

BDPPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1588 OF 2013**

M/s. Standard Mills)
Textile Division of Standard Industries Ltd.)
being a company incorporated under)
Companies act, 1956 having its office at)
59, "The Arcade", First Floor, World Trade)
Centre, Cuffe Parade, Mumbai – 400005) Petitioner.

V/s

1. Shri Ashok Bhargav Jadhav)
2. Shri Mahadeo R. Toke)
3. Shri Satyawan Ganpati Joil)
4. Shri Dattatray Domodar Kalambekar)
5. Shri T. Murugan Nadar)
6. Shri Baburao Narayan Rawool)
7. Shri Vikas Waman Walawalkar)
8. Shri Chandrakant Bhisaji Gaokar)
9. Shri Narendra Chandra Mouji)
10. Shri Satyanarayan J. Pande)
All C/o. Shri Chandrakant B.)
Gaokar, 2/3 Ganesh Krupa)
Chawl, Ram Nagar Kandalkar)
Compound, Bhandup,)
Mumbai – 400 708)
11. Rashtriya Mill Mazdoor Sangh)
Mazdoor Manjil, Parel.)
Mumbai – 400 012)Respondents.

Mr. Sudhir Talsania, Senior Counsel with Mr. Vishal Talsania, Ms. Pooja Kothari i/b Federal & Rashmikant for the Petitioner.

Mr. Arshad Shaikh with Mr. Hemant Ingale for Respondent Nos. 1 to 9.

Mr. Satyanarayan J. Pande – Respondent No.10, party in person, present.

Mr. S. S. Pathak for Respondent No.11

**CORAM: V. M. KANADE &
REVATI MOHITE DERE, JJ.
RESERVED ON : 23/02/2016
PRONOUNCED ON : 09/06/2016**

JUDGMENT (Per V.M. Kanade, J.)

1. Heard.
2. Rule. Rule is made returnable forthwith. Respondents waive service. Matter is taken up for final hearing by consent of parties.
3. Petitioner – Company was in the Textile Industry for more than 100 years. At one time, it was operating four Mills in different parts of the Country. On account of various factors, from 1989 the Company started incurring heavy losses over a period of years. Petitioner, ultimately, had to dispose of its assets for generating funds for the operation of the Company. It was compelled to shut down two Mills which were situated outside Maharashtra. Thereafter, only two Mills in the city were operational, namely, at Sewree and at Prabhadevi. Petitioner – Company therefore had no other option but to file an

application under Section 250 of the Industrial Disputes Act (hereinafter referred to as “IDA”) for the closure of the Plant at Sewree. This application was filed on 21/09/1999. The matter was thereafter referred for adjudication. Petitioner thereafter made second application dated 06/11/2000 for closure of the Mill at Prabhadevi under Section 250 of the IDA.

4. Several efforts were made by the Company and by the Representative Union to workout a strategy to restructure and rationalize the activities of the Company. Finally, an agreement was executed between the Representative Union and the Company dated 23/11/2000 in which it was agreed (i) that the Company would offer VRS to all the employees and staff members of both the Mills, (ii) those workers who were not interested in accepting the VRS compensation, would be assigned to the Sewree Mill, (iii) the Company would be permitted to sell the unusable plant and machinery as well as land in order to raise funds to tide over the liquidity crunch faced by the Company and (iv) that the workmen had agreed to give their support and co-operation and they had agreed to accept any job which may be given to them at Sewree Mill.

5. The said Agreement was registered under the provisions of the Bombay Industrial Relations Act, 1946 (“BIR Act”) and registration certificate dated 23/02/2001 came to be issued.

6. In view of the agreement between the parties, References under Section 250 of the IDA made in respect of both, Sewree Mill and

Prabhadevi Mill were withdrawn.

7. Out of total number of 2115 employees employed in Prabhadevi Unit, 2105 employees accepted VRS compensation and left services of the Petitioner – Company and remaining 10 employees were assigned to Sewree Mill. So far as Sewree Mill is concerned, out of 1436 employees, 1366 employees accepted VRS compensation and left the services of the Petitioner – Company. Thus, only 70 employees from Sewree Mill remained on the pay-roll of the Company. Thus, total 80 (70 + 10) workmen remained on the pay-roll of the Company.

8. Some of the workmen filed Writ Petition No.1679 of 2001 challenging the registration of Agreement dated 23/11/2000. It was inter alia prayed that the Company should be restrained from shifting, dismantling, selling any machine/parts and from alienating its assets and for a direction to provide regular work to the workers. This Writ Petition, however, was dismissed.

9. Simultaneously, some of the workmen filed Complaint (ULP) No.1285 of 2000 under the provisions of ULP Act challenging the legality and validity of the Agreement dated 23/11/2000. Some other workmen also joined in the said complaint. Subsequently, the complaint was amended and even the closure of Sewree Unit was challenged. Interim relief was not granted by the Industrial Court.

10. In the meantime, however, several other events took place and it would be relevant to make a reference to these events which

transpired during pendency of the said Complaint (ULP) No.1285 of 2000.

11. The Company transferred remaining 10 employees of Prabhadevi Unit by Transfer Order dated 28/02/2001 to Sewree Unit as per terms and conditions of the Agreement dated 23/11/2000.

12. Transfer Orders were also challenged by Respondent Nos. 1 to 10 by filing Complaint (ULP) No.309 of 2001 before the Industrial Court and no interim relief was granted in the said complaint in favour of the workers.

13. According to the Company, they tried to restart the Unit. However, Respondent Nos. 1 to 10 did not cooperate and refused to carry out the job of oiling and cleaning of the machines which was assigned to them. According to the Company, they took various steps to restart the factory. However, on account of non-cooperation by the workers and in view of independent report received by the Company, they took a decision to close Sewree Mill permanently. Accordingly, the Company issued 60 days' notice on 01/02/2002 under section 25-FFA of the IDA to the Government of Maharashtra conveying its intention to close down Sewree Mill with effect from 05/04/2002. Similar notice was also given in respect of Prabhadevi Mill.

14. The third complaint was filed, challenging the closure notice dated 01/02/2002 by filing Complaint (ULP) No.267 of 2002 before the Industrial Court under Items 9 & 10 of Schedule IV of the ULP Act

on the ground that same was in violation of the Agreement dated 23/11/2000 and for non-compliance of the IDA and BIR Act. Petitioner – Company filed its Written Statement. Application was made by Respondent Nos. 1 to 10 for being impleaded in the complaint filed by the Representative Union.

15. The said application was allowed and all the workmen were impleaded in the complaint filed by the Representative Union. After being impleaded, Respondent Nos. 1 to 10 filed an additional affidavit by taking several additional grounds.

16. Application moved by the Representative Union seeking various interim reliefs was rejected by the Industrial Court by an order dated 23/03/2002 by passing a reasoned order. This order was challenged by the Union in the High Court in Writ Petition No.2101 of 2002. This Writ Petition, however, was dismissed in limine by an order dated 16/04/2002. This order was challenged in Appeal Nos.190 of 2002 and 191 of 2002 and these Appeals also came to be dismissed by an order dated 06/06/2002.

17. No stay was granted to the closure of Sewree Unit. The Company gave a notice informing all workmen that Sewree Mill will be closed from 20/02/2003.

18. Respondent Nos. 1 to 10 filed Contempt Petition No.36 of 2003 alleging that the said notice was in violation of the order dated 12/09/2001 passed in Writ Petition No.1279 of 2001. This Contempt

Petition was also dismissed by an order dated 10/04/2003.

19. In the meantime, Complaint (ULP) No.267 of 2002 filed by the Representative Union was partly allowed by an order dated 20/03/2003.

20. Respondent Nos. 1 to 10 filed Review Application No.14 of 2003 during pendency of the Complaint (ULP) No.267 of 2002, which was disposed of by an order dated 20/03/2002. During the pendency of the said complaint, Respondent Nos. 1 to 9 filed Complaint (ULP) No. 771 of 2002 on the same grounds which were agitated in Complaint (ULP) No.267 of 2002.

21. According to the Petitioner – Company, though dispute between the parties was finally concluded by an order dated 20/03/2003, the Complaint (ULP) No.1285 of 2000 challenging the Agreement dated 23/11/2000 and Complaint (ULP) No. 309 of 2001, challenging the Transfer Order dated 28/02/2001 and the Complaint (ULP) No.771 of 2002, challenging closure of the Sewree Mill were still pending in the Industrial Court.

22. In the year 2004, Respondent Nos. 5 to 10 made an application for being impleaded in Complaint (ULP) No.1285 of 2000, which was allowed. The Company amended its Written Statement to bring on record the subsequent events that have transpired after filing of the Complaint (ULP) No.1285 of 2000. Additional issues were framed regarding maintainability of the complaint.

23. All the three complaints were clubbed together and entire evidence led in Complaint (ULP) No.1285 of 2000 was treated as evidence in all the complaints.

24. Industrial Court allowed the said Complaint (ULP) No.1285 of 2000 by the impugned Order dated 20/03/2013. By the said order, it held as under:-

(i) Petitioner – Company was not guilty of the alleged violation of ID Act and BIR Act.

(ii) Agreement dated 23/11/2000 was valid and proper.

(iii) Transfer Order dated 28/02/2001 as well as closure of Sewree Mill were legal and proper.

(iv) Petitioner – Company had committed unfair labour practice under Items 9 and 10 of Schedule IV of the IDA and directed to continue Respondent Nos. 1 to 10 in their employment till their date of retirement.

25. Being aggrieved by the said Judgment and Order, Petitioner – Company has preferred this Writ Petition under Article 226 of the

Constitution of India.

26. Mr. Talsania, the learned Senior Counsel appearing on behalf of the Petitioner challenged the impugned order on the following grounds viz (i) the impugned order was ex facie perverse and completely unsustainable in law; (ii) that there was no breach of agreement dated 23/11/2000; (iii) that the impugned order was barred by principles of *res judicata* and the principles analogous to the principles of *res judicata*; and (iv) that the Petitioner had not committed any fraud on anybody while closing down the Mill or disposing of the lands as alleged. He has taken us through the impugned Judgment and Order and the various earlier orders which have been passed in Complaint (ULP) No.267 of 2002 which was disposed of by judgment and order dated 20/03/2003 as also judgment and orders passed by the High Court in various Petitions which were filed by the Respondents from time to time. He also invited our attention to the order of dismissal of Contempt Petition passed by this Court. In support of the said submission, he has argued in detail on each of these points. He submitted that therefore the impugned Judgment and Order was liable to be set aside since it was perverse and unsustainable.

27. On the other hand, Mr. Shaikh, the learned Counsel appearing on behalf of Respondent Nos. 1 to 9 and Mr. Pandey, who is appearing in person, submitted that the Company had agreed to pay salary to workers who had not accepted VRS till they attained the age of superannuation. Secondly, the Company also agreed not to

close down the Sewree Mill till then. However, the Company had played fraud on the workers by selling land of the Mill and by stopping payment of salary to the remaining workmen though they had expressly agreed to do so till the age of their superannuation. He contended that initially the Company had represented that they would not close down the Mill but, at the same time, they had represented to various authorities including the Urban Secretary that the factory has been closed down and on that basis obtained orders for sale of the factory. It was, therefore, contended that the Company had played fraud not only on the workers but also on all authorities including the High Court and only because of the representations made by them that the Mill would not be closed down, the Petitions filed by Respondent Nos. 1 to 10 were disposed of.

28. Mr. Shaikh, the learned Counsel appearing on behalf of Respondent Nos. 1 to 9 relied on the Judgment of the Apex Court in *Workmen Employed in Associated Rubber Ltd vs Associated Rubber Industry Ltd. & Anr.*¹ He also relied upon the Judgment of the Apex Court in *S.P. Chengalvaraya Naidu (dead) by L.Rs. vs. Jagannath (dead by L.Rs. and Others*²

29. In support of his submissions that the Petitioner – Company had committed fraud, Mr. Shaikh the learned Counsel for the Petitioner relied on number of documents which are annexed to Writ Petition No.2886 of 2015. He relied on following 16 documents.

1 AIR 1986 SC 1

2 AIR 1994 SC 853

(i) Notice of Change dated 14.11.2000 – Page 75 of Writ Petition No.2886 of 2015.

(ii) Agreement dated 23.11.2000 which is at Page 82.

(iii) Format of VRS which is at Page 94.

(iv) Company's Affidavit dated 14.12.2000 which is at Page 102. The reliance is on the portion where it is stated on Page 104 “Company shall abide by the same....”

(v) Copy of reply dated 30.04.2001 filed by the Company which is at Page 142.
The relevant portion being on Page 147.

(vi) Order of the Industrial Court dated 11.06.2001 in Complaint (ULP) No.1285 of 2000 which is at Page 159.
The relevant portion being on page 173.

(vii) Order below Exhibit U-2 dated 14.08.2001 in Complaint (ULP) No.309 of 2001 which is page 204.
The relevant portion being on Page 212.

(viii) Affidavit in reply dated 30.07.2001 in Writ Petition No.1679 of 2001 which is at page 221.

(ix) Order of the Learned Division Bench dated 12.09.2001 in Writ Petition No.1679 of 2001 which is at Page 245. The relevant portion being on page 251, 252, 254 and 255.

(x) Letter from the State Minister to Labour, Law and Judiciary dated 03.04.2002, the Marathi document at Page 296 and the English Translation

at Page 297.

(xi) Letter dated 08.04.2002 from the office of the Labour Commissioner, the Marathi document at Page 298 and the English Translation at Page 300.

(xii) Letter dated 20.06.2002 from the Ministry of State to Labour, Law and Judiciary, the Marathi document at Page 320 and the English Translation at Page 321.

(xiii) Letter dated 19/02/2003 to the Senior Inspector of Police which is at Page 327.

(xiv) Notice of closure of Sewree Textile Unit which is at Page 328.

(xv) The Order impugned herein dated 20.03.2013 in Complaint (ULP) Nos. 1285 of 2000, 309 of 2001 and 771 of 2002 which is at Page 348

(xvi) Order in Complaint (ULP) No. 267 of 2002 dated 20.03.2003 which is at page 333 of the Company's Petition .

(xvii) Copy of Letter of Intent dated 10.03.2004 between M/s Standard Industries Ltd and M/s Dosti Corporation.

(xviii) Letter dated 20.10.2001 from the Urban Development Department to the MD of Standard Industries Ltd.

He also submitted synopsis of arguments and further arguments relying on dates and documents which indicated the manner in which the workers and other authorities including the Courts were defrauded by the Company.

30. We have heard both the Counsels and Respondent No.10 – Mr. Satyanarayan J. Pande at great length.

31. After having heard all of them and after having gone through the orders passed by the Industrial Court as well as the other proceedings which were initiated at the instance of the Representative Union and also the agreement executed between the parties, we are of the view that there is much substance in the submissions made by the learned Senior Counsel appearing on behalf of the Petitioner. We have already narrated brief facts but for the purpose of giving our opinion on the submissions made, we are of the view that it will be necessary again to briefly refer to certain chronology of events.

32. It is not in dispute that the Company was suffering losses since 1982. It is also not in dispute that several efforts were made by the Company and the Representative Union to find out ways and means to restructure the activities of the Company. It is a matter of record that an agreement was executed between the Representative Union and the Company dated 23/11/2000. In the said agreement, four salient points which were agreed between the parties were (i) that the Company would offer VRS to all employees and staff members of both the Unions, (ii) those workers who were not interested in accepting VRS compensation would be assigned to Sewree Mill, (iii) Company would be permitted to sell unusable plant and machinery as well as land in order to raise funds to tide over liquidity crunch faced by the Company and (iv) workmen had agreed to give their support and

co-operation and had agreed to accept any job which may be given at Sewree Mill.

33. It is also not in dispute that the Union had filed complaint before the Industrial Court in which all allegations have been made by the Representative Union and in all those proceedings, contention of the workmen was not accepted by the Courts. Whereas, in the complaint filed by the Respondents herein i.e. in second round of litigation, Industrial Court, while giving finding in favour of all other points, has given a finding that the Company is liable to pay salary of these Respondents till they attain the age of superannuation.

34. The principal contention of the Respondents/workers is that the Petitioner – M/s Standard Mills had committed a fraud on the workmen by promising on the one hand that they would give salary and wages to the workmen who had not accepted VRS till they attain the age of superannuation by providing them work at Sewree Mill. On the other hand, the Company was constantly taking steps to close down the factory. The contention of the workmen is that the Petitioner – Company had obtained various orders from authorities and courts on the basis of misrepresentation that they propose to give work to workmen who were transferred to Sewree Mill by reviving management of the Company and at the same time, Company was taking steps for closure of the Mill and lastly that since solemn assurance was given in the agreement dated 23/11/2000 that the Petitioner – Company would pay the Respondents/workmen salary and wages till they attain the age of superannuation, it was not open

for the Petitioner – Company to resile from the said promise and pay VRS compensation to the Respondents/workmen.

35. In our view, the entire submission of the Respondents/workmen proceeds on the basis of the clauses in the agreement which show that the Petitioner – Company was paying wages and salary to the Respondents/workmen till they attained the age of superannuation. It is not in dispute that the Company has nowhere in the said agreement mentioned that under no circumstances, the Company would be closed down. The Respondents/workmen are now relying on various documents such as document presented before the Urban Land Ceiling Department, seeking permission for sale of the Mill's land and other orders which were passed by this Court viz the order passed in Contempt Petition and certain observations made by the Court in the said contempt Petition.

36. This submission made by the Respondents/workmen is without any substance. Perusal of the agreement itself clearly indicates that the Company in the said agreement had clearly expressed its intention of selling the Mill's land for the purpose of paying dues of the workmen and, accordingly, Petitioner – Company has sold this Mill's land for the purpose of payment of dues of workmen. The submission of the Respondents/workmen that the Company had committed fraud by selling Mill's land is baseless and contrary to the terms and conditions of the agreement dated 23/11/2000. Perusal of the agreement indicates that it is in terms stated in the agreement that the Company would be permitted to sell unusable plant and machinery as

well as land to raise funds to tide over the liquidity crunch faced by the Company. Merely because the Company in the said agreement stated that those workmen who had not obtained VRS would be paid salary and wages till they attain the age of superannuation does not mean and cannot be construed to mean that even though the entire Company is shut down, the Company would still be liable to pay wages and salary to these workmen till they attain the age of superannuation. It is an admitted position that all other workmen except the 10 Respondents/workmen had accepted VRS compensation long time ago and out of 10 Respondents/workmen except Respondent No.10 - Shri Satyanarayan J. Pande, 9 Respondents accepted VRS compensation without prejudice to their rights and contentions raised in their Petition filed by them and by the Company. The Industrial Court has given all findings in favour of the Petitioner – Company. However, without assigning proper reasons, it has held that in view of the clauses in the agreement, Company was liable to pay wages and salary to the Respondents/workers till they attain the age of superannuation. It is a settled position in law that despite any agreement between the parties, if a party is legally entitled to take steps then the clauses in the agreement would not bind the party in doing so.

37. In the present case, there is no clause in the agreement which says that under no circumstances, the Petitioner – Company would be entitled to close down the factory at Sewree. The chronology of events clearly indicates that the Company had no other option but to close down the said factory after obtaining permission from the Court. The

Industrial Court has, in fact, given a finding that the Company had legally closed down the factory. In view of this finding given by the Industrial Court, it is not open now for the Respondents/workmen to say that the Petitioner – Company had committed a fraud on the workers and on the Union. The judgment on which reliance is placed by the learned Counsel appearing on behalf of Respondents/workmen in *The Workmen Employed in Associated Rubber Industry Ltd., Bhavnagar V/s. The Associated Rubber Industry Ltd., Bhavnagar and another*¹ was in the context of cases in relation to taxing statute. The said judgment, in our view, has no application to the facts of the present case. The entire thrust of the workmen is that by virtue of bringing in VRS, Petitioner – Company had fraudulently reduced number of workmen and brought it below 100 in order to defeat right of the workmen to get wages and salary till they attain the age of superannuation. Petitioner, in the present case, has taken legal steps for the purpose of closing down the business at Sewree. Lastly, it has to be noted that the Respondents had never made an allegation of fraud in any of the complaints made to the Industrial Court. There are no pleadings to that effect in the complaint or in the evidence which has been led. The Respondents/workmen on the basis of letter dated 31/08/2001 addressed by the Company to the Urban Development Department have sought to contend that the Petitioner – Company committed fraud. It has to be noted that the Petitioner – Company had not made any agreement or assured not to close down the Mill by following due process of law. Secondly, all documents including the agreement dated 23/11/2000 specifically refers to the intention of the

1 AIR 1986 SC 1

Petitioner to sell both the Mills' land to meet the financial liabilities including VRS compensation. Petitioner had filed an application under section 25-O of the Industrial Disputes Act, 1947, seeking permission to close down both the Mills. The submissions made by Mr. Sahikh, the learned Counsel appearing on behalf of Respondent Nos. 1 to 9 and Shri Satyanarayan J. Pande – Respondent No.10 are therefore without any substance and liable to be rejected.

38. We have perused the findings which are given by the Industrial Court. The Industrial Court has nowhere given any reasons as to why claim of the Respondents/workmen claiming payment of salary and wages till they attain the age of superannuation would not be hit by the principle of *res judicata* or the principles analogous to the principle of *res judicata*, after all the Courts in the first round of litigation had in terms held that workmen were not entitled to get wages till they attain the age of superannuation. The Industrial Court has merely brushed aside the objection taken by the Petitioner – Company that the relief claimed for wages and salary were barred by the principle of *res judicat*. We are of the view that the Order of the Industrial Court dated 20th March, 2013 in so far as it directs the Petitioners to continue the Respondent Nos. 1 to 10 in service till the date of retirement, provide them work and pay them their wages and to pay them their full back wages for the intervening period and all attendant benefits is liable to be quashed and set aside.

39. We therefore allow the Writ Petition No.1588 of 2013 in terms of prayer clause (a) with the following directions.

40. All the Respondents have been paid VRS compensation. However, Shri Satyanarayan J. Pande – Respondent No.10 refused to accept the VRS compensation. Since the Petition filed by the Petitioner – Company is allowed, we direct the Company to pay to Shri Satyanarayan J. Pande – Respondent No.10 VRS compensation which has been paid to all the Respondents alongwith interest @ 12% per annum from the date on which other workmen accepted the VRS till the date amount is actually paid.

41. Writ Petition is disposed of in the aforesaid terms and the rule is made absolute accordingly.

(REVATI MOHITE DERE, J.)

(V.M. KANADE, J.)