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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 17274 OF 2025

Vidyut Metallics Pvt Ltd
Through its Authorised Representative
Mr. Ved Parkash
L.B. S. Marg, Teen Hat Naka,
Wagale Estate, Thane 400 6104 **... petitioner**

Vs.

1. **Vidyut Metallics Employees Union**
   Room No.301, Hema Apartment,
   D Wing, Davale Nagar,
   Near TMT Depot, Lokmanya Nagar
   Pada No. 2, Thane-400 606.
2. **M/s. Supermax Personal Care Pvt. Ltd**
   Malhotra House, 4th Floor, In front of GPO, Mumbai-400 001. **...Respondents**

Mr. Jamshed Cama, Senior Advocate with Mr. Sujeet Salkar and Mr. Venkatesh Bhandari i/b Mr. Raymond Gadkar, for petitioner.

Mr. Nitesh Bhutekar i/b Ms. Harshada Shrikhande, Mr. Prathamesh Mandlik, Priyesha Patel, Mr. Aditya Mahamiya, Ms. Sejal Singh and Mr. Khushal Ahirrao for respondent No.1.

Mr. Ajinkya Kurdukar, for respondent No. 2.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 30, 2026.

PRONOUNCED ON : MAY 7, 2026

JUDGMENT:

1. The present petition is directed against the impugned Award dated 28 April 2025, rendered by the Industrial Tribunal at Thane in Reference (IT) No. 11 of 2014. The petitioner seeks to assail the legality and correctness of the said Award and prays for the same to be quashed and set aside on grounds urged in the petition.

2. The factual matrix giving rise to the present proceedings, briefly stated, is that the petitioner is a company which was earlier operating two manufacturing units in the Thane region. One unit, namely Vidyut Metallics Pvt. Ltd., was engaged in the manufacture of razor blades, while the other unit, being the PEECO Plant situated at Wagale Industrial Estate, was engaged in the manufacture of wax paper. On or about 2 May 2020, a major fire occurred at the PEECO Plant, resulting in cessation of manufacturing activities at the said unit. In view of the difficulties faced by the petitioner in continuing its manufacturing operations, including those at Vidyut Metallics Pvt. Ltd., the petitioner entered into a Business Transfer Agreement dated 30 December 2020 with respondent No. 2. The said agreement was made effective from 18 March 2021. By virtue of the said arrangement, the petitioner transferred its entire running business to respondent No. 2 on a slump-sale basis and on an “as is where is” condition, including

employees, business records, assets and liabilities of every nature. The only asset retained by the petitioner was the immovable premises.

3. It is the case of the petitioner that upon execution of the Business Transfer Agreement, it ceased to have any connection with or control over the transferred business, which thereafter came to be exclusively operated by respondent No. 2. It is further stated that 31 workmen had instituted Complaint (ULP) No. 337 of 2012 seeking ex gratia payment from respondent No. 2. By an order dated 13 November 2021, the Industrial Court directed both the petitioner and respondent No. 2 to make payment jointly and severally. Subsequently, four workmen, namely Tushar Shinde, Vinod Panchal, Avinash Asadokar and Ayub Shaikh, filed Complaint (ULP) No. 104 of 2014 claiming balance suspension wages for the period from 3rd November 2011 to 2013. By order dated 2 January 2021, the Industrial Court again held both the petitioner and respondent No. 2 jointly and severally liable to make the said payment.

4. The petitioner has placed reliance upon Clauses 1.1.8 and 6.2.4 of the Business Transfer Agreement to contend that all liabilities pertaining to the business, including contingent liabilities, stood transferred to respondent No. 2. Clause 1.1.8 defines “Business Liabilities” and provides for their transfer to the transferee, who is made responsible for discharge of such liabilities from the transfer date. It is further provided that respondent No. 2, as transferee, shall comply with all applicable employment laws

and shall be liable for all employee-related payments including gratuity, bonus, and other statutory dues. On this basis, it is contended that any relief of reinstatement with back wages, even if granted, can only be enforced against respondent No. 2, which is the entity presently carrying on the business. The petitioner asserts that it has ceased business operations and therefore cannot be directed to reinstate the workmen. It is further pointed out that respondent No. 2 has been admitted into Corporate Insolvency Resolution Process with effect from 11 January 2024, and the concerned workmen themselves have lodged claims before the Resolution Professional seeking recovery of substantial amounts towards back wages and other dues. According to the petitioner, this conduct clearly indicates that the workmen have recognized respondent No. 2 as the entity liable for such claims.

5. It is further the case of the petitioner that upon execution of the Business Transfer Agreement, as many as 1117 workmen, including managerial personnel and members of Maharashtra Rajya Rashtriya Kamgar Sanghatana, accepted employment with respondent No. 2 by executing individual consent letters. However, approximately 37 workmen, including the 31 concerned workmen in the present petition, who were members of respondent No. 1 Union, declined to accept such employment despite repeated requests. It is stated that these workmen were thereafter relocated to the PEECO Plant at Thane, but they discontinued attendance after a few days on what is described as untenable grounds. Consequently, the petitioner terminated their services with effect

from 11 July 2013 in accordance with law and paid retrenchment compensation along with other statutory dues, which were accepted by the workmen. The termination letters were sent by registered post as the workmen refused to accept the same personally.

6. The petitioner further contends that after transfer of the business, only 37 workmen remained on its rolls at the relevant time and therefore the statutory requirement of seeking prior approval for retrenchment was not attracted. It is also urged that though the concerned workmen are stated to have continued notionally under the petitioner, in fact they were working at the establishment of respondent No. 2 and were receiving wages and statutory benefits from respondent No. 2. It is further averred that certain actions relating to relocation and retrenchment were undertaken by one of the Directors, namely, Mr. Chaudhary, during a period when disputes existed regarding control of the Board of Directors. The petitioner asserts that steps had been initiated to remove the said Director through proceedings before the Company Law Board, and subsequent orders upheld by higher courts enabled restructuring of the Board. It is also contended that under a Secondment Agreement, the control and supervision of the concerned workmen vested with respondent No. 2, which paid all their dues, and therefore the petitioner could not be regarded as the employer in law. Despite this position, the respondent Union issued a Charter of Demands dated 16 August 2013 seeking reinstatement of the workmen.

7. The petitioner has assailed the finding recorded by the Industrial Tribunal to the effect that respondent No. 2 had not paid the terminal dues to the concerned workmen. According to the petitioner, this finding is contrary to the documentary evidence on record, which clearly establishes that retrenchment compensation and other dues were paid through cheques issued from the accounts of respondent No. 2 and credited to the workmen. It is contended that the Tribunal failed to properly appreciate this evidence, rendering the impugned finding unsustainable and perverse.

8. It is further stated that upon rejection of the demands raised by the respondent Union, conciliation proceedings were undertaken, culminating in a Reference order dated 25 February 2014. The respondent Union thereafter filed its Statement of Claim, to which the petitioner filed its Written Statement. Upon hearing the parties, the Industrial Tribunal partly allowed the Reference by the impugned Award dated 28 April 2025. Being aggrieved thereby, the petitioner has invoked the writ jurisdiction of this Court.

9. Mr. Jamshed Cama, learned Senior Advocate appearing on behalf of the petitioner, submitted that the impugned Award is based substantially upon the testimony of a solitary witness examined on behalf of the respondent Union. It is urged that in the course of cross-examination, the said witness has made material admissions to the effect that the concerned workmen had accepted and encashed their terminal dues, that a large majority of the

employees had voluntarily joined respondent No. 2, namely SPCPL, that no coercion or undue pressure was exercised upon them, and that the terminal benefits were duly credited to their respective accounts. According to the petitioner, these admissions strike at the very root of the findings recorded by the Tribunal and render the Award perverse, inasmuch as the Tribunal was led to believe that the respondent Union represented the majority of the workforce, whereas in fact 1117 employees had joined SPCPL under the recognized union MRRKS and only about 37 employees remained affiliated with respondent No. 1 Union.

10. It was further submitted that in Complaint (ULP) No. 58 of 2011, the Industrial Court had already recorded a categorical finding that the respondent Union had a negligible membership of approximately 2.5 percent and consequently lacked locus to espouse the cause of the workmen. In this background, the acceptance by the Tribunal of the respondent Union's claim of majority representation is stated to be manifestly erroneous. It is also contended that SPCPL, which has subsequently been admitted into Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, constitutes a necessary and proper party to any industrial dispute arising after the transfer of the undertaking. The fastening of liability solely upon the petitioner, namely VMPL, despite the transfer of business under the Business Transfer Agreement and despite SPCPL having assumed obligations towards the workmen, is, according to the petitioner, legally unsustainable.

11. Learned Senior Counsel further submitted that under the Secondment Agreement executed between SPCPL and VMPL, the concerned workmen continued to remain in the employment of SPCPL, which exercised supervision and control over their work and was responsible for payment of salary, provident fund, ESIC contributions and other statutory benefits. It is contended that VMPL was merely functioning as a nominal job-work contractor and did not have the attributes of an employer in law. The contrary finding recorded by the Tribunal, treating VMPL as the employer, is therefore assailed as being contrary to the evidence on record and vitiated by perversity. On these grounds, a prayer is made for setting aside the impugned Award.

12. Per contra, Mr. Nitesh Bhutekar, learned Advocate appearing on behalf of respondent No. 1 Union, opposed the petition and submitted that there was no valid transfer of employment of the concerned workmen from VMPL to SPCPL. It is contended that the Notice dated 12 January 2011 clearly stipulated that transfer of employment was conditional upon individual written consent of each workman, and no alternative mode of transfer was envisaged therein. It is an admitted position that the 31 workmen represented by respondent No. 1 did not furnish such consent and, therefore, their employment continued with VMPL. In the absence of such consent, the petitioner cannot contend that the said workmen stood automatically transferred to SPCPL. It is further submitted that even the Business Transfer Agreement itself made the transfer of employees subject to their individual consent.

Reliance is placed upon the evidence of the petitioner's own witness, who has admitted that the services of all employees did not automatically stand transferred to SPCPL, that the concerned 31 workmen continued to work with VMPL till the date of termination, that VMPL remained their employer and paid their wages, and that the workmen continued to work at the PEECO Plant of VMPL even after execution of the BTA. On the basis of such evidence, it is contended that the employer-employee relationship between VMPL and the concerned workmen subsisted till the date of termination.

13. It is further submitted that the justification sought to be advanced by VMPL for termination of services on the ground of absence of work is factually incorrect. The witness examined on behalf of VMPL has admitted the existence of a Job Work Agreement dated 18th March 2011 entered into between VMPL and SPCPL, under which VMPL had agreed to provide job work to SPCPL. The said witness has further admitted that under the terms of the said agreement, VMPL had undertaken to provide manpower, manufacture and dispatch products, supply additional operative and technical staff, and had in fact employed personnel for such purposes.

14. According to the respondent Union, the aforesaid admissions clearly negate the plea of lack of work raised by VMPL. It is contended that upon a comprehensive appreciation of the evidence on record, the Tribunal has rightly concluded that the termination was founded on incorrect and untenable reasons and is therefore

unsustainable in law. It is further urged that the transfer of the concerned workmen to the PEECO Plant was not a bona fide administrative decision but was punitive in nature, intended to penalize the workmen for refusing to consent to transfer of their employment to SPCPL. The evidence on record indicates that the said plant had been completely destroyed in a fire in 2010, that there were no functional facilities or working conditions, that there was no manufacturing activity, and that the plant was not operational at the relevant time. It is therefore contended that such transfer was an act of victimisation and constituted an unfair labour practice.

15. The learned Advocate further submitted that the termination orders dated 11 July 2013 were admittedly issued and signed by one Mr. Subhash D. Chaudhary. However, the minutes of the extraordinary general meeting dated 21 December 2012 record that the said Mr. Chaudhary had been removed from the post of Director of VMPL. This position is also stated to have been admitted in the cross-examination of the petitioner's witness, and further corroborated by publication of notice of removal in a newspaper dated 3 September 2014. It is therefore contended that the termination orders issued by the said person were without authority. No resolution authorising him to take such action has been produced on record. The explanation sought to be offered regarding a stay order of the Company Law Board has not been substantiated by any documentary evidence. In these circumstances, it is submitted that the Tribunal has rightly held

that the termination was effected by an incompetent authority and is therefore void ab initio.

16. It is further submitted that at the time when the termination orders were issued, certain proceedings were already pending before the Industrial Court and Tribunal, including Complaint (ULP) No. 58 of 2011, Complaint (ULP) No. 80 of 2013 and Reference (IT) No. 39 of 2012. It is pointed out that by an order dated 18th February 2011 in Complaint (ULP) No. 58 of 2011, VMPL had been restrained from altering the service conditions of the concerned workmen. A similar direction was issued on 26 July 2013 in Complaint (ULP) No. 80 of 2013. Despite the subsistence of these interim orders, the workmen were transferred to the PEECO Plant, which was admittedly non-functional, and were thereafter terminated on 11 July 2013.

17. It is contended that the action of VMPL in terminating the services of the concerned workmen during the pendency of industrial dispute proceedings, without obtaining prior approval as required under Section 33(2) of the Industrial Disputes Act, 1947, is in clear breach of the statutory mandate. Any alteration in service conditions or termination effected during the pendency of such proceedings, in violation of the embargo under Section 33(2), is void and inoperative. The Tribunal has therefore rightly held that non-compliance with the mandatory requirements of the said provision renders the termination illegal and unsustainable.

18. The respondent has also opposed the objection raised by the petitioner regarding the locus of respondent No. 1 Union. It is submitted that the Tribunal has, upon appreciation of evidence, rightly held that after refusal of transfer by the concerned workmen, only 31 employees remained on the rolls of VMPL and that all such workmen were members of respondent No. 1 Union. The requirement under Section 9A of the Trade Unions Act, 1926 is stated to have been satisfied. It is further contended that recognition of a union is not a precondition for maintaining an industrial dispute under the Industrial Disputes Act, 1947. In the absence of any recognized union, an unrecognized union representing the concerned workmen is competent to espouse their cause.

19. In support of the aforesaid submissions, reliance is placed upon judicial precedents, including *Dyes and Chemical Workers Union v. Asian Chemical Works and Ors.* 1991 SCC OnLine Bom 299, *Petroleum Employees' Union and Ors. v. Bharat Petroleum Corporation Ltd. and Anr.* 1983 SCC OnLine Bom 123 and *Emerson Climate Technologies (India) Pvt. Ltd. v. Bhartiya Kamgar Karmachari Mahasangh,* (Writ Petition No. 444 of 2020), wherein it has been held that an unrecognized union is competent to file a complaint of unfair labour practice in the absence of a recognized union. On this basis, it is prayed that the petition be dismissed.

20. In rejoinder, Mr. Cama, learned Senior Advocate for the petitioner, reiterated that on the date of reference, respondent No. 1 Union was an unrecognized union and therefore lacked locus to

espouse the dispute. It is further submitted that the Tribunal failed to consider the provisions of Section 25FF of the Industrial Disputes Act, which contemplate only two options for employees in the event of transfer of undertaking, namely, to accept compensation and discontinue service or to join the transferee. Reliance is placed upon the judgment of the Supreme Court in *Anakapalle Co-operative Agricultural and Industrial Society Ltd. v. Workmen,* AIR 1963 SC 1489 to support this proposition. It is also submitted that the decision to provide or not provide job work is within the domain of managerial discretion and cannot be compelled.

21. Learned Senior Counsel further relied upon the judgment in *M/s. Parry and Co. Ltd. v. P.C. Pal and Others,* AIR 1970 SC 1334 to contend that an employer is entitled to arrange its business affairs in a manner permissible in law, even if such arrangement has the effect of avoiding certain regulatory consequences. It is submitted that retrenchment, if effected for valid reasons and not by way of victimisation or unfair labour practice, cannot be interfered with. It is further contended that the claim for full back wages has not been substantiated by adequate evidence, as only one workman was examined on behalf of all employees. It is also urged that in the absence of transfer of the factory premises, the relief of reinstatement could not have been granted. It is lastly submitted that where the number of employees is less than 100, prior permission under Section 25-O is not required.

22. In support of his contention regarding grant of back wages, reliance is placed upon the judgments of the Supreme Court in *Management of Regional Chief Engineer, Public Health Engineering Department, Ranchi v. Their Workmen,* (2019) 18 SCC 814, *and Punjab National Bank v. Virender Kumar Goel and Others,* (2004) 2 SCC 193. It is submitted that once an employee accepts the benefit of a scheme, he cannot subsequently resile from the same and claim inconsistent reliefs. On these grounds, it is urged that the impugned Award deserves to be quashed and set aside.

REASONS AND ANALYSIS:

23. Having heard the learned Senior Advocate for the petitioner and the learned Advocate for the respondent Union, and upon perusal of the record as also the rival pleadings and the material part of the evidence referred to before this Court, this Court finds that the controversy turns mainly on one question whether the concerned 31 workmen stood validly transferred to SPCPL and, if not, whether the petitioner could still terminate their services during the pendency of industrial proceedings without prior approval in law.

24. The petitioner has laid emphasis on the Business Transfer Agreement and has attempted to build its case around the said document. It is urged that the transfer was on slump sale basis, that the business stood transferred, and that all liabilities stood shifted to SPCPL, and therefore the petitioner cannot now be

saddled with any liability of reinstatement or back wages. This submission, at first look, appears to have some strength because the language of the agreement is indeed wide and speaks of transfer of business along with assets and liabilities. However, upon closer scrutiny, this Court finds that such submission cannot be accepted. It is well settled that in matters arising under industrial jurisprudence, the Court is not confined to the mere wording of commercial agreements between parties. The Court must examine the working arrangement, the manner in which employment continued or did not continue, and the nature of control and supervision over the workmen. A document may say one thing, but if the ground reality shows another, then the Court cannot shut its eyes to such reality. A transfer between two corporate entities does not result in termination of employment unless the requirements are satisfied. Therefore, what is required to be seen is whether there was a genuine and effective change in the employer-employee relationship, or whether the arrangement remained only a paper transaction between two managements without altering the position of the workmen.

25. When the matter is examined in light of the evidence placed on record, the stand of the petitioner does not stand supported. The respondent Union has relied upon the Notice dated 12 January 2011, which indicates that the transfer of employment was not automatic but was made subject to the individual written consent of each workman. This condition goes to the root of the matter. If the scheme of transfer itself contemplates that each

workman must agree before his employment can be shifted, then in absence of such consent, the transfer of employment cannot be presumed. The material on record indicates that the 31 concerned workmen did not give such consent. In such situation, it would not be legally permissible for the petitioner to contend that their employment stood transferred merely because the business was transferred. The statutory position under Section 25FF also reinforces this view. The provision does not say that employment automatically comes to an end or stands transferred upon change of ownership. On the contrary, as explained by the Supreme Court in *N.T.C. (South Maharashtra) Ltd. v. Rashtriya Mill Mazdoor Sangh*, (1993) 1 SCC 217 the effect of transfer depends upon the terms governing such transfer and upon fulfillment of certain conditions. Thus, where the terms require consent and such consent is absent, it would be unsafe to hold that the relationship of employment stood altered.

26. The petitioner has further attempted to draw strength from the circumstance that a large number of employees, namely 1117 workmen, accepted the transfer and joined SPCPL by executing consent letters. This fact cannot conclude the issue in favour of the petitioner. Industrial law does not operate on the principle of majority rule in matters of individual rights. Each workman has an independent status in law. The rights of a minority group do not stand extinguished merely because a majority has chosen a different course. The Tribunal was concerned with the dispute raised by the 31 workmen, and therefore their case had to be

examined on its own footing. If these workmen did not consent to the transfer, and if there is material to indicate that they continued to remain under the control of the petitioner establishment, then the fact that other employees shifted to SPCPL does not displace their claim. The Court must be cautious not to dilute statutory protections by applying number of workmen. The legal question is not how many accepted the transfer, but whether those who did not accept it were lawfully transferred. On the material available, such lawful transfer is not established. Therefore, the contention based on majority acceptance does not answer the case of the petitioner.

27. Mr. Cama, learned Senior Advocate for the petitioner, has raised the objection that respondent No. 1 Union was not a recognized union on the date of reference and therefore had no legal standing to raise the dispute. It cannot be accepted that absence of recognition bars the workmen from approaching a forum through a union which is otherwise representing them. The material placed before this Court shows that the concerned 31 workmen were in fact members of respondent No. 1 Union and that their grievance was taken up by it. If such union is not permitted to raise the dispute, then practically the workmen would be left without any remedy. Such a situation cannot be accepted in industrial law, which is intended to protect workmen and provide them access to adjudication. The law cannot be read in such technical manner so as to defeat the remedy itself. Therefore, this Court is not inclined to hold that the reference was bad only on the

ground that the union was unrecognized.

28. Coming to the next submission, which is based on Section 25FF of the Industrial Disputes Act, it has been argued that upon transfer of undertaking, the workmen are left only with two choices, either to accept compensation and leave service, or to join the new employer, and that no other option is permissible. For this purpose, reliance is placed on the judgment in *Anakapalle Co-operative Agricultural and Industrial Society Ltd.* This Court finds that such submission proceeds on a narrow reading of the provision. Section 25FF does not operate in such manner. It does not say that employment automatically ends, or that workmen must move to the transferee. The provision only explains what happens if the transfer results in termination and also when it does not. The real question is whether in fact the employment continued or came to an end. In the present case, this issue is in dispute. There is material to show that the concerned workmen did not give consent for transfer and continued with the petitioner. If that be so, it cannot be said that they must be pushed into one of the two categories suggested by the petitioner. The legal position requires examination of facts and cannot be applied without such examination.

29. It has also been argued that the employer has freedom to decide whether to give job work or not and that such decisions fall within managerial powers. This Court does not dispute that management has discretion in running its business. However, such discretion is not absolute. When such decisions affect the rights of

workmen, the Court is entitled to examine whether the action is genuine or whether it is taken to defeat legal protections. If the decision appears to be a device to remove workmen or to compel them to accept conditions which they did not agree to, then the Court cannot remain silent. In the present case, the Tribunal has come to a conclusion, based on the material available, that the plea of no work was not correct and that some form of activity was still continuing. Whether that conclusion is fully correct or not, it cannot be ignored by saying that it is a matter of management. Managerial power cannot override statutory safeguards given to workmen. Therefore, this submission also does not advance the case of the petitioner in the manner sought.

30. The petitioner has submitted that the Tribunal has relied only on one witness examined on behalf of the Union. This submission requires careful examination. The Court must see what that witness stated and whether his statement finds support from other material. On reading the record as placed, it appears that the Tribunal has not proceeded on a single statement. The Tribunal has also taken into account the admissions given by the petitioner's own witness. Those admissions carry weight because they come from the side of the petitioner itself. It has been admitted that the concerned workmen continued to work with VMPL till the date of termination, that their wages were paid by VMPL, and that even after execution of the BTA they were working in the PEECO Plant. When a party's own witness speaks against its stand, the Court is entitled to rely upon such statement. Therefore, the conclusion

drawn by the Tribunal cannot be called arbitrary only because the petitioner takes a different view of the evidence. A finding becomes perverse only when it is wholly unsupported or contrary to record.

31. The petitioner has also argued that since the workmen accepted and encashed the terminal dues, they cannot now challenge the termination. It is true that acceptance of dues is a relevant fact and may indicate certain conduct on part of workmen. However, such acceptance cannot be treated as final settlement, especially when the workmen are disputing the legality of termination. Often, workmen accept such amounts due to financial necessity and without abandoning their rights. Therefore, mere encashment of cheques cannot validate an action which is otherwise not in accordance with law. The real issue remains whether the termination itself was lawful, whether it was done by a competent authority, and whether statutory provisions such as Section 33(2) were followed. If the termination is defective, payment of compensation cannot cure that defect. Thus, this submission of the petitioner does not take the matter much further.

32. The petitioner has placed considerable reliance upon the Secondment Agreement and has argued that SPCPL was exercising control and supervision over the workmen. The respondent Union has pointed out that even the petitioner's own witness admitted that the workmen continued to work under VMPL and were paid wages from VMPL. In such a situation, the Tribunal was justified in holding that the employer-employee relationship with VMPL had

not come to an end. In commercial dealings, secondment agreements are made for convenience of operations, but such arrangements do not change the legal employer unless there is complete transfer of control in accordance with law. The evidence in the present case does not establish such complete transfer. Therefore, the petitioner cannot avoid its obligations merely by referring to the secondment arrangement.

33. The petitioner has attempted to rely upon the transfer agreement to say that employment stood shifted. However, Section 25FF does not support such proposition. As explained in *N.T.C. (South Maharashtra) Ltd. v. Rashtriya Mill Mazdoor Sangh*, the section does not terminate employment upon transfer. It recognizes that employment may continue, and compensation is attracted only if there is termination. The proviso further protects the workmen where continuity of service and conditions are maintained. In the present case, the basic question is whether the concerned workmen had agreed to such transfer and whether their service actually continued under the new employer. The material on record suggests otherwise. Therefore, the petitioner cannot rely on Section 25FF.

34. This Court also finds that the submission of the respondent Union regarding transfer of workmen to the PEECO Plant deserves consideration. The evidence indicates that the said plant had suffered damage due to fire, that it was not functional, that there was no production activity, and that basic working conditions were lacking. If this position is accepted, then transferring the workmen

to such a place cannot be viewed as a administrative decision. It gives an impression that the workmen were being placed in a position where they could not effectively work. When workmen refuse to accept transfer to another employer and are then shifted to a non-functional unit, it raises doubt about the bona fides of such action. The inference drawn by the Tribunal that such conduct amounts to victimisation cannot be said to be without basis.

35. The issue relating to authority of Mr. Subhash D. Chaudhary also assumes importance. It has been contended that he had already been removed from the position of Director before issuing the termination orders. The petitioner has not been able to place material showing that he continued to have authority thereafter. The explanation regarding a stay order is not supported by any document. In absence of such proof, the Tribunal was justified in doubting his authority. If termination is issued by a person who does not have authority, such action becomes questionable in law. Therefore, the finding of the Tribunal on this aspect cannot be said to be unreasonable.

36. Apart from this, at the relevant time, industrial proceedings were pending, and interim orders were operating, restraining change in service conditions. Despite this, the services of the concerned workmen were terminated. Section 33(2) of the Industrial Disputes Act places a clear restriction on the employer in such situations. It requires that during pendency of proceedings, certain actions cannot be taken without following the prescribed

procedure. This is a substantive safeguard intended to protect workmen during adjudication. If such requirement is not complied with, the action becomes legally unsustainable. The Tribunal has taken note of this aspect and has rightly held that the termination suffers from this defect.

37. The petitioner has attempted to argue that since the number of workmen had reduced, the requirement of seeking approval was not applicable. This argument cannot be accepted once it is found that the concerned workmen were still employees of VMPL and that proceedings were pending. The applicability of statutory safeguards cannot be avoided by merely referring to the number of employees. The law requires compliance in substance. Therefore, this submission does not assist the petitioner.

38. The principle laid down in *N.T.C. (South Maharashtra) Ltd. v. Rashtriya Mill Mazdoor Sangh* further supports the case of the respondent Union. The law is clear that transfer of undertaking does not bring an end to employment. The continuity of service and the surrounding circumstances must be examined. In the present case, the facts do not show a lawful transfer of employment of the concerned workmen. Therefore, the petitioner cannot rely upon the BTA alone to deny its responsibility.

39. The petitioner has argued that since SPCPL is now undergoing insolvency proceedings, the liability should fall on SPCPL and not on the petitioner. Insolvency of one entity does not automatically shift liability if another entity was in fact the

employer at the relevant time. The Court must identify who had control over the workmen and who took the decision of termination. The material before the Tribunal indicates that VMPL continued to be the employer and that the termination was effected by it. Therefore, the workmen cannot be deprived of relief on account of insolvency of SPCPL.

40. The learned counsel for the Respondent has placed reliance upon the averment made by the respondent Union in its complaint, as also the statement made in the affidavit in lieu of examination-in-chief of Mr. Vasant Kumbhar, to contend that the workmen have asserted that they remained unemployed after termination. It is pointed out that in paragraph 4 of the Statement of Claim, it has been stated that the concerned workmen were unable to secure any alternative employment, and that in the affidavit, the said witness has deposed on behalf of all the workmen that they are unemployed. In the present case, Mr. Vasant Kumbhar has made such a statement not only in pleadings but also on oath. There is nothing shown on record to indicate that this statement was demolished in cross-examination or contradicted by any material brought by the petitioner. Once a workman asserts unemployment, the burden shifts to the employer to show that the workman was in fact gainfully employed elsewhere. Mere denial is not sufficient. In absence of any rebuttal evidence from the petitioner, the statement made by the workman cannot be discarded lightly. At the same time, it is also necessary to observe that such statement of unemployment, though relevant, is

not the sole factor for grant of full back wages. The Court is required to consider the entire set of circumstances, including the nature of termination, the conduct of parties, and the overall equities. However, the submission of the petitioner that the claim of unemployment is unsupported or unreliable cannot be accepted on the material as it stands. The Tribunal was therefore justified in taking note of the said assertion while considering the relief to be granted.

41. For these reasons, this Court holds that the impugned Award does not call for interference. The petitioner has failed to show that the workmen were transferred so as to sever their relationship with VMPL, or that the termination dated 11th July 2013 was made by a competent authority in compliance with the mandatory requirements of law. The objections based on locus, BTA, secondment, payment of dues and majority transfer are not sufficient to displace the findings of the Tribunal. The result, therefore, is that the petition deserves to be dismissed.

42. In view of the foregoing discussion, and upon overall assessment of the material submissions, evidence on record, and the findings arrived at hereinabove, the following order is passed:

(i) The writ petition stands dismissed;

(ii) The impugned Award dated 28th April 2025 passed by the Industrial Tribunal, Thane in Reference (IT) No. 11 of 2014 is upheld;

(iii) It is held that the termination of the concerned 31

workmen is illegal and unsustainable in law, and the findings recorded by the Tribunal in that regard do not warrant interference under writ jurisdiction;

(iv) The petitioner shall comply with the directions issued in the impugned Award within a period of four weeks from the date of this order;

(v) In the facts and circumstances of the case, there shall be no order as to costs;

(vi) Rule is discharged.

(AMIT BORKAR, J.)