

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1344 of 2013
IN
Civil Writ Jurisdiction Case No. 17485 of 2008**

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Madura Coats Employees Association, Lekhi Bhawan, Budha Marg, Patna through
its General Secretary, Namely Nand Kishore Prasad Son Of Sri Chatru Prasad
Yadav, Resident Of Khajanchi Road, P.S. Pirbahore, District And Town Of Patna

.... Petitioner Appellant

Versus

1. The State Of Bihar Through The Secretary, Labour, Employment And Training
Department, Government Of Bihar, Patna
2. The Managing Director, Madura Coats India, Now Coats Viyella India Ltd., 144
Mahatma Gandhi Road, Bengalore - 560001 (Karnataka)
3. The Regional Manager, Madura Coats, Now Coats Viyella India Ltd., Green
View, 19 - Circus Avenue, Kolkata - 700001 (West Bengal)
4. The Divisional Manager, Madura Coats, Now Coats Vivella India Ltd., Lekhi
Bhawan, Budha Marg, Patna, At Present Kanti Shree, Sandalpur (Kumhrar), Patna
- 800006
5. The Presiding Officer, Labour Court, Patna

.... (Respondents) Respondents

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Appearance :

For the Appellant	:	Mr. S. K. Agrawal, Mr. Shanti Pratap, Mr. Arbind Kumar Verma Advocates
For the respondents	:	Mr. Alok Kumar Sinha, Mr. Indrajeet Bhushan, Mr. Manish Kumar, Advocates
For the State	:	Mrs. Binita Singh, S.C. 18, Mr. Nishant Kr. Jha, A.C. to S.C. 28

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**CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE S. KUMAR**

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date: 05-07-2017

We have heard the parties and perused the records of

this case.

This intra-court appeal is directed against the

judgment dated 05.08.2013, delivered by a Single Judge Bench of

this Court in C.W.J.C. No.17485 of 2008, a copy of which stands



appended as Annexure 1.

Short facts necessary for adjudication stands encrypted as under:-

A reference under Section 10(1)(c) of the Industrial Disputes Act, 1947 was made and, accordingly, was referred to the Labour Court, Patna. The reference is extracted as under:-

“Whether the workmen of M/s Coats India Ltd., who were working at Patna Branch, are entitled to get full payment on the basis of daily attendance after illegal lock-out by the management since 20.07.1996? If not, what relief the workmen are entitled to?”

The case of the workmen represented by the employees union was that they were employed in the Thread Division Coats India which is a branch of Coats Viyella India Ltd.

It was urged on behalf of the workmen that the Thread Division Coats India was transferred to Calcutta. The branch officer and supervisors were also transferred to Calcutta from Patna. Only 14 employees were left out and the unit has been illegally locked out. It was urged that it was not a case of closure rather it was a case of merger of one division with another division. Further case of the workmen was that despite information, the management did not turn up in conciliation proceeding and when hardly a month had elapsed on 20.07.1996, the company was closed. On such illegal lock out and



retrenchment order passed by the company regarding 14 workmen, industrial dispute was raised and aforesaid reference was made by the competent authority.

However, the case of the management was that the reference itself was bad on account of the fact that it was not a case of lock out, rather was a case of closure and, thus, it could not have been termed as industrial dispute. Further case of the management is that in the statement of demand dated 23.07.1996 also, which has been brought on record as Ext. 5, the workmen had never raised the issue of lock out against the management rather they had raised the issue of closure. The management was the division of Coats Viyella India Ltd. which is a Ltd. company incorporated under the Indian Companies Act, 1956. However, in view of the declining sales prospect, the management had no option than to declare closure of the Patna branch with effect from 20.07.1996. Accordingly, the notice of closure and compensation under Section 25-FFF and notice under Section 25-FFA of the Industrial Dispute Act was also given to all the workmen and compensation, accordingly, was paid to all of them which would be evident from the Exts. 3 to 3/0. After receiving all the payments, the workmen, through their Union, raised the issue before the D.L.C. Pursuant to the notice, the management gave reply to the authority and after the receipt of the said reply by the



Labour Department, the conciliation proceeding ended and subsequently aforesaid reference was made to the labour court. .

On the aforesaid factual matrix, the Labour Court framed following issues:-

(I) “whether the workmen has been able to make out his case in terms of reference?”

(II) “Whether the validity of closure & termination can be looked into by the court as incidental matter there to?”

The labour court has answered the issues against the workmen and in favour of the management holding that it was a case of closure and not of lock out. There was notice of closure. The retrenched workmen accepted the compensation money and in that background, it was held that reference was bad as no such reference could have been made against the closure of the Patna Unit also due to the fact that the said demand was never disputed in the letter of demand by the workmen. It has further been held that in view of the fact that the retrenchment/termination is in view of the closure and reference has been declared to be bad, the validity of termination and closure cannot be looked into as incidental matter.

The Award dated 31 July, 2008 (Annexure 1 to the writ application) was put to challenge by the workmen's association by filing C.W.J.C. No.17485 of 2008 which has been



dismissed by a learned Single Judge Bench of this Court vide the impugned order dated 05.08.2013, contained in Annexure 1 of this appeal.

The learned Single Judge, after taking into consideration the Award as well as the various materials placed in support of rival parties, has held that predominant evidence show that it is a case of closure of the branch in question after following due procedure by noticing to one and all, and after payment of compensation and has eventually held that the reference was a misconstrued one, therefore, the rejection by way of Award in question cannot be faulted with and, accordingly, the writ application was dismissed. Hence this appeal.

Mr. S. K. Agrawal, learned counsel appearing for the appellant, has raised a solitary question for consideration before this Court that in view of the decision of the Apex Court rendered in **M/s. Tatanagar Foundry Co. Ltd. Vs. Their Workmen [AIR 1970 Supreme Court 1960]**, the present matter cannot be held to be closure of the Patna Unit by the Labour Court as well as the learned Single Judge because it was out and out a case of illegal lock out and, therefore, the reference should have been answered rather than having been discarded by branding it to be an illegal reference. It is submitted that the Apex Court has held in clear terms that closure by the employer does not merely means



closing down the place of business but closing the business itself, finally and irrevocably. The closure has to be genuine and bona fide in the sense that it should be a closure in fact and not a mere pretence of closure.

Prima facie, such submission appears to be attractive but on deeper scrutiny, we are of the opinion that the same has to be rejected for the following reasons:-

In M/s. Tatanagar Foundry Co. Ltd. (supra), the case was that the aforesaid company was incorporated in the State of West Bengal and owned two establishments, one located at Belur in the State of West Bengal and the other in Jamshedpur in Bihar. The Jamshedpur establishment Unit was closed. The Apex Court, after considering the earlier decision of the Apex Court in **Management of Express Newspapers Ltd. V. Workers [AIR 1963 SC 569]** and **Tea District Labour Association V. Ex-Employees of Tea Districts Labour Association [AIR 1960 SC 815]** and after appreciating the view that closure does not mean closing down the place of business but closing the business finally and irrevocably, has come to the conclusion that closure of Jamshedpur Unit would also amount to closure and not lock out and the findings of the Industrial Tribunal, Bihar that it was a lock out, was held to be defective law and, as a result, the same was set aside. Subsequently, in **Isha Steel Treatment, Bombay V.**



Association of Engineering workers Bombay and others [1987

(1)LLJ 427], the Apex Court has directly dealt with the aforesaid issue in particular in paragraph no.8 of the judgment which is quoted as under for better appreciation:-

8. “It is not necessary that in order to effect closure of business the management should close down all the branches of its business. In *Management of Hindustan Steel Ltd. v. The Workmen & Others*, (1973) 3 S.C.R. 303) this Court has held that the word 'undertaking' used in section 25-FFF seems to have been used in its ordinary sense connoting thereby any work, enterprise, project or business undertaking. It is not intended to cover the entire industry or business of the employer. Even the closure or stoppage of a part of the business or activities of the employer would seem in law to be covered by the said provision. In deciding the above case this Court relied upon its earlier decision in *Workmen of the Indian Leaf Tobacco Development Company Limited, Guntur v. Management of the Indian Leaf Tobacco Development Co. Ltd., Guntur*, (1970-I-LLJ-343). In that case the Court observed that a genuine closure of depots or branches, even though it did not amount to closure of the business could not be interfered with by an Industrial Tribunal. It further held that the closure was stoppage of part of the activity or business of the management and such stoppage is an act of management which is entirely in the discretion of the management. The Court further observed that no Industrial Tribunal could interfere with the discretion exercised in such a matter.”



A bare perusal of the aforesaid would reveal that in order to effect closure of business, it is not required that the management should close down all the branches of its business. The word 'undertaking' used in section 25-FFF seems to have been used **in Management of Hindustan Steel Ltd. v. The Workmen & Others, [(1973) 3 S.C.R. 303]** 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.

Accordingly, in above view of the discussion, this Court would have no hesitation in holding that such view taken by the Labour Court in the Award impugned and the view of the learned Single Judge cannot be faulted with and, as such, there is no reason for us to intervene into the matter.

As a result, this appeal is dismissed. However, there would be no order as to costs.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

Sanjay-II/-

AFR/NAFR	AFR
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