IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5290 OF 2019

Siemens Ltd.
Plot No. A-1/2, Five Star MIDC Shendra,
Aurangabad
Through – It's Manager-HR

VERSUS

Shendra Siemens Kamgar / Karmachari Sanghatana,
C/o. Shri. Chandrakant Mohan Sarode,
Sant Dnyaneshwar Nagar, House No. 70/1,
Through – It's Secretary

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Advocate for Petitioner : Mr. Sudhir Talsania, Senior Counsel i/b Mr. Yugant R. Marlapalle
Advocate for Respondent : Mr. B. R. Kaware

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WITH

CIVIL APPLICATION NO. 9297 OF 2019

Shendra Siemens Kamgar / Karmachari Sanghatana,
(Through its Authorized Signatory)
C/o. Shri. Subhash Haibati Kumbhar
Plot No. 13, Meenatai Thakare Nagar,
Cidco N-2, Aurangabad, 431003

VERSUS

M/s. Siemens Limited
(Through its Factory Incharge)
Plot No. A-1/2, Five Star MIDC Shendra,
Tq. Dist. Aurangabad

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Advocate for Applicant : Mr. B. R. Kaware

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CORAM : SIDDHESHWAR S. THOMBRE, J.

Date : 6th May, 2026

JUDGMENT :-

1. **Rule**. Rule made returnable forthwith. Heard finally with the consent of the parties at the stage of admission.

2. The petitioner has challenged the judgment and order dated 02.11.2018 passed by the learned Industrial Tribunal in Reference (IT) No. 08 of 2014, whereby the reference forwarded by the Labour Officer came to allowed.

3. The Petitioner is a Public Limited Company engaged in the manufacturing of bogie frames for the Indian Railways and is an 'industry' within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 (for short, "the Act"). The Respondent is a registered Trade Union representing the workmen who were in the employment of the Petitioner.

4. The Petitioner's case is that it employed exactly 99 workmen. On 14.08.2014, the Petitioner issued a notice discontinuing operations due to operational difficulties, effective from 16.08.2014. Wages were admittedly paid to the 99 workmen

until 29.09.2014. Subsequently, on 27.09.2014, the Petitioner served a 60-day notice of its intention to close the undertaking under Section 25-FFA of the Act, effective from 27.11.2014, and paid closure compensation to all 99 workmen.

5. A dispute arose when the Respondent Union filed a Charter of Demands. Following a failure report from the Conciliation Officer, the matter was referred to the Industrial Tribunal, Aurangabad. The primary point of contention was whether the Petitioner employed 100 or more workmen, which would trigger the mandatory prior permission requirements under Chapter V-B of the Act.

6. The Industrial Tribunal allowed the reference, holding that the Petitioner had employed more than 100 workmen. This Court previously remanded the matter, but the Hon'ble Supreme Court, in SLP No. 2776/2023 and restored this writ petition. Consequently, the petition is now heard finally on its merits.

7. Mr. Talsania, learned Senior Counsel for the Petitioner, submits that the Tribunal’s finding is perverse and contrary to the settled principles of law regarding the burden of proof. He contends

that the Petitioner produced the Muster Roll (Exh. C-20) and Attendance Records (Exh. C-24) for the administrative staff, which clearly established a headcount of 99 workmen.

8. The learned Senior Counsel strenuously argues that the burden of proof lies squarely on the party asserting a fact. Since the Respondent Union alleged that the headcount exceeded 100, the onus was on the Union to substantiate this with evidence. IN support of its contentions, the learned Senior Counsel for petitioner relief upon following judgments :-

- **Shankar Chakravarti Vs. Britannia Buiscuit Co.Ltd. [(1979)3 SCC 371]**
- **Voltas Ltd. Vs. Umed Singh Bajetha [2009(1) LLJ 576]**
- **Bajaj Auto Ltd. Vs. Ashok Dnyanoba Dhumal [2006(1) Mh. L. J. 147]**

The learned Senior Counsel placed reliance on the decisions of the Hon'ble Apex Court Shankar Chakravarti v. Britannia Biscuit Co. Ltd., specifically Paragraphs 32 and 33, to argue that the burden cannot be shifted to the employer to prove a negative.

9. It is further submitted that the Tribunal erred in classifying maintenance and assembly staff as "workmen" based solely on the cross-examination of the Petitioner’s witness. The learned Counsel argues that these responses were merely answers to suggestive queries and did not constitute legal admissions. He maintains that the status of a "workman" must be determined by the nature of duties, which the Tribunal failed to analyze.

10. The learned Senior Counsel for Petitioner highlights that during the pendency of this petition, 54 out of 99 workmen have already accepted fresh appointment orders and resumed duties. While the Petitioner offered re-employment to the remaining members, the settlement failed as the Respondent Union insisted on back wages and continuity of service, which is not feasible given the closure under Section 25-FFA.

11. Mr. Kaware, learned counsel appearing for the Respondent Union, vehemently opposed the petition, submitting that the Petitioner had deliberately suppressed the actual number of employees to circumvent the statutory requirement of seeking prior permission for closure from the appropriate government. It is the Respondent's specific case that the Petitioner employed more

than 100 workmen, thereby attracting the stringent provisions of Chapter V-B of the Industrial Disputes Act.

12. Learned counsel submitted that while the Respondent Union represents 99 permanent workmen, there were an additional 28 staff members who, by the nature of their duties, squarely fall within the definition of "workman" under Section 2(s) of the Act. Although these 28 staff members were not members of the Union, they must be counted toward the total strength of the industrial establishment. Furthermore, the Respondent in its evidence affidavit clearly identified certain "ex-workmen" whose inclusion pushes the total headcount well beyond the threshold of 100.

13. It is contended that the notice dated 29.09.2014, expressing an intention to effect closure with effect from 27.11.2014, is a colorable exercise of power and in flagrant violation of Section 25-O (Chapter V-B) of the Act. The Respondent Union challenged this illegal closure, leading the appropriate Government to refer the dispute to the Industrial Tribunal with a specific issue for adjudication: “Whether the Petitioner company employed one hundred or more than one hundred workmen on the date of the alleged closure?”.

14. Learned counsel invited the my attention to the fact that the Petitioner failed to comply with the Tribunal's order dated 10.07.2015 regarding the production of documents. Specifically, the Petitioner failed to produce the Wages Register despite a notice for production. Mr. Kaware further argued that an adverse inference must be drawn against the Petitioner for withholding primary documentary evidence. He submitted that nine specific employees from the administrative staff were in addition to the 99 workmen, and their names were deliberately omitted from the records to artificially restrict the headcount.

15. Reliance was placed on the written notes of arguments and the oral testimony of the Union's witnesses to assert that the Respondent has successfully discharged its burden of proving that the total strength exceeded 100. Counsel emphasized that since the Petitioner failed to produce the best evidence (the complete Wages Register), the Tribunal was justified in concluding that the Petitioner's records were unreliable. In support of his contentions, the learned counsel for respondent placed reliance on following judgments :-

- **Raj Kumar Dixit Vs. M/s. Vijay Kumar Gauri Shankar, [2015(2) CLR 573]**

- **Shreedhar Govind Kamerkar Vs. Yashwant Govind Kamerkar and Ors. [(2006)13 SCC 48]**

16. Finally, it was submitted that the Hon'ble Supreme Court, while setting aside the previous remand order of this Court, effectively restored the matter for a decision on the existing record. The Industrial Tribunal, after a thorough appreciation of both oral and documentary evidence, arrived at a finding of fact that is neither perverse nor illegal. Consequently, learned counsel prayed for the dismissal of the Writ Petition.

17. Having heard the learned counsel for the respective parties at length and after perusing the record, the core issue for determination is whether, at the time of the closure notice, the Petitioner establishment employed 100 or more workmen, thereby attracting the rigours of Chapter V-B of the Industrial Disputes Act, 1947.

18. To adjudicate this controversy, it is necessary to refer to the relevant statutory provisions. Section 25-K (Chapter V-B) mandates that the provisions of this chapter apply to an industrial establishment in which not less than one hundred workmen were employed on an average per working day for the preceding twelve

months. Further, Section 25-O prescribes the procedure for closing down an undertaking, requiring prior permission from the appropriate Government. Conversely, for establishments employing fewer than 100 workmen, Section 25-FFA (Chapter V-A) applies, requiring a mere sixty days' notice of the intention to close.

19. The Petitioner contends that it employed only 99 workmen and was thus governed by Section 25-FFA. However, the Respondent Union asserts that the Petitioner artificially suppressed the headcount by excluding staff members and indirect workmen who fall within the definition of "workman" under Section 2(s) of the Act.

20. This Court has scrutinised the evidence led before the Industrial Tribunal. Records reveal that the Respondent filed an application for the production of documents, including the Wages Register and specific muster rolls. Despite the Tribunal's order dated 10.07.2015, the Petitioner failed to produce the comprehensive Wages Register. In industrial adjudication, where the employer is the custodian of the best evidence regarding employment records, the non-production of such vital documents despite a court order warrants the drawing of an adverse inference.

21. The evidence affidavit of the Respondent provides a granular breakdown of the workforce. The details of employees employed by the Company during the period of September 2013 onwards are under :-

Month and Year	Direct Workmen	Staff	Indirect Workmen	Total Workmen
Sept - 2013	100	28	80	208
Oct - 2013	99	29	80	208
Nov – 2013	99	28	80	207
Dec - 2013	99	26	80	205
Jan - 2014	99	15	80	194
Feb – 2014	99	15	80	194
March - 2014	99	14	80	193
April - 2014	99	14	80	193
May - 2014	99	14	80	193
Jun - 2014	99	13	80	192
July - 2014	99	10	80	189
August - 2014	99	10	80	189
Sept - 2014	99	04	80	183

22. The Petitioner's witness, Mr. Pravin Kulkarni was cross-examined by the respondent. The relevant portion of his cross-examination is reproduced hereunder :-

> "10. It is not true to say that, in organization chart name of all employees were not mentioned. Names of Jiten Karmarkar, Ashosh Deshpande are not mentioned in the organization chart

> at page No. 95 at Exh. C-6. It is not true to say that, Mr. Mohan Jawale was working as Lezor cutting operator. He was working till December-2013. We have not produced his appointment letter. Kari Ansari and Rahul Kulkarni were working as a Store Keeper. It is not true to say that, Nitesh Pimpale was working as a assembler. He was working in assembly department as a operator. It is not true to say that, Abhishek Mishra was working in Maintenance Department. I am unable to tell his nature of work. It is not true to say that, Vijay Kalyani was working in Electrical Maintenance Department. H e was working in the same department as a Jr. Executive. Yogesh Tokekar was working in Fixture Maintenance Department. It is not true to say that, his nature of work was in the employee category. We have not produced their appointment letters of documents in respect of their nature of duties. It is not true to say that, all above said 9 employees were working as a employee on the machine.

23. The witness admitted to the presence of staff and indirect workers. Furthermore, it has come in evidence that individuals such as Mr. Mohan Jawale (Lezor Cutter Operator) and others like Yogesh Tikekar were categorized as "administrative staff" to exclude them from the workman tally. However, the Petitioner failed to disclose the actual nature of their duties. In the absence of evidence proving that these employees performed purely managerial or supervisory functions as contemplated under the exceptions to Section 2(s), the Tribunal was justified in treating them as workmen.

24. As regarding the contention of the Petitioner that the burden of proof lay upon the Respondent, this Court finds that the

Respondent Union has successfully discharged its initial burden by leading oral evidence and providing a detailed list of employees. The burden then shifted to the Petitioner to rebut this with documentary evidence (Wages Register/Muster Rolls), which it failed to do.

25. This Court finds that the Respondent has proved that more than 100 workmen were engaged with the Petitioner establishment. The Petitioner's attempt to restrict the number to 99 appears to be a calculated move to evade the requirement of seeking Government permission under Section 25-O. The reasoning recorded by the Industrial Tribunal is based on a sound appreciation of the evidence and the admissions made during cross-examination.

26. Consequently, the findings of the Industrial Tribunal cannot be termed as perverse or illegal. The closure effected without complying with Chapter V-B is void ab initio. As such, no case is made out to cause interference in the impugned order. Hence, I am not inclined to allow the writ petition. Accordingly, following order is passed :

ORDER

(I) The Writ Petition is devoid of merits and is hereby **dismissed**.

(II) The findings and the order passed by the Industrial Tribunal are upheld. No order as to costs.

(III) Rule stands **discharged**.

(IV) Resultantly, pending civil applications, if any, also stand disposed of.

(SIDDHESHWAR S. THOMBRE, J.)

ORDER

27. Upon the pronouncement of this judgment, the learned counsel for the petitioner moved an oral request seeking a stay on the execution and implementation of this order for a period of six weeks.

28. The learned counsel for the respondent strenuously opposed the request, submitting that the matter has been pending since 2019 and further delay would be prejudicial.

29. Having considered the aforesaid submissions, I find that no interim relief was granted during the pendency of this petition. Furthermore, as the employees concerned are currently

out of service, I am not inclined to grant a stay. Accordingly, the petitioner's request is rejected.

(SIDDHESHWAR S. THOMBRE, J.)

Omkar Joshi