Isha Steel Treatment, Bombay vs Association Of Engineering Workers, ... on 25 February, 1987

Equivalent citations: 1987 AIR 1478, 1987 SCR (2) 414, AIR 1987 SUPREME COURT 1478, 1987 2 SCC 47, 1987 LAB. I. C. 1028, 1987 (100) MADLW (CRI) 668, 1987 (1) CURCC 757, (1987) 100 MAD LW 668, 1987 UJ(SC) 2 75, 1987 2 UJ (SC) 10, 1987 LAB LR 86, (1987) 2 GUJ LH 374, (1987) 1 JT 545 (SC), (1987) 1 JT 548 (SC), 1987 SCC (L&S) 91, (1987) 1 SUPREME 205, (1987) 1 CIVLJ 569, (1987) 71 FJR 11, (1987) 54 FACLR 454, (1987) 1 LABLJ 427, (1987) 1 LAB LN 741, 1987 (2) SCC 203, (1987) 1 SUPREME 330, (1987) 1 CURCC 928, (1987) 1 CURLR 232

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, K.N. Singh

PETITIONER:
ISHA STEEL TREATMENT, BOMBAY

Vs.

RESPONDENT:
ASSOCIATION OF ENGINEERING WORKERS, BOMBAY &ANR.

DATE OF JUDGMENT25/02/1987

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
SINGH, K.N. (J)

CITATION:
1987 AIR 1478 1987 SCR (2) 414
1987 SCC (2) 203 JT 1987 (1) 548
1987 SCALE (1)442

ACT:
Industrial Disputes Act , section 25G--Applicability of the principle of "last come, first go" thereunder--Appellant firm carrying on business of metal processing with two Units commenced in 1963 and 1975 respectively--Both units had independent location, separate factory licences, separate municipal licences, separate accounts and balance sheet, and no inter transferability--Unit I closed completely on 15.2. 1982 due to indiscipline of the 32 workmen employed therein

gradually by first reducing their shifts from three to two--Closure compensation offered--Whether the closure is bad in law on the ground that there was functional integrality between the two units and were for all practicable purposes parts of one establishment--Whether the provisions of section 25G of the Act applied to the facts of the case.

HEADNOTE:

The appellant carries on the business of metal processing i.e. beat treatment of metals. In 1963 it established a factory with about 32 workmen-called "No. I Unit". In the year 1975 another factory called "No. II unit" was established for carrying on the same kind of business employing about 75 workmen about 200 yards away from the No. 1 Unit. Both the Units had independent location, separate factory licences and separate municipal licences. The two Units had separate stores and maintained separate accounts and balance sheets. The workmen of both the units were also employed independently and there was a separate muster roll in respect of each of the two units. There was no rule or condition regarding the inter-transferability of the workmen. However, there was by mistake the name of one workman by name Kishore Ram of Unit 1 entered in the muster roll of the II Unit in October 1980 and it had been scored out later.

On finding that the workmen of No. 1 Unit were wilfully slacking their work and that there was growing indiscipline among them, the appellant decided in the year 1981-82 to reduce the three shifts working previously to two shifts. The indiscipline and the lack of production continued and on it becoming impossible for the appellant to carry on
415
with even the two shifts as reduced, the appellant came to the unhappy conclusion that it had no alternative left but to close down the No. 1 Unit altogether with effect from 15.2.82 and closure compensation was offered to the entire staff of 32 workmen.

The workmen of the I Unit raised through their Union, namely, Association of Engineering Workers, Bombay an industrial dispute reference (IT) No. 218 of 1982. In the statement of claim filed by the workmen it was urged; (i) that the two units which were being run by the appellant had functional integrality and were for all purposes parts of one establishment and that the workmen were mutually transferable from one unit to the other; (ii) that the reasons given by the management for closing down Unit No. 1 is false, the action of the management was arbitrary and was colourable exercise of the management's power of closure; (iii) the impugned action was by way of victimisation for the trade union activities of the said workmen in Unit No 1 and the principle of "last come, first go" while terminating the services of the workmen having not been followed as

required by section 25-G of the Act, the termination was illegal. The Tribunal rejected the case of the workmen that the closure was in retaliation to the trade union activities of workmen and found that there was no victimisation of the workmen and the workmen concerned were not entitled to be reinstated as the closure of the 1 Unit had become legally effective from 15.12.1982 and passed its award to that effect on September 6, 1983. Aggrieved by the Award passed by the Tribunal, the workmen filed a petition under Article 226 of the Constitution of India before the High Court of Bombay challenging the legality of the Award. The learned Single Judge, before whom the writ petition came up for consideration, reversed the Award of the Tribunal and remanded the proceedings back to the Tribunal for afresh disposal. By the time, the decision was rendered, there were only 14 workmen, who were interested in the dispute, and therefore, the learned Single Judge directed the Tribunal to consider whether the termination of services of any of the 14 workmen, whose claim for reinstatement still subsisted, was done in violation of the principles laid down under section 25-G of the Act. Aggrieved by the judgment of the learned Single Judge, the appellant preferred an appeal before the Division Bench of the High Court. That appeal having been dismissed the appellant has come by way of special leave to the Supreme Court.

Allowing the appeal, the Court,

HELD: 1. The existence of the unity of ownership, supervision

416

and control in respect of the two units, the fact that the conditions of the service of the workmen of the two Units were substantially indentical, the fact that both the units are situate at a distance of 200 meters and that the business of heat treatment processing in the two Units are the same are not by themselves sufficient in the eye of law for holding that there was functional integrality between the two Units. This is a clear case of closure of an independent unit and not of a part of an establishment. [422D-E]

Workmen of the Straw Board Manufacturing Co. Ltd. v. M/s Straw Board Manufacturing Company Ltd., [1974] 1 LLJ 499 followed.

S.G. Chemicals and Dyes Trading Employees' Union v. S.G. Chemicals and Dyes Trading Ltd. & Anr., [1986] 2 SCC 624 distinguished.

2. The question of application of section 25-G of the Act arises only when the services of the workmen are retrenched within the meaning of section 25F and not when sections 25FF, and 25FFF are applicable. If the case is one of genuine closure then the question of applying section 25-G of the Act which is applicable to a case of retrenchment would not arise. 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. In fact the II

Unit is continuing to function as usual even now notwithstanding the stoppage of the activities at the I Unit. [423C-E]

Santosh Gupta v. State Bank of Patiala, [1980] 3 SCR 884, relied on.

3. It is not necessary that in the order to effect closure of business the management should close down all the branches of its business. A genuine closure of a Unit even though it did not amount to closure of the business could not be interfered with by an industrial Tribunal. The closure was stoppage of part of the activity or business of the management and such stoppage is an act of management which is entirely in the discretion of the management. No Industrial Tribunal could interfere with the discretion exercised in such a matter. [423F-H; 424A-B]

Management of Hindustan Steel Ltd. v. The Workmen & Ors., [1973] 3 SCR 303; Workmen of the Indian Leaf Tobacco Development Co. Ltd. Guntur v. Management of the Indian Leaf Tobacco Development Co. Ltd., Guntur [1969] 2 SCR 282 followed.

417

4. The two factors; namely: (i) the provident fund accounts of the employees and the Employees' State Insurance accounts of the two units had common numbers with the authorities concerned and (ii) settlements containing similar terms had been entered into in 1974 between the management and the workmen of the two units are not sufficient for holding that the two units were one and the same notwithstanding the fact that the nature of the business carried on in them was the same. [424B-D]

5. On a consideration of the entire material it is clear that (i) the Tribunal had not committed any error in recording the findings which called for interference at the hands of the High Court under Article 226 of the Constitution; (ii) this case is one of bona fide closure of an independent unit of business--and not a case of termination of services of workmen requiring consideration on remand, by the Tribunal in the light of s.25-G of the Act; (iii) it was a case where the judgment of the High Court if maintained would result in a wholly unjust situation in which a corresponding number of workmen in the II Unit would be prejudicially affected even though they had nothing to do with the 1st Unit. [424E-H]

Indian Cable Co. Ltd. v. Its Workmen, [1962] 1 LLJ 409, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2912 of 1986.

From the Judgment and Order dated 1.4.85 of the Bombay High Court in Appeal No. 262 of 1985.

J.P. Cama and Mukul Mudgal for the Appellant. V.N. Ganpule for the Respondents;

The Judgment of the Court was delivered by, VENKATARAMIAH, J. The appellant is M/s. Isha Steel Treatment, Bombay--A firm carrying on the business of metal processing, i.e., heat treatment of metals. In the year 1963 it established a factory (hereinafter referred to as the 'I Unit') for the purpose of carrying on the business of metal processing with about 32 workmen. Nearly 12 years after the establishment of the I Unit it established a second factory (hereinafter referred to as the "II Unit') for carrying on the same kind of business employing about 75 workmen about 200 yards away from the I Unit. Both the units had independent loca- tion, separate factory licences and separate municipal licences. The said two units also had separate stores and maintained separate accounts and balance sheets. The workmen of both the units were also employed independently and there was a separate muster roll in respect of each of the two units. There was no rule or condition regarding the inter- transferability of the workmen. On finding that the workmen of the I Unit were wilfully slacking their work and that there was growing indiscipline among them, the appellant decided in the year 1981-82 to reduce the three shifts working previously to two shifts. The indiscipline and the lack of production continued and on it becoming impossible for the appellant to carry on with even the aforesaid two shifts as reduced, the appellant came to the unhappy conclusion that it had no alternative but to close down the I Unit altogether. The aforesaid closure of the I Unit (set up in 1963) took effect on 15.12.1982 and closure compensation was offered to the entire staff of the 32 workmen. The workmen of the I Unit raised through their Union, namely, Association of Engineering Workers, Bombay, an industrial dispute before the Deputy Commissioner of Labour (Conciliation), Bombay District Office, Bombay, who in exercise of the powers delegated to him, under clause (d) of sub-section (1) of section 10 read with section 12(5) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') referred to Shri B.L. Borude, Industrial Tribunal, Maharash- tra, Bombay the dispute between the appellant and the work- men employed in the I Unit over the demand for reinstatement with full back wages and continuity of service with effect from 15.2. 1982. The said reference was registered as Refer- ence (IT) No. 218 of 1982 before the Tribunal. In the statement of claim filed by the workmen it was urged that the two units which were being run by the appel- lant had functional integrality and were for all purposes parts of the establishment and that the workmen were mutual- ly transferable from one unit to the other. It was further stated that the workmen were originally members of Mazdoor Congress which, according to them, could not improve their service conditions. Therefore, they decided to join another union, namely, the Association of Engineering Workers and were canvassing amongst themselves for organising under the banner of the Association of Engineering Workers. They further pleaded that on the management coming to know about it, it tried to persuade the workers not to join the said Association. On the workmen not agreeing to the suggestion made by the management, the management in an attempt to retaliate against the move of the workmen, removed 22 work- men on 15.2. 1982 alleging that the I Unit was making a loss, that the workmen had resorted to giving less production, that there was indiscipline in the 1 Unit and, therefore, the management was closing down the said unit. The workmen pleaded that the action of the management was arbitrary and was a colourable exercise of the management's power of closure. It was alleged that the impugned action was by way of victimisation for the trade union activities of the said workmen. They claimed that the

principle of 'last come, first go' while terminating the services of the workmen having not been followed as required by section 25-G of the Act, the termination was illegal. The appellant resisted the claim made by the workmen. It pleaded inter alia that the closure of the I Unit was due to the non-co-operation and indiscipline on the part of the workmen, that the two units were independent of each other and there was no functional integrality between them. The management denied that there was any rule or service condition permitting transfer of workmen from one factory to another. The management stated that it was always willing to pay the compensation payable on closure to the workmen concerned and that section 25-G of the Act was inapplicable to the case. After recording the evidence tendered by the parties and hearing the arguments urged on their behalf, the Tribunal held that the two units were independent of each other, there was no common seniori- ty list of the workmen of the two units and there was no rule or practice of transferring workmen from one factory to the other. The Tribunal rejected the case of the workmen that the closure was in retaliation to the trade union activities of workmen. It also found that there was no victimisation of the workmen and the workmen concerned were not entitled to be reinstated as the closure of the I Unit had become legally effective from 15.2. 1982. Accordingly, it rejected the demand made by the workmen by its Award dated September 6, 1983. Aggrieved by the Award passed by the Tribunal, the workmen filed a petition under Article 226 of the Constitution of India before the High Court of Bombay challenging the legality of the Award. The learned Single Judge, before whom the writ petition came up for considera- tion, reversed the Award of the Tribunal and remanded the proceedings back to the Tribunal for afresh disposal. By the time the decision was rendered, there were only 14 workmen, who were interested in the dispute. The learned Single Judge, therefore, directed the Tribunal to consider whether the termination of services of any of the 14 workmen, whose claim for reinstatement still subsisted, was done in viola- tion of the principles laid down under section 25-G of the Act. The learned Single Judge also directed the Tribunal to determine whether the workmen were entitled to reinstatement and if the Tribunal found that they were entitled to such reinstatement the question as to the grant of back wages should also be con- sidered by it. It should be stated here that the learned Single Judge made it clear that the finding of the Tribunal that the Association of workmen had 'failed to establish that the services of the workmen were terminated because of their joining the petitioner union' was not disturbed. The learned Single Judge, however, found that there was func- tional integrality between the two units and in that connec- tion observed thus:

> "In my judgment the fact that the two units are situate within a distance of 200 meters, the fact that both the units are controlled by the same employer and the fact that the busi- ness of heat treatment process carried on in the two units was identical, it leaves no manner of doubt that the two units were really integral and were known separately only be- cause the business in the two units commenced on different dates. In my judgment, the find- ing recorded by the Tribunal that the two units were separate and independent is clearly erroneous and cannot be sustained."

With these observations, the learned Single Judge set aside the finding recorded by the Tribunal to the effect that the two units were independent and separate and held that they were one and the same. In view of his finding the learned Single Judge held that section 25-G of the Act was applicable. He accordingly set aside the Award and remanded the case to the Tribunal with the

directions already set out above.

Aggrieved by the judgment of the learned Single Judge, the appellant preferred an appeal before the Division Bench of the High Court. That appeal was dismissed with the obser- vation that the finding of the learned Single Judge that the two units had functional integrality was correct and the remitting of the matter to the Tribunal was in order. This appeal by special leave is filed against the decision of the Division Bench of the High Court.

It is not disputed before us that after 15.2. 1982 when the work in the I Unit was completely stopped no work is being carried on in the premises where the I Unit had been established. It is also not disputed that the II Unit has been working as usual and the stoppage of the work in the I Unit had no effect on the work of the II Unit. The finding recorded by the Tribunal that the management had not closed down the I Unit by way of retaliation to the alleged trade union activities of the workmen of the I Unit has not been shown to be untenable. It is also seen that the findings of the Tribunal that the two units had been established in two different places although at a distance of about 200 yards from each other; that the muster rolls of the two units were separate; that the two units had separate factory licences and municipal licences; that the balance sheets of the two units were separate; and that there was no rule or condition of service that the workmen were transferable from one unit to the other are not set aside by the learned Single Judge. It is true that in the course of the evidence of one of the witnesses for the management it had been brought out, that the name of workman Kishore Ram of the 1 Unit had been by mistake entered in the Muster Roll of the II Unit in October, 1980 and it had been scored out. This was a stray case. There was no evidence in the case showing that Kishore Ram had actually worked in the II Unit. Neither Kishore Ram nor anybody else had been examined to give evidence in support of the said fact. On a consideration of the entire evidence including the fact that there was no common seniority list of workmen of the two units and the fact that the name of Kishore Ram had been entered in the Muster Roll of the II Unit in October, -1980 and that it had been scored out, the Tribunal came to the conclusion that the workmen of the two units were not trans- ferable from one unit to the other.

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 Company Limited v. M/s. Straw Board Manufacturing Company Limited, [1974] 1 L.L.J. 499 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 and that there is any func- tional 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. Chitaley 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 func-

> tioning 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 manage- ment and peace and wellbeing of the company to treat the employees different 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 employ- ees of the R. Mill 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 inde- pendent unit of a company and not a closure of a part of an establishment."

In the above decision this Court has held that the unity of ownership, supervision and control that existed in re- spect 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 indentical were not by themselves sufficient in the eye of law to hold that there was func- tional integrality between the two mills. It held that it was a 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 situate in 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 v. S.G. Chemicals and Dyes Trading Limited and Another, [1986] 2 S.C.C. 624 is not of much assistance to the work- men. 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 Trom- bay and the Marketing and Sales Division was at Churchgate. In 1984 the company which was managing the said three divi- sions 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 re- quired. 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 Trom- bay 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 re- quired by the Trombay factory for producing or processing the goods. it used to market and sell the goods so manufac- tured or processed by that factory and it also used to disburse the salary and other employment benefits and main- tain 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 notwith- standing the stoppage of the activities at the I Unit. The question of application of section 25-G of the Act arises only when the services of the workmen are retrenched. In Santosh Gupta v. State Bank of Patiala, [1980] 3 S.C.R. 884 it is laid down that if the termination of service

of a workman in a given case falls either under section 25-FF or under section 25-FFF of the Act it would not be a termina- tion falling under section 25-F of the Act. This Court has observed in that case that after the enactment of section 25-FF and section 25-FFF retrenchment included every kind of termination of service except those not expressly included in section 25-F or not expressly provided for by other provisions of the Act such as sections 25-FF and 25-FFF. Hence if the case is one of genuine closure then the ques- tion of applying section 25-G of the Act which is applicable to a case of retrenchment would not arise.

It is not necessary that in order to effect closure of business the management should close down all the branches of its business. In Management of Hindustan Steel Ltd. v. The Workmen & Others, [1973] 3 S.C.R. 303 this Court has held that the word 'undertaking' used in section 25-FFF seems to have been used in its ordinary sense connoting thereby any work, enterprise, project or business undertak- ing. It is not intended to cover the entire industry or business of he 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 Company Limited, Guntur v. Management of the Indian Leaf Tobacco Development Co. Ltd., Guntur, [1969] 2 S.C.R. 282. In that case the Court observed that a genuine closure of 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 and such stoppage is an act of management which is entirely in the discretion of the man- agement. The Court further observed that no Industrial Tribunal could interfere with the discretion exercised in such a matter.

It was, however, argued in this case on behalf of the workmen that since the Provident Fund accounts of the em- ployees and the Employees' State Insurance accounts of the two units had common numbers with the authorities concerned and settlements containing similar terms (copies which are not produced before us) had been entered into in 1974 be- tween the management and the workmen of the two units, it should be held that the two units had functional integrality between them. We are of the view that even these factors are not sufficient to hold that the two units were one and the same notwithstanding the fact that the nature of the busi- ness carried on in them was the same. In Indian Cable Co. Ltd. v. Its Workmen, [1962] 1 L.L.J. 409 this Court has held that the fact that the balance sheet was prepared incorpo- rating the trading results of all the branches or that the employees of the various branches were treated alike for the purpose of provident fund, gratuity, bonus and for condi- tions of service in general, could not lead to the conclu- sion that all the branches should be treated as one unit for purposes of section 25-G of the Act.

On a consideration of the entire material before it, the Tribunal had reached the conclusion that the closure of the I Unit was bona fide, that it did not have any functional integrality with the II Unit and that there was no victimi- sation of workmen for their trade union activities. On going through the Award passed by the Tribunal we feel that it had not committed any error in recording the said findings which called for interference at the hands of the High Court under Article 226 of the Constitution of India. We are satisfied that this case is one of bona fide closure of an independent unit of business. The learned Single Judge and the Division Bench 'of the High Court were, therefore, in error in hold- ing that the termination of service of the workmen in this case amounted

to retrenchment and not closure and the case of the workmen had to be considered on remand by the Tribu- nal in the light of section 25-G of the Act. They overlooked that it would result in a wholly unjust situation in which a corresponding number of workmen in the II Unit would be prejudicially affected even though they had nothing to do with the I Unit.

We, therefore, set aside the judgments of the Division Bench and of the learned Single Judge and restore the Award passed by the Tribunal.

Before concluding we should record that the learned counsel for the management submitted that the management was willing to pay ex gratia a sum of Rs.10,000 to each of the workmen who had not received till now any compensation payable to them under section 25-FFF of the Act for closure of the I Unit. He submitted that as on date 11 workmen had not received the compensation payable to them on closure and that each of them would be paid the compensation payable to them on closure and Rs. 10,000. The names of those 11 work- men are as under:

S/Shri

1. Madanlal Surajbali Jaiswal

2. Sukhdev

3. Dulsinger Rasharak Jaiswal

4. Motilal Pawar Kurmi

5. Mohanram Katwaro Jaiswal

6. Udaychand Keshavasingh

7. Zagaro Palveer Singh

8. Murlidhar Govind Javane

9. Wandev Prasad

10. Radhashyam Rajpati Yadav

11. Karmraj Lakshman Yadav We, therefore, direct the management to pay each of the above workmen compensation payable to them on closure and a sum of Rs. 10,000. The management is given two months' time to pay the amount due to each of the above eleven workmen.

The appeal is accordingly allowed. There shall, however, be no order as to costs.

S.R. Appeal al-

lowed.