

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2554 OF 2013

Association of Engineering Workers
Shri. Sai Datta Krupa, Janata Colony
Building no.5, Ram Narayan Narkar
Marg, Ghatkopar (East),
Mumbai-400 077.

.... Petitioner

: Versus :

1. The State of Maharashtra
Through: The Secretary to
The Government, Labour
Department, Mantralaya,
Mumbai-400 032.

2. Shri. S.K. Gawade,
Deputy Secretary, Labour
Department, Government of
Maharashtra, Mantralaya,
Mumbai-400 032.

3. The Commissioner of Labour
Maharashtra, Kamgar Bhavan,
Bandra Kurla Complex, Bandra
(East), Mumbai-400 051.

4. Wheelabrator Alloy Castings Ltd
Near Mangatram Petrol Pump,
L.B.S. Road, Bhandup (West),
Mumbai-400 078.

5. Neosym Industries Ltd.
(formerly known as Indian
Smelting and Refining Company
Ltd.,)near Mangatram Petrol
Pump, L.B.S. Road, Bhandup
(West), Mumbai-400 078.

6. Sarvashramik Sangh,
Neelkanth Apartments, Ground
Floor, Opp. Dr. Bhadkamkar
Hospital, Mahagiri, Thane-400 601

.... Respondents

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Mr. N.M. Ganguli a/w. Ms. Karuna Yadav, Advocate for the petitioner.

Mr. J.S. Saluja, AGP for respondents no.1 to 3.

Mrs. N.R. Patankar a/w. Mr. Prabhakar Jadhav, Mr. V.P. Sawant
Advocate for respondent no.4.

Mr. R.S. Pai a/w. Mr. Hemant Telkar i/by. Haresh Mehta and Co.,
Advocate for respondent no.5.

ALONGWITH
WRIT PETITION NO. 1178 OF 2014

Association of Engineering Workers
Shri. Sai Datta Krupa, Janata Colony
Building no.5, Ram Narayan Narkar
Marg, Ghatkopar (East),
Mumbai-400 077.

.... Petitioner

: Versus :

1. The State of Maharashtra
Through: The Secretary to
The Government, Labour
Department, Mantralaya,
Mumbai-400 032.
2. Hon'ble Labour Minister,
Govt. of Maharashtra,
Mantralaya, Mumbai-400 032.
3. Shri. S.K. Gawade,
Deputy Secretary, Labour
Department, Government of
Maharashtra, Mantralaya,
Mumbai-400 032.
4. Shri. D.B. Rajput,
Deputy Secretary,
Labour Department, Government
of Maharashtra, Mantralaya,
Mumbai-400 032.
5. The Commissioner of Labour
Maharashtra, Kamgar Bhavan,
Bandra Kurla Complex, Bandra
(East), Mumbai-400 051.
6. Wheelabrator Alloy Castings Ltd
Near Mangatram Petrol Pump,
L.B.S. Road, Bhandup (West),
Mumbai-400 078.
7. Neosym Industries Ltd.

(formerly known as Indian
Smelting and Refining Company
Ltd.,)near Mangatram Petrol
Pump, L.B.S. Road, Bhandup
(West), Mumbai-400 078.

8. Sarvashramik Sangh,
Neelkanth Apartments, Ground
Floor, Opp. Dr. Bhadkamkar
Hospital, Mahagiri, Thane-400 601

.... Respondents

Mr. N.M. Ganguli a/w. Ms. Karuna Yadav, Advocate for the petitioner.

Mr. J.S. Saluja, AGP for respondents no.1 to 5.

Mrs. N.R. Patankar a/w. Mr. Prabhakar Jadhav and Mr. V.P. Sawant,
Advocate for respondent no.6.

Mr. R.S. Pai a/w. Mr. Hemant Telkar i/by. Haresh Mehta and Co.,
Advocate, for respondent no.8.

Coram : **Smt. R.P. SondurBaldota, J.**

Judg. Resd on : **2nd December, 2014.**

Judg. Pron.on : **6th May, 2015.**

JUDGMENT :

1 This is a common order on the above two petitions

between the same parties. The first petition challenges the order dtd.11th July, 2013 passed by the State of Maharashtra on the application filed by respondent no.4 under Section 25-O(1) of the Industrial Disputes Act (“I.D. Act” for short). The second petition challenges the order dtd. 4th March, 2014 by the very authority on the application for review under Section 25-O(5) of the I.D. Act. The order impugned in the first petition grants permission to respondent no.4 to close its Plant at Bhandup (W) whereas order impugned in the second petition dismisses the application filed by the petitioner under Section 25-O (5) of the I.D. Act for review of the order of closure.

2 The petitioner is an unrecognised union, which claims to represent the employees of respondent no.4- Company. Respondent no.1 is the State of Maharashtra and respondents no. 2 and 3 are it's officers. Respondent no.5 is another Company and respondent no.6 is the recognised union.

3 The factual matrix of the case stated in brief is as follows:

Pursuant to the deed of Transfer of Undertaking dtd. 1st August, 2012 executed between respondent no.4 and respondent no.5 (formerly known as “Indian Smelting and Refining Company Limited”), the ownership and business of unit of erstwhile Indian Smelting and Refining Company Limited, Bhandup (Rolling and

Smelting activities) came to be transferred to respondent no.4. As a result of transfer, the workmen and staff members (excluding three management staff) employed by the transferee Company became employees of respondent no.4 w.e.f. 1st August, 2012 in accordance with Section 25(FF) of I.D. Act. After the transfer, the union recognised in the Company of respondent no.4 i.e. respondent no.6 filed Complaint (ULP) No.356 of 2012 against respondent no.4 making certain grievances pertaining to the transfer of the factory and work and Complaint (ULP) No.495 of 2012 in respect of transfer of the staff members. It had applied for certain interim reliefs. The Industrial Court rejected the application for interim reliefs which order was challenged by filing Writ Petition No.90 of 2013 in this Court.

4). During pendency of the litigation, the parties entered into negotiations for settlement. It was realised that due to various reasons and handicaps, it was virtually unviable to continue any activity in Bhandup Establishment. Therefore, an overall settlement of all the workmen was considered by introducing Voluntary Retirement Scheme. As a result, settlement dated 17th May, 2013, under Section 2(p) of the Industrial Disputes Act was signed between respondent no.4 and respondent no.6. Under the settlement, Voluntary Retirement Scheme of 2013 was introduced to all the workmen and staff members. Out of total strength of 419 workmen and staff

members, 283 opted for voluntary retirement, leaving only 36 workmen / staff members. Thereafter, respondent no.4 filed application for closure of the company. Notice of the application was served upon respondent no.6 as the recognized union. A copy of the notice was also pasted in the factory premises and also on the main gate of the factory premises. The recognized union appeared before the concerned authority. During pendency of the application, even the balance 36 workmen eventually opted for VRS and their employment with respondent no.4 came to an end w.e.f. 30th June, 2013. Accordingly, respondent no.4 amended its closure application on 1st July, 2013. Respondent no.6, also addressed letter dated 3rd July, 2013 to the Appropriate Government giving its "No Objection" for grant of permission for closure. Thereafter, the order dated 11th July, 2013 for closure was issued by the Appropriate Government.

5). The petitioner undisputedly is an unrecognized union. It alleges that the entire action as regards the closure of the Company was taken by respondent no.4 by keeping it in the dark. The petitioner claims to have learnt about the application for closure and the order passed thereon, through application made by it under the Right to Information Act. Then, on 13th August, 2013 it filed application for review of the order under Section 25-O(5) of the Industrial Disputes Act. That was also dismissed. According to the petitioner, closure of the business and consequent sale of the property by respondent no.4

required approval from the shareholders under Section 291(1) of the Indian Companies Act. It contends that, the grounds for closure of the Undertaking set out by respondent no.4 were not adequate or sufficient. According to it, if the existing employees left the organization, respondent no.4 could have recruited fresh hands who are amply available in the employment market on account of large scale unemployment in the city of Mumbai and continued with its activity. It is also the case of the petitioner that, respondent no.4 ought to have given notice of change under Section 9A of the Industrial Disputes Act, before entering into any agreement of settlement with the recognized Union. The petitioner alleges that, the financial statements submitted by respondent no.4 alongwith its application for permission for closure were incomplete and did not reveal the true picture. Further, respondent no.4 has not taken the steps required to be taken by it to overcome the obstacles in running its plant.

6). Mr. Ganguly, the learned Advocate appearing for the petitioner submits, relying upon the decision of this Court in **Association of Engineering Workers v. Multiweld Wire Co. Pvt. Ltd and Ors. reported in II CLR page 205**, that closure of an Undertaking is not to be permitted recklessly or for inadequate or insufficient reasons. The authority has to note that, closure would not be prejudicial to the interest of the general public. The authority

concerned must examine the statement of reasons given by the employer for closing down of the Undertaking. The reasons for closure must disclose the factual data upon which the employer has taken the decision of closing the Undertaking. The source of such factual data must be indicated and, where possible, annexed so that its correctness is verifiable. There can be no dispute with the proposition canvassed by Mr. Ganguly. However, there is nothing on record to indicate that the order of closure has been passed recklessly without reference to the record submitted. There is also nothing to indicate that prejudice of any nature is caused to the general public by the order of the Collector.

7). There is no substance in any of the challenges by the petitioner to the order of the appropriate authority granting permission to respondent no.4 to close its Undertaking at Bhandup factory. Respondent no.6, the authorized Union has exclusive locus-standi to represent the workmen in the matters of collective nature. The petitioner, not being the recognized Union, had no locus-standi in the matter. Secondly, the Tribunal had taken into consideration not just the financial status of the Company, but also the settlement arrived at with the recognized Union. The record shows that, every workman has accepted the VRS. The appropriate authority therefore found it reasonable to grant the application of respondent no.4. There is no

infirmity whatsoever with this order by the appropriate Government. Perusal of the order reveals due application of mind to all the relevant facts by the appropriate authority. Since the factory was to be closed down, there was no question of giving notice of change under Section 9A of the I.D. Act. There can also be no question of compelling respondent no.4 to carry on its activities by employing fresh labour.

8). Since the order dated 11th July, 2013 is found to be a correct and proper order, there was no scope for its review and the application by the petitioner for review was rightly rejected. The petitions are therefore dismissed.

(SMT. R.P SONDURBALDOTA, J)

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