**WORKMEN OF THE INDIAN LEAF TOBACCO DEVELOPMENT COMPANY LIMITED, GUNTUR** A

*v.*

**MANAGEMENT OF THE INDIAN LEAF TOBACCO DEVELOPMENT CO. LTD., GUNTUR**

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*September* 27, 1968

[J. M. SHELAT, V. BHARGAVA AND C. A. VAIDIALINGAM, JJ.]

*Industrial Dispute—Closure of branches or depots—No closure of business itself—Whether managerial activity, not referable to industrial tribunals—Rights of workmen in closed depots.*

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The respondent was carrying on the business of purchasing, handling and selling tobacco. In 1962, it was maintaining 21 depots where the principal work was handling tobacco and the work of purchasing was done on a small scale. In 1963, it gave notice that 8 out of the 21 depots would be closed down. An industrial dispute was raised by the workmen and the demands of the workmen, namely: (1) that no depot worked during 1962 should be closed; and (2) no workman who worked in 1962 should be retrenched, were referred to the Industrial Tribunal. The Tribunal held that the stoppage of work at the 8 depots and the closure was genuine and real, that there was no transfer of the work that was being carried on at those depots to other buying points established by the respondent, and repelled the suggestion of the appellants that it was a *mala fide* device adopted for carrying on the same business in a different manner, and decided both the issues against the workmen.

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In appeal to this Court,

HELD: (1) 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, and therefore, the issue was incorrectly referred by the Government for adjudication by the Tribunal. The closure is stoppage of part of the activity or business of the respondent. Such stoppage is an act of management which is entirely in the discretion of the respondent and no Industrial Tribunal can interfere with the discretion exercised in such a matter, or can have the power to direct the respondent to continue a part of the business which it had decided to shut down. or direct it to reopen a closed depot or branch. [284 G-H; 285 A-C]

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(2) On that finding, no question could arise of the retrenchment being set aside by the Tribunal, because, there was no business for which the workmen would be required. All that the workmen could claim was compensation for loss of the service, and, in a case where a dispute may arise as to whether workmen discharged are entitled to compensation under s. 25F or s. 25FFF, of the Industrial Disputes Act, 1947, it may become necessary to decide whether the closure amounts to closure in law or not. But, in the present case, the workmen have all been paid retrenchment compensation at the higher rate laid down in s. 25F and therefore, received adequate compensation. [287 F-H; 288 A]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 556 of 1966.

A Appeal by special leave from the order dated August 13, 1964 of the Industrial Tribunal, Andhra Pradesh in Industrial Dispute No. 41 of 1963.

*M. K. Ramamurthi, Shyamala Pappu* and *Vineet Kumar,* for the appellants.

B *K. Srinivasamurthy* and *Naunit Lal,* for the respondent.

The Judgment of the Court was delivered by

**Bhargava, J.** This appeal, by special leave, has arisen out of an award made by the Industrial Tribunal, Andhra Pradesh, at Hyderabad in an industrial dispute between the respondent, the Imperial Tobacco Co., as well as exporting the tobacco to various C (hereinafter referred to as "the Company"), and its workmen. Admittedly, the Company is an associate of the Imperial Tobacco Company Ltd., and the main business carried on by the Company is that of purchasing tobacco of all varieties and qualities, stemming, grading and packing of tobacco and supplying it to the Imperial Tobacco Co., as well as exporting the tobacco to various D foreign countries in the world. The Company has been carrying on this business for about 40 years and handles almost 35 per cent of the tobacco grown in the State of Andhra Pradesh. For the work of stemming, grading and packing tobacco, the Company has two factories, one at Anaparty in East Godavari District, and the other at Chirala in Guntur District. In connection with this E business, the Company, in the year 1962, was maintaining 21 depots where, according to the workmen, the appellants, the Company was carrying on the work of collecting tobacco, though the Company's case was that the principal work done at these depots was that of handling the tobacco purchased at other places and only included the work of purchasing tobacco on a small scale.

F On 16th August, 1963, the Company gave a notice to the Union of the appellant workmen that 8 out of 21 depots mentioned therein would be closed down with effect from 30th September, 1963. Thereafter, an industrial dispute was raised by the workmen which related to the closure of these 8 depots, as well as to a number of other demands, including revision of basic wages G and dearness allowance, additional discomfort allowance, etc. The State Government, by its Order dated 14th November, 1963, referred the dispute for adjudication under s. 10(1)(d) of the Industrial Disputes Act, 1947 to the Industrial Tribunal, Hyderabad. The first issue which was referred for adjudication, was as follows :—

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> "How far the demands of the union, *viz.*, (i) that no depot which worked during 1962 season should be closed, and (ii) that no workman who worked in 1962 season should be retrenched, are justified ?"

There were ten other issues, but we need not reproduce them, as we are not concerned with them in this appeal. A

In the proceedings for adjudication, the Company took a preliminary objection that the closure of the depots was a managerial function, that there could not be an industrial dispute over such closure, that the Government, therefore, had no power to refer this issue for adjudication, and that the Tribunal also had no power to adjudicate on it. Thereupon, the Tribunal framed a preliminary issue as to "whether the employer is justified in alleging that Issue No. 1 framed by the Government cannot be deemed to relate to an industrial dispute, and as such, whether the Government had the power to refer it for adjudication". The Tribunal decided this preliminary issue by giving an interim award on the 13th August, 1964. The preliminary objection was allowed and a further direction was made that the effect of this decision on Issue No. 1 will be decided later after hearing the parties. Thereafter, the Tribunal proceeded to hear the reference on this question as well as on all other issues referred to it and, ultimately, gave its award on 11th December, 1964. In that award, both the parts of issue No. 1 were decided against the workmen. The workmen have now come up in this appeal against the interim award dated 13th August, 1964 as well as against the final award insofar as it relates to issue No. 1. B C D

The decision given by the Tribunal in the interim award, holding that the reference covered by issue No. 1 was not competent, has been challenged by learned counsel for the appellants on the ground that the closure of a depot does not amount to closure of business in law and, since the same business was continued by the Company at at least 13 other depots, the closure of the 8th depots in question was unjustified. For the proposition that the closure of the depots did not amount to closure of business, learned counsel relied on the views expressed by this Court in *Pipraich Sugar Mills Ltd.* v. *Pipraich Sugar Mills Mazdoor Union*(1), where the Court explained the reason for the decision given by the Labour Appellate Tribunal in the case of *Employees of Messrs India Reconstruction Corporation Limited, Calcutta* v. *Messrs. India Reconstruction Corporation Ltd., Calcutta*(2). It, however, appears to us that this question raised on behalf of the appellants is totally immaterial insofar as the question of the jurisdiction of the Tribunal to decide the first part of issue No. 1 is concerned. The closure of the 8 depots by the Company, even if it is held not to amount to closure of business of the Company, cannot be interfered with by an Industrial Tribunal if, in fact, that closure was genuine and real. The closure may be treated as stoppage of part of the activity or business of the Company. Such stoppage of part of a E F G H

(1) [1956] S.C.R. 872. (2) 1953 L.A.C. 5 63.

A business is an act of management which is entirely in the discretion of the Company carrying on the business. No Industrial Tribunal, even in a reference under s. 10(1)(d) of the Industrial Disputes Act, can interfere with discretion exercised in such a matter and can have any power to direct a Company to continue a part of the business which the Company has decided to shut B down. We cannot possibly accept the submission made on behalf of the appellants that a Tribunal under the Industrial Disputes Act has power to issue orders directing a Company to reopen a closed depot or branch, if the Company, in fact, closes it down.

An example may be taken of a case where a Bank with its headquarters in one place and a number of branches at different C places decides to close down one of the branches at one of those places where it is functioning. We cannot see how, in such a case, if the employees of that particular branch raise an industrial dispute, the Bank can be directed by the Industrial Tribunal to continue to run that branch. It is for the Bank to decide whether the business of the branch should be continued or not, and D no Bank can be compelled to continue a branch which it considers undesirable to do.

In these circumstances, it is clear that the demand contained in the first part of Issue No. 1 was beyond the powers and jurisdiction of the Industrial Tribunal and was incorrectly referred for E adjudication to it by the State Government.

Of course, if a Company closes down a branch or a depot, the question can always arise as to the relief to which the workmen of that branch or depot are entitled and, if such a question arises and becomes the subject-matter of an industrial dispute, an Industrial Tribunal will be fully competent to adjudicate on it. It F is unfortunate that, in this case, when dealing with the preliminary issue, the Tribunal expressed its decision in the interim award in general words holding that Issue No. 1 as a whole was beyond its jurisdiction. If the reasoning in the interim award is taken into account, it is clear that the Tribunal on that reasoning only came to the conclusion that it was not competent to direct reopening of G the 8 depots which had been closed, so that the Tribunal should have held that the first part of Issue No. 1 only was outside its jurisdiction.

So far as the second part of that issue is concerned, as we have said above, it was competent for the Tribunal to go into it and decide whether the claim of the workmen that they should not be H retrenched was justified. On an examination of the interim award and the final award, we, however, find that the Tribunal in fact did

(1) [1956] S.C.R. 872.

do so. The case reported in *Pipraich Sugar Mills Ltd.*(1) was also concerned only with the question as to the relief that can be granted to workmen when there is closure of a business. No question arose either before the Court, or in the cases considered by the Court, of an Industrial Tribunal making a direction to the employers to continue to run or to reopen a closed branch of the business. The Labour Appellate Tribunal in the case of *Employees of Messrs India Reconstruction Corporation Ltd., Calcutta*(1) was dealing with the question of retrenchment compensation as a result of the closure of one of the units of the company concerned, and it held that the workmen were entitled to retrenchment compensation in accordance with law. This Court, in the case of *Pipraich Sugar Mills Ltd.*(2), only explained why the Labour Appellate Tribunal was justified in granting retrenchment compensation in that case. The opinion expressed by the Court was that, though there is discharge of workmen both when there is retrenchment and closure of business, the compensation is to be awarded under the law not for discharge as such but for discharge on retrenchment and if, as is conceded, retrenchment means in ordinary parlance discharge of the surplus, it cannot include discharge on closure of business. It was in this context that the Court went on to add that in the case of *Employees of M/s. India Reconstruction Corporation Ltd., Calcutta*(1) what had happened was that one of the units of the Company had been closed which would be a case of retrenchment and not a case of closure of business. It may be noted that, at the time when this decision was given, section 25FF and section 25FFF had not been introduced in the Industrial Disputes Act, and the only right to retrenchment compensation granted to the workmen was conferred by section 25F. It was in the light of the law then prevailing that the Court felt that the decision of the Labour Appellate Tribunal in the case of *Employees of M/s. India Reconstruction Corporation Ltd*(1) granting retrenchment compensation could be justified on the ground that the services of the workmen had not been dispensed with as a result of closure of business, but as a result of retrenchment. That question does not arise in the case before us. Since then, as we have indicated above, s. 25FF and s. 25FFF have been added in the Industrial Disputes Act, and the latter section specifically lays down what rights a workman has when an undertaking is closed down. In a case where a dispute may arise as to whether workmen discharged are entitled to compensation under s. 25F or s. 25FFF, it may become necessary to decide whether the closure, as a result of which the services have been dispensed with, amounts to a closure in law or not. In the case before us, it was admitted by learned counsel for both parties that the workmen, who have been discharged as a result of the closure of the 8 depots

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(1) 1953 L.A.C. 563. (2) [1956] S.C.R. 872.

A of the Company, have all been paid retrenchment compensation at the higher rate laid down in s. 25F, so that, in this case, it is not necessary to decide the point raised on behalf of the workmen.

In connection with the second part of issue No. 1, it was also urged by learned counsel for the appellants that the business, B which was being carried on at the 8 depots, had not in fact been closed down and had merely been transferred to buying points situated in and around the closed depots, including two new buying points established by the Company after the closure of these 8 depots. The argument was that the workmen were old employees who had served the Company for a long time and were C entitled to certain benefits as a result of that long service. The Company closed these 8 depots *mala fide* with the object of depriving the workmen of those benefits and merely altered the nature of the business by closing the depots and carrying on the same business at the buying points. This point urged by learned counsel cannot, however, be accepted in view of the findings of fact recorded by the Tribunal.

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The Tribunal examined in detail the allegations made on behalf of the workmen in this respect. In fact, the interim award mentions that, for the purpose of deciding the preliminary issue and the first issue, evidence was recorded by the Tribunal for more than a week and arguments of Advocates of the parties were E heard for even a longer period. After examining the evidence, the Tribunal came to the conclusion that the stoppage of the work at the depots was genuine and that the work which was being carried on at the depots had not been transferred to the buying points established by the Company. The closure of the business at the depots was necessitated by reasons of expediency inasmuch as the Company had to reduce its purchases in its quest for quality F and its desire to run the business economically. The principal work, which used to be done at the depots, was not that of purchasing tobacco, but of handling it and that work was not transferred at all to any buying point. The Tribunal, thus, came to the finding that the closure of these depots was real and genuine and that the suggestion of the appellants that only a device was G adopted of carrying on the same business in a different manner had no force at all. If the same business had been continued, though under a different guise, the claim of the workmen not to be retrenched could possibly be considered by the Tribunal; but, on the finding that there was a genuine closure of the business that used to be carried on at the depots, no question could arise H of the retrenchment being set aside by the Tribunal. The Tribunal could not ask the Company to re-employ or reinstate the workmen, because there was no business for which the workmen could be required. In these circumstances all that the workmen

could claim was compensation for loss of their service and in that respect, as we have indicated above, the workmen have received adequate compensation.

Consequently, the appeal has no force and is dismissed; but we make no order as to costs.

V.P.S. *Appeal dismissed.*

L2 S.C.I./69—2,500—6-1-70—GIPF.