Hindustan Lever Employees Union Vs State of Maharashtra and Others

Writ Petition No. 3364 of 1988

Court: Bombay High Court

Date of Decision: Sept. 15, 1993

Acts Referred:
Constitution of India, 1950 â€" Article 226#Industrial Disputes Act, 1947 â€" Section 2, 25

Citation: (1994) 2 LLJ 388

Hon'ble Judges: A.V. Savant, J

Bench: Single Bench

Advocate: Colin Gonsalves and Monica Sakhrani, for the Appellant; R.C. Master, for Respondent No. 1, R.R. Andhyarujina and P.K. Rele for Respondent No. 2 and R.P. Rele, for the Respondent

Final Decision: Dismissed

Judgement

A.V. Savant, J.
Heard all the learned Counsel at length, namely, Shri Gonsalves for petitioner-Union:

Shri Master for respondent No. 1-State and Shri Andhyarujina for respondent No. 2 - Employer. This is a rather unusual petition seeking relief in

terms of prayer (a) which says that this Court should issue a writ of certiorari permanently prohibiting respondent No. 1 from granting permission

to respondent No. 2 to close any part of the department of their Sewree Factory or, in the alternative, if such a permission is already granted, to

quash and set aside the order granting the same.

2. The petitioner is the Hindustan Lever Employees" Union which is a registered trade union; the first respondent is the State of Maharashtra

represented by the Department of Industries; and the second respondent is the employer viz., Hindustan Lever Limited. The dispute relates to the

shifting of the Nickel Catalyst Department of the second respondent"s factory from Sewree, Bombay to Taloja which is in Raigad District. It

appears that having regard to the increasing menace of pollution, the State Government appointed a Committee known as the Garg Committe.

Garg Committee made its recommendations and the question of shifting of extremely hazardous type of industrial units out of Bombay was

considered by the State Government. Certain industries were identified as being extremely hazardous type of industries requiring shifting. The

Committee made its report. The State Government also formulated its policy regarding the industrial location in Bombay Metropolitan Region in

respect of which Bombay Metropolitan Regional Plan No. 1970/91 came into effect from August 16, 1973. The plan provides for review of the

industrial location policy in the region. The Government Resolution dated February 3, 1984 spells out the modified policy for the purpose of

Industrial Location in the Bombay Metropolitan Region which was divided into four zones. Zone-1 consists of Bombay Island. Zone-II consists of

suburbs and the extended suburbs of Greater Bombay, Thane Municipal Corporation, Mira and Bhayandar and some other areas. Zone III

consists of New Bombay area and Zone IV consists of remaining area of Bombay Metropolitan Region. Admittedly, Sewree fell in Zone-1

Bombay Island. Taloja falls in Zone HI consisting of New Bombay area. Certain guidelines have been issued in the said policy resolution dated

February 3, 1984 regarding the location of the large, medium or small scale industries. The second respondent undoubtedly is a large scale

industry.

3. In the light of the said policy resolution dated February 3, 1984 and recommendations of the Garg Committee, a meeting was held on October

18, 1985 in the Chamber of the Additional Chief Secretary (Industries), Government of Maharashtra where the Industrialists concerned

participated to discuss the question of shifting their hazardous activities outside Bombay. Minutes of the said meeting held on October 18, 1985

are at Ex.A to the petition. The Industries identified as hazardous industries are as under:

i) Union Carbide.

ii) Ahmed Oil Mills

iii) Bombay Soap Factory.

iv) Excell Industry,

v) Hindustan Lever (respondent No. 2.)

vi) Indian Explosives, and

vii) Polychem.

On November 20, 1985, the second respondent-Company applied to the State Government for permission to shift to Taloja in keeping with the

policy dated February 3, 1984 and the minutes of the meeting held on October 18, 1985 and asked for necessary assistance. On June 22, 1988

there was agitation in the factory resulting in the lock-out. On August 18, 1988 the State Government permitted the second respondent to shift the

Nickel Catalyst Unit to Taloja. The petition has been filed on November 3, 1988 praying for the reliefs mentioned above.

4. At the admission stage, Mr. Sudhir Goyal, Factory Personnel Manager of the second respondent filed an affidavit dated November 4, 1988.

The affidavit categorically stated that the second respondent did not wish to effect any closure of any department at Sewree as alleged or

otherwise which could lead to the permanently closing down of a place of employment. It stated that under certain standing orders applicable to

the workmen in the Sewree Factory, a transfer of the workman from one department to another department was permissible if exigencies of

business so required. This was being done in the past and will continue to be done in future also. If the workmen in the Nickel Catalyst Department

at Sewree were, therefore, transferred to other departments at Sewree, it cannot amount to closure within the meaning of the word ''closure'' as

defined in the Industrial Disputes Act, 1947. A categoric statement was made in para 6 of the affidavit that far from being closed the other

departments to which the workmen of Nickel Catalyst Department were transferred will continue to exist and work. A further statement was made

that the second respondent had no intention to retrench any workman or terminate any workman so as to permit a closure. In the light of this

affidavit Daud, J. passed an order on November 4, 1988 as under:

Parties by Counsel. Respondent No. 2 states that his client has not yet approached and, therefore, respondent No. 1 granting permission u/s 25-

O I.D. Act, does not arise. Hence no orders necessary"".

The petition was, however, treated as pending and when it came up for hearing before Kurdukar, J., on February 17, 1989 the following order

was passed.

Rule.

In the event of 2nd respondent desiring to effect ""closure"" of any department in future, this respondent will follow the due process of law before

effecting such closure. Save and except this order no other interim relief at this stage.

Sd/-

17.2.1989

The petition has been pending since then and parties have filed their plead ings in details thereafter. Affidavit of Franklin D''souza, Vice President of

the petitioner-Union has been filed setting out the details of the shifting which in the submission of the petitioner amount to closure attracting the

provisions of Section 25-O of the Industrial Disputes Act, 1947. A reference is made to two other pending complaints under the M.R.T.U and

P.U.L.P. Act, 1971 namely complaint No. 855 of 1989 and complaint No. 1111 of 1989, both of which are pending in the Industrial Court at

Bombay alleging some unfair labour practice in respect of the alleged closure of other departments. It is stated that complaint No. 855 of 1989

relates to some departments other than the Nickel Catalyst Department. Complaint No. 1111 of 1989 relates to the quality control department. I

am not concerned with either of these two complaints.

5. Nandlal Narayanan has filed a further affidavit dated February 22, 1993 on behalf of the second respondent which states that the factory was

under lock-out from June 21, 1988 and was re-opened on June 22, 1989, when certain settlement was arrived at with the workmen. The said

affidavit reiterates that the petition was mainly for an injunction restraining the first respondent-State from granting any permission for closure of the

second respondent in accordance with Section 25-O of the Industrial Disputes Act, 1947 but since there was no application made by the second

respondent seeking permission for closure u/s 25-O of the Act, the question of granting such relief did not arise. It further reiterates the fact that

operation of the Nickel Catalyst Department was hazardous in nature and was not environment-friendly and, in the circumstances, taking an overall

view of the situation, the Company had decided to shift that operation to Taloja.

6. An affidavit has also been filed by Manohar Tatayaji Bhosale, Section Officer, Industries, Energy and Labour Department of the first respondent

- State of Maharashtra. It also states that the petition was filed seeking a writ of certiorari against the first respondent restraining them from granting

permission to the second respondent to close down any part of their Sewree Factory and, if such permission had been granted, to quash the same.

The first respondent contended that there was no application u/s 25-O of the Act by the 2nd respondent and, therefore, there was no cause of

action for filing this petition. The affidavit sets out that Garg Committee had identified 7 hazardous chemical industries which included Hindustan

Lever Limited and in view of the meeting that was held in the Chambers of Additional Chief Secretary on October 18, 1985, it was decided to

shift the Nickel Catalyst Department of Hindustan Lever Limited from Sewree to Taloja. This shifting from Zone-I to Zone-III was in accordance

with the existing industrial location policy as per the Government Resolution dated February 3, 1984. It was also pointed out that the State

Government had granted permission on February 13, 1986 for shifting subject to the following conditions:

(i) You shall surrender the power connected load of 164-KW of Catalyst Plant at Sewree.

(ii) You shall not use the vacated space for any industrial use without prior permission of this office.

(iii) You shall get the endorsement on DGTD Registration from concerned department of Government of India for this change of location.

(iv) You shall secure prior permission required under Industrial Disputes Act, 1947 from Labour Department of State Government.

(v) You shall take effective steps at Taloja to prevent water, air and soil pollution to the satisfaction of Maharashtra Pollution Control Board"".

7. After this, the Government of India had also granted permission on August 11, 1988 to change the location of the Nickel Catalyst Department

from Sewree to Taloja on certain conditions. Important conditions are as under:

(i) The Company shall surrender the power connection load of 164 KW of Nickel Catalyst Plant to the Electric Company immediately after

shifting of the plant.

(ii) The Company should not use the vacant space at Sewree for any other industrial activities without prior permission of the State Government.

(iii) The labour dispute, if any, shall be settled to the satisfaction of the Commissioner of Labour, Bombay

(iv) The Company shall take effective steps at Taloja to prevent water, air and soil pollution to the satisfaction of Maharashtra Pollution Control

Board before commencement of production.

In the above facts the petition has been argued at length.

8. At the out-set Shri Andhyarujina the learned Counsel appearing on behalf of the second respondent has raised a preliminary objection about the

maintainability of such a petition under Article 226 of the Constitution of India. Counsel contended that the petitioner purported to seek a relief

against the first respondent State restraining it from granting any permission to the second respondent to close down the Nickel Catalyst

Department of the second respondent factory. However, prayer (a) was merely speculative in the sense that there was not even an application

made by the second respondent to the first respondent u/s 25-O of the Industrial Disputes Act. The substance of the petition shows that reliefs

claimed are really against the second respondent company for which the appropriate forum is to go for industrial adjudication and not to file a

petition under Article 226 of the Constitution. In reply to this Shri Gonsalves the learned Counsel on behalf of the petitioner contended that what

has been termed as shifting is in effect a closure within the meaning of the provisions of Clause (cc) of Section 2 of the Industrial Disputes Act,

1947. The petitioner"s contention is that shifting amounts to closure and hence petition in this Court is maintainable seeking relief against the first

respondent State. In fact, Shri Andhyarujina went to the extent of contending that after the order was passed by Daud, J. on May 4, 1988, and in

any event after a further order was passed by Kurdukar, J on February 17, 1989, nothing really survived in the petition and the petition really

stood disposed of in the light of the two orders which are reproduced above. The fact remains that despite the order passed by Daud, J. on

November 4, 1988 the petition was treated as pending and rule was issued on February 17, 1989 with some clarification about the interim order.

However, in view of the order of Kurdukar, J. I have heard the petition on merits.

9. On merits, Shri Gonsalves has contended that there are about 3000 workmen at the Sewree Factory. It had about 25 departments. If the

Nickel Catalyst Department having 56 workmen was shifted from Sewree to Taljoa it amounted to closure of that department and since the

definition of the word ""closure"" contemplates permanent closing down a place of employment or part thereof provisions of Section 25-O would be

attracted in the facts of the present case. It is not disputed before me that as far as shifting of a department is concerned, no permission of the State

Government was required under any provision of law. If the second respondent applied to the Government for permission to shift, that was only in

keeping with the Government policy dated February 3, 1984 and the report of the Garg Committee in the light of which minutes of the meeting

held on October 18, 1985 have been recorded. It is true that the petitioner approached the State Government on October 28, 1988 by letter Ex.B

and by letter Ex.C. dated November 2, 1988 and apprehended closure of the department as a result of shifting of Nickel Catalyst Department

from Sewree to Taloja.

10. Shri Gonsalves has also invited my attention to the order passed by A.C. Agarwal, J. in respect of the discontinuance of manufacture of

product ""Rin"" in the Sewree Plant of the second respondent with effect from April, 1988. In Writ Petition No. 650 of 1989 decided by Agarwal,

J. on April 26, 1989, a view was taken that merely because the second respondent had chosen to discontinue the manufacture of one of its

products, it could not be held that it had closed down part of the undertaking. The second respondent was entitled to transfer the employees from

one department to another and the transfer of the workmen from one department to another was held to be justified by exigencies of trade. In view

of the Supreme Court decision in the case of Parry and Co. Ltd. Vs. P.C. Pal and Others, , it was held that the management had a right to re-

organise its work in the manner it pleases, and such a transfer could not amount to retrenchment or closure so as to attract the provisions of

Section 25-M or 25-O of the Industrial Disputes Act. The decision of Agarwal, J. in Writ Petition No. 650 of 1989 was challenged in Appeal No.

840 of 1989, The Division Bench took the view that in the facts of the case there was no closure either of the place of employ ment or part

thereof. In fact there was no retrenchment of the workmen. In view of this finding, the Division Bench dismissed the appeal but observed that there

may be substance in the contention that the Act does not require that retrenchment should accompany closure. This point was kept open.

11. In reply to the petitioner''s contentions, Shri Andhyarujina contended that, in the first place, the whole petition was misconceived and in the

absence of any application to the State Government u/s 25-O of the Industrial Disputes Act, the prayers in the petition were misconceived.

Counsel contended that this petition cannot be a substitute for the remedy by way of industrial adjudication. Whereas the petitioner had filed two

other complaints in the Industrial Court bearing Nos. 855 of 1989 and 1111 of 1989 regarding the shifting and/or closure of some other

departments it was not understood why the petitioner had chosen to file a writ petition in respect of shifting of Nickel Catalyst Department from

Sewree to Taloja. The petitioner ought to have approached Industrial Court if the petitioner had any grievance about any unfair labour practice. It

could avail of the protection of the M.R.T.U. & P.U.L.P. Act, 1971. Even in case of the closure without permission the petitioner has the remedy

under Sub-section (6) of Section 25-O of the Industrial Disputes Act, 1947. Counsel further contended that if no permission u/s 25-O was either

applied for or granted, the whole petition is misconceived. In the alternative if the petition was to question the policy of shifting, there was no mala

fides alleged as far as shifting is concerned. The petition was in substance a petition against the second respondent-company and such a petition

would not lie under Article 226 of the Constitution of India. My attention was then invited to the Standing Orders which permitted transfers of the

employees from one department to another and it was stated that in shifting of Nickel Catalyst Department from Sewree to Taloja, each and every

workman out of 56 workmen in the said department was absorbed in other departments at Sewree and none was retrenched or rendered jobless.

12. Shri Andhyarujina has also invited my attention to the Supreme Court decision in the case of General Labour Union (Red Flag) Bombay Vs.

B.V. Chavan and Others, . He contended that the allegations of the petitioner that the shifting was in fact a closure, would necessitate an inquiry

into disputed questions of facts where evidence will have to be led and findings recorded which can be done only in the Industrial Court My

attention has also been invited to the decision of Madhya Pradesh High Court in the case of Fertilizer Corporation of India Eastern Marketing

Zone Employees" Association v. Hindustan Fertilizers Corporation Ltd. and Anr. reported in 1985 (1) C.L.R. 937. This was a case of winding up

of the marketing division of the respondent-Corporation which was necessitated because of the stoppage of raw material allocation resulting in the

transfer of the workmen from Madhya Pradesh to either Assam or West Bengal. It was held that the Corporation had decided to accommodate

the employees of its marketing unit in Madhya Pradesh in its offices outside Madhya Pradesh and such a course was open to the Corporation in

view of the clear condition in the appointment orders. The transfer was held to be the result of shifting the M.P. Unit to avoid harsh consequence of

retrenchment and, therefore, did not amount to closure u/s 2(cc) of the Act. It was, therefore, held that Corporation was under no obligation to

follow the procedure prescribed u/s 25-O of the Act.

13. I have considered the rival contentions in the light of the above legal position. It is not possible to accept the contentions of Shri Gonsalves. In

my view, provisions of Section 25-O can have no application to the facts of the present case. Sub-section (1) of Section 25-O reads as under:-

Sub-section (1):

An employer, who intends to close down an undertaking of an industrial establishment to which this Chapter applies, shall submit for permission,

at least ninety days before the date on which the intended closure is to become effective, an application, in the prescribed manner, to the

appropriate Government, stating clearly the reasons for the intended closure of the undertaking. A copy of such application shall be served by the

employer simultaneously on the representatives of the workmen in the prescribed manner:

Provided that, nothing in this section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or other

construction work"".

In the first place, there is an application made by the second respondent to the first respondent seeking permission for closure. As far as the shifting

is concerned, it cannot be disputed that the first respondent had formulated a policy of location of industrial units. The said policy is dated February

3, 1984. Recommendations of Garg Committee to which my attention was invited undoubtedly notified the second respondent industry as one of

the hazardous industries. The minutes of the meeting held in the Chambers of the Additional Chief Secretary on October 18, 1985 also deal with

certain hazardous industries in which name of the second respondent figures at Sl.No. 5 in view of the environmental hazardous. It is not possible

to doubt the bona fides of the second respondent in shifting its Nickel Catalyst Department from Sewree to Taloja. This would be consistent with

the report of the Garg Committee, the Government policy dated February 3, 1984 as also the minutes of the meeting held on October 18, 1985, in

the Chambers of the Additional Chief Secretary. In the light of the said policy dated February 3, 1984, the report of the Garg Committee and

minutes of the meeting held on October 18, 1985, I have no doubt in my mind that shifting of Nickel Catalyst Department of the second

respondent-factory from Sewree to Taloja was bona fide and was not vitiated by any mala fides. There is no controversy before me that all the 56

workmen in Nickel Catalyst Department were immediately absorbed in other departments at Sewree as a result of the shifting of Nickel Catalyst

Department. There is no controversy before me that under the Standing Orders of the second respondent factory, the transfer from one

department to another is permissible. As held by the Supreme Court in the case of Parry & Co. (supra), the management has a right to reorganise

its work in the manner it pleases. A transfer from one department to another may be necessitated by exigencies of trade. Such a transfer cannot,

therefore, be termed as a closure of the department in the facts of the present case.

14. Reliance placed by Shri Gonsalves on the decision of the Supreme Court in the case of Management of Hindustan Steel Ltd. v. Work men and

Ors. reported in 1973 LIC 461 is, in my view, misplaced. The observations in para 10 of the judgment at page 465 would show that question has

to be decided in the facts of each case. In the facts of the case before the Supreme Court, Ranchi Housing Project was held to be clearly distinct

venture and it had a distinct beginning and an end. This was so found by the Tribunal.: It was in these facts that one has to view the observations

made by the Supreme Court. In my view, the ratio of the said Supreme Court decision in the case of Management of Hindustan Steel Ltd., can

have no application to the facts of the present case. On the other hand as held by the Supreme Court in the case of General Lab our Union v. B.V.

Chavan, (supra), the Supreme Court has observed in para 11 at page 84 of the report as under.

Therefore the true test is that when it is claimed that the employer has resorted to closure of industrial activity, the Industrial Court in order to

determine whether the employer is guilty of unfair labour practice must ascertain on evidence produced before it whether the closure was a device

or pretence to terminate services of the workmen or whether it is bona fide and for reasons beyond the control of the employer. The duration of

the closure may be a significant fact to determine the intention and bona fides of the employer at the time of closure but is not decisive of the

matter. To accept the view taken by the Industrial Court would lead to a startling result in that if an employer who has resorted to closure bona fide

wants to reopen, revive and re-start the industrial activity he cannot do so on the pain that the closure would be adjudged a device or pretence.

Therefore, the correct approach ought to be that when it is claimed that the employer is not guilty of imposing a lock-out but has the industrial

activity, the Industrial Court before which the action of the employer is questioned must keeping in view all the relevant circumstances at the time of

closure decide and determine whether the closure was bona fide one or was a device or a pretence to determine the services of the workmen.

Answer to this question would permit the Industrial Court to come to the conclusion one way or the other"".

15. Shri Andhyarujina is, therefore, justified in contending that the petitioner ought to have approached the Industrial Court and led evidence on the

basis of which findings could be recorded that there was in fact a closure necessitating recourse to the provisions of Section 25-O of the Industrial

Disputes Act. Shri Andhyarujina is also justified in placing reliance on the observations of the Madhya Pradesh High Court in the case of Fertilizer

Corporation of India, (supra). The facts of the said case would show that as a result of the Government policy based on consideration of economy

in logistics, supply of raw material was stopped to the Corporation in Madhya Pradesh. This necessitated the winding up of the marketing division

in Madhya Pradesh and shifting of its staff to the establishments of the Corporation out of Madhya Pradesh. Ultimately Madhya Pradesh Unit was

closed down on September 14, 1990 and its 35 employees were transferred to the places out of Madhya Pradesh namely to Assam and West

Bengal. Para 6 of the judgment at page 990 of the report 1993 1 CLR 992 reads as under:

Definition of ''closure'' u/s 2(cc) of the Act is given below:

2(cc) ""closure"" means the permanent closing down of a place of employment or part thereof.

Relying on this wide definition the learned Counsel for the petitioner argued that the closing down of marketing activities in M.P. by the

Corporation amounts to closure u/s 2(cc) of the Act for which the Corporation was required to apply for permission to the appropriate

Government u/s 25-O of the Act. Since admittedly, no such permission was obtained and the procedure prescribed u/s 25-O above was not

followed, the closure is illegal which renders the consequential impugned transfers of these employees void. In reply the learned Counsel for the

Corporation stressed that for order under Rule 76-B of the Rules framed under the Act requires information of the number of workmen those

services will be terminated on account of the closure of the undertaking along with the details of their categories, addresses and wages drawn by

them to be furnished to the Government while seeking permission for closure. From this it is evident that closure essentially entails termination of the

services of concerned employees. The Corporation in the best interest of its employees decided not to terminate their services. Instead they have

been accommodated in the other units of the Corporation under the express service condition applicable to them. As such, the mass transfer of

employees is not the result of closure as defined u/s 2(cc) of the Act but merely shifting of the marketing activity to other units of the Corporation.

In order to Judge which of the two rival contentions, closure versus shifting, is correct, we have to turn to the allegations of mala fides. If no mala

fides is proved, Corporation"s case of bona fide transfers as a result of shifting of the unit has to be accepted"".

16. I have already referred to the decision of the Supreme Court in the case of General Labour Union (Red Flag) Bombay Vs. B.V. Chavan and

Others, on which reliance has been placed by Madhya Pradesh High Court in its judgment which reads as under:

Simply because the word closure has been used in Annexures A and B, it cannot be assumed that Corporation"s action in this behalf amounted to

closure as defined u/s 2(cc) of the said Act. It has been argued on behalf of the Corporation that closure as held in General Labour Union (Red

Flag) Bombay Vs. B.V. Chavan and Others, , implies closing of industrial activity as a consequence of which workmen are rendered jobless. Shri

Naolekar drew our attention to the form in which the employer is required u/s 25-O of the said Act to apply for permission to the appropriate

Government, which requires information of the number of employees being thrown out of job to be included in the proforma. On this basis he

argued that since the Corporation had decided to accommodate the employees of its marketing unit in M.P. in its offices outside M.P. and such a

course was open to the Corporation in view of the clear condition in their appointment orders, their transfer is the result of shifting of the M.P. Unit

to other places to avoid the harsh consequence of retrenchment and does not amount to closure u/s 2(cc) of the said Act. The bona fides of the

Corporation are made further clear from the fact that it offered to accommodate the remaining 22 employees in the adjoining State of U.P.

Unfortunately this offer was not accepted by the petitioner. We are, therefore, satisfied that in the facts and circumstances of the case the transfer

of its employees vide Annexure K is not the result of the closure of M.P. Unit and, therefore, the Corporation was under no obligation to have

followed the procedure prescribed u/s 25-O of the said Act before issuing the impugned order.

17. The view taken by me is also consistent with the view that was taken by Agarwal, J., in Writ Petition No. 650 of 1989 when certain workmen

were transferred as a result of discontinuance of the manufacture of one of its products by the second respondent-company. It was held that this

would not amount to closure of a part of undertaking as contemplated by Section 2(cc) of the Industrial Disputes Act. The view taken by the

learned single Judge was confirmed in Appeal No. 840 of 1989 which was dismissed on August 23, 1989. It is true that the question as to whether

retrenchment must necessarily accompany closure was kept open. I am not called upon to express any opinion on the said question as to whether

in every case of closure, retrenchment must necessarily follow.

18. In view of my finding that the shifting was bona fide and genuine in the facts and circumstances of the case, I am of the view that there is no

closure within the meaning of Section 2(cc) or Section 25-O of the Industrial Disputes Act. In fact, the petition as filed was clearly misconceived.

At any rate, in view of the orders passed by Daud, J., on November 4, 1988 and by Kurdukar, J., on February 17, 1989 nothing of substance

really survived in the petition. If the petitioner had filed two other complaints namely complaint No. 855 of 1989 and No. 1111 of 1989 in the

Industrial Court, Bombay in respect of shifting and/or closure of the other departments, it is difficult to understand why the petitioner approached

this Court straightway circumventing the provisions relating to Industrial adjudication. Viewed from any angle, the allegations of the petitioner

necessitated an enquiry into facts for recording a finding that shifting in this case was not bona fide and genuine but was mala fide and colourable.

Evidence was required to be led by both the sides. This would not be, normally, possible in the limited jurisdiction under Article 226 of the

Constitution of India. This is apart from the fact that I have recorded a finding that shifting in the facts of the present case was bona fide and

genuine. Under the circumstances the petition is not entitled to any relief. Rule in the petition is, therefore, discharged. There will, however, be no

order as to costs.