surplus the Tribunal omitted to take into account the important fact that a sum of no less than £1,10,000/- has been capitalised out of the reserves at the beginning of the year. The second error was that the Tribunal in saying that after paying 8 months' bonus there is a balance of £34,397 with the employer, omitted to take into consideration the fact that the company would also have the benefit of a large amount as income-tax rebate in respect of the bonus paid to its clerical staff.

Taking all these facts into consideration we are of opinion that a fair order would be to award to the staff bonus equivalent to 3 months' basic wages in addition to the amount already paid voluntarily.

We therefore allow the appeal in part and in modification of the award made by the Industrial Tribunal award to the staff of M/s. Peirce Leslie Co., Ltd., bonus equivalent to 3 months' basic wages in addition to the amount already voluntarily paid by the company. There will be no order as to costs.

Appeal partly allowed.

TEA DISTRICTS LABOUR ASSOCIATION, CALCUTTA

v.

EX-EMPLOYEES OF TEA DISTRICTS LABOUR ASSOCIATION AND ANOTHER

(P. B. GAJENDRAGADKAR AND K. N. WANCHOO, JJ.)

Industrial Dispute—Closure of business centres held mala fide—If no closure in the eye of law in spite of actual closure—Industrial Disputes (Appellate Tribunal) Act, 1950 (XLVII of 1950), ss. 22, 23, 25F(C).

As there was appreciable decline in the activities and business of the appellant it decided, by means of a resolution, to close down two local agencies at Koraput and Berhampur (Ganjam) by May 31, 1957. About the same time the appellant also thought of retrenching its employees and decided to retrench ten of its employees with effect from December 1, 1956. An industrial dispute having arisen as a result of the said closure and

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retrenchment it was referred to the industrial tribunal for adjudication. Before the Industrial Tribunal it was conceded on behalf of the appellant that the retrenchment of ten employees was invalid as the statutory notice required by s. 25F(c) of the Industrial Disputes (Appellate Tribunal) Act had not been served. It was also stated afterwards that the statutory compensation had been paid to the retrenched workmen. As regards the question of closure the tribunal came to the conclusion that the closure was not bona fide, and it held that the legal consequence was that there was not a real closure. Accordingly it directed the appellant to reinstate the ten retrenched workmen and to pay all its workmen employed at the two centres as though the centres had not been closed and were actually working. On appeal by special leave :

Held, that when the two agencies had in fact been closed the finding about malafides could not justify the conclusion that the said two agencies should be deemed to continue and the tribunal was not entitled to make an award on that basis.

Banaras Ice Factory Ltd. v. *Its Workmen*, [1957] S.C.R. 143, explained and distinguished.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 169 of 1959.

Appeal by special leave from the Award dated June 26, 1958, of the Industrial Tribunal, Orissa, at Cuttack in Reference No. 2 of 1957.

M. C. Setalvad, Attorney-General for India, Vidya Sagar and *B. N. Ghosh*, for the appellants.

M. S. K. Sastri and *R. Patnaik*, for respondent No. 1.

R. Patnaik, for respondent No. 2.

1960. March 9. The Judgment of the Court was delivered by

Gajendragadkar J.

GAJENDRAGADKAR, J.—This appeal by special leave arises from an industrial dispute between the appellant, the Tea Districts Labour Association, and the respondents the ex-employees of the appellant and another. The dispute which was referred to the industrial tribunal for its adjudication consisted of two items:—

"(a) Whether the retrenchment of ten workers of Koraput and Ganjam Agencies of Tea Districts Labour Association effected on the 30th November, 1956, was justified, if not, to what relief those workers are entitled?

(b) Whether the closure of the Koraput and Ganjam Agencies contemplated by Messrs. Jardine Henderson Ltd., Secretaries, Tea Districts Labour

Association with effect from the 31st May, 1957, is *bona fide*: If so, whether the affected workers are entitled to some other alternative employment in any other establishment under the same management. If not *bona fide*, to what relief those workers are entitled?"

On this reference the award which was passed by the Tribunal directs the appellant to pay to the ten retrenched workmen all the pay and allowances to which they were entitled from November 30, 1956, to May 31, 1957, and it further orders the appellant to pay all its employees of the Berhampur and Koraput agencies, including the said ten retrenched workmen, all their pay and allowances from May 31, 1957, till one month after the publication of the award within which time the Management, if it so chooses, may close down the agencies, and in that event there would be no necessity for further notice of retrenchment to those ten retrenched workmen. The award has further added that if no *bona fide* closure is effected the ten retrenched workmen would be entitled to statutory notice if the Management still wants to retrench them. In regard to the other employees the award provides that they shall be entitled to all their pay and allowances as before and the agencies will in the eye of law be continuing agencies. The validity of the latter portion of the award in particular is challenged before us by the appellant in the present appeal by special leave.

The appellant is a Company Limited by Guarantee of performance of service only for its members and was formed in 1917. The appellant's members are the owners of several tea gardens in West Bengal and Assam and its chief object is to recruit labour from different parts of India and to supply it to the said tea gardens according to their requirements. Jardine Henderson Ltd. have since 1953 been and still are the Secretaries of the appellant. The appellant had a number of establishments in different parts of India which were known as Local Agencies, Local Forwarding Agencies and Forwarding Agencies. The function of Local Agencies and Local Forwarding Agencies was mainly to recruit labour and the function of

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Forwarding Agencies was mainly to accommodate and feed labour while in transit to and from tea gardens.

Towards the end of the appellant's financial year 1955-56, the appellant's Secretary received estimates from the constituent members regarding their estimated requirements of labour for the seasons from 1956 to 1959, and it appeared that these estimates were between 6,000 to 10,000 adults per annum, whereas in the past the appellant's organisation catered for the recruitment of about 30,000 labourers per annum. This appreciable decline in the activities and business of the appellant raised the problem of closing some of its agencies. In or about the beginning of March, 1957, it became apparent to the appellant that the requirement of labour was rapidly falling and that it would be necessary to close some of its agencies. Thereupon, the question was considered by the appellant's general committee held on March 7, 1957, and it was decided *inter alia* that the two local agencies at Koraput and Berhampur (Ganjam) should be closed, if possible by April 1, 1957. It was in pursuance of this resolution that the appellant ultimately decided to close down the said two agencies by May 31, 1957. One of the points referred to the Industrial Tribunal is in regard to this closure.

About the same time the appellant also thought of retrenching its employees and in pursuance of its decision in that behalf ten employees were retrenched with effect from December 1, 1956. This retrenchment is the other issue referred to the Industrial Tribunal for adjudication.

Before the Industrial Tribunal it was conceded on behalf of the appellant that the impugned retrenchment of ten employees was invalid in view of the fact that the statutory notice required by s. 25F(c) had not been served, and the appellant agreed that the said ten persons would therefore be entitled to the same pay and privileges that they were getting on the date of retrenchment until May 31, 1957, which was the date of the closure. Thus the position with regard to the impugned retrenchment was not in doubt.

In regard to the question of closure the tribunal has observed that what it had to consider was whether

the closure was real and *bona fide*. It considered the evidence and it was inclined to hold that the apprehensions entertained by the appellant in regard to the fall in its activities and work were not justified and that the appellant could have carried on with the two agencies in question. The tribunal also considered the fact that soon after the closure of Koraput and Berhampur agencies the appellant opened another agency at Vizianagaram, which is a place in Andhra Pradesh but is at some distance from Koraput in Orissa. The tribunal was not satisfied that the explanation given by the appellant for reopening of the Vizianagaram agency, which had been closed on the 6th September, 1956, was satisfactory. In the result the tribunal came to the conclusion that the closure was not *bona fide*, and it held that the legal consequence was that it was not a real closure. It is on the basis of this conclusion that it issued a direction to the appellant to reinstate the ten retrenched workmen and to pay all its workmen employed at the two centres as though the centres had not been closed and were actually working. In reaching this conclusion the tribunal has relied on the observations made by this Court in *Banaras Ice Factory Ltd.* v. *Its Workmen* (1).

It is common ground that the compensation, due to the employees on the footing that the closure was not justified, has been duly paid to all the employees concerned, and the learned Attorney General has stated to us that so far as the ten retrenched workmen are concerned they have also been paid the statutory compensation. On behalf of the appellant the learned Attorney General had made it perfectly clear that even if the appeal were to succeed the appellant would not claim any amount back from any of its employees concerned though it would be entitled in law to do so.

The main grievance made before us by the appellant is about the direction of the tribunal that the closure must be treated as *non est* and that the agencies must be held to be continuing and must continue to function despite their factual closure. The argument is

(1) [1957] S.C.R. 143.

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that even if the closure may not be *bona fide* it does not follow that the closure in fact has not taken place. It is not a case where closure is a pretence or the plea of closure is unreal in the sense that having purported to close the agencies, the same agencies have been functioning all the time, under a different garb. In fact the agencies have been closed even according to the finding of the tribunal. It is contended that the finding about the *mala fides* of the closure is open to serious doubt because the said finding is not supported by any legal evidence, and in a sense is opposed to the weight of the evidence on the record. We are inclined to think that there is considerable force in this contention. But assuming that the closure is not shown to be *bona fide*, does it necessarily follow that the closure is a fiction and it is unreal in the sense that the agencies can be treated to be in existence in the eye of the law? That is the very narrow point which arises for our decision in the present appeal.

As we have already indicated the conclusion of the tribunal on this point is based on the observations of this Court in the case of *Banaras Ice Factory Ltd.* v. *Its Workmen* (1). It will, therefore, be necessary to examine those observations and decide whether they really justify the conclusion of the tribunal. In that case this Court was dealing with the decision of the Labour Appellate Tribunal on a complaint filed before it under s. 22 of the Industrial Disputes (Appellate Tribunal) Act (Act No. XLVIII of 1950), hereafter called the Act. It appears that during the pendency of an appeal before the Labour Appellate Tribunal the appellant Company decided to close down its business and gave notice to all the workmen that their services would be terminated upon the expiry of 30 days from July 16, 1952. That led to the complaint under s. 23 of the Act on the allegation that s. 22 of the said Act had been contravened. The Labour Appellate Tribunal had found that the closure was *bona fide*. It conceded that the appellant had the right to close its business for *bona fide* reasons; but nevertheless it took the view that permission should have been obtained before the said closure. That is why according to it the appellant was guilty of contra-

(1) [1957] S.C.R. 143.

vening s. 22(b) of the Act. This decision was reversed by this Court. In doing so, the true scope and effect of ss. 22 and 23 of the Act were considered and it was held that if the impugned closure was *bona fide* then neither of the two sections came into operation. Thus the position was that the closure was *bona fide* and that the appellant had committed no breach of s. 22(b) of the Act. In dealing with the scope and effect of s. 23 this Court observed: "There is hardly any occasion for praying for permission to lift the ban imposed by s. 22, when the employer has the right to close his business and *bona fide* does so, with the result that the industry itself ceases to exist". Then it was added: "If there is no real closure but a mere pretence of a closure or it is *mala fide*, there is no closure in the eye of the law and the workmen can raise an industrial dispute and may even claim under s. 23 of the Act". It is on this latter observation that the Tribunal has founded its decision. With respect we do not read the observations as laying down an unqualified and categorical proposition of law that wherever a closure is *mala fide* it must be deemed to be unreal and non-existent. What this Court has said is that in cases of pretence of closure no closure in fact has taken place and for the purpose of s. 23 of the Act with which the Court was dealing a *mala fide* closure may conceivably be treated as falling in the same class as a pretence of closure. But in the present case the facts are not in dispute. There has been a closure and the agencies have been closed and their business has been wound up. If it is found that the closure was not *bona fide* the consequences would be the liability of the employer to pay the higher compensation under s. 25-FFF of the Industrial Disputes Act, 1947. But it is difficult to see how when the two agencies have in fact been closed the finding about *mala fides* can justify the conclusion that the said two agencies should be deemed to continue and how the award can make an order on that basis. Besides, as we have already indicated even the finding about the *mala fides* of the closure is itself open to serious doubt. In our opinion the said finding is

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based on mere surmises and is entirely opposed to the weight of evidence adduced in this case.

The result is that that portion of the award which issues directions to the appellant on the basis that the closure, in the eyes of law, had not taken place is set aside. The appeal succeeds to that extent and must be allowed. There will be no order as to costs in the circumstances.

Appeal allowed.

MANAGEMENT OF VISHNU SUGAR MILLS LIMITED, HARKHUA, DISTRICT SARAN, BIHAR

v.

THEIR WORKMEN REPRESENTED BY CHINI MILL MAZDOOR UNION, HARKHUA, DIST. SARAN, BIHAR

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March 9.

(P. B. GAJENDRAGADKAR AND K. N. WANCHOO, JJ.)

Industrial Dispute—Reference by State Government—Competence—Controlled industry—"Appropriate Government," meaning of—Industries (Development and Regulation) Act, 1951 (65 of 1951). —Industrial Disputes Act, 1947 (14 of 1947), s. 2 (a) (i).

A dispute relating to a workman in the appellant sugar mill, situate in Bihar, was raised by the Workers Union and a reference was made by the State Government. Under s. 2 (a) (i) of the Industrial Disputes Act, 1947, "'Appropriate Government' means in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government.....or concerning any such controlled industry as may be specified in this behalf by the Central Government.....the Central Government". The question was whether the State Government was competent to make the reference, as sugar was a controlled industry under the Industries (Development and Regulation) Act, 1951.

Held, that in order that the appropriate government under s. 2 (a) (i) of the Industrial Disputes Act, 1947, may be the Central Government for a controlled industry it is necessary that such controlled industry should be specified by the Central Government, and that in the absence of a notification for the