

(2008) 02 AHC CK 0260
In the Allahabad High Court

Triveni Glass Limited

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 13-02-2008

Acts Referred:

Contract Act, 1872 — Section 23
Factories Act, 1948 — Section 2, 4
Industrial Disputes Act, 1947 — Section 18, 2, 25F, 25FF, 25FFF
Contract Act, 1872 — Section 23
Factories Act, 1948 — Section 2, 4
Industrial Disputes Act, 1947 — Section 18, 2, 25F, 25FF, 25FFF
Contract Act, 1872 — Section 23
Factories Act, 1948 — Section 2, 4
Industrial Disputes Act, 1947 — Section 18, 2, 25F, 25FF, 25FFF

Citation : (2008) 6 AWC 5819 : (2008) 2 UPLBEC 1558

Hon'ble Judges : Janardan Sahai, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Janardan Sahai, J.—On the basis of a settlement dated 5.1.2005 between the petitioner M/s. Triveni Glass Limited (hereinafter referred to as the "employer") and its workmen, a dispute was referred to arbitration of the Deputy Labour Commissioner u/s 5-B of the U.P. Industrial Disputes Act. The dispute which was referred was whether the termination of the services of the 50 workmen of Plant No. 1 was justified or legal and if not so what relief the workmen were entitled to. The Deputy Labour Commissioner gave his award dated 30.10.2006 said to have been served upon the petitioner by letter dated 21.9.2007. The Arbitrator found that the services of the workmen were terminated on account of illegal closure of Plant No.1 without obtaining permission of the State Government u/s 6-W read with Section 6-V of the U.P. Industrial Disputes Act and he directed that the workmen be reinstated with full back wages. Before the Arbitrator, the employer and the employees represented by M/s. Triveni Sheet Glass Workers Union, had filed their respective written statements. The case of the employer

was that it has established five different independent plants for manufacture of glass by different processes and each of the Plants was a separate establishment there being no functional integrality amongst the plants and as there were less than 300 workers in Plant No. 1, no permission for closure was required u/s 6-W of the U.P. Industrial Disputes Act. The Arbitrator, however, found that the five plants were in fact undertakings of the same industrial establishment and the total number of workmen employed in these five Plants together being more than 500, permission for the closure u/s 6-W read with Section 6-V of the U.P. Industrial Disputes Act was required to be taken.

2. I have heard Sri Navin Sinha, Senior Advocate assisted by Sri Vipin Sinha for the employer-petitioner and Sri Rama Kant Misra, assisted by Sri U.K. Misra for the respondent- workmen.

3. To appreciate the contention of the counsel for the parties it is necessary to refer to certain facts. On 14.5.1998 a fire broke out in Plant No. 1 on account of which manufacturing activity therein had to be stopped resulting in lay off of the workmen of Plant No.1. The agitation that followed led to certain settlements. In the settlement dated 6.10.1998 it was agreed that some of the workmen of the Plant No. 1 would be laid off while others were to be given alternative jobs in other plants. According to the employer the efforts to revive the Plant No. 1 became impossible and its closure was declared with effect from 1.7.2002. The closure was followed by a settlement dated 9.8.2002, the terms of which are of some consequence to this case and as such are being briefly recited. It was agreed that the workmen of Plant No. 1 - (a) shall be paid full wages till 31st July 2002, (b) they be discharged only after payment of their dues, (c) till they are discharged, they will draw salary as payable, and (d) they will be removed in a phased manner as and when their dues are paid. The employers claim that in pursuance of this settlement 44 workmen were removed in the first phase after payment of their dues in full satisfaction. The arbitrator's finding however is that the employers were unable to establish that the services of these workmen were terminated in accordance with the settlement. According to the employers in their written statement 80 workmen of Plant No. 1 were to be discharged in the second phase and notice was given to terminate their services with effect from 24.1.2004 but it appears that disputes arose and two fresh settlements were entered into on 20.2.2004 by which wages were revised, the 80 workmen were to be engaged for two months and the parties were to abide by the decision of the "punch" as advised by the Labour Commissioner. Another settlement was thereafter entered into on 5.1.2005. It was in pursuance of this settlement that the dispute was referred to the arbitration of the Deputy Labour Commissioner. It is said that out of the 80 workmen whose services were to be terminated in the second phase, 23 workmen in the first instance and 7 thereafter took their dues and, therefore, there were left only 50 workmen in respect of whom the reference was confined.

4. On behalf of the employers it was submitted:

(A) that the only question which could have been adjudicated by the Arbitrator was whether the termination of services of the workmen was in accordance with the terms of the settlement dated 9.8.2002 and that the validity of the closure could not have been examined. (B) that the question of legality of the closure was outside the scope of the reference. (C) that there was no functional integrality between the five Plants, each of which were independent units and no permission was therefore required. (D) that the financial condition of the industry was very poor; the Plants had been closed; the industry was dead and the Arbitrator has erred in granting reinstatement with full back wages (E) that the Labour Court had given its award against the workmen and the present proceedings were barred by *res judicata*. Each of these points shall be taken up in the sequence in which submissions were made.

5. The submission of the petitioner's counsel is that in the settlement dated 9.8.2002 it was agreed that the services of the workmen would be terminated in a phased manner after clearing off their dues and all that had to be seen by the Arbitrator was whether the services of the workmen of Plant No. 1 had been terminated in accordance with the settlement dated 9.8.2002, which was binding upon the parties having been arrived at in the course of conciliation proceedings and to which the provisions of Section 6-B of the U.P. Industrial Disputes Act were not applicable and that in view of the settlement arrived at the question of the validity of the closure could not have been gone into. The finding recorded by the Arbitrator about this settlement is that it did not bear the seal and signatures of the conciliation officer and, therefore, could not be regarded as a settlement made during the course of conciliation proceedings. The finding of the Arbitrator is challenged on the ground that there is no requirement under law for the settlement to be signed by the conciliation officer and that the recitals in the settlement themselves indicate that it was entered into during the course of the conciliation proceedings. It is, however, not necessary to go into this question as it appears that a settlement cannot over ride the imperative provisions of obtaining permission before closure u/s 6-W of the U.P. Industrial Disputes Act. In *Oswal Agro Furane Ltd and Anr. v. Oswal Agro Furane Workers Union and Ors.* 2005 SCC (L.S.) the apex court considered this question in the context of Section 18(3) of the Industrial Disputes Act (Central), which gives binding effect to a settlement arrived at in the course of conciliation proceedings. It was held by the apex court that a settlement within the meaning of Section 2-P read with sub Section 3 of Section 18 of the Act undoubtedly binds the workmen but the provisions of Section 25O of the Industrial Disputes Act, 1947 (analogous to Section 6-W of U.P. Industrial Disputes Act) and those of Section 25N would prevail over the settlement and that obtaining of prior permission before closing down an undertaking is imperative in character. The provisions of Section 25O of the Central Act are in *pari materia* with Section 6-W of the U.P. Industrial Disputes Act. The decision would therefore apply to Section 6-W of the U.P. Act also. The (sic) of the decision is based upon public policy and upon the principle that a settlement though statutorily recognised is founded essentially in contract

and a contract cannot prevail over the consequences which the statute provides for breach of such of its provisions as are imperative. Paras 15 and 16 of the Supreme Court's judgement in Oswal Agro Furane Ltd., which lay down the law upon the subject are quoted as follows:

15. A settlement within the meaning of Section 2 (p) read with Sub-section (3) of Section 18 of the Act undoubtedly binds the workmen but the question which would arise is, would it mean that thereby the provisions contained in Section 25N and 25O are not required to be complied with? The answer to the said question must be rendered in the negative. A settlement can be arrived at between the employer and workmen in case of an industrial dispute. An industrial dispute may arise as regards the validity of a retrenchment or a closure or otherwise. Such a settlement, however, as regards retrenchment or closure can be arrived at provided such retrenchment or closure has been effected in accordance with law. Requirements of issuance of a notice in terms of Section 25N and 25O, as the case may be, and/or a decision thereupon by the appropriate Government are clearly suggestive of the fact that thereby a public policy has been laid down. The State Government before granting or refusing such permission is not only required to comply with the principles of natural justice by giving an opportunity of hearing both to the employer and the workmen but also is required to assign reasons in support thereof and is also required to pass an order having regard to the several factors laid down therein. One of the factors besides others which is required to be taken into consideration by the appropriate Government before grant or refusal of such permission is the interest of the workmen. The aforementioned provisions being imperative in character would prevail over the right of the parties to arrive at a settlement. Such a settlement must conform to the statutory conditions laying down a public policy. A contract which may otherwise be valid, however, must satisfy the tests of public policy not only in terms of the aforementioned provisions but also in terms of Section 23 of the Indian Contract Act.

16. It is trite that having regard to the maxim "*ex turpi causa non oritur actio*" an agreement which opposes public policy as laid down in terms of Sections 25N and 25O of the Act would be void and of no effect. Parliament has acknowledged the governing factors of such public policy. Furthermore, the imperative character of the statutory requirements would also be borne out from the fact that in terms of Sub-section (7) of Section 25N and Sub-section (6) of Section 25O, a legal fiction has been created. The effect of such a legal fiction is now well known.

6. The consequence of closure without application for permission for closure or despite refusal of permission is provided in Sub-section 6 of Section 6-W of the UP. Industrial Disputes Act and that consequence is that the closure would be illegal and the workmen would be entitled to all the benefits under any law in force as if the undertaking had not been closed down. This irresistible consequence which flows out of Sub-section (6) of Section 6-W cannot be

washed away or diluted by any settlement. A settlement is founded on contract and although stands on high pedestal in Industrial law would crumble down when it runs counter to the legal fiction envisaged in Section 6-W that a closure without permission is illegal from the very inception and the workmen would be entitled to every benefit they are entitled to under the law. The Industrial Disputes Act was enacted over the law of contract governing rights of employer and workmen. It would be (sic) to suggest that the basic rights created by the Act can be done away with by (sic) contract which the Act intends to override. Even collective bargaining recognized by the Act has its limitations. Benefits conferred upon the workmen for breach of imperative provisions of the Act cannot be bartered away even by collective bargaining. The contention of the employer's counsel that the settlement dated 9.8.2002 is the Magna Carta of the rights of the parties to which the parties must alone look up to for basing their claim is therefore misconceived.

7. The petitioner's counsel submitted that the Arbitrator has decided the question of validity of the closure, which was not a question referred to him nor was the closure ever challenged before any forum. In support of his contention that the Arbitrator cannot decide an issue, which has not been referred to him, reliance was placed by the learned Counsel upon three decisions:- (1) Firestone Tyre and Rubber Company of India (P) Ltd. Vs. Workmen Employed, represented by Firestone Tyre Employees' Union, (2) Pottery Mazdoor Panchayat v. The Perfect Pottery Co. Ltd and Anr AIR 1979 SC 1356 and Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others,

8. What has been held in these decisions by the Apex Court is that the Tribunal is required to confine its decision to the points of reference and matters incidental to them. In the M/s. Firestone Tyre & Rubber Co. of India (P) Ltd. Case (supra) the dispute about the validity of the dismissal from service of the workmen was referred and it was held that the Tribunal acted beyond the terms of reference when it considered the question of unfair labour practice or discrimination by the employers in reinstating some of the workmen. The Apex Court held that this subsequent act of reinstatement of the workmen was irrelevant for adjudging the validity of the earlier dismissal and when no issue on the alleged discrimination had been framed. In Pottery Madoor Panchayat (supra) case it was held that the Tribunal was not entitled to enter into the question as to the fact of closure when the reference was whether the closure was proper and justified. In the D.C.M. Case (supra) it was held that where the dispute referred was whether the strike and the sit down strike were legal or justified the Tribunal had to proceed on the footing that there was a strike and sit down strike and it could not go into the question whether there was or was not a strike or a sit down strike. It was held that the Tribunal could not enlarge the scope of the reference. In the present case the terms of reference are very wide. It is in three parts viz., (i) whether the termination of the services of the workmen was legal, (ii) whether the termination of the services of the workmen was justified and (iii) what relief, if any, to which the workmen were entitled to.

9. The expression "termination" is wide enough to cover every kind of termination of the services of an employee whether on account of dismissal or by way of retrenchment or by way of closure. The dictionary meaning of the word "termination" in the New Lexican Webster's Dictionary of the English Language is as follows:

termination - n. a terminating or being terminated if the end something in space or time, at the termination of the examination, (gram.) the final sound, letters or syllable of a word [fr. L. terminatio (terminationis)]

10. The terms of reference relating to the termination of the services of the workmen is therefore wide enough to cover every kind of termination of services including termination of services by way of closure and it was therefore open to the Arbitrator to enter into the question of legality of the closure for answering the reference. In *Agra Electric Supply Company Limited Agra v. Workmen* 1983 SCC (L&S) 210 one of the contentions advanced was that the terms of reference did not cover the question of payment of gratuity and therefore the award of the tribunal was bad. Dealing with the contention, the Apex Court held in para 2 of the judgement which is as follows:

2. It is useful to examine the terms of reference. There are two disputes and two references, but it is enough if one of them is reproduced:

Whether the employers have retired their workmen Sri Peerbux (son of Sri Inam Bux) Bank Peon and Sri Sahadat Ali (son of Sri Banne Ali) Coolie, Maintenance Department, by their orders dated May 30, 1970 (copies attached) in a justified and/or legal manner? If not, then to what benefit/compensation are the workmen entitled and with what details?

It is plain that industrial jurisprudence is an alloy of law and social justice, and one cannot be too pedantic in constructing the terms of a reference respecting a dispute for industrial adjudication. Liberally viewed, we are left with the impression that the Tribunal's construction of the terms of reference is correct. The question referred may be dichotomised. Was the retirement of the workmen legal and justified? If not, what compensation was payable to them? The first limb of the reference contains the pregnant impression "justified". It is one thing to say, speaking in terms of industrial jurisprudence that an action is legal. It another thing to say that it is justified. When the reference is comprehensive enough to cover both these concepts, it is within the jurisdiction of the Tribunal to investigate into whether the retirement is legal and, if legal, whether it is also justified. In the ordinary law of contracts, when a thing done is legal there is an end of the matter but in industrial law the rigid rules of contract do not govern the situation and an amount of flexibility in the exercise of powers taking liberties with the strict rights of parties is permitted to Tribunals. Relying on a series of decisions of this Court for this wider ambit of jurisdiction permissible in industrial adjudication, the Tribunal has held that the grievance of the workmen that their services should come an end by way of retirement without payment of gratuity in

real and substantial and that pragmatic considerations justify a direction for payment of gratuity more or less prevalent in many industries in this region. This approach is informed by social direction for payment of gratuity. We read the award in a composite and comprehensive sense as an award that the retirement is justified if it is accompanied by payment of gratuity. The dissection attempted in the submission made by learned Counsel is a distortion of the true intendment of the award. In this view, we think there is no substance in the first contention

11. In *State Bank of India v. N. Sundra Money* 1976 (32)F.L.R. (SC) 197 while considering the case of retrenchment u/s 2(oo) of the Industrial Disputes Act, 1947 the Apex Court held as follows:

A break-down of Section 2(oo) unmistakably expands the semantics of retrenchment. Termination for any reason whatsoever are the key words. Whatever the reason, every termination spells retrenchment. So the sole question has the employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination is where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination however produced, may be, the present may be a hard case, but we can visualise abuses by employers, suitable verbal devices, circumventing the armour of Section 25F and Section 2(oo).

12. For the purpose of deciding whether the termination of the services of the workmen in this case was legal, the Arbitrator could therefore have gone into the question whether the closure was legal or not if the services of the workmen had been terminated on account of closure. As to whether termination of the workmen's services was the direct result of closure is a question, which can be answered with reference to the pleadings of the parties relating to the nature of the dispute between them.

In Para 7 of the written statement the employer says;

That as all possibility to restart the plant No. 1 failed, the management decided to close down the said plant w.e.f. 1.7.2002. Accordingly notice for closure was displayed to the workers union and also pasted on the notice board....

13. In paragraph 18 of the same written statement it is stated that services of 50 workers were dispensed with because of the known fact that the Plant No. 1 is closed down since 14.5.1998 and the management could not restart the same. In *J.K. Iron and Steel Co. Ltd., Kanpur Vs. The Iron and Steel Mazdoor Union, Kanpur*, it was held that the nature of the dispute can be crystallized from the pleadings of the parties. The apex court observed:

Once the reference is made by Government, the Tribunal has to take the pleadings of the parties in writing and to draw up issues. Then it takes evidence, hears arguments and finally pronounces its "judgement" in open court". It is

evident from this that though these tribunals are not bound by all the technicalities of civil courts, they must nevertheless follow the same general pattern. Now the only point of requiring pleadings and issues is to ascertain the real dispute between the parties, to narrow the area of conflict and to see just the two sides differ.

14. In the written statement filed by the workmen also the question of legality of the closure has been raised. In paragraph 2 it is stated that the plant No. 1 was illegally closed since 14.5.1998 without permission of the State Government. It thus appears from the pleadings of the parties that the validity of the closure was in dispute and the petitioner's contention that the closure was never challenged is misconceived. If the settlement dated 9.8.2002 were valid and binding the settlement would have had the effect of postponing the date of termination of the workmen's services which under the settlement were to be dispensed with in a phased manner but such postponement would make no difference in the position that the termination of services was the result of closure. It has already been found that the settlement would be void being against the public policy if as the workmen contend the closure was illegal for noncompliance of any condition, which required the employer to obtain permission before declaring closure. It was therefore, necessary for the arbitrator to examine the question of the validity of the closure. The correctness of the finding of the arbitrator on the validity of the closure is therefore the question which next arises.

15. Section 6-W of the U.P. Industrial Disputes Act provides the procedure for closure of an undertaking of an industrial establishment and requires the employer to seek permission of the State Government. It is similar to Section 25O of the Industrial Disputes Act, 1947. Section 6-V of the U.P. Industrial Disputes Act provides that the provisions of Section 6-W and 6-X shall apply to an industrial establishment pertaining to an industry in which not less than 300 workmen are employed on an average per working day for the preceding 12 months. The contention of the petitioner's counsel is that the five plants were independent units and Plant No. 1 could not be regarded as an undertaking of an industrial establishment. He submits that there is no functional integrality between the five plants and that each plant was a separate industrial establishment. The term undertaking has not been defined in the Industrial Disputes Act. The term industrial establishment has however been defined in Section 25L(a) and the relevant part of the definition for purposes of this case is as follows;

(a) Industrial establishment" means:- (i) a factory as defined in Clause m of Section 2 of the Factories Act.

16. Counsel for both the parties relied upon the decision of the Apex Court in S.G. Chemicals and Dyes Trading Employees Union v. S.G. Chemical and Dyes Trading Limited and Anr. 1986 SCC (L & S) 303 as for the scope of the expression "undertaking of an industrial establishment" occurring in Section 25O of the Central Act and Section 6-W of the U.P. Act and the tests for determining when a

unit can be said to be a part of the Industrial establishment. The company S.G. Chemical and Dyes Trading Limited was a wholly owned subsidiary of Ambalal Sara Bhai Enterprises Limited. It was operating in Bombay through three divisions, namely, the Pharmaceutical Division at Worli employing 100 workmen, the Laboratory and Dyes Division at Trombay employing 60 workmen and the Marketing and Sales Division at Express Buildings Church Gate employing 90 workmen. The registered office of the company was situate in the same place as the Marketing Division, namely, in Express Building. Ambalal Sara Bhai Enterprises Limited also owned a Dyes Factory called S.G. Chemical and Dyes situate at Ranauli in Vadodra district in the State of Gujrat. The Company S.,G. Chemical and Dyes Trading limited gave notice to the government of Maharashtra that it intended to close down the undertaking/establishment/office of the Chemical and Dyes Division located at Express Building, Churchgate. The notice described the "industry" as Marketing and Sales operations of Chemical and Dyes" In the statement of reasons for the closure it was stated that Ambalal Sarabhai Enterprises had agreed to sell its business and undertaking at Ranauli to M/s Indian Dyes Stuff Industries Ltd. Bombay and that there would be no work left for the staff of the marketing and sales division at Express Building Church Gate, Bombay. The Employees Union contended that the closure of the Church Gate Division was contrary to the provisions of Section 25O of the Industrial Disputes Act. According to the union the aggregate number of workmen employed in the three divisions of the company exceeded 100 and therefore for the purpose of Section 25O it was the aggregate strength of the workmen of the company employed in all its three divisions, which was to be taken into account as there was functional integrality amongst all the three divisions and the company was bound to apply to the appropriate government for permission for closure and as prior permission was not applied for the closure was illegal.

17. The question for determination before the Apex Court as stated in paragraph 17 of the reports was whether the undertaking of the company the Church Gate Division formed part of the industrial establishment of the company, namely, the Trombay Factory so as to constitute the Trombay Factory and the Church Gate Division one establishment. The Worli Division did not fall for consideration because the evidence in the case was confined to the Trombay Factory. It was held by the Apex Court that the evidence established that the functions of the Church Gate Division and the Trombay Factory were neither separate nor independent but were so integrally connected as to constitute the Church Gate Division and the Trombay Factory into one establishment. In this case the Supreme Court considered the question as to what would be the proper test to be adopted for determining whether the undertaking is a part of the same industrial establishment. The apex court held;

The term "undertaking" occurring in Section 25FF tell for interpretation by this Court in Hindustan Steel Ltd v. Workmen. In that case, this Court held (at p. 310 of the Reports)

The word undertaking as used in Section 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.

It is thus clear that the word "undertaking" in the expression "an undertaking of an industrial establishment" in Section 25O means an undertaking in its ordinary meaning and sense as defined by this Court in the case of Hindustan Steel Ltd. If an undertaking in its ordinary meaning and sense is a part of an industrial establishment so that both taken together constitute one establishment, Section 25O would apply to the closure of the undertaking provided the condition laid down in Section 25K is fulfilled. The tests to determine what constitutes one establishment were laid down by this Court in Associated Cement Company case. The relevant passage is as follows:

What then is "one establishment" in the ordinary industrial or business sense? The question of unity or 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, departments units etc. with different locations, near or distant, the question arises what tests should be applied for determining what constitutes "one establishment". 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 units 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 therefore. Thus, in one case the unity of ownership, management and control may be the important test; in another functional integrality or general unity may be the important test; and in still another case, the important test maybe 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 *South India Millowners, Association v. Coimbatore District Textile Workers' Union*, *Western India Match Com. Ltd. v. Workmen* and *Workmen v. straw Board Manufacturing Col. Ltd.* In *Western India Match Co.* case the court

held on the facts that there was functional integrity and interdependence of community of 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.

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

18. The court then proceeded to apply the tests to determine whether the Churchgate Division formed part of the industrial establishment of the company and found that it did as the Trombay factory could not have functioned independently without the Churchgate Division being there. The circumstances considered by the court have been described in para 17 of the reports, a portion of which is quoted below;

17. 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 chemicals 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 situate 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 materials, 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 productwise sales statistics, Industrywise sales statistics, partywise sales statistics, monthly sales performance 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 form 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 Churhgate 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.

19. The apex court has held that the real purpose of the tests is to find out the true relation between the parts, branches, units etc. and if in their true relation they constitute one integrated whole the establishment would be one. In this case there is evidence to indicate that there was functional integrality in the production process of the five plants. There is also evidence to indicate that there was functional integrality in the Administration and Accounts. The evidence of functional integrality in the production process is contained in paragraph 14 of the written statement of the employer wherein it is stated that on account of thermal shock the furnace of the plant No. 5 collapsed which was a great shock to the management because Plant No. 5 was the feeder of other Plants. In paragraph 15 it is stated that the Management sought expert opinion to restart the furnace, but was advised to go for shut down in the float glass plant No. 5 due to collapse of furnace. The collapse of furnace crippled its other Plant Nos. 3 and 4, hence it was not possible to re-engage the said 80 workers. The employer examined only one witness viz., C.P. Yadav, the Deputy General manager. He stated that the fire which broke out on 14.5.1998 in Plant No. 1 was so fierce that it affected other parts of the plant and production was closed. The workmen's witness Lalji Nishad who was said to be working in Plant No. 1 stated that there is a single work shop for all the five units. He also stated that Plant No. 1 was closed without permission and about 275 workmen employed in Plant No. 1 were absorbed in plant Nos. 3, 4 and 5 on the basis of settlement.

20. There is also evidence of functional integrality in administration and maintenance of accounts. The employer's witness C.P. Yadav admitted that under the Companies Act, the company was registered by the name of Triveni Sheet Glass which was changed subsequently to Triveni Glass Ltd; that it has been registered as Triveni Glass Ltd., under the Factories Act; that there is a common balance sheet for all the plants and not separate balance sheets for each of the Plants; that there is a single registration under the Factories Act and no registration Plant-wise; that there is only a single Personnel Department, single Administration Department, single Accounts Department and single Time Office. He also admitted that according to necessity, the workmen of Triveni Glass Ltd., are transferred to Rajamundhry and Meerut where there are separate factories of the petitioner. It was also admitted by him that the workmen of Plant Nos. 1, 2, 3, 4 and 5 were some time transferred from one Plant to another according to need; that all the five Units are situated in one premises; that there is a single registration for all five Units in the name of Triveni Glass Ltd; that there are 577 workmen working in the Plants added together. It is stated in paragraph 14 of the counter affidavit filed in the writ petition that the

management for all the five units is the same and all the units are under the same managing director. In paragraph 35 of the counter affidavit it is stated that the batch house maintenance, carpentry, auto shop, power house, oil pump, civil work, R&D, accounts, store, workshop, warehouse, general house for all five plants are permanently located in plant No. 1. The averments made in paragraph 14 and 35 have been denied in general terms in the rejoinder affidavit. In para 37 of the rejoinder affidavit it is stated that staff of batch house, maintenance house etc. provides service to all units.

21. In the S.G. Chemical's case the court had applied the functional integrality test, which was most appropriately applicable in the facts of that case but it observed that the test to be applied would depend upon the facts of the case and in a given case several tests may be applied. The question in that case was whether the marketing and sales division and the Trombay Factory were a part of one industrial establishment. It was held by the apex court that an undertaking of an industrial establishment need not be a factory. In the marketing and sales division no manufacturing process was going on and even though the marketing and sales division was registered under the Bombay Shops Establishment Act and was situate in an altogether different premises but the functions performed by the marketing and sales division demonstrated an integrality with the Trombay factory and the Trombay factory could not have functioned independently without the marketing and sales division. The real purpose of the test (sic) is to find out whether the units constitute one integrated whole. In this case all the plants are owned by the same company and are under common management. They are under the same managing director. Thus if unity of ownership, management and control test is applied all the plants though separate units would be part of the same industrial establishment. The conclusion would also be the same if the geographical proximity test is applied as all the plants are situated in the same premises there being a common entrance gate into the premises which houses all the five plants although within the premises there are separate gates of entry for each of the plants. There is only a single registration under the Factories Act. Section 4 of the Factories Act provides that on the application of the occupier different departments of one factory can be treated separate factories under the Factories Act and several factories can be treated as a single factory. In this case there is only a single registration under the Factories Act and each of the plants does not have any separate registration. There is nothing to show that the condition (sic) of service of the workmen in the five plants are not the same. There is also evidence to indicate that employees from one plant have sometimes been transferred to another plant. All the plants are owned by the same company and under a common management. They are engaged in the manufacture of glass even though it may be glass of different kinds. There is a common balance sheet for all the plants. There is a single personal department, administrative and accounts department and time office, which regulates all the plants. Thus there appears to be a unity of propose ownership and control. The five plants function together and from part of the

same industrial establishment. It is also not in dispute that the employers had applied for permission for closure of other plants even though in those plants there were less than 300 workmen. This act of the employers shows that they were treating the plants as part of one industrial establishment. The finding of fact recorded by the Arbitrator that the plants are part of one establishment is supported by the evidence and the circumstances and does not suffer from any illegality.

22. Learned Counsel for the petitioner relied upon the decision of the apex court in *District Red Cross Society v. Babita Arora and Ors.* AIR 2007 SCW 5260 in which a claim petition was filed by a staff nurse of the District Red Cross Society Karnal against the termination of her services due to closing down of the red cross maternity hospital and it was urged that the management had not followed the procedure under Sections 25F and 25G of the Industrial Disputes Act. The question for consideration in that case was whether a staff nurse was entitled to protection of these provisions as the establishment in which she was working itself had been closed down though certain other wings or units of the District Red Cross Society Karnal were still functioning. It was held that in order to attract Section 25FFF it is not necessary that the entire establishment of an employer should be closed and if a unit or part of an undertaking, which has no functional integrality with the other units is closed it would amount to closure within the meaning of Section 25FFF of the Act. There is nothing in that decision, which may help in answering the question involved in the present case as to whether there was or was not a functional integrality between the five plants. The tests for determining whether an undertaking is part of an industrial establishment were not considered in that case. The decision in the Red Cross Society case does not help the petitioner on the point in issue in the present case.

23. Reliance was placed by the petitioner's counsel upon the decision of this Court in *Triveni Sheet Glass Works Ltd v. State of U.P. and Ors.* 2004 (100) FLR 102. That was a case in which the question relating to necessity of obtaining permission for closure of one of the other four plants of the company was considered by this court in the context of a prosecution lodged against the company. It was held by this court that the provisions of Section 6-W are applicable only when the industrial establishment pertaining to an industry employs not less than 300 workers. There was no dispute in that case that on the date of notice and closure there were only 226 workers employed in the Unit. The question of functional integrality was not raised or decided in that case. The order was challenged before the Apex Court. The Apex Court in *Amrendra Kumar v. Triveni Sheet Glass Works Ltd and Ors.* 2005 SCC (L&S) 938 held in para 3 as follows:

3. According to the appellant workman there has also been a violation of the provisions of Section 6-W read with Section 6-V of the State Act by the respondent Company. That was not the subject matter of the proceedings before the High Court. If the appellant is of the view that a dispute may be legally

raised with regard to the alleged violation of the provisions of the State Act by the respondent Company, it may do so in accordance with law. The judgement of the High Court is confirmed. The appeal is accordingly dismissed with the aforesaid observations.

24. The decision in M/s. Triveni Sheet Glass Works Ltd., therefore, does not bar the maintainability of the present writ petition and the question involved in this case was specifically left open by the apex court.

25. The contention of the petitioner's counsel that the financial condition of the industry was very poor, the plants had been closed and the industry was dead and the workmen could not be reinstated may now be considered. While the financial condition of the company may not be sound but the company itself maintain that efforts for revival of one of the plants are being made. It is however not necessary to go into that question for the purposes of this writ petition but it may be noticed that the arbitrator has recorded a finding that the employers had engaged contract labour in large number without observing the provisions of the Contract Labour Regulation and Abolition Act, 1970. The consequences of closure illegal for want of permission have been provided in Sub Section 6 of Section 6-W of the U.P. Industrial Disputes Act, which reads as follows;

(6). Where no application for permission under Sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

26. On the plain language of this provision it is clear that noncompliance with the requirement to obtain permission is fatal to the closure and the workmen are entitled to all the benefits as if the undertaking had not been closed down. In view of the consequences of a closure without permission provided by the statute itself the contention advanced that the industry is in poor financial condition would not come to the rescue of the employer. In S.G. Chemical's case the apex court in respect of the analogous provision of sub Section 6 of Section 250 observed that where no application for permission under Sub-section 1 of Section 250 is made the closure of the undertaking is to be deemed to be illegal from the date of the closure and the workmen are to be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down. The rationale of the provision can be gathered from the scheme of the Industrial Disputes Act, which reflects the policy of the Act to encourage continuity of production. Section 6-X of the UP. Industrial Disputes Act even gives power to the State Government to direct in the circumstances provided under that section that the undertaking shall be re-started within such time as may be specified in the order. The interest of the workmen is involved in the industry. It is in the public interest also that production should continue. It is for this reason that sub Section 2 of Section 6-W of the U.P. Industrial Disputes Act provides

that when an application for permission has been made the State Government shall make enquiry and give reasonable opportunity to the employer, the workmen and the persons interested in the closure and have regard to the continuance and adequacy of the reason stated by the employer, the interest of the general public and all other relevant factors. The State Government is also required to record reasons either for granting or refusing permission.

27. The factors, which are relevant for being considered to enable the State Government to take a decision in the matter of grant or refusal of permission have been enumerated in the application for permission for closure prescribed in Form XXIV. The notice of information to be given includes information regarding the number and categories of workmen affected by the proposed closure, annual production item wise for preceding three years, names of any interconnected company or companies under the same management, reasons for the purpose of closure, any specific efforts to avoid closure, financial position of the company etc. It is to be noted that the financial position of the company is only one of the circumstances to be considered by the State Government before it takes a decision to grant or refuse permission. The interest of the workmen is also an important factor to be considered. Moreover the motive of an employer to declare closure may not always be bona fide. But that apart an industry produces goods and satisfies the public need. Public interest therefore lies in the continuance of production and not in its closure. The scheme of the Act suggests that in certain cases permission can be refused even though the financial position of the company may not be sound. This aspect was considered in *Orissa Textile & Steel Limited v. State of Orissa* and Ors. 2202 SCO (L&S) 323 in which the validity of Section 250 of the Industrial Disputes Act, 1947 and of Section 6-W of the U.P. Industrial Disputes Act was questioned. While upholding the validity of these provisions the apex court dealt with the rationale of the policy behind the requirement to take permission. The apex court observed;

The amended Section 250 lays down guidelines which are to be followed by the appropriate government in granting or refusing permission to close down. It has to have regard to the genuineness and adequacy of the reasons stated by the employer. However, merely because the reasons are genuine and adequate cannot be mean that permission to close must necessarily be granted. There could be cases where the interest of general public may require that no closure takes place. Undoubtedly where the reasons are genuine and adequate the interest of the general public must be of a compelling or overriding nature. Thus, by way of example, if an industry is engaged in manufacturing of items required for defence of the country, then even though the reasons may be genuine and adequate it may become necessary, in the interest of the general public, not to allow closure for some time. Similarly, if the establishment is manufacturing vaccines or drugs for an epidemic which is prevalent at that particular point of time, interest of the general public may require not to allow closure for a particular period of time. We must also take a note of Sub-section (7) of the amended Section 250 which provides that if there are exceptional circumstances

or accident in the undertaking or death of the employer or the like, the appropriate government could direct that provision of Sub-section (1) would not apply to such an undertaking. This, in our view, makes it clear that the amended Section 250 recognises that if there are exceptional circumstances then there could be no compulsion to continue to run the business. It must however be clarified that this court is not laying down that some difficulty or financial hardship in running the establishment would be sufficient. The employer must show that it has become impossible to continue to run the establishment. Looked at from this point of view, in our view, the restrictions imposed are reasonable and in the interest of the general public.

28. The statement of objects and reasons of the U.P. Industrial Disputes Act also indicate that the objects of the Act are in favour of continuance of production. The following is an extract from the objects and reasons;

Although more than two years have passed since the termination of the war, normal life is still far from sight. There is a shortage of food grains and all other essential commodities and necessities of life. Maximum production is required to relieve the common want and misery. Prices continue to be rising and life has become very difficult for the common man. The loss of every working hour adds to the suffering of the community. In these circumstances it is essential that Government should have powers for maintaining industrial peace and production and for the speedy and amicable settlement of industrial disputes. The bill which is similar to the Ordinance already in force, provides for such powers", Vide U.P. Gazette Extraordinary dated 27th October, 1947. The amending Act XXV of 1950 was published in U.P. Gazette Extraordinary dated August 21, 1950 and came into force when it was published in U.P. Gazette.

29. The statement of objects and reasons of the Act and the scheme of its other provisions indicate that closure is not the unfettered right of the employer. The poor financial condition of the undertaking and the interest of the employer are not the only factors which have to be taken into account in deciding whether closure should be permitted. The workmen's interest and the public interest have to be considered as well. It is for this reason that the forum for grant of permission is the State government. It is not for this court to consider whether circumstances exist for the grant of permission and that closure was therefore justified. That discretion the statute has left (sic) the State Government. The employers have failed to apply for permission. They must therefore face the consequence which the Statute provides for its breach. It may appear to be hard that even if the industry is in deep financial doldrum or has factually closed down that the workmen should continue to be paid their wages instead of being bundled away with lump sum compensation as Mr. Sinha would suggest but it is not for this court to substitute in (sic) its own wisdom a different relief when the statute provides that the workmen would continue to enjoy all benefits under any law as if there had been no closure. The theoretical foundation for this seemingly inequitable benefit to the workmen as also of the requirement of the

consideration of the workmen's interest in grant of permission for closure lies in the fact that the industry produces profits and builds up its assets with the combined participation of labour and capital. The benefits which the statute provides to the workmen have therefore to be provided to them.

30. The last contention of the employer is that the dispute about illegal termination of services was referred to the labour court, which gave its award dated 24.2.2005 against the workmen and it is contended that the principles of *res judicata* are applicable and the arbitrator has erred in granting relief to the workmen. The finding recorded by the arbitrator is that the award was not given on merits. The award was an *ex parte* one. The case of the workmen is that the reference was not made at the instance of the workmen and that no summons were served upon them and the fact that the dispute in respect of the termination of services of 50 workmen (the dispute in the present writ petition) had been referred to arbitration by agreement dated 5.1.2005 was concealed by the employers who were parties to the reference to the arbitrator. It is thus clear that when the parties had agreed to refer their dispute to the arbitrator by agreement dated 5.1.2005 the reference to the labour court stood superseded and this fact should have been brought to the notice of the Labour Court by the employers. Moreover the award of the Labour Court is not on merits and the issues involved in the present petition were not decided. In these facts the view taken by the arbitrator does not suffer from any illegality. In view of the discussions aforesaid the writ petition lacks merit and is dismissed.