A J.K. SYNTHETICS

v.

RAJASTHAN TRADE UNION KENDRA AND ORS.

DECEMBER 12, 2000

B [S. RAJENDRA BABU AND S.N. VARIAVA, JJ.]

Labour Laws :

Industrial Disputes Act, 1947--Section 25-N Termination of services C *of workmen on closure of unit of a company--Held, on facts, there was closure which was referred and decided by Industrial Tribunal.*

In January 1983, Appellant-company had a 'lay off' on account of 100% power cut and non-functioning of its generators. The Company terminated D **services of 1164 workmen on closure of Textile Division of the company because of huge losses and lack of power. Later, another 1201 workmen were retrenched by the Company. The respondent-union filed a Writ Petition before the High Court challenging the termination and retrenchment of 2367 workmen. The un-retrenched workmen refused to report for duty and went on a strike when the company lifted the lay-off. The Company filed a Writ** E **Petition before the High Court challenging the constitutional validity of Section 25-N of the Industrial Disputes Act, 1947. The High Court in October 1983 allowed the Writ Petition of the Company and dismissed the Writ Petition of the respondent-union. In January 1984, the respondent-union filed a Special Leave Petition. Leave was granted and by an interim order, the Company was directed to pay 1/3rd of disputed total wages subject to future adjustment.**

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In December 1983, Industrial Tribunal framed questions to be decided on a reference made by the State Government under Section 10-H of the Act regarding the justification of lay-off, closure of an unit and subsequent termination and retrenchment of the workers and the relief to be given to G **them. In March 1985, the Company claimed before the Industrial Tribunal that a settlement has been arrived at with different Unions concerned and filed a joint application praying for an award on the basis of the settlement. However, the respondent-union opposed the settlement stating that the settlement entered into with other Unions are not binding on the workmen. The Industrial Tribunal held a secret poll. A majority of the workers voted against the**

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settlement. In May 1985, the Industrial Tribunal passed an Award holding that the lay off was *bona-fide* due to 100% power cut and failure of the company's generators and further held that the strike by un-retrenched workmen was illegal and termination of 1164 workmen was justified on closure of the plant of the company. The Industrial Tribunal awarded various reliefs to the workmen, which was based mainly on the earlier settlement. The Company accepted and paid the dues to the workmen as per the award. The respondent-union filed a Special Leave Petition against the Award of the Industrial Tribunal. Leave was granted. In August 1993, the company filed a Writ Petition before the High Court challenging the Award of the Industrial Tribunal.

Meanwhile in May 1982 the Court in the case of *Workmen* v. *Meenakshi Mills Ltd.* held that Section 25-N of the Industrial Disputes Act, 1947 is valid and not unconstitutional. The Court remanded the pending appeals of the respondent-unions back to the High Court for consideration on merits in the light of the judgment in Meenakshi Mills Ltd. Single Judge of the High Court upheld the award of the Industrial Tribunal and directed payment of full wages to 1201 workmen. The Company and the Unions filed appeals before the Division Bench of the High Court against the judgment of the Single Judge. The High Court rejected the Writ Petition of the company filed in August 1993 on grounds of delay and laches and that the award was already accepted by the company. The High Court reversed the judgment of the Single Judge holding that there was no closure and directed reinstatement of 1164 workmen and payment of full wages.

In these appeals, the Company contended that the finding of the High Court on closure of the unit is erroneous and that reinstatement of workmen is unjustified, and that the company contended that the closure of the unit was not referred to the Industrial Tribunal.

Disposing of the appeals, the Court

HELD : 1. The High Court erred in concluding that the Industrial Tribunal could not have gone into the question of closure, as it was not referred to it. Before deciding upon the question of justification of retrenchment of workmen, which was one of the disputes referred to, it became absolutely necessary for the Tribunal to first ascertain whether there was a closure and whether such closure was *bonafide*. When the disputes were referred to the Industrial Tribunal, the term 'closure' was not incorporated in the Industrial

A Disputes Act, 1947. The concept of 'closure' was well known. Though in the reference and in the pleadings, 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. Prior to the reference of the disputes the company was claiming permanent discontinuance of a process in the Textile Section of the Nylon Plant. A permanent discontinuance necessarily B meant closure. It cannot be denied that the closure need not be of the entire plant. A closure can also be a part of the plant. The company proved before the Tribunal that it was suffering heavy losses in the Textile Division of the Nylon Plant. The High Court has ignored the fact that before the Industrial Tribunal not only witnesses on behalf of the Company but also witnesses on C behalf of the Unions admitted that the Textile Division of the Nylon plant had been closed. Thus before the Industrial Tribunal, there was no dispute that the Textile Division had been closed. This fact has been completely overlooked by the High Court. When facts are admitted or not seriously disputed at the trial stage, the Appellate Court cannot draw an adverse inference contrary to the admitted facts. The High Court should have realised that the dispute D regarding closure was contrary to the evidence on record. The High Court has thus erred in coming to a conclusion that there was no Textile Division and that there was no closure of the Textile Division.

[561-F, G; 562-B; 563-E, F]

E *Workmen* v. *Meenakshi Mills Ltd.*, [1992] 3 SCC 336, relied on.

Pipraich Sugar Mills Ltd. v. *Pipraich Sugar Mills Mazdoor Union*, [1956] SCR 872 and *Express Newspapers Ltd.* v. *Their Workers and Staff and Ors.*, (1962) II LLJ 227, referred to.

F 2. The directions by the High Court to the State Government and the Labour Department to prosecute the Company and its office bearers for contravention of the provisions of the Industrial Disputes Act is unjustified and are unsustainable. The judgment of the Division Bench is set aside and the judgment of the Single Judge is restored. It is clarified that if the Government or the Labour Department are of the opinion that there has been G any contravention of the provision of the Industrial Disputes Act or the Rules, they are at liberty to prosecute if it is felt that it is necessary to do so.

[563-H; 564-A, B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5074-5079 of H 1996.

From the Judgment and Order dated 13.11.95 of the Rajasthan High Court in D.B.C.S.A. (W.) Nos. 337/94, 179/95, 338/94, 335/94, 339/94 and S.B.C.W.P. No. 6248 of 1993. A

Anoop Chaudhary, Jitendra Sharma, Har Dev Singh, Sr. Advs. Ms. June Chaudhary, Sameer Parekh, Rohit Alex, M.K. Sharma. P.H. Parekh, P. Gaur, P.N. Jha. B.K. Pal, Dinesh Rai Dewedi, Ms. Minakshi Vij and Ms. Madhu Moolchandani for the appearing parties. B

The Judgment of the Court was delivered by

S.N. VARIAVA, J. These Appeals are against a common Judgment dated 13th November, 1995 passed by the Division Bench of the Rajasthan High Court in five Civil Special Appeals and a Writ Petition. C

In 1983 the Appellant Company had a "lay off". According to the Appellant the lay off became necessitated because there was a 100% power cut and the Company's own generators were under repairs. Thereafter on 15th January, 1983 the Appellant Company terminated the services of 1164 workmen. D According to the Appellant this termination was necessitated because of closure of a section of the Nylon plant. According to the Appellant Company this unit had to be closed because of huge losses and also because of lack of power.

On 17th January, 1983 another 1201 workmen were retrenched by the Appellant Company. The Rajasthan Trade Union Kendra (hereinafter referred to as RTUK) filed a Petition in the Rajasthan High Court (W.P. No. 213 of 1983) challenging the termination and retrenchment of the 2367 workmen. E

On 17th February, 1983 the Appellant Company lifted its lay-off. However, the workmen refused to report for duty and proceeded on a strike. F

On 7th March, 1983 the Appellant filed a Writ Petition (W.P. No. 409 of 1983) challenging the constitutional validity of Section 25-N of the Industrial Disputes Act (hereinafter called the said Act).

On 28th August, 1983 the Government of Rajasthan referred the following disputes to the Industrial Tribunal under Section 10(H) of the said Act: G

> "1. Whether the lay off in 4 Divisions of J. K. Synthetics Ltd., Kota (*viz.* J. K. Synthetics, J. K. Acrylics, J. K. Staple & Tows and J. K. Tyre Cord, Kota) from January 10, 1983 to February 17, 1983 was legal and justified and if not, to what relief the workers are H

A entitled?

2. Whether the retrenchment in 4 Divisions of J. K. Synthetics (*viz.* J.K. Synthetics, J.K. Acrylics, J.K. Tyre Cord and J.K. Staple and Tows, Kota) was justified and if not, to what relief the workers are entitled?

B 3. Whether in case the provisions of Section 25-N of the Industrial Disputes Act, 1947 are held to be unconstitutional by the Hon'ble High Court in the Writ Petitions (213/1983 and 409/1983) the retrenchment was in accordance with other provisions of the said Act, and to what relief workers are entitled?

C 4. Whether non-resumption of duty by unretrenched workmen engaged in the four Divisions of J.K. Synthetics Ltd., Kota (viz. J.K. Synthetics, J.K. Acrylics, J.K. Staple & Tows and J.K. Tyre Cord, Kota) was justified and whether the workmen are entitled to any relief for this period from February 17, 1983 till they resumed duty."

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On 19th October, 1983 a Full Bench of the Rajasthan High Court allowed the Writ Petition filed by the Appellant and dismissed the Writ Petition filed by RTUK.

On 12th December, 1983 the Industrial Tribunal, with the consent of E parties and on the basis of pleadings, raised the following 8 issues:

"1. Whether the lay off in four Divisions of J.K. Synthetics, Kota (namely J.K. Synthetics, J.K. Acrylics, J.K. Staple & Tows and J.K. Tyre Cord, Kota) from January 10th to February 17th 1983 was legal and justified?

F 2. Whether the retrenchment in aforesaid four Divisions was justified?

3. The provisions of Section 25-N of the Industrial Disputes Act, 1947 having been held to be unconstitutional by Hon'ble High Court of Rajasthan, whether the retrenchment in the aforesaid G four Divisions of J.K. Synthetics is still in accordance with the other provisions of the Industrial Disputes Act, 1947.

4. Whether the non-resumption of duty by un-retrenched workmen engaged in the aforesaid four Divisions from 17.2.83 was justified?

H 5. Whether for the reasons contained in para 25 and its various

sub-paras of statement of demands of J.K. Synthetics Ltd., the reference made to this Tribunal is *mala fide*, misconceived and untenable? A

6. Whether item Nos. 1, 2 and 3 in terms of reference are not industrial disputes:

7. Whether there has been in fact any dis-continuance/closure of undertakings/departments/processes/operations/interconnected processes and activities in Nylon Division before retrenchment? Whether the above, even if proved amounts to closure as known in Industrial Law? B

8. To what relief the parties are entitled?" C

On 2nd January, 1984 RTUK preferred a Special Leave Petition against the Judgment of the Rajasthan High Court dated 19th October, 1983. In this Petition leave was granted on 2nd January, 1984. By an interim order the Appellant Company was directed to pay 1/3rd of the total wages subject to future adjustment. D

It is claimed by the Appellant that on 22nd March, 1985 a settlement was arrived at by the Appellant Company with three Unions affiliated to CITU and two Unions working in the Company. On 22nd March, 1985 a joint Application was filed before the Industrial Tribunal praying that the settlement be taken on record and that an Award be made in terms of the settlement. On E 31st March, 1985 RTUK filed an Application before the Industrial Tribunal that the Executive Committee had not met to consider the settlement and that the representatives of CITU were not authorised to sign the settlement. RTUK opposed the settlement and claimed that the settlement cannot be binding on the workmen. F

On 5th April, 1985 the Industrial Tribunal ordered a secret poll to be taken in order to ascertain whether the workers had agreed to the settlement. Such poll was taken on 12th April, 1985. 1994 workers voted against the settlement, whereas 1850 voted in favour of the settlement. As the majority of the workers had voted against the settlement the Industrial Tribunal held, G on 7th May, 1985, that an Award could not be passed in terms of the settlement. The Industrial Tribunal further held that the question whether the settlement could be looked into to modulate reliefs would be considered later on.

On 14th May, 1985 the Industrial Tribunal passed an Award. The Tribunal held that the lay off was *bona-fide* and justified due to 100% power cut and H

A failure of Company's generators. The Tribunal held that strike in the Nylon Plant was illegal. The Tribunal held that the strike in the Acrylic Plant was not illegal. The Tribunal held that there was closure of the Textile Section of the Nylon Plant. The Tribunal held that on these counts termination of 1164 workers was justified. The Tribunal ultimately held as follows:

B "If the reliefs are granted on the basis of the findings as contained in this Award the financial burden on J.K. Synthetics will be about Rupees one Crores or one and half crores. If the settlements are looked into for granting the reliefs to the workers then the financial burden on the company shall be to the extent of rupees four to five C crores. Out of about 1,199 retrenched workers of the running plants, a large number of them have been absorbed, some have resigned. About 650 workers remain who are to be re-employed. Having given my serious thought to all these circumstances, I am of the opinion that relief should be modulated on the lines of the settlements, as the settlements to me appear to me just and fair in the larger interest of D the majority of the workers as well as for industrial peace. Even the Unions of the workers of the four plants affiliated to CITU have filed an application that the settlements are more beneficial to the workers and in their larger interest and therefore relief should be given as per the settlements. The Company J.K. Synthetics has neither supported E the application nor opposed it. Even Mr. Poonamla at one stage urged that in case the findings on the issues and the Award are less favourable to the workers then the settlement arrived at the Tribunal can look into the settlement. But according to him the settlements are not just and fair and are not favourable to the workers. But I am unable to agree with Mr. Poonamla and a comparison of the terms of F settlements and the findings on the various issues reported by me will show that the findings are less favourable to the workers and if the Award is given on the basis of these findings, it will be less favourable to the workers than the terms of the settlements."

On this basis the Industrial Tribunal gave various reliefs to the workmen G based mainly on the settlement. We are informed that now the Appellant Company has accepted the Award and paid as per this Award.

RTUK filed a Special Leave Petition against the Award in August 1985. Leave was granted in the Special Leave Petition.

H Thus, before this Court Civil Appeals filed by RTUK against the

Judgment of the Rajasthan High Court dated 19th October, 1983 as well as the Civil Appeal against the Award dated 14th May, 1985 were pending. A

In the meantime, on 15th May, 1992 this Court held in the case of *Workmen* v. *Meenakshi Mills Ltd.* reported in [1992] 3 SCC 336, that Section 25-N of the said Act was valid and was not unconstitutional.

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On 17th March, 1993 this Court remanded the pending matters back to the Rajasthan High Court for consideration on merits on the basis of the Judgment in *Meenakshi Mills Ltd.* case (supra).

On 25th August, 1993 the Appellant Company filed a Writ Petition (W. P. No. 6248 of 1993) challenging the Award of the Industrial Tribunal.

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The Petitions pending in the Rajasthan High Court came to be disposed of by a common Judgment dated 25th March, 1994. The learned single Judge upheld the Award of the Industrial Tribunal. The single Judge confirmed the findings of the Tribunal in regard to the illegal strike and closure. The learned single Judge upheld the finding that 1164 workmen have been terminated because of closure and that there was no retrenchment. However, the learned single Judge has held that in view of the Judgment in *Meenakshi Mills Ltd.'s* case, the 1201 workers would be entitled to full wages.

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Both the Appellant Company, RTUK and some other Unions filed Appeals before the Division Bench of the Rajasthan High Court. These Appeals and Writ Petition No. 6248 of 1983 came to be disposed of by the impugned Judgment dated 13th November, 1995. The Division Bench rejected Writ Petition No. 6248 of 1993 on grounds of delay and latches, as well on ground that Appellant Company had already accepted the Award. By this Judgment the Division Bench has reversed the Judgment of the learned single Judge and not accepted the findings in the Award of the Tribunal, except on the question of strike. The Division Bench has held that the question of closure was never referred to the Industrial Tribunal and the Tribunal could not have gone into that question. On facts the Division Bench held that there was no closure. The Division Bench directed reinstatement of these 1164 workmen and payment of full wages to them. It is this Judgment which is assailed before us.

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The Division Bench has accepted the findings of the Industrial Tribunal and the Single Judge on strike. These findings have not been seriously assailed before us and therefore require no interference. On behalf of the Appellant Company it has been urged that the findings of the Division Bench on closure are erroneous. On the other hand, the Respondents have supported

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A the findings of the Division Bench on this point.

The question for consideration before us is whether the Division Bench was right in concluding that the question of closure was never referred to the Industrial Tribunal and/or in concluding that there was no closure of any unit of the Appellant Company.

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As has been set out hereinabove, amongst other disputes which have had been referred to the Industrial Tribunal was Dispute No. 2, which reads as follows:

> "2. Whether the retrenchment in 4 Divisions of J. K. Synthetics (viz. J.K. Synthetics, J.K. Acrylics, J.K. Tyre Cord and J.K. Staple and Tows, Kota) was justified and if not, to what relief the workers are entitled?"

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Thus, the Industrial Tribunal was required to go into the question whether or not the retrenchment was justified. The Appellant had sought to justify retrenchment of the 1164 workmen on the basis that there was a closure of a section of the Nylon Plant. Thus in order to come to the conclusion, whether or not retrenchment was justified, the Industrial Tribunal necessarily had to first decide whether or not there was a closure.

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This Court in the case of Express *Newspapers Ltd.* v. *Their Workers and Staff and others* reported in 1962 II LLJ 227 has held that if the Industrial Tribunal had to decide whether strike was justified, it would have to examine the question whether or not the dispute referred to it was an industrial dispute. This Court held that the decision of this question would inevitably depend upon the view which the Industrial Tribunal may take as to whether the action taken by the Company is a closure or a lock out. It was observed as follows:

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> "It is also true that even if the dispute is tried by the industrial tribunal, at the very commencement, the industrial tribunal will have to examine as a preliminary issue the question as to whether the dispute referred to it is an industrial dispute or not, and the decision of this question would inevitably depend upon the view which the industrial tribunal may take as whether the action taken by the appellant is a closure or a lock-out. The finding which the industrial tribunal may record on this preliminary issue will decide whether it has jurisdiction to deal with the merit of the dispute or not."

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H This Court, in the case of *Pipraich Sugar Mills Ltd.* v. *Pipraich Sugar*

Mills Mazdoor Union, reported in 1956 SCR 872, has held that the definition of an industrial dispute as contained in the Industrial Disputes Act contemplates the existence of an industry and a subsisting relationship of employer and employees between the parties. This Court has held that there could be no industrial dispute within the meaning of this Act where the industry has been closed and the closure is real and *bona fide.*

Thus, in our view, the Division Bench erred in coming to the conclusion that the Tribunal could not have gone into the question of closure as it was not referred to it. In our view, on the disputes which have been referred, particularly Dispute No. 2 (set out hereinabove) it became absolutely necessary for the Tribunal to first ascertain whether there was a closure and whether such closure was *bona fide.*

The next question which has to be decided is whether the Division Bench was right in concluding on facts that there was no closure. The Division Bench has come to its conclusion that there was no closure by first concluding that there was no Textile Section in the Company and that the Textile Section was an inseparable part of the entire plant. The Division Bench has also drawn an adverse inference against the Appellant Company on the ground that the Company has not produced certain log books to show what parts of the Russian Generating sets were missing. It, therefore, drew an adverse inference that the non- production of the log books necessarily meant that had those log books been produced, it would have shown that Russian Generating Sets were operable. It therefore opined that there was no sufficient cause for the alleged closure.

In our view, the Division Bench has erred in arriving at the above conclusions. 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 dis-continuance 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. After the disputes were referred both the parties filed their pleadings. On those pleadings specific issues were raised. One of the Issues raised was an Issue No. 7, which reads as follows:

"7. Whether there has been in fact any discontinuance/closure of

A undertakings/departments/processes/operations/interconnected processes and activities in Nylon Division before retrenchment?"

At the time when this issue was raised the Respondents did not contend that such an issue could not be raised as it was not part of the dispute referred. The Respondents did not contend that this Issue did not arise on the B pleadings. This is because the Respondents were aware that it was always the case of the Appellant that there had been discontinuance of this Section. It cannot be denied that the closure need not be of the entire plant. A closure can also be a part of the plant. Before the Tribunal both the parties led evidence. The Appellant Company proved before the Tribunal that it was C suffering heavy losses. It proved before the Tribunal that in the Textile Section the losses were as follows:

"During 1979 Rs. 10.64 lacs,

"1980 Rs. 56.93 lacs,

D "1981 Rs. 292.63 lacs and

"1982 Rs. 532.49 lacs"

Thus between 1979 and 1982 the losses had gone up from Rs. 10.64 lacs to Rs. 532.49 lacs. Not only that, it was admitted before the Industrial Tribunal E that the Appellant Company had following divisions in which the total number of workmen employed were as follows:

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"S.No.	Division	Total number of permanent workmen employed
1.	Nylon plant/Division engaged in Plat/POY/MOY/yarn process:	2209
	Nylon Plant/Division (engaged In texturising, crdmping and Processes).	1164
G 2.	Tyre Cord Plant/Division	660
3.	Synthetic Stapple Fibre Plant/Division.	703
4.	Acrylic Plant/Division	527
	Total	5263"

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Thus, it is to be seen that in the Nylon Plant there was a division known as a 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. The Division Bench has also ignored the fact that before the Industrial Tribunal not only witnesses on behalf of the Appellant Company but even witnesses on behalf of the Unions, particularly one Mr. Satya Narayan Tailor, have admitted that the Textile Section of the Nylon Plant had been closed. Similarly, another Mr. K.D. Chaudhary has also admitted that the Textile Section of the Nylon Plant had been closed. It was also an admitted position, on evidence before the Industrial Tribunal, that the workers of the other departments of the Nylon Plant were not transferred to the Textile Section and the workers of the Textile Section were not transferred to other departments. Based on evidence the Industrial Tribunal in its Award has recorded as follows:

> "The factum of the closure of the Textile section of the Nylon plant has not been very seriously disputed and on behalf of the Unions and the witnesses for RCTU and CITU as well as for the Staff Association have not rebutted, the evidence produced on behalf of the Company that the Textile section has been closed."

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.

It must be mentioned that the Division Bench has affirmed the findings of the Single Judge based upon the decision of this Court in *Meenakshi Mills Ltd.'s* case (supra). In our view, those findings are correct and cannot be disturbed.

It must also be mentioned that the Division Bench has in concluding directed the State Government and the Labour Commissioner-cum-Deputy Secretary, Labour Department to prosecute the Company and its office bearers for contravention of the provisions of the Industrial Disputes Act and the

A Rules framed thereunder. In our view, such directions were entirely unjustified and are unsustainable.

We, therefore set aside the Judgment of the Division Bench and restore the Judgment of the single Judge of the High Court. We, however clarify that if the Government or the Labour Commissioner-cum-Deputy Secretary, Labour
B Department are of the opinion that there has been any contravention of the provisions of the Industrial Disputes Act or the Rules framed thereunder, they are at liberty on their own to prosecute if they feel it necessary to do so.

The Appeals stand disposed off accordingly. There will be no Order as to costs throughout.
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B.S. Appeals disposed of.