

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

**LETTERS PATENT APPEAL NO. 507/2011 IN WRIT PETITION NO. 1133/2002 (D)
WITH
CROSS-OBJECTION STAMP NO.2805/2012**

Brooke Bond Employees Union,
C/o R.T. Wankhede, Plot No.127,
Shilpa Nagar, Narendra Nagar, Nagpur
400015 through its General Secretary.

APPELLANT

.....VERSUS.....

1. Hindustan Unilever Limited,
through its Regional Manager,
having its office at Uttara, Plot No.2,
Sector 11, CBD Belapur, New Mumbai 400 614.
2. Hindustan Lever Limited,
through its Chairman, Hindustan Lever House,
165/166, Backbay Reclamation, Mumbai.
3. M/s Hindustan Lever Ltd.,
Hindustan Lever House, 165/166, Backbay
Reclamation, Mumbai 400 020 through
its Regional Personnel Manager (West),
(Unit Manager-Regional Accounts Office,Nagpur).
4. Member,
Industrial Court, Maharashtra,
Nagpur Bench, Civil Lines, Nagpur.

RESPONDENTS

Shri S.D. Thakur and Shri D.S. Thakur, counsel for the appellant.
Shri H.V. Thakur, counsel for the respondent nos.1 to 3.

CORAM : A. S. CHANDURKAR AND G.A. SANAP, JJ.

DATE ON WHICH ARGUMENTS WERE HEARD : 05TH OCTOBER, 2021.

DATE ON WHICH JUDGMENT IS PRONOUNCED : 29TH OCTOBER, 2021.

JUDGMENT (PER : A.S. CHANDURKAR, J.)

This letters patent appeal filed under Clause 15 of the letters patent takes exception to the judgment of the learned Single Judge dated 21.10.2011 in Writ Petition 1133 of 2002. By the said judgment, the writ petition preferred by the respondent nos.1 to 3 herein for challenging the judgment passed by the Industrial Court Nagpur on 27.02.2002 has been allowed and that judgment passed by the Industrial Court allowing the complaint filed by the appellant has been set aside.

2. The brief facts that are relevant for deciding the challenges as raised are that it is the case of the appellant-Union through its General Secretary that it comprises of the employees of the erstwhile Brooke Bond India Limited. The said company was subsequently acquired by Hindustan Lever Limited through its parent company in the year 1984. The parent company had also acquired another company named Lipton India Limited. Both these companies were then merged in the year 1994 to form Brooke Bond Lipton India Limited. This company was then merged into Hindustan Lever Limited. According to Union the Federation of its employees is the apex body of trade unions. From 1962 onwards various agreements were entered into by the Federation with the Management of Brooke Bond India Limited concerning service conditions and pay-scales of its employees. According to the Union representing about nineteen employees of the Regional Accounts Office, Nagpur the activities of the Regional Accounts Office and the manufacturing activities carried out at different factories especially the factory at Kanhan were interrelated and interdependent. All of them were thus constituted one industrial establishment. The services of the employees of Brooke Bond India Limited were transferable from various factories to the Regional Accounts Office and vice versa. On 05.01.2001 a notice of closure was displayed by the Management at the Regional Accounts Office, Nagpur. As per that notice which was not preceded by a notice of change as required by Section 9A of the Industrial Disputes Act, 1947 (for short, 'the Act of 1947') the activities of the Regional Accounts Office, Nagpur were

closed down. Since this notice of closure did not contain any reason and was issued without granting any opportunity to the members of the Union, the same resulted in commission of unfair labour practice within the meaning of Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, 'the Act of 1971'). On the aforesaid premise, the Union approach the Industrial Court by filing complaint under Sections 26, 27 and 28 of the Act of 1971 alongwith Items 4(f), 5 of Schedule II and Item 7 and 9 of Schedule IV to the Act of 1971.

3. The Management filed its written statement at Exhibit 25 and opposed the prayers made in the complaint. It was pleaded that the notice of closure issued on 05.01.2001 was in accordance with the provisions of law and the various agreements entered into with the Federation. It was denied that there was any functional integrality between the Regional Accounts Office and any other establishment of the company. Since no work was available at the Regional Accounts Office from January-2000 the Management had offered two alternatives to the members of the Union namely, an option of accepting voluntary retirement alongwith monetary benefits or the option of re-deployment as per Clause 29 of the settlement dated 27.07.1999. Since both these options were refused, the Management offered statutory dues to the nineteen employees while terminating their services on account of closure of the Regional Accounts Office.

4. The Industrial Court considered the complaint on merits and after examining the evidence on record held that the action of closure was in violation of the provisions of Sections 25-O and 9A of the Act of 1947. After holding the closure to be illegal, the Industrial Court directed the Management to restore the position that was existing prior to 05.01.2001 by withdrawing the retrenchment notice.

The Management being aggrieved by the aforesaid judgment challenged the same in Writ Petition No. 1133 of 2002. The learned Single Judge in his detail judgment recorded a finding that the closure of the Regional Accounts Office was governed by the terms of various agreements between the Management and the Federation. The Regional Accounts Office was not functionally integrated with other establishments of the Company. Moreover, in view of the proviso to Section 9A of the Act of 1947 there was no need to issue any notice of closure under Section 9A of the Act of 1947. On the basis of these findings the judgment of the Industrial Court was set aside and the writ petition was allowed. Being aggrieved by the aforesaid judgment, the Union has preferred the present letters patent appeal while the Management has preferred cross-objections seeking to challenge certain adverse findings recorded against it.

5. Shri S.D. Thakur, learned counsel for the appellant-Union reiterated the submissions that were canvassed before the learned Single Judge while supporting the order passed by the Industrial Court.

According to him, the notice of closure dated 05.01.2001 was illegal since there was no reason mentioned therein that prompted closure of the Regional Accounts Office. Referring to the provisions of Section 25FFF of the Act of 1947 it was submitted that the workmen were entitled to notice and compensation in accordance with the provisions of Section 25F of the Act of 1947. The conditions precedent to retrenchment of workmen as stipulated therein required giving of one month's notice in writing indicating reasons for such retrenchment. Since the requirements of such Clauses (a) and (b) of Section 25F were mandatory in nature, the non-compliance in that regard rendered the notice of closure void ab initio. In that regard, the learned counsel placed reliance on the decisions in *Gammon India Limited Versus Niranjan Dass* [(1984) 1 SCC 509], *Pramod Jha & Others Versus State of Bihar & Others* [(2003) 4 SCC 619], *Rajasthan Lalit Kala Academy Versus Radhey Shyam* [(2008) 13 SCC 248], *Mohan Lal Versus Management of M/s Bharat Electronics Ltd.* [(1981) 3 SCC 225], *Union of India Versus Mohan Lal Capoor & Others* [(1973) 2 SCC 836] and *D.K. Yadav Versus J.M.A. Industries Ltd.* [(1993) 3 SCC 259].

It was then submitted that in the facts of the case the provisions of Section 25-O of the Act of 1947 were applicable. Since the activities of the Regional Accounts Officer were dependent on the activities of other establishments of the Company, it formed an integral part of the entire establishment. The finding to the contrary

recorded by the learned Single Judge was without any legal basis and the same was liable to be set aside. Reference was made in that regard to the decision in *S.G. Chemicals and Dyes Trading Employees' Union Versus S.G. Chemicals and Dyes Trading Limited & Another* [(1986) 2 SCC 624]. Absence of notice of closure under Section 9A of the Act of 1947 also vitiated the notice of closure. The reliance placed on the proviso to Section 9A of the Act of 1947 by the learned Single Judge was erroneous. Inviting attention to various settlements that were entered into under Sections 2(p) and 18 of the Act of 1947 it was submitted that the modalities prescribed therein were binding on both the parties and failure to abide by the terms of settlement resulted in attracting the provisions of Item 9 of Schedule IV to the Act of 1947. It was not permissible for the Management to unilaterally modify or vary the settlements and by doing so an unfair labour practice was committed by the Management. Reliance was placed on the decisions in *M/s Tata Iron and Steel Co. Ltd. Versus The Workmen & Others* [(1972) 2 SCC 383] and *Lokmat Newspapers Pvt.Ltd. Versus Shankarprasad* [(1999) 6 SCC 275]. It was thus submitted that the Industrial Court having rightly considered the entire material on record and thereafter having granted relief to the Union, its judgment ought not to have been interfered with by the learned Single Judge. It was prayed that the order passed by the Industrial Court be restored.

6. Shri H.V. Thakur, learned counsel for the respondent nos.1 to 3-Management supported the judgment of the learned Single Judge. According to him the learned Single Judge by applying the correct legal tests in the light of the material on record was justified in holding that there was absence of functional integrality between the activities of the Regional Accounts Office and other establishments of the Company. As per the various settlements with the Federation, the Management had clearly indicated its desire to close down the activities of the Regional Accounts Office at Nagpur. Appropriate options were given to the employees therein but the same were not accepted by them. There was no option therefore to close down the Regional Accounts Office and hence it was not correct to contend that the same amounted to retrenchment. Referring to the provisions of Section 2(cc) and 2(oo) of the Act of 1947 it was submitted that retrenchment required existence of a live industry which was in contra-distinction with a permanent closing down of a place of employment or part thereof. He urged that the provisions of Section 25-O were not applicable in the facts of the case and it was rightly held by the learned Single Judge that by virtue of the proviso to Section 9A of the Act of 1947 notice of closure was also not required to be issued. He referred to the decisions in *L. Robert D'Souza Versus The Executive Engineer, Southern Railway & Another* [AIR 1982 SC 854], *Alarsin & Alarsin Marketing Employees Union Versus Alarsin Pharmaceuticals & M/s Alarsin Marketing Pvt. Ltd. & Another* [2004 II CLR 888] and *Anglo-French Drugs and Industries Ltd. Versus Roche/Anglo-French Employees'*

Union [2005 (3) Mh.L.J. 1120] in that regard. According to him various findings recorded by the learned Single Judge were based on the evidence on record and those findings were not shown to be perverse. He also referred to the evidence on record to substantiate his contentions. According to him compliance with the provisions of Section 25-F was not a condition precedent for closure of an establishment. It was relevant only when retrenchment was to be effected. The provisions of Sections 25-F and 25-O could not go together. As regards the findings recorded by the learned Single Judge that the Union was competent to file the complaint it was submitted that the Constitution of the Union and especially Clause 10(C) did not permit the General Secretary to file the complaint in absence of any grievance made by any workman to the Union in writing. He referred to the decisions in *Punjab University Versus V.N. Tripathi & Another* [(2001) 8 SCC 179], *Dale & Carrington Invt. (P) Ltd. & Another Versus P.K. Prathapan & Others* [(2005) 1 SCC 212] and *M/s Nibro Limited Versus National Insurance Co. Ltd.* [AIR 1991 Delhi 25] in that regard. It was further urged that closure of the Regional Accounts Office was not a local issue as held by the learned Single Judge. It was an All India issue pursuant to the settlements with the Federation. The Union was therefore not competent to question the notice of closure when it was not a party to various settlements. The Federation was not brought in picture by the Union nor was any Office bearer of the Federation examined. Further, the finding recorded that the interim payments made to the workmen were justified in view of the

provisions of Section 17B of the Act of 1947 was also incorrect. The requirements of Section 17B had not been satisfied since there were no affidavits filed regarding absence of gainful employment. However, he submitted that as a policy decision, the Management was not desirous of pressing the aspect of recovery of payments already made. It was then submitted that since the cause of action for filing the complaint was the termination of nineteen employees, the Union ought to have approached the Labour Court and not Industrial Court. In that context reliance was placed on the decisions in *Rajneesh Khajuria Versus Wockhardt Limited & Another* [(2020) 3 SCC 86], *Shankarprasad And Lokmat Newspapers Pvt. Ltd., Nagpur* [1997 II LLJ 195], *Executive Engineer, Electrical Division, Nagpur & Another Versus Prakash Devidas Kalasit* [1985 Mh.L.J. 338], *Pepsico India Holdings Pvt. Ltd. And Noshir Elavia & Another* [2002 II LLJ 721] and *Manoj Amdas Ingle & Others Versus Member, Industrial Court, Nagpur & Another* [2004 (3) Mh.L.J. 41]. It was thus submitted that considering the fact that the entire material on record had been considered by the learned Single Judge there was no reason to interfere with the impugned judgment. However, the adverse findings as challenged in the cross-objection were liable to be set aside.

7. We have heard the learned counsel for the parties at length and with their assistance we have also perused the material that was

placed on record by the parties. Before considering the applicability of the relevant statutory provisions on which the learned counsel for the parties have relied, it would be necessary to first refer to the findings recorded by the learned Single Judge after considering the evidence on record. It has been found by the learned Single Judge that the settlements from 24.01.1962 to 27.07.1999 which are at Exhibits 53 to 59 were entered into between the Federation and the Management under Section 2(p) read with Section 18(1) of the Act of 1947. Under these settlements a need was expressed by the Management for restructuring and re-organization of its activities in a phased manner. Initially the sales depots were closed and the sales system was replaced by the system of acquiring and forwarding agents and re-distribution of stockists. The number of Area Sales Offices/Branch Offices were reduced to five. Nagpur Area Sales Office was also closed down and the entire accounting work was agreed to be carried out from the Regional/Branch Office at Mumbai. As a result of re-organization of Company's activities option was given to the employees to either opt for voluntary retirement or to agree for re-deployment. It is in the light of these settlements that it has been held that the closure of the Regional Accounts Office was governed by the various settlements with the Federation. Yet another finding recorded is that the Regional Accounts Office was not part and parcel of the manufacturing process of the Company. There was no evidence found on record to hold that the Regional Accounts Office, Nagpur formed part and parcel of the manufacturing process undertaken by various factories. It is

on this basis that it was concluded that there was no material on record to satisfy the test of functional integrality, interdependence and componential relationship between the Regional Accounts Office and the various factories. On this basis it has been held that the provisions of Section 25-O(1) of the Act of 1947 were not attracted. The closure was governed by the provisions of Section 25FFF and that course had been duly followed.

8. We find that the aforesaid findings going to the root of the matter have been recorded after considering the relevant material on record. Once it is found that the closure of the Regional Accounts Office at Nagpur was pursuant to the settlements between the Federation and the Management the proviso to Section 9A would stand attracted. As per the said proviso, no notice of change would be required to be given if such change is effected pursuant to any settlement or award. The Union has not been in a position to demonstrate that the closure of the Regional Accounts Office as per notice dated 05.01.2001 was not pursuant to the settlement at Exhibits 53 to 59. Reliance has been rightly placed on the decision of the learned Single Judge in *Anglo-French Drugs and Industries Ltd.* (supra) by the learned counsel for the Management that for alteration of the conditions of service, existence of a live industry is necessary. On the factum of closure being established there would be no occasion to hold that such closure amounted to alteration of the conditions of service.

As regards the finding recorded by the learned Single Judge that the closure of the Regional Accounts Office was a local issue, the basis for that conclusion is that in none of the settlements was any provision made to enable the parties to the settlement to raise a question about illegal closure. In absence of any such modality it was held that the Union by espousing the case of its members at Nagpur was competent to do so and the same was thus a local issue. We do not find any reason to take a different view of the matter and on perusal of various settlements the aforesaid aspect is clear. For the same reason it was not necessary for the Federation to come in the picture in the present proceedings nor was it required to examine any witness in that regard. Similarly, the finding recorded that the jurisdiction of the Industrial Court was rightly invoked also does not require any interference since what was challenged was the notice of closure on the premise that it was in breach of the settlement entered into. Admittedly, the provisions of Item I of Schedule IV to the Act of 1971 had not been invoked and thus the Industrial Court was competent to entertain the same. The substantive claim made in the complaint was with regard to the illegal closure of the RAO at Nagpur on the premise that it was in breach of the settlements between the parties and hence the provisions of Item 9 of Schedule IV to the Act of 1971 were rightly invoked by the Union. The ratio of the decision in *Lokmat Newspapers Pvt. Ltd.* (supra) has been rightly held to be not applicable to the facts of the present case.

9. As regards the competence of the General Secretary to file the complaint before the Industrial Court, it is seen that the learned Single Judge has found that the complaint was filed by the registered Union and that Shri Rajhans was its General Secretary. The judgments cited in the cases of *Dale & Carrington Invt. (P) Ltd.* And *M/s Nibro Limited* (supra) have been dealt with. We are in agreement with the finding recorded in paragraphs 19 to 23 of the judgment of the learned Single Judge in that regard.

10. We thus find on a re-consideration of the material on record in the context of the findings arrived at by the learned Single Judge that the learned Single Judge was legally justified in setting aside the judgment passed by the Industrial Court. The closure of the Regional Accounts Office at Nagpur being pursuant to various settlements, the notice dated 05.01.2001 given to that effect did not result in constituting an unfair labour practice. We therefore do not find any reason to interfere with the judgment of the learned Single Judge. In the passing we may observe that by virtue of the interim orders passed in the year 2002 the nineteen employees were being paid last drawn wages and according to the Management this payment is approximately Rs.2,50,00,000/- (Rupees Two Crores Fifty Lakhs). We find that the interim orders as passed have resulted in meeting the ends of justice especially when the Management as a policy matter has decided not to agitate this aspect.

11. For aforesaid reasons the judgment of the learned Single Judge in Writ Petition No.1133 of 2002 stands confirmed. Letters Patent Appeal alongwith Cross-Objection stand dismissed leaving the parties to bear their own costs.

(G.A. SANAP, J.)

(A.S. CHANDURKAR, J.)

APTE