S.G. Chemical And Dyes Trading ... vs S.G. Chemicals And Dyes Trading Limited ... on 3 April, 1986

Equivalent citations: 1986 SCR (2) 126, 1986 SCC (2) 624

Author: D.P. Madon

Bench: D.P. Madon, O. Chinnappa Reddy

PETITIONER:
S.G. CHEMICAL AND DYES TRADING EMPLOYEES' UNION

Vs.

RESPONDENT:
S.G. CHEMICALS AND DYES TRADING LIMITED AND ANOTHER

DATE OF JUDGMENT03/04/1986

BENCH:
MADON, D.P.
BENCH:
MADON, D.P.
REDDY, O. CHINNAPPA (J)

CITATION:
1986 SCR (2) 126 1986 SCC (2) 624
1986 SCALE (1)1048

ACT:
Industrial DLsputes Act, 1947 : Section 25-0 :
"An undertaking of an industrial establishment"- Interpretation of.
Closure of such an "undertaking" - When illegal.
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 : Section 28 and Item 9, Schedule IV : Settlement - Termination of Services of Workmen in contravention thereof - Whether unlawful.
Constitution of India, Article 136 - Resort to - 'Whether permissible where equally efficacious remedy available.

HEADNOTE:
Sub-s. (1) of 8. 25-o of the Industrial Disputes Act, 1947 obligates an employer, who intends to close down an undertaking of an industrial establishment, to which Chapter V-B applies, to submit an application for prior permission

at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government. Sub-s. (6) of 8. 25-0 provides that where no application under sub-s. (1) is made within the specified period or where permission has been refused, the closure of the undertaking shall 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. Section 25-K specifies the industrial establishments to which Chapter V-B applies as those in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.

Item 9 of Schedule IV to the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act,
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1971 lists failure to implement an award, settlement or agreement ss one of the general unfair labour practices on the part of the employers.

The respondent-company, a wholly owned subsidiary, was operating in Bombay in three Divisions, st three different places, the Pharmaceutical Division at Worli having 110 employees, the Laboratory and Dyes Division at Trombay having 60 employees, and the Marketing and Sales Division at its Registered Office at Churchgate having 90 employees. The holding company had a chemicals and dyes factory in the State of Gujarat which was sold out in 1984. Since the buyer company proposed to handle the sales through their own distribution channels and the services of the staff working st the Registered Office were no longer required, the respondent-company by its notice dated July 16, 1984 intimated the Government of Maharashtra that in accordance with the provisions of sub-s. (1) of s. 25-FFA of the Industrial Disputes Act (which applies to undertakings employing fifty or more workmen) it intended to close down the undertaking/ establishment/office at its Registered Office. In the said notice, the number of workmen on the rolls was stated to be ninety. The company thereafter closed down the said Division terminating the services of 84 employees, while retaining the remaining six to attend to the work upon such closure.

The Employees' Union thereupon filed a complaint before the Industrial Court under s. 28 of the Maharashtra Act, read with Item 9 of Schedule IV thereto, contending that the closure of the Marketing and Sales Division was contrary to s. 25-0 of the Industrial Disputes Act, and, therefore, the employees continued to be in service, notwithstanding the notice of closure, and were entitled to full wages and allowances, in terms of the settlement dated February 1, 1979 entered into with the company, and as these were not paid the company had committed an unfair labour practice under Item 9 of Schedule IV to the Maharashtra Act. Their case was that there was functional integrality amongst all

the three M visions of the respondent-company, and as the aggregate number of employees in those Divisions exceeded one hundred the company was bound tc apply to the appropriate Government for permission under s. 25-0(1). The failure of the company to do so had rendered the closure illegal under 8. 25-0(6).
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The Industrial Court dismissed the complaint holding (i) that 8. 25-0 of the Industrial Disputes Act was not applicable inasmuch as the number of workmen employed at the industrial establishment at Trombay at no time had been one hundred or more as required by s. 25-K, (ii) that the Churchgate Office not being a part of the Trombay factory in legal parlance, it was not an undertaking of an industrial establishment within the meaning of Chapter V-B of the Industrial Disputes Act, and (iii) that even assuming that 8. 25-0 was attracted, a violation of that section would not constitute an act of unfair labour practice under Item 9 of Schedule IV to the Maharashtra Act.

On the question whether s. 25-0 of the Industrial Disputes Act applied to the closure of the Churchgate Office and whether the Trombay factory and the Churchgate Division constituted one establishment.

Allowing the appeal by special leave, the Court,
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HELD: 1. The closing down of the Churchgate Division of the respondent-company was illegal, as it was in contravention of the provisions of s.25-0 of the Industrial Disputes Act 1947. The company was guilty of the unfair labour practice specified in Item 9 of Schedule IV to the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 for its failure to implement the settlement entered into with the appellant-Union. [159 F; 160 A; 159 H]

The workmen, whose services were terminated on account of such illegal closure continue in employment and are entitled to receive from the company their full salary and all other benefits under the settlement retrospectively. [161 C]

2.1 Section 25-0 of the Industrial Disputes Act applies to the closure of an undertaking of an industrial establishment and not to the closure of an industrial establishment. [149 C]

2.2 The Trombay factory of the respondent-company is an industry within the meaning of the term in cl.(j) of 8. 2 of the Industrial Disputes Act , for it carries on the work of manufacturing and processing of dyes. That factory is also a
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"factory" as defined in cl. (m) of s.2 of the Factories Act 1948, and is, therefore, an industrial establishment within the meaning of that expression as defined in 8. 25-L of the Industrial Disputes Act. [144 F-G]

2.3 The Act 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. In the modern industrial world it is often not possible for all processes which ultimately result in the finished product to be carried out at one place. In many cases these functions with regard to the use, sale, transport, delivery and disposal of the article or substance manufactured are distributed amongst different departments and divisions housed in different buildings situate at different places. [149 D; 146 G; 147 A; 146 F]

2.4 The term 'undertaking' being not defined, wherever it occurs in the Act, unless a specific meaning is given to that term by the particular provision it is to be understood in its ordinary meaning and sense connoting thereby any works, enterprise, project or business undertaking, not necessarily covering the entire industry or business of the employer. So understood, 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. 25-0 would apply to the closure of the undertaking provided the condition laid down in s. 25-K of not less than one hundred workmen being employed on an average per working day for the preceding twelve months is fulfilled. [149 D-F; 150 A; D-E]

Management of Hindustan Steel Limited v. The Workmen and others, [1973] 3 S.C.R. 303 and Workmen of the Straw Board Manufacturing Company Limited v. M/s. Straw Board Manufacturing Company Limited , [1974] 3 S.C.R. 703, referred to.

2.5 The functions of the Churchgate Division and the Trombay factory of the respondent were neither separate nor independent of each other but were so integrally connected as to constitute these two into one establishment. There was complete functional integrality between them. The Trombay factory could never have functioned independently without the
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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. [152 E; 154 F; 154 C-D]

The Associated Cement Companies Limited, Chaibassa Ce ment Works, Jhinkpani v. Their Workmen, [1960] 1 S.C.R. 703; Workmen of the Straw Board Manufacturing Company Ltd. v. M/s. Straw Board Manufacturing Co. Ltd., 119741 3 S.C.R.

703; South India Millowners' Association and others. v. Coimbatore District Textile Workers' Union and others, [1962] 1 Lab. L. J. 223 S.C. and Western India Match Co. Ltd. v. Their Workmen, [1964] 3 S.C.R. 560, referred to.

The total number of workmen employed at the relevant time in the Trombay factory and the Churchgate Division of the respondent-company was one hundred and fifty. Therefore, if the respondent-company wanted to close the Churchgate Division it was required to satisfy the requirements of 8. 25-0 of the Industrial Disputes Act . Section 25-FFA had no application in such a situation. [154 F-G]

3.1 Merely because registration was required to be obtained under a particular statute, it did not make the business or undertaking or industry so registered a separate legal entity except where a registration of incorporation was obtained under the Companies Act. The fact that the Trombay factory was registered under the Factories Act while the Churchgate Division was registered as a commercial establishment under the Bombay Shops and Establishments Act was no bar to treating them as one establishment. The Factories Act and the Bombay Shops and Establishments Act are regulatory statutes and the registration under both these Acts is compulsory for providing certain benefits to the workmen employed in the factory or the establishment, as the case may be. [155 B; 154 H; 155 A; 155 C]

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3.2 A factory as defined in cl. (m) of s.2 of the Factories Act is excluded from the definition of "commercial establishment" contained in cl. (4) of s. 2 of the Bombay Shops and Establishments Act, and is not mentioned in the list of establishments set out in the definition of "establishment" given in cl. (8) of s. 2 of the said Act because various matters in respect of which provision is made under that Act are also provided for in the Factories Act. There is, however, nothing to prevent the State Government from declaring, under the latter part of cl. (8) of s. 2 a factory to be an establishment for the purposes of the Bombay Shops and Establishments Act. [157 B-C]

4. It is an implied condition of every agreement, including a settlement, that the parties thereto will act in conformity with law. Such a provision is not required to be expressly stated in any contract. If the services of workmen are terminated in violation of any of the provisions of the Industrial Disputes Act, such termination is unlawful and ineffective and the workmen would ordinarily be entitled to reinstatement and payment of full backwages. [159 D]

In the instant case, there was a settlement arrived at between the respondent-company and the Employees' Union under which certain wages were to be paid by the Company to its workmen, but the company closed down its Churchgate Division without complying with the provisions of s.25-0(1), which amounted to an illegal closure under s. 25-0(6). The workmen whose services were terminated were, therefore,

entitled to receive from the date of closure their salary and other benefits payable to them under the settlement. These having not been paid to them, there was a failure on the part of the company to implement the settlement and consequently the company was guilty of the unfair labour practice specified in Item 9 of Schedule IV to the Maharashtra Act. The Union was thus justified in filing the complaint under s. 28 of that Act complaining of such unfair labour practice. [159 E-F; 161 C; 159 H; 160 A]

Mharashtra General Kamgar Union v. Glass Containers Pvt. Ltd. & Anr., [1983] 1 Lab. L. J. 326, overruled.

5. Article 136 of the Constitution is not designed to permit direct access to the Supreme Court in cases where other equally efficacious remedy is available and where the question
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is not of public importance. Though the powers of the Court under that Article are very wide still the grant of special leave to appeal is in the discretion of the Court. In the instant case, a large number of workmen had been thrown out of employment who could ill afford the luxury of fighting from court to court, and the questions raised were of considerable importance both to the employers and the employees, which were valid reasons for exercise of the discretion. [137 B; 138 E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 830 of 1986.

From the Judgment and Order dated 26th July, 1985 of the Industrial Court, Maharashtra in Complaint (ULP) No. 1273 of 1984.

Dr. Y.S. Chitale and Mrs. S. Ramachandran for the Appellant.

Mahesh Bhatt, P.H. Parekh and Miss Indu Malhotra for the Respondents.

The Judgment of the Court was delivered by MADON, J. This is an Appeal by Special Leave granted by this Court against the order of the Industrial Court, Maharashtra dismissing a complaint filed by the Appellant Union under section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (Maharashtra Act No.1 of 1972) complaining of an unfair labour practice on the part of the First Respondent Company, namely, a failure to implement the Settlement dated February 1, 1979, entered into between the Appellant Union and the First Respondent Company. This Act will hereinafter be referred to in short as "the Maharashtra Act".

The First Respondent Company, S.G. Chemicals and Dyes Trading Limited (hereinafter referred to as "the Company") is a wholly owned subsidiary of Ambalal Sarabhai Enterprises Limited and

carries on the business of pharmaceuticals, pigments and chemicals. The Second Respondent is the General Manager (Marketing) of the Company. The Appellant Union, S.G. Chemicals and Dyes Trading Employees' Union (hereinafter referred to as "the Union") is a trade union registered under the Trade Unions Act, 1926 (Act No. 16 of 1926) representing the employees of the Company. In 1984 the Company was operating in Bombay through three Divisions, namely, the Pharmaceuticals Division at Worli, the Laboratory and Dyes Division at Trombay and the Marketing and Sales Division at Express Building, Churchgate. The Registered Office of the Company was also situate in the same place as the Marketing Division, namely, in Express Building. Ambalal Sarabhai Enterprises Limited is also the owner of a chemicals and dyes factory called S.G. Chemicals and Dyes, situate at Ranoli in Baroda District in the state of Gujarat.

By a notice dated July 16, 1984, given in Form XXIV-B prescribed by Rule 82-A of the Industrial Disputes (Bombay) Rules, 1957, the Company signing itself as "SG Chemicals & Dyes Trading Limited (Chemicals & Dyes Division)", intimated to the Secretary, Government of Maharashtra, Industries and Labour Department, Bombay, that in accordance with the provisions of sub-section (1) of section 25FFA of the Industrial Disputes Act, 1947 (Act No. 14 of 1947), it intended to close down "the Undertaking/Establishment/Office of Chemicals & Dyes Division, located at Express Building, 14 'E' Road, Churchgate, Bombay-400020, with effect from 17th September 1984". In the said notice the number of workmen on the roll was stated to be ninety, the name of "the Undertaking (and the Establishment proposed to be closed)" was given as "Chemicals & Dyes Division Office of SG Chemicals & Dyes Trading Limited". The 'Industry' was described in the said notice as "Marketing and Sales operations of Chemicals and Dyes". In the Statement of Reasons annexed to the said notice it was stated as follows :

> "Ambalal Sarabhai Enterprises Ltd., have agreed to sell its business and Undertaking known as SG Chemicals and Dyes, situated at Ranoli to M/B. Indian Dyestuff Industries Ltd., Bombay, with effect from 25-6-1984. Chemicals & Dyes Division of SG Chemicals and Dyes Trading Limited was rendering staff and other services to SG Chemicals and Dyes as also to their Marketing Companies who handled the sale of SG Chemicals & Dyes products. Indian Dyestuff Industries Ltd., propose to handle the future sale of SG Chemicals & Dyes products through their own distribution channels. SG Chemicals & Dyes and the Marketing Companies have informed us that the staff services offered by us to them would no longer be required by them resulting in there being no work for the staff working at Express Building office of Chemicals & Dyes Division of SG Chemicals and Dyes Trading Limited. The Management has, therefore, no other alternative but to close down their office operations of Chemicals & Dyes situated at Express Building, 14 'E' Road, Churchgate, Bombay 400020."

Copies of the said notice were sent to the Commissioner of Labour, Maharashtra, the Deputy Commissioner of Labour, Maharashtra, and the Union.

By its letter dated July 16, 1984, addressed to the Company, the Union raised a demand not to terminate the services of the employees pursuant to the said notice dated July 16, 1984. The Company none the less closed down the said Division at Churchgate with effect from September 17,

1984. The Company retained only six employees who, according to it, were to attend to the work consequent upon such closure. The Company did not pay to the eighty-four employees whose services were terminated any salary after September 17, 1984. According to its counter affidavit filed in reply to the Petition for Special Leave to Appeal, the Company has, however, offered to these eighty-four employees retrenchment compensation under section 25FFF of the Industrial Disputes Act aggregating to Rs. 22,02,670 and eighty-two out of these eighty-four employees have accepted such compensation aggregating to Rs. 22,00,162.

The Union filed on October 8, 1984, before the Industrial Court Maharashtra, Bombay, a Complaint, being Complaint (ULP) No. 1273 of 1984, under section 28 of the Maharashtra Act read with Item 9 of Schedule IV thereto. The contention of the Union in the said Complaint was that the closure of the Churchgate Division was contrary to the provisions of section 25-O of the Industrial Disputes Act and, therefore, the employees continued to be in the service of the Company notwithstanding the said notice of closure and were entitled to full wages and all allowances as provided in the Settlement dated February 1, 1979, entered into between the Company and the Union, which were not paid to them and, therefore, the Company had committed an unfair labour practice under Item 9 of Schedule IV to the Maharashtra Act. Under section 26 of the Maharashtra Act, unfair labour practices mean any of the practices listed in Schedules II, III and IV to the Maharashtra Act. Under section 27, no employer or trade union and no employees are to engage in any unfair labour practice. Under section 28, where any person has engaged in or is engaging in any unfair labour practice, then any trade union or any employee or any employer or any Investigating Officer appointed under section 8 of the Maharashtra Act may, within ninety days of the occurrence of such unfair labour practice, file a complaint before the court competent to deal with such complaint. The competent court in the present case was the Industrial Court. Schedule IV to the Maharashtra Act lists what constitute "General Unfair Labour Practices on the part of employers". Item No 9 of Schedule IV is as follows :

> "9. Failure to implement award, settlement or agreement."

It was the case of the Union that the aggregate number of workmen employed in the three Divisions of the Company exceeded one hundred and, therefore, for the purposes of the said section 25-O, 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, therefore, under section 25-O of the Industrial Disputes Act, the Company was bound to apply to the appropriate Government for prior permission for such closure at least ninety days before the date on which such closure was to become effective. According to the Union, as such prior permission was not applied for, the closure of the Chemicals and Dyes Division Office of the Company at Churchgate was illegal and such closure, therefore, amounted to an unfair labour practice as it amounted to a failure to implement the said Settlement dated February 1, 1979. On the examination of the evidence led before it, the Industrial Court held:

> "There can be no doubt that part of the work done at the head office at Churchgate was in connection with or incidental to the Trombay factory and there does appear some functional integrality between the factory and the head office, but in my view,

this fact is irrelevant in this complaint."

The reason why the Industrial Court considered the functional integrality between the Trombay factory and the Churchgate office as irrelevant was that according to it before section 25-O could apply, the number of workmen employed in an industrial establishment as defined by section 25-L of the Industrial Disputes Act should not be less than one hundred and that admittedly at no time had the number of workmen at the Trombay Factory been one hundred or more. The Industrial Court further held that the Churchgate office was not in legal parlance a part of the Trombay factory and the Company was not bound to follow the procedure prescribed by section 25-O for by no stretch of imagination could the Churchgate Division be held to be "an undertaking of an industrial establishment" within the meaning of Chapter V-B of the Industrial Disputes Act. The Industrial Court also held that the Head Office of the Company located at Churchgate was governed by the Bombay Shops and Establishments Act, 1948 (Bombay Act No. 79 of 1948) while the establishment at Trombay was a factory as defined in the Factories Act, 1948 (Act No. 63 of 1948), and, therefore, these were two separate legal entities governed by the provisions of two independent and separate Acts. Further, according to the Industrial Court assuming section 25-O was attracted, the violation of that section would not constitute an Act of unfair labour practices under Item No. 9 of Schedule IV to the Maharashtra Act. For reaching this conclusion, the Industrial Court relied upon the decision of a learned Single Judge of the Bombay High Court in Maharashtra General Kamgar Union v. Glass Containers Pvt. Ltd. and another, [1983] 1 Lab. L.J. 326, in which the learned Single Judge had held that non-compliance with any statutory provision such as section 25FFA of the Industrial Disputes Act cannot by regarded as a failure by the employer to implement an award, settlement or agreement. The Industrial Court consequently dismissed the said Complaint by its order dated July 26, 1985. It is against the said order of the Industrial Court that the present Appeal by Special Leave granted by this Court has been filed.

The Union has directly come to this Court in appeal against the said order of the Industrial Court without first approaching the High Court under Article 226 or 227 of the Constitution for the purpose of challenging the said order. The powers of this Court under Article 136 are very wide but as clause (1) of that Article itself states, the grant of special leave to appeal is in the discretion of the Court. Article 136 is, therefore, not designed to permit direct access to this Court where other equally efficacious remedy is available and where the question is not of public importance. Today, when the dockets of this Court are over- crowded, nay - almost choked, with the flood, or rather the avalanche, of work pouring into the Court, threatening to sweep away the present system of administration of justice itself, the Court should be extremely vigilant in exercising its discretion under Article 136. The reason stated at the Bar for not first approaching the High Court to get the same relief was that in view of the judgment of the learned Single Judge of the High Court in Maharashtra General Kamgar Union v. Glass Containers Pvt. Ltd. and another if a writ petition were filed in the High Court, it would certainly have been dismissed, forcing the employees through the Union to come to this Court in appeal against the order of the High Court. When we consider that here are eighty-four workmen who have been thrown out of employment and can ill- afford the luxury of fighting from court to court and that some of the questions arising in the case are of considerable importance both to the employers and the employees, the reason given for directly coming to this Court must be held to be valid and this must be considered to be a fit case for this

Court to exercise its discretion and grant Special Leave to Appeal.

Turning now to the merits of this Appeal, the first question which falls to be considered is whether section 25- 0 of the Industrial Disputes Act applied to the closure of the Churchgate Office. According to the Union, the case was governed by section 25-O while according to the Company, it was section 25FFA which applied to the case. Under section 25FFA(1), an employer who intends to close down an undertaking is to give, at least sixty days before the date on which the intended closure is to become effective, a notice in the prescribed manner to the appropriate Government stating clearly the reasons for the intended closure of the undertaking. The proviso to the said sub-section (1) provides that section 25FFA shall not apply inter alia to "an undertaking in which (i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months." The other exclusion from the application of section 25FFA is irrelevant for the purpose of this Appeal. Thus, where an employer intends to close down an undertaking in which 50 workmen or more are employed, he is to give at least sixty days' notice in the prescribed manner to the Government stating the reasons for the intended closure of the undertaking and under section 25FFF(1), where an undertaking is closed down for any reason whatsoever every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure, is to be entitled to notice and compensation in accordance with the provisions of section 25F as if the workman had been retrenched.

Section 25-O features in Chapter V-B of the Industrial Disputes Act. This Chapter was inserted in the Industrial Disputes Act by the Industrial Disputes (Amendment) Act, 1976 (Act No. 32 of 1976), with effect from March 5, 1976, and contains sections 25K to 25S. Section 25-O as originally enacted was substituted by section 14 of the Industrial Disputes (Amendment) Act, 1982 (Act No. 46 of 1982). Under section 1(2) of the Amendment Act, 1982, the said Act was to come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. The Industrial Disputes Act as also the Amendment Act, 1982, were further amended by the Industrial Disputes (Amendment) Act, 1984 (Act No. 49 of 1984). By section 7 of the Amendment Act, 1984, sub-section (2) of section 1 of the Amendment Act, 1982, was amended by inserting the words "and different dates may be appointed for different provisions of this Act" after the words "by notification in the Official Gazette, appoint". Under section 1(2) of the Amendment Act, 1984, the said Act was to come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of the said Act. By Ministry of Labour and Rehabilitation (Department of Labour) Notification No. S.O. 605(E), dated August 18, 1984, published in the Gazette of India Extraordinary, Part II, Section 3(ii), dated August 18, 1984, at page 2, the whole of the Amendment Act, 1984, was brought into force with effect from August 18, 1984. By Ministry of Labour and Rehabilitation (Department of Labour) Notification No. S.O. 606(E), dated August 21, 1984, published in the Gazette of India Extraordinary, Part II, Section 3(ii) dated August 21, 1984, at page 2, several sections of the Amendment Act, 1982, including section 14 which substituted section 25-O of the Industrial Disputes Act, were brought into force on August 21, 1984. Sub-section (1) of section 25-O as substituted provides as follows :

> "25-O. Procedure for closing down an undertaking.-

(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior. permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner :

Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work." Under sub-section (2) of section 25-O, where an application for permission to close down an undertaking of an industrial establishment has been made, the appropriate Government is to make such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure, it may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order is to be communicated to the employer and the workmen. Under sub-section (3), where the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application was made, the permission applied for is to be deemed to have been granted on the expiration of the said period of sixty days. The other sub-sections of section 25-O are not relevant except sub-section (6) and (8) which are 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.

"(8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months".

Section 25K(1) specifies the industrial establishments to which Chapter V-B applies. Section 25K(1) is as follows :

"25K. Application of Chapter V-B. -

> (1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only Intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months."

The words "one hundred" were substituted for the words "three hundred" in section 25K by section 12 of the Amendment Act, 1982, which section was also brought into force on August 21, 1984. Section 25L defines the expression "industrial establishment" for the purposes of Chapter V-B and is in the following terms :

> "25L. Definitions. -
>
> For the purposes of this Chapter, -
>
> (a) 'industrial establishment' means -
>
> (i) a factory as defined in clause (m) of section 2 of the Factories Act. 1948;

(ii) a mine as defined in clause (j) of sub-

section (1) of section 2 of the Mines Act, 1952; or

(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951;

(b) notwithstanding anything contained in sub- clause (ii) of clause (a) of section 2, -

(i) in relation to any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or

(ii) in relation to any corporation not being a corporation referred to in sub-clause (i) of clause (a) of section 2 established by or under any law made by Parliament, the Central Government shall be the appropriate Government.

The definition given in section 25L is for the purposes of Chapter V-B only. In addition thereto, a new clause, namely, clause (ka) was inserted in section 2 of the Industrial Disputes Act to define the expression "'industrial establishment or undertaking" by clause (d) of section 2 of the Amendment Act, 1982. The relevant provisions of the said clause (ka) are as follows :

> "(ka) 'industrial establishment or undertaking' means an establishment or undertaking in which any industry is carried on :
>
> Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then, -

> (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;
>
> (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking".

Clause (b) of section 2 of the Amendment Act, 1982, also inserted a new clause, namely, clause (cc) defining the term "closure". The said clause (cc) is as follows :

> "(cc) 'closure' means the permanent closing down of a place of employment or part thereof".

Clauses (b) and (d) of section 2 of the Amendment Act, 1982, were brought into force on August 21, 1984. Clause (j) of section 2 of the Industrial Disputes Act defines the term "industry" as follows :

> "(J) 'industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen".

By clause (c) of section 2 of the Amendment Act, 1982, the definition of "industry" given in clause (j) of section 2 of the Industrial Disputes Act was substituted. Clause (c) of section 2 of the Amendment Act, 1982, does not, however, appear to have been brought into force yet and in any event was not in force when the Company gave the notice of closure as also when it closed down its Churchgate Division. It is, therefore, unnecessary to reproduce the definition of "industry" as substituted by the Amendment Act, 1982.

At the date when the Company gave the notice of closure, namely, on July 16, 1984, the section in force was section 25-0 as originally enacted by the Industrial Disputes (Amendment) Act, 1976. In the case of the State of Maharashtra the original section 25-0 was substituted by a new section by the Industrial Disputes (Maharashtra Amendment) Ordinance, 1981 (Maharashtra Ordinance No. 16 of 1981), which Ordinance was repealed by the Industrial Disputes (Maharashtra Amendment) Act, 1981 (Maharashtra Act No. 3 of 1982). The said Act came into force with retrospective effect on October 27, 1981, namely, the date of the promulgation of the said Ordinance. Both the said Ordinance and the said Act had received the assent of the President. It was, therefore, section 25-0 as in force in the State of Maharashtra which was applicable when the Company gave the notice of closure. It is, however, unnecessary to set out the provisions of either the original section 25-0 or of that section as applicable in the State of Maharashtra for under both of them the provisions for

giving a notice seeking permission of the government for the intended closure at least ninety days before the date on which the intended closure was to become effective and the consequences of not obtaining such prior permission were the same as in G section 25-O as substituted by the Amendment Act, 1982. What is, however, material is that at the date of the giving of the notice of closure, section 25-K required not less than three hundred workmen to be employed in an industrial establishment. The said Maharashtra Act of 1982 which replaced the said Ordinance had inserted a new sub- section (1A) in section 25K of the Industrial Disputes Act. The said sub-section (1A) was as follows :

"(1A) Without prejudice to the provisions of sub-

section (1), the appropriate Government may, from time to time, by notification in the Official Gazette, apply the provisions of section 25-O and section 25-R in so far as it relates to contravention of sub-section (1) or (2) of section 25-O, also to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which such number of workmen, which may be less than three hundred but not less than one hundred, as may be specified in the notification, were employed on an average per working day for the preceding twelve months."

No notification under the said sub-section (1A) which would apply to the company has been brought to the notice of this Court. Even assuming that there was no such notification, by the Amendment Act, 1982, with effect from August 21, 1984, the requirement of not less than three hundred workmen was substituted by a requirement of not less than one hundred workmen. Thus, at the date of closure, which is the material date for the purposes of this Appeal, section 25K as amended by the Amendment Act, 1982, was in force and was applicable to the Company along with section 25-O as substituted by the Amendment Act, 1982. The parties have also gone to trial on the footing that the requirement under section 25-K was "not of less than one hundred workmen".

The Trombay factory of the Company carries on the work of manufacturing and processing dyes. It is not disputed that the Trombay factory is an industry within the meaning of that term as defined in clause (j) of section 2 of the Industrial Disputes Act. It is also not disputed that the Trombay factory is a factory as defined by clause (m) of section 2 of the Factories Act and is, therefore, an industrial establishment within the meaning of that expression as defined in section 25L of the Industrial Disputes Act. What was, however, disputed was that the Trombay Factory is an industrial establishment to which Chapter V-B applies because at no time did it employ one hundred workmen. It was also disputed that the Churchgate Division of the Company was an undertaking of an industrial establishment inasmuch as the Chruchgate Division was not a factory within the meaning of clause (m) of the Factories Act. The Company's contentions in that behalf found favour with the Industrial Court.

It is not possible to accept the above conclusions reached by the Industrial Court. Clause (m) of section 2 of the Factories Act, 1948, defines the term "factory" as follows:

"(m) 'factory' means any premises including the precincts thereof -

(i) whereon ten or more workers are working, or Were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, -

but does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952), or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place;

Explanation. - For computing the number of workers for the purposes of this clause all the workers in different relays in a day shall be taken into account."

The first thing to notice about clause (m) of section 2 of the Factories Act is that it defines a "Factory" as meaning "any premises including the precincts thereof" and it does not define it as meaning "any one premises including the precincts thereof". Under this definition, therefore, it is not required that the industrial establishment must be situate in any one premises only. The second thing to notice about clause (m) is that the premises must be such as in any part thereof a manufacturing process is being carried on. The expression "manufacturing process" is defined in clause (k) of section 2 of the Factories Act. The said clause (k) is as follows :

"(k) 'Manufacturing process' means any process for

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(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance, or

(iii) generating, transforming or transmitting power, or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding ; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels ; or

(vi) preserving or storing any article in cold storage".

(Emphasis supplied) Thus, the different processes set out in sub-clause (i) of clause (k) of section 2 must be with a view to the use, sale, manufactured.

In the modern industrial world it is often not possible for all processes which ultimately result in the finished product to be carried out at one place and by reason of the complexity and number of such processes and the acute shortage of accommodation in many cities, several of these processes are often carried out in different buildings situate at different places. Further, in many cases these functions are distributed amongst different departments and divisions of a factory and such departments and divisions are housed in different buildings. That a factory can be housed in more than one building is also clear from section 4 of the Factories Act which provides as follows :

> "4. Power to declare different departments to be separate factories or two or more factories to be a single factory. -
>
> The State Government may, on an application made in this behalf by an occupier, direct, by an order in writing, that for all or any of the purposes of this Act different departments or branches of a factory of the occupier specified in the application shall be treated as separate factories or that two or more factories of the occupier specified in the application shall be treated as a single factory."

Section 25L is not the only section in the Industrial Disputes Act in which the expression "industrial establishment" is defined. This expression is also defined in the Explanation to section 25A in terms identical with clause (a) of section 25L. While the definition given in section 25L is for the purposes of Chapter V-B, the definition given in the Explanation to section 25A is for the purposes of sections 25A, 25C, 25D and 25E. Under section 25C, if a workman in an industrial establishment has been laid off, subject to the other conditions set out in that section being satisfied, such workman is entitled to compensation as specified in that section. Under section 25E, no compensation is to be paid to a workman who has been laid off inter alia "if such laying-off is due to a strike or slowing down of production on the part of the workman in another part of the establishment", this particular provision being contained in clause (iii) of section 25E. The meaning of the expression "another part of the establishment" occurring in clause (iii) of section 25E fell to be interpreted by this Court in The Associated Cement Companies Limited, Chaibasa Cement Works, Jhinkpani v. Their Workmen, [1960] 1 S.C.R. 703; s.c. [1960] 1 Lab. L.J. 497. The facts of that case were that the appellant company owned a factory which was situate in the State of Bihar. It also owned a limestone quarry which was situate about a mile and a half from the factory. Limestone being the principal raw material for the manufacture of cement, the factory depended exclusively for the supply of limestone on the said quarry. On behalf of the labourers in the limestone quarry certain demands were made on the management of the company but as they were rejected the labourers went on strike; and on account of the non-supply of limestone due to the strike the management had to close down certain sections of the factory and to lay-off the workers not required during the period of closure of the sections concerned. Subsequently, after the dispute between the management and the workers of the limestone quarry was settled and the strike came to an end, a demand was made on behalf of the workers of the factory who had been laid-off during the strike, for payment of lay- off compensation under section 25-C of the Industrial Disputes Act, but the management refused the demand relying

on clause (iii) of section 25E. The Industrial Tribunal took the view that the limestone quarry was not part of the establishment of the cement factory and that the workmen in the factory were not disentitled to lay-off compensation by reason of clause (iii) of section 25E. The company's appeal was allowed by this Court. On behalf of the workmen the Explanation to section 25A was relied upon. With reference to the said Explanation, this Court said (at pages 715-16) :

> "The Explanation only gives the meaning of the expression 'industrial establishment' for certain sections of the Act; it does not purport to lay down any test as to what constitutes one 'establishment'. Let us take, for example, a factory which has different departments in which manufacturing processes are carried on with the aid of power. Each department, if it employs ten or more workmen, is a factory within the meaning of cl.(m) of s.2 of the Factories Act, 1948; so is the entire factory where 1,000 workmen may be employed. The Explanation merely states that an undertaking of the nature of a factory as defined in cl.(m) of s.2 of the Factories Act, 1948, is an industrial establishment. It has no bearing on the question if in the example taken, the factory as a whole or each department thereof should be treated as one establishment. That question must be determined on other considerations, because the Explanation does not deal with the question of one establishment. In our view, the true scope and effect of the Explanation is that it explains what categories, factory, mine or plantation, come within the meaning of the expression 'industrial establishment'; it does not deal with the question as to what constitutes one establishment and lays down no tests for determining that question."

Section 25-0 applies to the closure of "an undertaking of an industrial establishment" and not to the closure of "an industrial establishment". Section 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". Section 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, sections 25FF, 25FFA and 25FFF, is not defined anywhere in the Act. Even the new clause (ka) which was inserted in section 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 clause (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 a 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 section 25FFF fell for interpretation by this Court in Management of Hindustan Steel Limited v. The Workmen & Ors., [1973] 3 S.C.R. 303. 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 Company Limited v. M/s. Straw Board Manufacturing Company Limited, [1974] 3 S.C.R. 703, 719.

It is thus clear that the word "undertaking" in the expressions "an undertaking of an industrial establishment"

> in section 25-0 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, section 25-O 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's Case. The relevant passage is as follows :
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> "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, I 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 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; and in still another case, 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." E These

tests have been accepted and applied by this Court in different cases, for instance, in South India Millowners" Association and Ors. v. Coimbatore District Textile Workers' Union & Ors., [1962] 1 Lab. L.J. 223 S.C., Western India Match Co. Ltd. v. Their Workmen, [1964] 3 S.C.R. 560; s.c. [1963] 2 Lab. L.J. 459 and Workmen of the Straw Board Manufacturing Company Limited v. M/s. Straw Board Manufacturing Company Limited. In Western India Match Company's case the Court held on the facts that there was functional integrality and interdependence or 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. In the Straw Board Manufacturing Company's case the Court held (at page 713) :

"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 integrality will assume an added significance in a case of closure of a branch or unit."

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 the Churchgate Division and at 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 a 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 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 forcast 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, rain coats 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.

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 decisions with regard to the workload, assignment 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. me 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. m e 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 applied was section 25-O and not section 25FFA.

The next contention raised on behalf of the Company was that the Trombay factory was registered under the Factories Act while the Churchgate Division was registered as a commercial establishment under the Bombay Shops and Establishments Act and, therefore, they could not be treated as one. According to the Industrial Court, this fact of registration under two different Acts constituted the Trombay factory and the Churchgate Division into two separate legal entities. It is as difficult to follow this contention of the Company as it is to understand the conclusion reached by the Industrial Court. Merely because registration is required to be obtained under a particular statute, it does not make the business or undertaking or industry so registered a separate legal entity except where a registration of incorporation is obtained under the Companies Act. m e Factories Act and the Bombay Shops and Establishments Act are regulatory statutes and the registration under both these Acts is compulsory for providing certain benefits to the workmen employed in the factory or the establishment, as the case may be. What was, however, relied upon was the definition of "commercial establishment" given in clause (4) of section 2 of the Bombay Shops and Establishments Act. me said clause (4) is as follows :

> "(4) 'Commercial establishment' means an establishment which carries on, any business, trade or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession and includes establishment of any legal practitioner, medical practitioner, architect, engineer, accountant, tax consultant or any other technical or professional consultant and also includes a society registered under the Societies Registration Act, 1860, and a charitable or other trust, whether registered or not, which carries on whether for purposes of gain or not, any business, trade or profession or work in connection with or incidental or ancillary thereto but does not include a factory, shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment.

(Emphasis supplied.) Clause (9) of section 2 of the said Act defines "factory" as meaning "any premises which is a factory within the meaning of clause (m) of section 2 of the Factories Act, 1948, or which is deemed to be a factory under section 85 of the said Act". The definition of "Commercial establishment" in clause (4) of section 2 clearly shows that a commercial establishment is one of the categories of "establishment".

> "Establishment" is separately defined in clause (8) of section 2 as follows :
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> "(8) 'Establishment' means a shop, commercial establishment, residential hotel, restaurant, eating house, theatre, or other place of public amusement or entertainment to which this Act applies and includes such other establishment as the

> State Government may, by notification in the Official Gazette, declare to be an establishment for the purposes of this Act".

It will be noticed that the word "factory" does not occur in the definition of "establishment" while a factory is expressly excluded from the definition of "commercial establishment". The reason is obvious. mere are separate Chapters in the Bombay Shops and Establishment Act which provide for various matters such as opening and closing hours, daily and weekly hours of work, interval for rest, holidays in a week, etc., in respect of different categories of establishment, such as shops and commercial establishments, residential hotels and restaurants and eating houses and theatres or other places of public amusement or entertainment. Under section 7(1) of the said Act, the employer of every establishment is to send to the Inspector of the local area concerned a statement in a prescribed form together with the prescribed fees containing various particulars including "the category of the establishment, i.e., whether it is a shop, commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment". On receipt of such statement and the fees the Inspector, if satisfied about the correctness of the statement, is to register the establishment in the Register of Establishments. The form of the Register of Establishments is given in Form appended to the Maharashtra Shops and Establishments Rules, 1961, made under section 67 of the Bombay shops and Establishments Act. m is Form shows that the Register is divided into five parts. Part I consists of shops; Part II consists of commercial establishments; Part III consists of residential hotels; Part IV consists of restaurants and eating houses; and Part V consists of theatres and other places of Public amusement or entertainment.

A factory as defined in clause (m) of section 2 of the Factories Act is excluded from the definition of "commercial establishment" contained in clause (4) of section 2 of the Bombay Shops and Establishments Act, and is not mentioned in the list of establishments set out in the definition of "establishment" given in clause (8) of section 2 of the said Act because various matters in respect of which provision is made under the said Act are also provided for in the Factories Act. There is, however, nothing to prevent the State Government from declaring, under the latter part of clause (8) of section 2, a "factory" to be an establishment for the purposes of the Bombay Shops and Establishments Act.

Under section 4 of the Bombay Shops and Establishments Act, certain provisions of that Act set out in Schedule II to the said Act are not to apply to the establishments, employees and other persons mentioned in the said Schedule. Further, under section 4, the State Government has the power, by notification published in the Official Gazette, to add to, omit or alter any of the entries in Schedule II. Several of the entries set out in Schedule II show that a number of industrial establishments, using that expression in its ordinary sense, are covered by the term "establishment" such as, ice and ice-fruit manufacturing establishments (Entry 24); any establishment wherein a manufacturing process defined in clause (k) of section 2 of the Factories Act is carried on (Entry 34); dal manufacturing establishments (entry 46); establishments commonly known as general engineering works wherein the manufacturing process is carried on with the aid of power (Entry 54); such establishments manufacturing bricks as open earlier than 5.30 a.m. (Entry 96); establishment of Jayems Chemicals, Nashik Road, Deolali, Nashik (Entry 106); Biotech Laboratories, Poona (Entry 160); employees in Messrs. Manganese Ore (India) Ltd., Nagpur (Entry 183); employees in

tanneries and leather manufactory (Entry 187); ILAC Limited, Calico Chemicals Plastics and Fibres Division Premises, Anik Chembur, Bombay - 400074 (Entry 208); flour mills in Greater Bombay (Entry 220); and Trombay Thermal Power Station Construction Project, Unit 5, of the Tata Power Company Ltd., Bombay (Entry 243). It may be mentioned that while the laboratory of the Company was located in the Express Building before it was shifted to the Trombay factory, it was registered under the Bombay Shops and Establishments Act and not under the Factories Act.

The error made by the Industrial Court was in considering that an undertaking of an industrial establishment should itself be an industrial establishment, that is, a factory as defined in clause (m) of section 2 of the Factories Act. This supposition is not correct for, as already pointed out, there is no requirement contained in the Industrial Disputes Act that an undertaking of an industrial establishment should also be an industrial establishment.

The last contention on the merits which was raised on behalf of the Company was that though the Company might have acted in contravention of the provisions of section 25-0 of the Industrial Disputes Act, it nonetheless would not amount to a failure to implement the Settlement dated February 1, 1979, entered into between the Company and the Union and, therefore, the act of closing down the Churchgate Division was not an unfair labour practice under section 28 of the Maharashtra Act read with Item No. 9 of Schedule IV to the said Act. This contention too found favour with the Industrial Court. For reaching the conclusion that the closing down of the Churchgate Division was not an act of unfair labour practice on the part of the Company, the Industrial Court relied upon the decision of a learned Single Judge of the Bombay High Court in the case of Maharashtra General Kamgar Union v. Glass-Containers Pvt. Ltd. and another. The relevant passage in that judgment is as follows (at page 331) :

> "It is difficult to accept the submission made on behalf of the Union that non-compliance with any statutory provisions such as s.25-FFA must be regarded as failure by the employer to implement an award, settlement or agreement. The position might be different in relation to certain statutory provisions which are declared to hold the field until replaced by specific provisions applicable to certain specific undertakings. For example, the Model Standing Orders may govern a particular employer and his workmen till repulsed or substituted by certified Standing Orders specially framed for that employer and approved in the manner provided under the statute or the rules. This would not imply that provisions such as those contained in s. 25FFA or s. 25-FFF of the Industrial Disputes Act can be held or deemed to be a part of the contract of employment of every employee. Any such interpretation would be stretching the language of item 9 to an extent which is not justified by the language thereof".

It is not possible to accept as correct the view taken in the said case. It is an implied condition of every agreement, including a settlement, that the parties thereto will act in conformity with the law. Such a provision is not required to be expressly stated in any contract. If the services of a workman are terminated in violation of any of the provisions of the Industrial Disputes Act, such termination is unlawful and ineffective and the workman would ordinarily be entitled to reinstatement and

payment of full back wages. In the present case, there was a Settlement arrived at between the Company and the Union under which certain wages were to be paid by the Company to its workmen. The Company failed to pay such wages from September 18, 1984, to the eighty-four workmen whose services were terminated on the ground that it had closed down its Churchgate Division. As already held, the closing down of the Churchgate Division was illegal as it was in contravention of the provisions of section 25-0 of the Industrial Disputes Act. Under sub-section (6) of section 25-0, where no application for permission under sub-section (1) of section 25-0 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 eigty-four workmen were, therefore, in law entitled to receive from September 18, 1984, onwards their salary and all other benefits payable to them under the Settlement dated February 1, 1979. These not having been paid to them, there was a failure on the part of the Company to implement the said Settlement and consequently the Company was guilty of the unfair labour practice specified in Item 9 of Schedule IV to the Maharashtra Act, and the Union was justified in filing the Complaint under section 28 of the Maharashtra Act complaining of such unfair labour practice.

It was lastly submitted that several employees must have taken up alternative employment during the intervening period between the date of the closure of the Churchgate Division and the hearing of this Appeal and an inquiry, therefore, should be directed to be made into the amounts received by them from such alternative employment so as to set off the amounts so received against the back wages and future salary payable to them. It is difficult to see why these eithty-four workmen should be put to further harrassment for the wrongful act of the Company. It is possible that rather than starve while awaiting the final decision on their complaint some of these workmen may have taken alternative employment. The period which has elapsed is, however, too short for the moneys received by such workmen from the alternative employment taken by them to aggregate to any sizeable amount, and it would be fair to let the workmen retain such amount by way of solatium for the shock of having their services terminated, the anxiety and agony caused thereby, and the endeavours, perhaps often fruitless, to find alternative employment.

It was also submitted that most of the workmen have already accepted the retrenchment compensation offered by the Company and cannot receive full back wages or future salary until the amount of such compensation received by them is adjusted. Learned Counsel for the Union has very fairly conceded that the workmen cannot retain the retrenchment compensation and also claim full back wages as also future salary in full and that the amount of retrenchment compensation received by the workmen should be adjusted against the back wages and future salary. There would be no difficulty in adjusting the amount of back wages against the amount of retrenchment compensation received by the concerned workmen but if thereafter there is still any balance of retrenchment compensation remaining to be adjusted, it would be too harsh to direct that such workmen should continue in service and work for the Company without receiving any salary until the balance of the retrenchment compensation stands fully adjusted; and, therefore, so far as future salary is concerned, only a part of it can be directed to be adjusted against the balance of the retrenchment compensation, provided there is any such balance left after setting off the back wages.

In the result, this Appeal must succeed and is allowed and the order dated July 26, 1985, passed by the Industrial Court, Maharashtra, Bombay, dismissing the Complaint (ULP) No. 1273 of 1984 filed by the Appellant Union against the Respondents is set aside and the said Complaint is allowed and it is declared that the closure of the Churchgate Division of S.G. Chemicals and Dyes Trading Limited was illegal and the workmen whose services were terminated on account of such illegal closure continued and are continuing in the employment of the Company on and from September 18, 1984, and are entitled to receive from the Company their full salary and all other benefits under the Settlement dated February 1, 1979, entered into between the Company and the Appellant Union, from September 18, 1984, until today and thereafter regularly until their services are lawfully terminated according to law. If any workman whose services were purported to be terminated by the closing down of the Churchgate Division of the Company has received retrenchment compensation from the Company, the amount of back wages will be set off against such retrenchment compensation and if after such setting off any balance of retrenchment compensation still remains, it will be adjusted by deducting twenty per cent from the periodic salary payable to such workmen.

The Respondent Company will pay to the Appellant Union the costs of this Appeal.

P.S.S. Appeal allowed.