(2007) 04 BOM CK 0166

Bombay High Court

Case No: Writ Petition No. 427 of 2006

Biddle Sawyer Ltd.		APPELLANT
	Vs	
Chemical Employees Union and Others		RESPONDENT

Date of Decision: April 11, 2007

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2, 25FFF, 25K, 25O

Citation: (2007) 3 BomCR 586 : (2007) 109 BOMLR 823 : (2007) 114 FLR 496 : (2007) 5 MhLj 618

Hon'ble Judges: V.K. Tahilramani, J; S. Radhakrishnan, J

Bench: Division Bench

Advocate: K.K. Singhvi, Sanjay Singhvi, Bennet D''Souza and K.S. Bapat, P.K. Rele, Nutan Patankar, R.P. Rele and Piyush Shah, for the Appellant; J.P. Cama and Arshad Shaikh, instructed by y., Sanjay Udeshi and Co., for the Respondent

Judgement

S. Radhakrishnan, J.

The present petition had been referred to us by the Hon''ble the Chief Justice with regard to a dispute about the interpretation of Section 2(cc) of Industrial Disputes Act, 1947. The dispute arises from conflicting judgments of this Court. The learned Senior Counsel appearing for the Petitioners has brought to our notice the judgment of a Learned Single Judge in the case of Voltas Employees Union, Mumbai v. Voltas Limited, Bombay and Anr. (2003) 1 CLR 205. The relevant paragraph of the said judgment reads as under:

The definition of "closure" has been included in the I.D. Act by an amendment of 1982. This amendment is in terms different from the meaning attributed by the Apex Court to the word "closure" in the Express Newspapers. There the Apex Court has held that closure meant not only closing down place of business but the business itself and that indicated the final and irrevocable termination of the business itself. Closure as defined under the I.D. act means closure of a place of

employment or part thereof permanently. Now, the first submission of the learned Counsel for the Union that the CABD is part of the Thane establishment and, therefore, cannot be closed down on its own since the Thane works are to be considered as a single legal entity cannot be accepted as the definition of "closure" permits the closing down of part of the place of employment. Assuming the CABD is part of the Thane works, the closing down of that part is permitted by the I.D. Act. Significantly, this definition does not speak of closure of the business as the Apex Court has had in the Express News papers case (supra). Therefore, the CABD is not a closure in the eyes of law as the business itself has been shifted to Dadra is of no avail.

2. On the other hand, the learned Senior Counsel appearing for the Respondents has brought to our attention the judgment in the case of Industrial Perfumes Limited v. Industrial Perfume Workers Union 1998 (2) CLR 273, particularly the following portion:

It may be noted that the Petitioners main business was processing and making of general perfumes. In so far as aroma chemicals are concerned, since September 1995 the production had been shifted to the plant of Hindustan Lever Ltd at Taloja and in so far as perfumes are concerned the work is being done by General Perfumes since early 1996. The licence continued in the name of the Petitioners. In fact the balance sheet of the company would show that there has been increase in profits. Apart from that in the year ending 31st December, 1996 the company is shown to have made a profit before tax of Rs. 25077 lakhs compared to Rs. 11411 lakhs during the previous year ending 31st December, 1995. Further an amount of Rs. 330 lakhs were made for restructuring of manufacturing operation in the year 1996. What this indicates as held by the Industrial Court is that though the plant at Hay Bunder has been closed down the business of the company has not been closed down and manufacture of both items in respect of which the company holds licence are being carried on either at the Plant of Hindustan Lever Ltd of which it is a subsidiary at Taloja or through the General Perfumes. In other words it is clear that there is no closure of business which is one of the tests to be satisfied as laid down by the Apex Court in the case of Express Newspapers Ltd. (supra). Apart from Hay Bunder the petitioner had no other manufacturing unit.

3. The learned Senior Counsel has also brought to our notice the judgment in the case of Vazir Glass Works v. Bharat R. Tayade and Ors. 2000 2 CLR 640, of which the relevant paragraph reads as under:

Bearing in mind these findings recorded in the earlier judgment and their present guarantee given and the stand by the complainant herein that the petitioners and Respondent No. 2 have functional integrity to my mind the issue of Relationship between the Petitioner and Respondent No. 2 will have to be gone into. This is not merely therefore a case where the petitioners intend to close down the factory or whether it amounts to a de facto closure. The key issue would be whether even if

the establishment were de facto closed whether the business is also closed. In case like this where the petitioners are prima facie actually involved in setting up another company to carry out all its manufacturing activities which it was carrying out and divert its customers to Respondent No. 2 and then declare its intention to close down the unit, whether that would be closure in the eyes of law and whether in that event the ratio laid down in the case of Banaras Ice Factory Ltd v. their Workmen (supra) and in the case of The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others, ; will have to be considered. It is true that both the labour court and the Industrial Court have not addressed themselves directly on this question but reading the two orders it is clear that what the two Courts below have done by reference to the judgments of this Court in Maharashtra General Kamagar Union (supra) was infact considering this very issue. I, therefore find no error apparent or any jurisdictional error which require exercise of the extraordinary jurisdiction in so far this aspect is concerned.

4. On a perusal of all these judgments, there is in no manner a doubt that there is a direct conflict as to the interpretation of provisions of the Industrial Disputes Act pertaining to the definition of "closure" u/s 2(cc). The point of difference between the judgments, whether "closure" means closure of business altogether or merely a closure of any undertaking or any manufacturing process but the business is continued, also amounts to closure. As a result of the said conflict, the Hon''ble the Chief Justice has referred to us the above question of law.

5. Mr. P.K. Rele, the learned Senior Counsel raised the following points. It was contended that till 20.8.1984 there was no definition of closure in Industrial Disputes Act, 1947 and Section 2(cc) defining the term "closure" came to be inserted by Act No. 46 of 1982, which came into effect from 21.8.1984. Section 2(cc) of the Industrial Disputes Act, 1947 defines closure as under:

Closure means the permanent closing down of a place of employment or part thereof

6. In the case of Express Newspapers (P) Ltd Madras v. Their Workmen 1962 (2) LLJ 227, it was held by the Supreme Court that the closure was the closing down of the business itself and not the place of business. While lockout meant the closure of place of business and not closure of business itself. It was contended that at the time of determining this case, the word "closure" was not defined at all in the Industrial Disputes Act and hence it would not be an authority for the proposition that closure means the closing down of business itself. Further in the teeth in the definition of closure the issue is no more res integra as effect must be given to the amended definition of closure. This has, it was contended by Mr. Rele, been rightly done by the learned Single Judge in the case of Voltas Employees Union (supra).

7. Thereafter Mr. Rele relied upon various judgments of the Supreme Court in support of his contention. Mr. Rele relied upon the judgment in the case of Kalinga

Tubes Ltd v. Their Workmen 1968 (34) FJR 393. The relevant paragraph of the said judgment reads as under:

It is significant that in the case of Workers of the Pudukottah Textile Mills, Civil Appeal No. 1005 of 1963, there had neither been winding up of the entire business nor had the machinery or the factory been disposed of and actually the Mills had been reopened only after an interval of a few months and yet it was held that there had been a closure.

8. Mr. Rele, the learned Senior Counsel also brought to out notice the judgment in the case of Management of Hindustan Steel Limited v. The Workmen and Ors. 1973 LAB IC 461. It was contended that even when there was no definition of closure in the Industrial Disputes Act, the Hon''ble Supreme Court has held that the word undertaking used in Section 25-FFF of the Industrial Disputes Act is not intended to cover the entire industry or business of the employer which is evident from the following observation:

The word undertaking as used in Section 25-FFF seems to us to have been used in its ordinary sense connoting thereby any work, enterprise, project or business undertaking. It is not intended to cover the entire industry or business of the employer as was suggested on behalf of the Respondents. Even closure or stoppage of a part of the business or activities of the employer would seem in law to be covered by this sub-section.

9. Drawing our attention to the judgment in the case of Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd., , it was pointed out by the learned Counsel Mr. Rele, that in the aforementioned case two units of the Company were functioning. The management decided to close down one unit. The Court came to the conclusion that a clear case of closure of an independent unit of the Company was made out.

10. Referring to the judgment in the case of S.G. Chemicals & Dyes Trading Employees Union v. S.G. Chemicals & Dyes Trading Limited and Anr. 1986 1 LLN 986, learned Senior Counsel Mr. Rele has contended that it was unequivocally held by the Hon''ble Supreme Court that the term "undertaking" is not defined anywhere in the Act including in Section 2(ka) of the Industrial Disputes Act and has held that unless a specific meaning is given to the term undertaking in the Industrial Disputes Act by that particular provision, it was to be understood in its ordinary meaning and sense. This case reiterated and reaffirmed what had been held by the Apex Court in the case of Hindustan Steel Limited.

11. Referring to the judgment in the case of J.K. Synthetics v. Rajasthan Trade Union Kendra and Ors. 2001 1 CLR 1058, Mr. Rele, the learned Counsel has pointed out that the Hon''ble Supreme Court in the aforesaid case has observed that it must be remembered that at the time the disputes were referred to the Industrial Tribunal the term ''closure'' had not been incorporated in the Industrial Disputes Act. It may

be noted that the Hon''ble Supreme Court in the said case specifically held that a closure can also be a part of the plant."

12. Mr. Rele vehemently contended that the definition of "closure" should be read as it is, i.e. closure would mean the permanent closing down of a "place" of employment or part thereof. For this purpose he relied upon the general principles that govern interpretation of statutes. Mr. Rele, in support of his contention referred to the judgment in the case of D.R. Venkatachalam and Others Vs. Dy. Transport Commissioner and Others, , wherein the relevant paragraph 27 reads as under:

It is, however, becoming increasingly fashionable to start with some theory of what is basic to a provision or a chapter or in a statute or even to our Constitution in order to interpret and determine the meaning of a particular provision or rule made to sub serve an assumed "basic" requirement. I think that this novel method of construction puts, if I may say so, the cart before the horse. It is apt to seriously mislead us unless the tendency to use such a mode of construction is checked or corrected by this Court. What is basic for a section or a chapter in a statute is provided: firstly, by the words used in the statute itself, secondly, by the context in which a provision occurs, or, in other words, by reading the statute as a whole, thirdly, by the preamble which could supply the "key" to the meaning of the statute in cases of uncertainty or doubt; and, fourthly, where some further aid to construction may still be needed to resolve an uncertainty, by the legislative history which discloses the wider context or perspective in which a provision was made to meet a particular need or to satisfy a particular purpose. The last mentioned method consists of an application of the Mischief Rule laid down in Heydon''s case 1584 76 ER 637 long ago.

13. Thereafter, Mr. Rele, referred to and relied upon the judgment in the case of Easland Combines, Coimbatore Vs. The Collector of Central Excise, Coimbatore, , wherein the relevant paragraph No. 15 reads as under:

In our view, it would be difficult to accept the aforesaid contention. It is well settled law that merely because a law causes hardship, it cannot be interpreted in a manner so as to defeat its object. It is also to be remembered that the Courts are not concerned with the legislative policy or with the result whether injurious or otherwise, by giving effect to the language used nor it is the function of the Court where the meaning is clear not to give effect to it merely because it would lead to some hardship. It is the duty imposed on the Court. In interpreting a particular provision of law to ascertain the meaning and intendment of the Legislature and in doing so, it should presume that the provision was designed to effectuate a particular object or to meet a particular requirement.

14. On the same lines, referring to the judgment in the case of State of Kerala and Another Vs. P.V. Neelakandan Nair and Others, , wherein the relevant Paragraph No. 7 of the judgment reads as under:

It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent.

15. Mr. Rele contended that shift of place of manufacture and closing down of the existing place of manufacture amounted to closure as defined in Section 2(cc). Thereafter Mr. Rele referred and relied upon the judgment in the case of Workmen of Sur Iron & Steel Co. Pvt. Ltd v. Sur Iron & Steel Co. Pvt. Ltd and Anr. 1971 (1) CLJ 570, particularly the paragraph No. 5 of the judgment, which reads as under:

On behalf of the workmen a case was put forward and was sought to be supported by the evidence of some witnesses to the effect that the company had set up factories at four different places where it was carrying on its work of manufacture of the same articles which it was manufacturing earlier in the factory.

16. Mr. Rele, the learned Senior Counsel pointed out to the Court the definition of the word "place" as shown in Webster''s Universal Dictionary on page 1065 in order to emphasise its importance in the interpretation of definition of "closure". The definition as he pointed out was building, apartment, an open space adopted or used for a specific purpose; place of business.

17. Mr. Rele sought to contend that since the expression "undertaking" was used in Section 25-O it would mean that closing down of a "place" of employment or business would itself amount to closure. This he pointed out from the case of S.G. Chemicals Employees Union (supra). Paragraph No. 16 of the said judgment is relevant, which reads as under:

It is thus clear that the word "undertaking" in the expression "an undertaking of an industrial establishment" in Section 25-O means an undertaking in its ordinary meaning and sense as defined by this Court in the case of Hindustan Steel Limited. If an undertaking in its ordinary meaning and sense is a part of an industrial establishment so that both taken together constitute one establishment, Section 25-O would apply to the closure of the undertaking provided the condition laid down in Section 25K is fulfilled. The test to determine what constitutes one establishment were laid down by this Court in Associated Cement Company''s case. the relevant passage is as follows:

What then is ''one establishment'' in the ordinary industrial or business sense? The question of unity of oneness presents difficulties when the industrial establishment consists of parts, units, departments, branches etc. If it is strictly unitary in the sense of having one location and one unit only, there is little difficulty in saying that it is one establishment. Where, however, the industrial undertaking has parts, branches, departments, units etc. with different locations, near or distant, the question arises what tests should be applied for determining what constitutes ''one establishment''. Several tests were referred to in the course of arguments before us, such as geographical proximity, unity of ownership, management and control, unity of

employment and conditions of service, functional integrality, general unity of purpose etc. It is, perhaps, impossible to lay down any one test as an absolute invariable test for all cases. The real purpose of these tests is to find out the true relation between the parts, branches, units etc. If in their true relation they constitute one integrated whole, we say that the establishment is one; if on the contrary they do not constitute one integrated whole, each unit is then a separate unit. How the relation between the units will be judged must depend on the facts proved, having regard to the scheme and object of the statute which gives the right of unemployment compensation and also prescribes disqualification therefor. Thus, in one case the unity of ownership, management and control may be the important test; in another case functional integrality or general unity may be the important test; and in still another case, the important test may be the unity of employment. Indeed, in a large number of cases several tests may fall for consideration at the same time.

These tests have been accepted and applied by this Court in different cases, for instance, in South India Millowners'' Association and Ors. v. Coimbatore District Textile Workers'' Union and Ors., Western India Match Co. Ltd. v. Their Workmen and Workmen of the Straw Board Manufacturing Company Ltd. v. Straw Board Manufacturing Company Limited. In Western India Match Company''s case the Court held on the facts that there was functional integrality and inter-dependence or community of financial control and management of the sales office and the factory in the appellant company and that the two must be considered part of one and the same unit of industrial production. In the Straw Board Manufacturing Company''s case the Court held :

The most important aspect in this particular case relating to closure, in our opinion, is whether one unit has such componential relation that closing of one must lead to the closing of the other or the one cannot reasonably exist without the other. Functional integrality will assume an added significance in a case of closure of a branch or unit.

18. The learned Counsel thereafter referred to the case of J.K. Synthetics v. R.T.U. Kendra 2001 (1) LLN 877, particularly paragraph No. 27 of the judgment, to elucidate the circumstance in which the closing down of division of an undertaking would amount to closure. The Supreme Court has observed :

...It must be remembered that at the time the disputes were referred to the Industrial Tribunal the term "closure" had not been incorporated in the Industrial Disputes Act. However, the concept of "closure" was well known. Therefore, even though in the reference and in the pleading the term "closure" may not have been specifically used, what was essential was whether or not there was in fact a closure as understood in Industrial Law. Even prior to the disputes being referred the Appellant-Company had been claiming that there was discontinuance of process in the textile section of the nylon plant. They were claiming that it was a permanent

discontinuance. A permanent discontinuance necessarily meant closure.... Thus it is to be seen that in the nylon plant there was a division known as Texturising Division. This division was admittedly known as the Textile Division of the nylon plant. Therefore, it was a separate division in the nylon plant.... Thus before the Industrial Tribunal there was no dispute that there was textile section and there was no serious dispute that the Textile Section had been closed. This fact has been completely overlooked by the Division Bench. When facts are admitted or not seriously disputed at the trial stage the appellate court cannot draw an adverse inference contrary to admitted facts. The Division Bench should have realized that the dispute regarding closure was contrary to the evidence on record. The Division Bench has thus erred in coming to a conclusion that there was no textile section and that there was no closure of the textile section. The findings of the Division Bench in this behalf cannot be sustained, require to be and are set aside.

19. Mr. J.P. Cama, the learned Senior Counsel appeared on behalf of Respondent Union. He sought to point out that the definition of "closure" must be understood in its essence as being a part of a social legislation, i.e. the Industrial Disputes Act. Therefore, closure cannot and does not mean merely closing down of the place or location or premises where the business is carried on, but the closing down of the business activity itself in that place.

20. The learned Senior Counsel further submitted that if the definition was understood in any other sense as being merely the closing down of the place or premises alone, it would defeat the purpose of a legislation that was sought to act as a cloak of protection to the labour. In support of his contention, he brought to the notice of this Court a catena of judgments which will now be reproduced.

21. Mr. Cama, the learned Senior Counsel pointed out that prior to the insertion of the definition of "closure" the Hon''ble Supreme Court has interpreted "closure" to mean closing down of business itself. the same meaning has been sought to be codified through the definition.

22. The Supreme Court in the case of Tatanagar Foundry Co. Ltd. Vs. Their Workmen, , has observed in paragraph No. 3 of the judgment as under:

...It was pointed out in that case that in the case of a closure, the employer does not merely close down the place of business but he closes the business itself finally and irrevocably. A lockout on the other hand indicates the closure of the place of business and not closure of the business itself. In the present case the totality of facts and circumstances would lead to the conclusion that the undertaking at Jamshedpur was closed down completely and was a final and irrevocable termination of the business itself.

23. This Court in the case of Innovations Garment Limited v. S.K. Singe and Anr. 2002 2 CLR 902, has observed that shifting of a place of manufacturing from one location to another and discontinuing manufacture in the former location does not amount

to closure of business. The relevant observations of this Court in paragraph No. 8 of the Judgment are as follows:

...The petitioners were directed to discontinue or stop the manufacturing activities under the law by the competent authority. It is, therefore, not possible for me to accept the contention of Ms. Gopal that the decision of the petitioners to stop or to discontinue the manufacturing activities suffer from lack of bonafides or an act of victimisation or it was a malafide decision to resort to closure in the guise of shifting. The bonafides of the petitioner can further be tested in the light of their restarting the factory at Mumbai after making alternative arrangement from 1st September, 1998. The petitioners had sufficient land and infrastructure at Massourie and their decision to shift their activities to Massourie cannot be questioned as unjustified or malafide. I do not find any fault with the decision of the petitioners to shift to Massourie their manufacturing unit from Mumbai. It is, therefore, not possible for me to accept the findings of the industrial Court that stopping of manufacturing activity at Mumbai and shifting to Massourie amounted to closure as defined under the provisions of the Industrial Disputes Act. Since there was no closure of the manufacturing activities at Mumbai and it was decided to relocate or shift the factory at Massourie, it cannot be said that it was a closure of the factory or company at Mumbai. In my opinion, therefore, Section 25(O) of the Industrial Act is not attracted....

24. As a matter of coincidence, Mr. K.K. Singhvi, the learned Senior Counsel was appearing in the case of Hindustan Lever Employees Union v. State of Maharashtra 1989 (2) CLR 420, albeit arguing the exact opposite case. The Court has observed in paragraph No. 3 as under:

Merely because the second respondent has chosen to discontinue the manufacture of one of its products, it cannot be held that he has closed down a part of undertaking.

25. Further, Mr. Singhvi, the learned Senior Counsel pointed out in Hindustan Lever v. State of Maharashtra and Ors. 1993 (2) CLR 847, our High Court has observed:

...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 part of undertaking as contemplated by Clause (cc) of the Industrial Disputes Act.

Further, the Court has gone ahead to observe that even on admitting that the shifting was bonafide and genuine in that case, there was no closure within the meaning of Section 2(cc) or Section 25-O of the Industrial Disputes Act.

26. Mr. K.K. Singhvi, the learned Senior Counsel appeared on behalf of the intervener/applicant, Industrial Perfume Workers Union. This union was the respondent in the matter of Industrial Perfumes Limited v. Industrial Perfumes

Workers 1998 (2) LLR 273 as mentioned earlier, wherein the learned Single Judge had interpreted provision of closure under the Industrial Disputes Act, 1947. Since the same was being considered by this Bench in the present Writ Petition, the Industrial Perfume Workers Union was allowed to be an intervener in the present reference.

27. Mr. Singhvi, the learned Senior Counsel pointed out the definition of the words ''place of employment'' as provided in the Black Law Dictionary (Sixth Edition) as under:

Within the safe place statutes of a place where active work, either temporary or permanent, is being conducted in connection with a business for profit; that is, where some process or operation related to such industry, trade or business is carried on and where any person is directly or indirectly employed by another.

28. Mr. Singhvi, the learned Senior Counsel sought to contend with the help of this definition that the term ''place of employment'' has been wisely used by the legislature to have a wider net to include all aspects of industry/business. i.e. shops, factories, plantations and any undertaking or part thereof. Hence he contended that place of employment means a place where an industry or undertaking/part thereof is carried on. Closure in this context must mean a closure of industry/business/undertaking/establishment.

29. He argued that if closure is not in relation to an industry/undertaking, closure of "place of employment" will have no meaning. Ordinarily closure of a ''place of employment'' having no relationship with industry or undertaking will have no meaning. The learned Senior Counsel stated that a place could never be permanently closed if it has no relationship with business or industry. If the business is not closed, you can never permanently close a ''place'' of business. Closure of a place of employment i.e. any one of the establishment will have no meaning unless the industry or establishment is closed and the employment comes to an end. This is because without closing the business, closure of a place in which the business is carried out cannot be permanently closed. Some or the other business is bound to be started in that place. Therefore it is submitted that closure of a place of employment would mean closure of the undertaking or establishment in which the employees are provided employment. Such a construction is also in consonance with the intention and the purpose of the Industrial Disputes Act. If the narrow meaning is given having no relationship with closure of business then by just transferring/shifting the business from one place to another, the employer will be able to terminate the services of the workmen and render them unemployed. The employer may be just by transferring two employees to various other establishments would reduce the strength of workmen below 100 and circumvent the provision of Section 25(O). Such an interpretation, Mr. Singhvi contended, must be avoided. Because if it were not so, a bonafide employer having more than 100 workmen who decides to shift his business for economic reasons to another place

will have to seek permission u/s 25-O of the Industrial Disputes Act, though he wishes to continue the same business at another place and he does not wish to terminate the services of his workmen.

30. Mr. Sanghvi, the learned Senior Counsel pointed out that legislative history supports the aforesaid interpretation. Jurisprudentially "closure" means permanent closure of industry, undertaking irrevocably. The inclusion of Section 2(cc), Section 2(k)(a) defining industrial establishment and the amendment of Section 25-O indicates that the meaning of closure has to be harmonised with provision relating to closure u/s 25-O. Mr. Singhvi brought to our notice that the legislature has used the word closure of an "undertaking" as opposed to closure of a "place". It is made very clear that according to legislature closure means the permanent closure of an undertaking i.e. an establishment in which an industry is carried on. It necessarily means closure of business/industry.

31. Mr. Singhvi argued that the legislature did not mean to give a go-bye to the concept of closure enunciated by the Supreme Court. If the legislative intent were to make drastic departure from meaning given by the Supreme Court, it would have expressly done so. In fact Section 25-O was amended to rectify deficiencies pointed out in Excel Wear and Others Vs. Union of India (UOI) and Others, , and to make the section Constitutional. There is a clear reference in the statement of objects and reasons in the Bill. Whereas the intention was not so in enacting Section 2(cc).

32. It was put forth by Mr. Singhvi that it is a well settled principle of interpretation of statutes that while amending law, the legislature is presumed not to make a radical departure from existing law unless the intention is so expressed, as held in Byram Pestonji Gariwala Vs. Union Bank of India and others, . Paragraph No. 29 of the judgment is relevant, which reads as under:

It is rule of legal policy that law should be altered deliberately rather than casually. Legislature does not make radical changes in law ''by a side windeer, but only by measured and considered provisions'' (Francis Bennion''s Statutory Interpretaion, Butterwords, 1984, Para 133). As stated by Lord Devlin in National Assistance Board v. Wilkinson (1952) 2 QB 648:

It is a well-established principle of construction that a statute is not to be taken as effecting a fundamental alteration in the general law unless it uses words that point unmistakably to that conclusion.

33. It was respectfully submitted by Mr. Singhvi that the Madhya Pradesh High Court in the case of Fertilizer Corporation of India v. Hindustan Fertilizer Corporation and Ors. has taken a view that Section 2(cc) and Section 25-O are not attracted when business activity carried on in a particular establishment is merely shifted. This is also the view of our High Court in the case of Hindustan Lever Employees Union''s case (supra).

34. The Bombay High Court in the case of Chandrabhushan Ramehandra Garu and Others Vs. State of Maharashtra and Others, has held that the shifting of business activity to another place does not attract provisions relating to closure under the Industrial Disputes Act.

35. The Rajasthan High Court in the case of Rajasthan Small Scale Industries Employees Union v. State of Rajasthan 1990 LAB I.C Raj.1668, has observed in paragraph No. 18 as follows:

The position is thus well settled by the pronouncements of the Apex Court closure of distinct venture though a part of business complex is perfectly legal and permissible. It is not necessary that the entire business of the Company should be closed down. The management is free to close down a part of the business. The closure of such a part of the business is not bad. It is legal and permissible. Of course, the closure should be a genuine and real. It should not be a ploy adopted for carrying on the same business in a different manner.

36. Finally, Mr. Singhvi referred to and relied upon the judgment of the Madras High Court in the case of Workmen of Indian Forge and Drop Stampings Limited v. Management of India Forge & Drop Stampings Limited and Ors. 1996 (3) LLJ 501. The observations of the Madras High Court in paragraph Nos. 15 & 16 are relevant, which read as under:

15. ...It is by now well settled by more than one decision of the Supreme Court as also of this Court that the concept of closure in law is not merely closing down the place of business, but, on the other hand, the business itself must be relinquished clearly and unmistakably and the legal personality of the same must come to an end. When an employer is really continuing the business as distinguished from the mere outward form of it, and that in the case of legal closure, an employer does not merely close down the place of business, but he closes down the business itself and consequently, the closure indicates a final and irrevocable termination of the business itself, in contrast to lock-out which indicates closure of the place of business and not closure of the business itself. It is also well-settled that where the closure is mere pretense or unreal in the sense that having purported to close the agencies, the same have been allowed to function all the time under a different garb, it would not constitute closure in law. Equally, it is well settled that it would not be necessary to wind up the company or the concern itself to substantiate the claim of closure in law....

16. ...In our view, a factual closure of a unit does not ipso facto constitute closure of the business also and the Tribunal has not only understood the correct position of law but appeared to have taken pains to maintain the dichotomy between the factual closure or the pretended closure on the one hand and the closure of the business once and for all on the other which alone would constitute closure in the eye of law.

37. It was therefore submitted by the learned Senior Counsel that the term closure would have to mean closure of undertaking/industry/business and not merely a "place" of business.

38. Having considered extensively all the judgments placed before us by the learned Senior Counsel, the law relating to "closure" seems to be a well settled one. Closure is the closing down permanently of the source of employment of the workmen, i.e. the place where the employment is actively generated. It thus follows that closing down of a "place" of business would not amount to closure as that would be over simplification which would lead to various negative ramifications as they have been extensively dealt with in the earlier part of the judgment in various quotations from various judgments. It must be recalled that the object of labour legislation is social welfare legislation. It is an umbrella of protection provided to workmen to shield them from the employer exploiting their vulnerable position. But it cannot be said that merely because a place of manufacture has been closed down and restarted at another place or transferred to another employer that the undertaking has been closed down. The business itself is still alive, the source of employment is still present and there is no valid closure in law.

39. A conspectus of all the above judgments makes it clear that "closure" would really mean permanent closure of the "place of employment" or a part thereof and the same could never mean only "place" of employment. One has to read the above definition of Section 2(cc) of Industrial Disputes Act in a comprehensive manner and not in a disjointed manner. A "place of employment" means a place, which generates employment or where business is carried on, and the same should not be construed in a superficial manner to indicate only a building or factory. The above interpretation has been consistently adopted by the Hon''ble Supreme Court and our High Court, as can be seen from the following:

(a). The Hon''ble Supreme Court in the case of Tatanagar Foundry Co. Ltd. Vs. Their Workmen, , in paragraph No. 3 has observed as under:

... It was pointed out in that case that in the case of a closure, the employer does not merely close down the place of business but he closes the business itself finally and irrevocably. A lockout on the other hand indicates the closure of the place of business and not closure of the business itself. In the present case the totality of facts and circumstances would lead to the conclusion that the undertaking at Jamshedpur was closed down completely and was a final and irrevocable termination of the business itself.

(b). Our High Court in the case of Innovations Garment Limited v. S.K. Singe and Anr. (2002) 2 CLR 902 has observed in paragraph No. 8 as follows:

The petitioners were directed to discontinue or stop the manufacturing activities under the law by the competent authority. It is, therefore, not possible for me to accept the contention of Ms. Gopal that the decision of the petitioners to stop or to

discontinue the manufacturing activities suffer from lack of bonafides or an act of victimisation or it was a malafide decision to resort to closure in the guise of shifting. The bonafides of the petitioner can further be tested in the light of their restarting the factory at Mumbai after making alternative arrangement from 1st September, 1998. The petitioners had sufficient land and infrastructure at Massourie and their decision to shift their activities to Massourie cannot be questioned as unjustified or malafide. I do not find any fault with the decision of the petitioners to shift to Massourie their manufacturing unit from Mumbai. It is, therefore, not possible for me to accept the findings of the industrial Court that stopping of manufacturing activity at Mumbai and shifting to Massourie amounted to closure as defined under the provisions of the Industrial Disputes Act. Since there was no closure of the manufacturing activities at Mumbai and it was decided to relocate or shift the factory at Massourie, it cannot be said that it was a closure of the factory or company at Mumbai. In my opinion, therefore, Section 25(O) of the Industrial Act is not attracted....

40. We are in full agreement with the observations of Madras High Court in the case of Workman of Indian Forge and Drop Stampings Limited v. Management of India Forge & Drop Stampings Limited and Ors. 1996 (III) LLJ 501 wherein paragraphs 15 and 16 read as under:

15. ...It is by now well settled by more than one decision of the Supreme Court as also of this Court that the concept of closure in law is not merely closing down the place of business, but, on the other hand, the business itself must be relinquished clearly and unmistakably and the legal personality of the same must come to an end. When an employer is really continuing the business as distinguished from the mere outward form of it, and that in the case of legal closure, an employer does not merely close down the place of business, but he closes down the business itself and consequently, the closure indicates a final and irrevocable termination of the business itself, in contrast to lock-out which indicates closure of the place of business and not closure of the business itself. It is also well-settled that where the closure is mere pretense or unreal in the sense that having purported to close the agencies, the same have been allowed to function all the time under a different garb, it would not constitute closure in law. Equally, it is well settled that it would not be necessary to wind up the company or the concern itself to substantiate the claim of closure in law....

16. ...In our view, a factual closure of a unit does not ipso facto constitute closure of the business also and the Tribunal has not only understood the correct position of law but appeared to have taken pains to maintain the dichotomy between the factual closure or the pretended closure on the one hand and the closure of the business once and for all on the other which alone would constitute closure in the eye of law.

41. It must be realised that a place can never be permanently closed if it has no relationship with the business or industry. Therefore, if the business is not closed, then one cannot permanently close a "place" of business. Similarly closure of a place of employment i.e. any one of the establishment will have no meaning unless the industry or establishment is closed and the employment comes to an end. This is because without closing the business closure of a "place" in which business is carried on cannot be permanently closed, as some other business will start in that place. Therefore closure of a "place of employment" would mean closure of the undertaking or the establishment wherein employees are provided employment in the sense business is closed and not merely the place where business is carried on.

42. In the light of the above, we are clearly of the view that the interpretation of the learned Single Judge in the case of Industrial Perfume Workers Union (supra) with regard to "closure" is the correct interpretation, and accordingly we answer the above issue.