

(2003) 06 AHC CK 0018

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 42075 of 2002

Agra Engineering Industries Employees Union

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-06-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25O, 25O(2), 25O(5)

Citation : (2003) 3 UPLBEC 2375

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : K.P. Agarwal, S.S. Nigam and Vijay Sinha, for the Appellant; S.P. Gupta, Tarun Agarwal and H.N. Shukla and S.C., for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—Agra Engineering Industries, Artoni, Agra, Respondent No. 2 is a unit of Jay Engineering Works Ltd., a Company incorporated under the Companies Act. Petitioner is a Union of Agra Engineering Industries employees. It has prayed for quashing the order dated 26.4.2002 (Annexure-4 to the writ petition), passed by the State Government, allowing application of the Company for closure of Respondent No. 2, establishment at Agra u/s 25-O of the Industrial Disputes Act, 1947 and has further prayed for a direction in the nature of mandamus to the respondents not to close down the company i.e., Respondent No. 2 and to pay regular salary to its workers.

2. The facts giving rise to this petition are, that Respondent No. 2 suspended its production activities w.e.f, 1.8.2001. Wages were, however, paid to the workers with a total strength of 238 including 52 members of the staff and 186 workmen, up to 31.5.2001. A recovery certificate was issued by the Deputy Labour Commissioner under U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 for wages for the month of November, 2001. In Writ Petition No. 5480 of 2002 this Court with the consent of petitioner Company and employees Union, stayed the operation of the order for a period of two months, allowing the Management

to remove finished goods, semi-finished goods and scrap from factory and pay the amount under the orders, after the removal of the goods. On 26.2.2002, Respondent No. 2 made an application to Secretary, Labour Government of U.P., informing that it proposes to close down the undertaking with effect from 30.5.2002, and sought permission for closure. In Para 4 of the application a declaration was made that in the event approval for the closure was granted, every workman in the undertaking to whom Sub-section (8) of the said Section 25-0 applies, will be given notice and paid compensation, as specified in Section 25N of the Industrial Disputes Act, 1947 as if the workman had been retrenched under the said section. The application enclosed a list of workmen, details relating to licensed capacity and utilization capacity of the manufacture of ceiling fans, annual production for preceding three years production in progress itemwise and valuwewise etc. It also included balance-sheet and profit and loss account and audit reports for the last three year, which reflected losses. Reasons for the proposed closure were given in Appendix XXII appended to the application dated 26.2.2003. These reasons stated that Agra Engineering Industries, Agra is a unit of the Jay Engineering Works Ltd. a sick industrial unit with accumulated losses of Rs. 107 crores and a negative networth of Rs. 82 crores. The continued losses had made the financial position of the Company so bad that it was not possible to pay suppliers, wages and other statutory dues. The Indian Electric Fan Industry is facing tremendous pressure both in the terms of prices and business volume with rapidly changing economic environment both within the country and internationally. The organized fan industry in India continuously for 5 years is loosing its market shares to the unorganized sector. The Government Tax policies are continuously making the organized sector uncompetitive at the market place, the gradual increase in excise duty and other Government levies, over the past few years have further widened the gap between the organized and unorganized sector. The company's BIFR scheme was approved in November, 1997 and provided major portion of rehabilitation funds sources from sale of surplus land at Kolkata, which unfortunately could not materialize despite best efforts by the company in close coordination with Government of West Bengal. In view of continued cash losses the company in June, 2002, having no option submitted a supplementary proposal to BIFR proposing to close down manufacturing facility Agra i.e., Agra Engineering Industry. The financial position became so worse that the company was not in a position to continue procuring raw materials as suppliers declined to supply fresh materials to the Agra Unit before their old dues are settled. The unit suffered huge losses both in terms of productivity and financial losses because of go slow adopted by Agra workmen during the year 2000-2001. The production activities were suspended with effect from 1.8.2001. The manufacturing plant of Agra Unit was manufacturing most of the economy price models and were the worst hit because of the domestic/international price pressures. The Company has no funds to invest in machines overhauling/reconditioning and that the unit became the weakest link in terms of quality and reliability and thus, it was decided to close down Agra Engineering Industry. In Annexure XXIII the company disclosed

attempts to avoid closure. It was stated that vide order dated 21.11.1997 the BIFR sanctioned a scheme of rehabilitation with cost of Rs. 63.34 crores, including Rs. 33 crores from promoters and Rs. 30.34 crores by sale of surplus land at Calcutta. The promoters inducted Rs. 28.77 crores. In financial year March, 1993, the company owed an amount of Rs. 3306 lacs to the Bank and Rs. 166.66 lacs to the term lending institutions besides deferred creditors of Rs. 0.52 lacs due to the Banks. Due to non-conclusion of sale of land the expected fund could not become available and thus, unfortunate step to take decision to close Agra Unit was taken.

3. On receipt of the application the Assistant Labour Commissioner, Agra Region, Agra sent notice dated 20.3.2002 to the parties to appear on 23.3.2002. The petitioner filed their objection on 23.2.2002 denying the facts stated in the application for closure. A preliminary objection was raised that the application could have been made u/s 6(W) of the Industrial Disputes Act, 1947 which provides the procedure for closing down an undertaking. It was stated that the Agra Engineering Unit was established in 1969 and is earning profit for 32 years. The company was manufacturing 1850 fans per shift per day and its high quality fans were sold at Rs. 1200 as against cost of production of Rs. 742 per fan. In Para 5 of the objection it was stated that the unit was notified at SI. No. 170 by the Supreme Court in Public Interest Litigation No. 13381 of 1984 and was required to be closed on 31.12.2001. In order to avoid the compliance of the direction of the Supreme Court and to avoid payment of wages to its workmen, the company filed u/s 25-0 of the Act. "He BIFR has passed two orders for rehabilitation in June, 2001 and 11.1.2002, which have not become final and that rehabilitation proposal has not been rejected so far. The application u/s 25-0 was filed in order to avoid liability of payment. On 26.4.2001 the Management had entered into settlement with workmen in which workmen agreed for higher production. The other two units of Jay Engineering Works at Calcutta and Hyderabad are showing more losses and that no such proposal of closure was sent to either West Bengal or Andhra Pradesh Governments. It was further stated in Para 13 of the objection that since the U.P. is backward Industrial State and that 292 industries of Agra has been closed down, it was not possible to obtain alternative employment. It was stated in Para 14 that up-to 1994 the unit was in profits and bonus was paid at 10.6%, 14%, 17% and up-to 20%. Production of 20 fans per day in 1969 was increased by workmen upto 1850 fans per day. In the financial year 1999-2000, 4,11,140 fans were manufacture. The workmen challenged and objected to the correctness of the balance-sheet and required that the balance-sheet should be re-examincd. The workmen raised doubts over the intention of the company inasmuch as the production never ceased and fell below the target.

4. The Labour Commissioner, Kanpur heard both the parties on the date fixed and directed Respondent No. 2 to file audited balance-sheet for the last 10 years which were file by the Respondent No. 2. After last hearing dated 23,4.2002, the Labour Commissioner submitted his report on the same day, to the Secretary,

Labour Court Department. The impugned order refers to the application dated 26.2.2002, the hearing given by the Labour Commissioner, U.P., Kanpur to the employers and the representative of the workmen on various dates. It thereafter concluded that the unit was running in losses for the last 10 years and had accumulated losses of Rs. 9.55 crores, and thus, granted permission to Agra Engineering a unit of Jay Engineering Works Ltd., Agra for closure u/s 25-0 of the U.P. Industrial Disputes Act, 1947.

5. Petitioner filed a detailed and comprehensive review application dated 6.6.2002 u/s 25-0(5) of the Industrial Disputes Act, 1947. It was heard by Labour Commissioner. He found that no new ground has been taken and recommended on 2.8.2002 to dismiss the review petition. By an order dated 2.9.2002, State Government rejected the review petition.

6. I have heard Sri K.P. Agarwal, Senior Counsel, assisted by Sri S.S. Nigam for petitioner and Sri S.P. Gupta, Senior Counsel, assisted by Shri Tarun Agarwal for Respondent No. 2 and learned Standing Counsel. By order dated 14.2.2003 the Court had summoned the original record which was produced on 12.2.2003 and that the records were retained. The matter was heard on 19.2.2003 and thereafter, after three adjournments the order was reserved on 27.3.2002. Sri K.P. Agarwal submits that application for closure has not been allowed for genuine and adequate reasons. The industry was running in profit. There was and is huge demand of its products and the difference between the sale and profit is not genuine. He submits that the accounts were manipulated for closing the unit. The rehabilitation scheme had been proposed and was not rejected by BIFR. Retrenchment compensation, as directed by Apex Court in MC Mehta's case was not paid. He also challenged the adequacy of the grounds for closure as well as the fact that the State Government unduly hurried to close the proceedings as the statutory period of consideration of application was coming to an end. He submits that the Labour Secretary did not apply his mind and failed to consider the report of the Labour Commissioner before granting permission. It will affect the future of the workmen and will vitiate the industrial climate. The workmen were making their best efforts to increase production. According to Sri K.P. Agarwal the application of the company by which the unit was sought to be closed and proposed to retrench its workmen was not bona fide and should not have been allowed.

7. Sri S.P. Gupta, Senior Advocate, appearing for Respondent No. 2 defended the order and submitted that the majority of the workmen were given detailed hearing by the Labour Commissioner. Their objections were duly considered and after looking into the entire material on record, the State Government found that the company is running into accumulated losses of 9.55 crores for the last 10 years. He submits that the contention of the petitioner that the application of the respondent company for closure has been made to circumvent the order dated 30.12.1996 passed by the Supreme Court is patently erroneous. In its order dated 30.12.1996 Supreme Court categorically stated, that those who do not opt

for gas connection or re-allocate themselves on alternate plots will have to close their factory irrevocably w.e.f, 30.4.1997 and will have to pay compensation to its workers by 31.5.1997. Despite the fact that the unit is not using coal/coke, it applied for gas for manufacturing activities at that moment of time. A huge amount was paid to the gas industry for gas connection. In the meantime the respondent company continued to suffer losses. The production had to be stopped with effect from 1.8.2001 although the Management continued to pay its workmen. The question for circumventing the order dated 30.12.1996 passed by the Supreme Court did not arise. It was lastly submitted that the review application filed by petitioner has been considered and was rejected and that no ground has been made out to interfere with order.

8. Section 25-0 of the Industrial Disputes Act, 1947 (in short the Act) provides for a detailed procedure for closing an undertaking. Every employer has a right to close down the undertaking. He, however, cannot escape the liability of payment of wages unless he has applied for permission for closure and has been granted such permission. Where the permission has been refused under Sub-section (2) of Section 25-0 the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits as if the undertaking has not been closed down. Sub-section (8) provides that where, however, the permission has been granted, under Sub-section (2), or is deemed to have been granted under Sub-section (3), every workmen employed immediately before the date of application for permission, shall be entitled to receive compensation which shall be equivalent to 15 days average pay, for every completed year of continuous service or any part thereof in excess of six months. The object of Section 25-0 is to obtain permission by satisfying the appropriate Government with the reasons which are in the interest of general public to close down the undertaking and to legally retrench its workmen. The constitutional validity of Section 25-0 was challenged in *Excel Wears v. Union of India and Ors.*, (1978) 4 SCC 224. The Constitution Bench of Supreme Court, hearing the case struck down Section 25-0 as it then stood before its amendment, by Amendment Act No. 46 of 1982. The Apex Court held that right to close down business was an integral part of fundamental right to carry on business as guaranteed under Article 19(1)(g) of the Constitution. There can be a reasonable restriction on this right under Article 19(6) to restrain or deter, reckless, unfair, unjust and mala fide closure. It held that Section 25-0 falling in Chapter V-B dealt only with bigger undertaking and of a few type and thus, the classification was reasonable, but the procedure and requirement of not giving reasons by the State Government and absence of provisions for a right of appeal or revision or even review after some time, were unreasonable. It also held that even after the valid closure, Section 25N was attracted, and that the restrictions imposed were more excessive than were necessary for achieving object and were highly unreasonable.

9. In *Workmen of Meenakshi Mills Ltd. and Others Vs. Meenakshi Mills Ltd. and Another*, while considering the constitutional validity of Section 25-N (as it then

stood) Excel Ware's case was considered. It was held that the object and reasons underlining enactment was to prevent unavoidable hardship of the employees resulting from retrenchment, by protecting existing employees and to check growth of unemployment. One of the object was also to achieve higher production and productivity by preserving industrial peace and harmony. Supreme Court held that ordinarily a restriction which had effect on promoting or effectuating a directive principle can be presumed to be a reasonable restriction, and must, therefore, be regarded to have been imposed in the interest or general public. The employers right is not absolute, and that a restriction imposed on employers right to terminate services of an employee is not alien to the constitution of the scheme.

10. The reasons given in declaring the restrictions imposed by Section 25-0 in Excel case as unconstitutional were sought to be cured by Amendment Act No. 46 of 1982, and that on the legal position as obtained in Minakshi Mills case, the opinion in Excel Wears case was referred to a Constitution Bench in Orissa Textile and Steel Ltd. Vs. State of Orissa and Others, The Supreme Court examined the amended provisions of Section 25-0 in the light of law laid down in Meenakshi Mills case and held that amending Section 25-0 is net ultra virus the Constitution and is saved by Article 19(6) of the Constitution of India. Some of the observations, and conditions of valid exercise of powers by State Government in M/s. Orissa Textile and Steel Ltd. relevant for the purpose of this case and contained in Paras 10, 11, 13, 15, 17, 18, 20 and 21 of the Judgment are summarized as below:-

(a) The appropriate Government before passing an order is bound to make an inquiry. The order passed by the appropriate Government has to be in writing and is required to contain reasons. (b) The requirement of making an inquiry postulates and inquiry into the correctness of the facts stated by the employer in the notice served by him, and also all other relevant facts and circumstances including the bona fides of the employer. Opportunity of hearing has to be afforded to the employer, workmen and all persons interested.

(c) The detailed information given by the employer enables the appropriate Government to make up its mind and collect necessary facts for the purposes of granting or refusing the permission. The appropriate Government would have to ascertain whether the information furnished is correct and whether the proposed action is necessary, and, if so, to what extent.

(d) The making of an inquiry, affording opportunity to the employer, and the workmen, and all other existing persons, and the necessity to pass written order containing reasons, envisages exercise of functions which are not purely administrative in character but are quasi-judicial in nature. Government cannot dispense with enquiry, however, the nature of enquiry is at the discretion of Government.

(e) The right of review under Sub-section (5) of amended Section 25-0 is not at

the discretion of the State Government. The word "may" in Sub-section (5) has to be read as "shall" and that the review would necessitate to make an inquiry into all relevant facts, particularly the genuineness and adequacy of the reasons stated by the employer, and giving of an opportunity of being heard. An order passed on review would have to be an order giving reasons. The exercise of powers of review is also a quasi-judicial functions performed by the State Government. The review application has to be disposed of within reasonable period. Supreme Court confined this period to 30 days.

(f) Even if the reasons are genuine and adequate, it does not mean that permission to close must necessarily be granted. There can be cases where interest of general public may require that no closure takes place. Such reasons must be all compelling or over-riding in nature such as manufacturing items require for defence of the country, manufacturing vaccine or drugs for an epidemic which is prevalent for that particular time etc, However, the Court clarified that it is not laying down the law that some difficulty or financial hardship in running the establishment would be sufficient. The employer must show that it has become impossible to continue to run the establishment.

(g) The phrase "in the interest of general public" is a phrase of a definite connotation, and a known concept, in Section 25-D which had been bodily lifted from Article 19(6) of the Constitution of India. It is not vague or undefined term.

11. The facts and circumstances which may be sufficient to justify the closure have been the matter of consideration in a number of cases including Associated Cement Co. Ltd and Anr., v. Union of India and Ors., by Full Bench of Gujarat High Court in Associated Cement Companies Ltd. and Another Vs. Union of India and Others, ; Mrs. Noorjahan Begum and Ors., v. Orissa State Leather Corporation Ltd., and Ors. 1999 LIC 1749 . In S.G. Chemicals and Dyes Trading Employees' Union Vs. S.G. Chemicals and Dyes Trading Limited and Another, the Supreme Court interpreted the expression : an undertaking of an industrial establishment" in Section 25-D and held that the terms of "undertaking", though it occurs in several sections of the Industrial Disputes Act, has not been defined in the Act. It means as establishment or undertaking in which the industry is carried out unless a specific meaning is given to that it has to be understood in its ordinary meaning and sense and thus, it means an undertaking which is a part of industrial establishment and both taken together constitute an establishment. The test laid down to determine whether the undertaking constitute one establishment in The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen, , were approved. The test which have been followed in subsequent decision included that there must be functional integrally and interdependence of power, unity of financial control and Management of the sales office and factory of the appellant company and that too must be considered part of one and the same unit of industrial production.

12. The thrust of submission of Mr. K.P. Agarwal is that the closure has been

effected with mala fide intention to avoid consequences of the direction given by Supreme Court in MC Mehta (Taj Trapezium matter) v. Union of India (1997) 2 SCC 353. In order to protect Taj Mahal which is amongst world wonders, the Supreme Court took into account the report of Central Board of Prevention and Control of Water Pollution, New Delhi (Control of Urban Pollution Series (CUPS/7/1981-82 page 1981-82) titled as "inventory and assessment of pollution emission in and around Agra-Mathura Region" and the "Overview Report" regarding status of air pollution around the Taj in 1990 by National Environment Engineering Research Institute (NEERI), and got a survey conducted through the UP. Pollution Control Board, identified and categorised number of industries situate in Agra Region. Out of 511 types of industries 292 Industries, including 46 Engineering Industries were identified which included respondent industry namely Agra Engineering Industry, Artoni, Agra at Item 170, at Page 379 of the report. The Supreme Court considered these 292 industries out of the aforesaid list as responsible for air pollution and issue orders as against all of them contained in Para 35 of the report. In Para 34 it was held that 292 industries detailed in Para 29 of the report included respondent industry at Item No. 170 to change to natural gas for natural fuel. The industries which are not in a position to obtain gas connection for any reason, were required to stop functioning with the aid coke and coal in TTZ and made relaxation as per direction given in Para 35. The first direction provided that the industries (292 listed above), shall approach/apply to the GAIL before 15.2.1997 for grant of industrial gas connection. Those which are not in a position to obtain gas connection and which do not wish to obtain gas connection shall apply to UPSIDE before 28.2.1997 for allotment of alternative plots in the industrial estates outside TTZ. The GAIL was required to give final decision by 31.3.1997 and communicate the allotment letters to the individual industries. Direction No. 4 provided that those industries which neither apply for gas connection nor for alternative industrial plot shall stop functioning with the aid of coke/coal in the TTZ with effect from 30.4.1997. Supply of coke/coal to these industries shall be stopped forthwith. Direction No. 5 provided that GAIL shall commence supply of gas to the industries by 30.6.1997. As soon as the gas supply to an industry commences, the supply of coke/coal to the said industry shall be stopped with immediate effect. Direction No. 13 has been cited as a reason for apply for closure of the respondents industry. This Direction No. 13 is quoted as below:

"13. The workmen employed in the above mentioned 292 industries shall be entitled to the rights and benefits as indicated hereunder :

(a) The workmen shall have continuity of employment at the new town and place where the industry is shifted. The terms and conditions of their employment shall not be altered to their detriment.

(b) The period between the closure of the industry in Agra and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of service.

(c) All those workmen who agree to shift with the industry shall be given one year's wages as "shifting bonus" to help them settle at the new location. The said bonus shall be paid before 31.1.1998.

(d) The workmen employed in the industries who do not intend to relocate/obtain Natural Gas and opt for closure they have been in continuous service (as defined in Section 25-B of the Industrial Disputes Act, 1947) for not less than one year in the industries concerned before the said date. They shall be paid compensation in terms of Section 25-F(b) of the Industrial Disputes Act. These workmen shall also be paid, in addition, six years' wages as additional compensation.

(e) The compensation-payable to the workmen in terms of this judgment shall be paid by the Management within two months of the retrenchment.

(f) The gratuity amount payable to any workman shall be paid in addition."

13. Sri K.P. Agarwal submits, that since petitioner industry was directed to be closed on the aforesaid directions, and the workers were deemed to have been retrenched by 31.5.1997 and were required to be paid six years wages as additional compensation, and that the guidelines given by Supreme Court were extended in November, 2000 for ten months and were last extended by its order dated 31.10.2001 only upto 31.12.2001, the respondents tried to avoid consequences, by applying for permission for closure. The initial deposit for gas connection was made to GAIL but no further steps were taken to obtain gas connection. The respondent took no steps whatsoever to switch over to gas or any alternative technology for running the industry. Each owner of the industry was required to file undertaking on or before 10.10.2001, to switchover the gas and if they failed to contain such undertaking, the State was directed to disconnect electricity power as well as water connection forthwith and such industries were also not permitted to be run even by generators. The respondents as such under the aforesaid threat, which required the company to pay six years wages as additional compensation and gratuity in addition, applied for closure. According to Sri K.P. Agarwal, the State Government was informed by the Labour Commissioner with the aforesaid consequence and recommendation was made to make order conditional upon such consequences. The Labour Secretary, however, adopted an arbitrary approach, and without going into the judgment and its, consequence formed an opinion only on the fact that the industrial establishment had opted and applied for gas connection and was thus not covered by the said decision. The Labour Secretary did not care to go into the details, and without caring to look whether the reasons given for closure were bona fide and whether the respondents were trying to avoid the consequences of MC Mehta's case, proceeded to grant permission for closure in a wholly casual manner. The State Government did not take into account any of the facts and circumstances reported by the Labour Commissioner who had the opportunity to hear both the parties. The entire approach and the assessment was thus vitiated and is contrary to the ratio of judgment of M/s. Orissa Textile and Steels Ltd. in which it was laid down that before passing an order, the

appropriate Government will have to ascertain whether the information is correct and the proposed action is necessary, and that the fact that there is some financial hardship in running the establishment could not be the only ground to grant permission. There was no finding recorded in the order which took care of the objection of the workmen that the financial position was wrongly projected and that the accounts were manufactured, and that there were no compelling reason to close down industrial establishment and that the whole attempt was to avoid consequences of MC. Mehta's case.

14. The Court has the benefit of perusing the original records which were summoned, and retained by the Court. The record includes the application made by the Jai Engineering Works Ltd. to close down its undertaking namely M/s. Agra Engineering Industries, Artoni, Agra signed by the authorized signatory dated 26.2.2002 which was received by the Principal Secretary, Labour, U.P. on 26.2.2002. The application was forwarded to Labour Commissioner, U.P., Kanpur. Notices were issued by the Labour Commissioner to both, employees and the workmen. The Labour Commissioner gave opportunity to both the parties for hearing. The last hearing took place on 23.4.2002. On the same day, the Labour Commissioner vide his letter No. 62/IRD-2002 (Camp), dated 23.4.2002 submitted a report to the Joint Secretary, Labour Department, Government of U.P., Lucknow. In his report, the Labour Commissioner Sri Anis Ansari stated that on the record produced by the establishment, it is clear that the establishment is having financial difficulties. It is running into losses continuously for the last ten years totalling Rs. 9. crores. Against this the workmen have not produced any factual figure. The employers presented a rehabilitation scheme before the BIFR in the year 1997. The scheme was accepted by the BIFR but for certain reasons it could not be implemented. Consequently a new rehabilitation proposal has been submitted to BIFR which is pending consideration and in which the closure of Agra Unit is proposed. The workmen during the hearing of the matter have drawn the attention towards the order dated 30.12.1996 made by Supreme Court in M.C. Mehta v. Union of India in Writ Petition No. 13381 of 1984 in which Hon"ble Supreme Court has provided following options to the polluting unit in the Taj Trapezium Area; First the unit (using coke/coal) causing pollution should be transferred to other place, away from Taj Trapezium; as a second option, the concerned unit should use gas as fuel in its production process. If both these options are not accepted by the unit by May, 1997 they should be treated to be closed and the workmen employed by them shall be treated to be retrenched. These workmen, apart from their legal dues, shall also be paid six years wages as additional compensation. The subject unit is listed at No. 117 in the list of the units. The Management have informed that they have made an application in January, 1997 to Gas Authority of India Ltd. for gas connection and have deposited rupees two lacs as prescribed application fees and have given Bank guarantee of rupees six lacs on 18.2.1997, but GAIL has not supplied gas to them. In the meantime because of financial sickness, the Management has decided to close the undertaking. On these facts the Labour Commissioner found,

after making a inquiry, that it appears that the employers have made an application for closure of the undertaking, to avoid the payment of dues determined by Supreme Court. In these circumstances, the Labour Commissioner was clearly of the view that either the closure application should be rejected on the aforesaid ground or if the State Government decides to give permission for closure, he recommended that the closure should be permitted with a condition so that the orders passed by Hon"ble Supreme Court in Writ Petition No. 13381 of 1984 may be complied with and special direction should be given in that regard.

15. The notices and orders on the original file, record that on 22.4.2002 the Principal Secretary, Labour Government of UP. recorded a note stating that she had a talk with Labour Commissioner. He will sent his recommendation tomorrow after hearing. The record along with notice should be presented before her in the morning on 26.4.2002 so that orders may be obtained and issued on the same day. The recommendation of the Labour Commissioner were received by the Joint Secretary on 24.4.2002 and that on the same day a note was put before the Principal Secretary, Labour Department stating in detail the recommendations made by the Labour Commissioner. Sri Sant Lal, Joint Secretary, also recommended in his note on the same day, stating that Labour Commissioner has made recommendations for conditional permission of closure. Two days thereafter on 26.4.2002, the Principal Secretary, Labour Department, Government of U.P. passed an order to be forwarded to the Advisor to the Hon"ble Governor. The English translation of the order reads as follows :

"The period for taking decision on the application for closure filed by Jai Engineering Works Ltd., Agra is going to expire today. After several efforts, the report of Labour Commissioner has been received yesterday. Keeping in view the facts it will be proper to give permission for closure. I have seen the orders passed in the matter of M.C. Mehta and find that this establishment is not affected by the said order regarding retrenchment, as they have applied for gas within time.

Kindly approve the proposal for permission of closure.

Manjulika Gautam, 24.4.2002. Principal Secretary, Labour Department, Government of U.P."

16. The note appears to have received and approved from the Advisor to Hon"ble Governor on 26.4.2002 and on the same day the order giving permission for closure was issued under the signatures of Principal Secretary, Labour Department, Government of U.P. The order recorded that the Labour Commissioner has given opportunities to both the parties for hearing and that the notices and documents go to show that the establishment is running into losses for the last 10 years totalling Rs. 9.55. crores, and that Hon"ble Governor has given approvals for closure of M/s. Agra Engineering Industries, Agra (a unit of Jai Engineering Works, Agra) u/s 25-0 of the Industrial Disputes Act, 1947.

17. The record includes a letter of Senior General Manager, Jai Engineering Works Ltd. dated 13.5.2002 informing that on 10/11.5.2002, the establishment has posted cheques by registered post towards the payment of closure compensation and other dues upon it on closure except gratuity and bonus to all workmen and staff along with intimating them to closure of M/s. Agra Engineering Industries, Agra. It further states that as per Rule 4, proceedings in the record, the establishment has not adjusted any wages payment made earlier of the preceding month and their full and final closing and for payment of gratuity, the workmen have been required to submit their application under prescribed form for which the gratuity and bonus will be payable as per law. The record also includes proceedings for review of the order, A letter of Assistant Labour Commissioner, Agra Region dated 12.6.2002 reported that the establishment has been closed on 30.5.2002, and that all the dues payable, to the workmen have been sent by registered post. The application for review made by workmen on 18.5.2002 and received in the office of Principal Secretary, Labour Department on 18.5.2002, enclosing the order of closure, selling arrangement for the last three years, annual production item-wise for preceding three years, letter sent to President/Secretary, Agra Engineering Industries Employees Union for implementation of memorandum of understanding dated 26.4.2001 vide letter dated 31.7.2001, average returns which shows upward growth, statement of production and profit and loss account from 1995-96 to 2000-2001, wages cost per fan, production commitment etc. Annexure-12 to review petition, is a letter of the General Manager, District Industries Centre, Agra to Executive Engineering Electricity Distribution Division, Agra for disconnecting the electric supply of 74 units in pursuance of their order of Supreme Court where the undertaking has not been received under the orders of the Supreme Court dated 3.10.2001 and a list of establishment which have not given undertaking which includes M/s. Agra Engineering Industries at Sl. No. 24.

18. The grounds of review included that the closure has been granted as against the orders of supreme Court dated 30.12.96 in Writ Petition No. 13381 of 1984, and that the permission for closure was granted against the recommendation of Sri B.K. Singh, Deputy Labour Commissioner dated 25.1.2002. It was further pleaded that the BIFR has not rejected the rehabilitation proposals. There is possibility of resumed production for receiving gas connection from Gas Authority of India Ltd., and that the Principal Secretary, Labour has not considered the reply given by the workmen. In Paras 2, 3 and 4 of the review petition it was reiterated that the production was increased from 20 fans per day in the year 1999 progressively upto 1700 fans per day on 21.5.1993, 1800 fans per day, on 27.4.1994 and 1850 fans per day by settlement dated 15.6.1997 for increasing production. The last settlement dated 26.4.2001 was made for a period upto 30.5.2004 in which the workmen agreed for production 1850 fans per day. The fans produced were giving profit of Rs. 458/- per fan, taking profit and loss account, market price Rs. 1200/- per fan, the establishment has manufactured the losses. For example it was submitted that in the year 1995 as cost

production of 382 thousand fans losses of Rs. 30 lacs were shown whereas in the year 1996 as against production of 407 thousand fans losses of Rs. 203 lacs was shown, which is beyond the imagination of the workmen. It was further stated that Annexure-8 to the review petition shows that the labour charges for production per fan were Rs. 16.30 per fan in the year 1994 which was reduced to 15.26 per fan in 1995, Rs. 15.08 per fan in the year 1996 and Rs. 15.33 per fan in 1997, and thus, there was absolutely no question of losses suffered by the establishment. In the notice given by Management dated 1.8.2001, the establishment did not give the losses, as the cause of closure of production. It was stated in the said notice that the production had been closed to regulate finished stocks, and that the labour dispute in that regard was considered by the Deputy Labour Commissioner, Agra who had recommended by his letter No. 1277, dated 25.1.2002 to withdraw the closure of undertaking. The workmen again stressed the fact that the permission was applied to avoid the consequences of the orders of the Supreme Court, and that on account of closure of polluting unit at Agra, there was large scale of unemployment at Agra on account of which the workmen will not be able to find any alternative employment, and that their families will suffer starvation. According to them Usha Fans were familiar all over the world for their quality and arc being exported through M/s Usha International Ltd. The workmen ensured the quality and production and cannot be made suffer on account of the arbitrary decision of the Management. The workmen prayed in their review application to cancel the order, of closure, to ensure payments in accordance with the orders of the Supreme Court dated 30.12.1996 and 3.10.2001 and in the alternative to refer the matter to any competent Industrial Tribunal and as a last alternative to limit the period of closure until the production is resumed either after acceptance of rehabilitation by BIFR or supply of gas by Gas Authority of India Ltd.

19. On the aforesaid facts and circumstances and the position of law as obtained and after decision of the Constitution Bench in M/s. Orissa Textile and Steels Ltd (supra), the Court is posed with the question whether the State Government made a proper inquiry into the correctness of the facts stated by the employer in the notice served by him, as also all other facts and circumstances including the bona fides of the employer. The Court has also to ascertain whether the Government applied its mind and considered the correctness about the information furnished and provided reasonable opportunity to the workmen and all other existing persons, and whether the order contained reasons to support the conclusion of approval. After the aforesaid inquiry, the Court has to further examine whether the right of workmen of review which has been made inherent in Sub-section (5) of Section 25-D to save it from the voice of arbitrariness, was properly dealt with as a quasi-judicial function and whether on the reasons given the closure must necessarily have been granted.

20. The workmen strongly opposed the grounds pleaded by the Management for permission for closure. They provided material on record to show that there was consistent rise in production and quality of the finished product. Whereas the

cost of production of fans and its market price increased from year to year cost of labour charges per fan decreed gradually. The record produced by the establishment demonstrate that at no stage production suffered either on account of want of raw material or on account of any difficulty placed by the workmen. Along with the application, the establishment annexed balance-sheet of last three years for the year ending on 31.3.1999, 31.3.2000 and 31.3.2001. These balance-sheets demonstrated that the unit suffered progressive losses. The production figures of the year 1999-2000 for ceiling fans and other fans stood at 411140 and of the year 2000-01 at 242413, this fall in production was on account of closure of production in August, 2001, whereas in June total number of 32502 and in July total number of 16935 ceiling fans were, manufactured. The reasons for proposed closure given in Annexure-22 of the application were accumulated loss which have made financial position so bad that it was not possible to pay suppliers, wages and other statutory dues. The Management blamed the Government Tax Policies are continuously making the organized sector uncompetitive at the market place by gradual increase in excise duty and other Government levies. It was also stated that the scheme was approved by BIFR in November; 1997 providing for rehabilitation fund sources from sale of surplus land at Kolkata could not materialize, and thus, supplementary proposals were sent to BIFR in June, 2000 proposing closing down manufacturing facility at Agra.

21. The record shows that neither the Labour Commissioner nor the State Government considered the objection of the workmen to the plea regarding financial losses. The workmen placed sufficient material to show that the production was on rise and that at no point of time, the quality and quantity the production suffered. The State Government did not address itself to the cause of financial losses. It took into account the accumulated loss without going into its reasons and possibility of rehabilitation. The Labour Commissioner and the State Government did not care to find out the bona fides of the Management and the failure to implementation of the rehabilitation proposals which were approved by BIFR and the pendency of supplementary rehabilitation proposals. The genuineness of reasons for difficulties in failure of selling the properties at Kolkata were not gone into by the State Government. There was sufficient material before the State Government to show that fresh proposals of rehabilitation were pending with BIFR which included closure of the Agra unit and were in active consideration of the Board. Without waiting for the finalization of these proposals, the State Government proceeded to permit the closure. There is absolutely nothing on record either in the orders of the Labour Commissioner or in the notes prepared and put before the Principal Secretary, Labour Department, Government of UP. to show that they applied their mind and considered the objections. The reason of financial difficulties were taken by the State Government as conclusive reasons to permit the closure. The Labour Commissioner in his recommendation dated 23.4,2002 had specifically stated that the application for closure has been filed to avoid liability of payment of

retrenchment compensation of six years of the workmen in pursuance of the directions of the Supreme Court and that the permission should either be refused or be granted with specific condition that the orders of the Supreme Court may be complied with. The Principal Secretary in unusual hurry considered the application for Gas connection as sufficient compliance and recommended closure.

22. The notes and order-sheets of the record shows that whereas the last hearing was held by the Labour Commissioner on 23.4.2002 and on the same day he submitted his report which was received vide endorsement of the Joint Secretary, Labour Department, Government of U.P. at Lucknow on 24.4.2003, and that the Principal Secretary, Labour Department, Government of U.P., Lucknow had passed an order, put up the matter before her on 26.4.2002, she did not even care to look into the recommendations made by the Labour Commissioner, and decided that it will be proper to grant permission of closure.

23. U.P. Pollution Board had notified and included the respondent industry at Agra as a polluting unit in Taj Trapezium amongst the Engineering Industries at Item No. 170. It was found responsible for polluting air, The orders with reference to Paragraph 5 were applicable to the respondent industry. Options were given either to relocate or to obtain gas connection. GAIL was required to take final decision by 31.3.1997 and to supply gas by 30.1.1997 after which supply of coke/coal was to be stopped with immediate effect. Direction 13(d) provided that the workmen employed in the industry who did not intend to relocate/obtain natural gas and opt for closure shall be deemed to have been retrenched by 31.5.1997 and shall be paid compensation in terms of Section 25-F of the Industrial Disputes Act and shall also be paid in addition six years wages as additional compensation. The time schedule fixed in the aforesaid order were extended by the Supreme Court by its order dated 3.10.2001, only upto 31.12.2001. It is at this time it appears from the record, that the respondent industry felt that in case it has to close down in pursuance of the orders of the Court, it will be required to pay six years wages as compensation to each of these workmen, and thus, without waiting for the consideration of the supplementary rehabilitation proposals submitted to BIFR, it closed production from 1.8.2001 and applied for closure on 26.2.2002 with effect from 30.5.2002.

24. Sri S.P. Gupta, Senior Counsel laid great emphasis on his submission that the respondent industry was not sign coke/coal as fuel for production. It used electricity for production, and that as an abundant caution it had applied for gas connection and deposited the amount and Bank guarantee. The gas was not supplied by GAIL, and that in the circumstances, it was not covered by direction 13(d) of the directions given in M.C. Mehia case. Having gone through the orders of the Supreme Court and the order of extension dated 3.10.2001, I find that the order for relocation on listed polluting industries or to obtain natural gas were not confined only to industries using coke/coal. These were applicable to all the industries which were identified as polluting industries, even if they were not using coke/coal as raw material. The petitioner was using electricity as raw

material. The electricity connection was disconnected on account of failure to obtain natural gas. The fact that petitioner deposited money and submitted Bank guarantee by itself did not discharge its obligation and did not amount to foil and due compliance with the orders of the Supreme Court. In the circumstances, the respondent establishment with disconnected electric connection was going to face compulsory closure on 31.12.2001 under order of the Supreme Court on 3.10.2001, and in such circumstances it was required to pay six years wages as additional compensation to its workmen. To avoid the consequences the industry applied for closure. The Labour Commissioner in his recommendation dated 23.4.2002 found that the application for closure was not bonafide and was clearly of the opinion that the application for closure should be rejected, and in case the State Government decides otherwise, the permission should be granted conditionally for complying with the orders of the Supreme Court and this opinion was formed after taking into account all the documents and other factors and after hearing both the parties. The Labour Commissioner had the occasion to go through the documents and hear the submission of both the parties. The Labour Commissioner had also committed a patent error in failing to examine and scrutinized the reason given for closure. The workmen objected to and gave details of production, quality, other relevant factors and challenged the financial projections and losses, set up by the company. They pleaded that in view of their continued effort, hard work and toil, the company with its apparent production, capacity could not have suffered losses and even if these losses were taken into account, the supplementary rehabilitation proposals were still pending with BIFR. The Labour Commissioner required the company to file ten years financial statements which were filed but these were not discussed at all. When a rehabilitation scheme was pending with BIFR, the State Government could not have permitted closure without even considering its validity. The Principal Secretary, Labour Department, had the benefit of the documents supporting the application, the objections of the workmen and all other factors which have been enumerated in the judgment of M/s. Orissa Textile and Steels Ltd (supra). She, however, was apparently in hurry to avoid the period which was going to expire and after which the permission was deemed to have been granted. The note recorded by her on the order-sheet, clearly demonstrate that there was absolutely no application of mind at all on the facts and circumstances, documents, relevant facts and circumstances, and the recommendations of the Labour Commissioner which formed the material to exercise the quasi-judicial powers. She considered an application for supply of gas as sufficient compliance with the orders of the Supreme Court and proceeded to recommend for grant of permission of closure.

25. The quasi-judicial exercise of power postulates that the authority should arrive at the conclusion based upon reason. The necessity to provide reasons, however, brief, in support of the conclusion is too obvious to be emphasized. Section 25-0(2) of the Act mandates recording of such reasons, and on this essential condition the validity of the Section 25-0 was upheld in Orissa Textiles

Ltd. (supra). Obligation to give reasons not only reduces arbitrariness but also introduces clarity and purpose of exercise of authority, and give opportunity for the higher forums to test the correctness of reasons. The State Government did not apply its mind to the relevant facts and circumstances, bonafide of the employer, objections of the workmen to the reasons given by the employers and failed to record reasons in its order. The State Government was exercising powers which are quasi-judicial in nature and was, thus, required to pass orders containing reasons and visualizing exercise of function.

26. Further the State Government committed gross error in law in denying the right of review to the petitioner. The review application was also to be decided in exercise of the powers in Sub-section (5) of Section 25-0 of the Act as a quasi-judicial function to be performed by the State Government, which required consideration of facts and circumstances brought about in the review application, as well as recording of reasons. The application for review was also not decided within reasonable time. It was filed on 6.6.2000, and was decided on 2.9.2002 clearly beyond 30 days time limit set up by Supreme Court. The only reason given in the order is that the application dated 8.5.2002 did not contain any new fact which required reconsideration or review by the State Government. Since the impugned order dated 26.4.2002 did not contain any reason except the fact that the unit was running into losses for 10 years, it was incumbent upon the State Government to have given reasons while rejecting the review application.

27. The financial difficulty and constraints faced by an establishment are relevant factors to be taken into consideration. These reason, however, cannot be the only reason to be taken into account which considering the application for closure. There are other facts and circumstances including bona fide of the employees, or such compelling overriding circumstances including the interest of general public, on which the application for closure may be considered. The petitioners in their objection had not only assailed the reasons given in the application namely financial difficulties, but also challenged the correctness of balance-sheet as documents prepared for the purpose of closure to avoid the consequence in M.C. Mehta's case . The State Government ought to have addressed itself to these questions and to consider whether the objections, had substance. It has been held in Orissa Textile and Steels Ltd. (supra) that the interest of general public has a known concept. It is a guiding factor which should have been taken into consideration. The record does not show that the State Government had taken into account the interest of general public as one of the factors, specially when order was to deprive 238 employees of their right to the retrenchment compensation to be determined in accordance with the Act, as well as compensation of six years wages to be paid to them under the orders of the Supreme Court.

28. For the aforesaid reasons the impugned orders dated 26.4.2002 passed by the State Government permitting closure of Agra Engineering Industries, Agra (a unit of Jai Engineering Works Ltd.), u/s 25-0 of the Industrial Disputes Act, 1947,

as well as the order on review application dated 2.9.2002 are declared to be illegal and arbitrary and ultra virus to the condition of exercise of such power u/s 25-0 of the Industrial Disputes Act, 1947. The writ petition is, accordingly, allowed, and the impugned orders dated 26.4.2002 and 2.9.2002 are set aside, and the Respondent No. 2 is directed to pay entire arrears and regular wages to its workmen. Petitioner shall be entitled to cost from Respondent No. 2 quantified at Rs. 10,000/-