R. B. BANSILAL ABIRCHAND MILLS CO. LTD.

v.

LABOUR COURT NAGPUR & ORS.

November 25, 1971

[S. M. SIKRI, C.J., J. M. SHELAT, I. D. DUA AND G. K. MITTER, JJ.]

Industrial Disputes Act—S. 33C(2)—Whether Labour Court has jurisdiction to entertain application for lay-off compensation under s. 33C(2).

A textile mill in Madhya Pradesh employed about a thousand workers. The mill was owned by a firm, the appellant in the Second Appeal. A fire broke out in the Mill doing appreciable damage to some of the machines. From a letter of the Insurance company, the extent of the damage caused, was ascertained to be about Rs. 37,420/-. In terms of the last notice given by the employers the mills did not commence work but instead, the management transferred the mills to the company which had been incorporated on 8th December 1959. From the facts it was clear, that the damage to the machinery was insignificant as against the total assets transferred to the company and the damage was not such that it was not possible to run the mills at all.

Respondents 2 to 346 in the Second Appeal applied under s. 33C(2) of the Industrial Disputes Act to the Labour Court claiming lay-off compensation for the period they remained idle. The Labour Court held that there had been a lay-off within the meaning of s. 2(KKK) of Industrial Disputes Act and except 'badli' workers the employees were entitled to compensation for the full period of 18 months. The appellants in both the appeals, filed writ petitions before the High Court for quashing the order of the Labour Court and the High Court raised several issues and ultimately remanded the matters back to the Labour Court for recording fresh evidence as to whether the applicants presented themselves for work at the appointed time at least once a day within the meaning of s. 25E(ii). On the application of the appellants the High Court granted certificates under Art. 133(1)(a) of the Constitution. The point urged by the appellants was that if a claim is made on the basis of a lay off and the employer contends that there was no lay off but closure it is open to a labour court to entertain an application under s. 33C(2). It is more so when the dispute was not between a solitary workman on the one hand and the employer on the other but a whole body of workmen ranged against their employer who was faced with numerous applications before the labour court for computation of benefit in terms of money.

Dismissing the appeals,

HELD : (i) From the facts and circumstances of the case, it was clear that the business of the company was continuing. They, in fact, continued to employ several employees and their notices say that some portion of the mills would continue to work. The Labour Court's jurisdiction could not be ousted by a mere plea denying the workmen's claim to the computation of benefit in terms of money. The Labour Court must go into the matter and come to a decision as to whether there was really a closure or a lay off. If it took the view that there was a lay-off, it would be acting within its jurisdiction if it awarded compensation in terms of the provisions in Ch. VA. The High Court is right in upholding the decision of the Court. [591 E-H]

A (ii) Section 33C(2) takes within the purview, cases of workmen who claim that the benefits to which they were entitled should be computed in terms of money, even though the right to the benefit on which their claim is based, is disputed by their employers. In other words, the Labour Court may enquire into all such acts or disputes which are incidental to the main dispute. [588 C-D]

B (iii) Section 25C provides for the measure of compensation to be awarded in cases of lay off of workers. The claim to compensation of every workman who is laid off is one which arises under the statute itself and s. 25C, provides for a benefit to the workman which is capable of being computed in terms of money under s. 33C(2), of the Act. The scheme of the Act is that an individual workman can approach a labour court for computation of compensation in terms of s. 25C of the Act and he is not concerned to see whether other co-workers will adopt the same C course or not. The fact that a number of workers make claims of identical nature cannot make any difference to the individual workman who prefers the claim. The mere fact that a large number of persons makes a claim of the same nature against the employer does not change the nature of the dispute so as to take it out of the pale of s. 7 of the Act and render the dispute one which can only be dealt with by an industrial tribunal. [588 E-H]

D *Central Bank of India Ltd.* v. *P. S. Rajagopalan*, [1964] 3 S.C.R. 140, followed.

Mining Engineer v. *Rameshwar*, [1968] 1 S.C.R. 140, *U.P. Electric Supply Co.* v. *R. K. Shukla*, [1970] 1 S.C.R. 507, *Ramkrishna Ramnath* v. *Presiding Officer, Nagpur*, [1970] 2 L.L.J. 306 and *Sawatram Mills* v. *Baliram*, [1966] 1 S.C.R. 764, referred to and distinguished.

E CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2136 and 2295 of 1966.

Appeals from the judgment and order dated February 2, 1965 of the Bombay High Court, Nagpur Bench in Special Civil Applications Nos. 246 of 1964 and 84 of 1963 respectively.

F *G. B. Pai, P. C. Bhartari, J. B. Dadachanji, O. C. Mathur* and *Ravinder Narain*, for the appellant (in C.A. No. 2136 of 1966).

S. V. Gupte, C. N. Nagle and *A. G. Ratnaparkhi*, for the appellant (in C.A. No. 2295 of 1966).

G *M. C. Bhandare, V. P. Sathe, Praveen Pareek, Vineet Kumar* and *Indira Jai Singh*, for respondents Nos. 131 to 142, 144 to 478, 480 to 488, 490 and 492 (in C.A. No. 2136 of 1966).

The Judgment of the Court was delivered by

H **Mitter, J.** The main question in these two appeals by certificate is, whether the Labour Court had jurisdiction to entertain the application for lay-off compensation under s. 33-C(2) of the Industrial Disputes Act. The appellant in the first appeal is a

limited company which is now under liquidation while the appellant in the second is a partnership firm, the respondents in the two appeals being the Labour Court and different groups of workmen. A

The facts are as follows. In Hinganghat there was a textile mill known as R. B. Bansilal Abirchand Mills which used to employ about 1000 men. The mill was owned by the firm, the appellant in the Second appeal. A fire broke out in the mill on March 27, 1959 doing appreciable damage to some of the machines. The employers put up a notice under their Standing Order No. 19 on March 28, 1959 to the effect that the fire of the previous night had caused heavy loss and extensive damage to the departments rendering the mill's working impracticable until necessary repairs and adjustments were carried out. The employees were however to note that the folding and workshop departments would continue to work as usual and notice of resumption of mill's working would be posted after necessary adjustments and repairs were carried out. This was followed by a second notice issued on April 2, 1959 to the effect that the preliminary survey of the fire have in conjunction with the insurance companies had shown that over 60 per cent of the machines in the carding, fly frame and Ring frame departments had been damaged and that the damage to the bulk of these machines was such that they might require complete replacement. It was further announced that in the circumstances the Management had no alternative but to declare stoppage of work of all the productive departments of the mills. B C D E

Although it is not possible to be precise as to the extent of the damage caused, a fair idea of it can be had from a letter of Hukumchand Insurance Company Ltd. dated August 28, 1959 stating that the loss to buildings, machinery and accessories had been determined at Rs. 22,624/- by the surveyors. It appears that on 27th April 1960 the representatives of the insurance companies had agreed to re-assessment increasing the figure for repairs to Rs. 37,420/-. F

The third notice put up by the firm on April 29, 1960 gave no indication of the date of completion of the repairs. On September 13, 1960 the firm notified that the departments of the mills which had remained unproductive since 28th March, 1959 were expected to commence working on or about 30th September, 1960. G

The firm did not however work the mills in terms of the last notice but transferred the same to the company which had been incorporated on 8th December, 1959. It appears that the consideration for the transfer was Rs. 34,75,000/- made up of H

A Rs. 11,50,000/- being the value of the immovable properties and Rs. 23,25,000/- being the value of movable properties. Compared to the second figure, the damage to the machinery as assessed by the insurance companies is insignificant.

The first notice of 28th March, 1959 brings out the fact that
B the work in the mill as a whole was not brought to a stand still and that it was to continue as usual in the folding and workshop departments. According to the second notice, the preliminary survey had shown that over 60 per cent of the machines in only three departments, namely, carding, fly frame and ring frame, had been damaged and that complete replacement of some of the above might be necessary. The notices do not make out the
C case that the damage was such that it was not possible to run the mills at all.

Towards the end of 1961 and the beginning of 1962, respondents 2 to 346 in Civil Appeal No. 2295 of 1966 presented applications under s. 33-C(2) of the Industrial Disputes Act to the
D Labour Court at Nagpur claiming to have been laid-off from 28th March 1959 to 30th September, 1960. The appellants in the second appeal filed a written statement before the Labour Court contending *inter alia* that the Labour Court had no jurisdiction under s. 33-C(2) and that the parties had to work out their rights within the four corners of the State Act *i.e.* the C.P. and Berar
E Industrial Disputes Settlement Act, 1947. By order dated 30th November, 1962 the preliminary objection as to jurisdiction of the employers was rejected by the Labour Court. On this, the appellants preferred an application under Art. 226 of the Constitution of India before the Bombay High Court. By a common judgment rendered on 25th August, 1962 the High Court rejected the contentions of the appellants that the claim under the In-
F dustrial Disputes Act was not maintainable because of the operation of the State Act and further held that the Labour Court was competent to adjudicate on the merits of the claim of the workers even where the employer disputed not only the jurisdiction of the said court but also disputed that there was any lay-off as claimed and that the applicants were not workmen within the meaning of
G the Act. The appellants who were petitioners before the High Court did not proceed further in the matter by applying for a certificate that the case was fit for appeal to this Court. By order dated November 30, 1962 the Labour Court dismissed as barred by the principles of *res judicata* 125 applications of some of the workers who had previously applied to the Labour Court at Bombay and whose applications had been subsequently dismissed by
H the Labour Judge, Bombay on the ground of lack of jurisdiction under s. 33-C of the Industrial Disputes Act. The claim dismissed related to the period between March 28, 1959 and May

2, 1960. The Labour Court allowed the claims relating to the period from May 3, 1960 to September 30, 1960 and ordered the issue of certificates of recovery under s. 33-C of the Act. A

Respondents 2 to 493 in Appeal No. 2136/1966 filed applications under s. 33-C in the Labour Court at Nagpur claiming lay-off compensation for the period 28th March, 1959 to September 30, 1960. The Labour Court held by order dated February 29, 1964 that there had been a lay-off within the meaning of s. 2(kkk) of the Industrial Disputes Act and that the employees were entitled to compensation for the full period of 18 months but workers who were "badli" workers were not entitled to such compensation. The appellants in both the appeals preferred writ petitions before the High Court of Bombay for quashing the order of the Labour Court. B C

The two writ petitions were disposed of by the High Court by a common judgment on February 2, 1965. Before the High Court four main points were raised, namely :— D

1. Whether having regard to the circumstances and the established facts there had been a lay-off within the meaning of the expression in s. 2(kkk) ?

2. If there had been a lay-off, whether compensation under s. 25-C read with s. 25-E of the Act was payable to the workers, also whether the workers were not entitled to compensation because of non-fulfilment of conditions prescribed in s. 25-E ? E

3. Whether badli workers were entitled to lay-off compensation? and

4. Whether the quantum of compensation would be governed by the first proviso to s. 25-C or whether s. 25-C(ii) would be applicable entitling the workers to compensation for the full period of the lay-off *i.e.* 28-3-59 to 30-9-1960 ? F

On the first question the High Court held that "by every indication and circumstance and by express declaration of its management it was a running industry", meaning thereby that there was no closure. On the second question, the High Court held that the Labour Court should have considered whether the workmen had proved that they had presented themselves for work or not in terms of s. 25-E to be able to claim compensation under s. 25-C, excepting with regard to three workmen who gave clear evidence on the point. It also held that badli labour were not entitled to lay-off compensation. It turned down the contention that compensation was claimable only in terms of the Standing Orders of the Mill. In the result the High Court remanded the G H

matters back to the Labour Court for recording fresh evidence on behalf of both the parties on the following issue :

> Do the applicants prove that they presented themselves for work at the appointed time at least once a day within the meaning of s. 25-E(ii)?

On the applications of the appellants, the High Court granted certificates under Art. 133(1)(a) of the Constitution.

Before us learned counsel for the respondents Mr. Bhandare sought to resist the main contention of the appellants by urging that the decision of the High Court in 1962 operated as *res judicata* in the present appeals. He said that it was open to the appellants to challenge the conclusion of the High Court arrived at in 1962 by moving the High Court by an application for the issue of a certificate of fitness for appeal to this Court and in the event of refusal thereof, to ask for special leave of this Court. In the absence of such applications the determination of the High Court in 1962 had become final and the question as to jurisdiction could not be canvassed again. We do not think it necessary to go into this question as the matter can be disposed of even on the basis that it is open to the appellants to raise the question of jurisdiction before this Court although the point was not expressly taken in the grounds for leave to appeal to this Court before the High Court.

The substantial point of Mr. Gupte appearing for one set of appellants was that it being the case of the employers that there had been a closure of the mills the dispute could not be adjudicated upon by a Labour Court and was entertainable only by an Industrial Tribunal under the provisions of s. 10(1)(d) of the Act. Mr. Gupte drew our attention to various sections of the Act in support of his contention that an "industrial dispute meant primarily a dispute or difference between employers on the one hand and employees on the other connected with the employment or non-employment or the terms of employment etc. of any person. He urged that the basic underlying idea was that to be an industrial dispute the dispute had to be one which affected the employees as a class as pitted against their employers. He argued that individual workman could only approach the Labour Court for lay-off compensation when *prima facie* there was no question of closure of the industry by the employers and drew our attention to the definition of 'lay-off' in s. 2(kkk). According to him in a situation like the present where the inability on the part of the employer to give employment was not limited to a handful of persons but extended to the employees wholesale arising out of a calamity it could not be said that there had been a lay-off of the employees. Although the word 'closure' is not defined in the Act, counsel

argued that the expression would aptly describe the condition prevailing in the mills as a result of the fire on March 27, 1959. A

We find ourselves unable to accept Mr. Gupte's contention. We may in this connection refer to the relevant provisions in the Act. The authorities under the Act are specified in different sections of Chapter II containing ss. 3 to 9. Under s. 7 it is open to the appropriate Government by notification in the Official Gazette to constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matters specified in the Second Schedule and for performing such other functions as may be assigned to them under the Act. Under s. 7-A the appropriate Government may, by notification, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule. In the Second Schedule are set forth certain matters in items 1 to 5 which are within the jurisdiction of a Labour Court and item 6 gives the Labour Court jurisdiction to deal with "all matters other than those specified in the Third Schedule". The Third Schedule contains 11 items of which item 10 reads : B C D

> "Retrenchment of workmen and closure of establishment".

Lay-off is not expressly covered by either of the two Schedules. It would therefore be a matter covered by the Second Schedule under item 6 thereof. S. 10(1)(c) enables the appropriate Government when it is of opinion that an industrial dispute exists or is apprehended *inter alia,* to refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule to a Labour Court for adjudication. So far as an Industrial Tribunal is concerned, the appropriate Government may under s. 10(1)(d) make reference to it not only in cases covered by the Second Schedule but also those included in the Third Schedule except that when the dispute relates to any matter in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it thinks fit, make a reference to a Labour Court under cl. (c). E F

According to Mr. Gupte, Chapter V-A of the Act introduced in the year 1953 providing for claims being preferred by individual workmen to compensation could only be resorted to when the dispute was such as would not call for a reference under s. 10(1)(d). He urged further that it being open to the Central Government to amend the Second and the Third Schedules by issue of notification under s. 40 of the Act, so long as the said Schedules stood unaltered, it should be presumed that the legislature did not intend a Labour Court to exercise its jurisdiction in cases where there was G H

A a serious question of closure of an establishment put forward by the employers. All this, argued counsel, went to show that if the essential nature of the dispute was a difference between the employer on the one hand and a very large body of workmen on the other, the employer making an assertion involving a matter covered by the Third Schedule to the Act, it would not be open to the B workmen to prefer claims individually under s. 33-C.

The ambit of s. 33-C has been examined by this Court on a number of occasions and reference may usefully be made to some of the authorities in this connection to find out whether the Labour Court was within its jurisdiction to entertain the applications which C were followed by the writ petitions to the Bombay High Court. In *Central Bank of India Ltd.* v. *P. S. Rajagopalan*(1) the legislative history of s. 33-C was gone into at length and the conclusion of this Court on the scope thereof was as follows (see p. 150) :

> "The legislative history to which we have just referred clearly indicates that having provided broadly for the D investigation and settlement of industrial disputes on the basis of collective bargaining, the legislature recognised that individual workmen should be given a speedy remedy to enforce their existing individual rights, and so inserted s. 33-A in the Act in 1950 and added s. 33-C in 1956. These two provisions illustrate the cases in which indi- E vidual workmen can enforce their rights without having to take recourse to s. 10(1) of the Act, or without having to depend upon their Union to espouse their cause. Therefore, in construing s. 33-C we have to bear in mind two relevant considerations. The construction should not be so broad as to bring within the scope of s. 33-C F cases which would fall under s. 10(1). Where industrial disputes arise between employees acting collectively and their employers, they must be adjudicated upon in the manner prescribed by the Act, as for instance, by reference under s. 10(1). These disputes cannot be brought within the purview of s. 33-C. Similarly, having regard G to the fact that the policy of the Legislature in enacting s. 33-C is to provide a speedy remedy to the individual workmen to enforce or execute their existing rights, it would not be reasonable to exclude from the scope of this section cases of existing rights which are sought to be implemented by individual workmen."

H Turning down the contention put forward on behalf of the employers there that computation under s. 33-C(2) would only be

(1) [1964] 3 S.C.R. 140.

possible where the right of the workman to receive the benefit was not disputed, it was said :

> "The claim under s. 33-C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry might be held to be incidental to the main determination which has been assigned to the Labour Court by sub-s. (2). As Maxwell has observed "where an Act confers jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution."

Accordingly it was held that s. 33-C(2) took "within the purview cases of workmen who claimed that the benefit to which they are entitled should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers".

Following the above decision, it was held in *Mining Engineer* v. *Rameshwar*(1) that sub-s. (2) of s. 33-C was not confined to cases arising under an award, settlement or even under the provisions of Chapter V-A of the Act and the benefit provided in the bonus scheme under the Coal Mines Provident Fund and Bonus Schemes Act, 1948 would be covered by sub-s. (2).

Section 25-C provides for the measures of compensation to be awarded in cases of lay-off of workers. S. 25-F of the Act however provides *inter alia* that no compensation shall be paid to a workman who has been laid-off if he does not present himself for work at the establishment at the appointed time during the normal working hours at least once a day.

The claim to compensation of every workman who is laid-off is one which arises under the statute itself and s. 25-C provides for a benefit to the workman which is capable of being computed in terms of money under s. 33-C(2) of the Act. The scheme of the Act being to enable a workman to approach a Labour Court for computation of the compensation claimed by him in terms of s. 25-C of the Act he is not concerned to see whether other co-workers will or will not adopt the same course. The fact that a number of workers make claims of identical nature *i.e.* to compensation for lay-off, arising out of the same set of facts and circumstances cannot make any difference to the individual workman who prefers the claim. The mere fact that a large number of persons makes a claim of the same nature against the employer, does not change

(1) [1968] 1 S.C.R. 140.

A the nature of the dispute so as to take it out of the pale of s. 7 of the Act and render the dispute one which can only be dealt with by an Industrial Tribunal to which reference can be made by the appropriate Government.

Reference was however made to the decision of *U.P. Electric* B *Supply Co.* v. *R. K. Shukla*(1) in aid of the contention for the appellants that if the dispute touches a matter in the Third Schedule the Labour Court will not have jurisdiction to deal with it. In this case the State Electricity Board, U.P. took over the undertaking of the company from September 16, 1964 in exercise of power under sec. 6 of the Indian Electricity Act, 1910 and under C the provisions of the appellants' licences. As a result thereof, the company ceased to carry on the business of generation and distribution of electricity thereafter. On September 16, 1964 the Board issued letters of appointment to the employees of the appellant in the posts and positions which they had previously held. According to the respondents they were not given credit for their past services with the company. All the workmen of the two undertakings D were taken over in the employment of the Board with effect from September 17, 1964. 443 workmen employed in the Allahabad undertaking filed applications before the Labour Court under s. 6-H(2) of the U.P. Industrial Disputes Act, 1947 for payment of retrenchment compensation and salary in lieu of notice. The orders for payment of retrenchment compensation were resisted E by the company *inter alia* on the ground that the workmen were not in fact retrenched and in any event since they were admitted to the service of the Board on terms not less favourable than those enjoyed before, the company was under no liability to pay retrenchment compensation and the Labour Court was incompetent to entertain and decide the applications for awarding such compensa- F tion. On the above facts the Court in the appeal by special leave observed "the Company had expressly raised a contention that they had not retrenched the workmen and that the workmen had voluntarily abandoned the Company's service by seeking employment with the Board even before the Company closed its working." Reliance was however placed on certain passages in the judgment at p. 513 and at p. 517 which according to counsel for the appel- G lants went to show that when the factum of retrenchment is questioned, there is a dispute which is exclusively within the competence of the Industrial Tribunal. These observations cannot be considered binding on us as all the aspects were not placed before the Court then.

H Reference was also made to the case of *Ramakrishna Ramnath* v. *Presiding Officer, Nagpur*(2). In that case the appellant had

(1) [1970] 1 S.C.R. 507. (2) [1970] 2 L.L.J. 306.

issued a notice in writing on the 1st July 1958 following the issue of a notification by the Government of Bombay under s. 5(2) read with s. 5(1) of the Minimum Wages Act, 1948 to the effect that it had been forced to close its factory as from the 1st of July 1958 by the action of the Bombay Government in issuing the said notification inasmuch as minimum rates of wages made payable as from 1st July, 1958 were so excessive and unworkable that it was impossible for any employer to give effect to them and the notification had made the working of the business a financial impossibility. The workers were also informed that the closure of the business would continue as long as the notification dated 11th June 1958 continued in force. The Government of Bombay withdrew the notification after some time and the appellants started to work the factory from 10th August, 1958 taking in all employees who were there before 1st July. The respondent No. 2 put in an application before the Presiding Officer, Labour Court Nagpur on 5th November, 1963 claiming Rs. 334.80 on account of retrenchment compensation and one month's pay in lieu of notice. The appellant put in its written statement, *inter alia*, contending that the said respondent was not an employee but an independent contractor and that there had been no closure of the business to attract s. 25-FFF of the Act and that in any event the dispute could not be referred to a Labour Court. In the appeal by special leave to this Court it was contended, *inter alia*, (a) that the dispute did not fall within the jurisdiction of the Labour Court but within that of an Industrial Tribunal, (b) that there was really no closure of the appellant's business but only a lock out or a temporary stoppage of work not attracting the operation of s. 25-FFF and (c) that in order that the respondent could claim the benefit of s. 25-F it was obligatory on her to show that she had worked for 240 days in each year of service for which the claim was made. This Court found that the appellant had not taken the plea in its written statement and that there had been a lay-off or a lock-out and that it had only submitted that the closure in accordance with the notice did not fall within the scope of s. 25-FFF of the Act. By issues 6 and 7 the appellant raised questions as to whether the closure had resulted in the retrenchment of the applicant and whether the closure was beyond the control of the employer. No dispute was raised about the factum of closure. Strangely enough it was urged before this Court that "there could be no closure because the appellant was merely protesting against irresponsible action of the Government action and had no intention to close the business permanently." The Court found that the question of lock-out was not mooted when the issues were settled nor had any plea been taken that there had been a temporary cessation of work under Standing Order No. 11. In our view, the observations in this case do not help the appellants before us.

A In *Sawaram Mills* v. *Baliram*(1) the claim of the workmen for lay-off during a certain period before the Second Labour Court Bombay was resisted *inter alia* on the ground that the said court had no jurisdiction as the dispute fell to be tried under the C.P. and Berar Industrial Disputes (Settlement) Act, 1947, and, secondly, the application under s. 33-C was incompetent because B it was not a claim for money due and calculations had to be made for ascertaining the sum due. On a construction of the sections of the Industrial Disputes Act this Court held that :

> "Compensation for lay-off could only be determined under Chapter V-A of the Industrial Disputes Act and C the workmen were entitled under s. 33-C(1) to go before the Second Labour Court to realise moneys due from their employers under Chapter V-A."

The Court also negatived the contention that the Industrial Disputes Act did not apply but the C.P. and Berar Industrial Disputes (Settlement) Act did as the State Act made no mention of lay-off D or compensation for lay-off. The other argument was rejected following the judgment in *Kays Construction Co. (P) Ltd.* v. *State of U.P. & ors.*(1).

In substance the point urged by the appellants was that if a claim is made on the basis of a lay-off and the employer contends that there was no lay-off but closure, it is not open to a labour E court to entertain an application under s. 33-C(2). The more so it was stated, when the dispute was not between a solitary workman on the one hand and the employer on the other but a whole body of workmen ranged against their employer who was faced with numerous applications before the Labour Court for computation of benefit in terms of money. As has been said F already, the Labour Court must go into the matter and come to a decision as to whether there was really a closure or a lay-off. If it took the view that there was a lay-off without any closure of the business it would be acting within its jurisdiction if it awarded compensation in terms of the provisions of Chapter V-A. In our opinion the High Court's conclusion that

G > "In fact the business of this Company was continuing. They in fact continued to employ several employees. Their notices say that some portions of the mills would continue to work"

was unexceptionabe. The notices which we have referred to can only lead to the above conclusion. The Labour Court's jurisdic- H tion could not be ousted by a mere plea denying the workman's claim to the computation of the benefit in terms of money; the

(1) [1966] 1 S.C.R. 764. (2) [1965] 2 S.C.R. 276.

Labour Court had to go into the question and determine whether, on the facts, it had jurisdiction to make the computation. It could not however give itself jurisdiction by a wrong decision on the jurisdiction plea. A

Appearing for the appellant in Civil Appeal No. 2136/66 Mr. Pai contended that his clients' liability would only commence after the 1st October, 1960 when it started to run the mill. This point had not been canvassed before the High Court and consequently we cannot entertain it. B

In the second case Mr. Gupte argued that although his client did not raise the question of liability before, there was no question of any concession and he should be allowed to contest his liability on the basis of the application preferred for urging additional grounds before this Court. As this point was not urged in the court below this application must be refused. C

The last point urged was that in view of Standing Orders 19 and 21 the quantum of compensation had to be scaled down or measured in terms of the Standing Order 19 the employer could, in the event of fire, breakdown of machinery etc. stop any machine or machines or department or departments wholly or partially or the whole or a part of the establishment for any period, without notice and without compensation in lieu of notice. Under Standing Order 21, any operative played off under Standing Order 19 was not to be considered as dismissed from service but as temporarily unemployed and was not to be entitled to wages during such unemployment except to the extent mentioned in Standing Order No. 19. The High Court rightly turned down the contention in view of s. 25-J of the Act under which the provisions of Chapter V-A are to have effect notwithstanding anything inconsistent therewith contained in any other law including Standing Orders made under the Industrial Employment (Standing Orders) Act, 1946. D E F

These appeals were originally heard by a Bench of five Judges including S. C. Roy, J. who expired a few days back. The above judgment was concurred in by our late colleague. We however gave a further hearing to the parties at which nothing was addressed to us to make us change our opinion already formed. G

In the result, the appeals fail and are dismissed with costs. One set of hearing fee.

S.C. *Appeals dismissed.*