

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 3133 OF 1995

Ashish Gram Rachna Trust
Karmachari Union, Pachod,
through its President.
Shri M. P. Taksal.

... **PETITIONER**

VERSUS

1. Ashish Gram Rachna Trust,
through its Managing Trustee,
C/o. Institute of Management
of Health, Pachod, Tq. Paithan,
District – Aurangabad.

... **RESPONDENT**

2. The Member, Industrial Court,
Aurangabad.

(Deleted as per Court's
order dated 5/7/95)

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Mr. A. S. Shelke, Advocate h/f Mr. S. K. Shelke.

Mr. P. R. Pawar, Advocate for Respondent No.1.

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CORAM : **P. R. BORA, J.**

DATE : 28th June, 2016.

ORAL JUDGMENT:

. The judgment dated 7th April, 1995 delivered by the
Member Industrial Court, Aurangabad in Complaint (ULP) No.143 of

1994 is assailed in the present petition. The aforesaid complaint was filed by the Petitioner Union under Section 28(1) read with Items 1(a) (b)(c), Items 4(a)(f) of Scheduled II and Items 7, 9 and 10 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971.

2 The workers who were the members of the Petitioner Union, were employed by Respondent No.1 for carrying out its project known as Comprehensive Health and Development Project (hereinafter referred to as "CHDP"). Respondent No.1 closed down the aforesaid project with effect from 1st October, 1993. Before effecting the closure, notice dated 31st July, 1993 was given to the employees working in the said project declaring the intention of closing down the said project and the compensation in accordance with the provisions of Section 25-F was paid to the employees of the said project. It was the grievance of the Petitioner Union that Respondent No.1 was carrying out total six projects having more than 100 employees employed in total in all these projects and that there was functional integrity in the activities and the work of all these six projects. It was, therefore, the contention of the Petitioner Union that even if a decision was taken to close down the CHDP unit, the workers employed by Respondent No.1 in the said unit, must have

been absorbed by Respondent No.1 in their other units. It was the further contention of the Petitioner Union that since more than 100 employees were working under Respondent No.1, the provisions under Chapter V-B of the Industrial Disputes Act were applicable and the same ought to have been complied with. According to the Union, since there was no compliance of the said provisions, the closure was illegal and the action of Respondent No.1 of closing the CHDP project was liable to be quashed and set aside. Consequently the workers working in the said unit were liable to be reinstated with Respondent No.1.

3 As against the aforesaid contentions raised by the Petitioner Union, it was the specific case pleaded by Respondent No.1 that CHDP project was entirely funded by International Funding Agency known as "ICCO" and since said Agency stopped funding to CHDP project, there was no option before Respondent No.1, but to close down the said project. It was further contended that the entire procedure was scrupulously followed by Respondent No.1 while effecting closure of CHDP unit. Respondent No.1 has denied that other units run by said Trust have any functional integrity with CHDP project. It was the contention of Respondent No.1 that CHDP project

was an independent project, not having any nexus with other activities of the Trust carried out by their different units.

4 The learned Industrial Court after having assessed the oral and documentary evidence brought before it dismissed the complaint vide the impugned judgment.

5 Shri Shelke, the learned counsel for the Petitioner Union has assailed the impugned judgment on various grounds. The learned counsel submitted that the finding recorded by the Industrial Court as about the issue raised by the Petitioner Union about the functional integrity between different projects run by Respondent No.1 Trust has not been properly addressed to by the Court. It was further argued that the Industrial Court has also failed in considering that when the only reason cited by the Respondent No.1 for closing down the CHDP project was financial difficulty in view of the specific provisions in Section 25-FFF, the said contention should not have been accepted by the Court. The learned counsel further sought to canvass that sufficient evidence was put before the Industrial Court so as to show that all the units run by Respondent No.1 Trust were inter-dependent. The learned counsel submitted that the evidence on

record shows that the Multi-Purpose Workers working under the CHDP were working for the Navjeevan Rugnalaya, which is being run by Respondent No.1 Trust. The learned counsel submitted that enough evidence has come on record showing that while carrying out the field work the MPW workers under the CHDP were directing the patients only to Navjeevan Rugnalaya. It was therefore, the contention of the learned counsel that there was functional integrity between the work carried out in the project of CHDP and Navjeevan Rugnalaya. The learned counsel contended that if number of employees employed in Navjeevan Hospital and CHDP project is considered together, the number exceeds to 100 employees and as such the closure so effected without following the procedure provided under Chapter V-B of the Industrial Disputes Act was required to be declared illegal. The learned counsel, therefore, prayed for setting aside the impugned judgment and order.

6 The learned counsel appearing for Respondent No.1 supported the impugned judgment. The learned counsel pointed out the discussion made by the Industrial Tribunal while deciding the Issue No.3 and submitted that the facts, which were brought on record and the evidence, which was adduced by the parties, has been

properly appreciated by the Industrial Court and a clear finding has been recorded, thereafter, that the Union has failed in establishing that there was functional integrity between the activities being carried out by the different units run by Respondent No.1 Trust. The learned counsel further submitted that the services of the employees employed in the CHDP project were not transferable and in fact during the entire course of their service they were not transferred to any other unit or were not asked to carry out any work in any other unit even for the shorter period. The learned counsel inviting my attention to the letter received to Respondent No.1 Trust from the International Funding Agency "ICCO" submitted that since the sole funding agency has stopped funding to the CHDP project, there was no other option before Respondent No.1 except to close down the said project. The learned counsel submitted that the entire procedure prescribed for closing down the undertaking was scrupulously followed before closing down the unit. The learned counsel submitted that a clear 60 days prior notice was issued to the employees working in CHDP unit and the compensation was paid to all of them as provided under Section 25-F of the Industrial Disputes Act. The learned counsel submitted that no interference is required in the order passed by the

Industrial Court and therefore, prayed for dismissal of the petition.

7 After having carefully considered the submissions advanced by the learned counsel appearing for the respective parties and on perusal of the impugned judgment, it does not appear to me that any error has been committed by the learned Industrial Court in dismissing the complaint filed by the Petitioner Union. From the evidence on record, which has been properly discussed by the Industrial Court, it appears that the Petitioner Union has failed in bringing on record any evidence so as to draw a conclusion that other units run by Respondent No.1 Trust were having nexus with each other or their activities were inter-dependending or there was any functional integrity in the work being carried out in those units. The learned Industrial Court has rightly observed that nothing has been brought on record to show that the employees from one unit were transferred to other unit or that they were asked to work even for a short period in other unit. The Industrial Court has further elaborately discussed as to how the provisions of Chapter V-B of the Industrial Disputes Act could not have been applied in the present case. After having considered the evidence on record and on perusal of the relevant provisions of law, it does not appear to me that any error has

been committed by the Industrial Court in recording such finding.

8 An attempt was made by the learned counsel for the Petitioner to submit that since the CHDP project was closed down for the sole ground of financial difficulty, the provisions of Section 25-FFF were applicable and since the said provisions have not been followed, the closure is liable to be declared as illegal. I have carefully perused the provisions of Section 25-FFF. There is no such restriction as has been argued by the learned counsel. Sub-section (1) of Section 25-FFF clearly provides that undertaking can be closed down for any reason whatsoever subject to compliance to be made under Section 25-F. Proviso to sub-Section (1) of Section 25-FFF provides that where is the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of Section 25-F shall not exceed his average pay for three months. Explanation to the said proviso says that an undertaking which is closed down merely because of financial difficulties shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of employer. In the instant case, admittedly, the compensation is paid in accordance with the provisions of Section 25-F and as such there is

no question of taking into account the provisions incorporated in Section 25-FFF.

9 After having considered the entire material on record, I do not find any reason to interfere in the order so passed. The writ petition is devoid of any substance and deserves to be dismissed. It is accordingly dismissed. Rule discharged.

[P. R. BORA, J.]

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