

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 10525 OF 2017

Gajanan Rambhau Ambhore  
and Others

... Petitioners

Versus

General Managar/Managar,  
Atul Electro Formers Ltd.  
and Others

... Respondents

WITH

WRIT PETITION NO. 10526 OF 2017

Prashant s/o Shankar Sonawane  
and Others

... Petitioners

Versus

General Managar/Managar,  
Atul Electro Formers Ltd.  
and Others

... Respondents

.....

Mr. Ashok V. Patil h/f Mr. A. R. Joshi for the Petitioners.

Mr. Y. R. Marlapalle for Respondent No.2.

Mr. P. P. Kothari for Respondent No. 3.

.....

**CORAM : V. K. JADHAV, J.**

**RESERVED ON : 12<sup>TH</sup> MARCH, 2018**

**PRONOUNCED ON : 27<sup>TH</sup> MARCH, 2018**

**PER COURT:-**

1. Heard finally with consent at admission stage.

2. By way of these Writ Petitions, the petitioners in both the Writ Petitions are challenging the common judgment and order dated 20.03.2017 passed by the 1<sup>st</sup> Labour Court, Ahmednagar in Complaint (ULP) Nos. 7 of 2015 and 8 of 2015 and the common judgment and order passed by the learned Member of the Industrial Court, Ahmednagar in Revision (ULP) Nos. 12 of 2017 and 13 of 2017, confirming thereby the order passed by the Labour Court.

3. Brief facts giving rise to these two Writ Petitions are as follows:

a. The respondent no.1-M/s. Atul Electro Formers Limited (hereinafter for short, referred to as “the AEFL Company”) is a company registered under the Companies Act, 1956 and the respondent no.2 is the Managing Director. The AEFL Company is mainly engaged in “Nickel Screens”. It has 23 regular permanent employees and 13 administration staff. The permanent employees are duly represented by the Union and the service conditions of all the employees are duly regulated by executing settlements/agreements at regular interval of three years.

b. The petitioners came to be appointed as Operators in skilled/semi skilled grade. They have rendered continued service for years together. The manufacturing activities undertaken by the AEFL Company were smoothly going on till November 2014 and thereafter, the Board of Directors slowed down the manufacturing activities at its Ahmednagar industrial plant. The AEFL Company discontinued two shifts and started to dismantle the machinery installed in the Ahmednagar industrial plant. On 22.07.2015, the AEFL Company, under the signature of respondent no.2-Managing Director, issued termination orders on the ground that the manufacturing activity of Nickel Screens has been declined. According to the petitioners, the alleged closure, which led to the termination of their services and the services of other workmen, is bogus and *malafide* and the reasons set out in the termination order are *ex facie* false and fabricated. The said termination attracts Clauses (a), (b) and (d) of Item 1 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter, for short, referred to as “the MRTU & PULP Act”). According to the petitioners, the retrenchment benefit

given by the AEFL Company is inadequate. According to the petitioners, termination of services on account of the so called closure amount to unfair labour practices and thus, approached to the Labour Court for the reliefs as detailed in the complaints, including relief to direct the respondents to pay compensation in lieu of retrenchment.

c. Respondent nos. 1 and 2 have strongly resisted the complaints by filing written statement. It has been specifically denied that they have been engaged in unfair labour practice as alleged in the complaints. According to them, during the period of last more five to seven years, due to heavy globe competition to the business of AEFL Company and also due to introduction of new techniques, the benefits of the AEFL Company as well as the shares in the market have gone down to a substantial extent. Therefore, taking a review of this situation, the Board of Directors of the AEFL Company, in the last meeting held on 26.02.2015, ultimately took a decision to permanently close down the manufacturing activity of Nickel Screens at Ahmednagar with effect from 27.02.2015 after working hours. According to respondent nos. 1 and 2, anticipating the aforesaid

situation, prior to the closure, it was also decided by the AEFL Company to sale its 100% equity shares in its subsidiary M/s. Atul Sugar Screens Private Limited (ASSPL) alongwith its brand name "Atul". Accordingly, the AEFL Company permanently closed down its manufacturing activity with effect from 27.02.2015 and while closing down the same, it has meticulously followed all the relevant and applicable provisions of the Industrial Disputes Act, 1947. (for short, "ID Act") which includes payment of one month's salary in lieu of the notice period, payment of closure compensation and also payment of all other legal dues including the up-to-date gratuity alongwith bonus at the rate of 20% earned salary etc. On account of closure, the AEFL Company terminated the services of all its 23 employees who were on its roll. According to the respondents, they have closed down their establishment permanently after following due process of law which cannot amount to unfair labour practices.

d. The respondent no.3-ASSPL has also resisted the complaints by filing written statement. It is the case of respondent no.3 that the petitioners are not its employees and as

such, no relationship of employer and employee exists between respondent no.3 and the petitioners. The petitioners have wrongly impleaded respondent no.3 as party respondent and accordingly prayed for compensatory costs.

e. The learned Judge of the 1<sup>st</sup> Labour Court, Ahmednagar, by the impugned common judgment and order dated 20.03.2017 in Complaint (ULP) Nos. 7 of 2015 and 8 of 2015, dismissed the complaints. Being aggrieved by the same, the petitioners herein filed Revision Application (ULP) Nos. 12 of 2017 and 13 of 2017 and the learned Member of the Industrial Court, Ahmednagar, by the common judgment and order dated 25.07.2017, dismissed the aforesaid two Revisions. Hence these Writ Petitions.

4. The learned counsel for the petitioners submits that the phrase “closure” is defined in the ID Act and the employer is bound to comply with the provisions of Section 25F by paying compensation to the outgoing employees. The aggrieved workmen have duly received the said closure compensation so offered and paid, under protest. The learned counsel submits that the ID Act is a Central Act and the State of Maharashtra has

enacted the MRTU & PULP Act and as such, objects of both the Acts are different in certain areas and more particularly, the MRTU & PULP Act mainly provides for recognition of trade union in an undertaking and specifically and precisely provides for prevention and commission of unfair labour practices resorted by the employer. The learned counsel submits that the ULP courts lift the veil of the employer and ascertain his true intention behind the factum of closure and investigate unfair labour practices resorted by the employers while terminating the services of the concerned workmen. In case of closure of an undertaking having less than 50 employees, the ULP court can declare an unfair labour practice if such a closure right is not exercised in *bonafide* manner and if it is under the colourable exercise of the employer's right. The learned counsel submits that in fact, closure is based on several reasons forming foundation of the closure and the petitioners have succeeded in proving falsity of the said reasons. The learned counsel submits that an act of the employer even based on the factum of closure, needs to be scrutinized by the ULP courts though the employer has made statutory compliance while effecting the closure. The termination order dated 22.07.2015 issued by respondent nos. 1

and 2 categorically states that during the period of last more than four to five years, the manufacturing activity of Nickel Screens has been declined and the same is because of the absolute adverse market conditions and severe competition. This is the foundation and reason assigned for the alleged closure by the respondent-management. In order to falsify the said reasons, the petitioners claimed certain documents from the respondents by filing Notice of Document and the respondent nos. 1 and 2 filed their reply to the Notice of Document. The learned Presiding Officer of the Labour Court was pleased to pass an order directing the respondent-management to produce the documents from serial no.(a) to (f) and (i) to (o) on record and further directed to file an affidavit if documents are not maintained or not in the custody of the management. The respondent-management has filed an affidavit recording the status of the document stating that certain material documents are not traceable/available. It is clear that the respondent-management has avoided to file material documents for the reason that if those documents were produced before the Court, the reasons set out in the termination order would have been proved to be false. On the other hand, the learned Judge of the

Labour Court has observed that the petitioners have failed to prove their evidence. They have not established that the said documents, which were not produced on record by the respondents, were maintained and the same are in the custody of the respondents and as such, no adverse inference can be drawn. The learned Presiding Officer of the Labour Court has erroneously observed that the petitioners have not placed on record any document showing that at the time of closure, the respondent-company was having lot of orders and the production of Nickel Screens was not in decline. In absence of any cogent evidence, it cannot be concluded that at the time of closure, the company was having lot of orders and thus, the reasons assigned in the termination order are patently false. The learned counsel submits that the finding of the Labour Court is perverse. The learned Presiding Officer of the Labour Court has not properly considered the documents such as agreements, settlements between the union and the management, pay slips, incentives, wage rise given to the employees from time to time etc. The learned counsel submits that the evidence adduced by the petitioners on record is sufficient to draw conclusion that the production of Nickel Screens since last four to five years was

never declined. the learned Member of the Industrial Court, in its impugned common order has also taken a similar view and simply relied upon the fact of closure without going into the evidence recorded before the Labour Court.

5. The learned counsel for the petitioners, in order to substantiate his contentions, placed reliance on the following cases:

1. Judgment dated 11.07.1984 delivered by the High Court of Bombay in Letters Patent Appeals Nos. 52 to 55 of 1982 (*Maharashtra State Road Transport Corporation vs. Yadao and others*),
2. *Director, Horticulture, Punjab and others vs Jagjivan Prasad*, reported in 2008 (117) FLR 777,
3. *Rashtriya Chemicals and Fertilizers Limited vs RCF Employees Union*, reported in 2007 II CLR 1035 and
4. *Municipal Committee Tauru vs. Harpal Singh and another*, reported in 1998 (80) FLR 681.

6. The learned counsel for respondent nos. 1 and 2 submits

that the petitioners' witness has admitted that the legal dues were given and the petitioners have also en-cashed the cheque of compensation. The petitioners never made correspondence with the company showing that the calculations of their legal dues are not proper. Admittedly, the petitioners have not returned their retirement compensation. The petitioners have accepted that after closure of the company, the company has not started production of the said product at any other place. The learned counsel submits that there is no evidence showing that the respondent AEFL Company has not acted in good faith but in colourable exercise of the employer's right, terminated the services. The reason for termination of services of the petitioners on account of the closure cannot be said to be patently false reason. The reason set out by the AEFL Company for termination of services of the petitioners is on account of closure of the manufacturing activity of Nickel Screens as it has been in decline. The petitioners have not disputed the factum of closure or the matter for compliance under Section 25F of the ID Act. The learned counsel submits that there is no evidence to indicate that the closure was a mere pretence and there was no closure in fact. There is no evidence to establish that the business being

carried out by respondent nos. 1 and 2, now continued to be carried out by the 3<sup>rd</sup> respondent. The learned counsel submits that the essence of the matter, therefore, is the factum of closure by whatsoever reasons motivated. The closure has to be genuine and *bonafide* in the sense that it is a closure in fact and not a mere pretence of the closure. The learned counsel submits that in the instant case, each one of the workmen, at the time of closure, was paid closure compensation in accordance with the provisions of the ID Act and the first witness on behalf of the petitioners has also admitted that the petitioners had received their legal dues such as gratuity, notice pay, retrenchment compensation, leave salary etc. The learned counsel submits that both the courts below have rightly dismissed the complaints filed by the petitioners. There is no substance in the Writ Petitions and the Writ Petitions are thus liable to be dismissed.

7. In order to substantiate his contentions, the learned counsel for respondent nos. 1 and 2 relies upon the case of *Lionel Edward & India Steamship Employees Union vs. India Steamship Company Ltd. & Ors.*, reported in *2006 (6) Mh.L.J. 503*.

8. The learned counsel for respondent no.3 submits that under Section 28 of the MRTU & PULP Act, a complaint of unfair labour practice can be filed by an employer, an employee, a trade union or an investigating officer. Since the petitioners are not the employees of respondent no.3, they are not entitled to file any complaint of unfair labour practice against respondent no.3. Learned counsel submits that the petitioners are rank outsiders in so far as respondent no.3 is concerned. Any complaint of unfair labour practice filed against respondent no.3 by a rank outsider would not be maintainable. For being eligible to file a complaint, the relationship between the petitioners and respondent no.3 needs to be that of an employer and employee. Furthermore, this relationship must be undisputed and indisputable. The learned counsel for respondent no.3 submits that as such, the complaints are not maintainable against respondent no.3 as there exists no employer-employee relationship between respondent no.3 and the petitioners. The learned counsel further submits that respondent no.3 is entitled to damages to the tune of Rs.1,09,663/- and prays that the complaint may be rejected with damages as above.

9. The learned counsel for respondent no.3, in order to substantiate his contention, placed reliance on the following cases:

1. *Vividh Kamgar Sabha vs. Kalyani Steels Limited*, reported in *2001 (1) CLR 532*,
2. *Cipla Limited vs. Maharashtra General Kamgar Union*, reported in *2001 LLR 305*,
3. *Raigad Mazdoor Sangh vs. Vikram Ispat and others*, reported in *2001 (90) FLR 568*,
4. *India Seamless Metal Tubes Ltd. (Tubes Division) Ahmednagar vs. Sunil Rambhau Iwale and others*, reported in *2001 (iii) CLR 728* and
5. *Hindustan Coca-Cola Bottling S/W Pvt. Ltd. vs. Bhartiya Kamgar Sena and others*, reported in *2001 (iii) CLR 1025*.

10. Having carefully gone through the record and the impugned judgments passed by the courts below, I find no substance in this Writ Petition. There is evidence that respondent

nos. 1 and 2 have closed the production activity in the factory at Ahmednagar which was running for about 35 years. The said factory was permanently closed on 27.02.2015. The petitioners' witness has also admitted about the closure of the factory. It is also not disputed that the termination with effect from 27.02.2015 was on account of the closure. If the reason for termination is closure, the Labour Court, under Section 28 read with Item 1 of Schedule 4, can hardly look into the motive or reasons for such a closure. There cannot be any reinstatement in the closed factory. The learned counsel for the petitioners has also admitted the same and thus, submitted that these Writ Petitions are restricted to the extent of the compensation since the petitioners have lost their permanent job at almost above the age of 40 years and after termination, they would hardly get any employment in any other industrial unit. The closure can be challenged before the Industrial Court or Industrial Tribunal and it is for the Labour Court to look into the aspects whether the employer, on termination of the employees on closure, has complied with all the provisions with regard to such termination. Both the courts below have observed that the notice pay compensation and other dues have been paid to the petitioners.

Even the learned counsel for the petitioners, during the course of arguments, has also admitted the same before this Court. Even in an industrial unit, where employees are less than 50, the unit can be closed without assigning any reasons. The learned Member of the Industrial Court has rightly observed that it is highly unlikely on the part of respondent nos. 1 and 2 to close down its unit which is running since 35 years simply to remove the petitioners/employees. Respondent nos. 1 and 2 have shown the reasons for closure as adverse market conditions, decline in the activities etc.

11. According to the learned counsel for the petitioners, the reasons for closure are patently false and therefore, complaint before the Labour Court under Item 1 is maintainable. The learned counsel has submitted that if the employer takes an action in colourable exercise of its right, the same is required to be seen by the Labour Court. The learned counsel submits that the impugned termination is a classic example of unfair labour practice under Item 1 (a), (b) and (d) of Schedule IV of the MRTU & PULP Act. The petitioners also contended that after collecting information from the respondents, it revealed that

respondent nos. 1 and 2, with ill motive, have incorporated respondent no.3 and the orders as well as dispatches of furnished goods etc. were rotated through respondent no.3 which is nothing but another wing of respondent nos. 1 and 2 company. The respondent nos.1 to 3, in collusion with each other, have diverted the said product to Gujarat and the machinery installed in its Ahmednagar plant has also been shifted in Gujarat. However, it is to be noted that even respondent no.3-company was incorporated by respondent nos.1 and 2. Respondent no.3-company was incorporated for marketing only. Further, as per the agreement dated 29.05.2014, the equity shares of respondent no.3-company has been sold to another company namely Stovec. The learned Judge of the Labour Court, after going through the relevant agreements alongwith list of documents exhibit C-32, observed that these all the legal documents whereby respondent nos. 1 and 2 company has formed a new 100% subsidiary respondent no.3-company and transferred the business to it. Respondent nos. 1 and 2 made an agreement with respondent no.3 for supply of material and respondent nos. 1 and 2 have made an agreement with Stovec for sale of the production, machinery, stock, raw material and

trade mark. Respondent nos. 1 and 2 sold its 100% equity shares to Stovec and relinquished its ownership and control over respondent no.3 company. The learned judge of the Labour Court, on the basis of these agreements, which are legal documents prepared after paying the necessary stamp duty, observed that the legality of these documents cannot be questioned before the Labour Court and on the basis of these agreements, it cannot be said that these agreements are just a paper arrangement so as to divert the production through Stovec as argued by the learned counsel for the complainants.

12. In the case of *Lionel Edward & India Steamship Employees Union vs. India Steamship Company Ltd. & Ors.* (supra), in para nos. 7 and 9 of the judgment, this Court (Coram: Dr. D. Y. Chandrachud, J.) has made the following observations:

*7. While considering the tenability of the submissions which have been urged on behalf of the petitioner, it would be necessary to note that the Industrial Disputes Act, 1947 came to be amended by Act 46 of 1982 to insert a statutory definition of the expression 'closure'.*

*'Closure' has been defined to mean the permanent closing down of a place of employment or a part thereof. Chapters VA and VB govern the right of the employer to effect a closure by subjecting that right to the observance of certain conditions.*

*In the present case, it is not disputed that the total number of employees in the Bombay branch office was 37 and that consequently Chapter VB has no application. Chapter VA, therefore, regulates the question of closure in this case. Sub section (1) of Section 25FFF postulates that 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 shall, subject to the provisions of sub-section(2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. The proviso to sub-section (1) deals with a situation where an undertaking is closed down on account of unavoidable circumstances beyond the control of the employer. The proviso has no application to the facts of this case. In the present case, it has not been disputed that each one of the workmen was at the time of the closure paid closure compensation in accordance with Section 25FFF. In the course of his evidence, the first witness who disposed on behalf of the workmen (Mr. M. Britto) admitted that he had received his*

*legal dues such as gratuity, notice pay, retrenchment compensation and leave salary. Before this Court it has been fairly admitted that this was the factual position which governs all the 37 employees. Now in this background it would be necessary to advert to the decision of the Supreme Court in Kalinga Tubes Ltd. and Their Workmen, 1969 I LLJ 557. The Industrial Tribunal had in that case dwelt upon the profitability of the business of the employer and the profits which had been made, for the purposes of assessing the circumstances of the closure. Holding that this was an extraneous and irrelevant circumstances, the Supreme Court held as follows:*

*“So far as the present case is concerned the tribunal travelled into an extraneous and irrelevant field when it took into account the profitable business which the company was doing and the profits which it was making or was expected to make. The tribunal was apparently labouring under the impression that according to certain judicial decisions there can be a closure of an undertaking only when there are financial difficulties and the undertaking becomes a losing concern. It is difficult, and indeed no such principle entrenched in industrial law has been brought to our notice to accept that the closure of an undertaking can be limited or restricted only to financial, economic or other considerations of a like nature.”*

*The Supreme Court held that the closure has to be genuine and bonafide in the sense that it is a closure in fact and not a mere pretence of a closure. Following the earlier decision of the Court in India Hume Pipe Company Ltd. v. Their Workmen, 1969 I LLJ 242, the Supreme Court held that it was emphasised in that decision that the expression “bona fide” used in certain decisions of the Court did not refer to the motive behind the closure but to the fact of closure. The Supreme Court held as follows:*

*“The discussion of the above decisions yields the result that the entire set of circumstances and facts have to be taken into account while endeavouring to find out if, in fact, there has been a closure and the tribunal or the court is not confined to any particular fact or set of facts or circumstances. In one case the management may decide to close down an undertaking because of financial or purely business reasons. In another case it may decide in favour of closure when faced with a situation in which it is considered either dangerous or hazardous from the point of view of the safety of the administrative staff or members of the management or even the employees themselves to carry on the business. The essence of the matter, therefore, is the factum of closure by whatever reasons motivated.” (emphasis supplied).*

9. *On this state of the evidence, it cannot be said that the closure was a mere pretence and that there was no closure*

*in fact. There is no evidence to establish that the business which was being carried on by the Bombay branch office continued to be carried on by the Third Respondent. On behalf of the Petitioner, reliance was sought to be placed on the statement of the total number of ships of the Second Respondent that had called at Bombay Port during the year 1992. On the other hand, it has been submitted on behalf of the Second Respondent that the Petitioner did not seek the production of any records for the years subsequent thereto, which would have affirmed the correctness of the position stated by the General Manager, Commercial Services that there was a precipitate decline in the vessels of the management that had called at Bombay Port on and after the closure of the Bombay Office. The material on the record is sufficient to sustain the finding of the Tribunal that there is a closure in fact. Once the Tribunal has taken a view based on the evidence on the record, this Court would not have been justified in substituting its own perception for the finding arrived at by the fact finding body. Once the factum of closure is established the surviving question was whether the conditions requisite for effecting the closure of the undertaking under Section 25FFF had been duly complied with. As a matter of fact, compliance of Section 25FFF has not been disputed. The closure was in accordance with the provisions of Section 25FFF of the Industrial Disputes Act, 1947. There is no evidence to establish that the discharge or dismissal of the employees in the present case was not in*

*good faith, but in colourable exercise of the employer's rights or for patently false reasons within the meaning of items 1(b) and (d) of Schedule IV.*

13. In the instant case, the factum of closure is established and thus, the surviving question would be whether the condition requisite for effecting the closure of the undertaking under Section 25FFF of the ID Act had been duly complied with or not. The compliance of Section 25FFF has not been disputed. The closure was in accordance with the provisions of Section 25FFF of the ID Act. There is absolutely no evidence to establish that the termination of the petitioners was not in good faith, but in colourable exercise of the employer's right or for patently false reason within the meaning of Items 1(b) and 1(d) of Schedule 4 of the MRTU & PULP Act.

14. In view of the above discussion and in the light of the observations made by this Court in the above cited case, I do not find any substance in these Writ Petitions. The Writ Petitions are liable to be dismissed. Hence the following order:

**ORDER**

- I. Writ Petition No. 10525 of 2017 and Writ Petition No. 10526 of 2017 are hereby dismissed. In the circumstances, there shall be no order as to costs.
- II. The bank guarantee furnished by respondent nos.1 and 2, as directed by this Court vide order dated 23.08.2017, stands discharged.
- III. Both the Writ Petitions are accordingly disposed of.

**( V. K. JADHAV, J.)**

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