IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1420 OF 2022

General Motors India Pvt. Ltd.	]	
A-16, MIDC, Talegaon Industrial Area,	]	
Phase No.II Expansion, Tal.Maval	]	
District-Pune-410 507	]	...Petitioner
Vs.		
General Motor Employees Union	]	
C/o General Motors India Pvt. Ltd.	]	
MIDC, Phase No.II, Talegaon,	]	
Tal.Maval, District-Pune, 410 507	]	...Respondent

Mr. Janak Dwarkadas, Senior Advocate a/w. Ms. Namrata Vinod a/w. Mr. Vijay Purohit a/w. Mr. Faizan Mithaiwala, Mr. Virendra Vikram i/b. P & A Law Offices, for the Petitioner.

Mr. Sanjay Singhvi, Senior Advocate a/w. Mr. Nitin Kulkarni a/w. Ms. Aparajita R. Jha a/w. Mr. Rahul Kamerkar, for the Respondent.

CORAM : C.V. BHADANG, J.

RESERVED ON : 30 AUGUST 2022

PRONOUNCED ON : 12 SEPTEMBER 2022

JUDGMENT :

. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2. By this Petition, the Petitioner is challenging part of the order dated 5 January 2022 (below exhibit-U-2) passed by the Industrial Court at Pune in Complaint ULP No.155 of 2021. By the impugned order the Industrial Court has directed the Petitioner (Original Respondent) to pay 50% of the salary to each of the employees-workmen represented by the Respondent-Union, who have been retrenched as per order dated 12 July 2021.

3. Brief facts necessary for the disposal of the Petition may be stated thus :-

That the Petitioner is a company incorporated under the Provisions of the Companies Act 1956 in the year 1994. The Petitioner is having a manufacturing plant for motor vehicles at Talegaon in Maharashtra as well as a plant at Harol, Gujrat which was closed by the Company in the year 2017. The present Petition pertains to the employees working in the Talegaon plant.

4. Somewhere in January 2020 the Petitioner had entered into an agreement for sale of the business of the Petitioner to Great Wall Motors (‘GWM’) of China. The employees were *inter alia* informed that the terms of the sale to GWM does not contemplate automatic transfer of the employees.

5. On account of a change in the Foreign Direct Investment (“FDI”) Policy of the Government, the deal with

GWM was required to be kept on hold due to regulatory changes. The workmen were informed that there would be no production at the Talegaon plant post December-2020. The deal has not eventually materialised.

6. On 20 November 2020 the Petitioner filed an Application for permission to close the Talegaon plant, under Section 25(O) of the Industrial Disputes Act, 1947 (I.D. Act for short). On 24 December 2020 the production at the said plant was stopped. The application for closure has since been rejected.

7. On 16 April 2021 all the 1586 workmen working in the said plant were laid off under Section 25(M) of the I.D. Act. The Respondent-Union challenged the same before the Industrial Court in Complaint ULP No.71 and 73 of 2021, which are pending.

It appears that the Government of Maharashtra also referred the dispute of lay-off to the Industrial Tribunal at Pune under the I.D. Act.

8. On 12 July 2020 the Petitioner retrenched/ terminated the services of 1086 workmen placing reliance on Clause 31.8 of Certificated Standing Order (CSO).

9. The Respondent-Union challenged the same before the Industrial Court, in Complaint (ULP) No.155 of 2021

alleging Unfair Labour Practice by the Petitioner under Item No.9 and 10 of Scheduled-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act. 1970 (1970 Act, for short).

10. The Petitioner filed an Application raising objection to the jurisdiction of the Tribunal, to entertain the complaint which Application was rejected by the Tribunal on 17 August 2021.

11. The Petitioner challenged the same before this Court in WP No.5353 of 2021. That Petition was disposed of on 6 October 2021 recording the statement on behalf of the Respondent-Union that the challenge in the complaint before the Industrial Court, would be restricted to the ground based on Section 25(N) of the I.D. Act.

12. The Respondent-Union filed Application Exhibit-U-2 *inter alia* for a direction to the Petitioner to pay the salary/wages of the workmen and for restraining the Petitioner from alienating the property. The Tribunal by the impugned order has rejected the later prayer. However, has directed the Petitioner to pay 50% of the salary to each of the employees workmen who are covered by the order of retrenchment dated 12 July 2021. Feeling aggrieved the Petitioner is before this Court.

13. I have heard Mr.Dwarkadas, the learned Senior Counsel for the Petitioner and Mr.Sanghvi, learned Senior Counsel for the Respondent. Parties have also filed written submissions on record. I have gone through the same.

14. It is submitted on behalf of the Petitioner that the termination is based on Clause 31.8 of the CSO. It is submitted that Clause 31.8 entitles the Petitioner to retrench any of the workmen who have been laid off for more than 45 days. It is the principle contention on behalf of the Petitioner, that the Industrial Court, had no jurisdiction to hold that Clause 31.8 of the CSO was against public policy. It is submitted that such a jurisdiction cannot be assumed by the Industrial Court even at the *prima facie* stage, in view of Item No.1 of Scheduled IV read with Section 7 of the MRTU & PULP Act 1971.

15. In other words, it is submitted that the jurisdiction to examine the legality or otherwise of the CSO is with the Labour Court. It is submitted that Industrial Court could not have sat in Appeal or examined the legality or validity of the CSO particularly in view of the fact that in WP No.5353 of 2021 the Respondent had restricted the challenge based on Section 25(N) of the I.D. Act.

16. The learned Senior Counsel pointed out that the Petitioner-Company has more than 8480 Crores of accumulated

losses as on 20 November 2020 and soon after 24 December 2020 the production was required to be stopped on account of lack of work to remain operational.

17. It is submitted that solely with a view to ensure rehabilitation of the workmen, the Petitioner had introduced a generous Voluntary Separation Scheme ("VSS") which was finalized after several rounds of discussions with the workmen and the Union. It is submitted that about 550 workmen opted for the VSS of their own free will.

18. It is submitted that on account of the Covid-19 pandemic which is a natural calamity of unforeseen dimension and which has been declared by the Central Government to be a global pandemic, the Petitioner was required to lay off the workmen as per Clause-7 of the CSO on 16 April 2021 and 30 April 2021. It is pointed out that when the lay off is declared on the point of natural calamity, the prior permission of the Government is not required.

19. It is submitted that the pandemic had a devastating effect on the business/commerce in general and the automobile industry in particular.

20. It is submitted that the workmen who have been retrenched has received average of Rs.5.6 lakhs as compensation

apart from other statutory dues and despite acceptance of the said benefits the Respondent-Union is challenging the retrenchment/termination on the ground of absence of permission of the Government, Under Section 25(N) of the I.D. Act.

21. It is submitted that reliance placed by the Union on Section 25J of the ID Act is misplaced for the reason that there is no inconsistency between the provisions of section 25(N) of the I.D. Act and Clause 31.8 of the CSO. It is submitted that even after Section 25J of the ID Act is made applicable to Chapter V-B establishment by means of Section 25(S) of the ID Act still in the absence of any inconsistency, the ground raised by the Union has to fail.

22. It is submitted that the Industrial Court could not have assumed jurisdiction to examine the validity of the CSO in view of the provisions of Section 13A of the Industrial Employment (Standing Orders) Act, 1946 (1946 Act for short).

23. It is thus, submitted that the observations and finding by the Industrial Court holding that Clause 31.8 of the CSO is against 'public policy' in order to brush it aside, is without jurisdiction.

24. The learned Senior Counsel has placed reliance on the decision of the Supreme Court in ***Arun Kumar V/s. Union of India***[1]***, Banglkot Cement Cl .Ltd. V/s. R.K. Pathan & Ors.***[2]***, D.K. Yadav V/s. J.M.A. Industires Ltd***[3]***, Rohtak and Hissar Distrcits Electric Supply Co.***[4]***, Oswal Agro Furane Ltd V/s.Oswal Agro Furane Workers Union***[5]***, Rajneesh Khajuria V/s. Wockhardt Ltd.***[6] ***and Bharat Forege Employees Union V/s. Bharat Forge***[7]***.***

25. It is pointed out that the CSO has gone through rigorous certification and any person aggrieved has a right of Appeal under Section 6 of 1946 Act. It is pointed out that the CSO is in force since 2009 and forms part of the statutory terms and conditions of service which could not have been ignored.

26. It is submitted that the Tribunal has not considered the issue as to whether in the face of Clause 31.8 of the CSO, the provisions of Section 25(N) can be made applicable. It is submitted that this is not a case of retrenchment under Section 25(N) of the ID Act. It is essentially termination arising out of lay off as if the workmen are retrenched. It is submitted that every retrenchment is not termination. It is submitted that reliance placed by the learned Industrial Court, on the decision of

1 2007 (1) SCC 732
2 1962 Supp (2) SCR 697
3 (1993) IILLJ 696 SC
4 AIR 1966 SC 1471
5 Manu/SC/0104/2005
6 2020 (3) SCC 86
7 WPL No.98325 of 2020

the Supreme Court in *Oswal Agro Furane Ltd* is misplaced. It is pointed out that in that case a settlement arrived between employer and employees ignoring the provisions of Section 25(N) of the ID Act was held to be opposed to public policy.

27. It is submitted that even otherwise the Industrial Court had no jurisdiction to entertain the complaint regarding termination which essentially falls under Item No.1 of Scheduled IV of the 1970 Act which is maintainable before the Labour Court for which reliance is placed on the decision of the Supreme Court in *Rajneesh Khajuria.*

28. Lastly, reliance is placed on the decision of this Court in *Bharat Forge Employees Union,* holding that categorization of Covid-19 as a natural calamity is a triable issue. It is submitted that the Industrial Court could not have granted the relief of payment of 50% salary/wages particularly when the challenge to the legality of the order of lay off was pending. It is submitted that the Respondent had not established any *prima facie* case for grant of the relief which would entail huge financial burden on the Petitioner which is having no operational business profits. It is therefore, submitted that the impugned order be set aside.

29. In the alternative, it is submitted that the matter may be remitted back to the Industrial Court to decide the issue

whether in the face of Clause 31.8 of the CSO Section 25(N) can be made applicable.

30. Mr.Sanghvi, the learned Senior Counsel for the Respondent has supported the impugned order. It is submitted that Section 25(N) which is applicable in this case, has an overriding effect, as Section 25(N) will be attracted notwithstanding anything contained in any Certified Standing Orders relating to an Industrial establishment. It is pointed out that the provisions of Section 25(N) would be applicable in view of the provisions contained in Section 25(J) and 25(S) of the ID Act. It is submitted that Clause 31.8 of the CSO is a reproduction of Section 25(C) of the ID Act and the legislature in its wisdom had specifically excluded Section 25(C) and 25(F) from Chapter V-B of the ID Act and instead Section 25(N) is applicable to those establishments covered under Chapter V-B.

31. It is submitted that admittedly no prior permission has been obtained before the retrenchment/termination. It is submitted that as against the entitlement of full wages as per Sub Section 7 of Section 25(N), the Tribunal in its discretion, has awarded only 50% of the wages that too prospectively and thus the order does not require any interference. It is submitted that a criminal complaint is filed against the Petitioner, for breach of impugned order for which process is issued. It is submitted that

the present challenge may not be entertained, unless the Petitioner first complies with the impugned order.

32. It is submitted that there is a clear conflict between 25(N) and Clause 31.8 of the CSO and the argument of the Petitioner to the contrary, in the submission of the learned counsel, cannot be accepted. It is submitted that the Industrial Court has not struck down the relevant CSO and has only considered the issue whether Section 25(N) will override Clause 31.8 of the CSO. It is submitted that while holding so, the Tribunal has rightly placed reliance on the decision in Oswal Agro Furane Ltd and has separately taken recourse to Section 25(J) and 25(S) to hold that Section 25(N) would be applicable.

33. The learned counsel placed reliance on the decision of the Supreme Court in ***S.G. Chemicals & Dyes Trading Employees Union V/s. S.G. Chemicals & Dyes Trading Ltd***[8]***, Rajasthan State Raod Transport Corporation & Anr. V/s. Krishna Kant***[9]***,*** to submit that Section 25(N) would constitute part of the employment contract/terms of employment.

34. It is submitted that the Industrial Tribunal has jurisdiction, in view of that fact that the challenge is to the termination on the ground of violation of Section 25(N) of the ID Act.

8 (1986) 2 SCC 624
9 (1995) 5 SCC 75

35. It is submitted that the Petitioner was a profitable enterprise and was proposed to be sold to GWM, China for a very high price and the Memorandum of Outstanding ("MoU") was signed with GWM China, even before the Petitioner applied for closure which has been rejected and which order has attained finality.

36. It is submitted that as per the reports the company has made it clear that their business strategy in India remains unchanged while exploring further options for the sale of the site. It is submitted that the accumulated losses till 2016 have started to decline and there were operational profits during the three years period immediately prior to the stoppage of production. The learned counsel referred to the balance-sheet in this regard. It is submitted that the Industrial Court has rightly appreciated all the rival circumstances and has restricted the order for payment of 50% of the salary/wages prospectively and the said order does not require interference.

CONSIDERATION

37. Notwithstanding extensive narration of facts and the rival submissions, the issue lies in a narrow compass, as the material facts are not in dispute and infact are matters of record.

38. It is undisputed that the Petitioner had entered into an MoU for sale of the undertaking with GWM, China somewhere in January 2020 and the said transaction did not materialize, presumably on account of certain regulatory changes. It is also undisputed that the Petitioner had filed a permission to close the Talegaon plant under Section 25(O) of the I.D. Act and the said permission has been rejected. The production of the plant had stopped from 24 December 2020. About 1586 workmen working at the plant were laid of under Section 25(M) of the I.D. Act on 16 April 2021 and the validity of the said order of lay off is subject matter of challenge before the Industrial Court in complaint ULP No.71 and 73 of 2021.

39. It is further undisputed that the Petitioner had floated a Voluntary Separation Scheme ('VSS') which was accepted by about 550 workmen. Thus, the dispute only survives sofar as the remaining 1086 workmen are concerned.

40. The Petitioner placing reliance on the proviso to CSO No.31.8 has effected retrenchment/termination of the said workmen on the ground that they were laid of for more than 45 days. Admittedly, no permissions is obtained from the government.

41. Clause 31.8 of the CSO reads thus :-

> *During any period of twelve months, if a workman is so laid off for more than forty-five days, no such compensation shall be payable in respect of any period of the lay-off after the expiry of the first forty-five days.*
>
> *Provided further that it shall be lawful for the Company in any case falling within the foregoing clause to retrench the workmen in accordance with the provision contained in Section 25-F of the Industrial Disputes Act 1947 at any time after the expiry of forty-five days of the lay-off and when the Company does so, any compensation paid to the workmen by the Company for having being laid off during the proceeding 12 months may be set-off against the compensation payable for retrenchment.*

42. The Petitioner has challenged the retrenchment/termination in Complaint ULP No.155 of 2021 which is pending before the Industrial Court at Pune.

43. It can be seen that by virtue of the statement made before this Court in Writ Petition No.5353 of 2021 the challenge at the instance of the Petitioner has been restricted to the ground based on Section 25(N) of I.D. Act.

44. Indisputably, the Petitioner is an establishment which is governed by Chapter V-B of the I.D.Act. Presently, I am not concerned with the challenge to the order of lay off as it is subject matter of challenge in separate proceedings. The question is assuming that the lay of is legal, whether the retrenchment is valid, in view of Section 25(N) of the I.D. Act and/or whether the same can be justified in view of Clause 31.8.

45. Section 25N(1) and (7) of the I.D. Act, which are relevant for the purpose read thus.

> *"25N. Conditions precedent to retrenchment of workmen.-*
> *(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,--*
> *(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and*
> *(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.*
> *(2) …*
> *(3)…*
> *(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice has been given to him."*

46. It is undisputed that the Petitioner establishment has not sought any permission for such retrenchment as contemplated under Section 25(N)(1)(b) of the I.D. Act. It is precisely for this reason that it is contended on behalf of the Respondent-Union placing reliance on Sub-Section 7 Section 25(N) that the workmen are entitle to all the benefits under the law "as if no notice had been given to them". At the cost of the

repetition it needs to be stated that the action is sought to be justified on the basis of Clause 31.8 of the CSO.

47. There was a debate at the bar about the status of Certified Standing Orders, in relation to the terms and conditions of employment of the workmen. It is not necessary to dilate on the same, as it is well settled that the CSO under the 1946 Act, are statutorily imposed conditions of service and are binding between the parties.

48. The Industrial Court has referred to the decision of the Supreme Court in *Rajasthan State Road Transport Corporation* (Supra), in which it has been held that the Certificated Standing Orders framed under the 1946 Act, are statutorily imposed conditions of service and are binding both upon the Employer and Employees "though they do not amount to statutory provisions".

49. The Supreme Court in the aforesaid case has referred to its earlier decision in ***Workmen V/s. Dewan Tea Estate***[10]**,** in which it has been observed thus :-

> *"It will be recalled that the Standing Orders which have been certified under the standing Orders Act became part of the statutory terms and conditions of service between the industrial employer and his employees. Section 10(1) of the Standing Orders Act provides that the Standing Orders*

10 (1964) 5 SCR 548

finally between the employer and the workmen, be liable to modification until the expiry of six months from the date on which the Standing Orders or the last modification thereof came into operation. If the Sanding Orders thus become the part of the statutory terms and conditions of service, they will govern the relations between the parties unless, of course, it can be shown that any provisions of the Act is inconsistent with the said Standing Orders.

18. We do not think the certified Standing Orders can be elevated to that status. It is one thing to say that they are statutorily imposed conditions of service and an altogether different thing to say that they constitute statutory provisions themselves"

50. The question really is what would be the effect of Clause 31.8 of the CSO in the face of non-compliance of Section 25(N) of the I.D. Act. Now prior to considering the said issue it is necessary to note that as per Section 25(S) of I.D. Act provisions of Section 25(J) of the I.D. Act (Which falls under Chapter V-A), would be applicable to the establishment governed by Chapter V-B of I.D. Act. Section 25(J) reads thus :-

25J. Effect of laws inconsistent with this Chapter.-
(1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law [including standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946)]:
[Provided that where under the provisions of any other Act or rules, orders or notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.]

> *(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen insofar as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter."*

51. It can thus be seen that the conjoint reading of Section 25(J) and Section 25(S) would make it clear that said provisions will apply notwithstanding anything inconsistent therein contained in any other law, including Standing Orders made under the 1946 Act. Section 25(N) in terms prescribes that there shall be no retrenchment except as provided under the said Section which includes prior permission being sought from the appropriate Government which is admittedly not obtained in this case.

52. Proviso to Clause 31.8 of the CSO permits the Petitioner to retrench the workmen, in accordance with the provisions contained in Section 25F of the I.D. Act at any time after the expiry of 45 days of lay off.

53. It was strenuously urged on behalf of the Petitioner that the Industrial Court exceeded its jurisdiction in declaring Clause 31.8 of the CSO inoperative, as being opposed to public policy.

54. It is true that as per the Section 13A of the 1946 Act, the question about application or interpretation of a CSO is required to be referred to the Labour Court. It is precisely on the ground that it is contended that the Industrial Court exceeded its jurisdiction. In my considered view the contention cannot be accepted as the Industrial Court cannot be said to have declared the CSO No.31.8 as invalid nor it has been struck down. There are situations where the Courts/Tribunal are required to consider the applicability of conflicting statutory provisions. In such a case it is always open for the Courts/Tribunal to consider, which provision shall apply with precedence.

55. It is necessary to note that the Industrial Court although has made certain observations about Clause 31.8 of the CSO being against public policy what the Industrial Court has essentially held is that the CSO will not have overriding effect over the provisions of the I.D. Act (paragraph 26) and that in the event of inconsistency, Section 25(N) of the I.D. Act will prevail (paragraph 27). Further the Industrial Court has held that on the basis of Clause 31.8 of the CSO, the Petitioner (Respondent before the Tribunal) has no right to retrench the workmen without following procedure prescribed in Section 25(N) of the I.D. Act. The observations and the findings by the Industrial Court have to be read as a whole. In my considered view all that the Industrial Court has in effect held is that under the relevant

CSO the Petitioner could not have retrenched the workmen, without following the provisions of Section 25(N).

56. The contention that there is no conflict between the Standing Order No.31.8 and Section 25(N) to my mind cannot *prima facie* be accepted.

57. Clause 31.8 of the CSO entitles the Petitioner to retrench the workmen who have been laid off for more than 45 days. On the contrary Section 25N imposes certain conditions for retrenchment including the obtaining of permission from the Government, which has admittedly not been obtained in this case.

58. Even sofar as the jurisdiction of the Industrial Court to entertain the complaint, challenging the retrenchment is concerned, an objection was raised to the jurisdiction of the Tribunal which was rejected and which was challenged by the Petitioner before this Court in Writ Petition No.5353 of 2021. That Petition has been disposed of by recording the statement on behalf of the Petitioner that the grievance would be restricted to Section 25N of the I.D. Act. Thus the challenge to the jurisdiction cannot be accepted at this stage.

59. A brief reference may be made at this stage to the decisions cited on behalf of the Petitioner. In *Arun Kumar*

(Supra) the validity of Rule 3 of the Income Tax Rules 1962 as amended in 2001 was subject matter of challenge. Reliance was placed on the observations in paragraph 74 of the judgment in which the Supreme Court *inter alia* held that the jurisdictional fact is a fact which must exists before a Court, Tribunal or an authority assumes jurisdiction over a particular matter.

I have already found that the challenge to the jurisdiction cannot be accepted at this stage.

60. In *Banglkot Cement Co. Ltd. (Supra),* the question was about scope and effect of Clause 5 in the Schedule to the 1946 Act. In *D.K. Yadav (Supra)*, it was held that though the CSO's have statutory force, they do not expressly exclude the Application of principles of natural justice.

61. In *Rohtak and Hissar Districts Electric Supply Co. Ltd. (Supra)*, the validity of certain orders passed by the certifying authorities, in respect of the Draft Standing orders were challenged. Paragraph 10 of the judgment was referred to in which the Supreme Court *inter alia* has held that the Standing Orders have to cover matters specified in the schedule attached to the Act.

62. The learned Senior Counsel for the Petitioner had submitted that the Industrial Court could not have placed reliance on the decision in *Oswal Agro Furane Ltd (Supra),*

inasmuch as the said case involved the provisions in a settlement arrived at by and between the employer and the workmen, unlike in the present case where there is a Certified Standing Order. I have already found that although the Industrial Court has observed that the Standing Order is against public policy, essentially the finding is that it cannot override Section 25(N) and the workmen cannot be retrenched placing reliance on the said Standing Order without obtaining permission of the Government as required by Section 25(N) of the I.D. Act.

63. In *Rajneesh Khajuria (Supra)*, the concerned, employee was transferred and on account of his failure to comply with the order of transfer, his services were terminated. The employee succeeded before the Industrial Court which order was set aside by the High Court holding that, it is for the employer to decide to which place the employee, should work, in the interest of the establishment. The matter went to the Supreme Court. It was in this context the Supreme Court has examined the jurisdiction of the Industrial Court *inter alia* to decide the complaints relating to unfair labour practices except unfair labour practice falling under Item-1 of Schedule-IV of the 1971 Act.

64. The Supreme Court has *inter alia* held that the Industrial Court will not have jurisdiction to examine the question of termination "as a consequence of the order of transfer". The case in my view is clearly distinguishable on facts.

65. Lastly, in *Bharat Forege Employees Union (Supra)*, there was challenge to the order of notice of lay off on account of the economic slowdown as a result of Covid-19 pandemic. The Industrial Court held that whether Covid-19 is a natural calamity and whether prior permission is necessary to be obtained to declare lay off is an issue which is required to be proved by oral evidence and was a triable issue. The Industrial Court therefore refused to grant interim relief which order was subject matter of challenge before this Court. This Court refused to interfere by expediting the complaint before the Industrial Court. I have already noticed that the issue of lay off is not for consideration in this Petition as it is subject matter of separate challenge.

66. The alternate contention on behalf of the Petitioner that the matter be remitted back to the Industrial Court also cannot be accepted, as the material facts are not in dispute and are matters of record. The issue is one of the applicability of Section 25(N) in the face of the relevant CSO.

67. I have gone through the impugned order and I do not find that it suffers from any infirmity so as to require interference. The Petition is without any merit and is accordingly dismissed.

68. Rule is discharged with no order as to costs.

C.V. BHADANG, J.