and proper and in accordance with law and the said order has wrongly been interfered with by the Industrial Court warranting interference by this Court in writ jurisdiction.

24. In view of the aforesaid conclusions and findings, in my view, the detailed discussion about the various other judgment cited by the learned counsel for the parties is not necessary.

25. Consequently, this writ petition is allowed and the order passed by the Industrial Court, Amravati on 23-1-1989 (Annexure - X) is quashed and set aside. The order passed by the Labour Court, Amravati on 6-7-1988 is restored. Rule is made absolute in the aforesaid terms. No costs.