

(2007) 10 BOM CK 0090

In the Bombay High Court

Case No : Writ Petition No. 2659 of 2005

Britannia Industries Ltd.

APPELLANT

Vs

Maharashtra General Kamgar Union and Shri C.V. Bhadang,
Hon"ble Industrial Tribunal at Mumbai

RESPONDENT

Date of Decision : 30-10-2007

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 226, 32

Industrial Disputes Act, 1947 — Section 10, 10(2A), 2, 25(N)(2), 25(N)(3)

Citation : (2008) 2 BomCR 277 : (2007) 109 BOMLR 2536 : (2008) 119 FLR 915 : (2008) 4 MhLj 324

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : C.U. Singh and P.M. Palshikar, for the Appellant; Anand Grover and Sophia Ebrahim, instructed by Prakash Mahadik, for the Respondent

Judgement

Anoop V. Mohta, J.

This is a matter about a closure of a company.

1. On 24/12/2003, an application by the petitioner for closure of its Reay Road factory, Mumbai to the Commissioner of Labour, Mumbai u/s 25(O) of the Industrial Disputes Act, 1947 (for short, "I.D. Act") replied by the Respondent Union.

2. On 23/03/2004 the Commissioner allowed the Company Application for closure.

3. On 25/03/2004, the respondent Union"s application for Review of the order or for Reference of the matter u/s 25(O) of I.D. Act.

4. On 05/04/2004 by an order the Commissioner of Labour referred the matter for adjudication before the Industrial Tribunal.

5. On 13/04/2004, in Writ Petition No. 1136 of 2004 by the Respondent Union

challenged the order.

6. On 21/04/2004, the Industrial Tribunal in Ref. No. (IDA) 17 of 2004, granted interim reliefs in favour of the Union.

7. On 12/07/2004, by orders this Court while disposing of two writ petitions filed by the Petitioner (W.P. No. 1297 of 2004 impugning above order, and W.P. No. 1298 of 2004 impugning the order of Reference dated 05/04/2004) allowed to withdraw the Petition with liberty to raise the issues thereunder in the Reference before the Tribunal.

8. On 27/07/2004, the Tribunal framed issues.

9. On 28/07/2004 the Company's Application for recasting issues and for framing an additional issue.

10. On 06/08/2004, an application by the Company for longer date for filing Writ Petition in Bombay High Court to challenge the order dated 06/08/2004 of framing additional issue. The Reference was expedited by Hon''ble High Court and the matter was fixed for 17/08/2004 for evidence.

11. On 17/08/2004, the petitioner Company's application for hearing issue No. 5A as a preliminary issue; the Union's opposed the same.

12. On 21/08/2004, Industrial Tribunal rejected the Company's Application.

13. On 22/09/2004, Writ Petition No. 2424 of 2004 filed by the Company against order dated 21/08/2004 of the Tribunal.

14. On 05/10/2004, the Company's application for adjournment of 3 weeks in order to obtain copy of the order of the High Court in Writ Petition No. 2424 of 2004. The Union placed strong objection to said application since there was considerable delay and it was a time bound matter. The time was granted till 19/10/2004 to the company to file affidavit in lieu of examination in chief as no interim relief was granted by the High Court.

15. On 19/10/2004, an application by the Company for further adjournment by 2 weeks as order of the High Court was not received.

16. On 03/11/2004, the Company's Application that the matter be adjourned as the Company intends to file Appeal against order of the High Court.

17. On 19/11/2004, in Ref. No. (IDA) 17 of 2004, the evidence of company witness Mr. Sheshadri was recorded.

18. On 30/11/2004, the petitioner withdrew the writ petition in which impugned order dated 22/09/2004 was challenged, and also in light of Supreme Court judgment in Orissa Textiles, to ensure that reference be concluded within 30 days from date of production of order of this Court.

19. On 02/12/2004, a joint Application from both the parties for adjournment

since copy of order was not received.

20. On 18/12/2004, a joint application from both the parties for adjournment as advocates were not in a position to conduct the matter during the vacation.

21. On 28/12/2004, the Industrial Court's order on Respondent Union's application with regard to the payment of wages.

22. On 02/02/2005, this Court disposed of the Respondent Union's Petition W.P. No. 228 of 2005 (challenged to the order dated 28/12/2004).

The order also noted "The court has been informed that the I.C. has already commenced recording evidence of the management" witnesses and the reference has been conducted from day to day. Parties have agreed that they shall co-operate with the I.C. without seeking needless adjournments in order to ensure that the reference is disposed of as expeditiously as possible."

23. On 02/03/2005, an application by the Union. The Company examined 3 witnesses and proposed to examine 3 more, thereafter, the Union wanted to lead evidence, hence time limit was extended to 3 more months.

24. In this regard Justice A.P. Shah and S.J. Vazifdar, J. on 15/03/2005, passed the following order.

Heard Advocates. Time to dispose of the proceedings is extended by a period of 3 months from today.

25. An award of Industrial Court (for short, "I.C.") dated 12/08/2005, impugned in the present Petition.

26. On 13/02/2006, a minutes of Order of His Lordship V.C. Daga regarding the payment of 50% of the last drawn amount/ wages to the workmen.

27. On 16/06/2006, the respondent Union filed Notice of Motion No. 329 of 2006 for payment of wages in accordance with the provisions of Section 250(6) of ID Act.

28. The relevant Section 250 of the ID Act for convenience is reproduced as under:

25-O. Procedure for closing down an undertaking:

1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

Provided that nothing in this sub-section shall apply to an undertaking set up for

the construction of buildings, bridges, roads, canals, dams or for other construction work.

2) Whether an application for permission has been made under Sub-section (1), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

3) Whether an application has been made under Sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of Sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.

5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under Sub-section (2) or refer the matter to a tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

6) Whether no application for permission under Sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, 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 under any law for the time being in force as if the undertaking had not been closed down.

7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of Sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

8) Where an undertaking is permitted to be closed down under Sub-section (2) or where permission for closure is deemed to be granted under Sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive

compensation which shall be equivalent to fifteen day's average pay for every completed year of continuous service or any part thereof in excess of six months.

29. The preliminary submissions of the learned senior counsel appearing on behalf of the petitioner, oral as well as written, are crystalized as under:

i) Section 25O as originally enacted in 1976 was struck down by a Constitution Bench of the Supreme Court in *Excel Wear and Others Vs. Union of India (UOI) and Others*, after finding that the Section imposed unreasonable restrictions on the right to close down an industry, which right was found to be a fundamental right protected by Article 19(1)(g);

ii) The Section as re-enacted by Act 46 of 1982 balanced the need for restrictions with the aforesaid fundamental right to close down an industry. Hence, strict time limits were laid down, such as 90 days" prior notice of closure to the workmen/unions, 60 days to decide the application for closure made pursuant to such notice, and 30 days to decide a Reference challenging the decision of the appropriate Government shall be final and binding, and shall remain in force for one year;

iii) So far as the limit of 30 days is concerned, it is important to note that no power is given to the Tribunal to extend this period. This is in contra-distinction to Sub-section (2A) of Section 10 and the Proviso to Sub-section (5) of Section 33, both of which were inserted by the very same Act 46 of 1982. Parliament itself felt the need to spell out a power to extend time, and conferred this power in References u/s 10 and Approval Applications u/s 33(2), but consciously refrained from conferring such a power to extend time in Section 25O(5);

iv) The words of the proviso to Section 25-O(5) also suggest that the limit is mandatory, since Parliament has used the words "shall pass an award within a period of thirty days from the date of such reference". The use of "shall" in this context must be read as a peremptory command. It is also not without significance that Parliament has specified the time with precision as "thirty days from the date of such reference", whereas in other Sections like 10(2A) and 33(5) the time is laid down in "months";

v) The Supreme Court in *Strawboard Manufacturing Co. Ltd. Vs. Gutta Mill Workers" Union*, held that where a time limit is laid down for deciding an industrial reference, and the statute (U.P. Industrial Disputes Act) does not give a power to extend time, the Tribunal becomes functus officio and loses jurisdiction to decide the matter, and its award is consequently a nullity;

vi) The Judgment of a learned Division Bench in *Association of Engineering Workers v. Indian Hume Pipe Co.* 1986 Mah. L.J.34 : 1986 Lab. I.C.749 in which the Bench held that the time limit of 30 days prescribed in the Proviso to Section 25O(5) is directory and not mandatory, has been held by a learned Single Judge in *United White Metals v. Bharatiya Kamgar Sena* 2006 I LLN 430 to have been impliedly overruled by the Supreme Court Judgment in *Vazir Glass Works v.*

Maharashtra General Kamgar Union AIR 1986 SC 1282 : (1986) 2 SCC 118. The said Judgment in United White Metal (supra) has been expressly affirmed and approved on merits by another Division Bench (Hon''ble Khandeparkar and Hon''ble Chandrachud, Ld. JJ.) in an unreported Judgment/Order dated March 5, 2007 in Santosh S. Salkar and Ors. v. United White Metals Limited Notice of Motion No. 2979/2006 with N/M 4417/2006 with Appeal No. 892 of 2006 in WP No. 838 of 2006. By necessary implication, therefore, the Judgment of another learned Single Judge (Hon''ble Lodha, J.) in Ambica Silk Mills v. Maharashtra General Kamgar Union 1998 I CLR 425 in which the learned Judge followed the Division Bench in AEW v. Indian Hume Pipe Co. (supra) must also be treated as impliedly overruled.

vii) In any event, the aforesaid Judgments in AEW v. Indian Hume Pipe Co. (supra) and Ambica Silk Mills (supra) must be treated as impliedly overruled by the subsequent Judgment of a learned Constitution Bench of the Supreme Court in Orissa Textile and Steel Ltd. Vs. State of Orissa and Others, , in which the Supreme Court has clearly indicated that the period of 30 days for deciding a Reference is both reasonable and required to be followed. Indeed, in order to uphold the Constitutionality of the re-enacted Section 250, the Supreme Court extended the said time limit of 30 days to applications for Review also, which would certainly not have been done if the said time limit was merely directory. The learned Counsel for the respondents resisted all above submissions by oral as well as written arguments.

30. The preliminary issues as raised and argued accordingly, are:

1. Whether reference u/s 250(5) of the Industrial Disputes Act, 1947 (for short,"The ID Act") provides a time limit for its disposal, specially the period of one year specified for reference is mandatory? - No.
2. Whether after the period of one year the order passed by the appropriate Government u/s 250(2) of the ID Act is ceases to exist? - No.
3. Whether Vazir Glass, United White Metal, Ambica Silk Mills lead to the conclusion that after the period of one year the Tribunal loses its jurisdiction? - No.
4. Whether the reference so made become infructuous or the Tribunal within the jurisdiction after the expiry of the period so specified in Section 250(5) of the ID Act? - No.
5. Whether 30 days period u/s 250(5) of the ID Act is mandatory? - No.
6. Whether such Tribunal ceases has a jurisdiction and become functus officio 30 days after the date of reports hence the award is nullity? - No.
7. Whether the order passed by the Hon''ble High Court extending the time to complete the proceedings after the expiry of one year was without jurisdiction? - No.

8. An unreported judgment in Bon Limited v. Hindustan Lever Employees Union dated 18th September, 2007 covers the issue in favour of the Union/ workers specially in the facts and circumstances of the case? - Yes.

9. Whether if these clauses and or the claim of Section 25O(2 to 5) of the ID Act if held mandatory would render the workers remediless? - Yes.

31. The factual aspect in the present case just cannot be overlooked is that the order of appropriate Government granting permission to close the undertaking of the petitioner was issued on 23rd March, 2004. The petitioner effected the closure on 5th May, 2004 and or in any event on 12th July, 2004.

32. By order dated 02/12/2004 while granting the last chance, the parties directed to proceed with the case on next date. As the matter already commenced observed to ensure that the reference need to be disposed of as expeditious as possible.

33. By order dated 11/04/2005 even the Division Bench of this Court extended the time by observing "time to dispose of the proceedings is extended by three months from today". The impugned award dated 12/08/2005, has been challenged in the present Writ Petition.

34. By order dated 13/02/2006 this Court has also passed the order regarding 50% of the amount last drawn wages to the workmen. Even the respondent Union filed Notice of Motion No. 223/2006 for payment of wages in accordance with the provisions of Section 25O(6) of I.D. Act on 16/06/2007.

35. Recently, in Writ Petition No. 1832 of 2007, Bon Limited v. Hindustan Liver Employees Union the Bombay High Court by an unreported judgment dated 18th September, 2007 while answering; "Whether after one year, from the date of an order by closing down and undertaking u/s 25(O)-(2) of the I.D. Act, the Tribunal adjudicating the reference u/s 10 r/w 25O(5) would be functus officio and the adjudication proceedings would stand concluded and or lapse without any decision" has negated the said issue, by observing in para 18, 19 and 21 as under:

18. Upon plain reading of Section 25O it is clear that none of the sub-sections, except Sub-section (7), is prefaced by non obstante provision overriding the other provisions in the ID Act. It is true that Section 25O is a special provision but that does not exclude the remedy available to the workmen to apply for reference against the order of closure, passed under Sub-section (2), u/s 10 read with Section 25O(5) of the ID Act. If a reference made at the instance of workmen, as in the present case, is not decided within one year that would close the doors for the workmen and they would not have any remedy available in law. The basic proposition that a party cannot be rendered remediless has to be borne in mind while interpreting a provision such as the one that falls for my consideration in the present case. At the highest, Section 25O is a special procedure seeking permission to close if the predicates set out therein are

satisfied. So read, a balance would be struck between the special provision seeking permission to close and general remedy to the workmen u/s 10 to raise an industrial dispute before the Tribunal to look into all aspects of the legality or otherwise of closure. The test, which the tribunal has to consider while adjudicating an industrial reference, can be different from those which the appropriate Government consider while granting permission to close u/s 250(2) of the I.D. Act.

19. It is true that the right to close down an undertaking is an integral part of the fundamental right to carry on business under Article 19(1)(g) of the Constitution of India. The workman also has the right to raise an industrial dispute with regard to the said closure. In this connection, provisions of Section 2(k), 7A and the Third Schedule Item 10 of the ID Act may also be noticed. Section 2(k) defines "industrial dispute" to mean any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons. u/s 7A, the Appropriate Government is empowered to constitute Industrial Tribunals for the adjudication of an "industrial disputes" relating to any matter, whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned under the ID Act. The Third Schedule of the I.D. Act and item 10 therein clearly shows that closure of establishment is a matter within the jurisdiction of Industrial Tribunal which is empowered u/s 7A to adjudicate the industrial dispute. Taking in view Section 2(k), 7(A) and the Third Schedule item 10 of the I.D. Act, it is clear that the workmen has a right to raise an industrial dispute with regard to "Closure".

20. Section 250 creates an embargo on the power of the employer to close his factory. This section, inter alia, provides that if a factory employs more than 100 workman then the employer shall not close the factory without obtaining prior permission of the appropriate Government. Once the permission to close is granted by the appropriate Government, I do not see any reason as to why the closure cannot become an industrial dispute u/s 2(k) and as to why the workmen cannot have a right to seek a reference for resolution of such dispute u/s 10 of the I.D. Act. If the provisions of Section 250(4) and (5) are not interpreted to mean this it would render the workmen without any remedy and the apprehension expressed that the employer would succeed by delaying the proceedings and rendering the remedies infructuous would turn into reality.

21. In the circumstances thereof, the first question stands answered in the affirmative while the second question stands answered in the negative. Both the judgments impugned in this petition accordingly stand confirmed. In the result, the rule stands disposed in the terms of this judgment with the direction to the Tribunal to dispose of the reference, in any event, within the time extended by this Court earlier. No costs.

I am in complete agreement with above reasoning and the decision.

36. Admittedly, there was no occasion for the Supreme Court in *Excel Wear* (supra) to decide and or deal with the newly added Section 25O of the I.D. Act. Unamended Section 25O did not contain any provisions with regard to the reference or review. That judgment in no way, therefore, deal with the issue and or submission as raised by the petitioner with this regard. The parties were fully aware of the provisions and its effect.

37. The wording of proviso to Section 25O(5) of the I.D. Act provides that "shall pass an award within a period of 30 days from the date of such reference". Section 25 of the I.D. Act is basically a complete code to cover and deal with the aspect of closure, read with the prescribed rules. Therefore, we have to read the scheme of the Section, accordingly. The provision as read and reproduced above no where created any bar or prohibits the State Government or the Tribunal and such other authorities not to extend the time. There is nothing to show unless interpreted otherwise that the Tribunal become functus officio and loses jurisdiction to decide the matter and any award if passed after the such period became nullity. The reliance therefore, on *Strawboard Manufacturing Co. Ltd. Vs. Gutta Mill Workers' Union*, is not applicable on facts as well as on law itself. In absence of specific bar, therefore, the parties accordingly elected to proceed further and in the present case the Court had passed the order and extended the time. The said order of grant of extension of time by the High Court, therefore, cannot be said to be contrary to any provisions of law. There was no such challenge made at any earlier point of time. On the contrary, both these parties acted based on the existing provisions of law and the practice.

38. The learned Counsel appearing for the petitioner further submitted that both the provisions i.e. Section 25O and Sub-section 2A of Section 10 and proviso to Sub-section 5 of Section 33 have been inserted by the very Section Act of 46 of 1982. Both the provisions and Sections are on different footings and need to consider from the respective point of view i.e. reference u/s 10 and approval u/s 33(2). The Section 10A and Section 33(5) of the I.D. Act, the time laid down is in months and not in days. The whole purpose and object of the scheme and the sections are different. I am of the view that the interpretation as sought based upon the other Section as referred above, is impermissible. I am considering Section 25O, independently while deciding the preliminary objections as raised in the present petition, because in my view, Section 25O provides the complete Code and procedure for all the authorities and concerned persons to follow, while dealing with an application of closure. The related aspects need to be followed thereafter of other provisions of the I.D. Act.

39. The use of word "shall" in Section 25O(4) and (5) of the I.D. Act, after considering plain reading of Section 25O, I am of the view that the word "shall" need to be read as "may".

40. The Supreme Court in *Dove Investments Pvt. Ltd. and Others Vs. Gujarat Industrial Inv. Corporation Ltd. and Another*, , has observed as under:

13. Whether a statute would be directory or mandatory will depend upon the scheme (23) thereof. Ordinarily a procedural provision would not be mandatory even if the word "shall" is employed therein unless a prejudice is caused. (See P.T. Rajan v. T.P.M. Sahir).

14. In Chandrakant Uttam Chodankar v. Dayanand Rayu Mandrakar this Court observed: (SCC P.212, Paras 74-75)

"74. In this case it is not necessary for us to go into the question as to whether Section 83 is imperative in character or not inasmuch it is settled law that even where the expression "shall" is used, the same may not be held to be mandatory. Even a mandatory provision having regard to the text and context of the statute may not call for strict construction.

75. In U.P. SEB v. Shiv Mohan Singh this Court stated the law in the following terms: (SCC P.440, paras 96-97)

6. Ordinarily, although the word "shall" is considered to be imperative in nature but it has to be interpreted as directory if the context or the intention otherwise demands. (See Sainik Motors v. State of Rajasthan AIR para 12).

15. "Therefore, it is necessary to ascertain the intention. The word "Shall" is not always decisive. Regard must be had to the context, subject matter and object of the statutory provision in question in determining whether the same is mandatory or directory. No universal principle of law could be laid in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory. It is the duty of the court to try to get at the real intention of the legislature by carefully analysing the whole scope of the statute or section or a phrase under consideration.

41. In view of above, we have to consider the scheme of the section and the statute and the facet that the Industrial Disputes Act is a welfare legislature. In view of M/s. Saraswati Sugar Mills Vs. Haryana State Board and others, , any interpretation or construction of such welfare statute should be liberal and not strict like tax statute.

42. Therefore, the meaning required to be given to the word "shall" need to be considered from the point of view of employers as well as that of employees. While construing the meaning to the word "shall" the nature, scope and purpose of the statute is also important. Therefore, if the provisions of 30 days and or of one year as sought to be contended, if held mandatory it will render whole of the proceedings infructuous, after lapse of 30 days and or one year. This would definitely cause great hardship and prejudice to the employees. Therefore, such cannot be the intention of the I.D. Act which is a welfare legislation to cover and to protect the rights of both the parties. Therefore, the word "shall" cannot be read as mandatory. It needs to be read as "may". However, it is subject to observation of the Supreme Court in Dove Investments (supra):

17. However, even if a statute is directory in nature the same should be

substantially complied with. What would satisfy the requirements of substantial compliance, however, would depend upon the fact of each case.

43. Therefore, taking over-all view and conjoined reading of the above provisions and specially of Section 250, which according to me not vague or unambiguous, and as there is no bar and the Courts as well as the Tribunals have power to extend the time. However, it is to be exercised judicially. Once the matter is referred before the Tribunal under the I.D. Act, the Tribunal will be incharge of the matter for all the purposes till its decision. Therefore, entitled to consider the rival contentions, on the merit of the matter, by giving notice and hearing to both the parties. In such circumstances also, the submission that after one year the Tribunal ceases its jurisdiction and or the award as passed is nullity and void, is inconceivable.

44. In Orissa Textile & Steel Ltd. (Supra) decided on 17th January, 2002, the Supreme Court has considered the provision of Section 250(5) specially in para 5, 12 and 14 and observed that the time limit for deciding the review application in absence of any specific provisions, be within reasonable period of 30 days. As noted, there is no specific period provided for deciding the review application u/s 250(5) of the I.D. Act and therefore, there is no occasion for the Apex Court to decide whether 30 days are mandatory or not as sought to be contended by the Counsel for the petitioners.

45. In the same judgment, the Apex Court, further found that the amendment to proviso of Section 250(4) provide for an embargo on employer only for the period of one year. The restriction on a employer's right under Article 19 of the Constitution of India held to be reasonable. However, by observing that the employer is free to make a fresh application after the lapse of one year. In para 19 of Orissa Textile and Steel Ltd. (Supra) the Supreme Court has observed that " we did not read Excel Wears (supra) case to mean that the permission to close must always be granted if the reasons are "genuine and adequate". Thus, the permission can be rejected even if the grounds are "genuine and adequate" if the Tribunal, found it not in the interest of general public. Therefore, such adjudication process cannot be rendered infructuous by referring to Orissa Textile and Steel Ltd. (supra) particularly, when the said issue was not before the Supreme Court. There cannot be any finality to the permission even if granted or refused by the Government unless the application u/s 250(5) is decided by the Tribunal.

46. The Division Bench of this Court in AEW (supra), has held that the time limit of 30 days prescribed in the proviso of Section 250(5) is directory. In this background, therefore, even after the decision of Orissa Textile and Steel Ltd. there is no case to hold otherwise. There is no case even on the basis of submission as raised by the petitioner, to treat the same judgment as impliedly overruled, based upon the decision given by the learned Single Judge in United White Metals (supra). merely because the judgment in United White Metals (supra) of single Judge was affirmed and approved on merits by another Division

Bench in Santosh S. Salkar (supra) by confirming at the stage of admission by order dated 5th March, 2007.

47. In United White Metal (supra), the petitioner company filed an application u/s 25N and the additional Commissioner of Labour granted permission on 17th September, 2004 to retrench u/s 25N of I.D. Act in one month. An application for review was filed by the workers Association (Mahasangh) on 22nd September, 2004. On 11th October 2004 the specified authority passed an order refusing to pass an earlier order. On 28th October, 2004, the appropriate Government sent the matter to the Industrial Tribunal by reference u/s 25N of the Act. On 2nd December, 2004 the petitioner filed an application for interim relief. On 11th March, 2005, the statement of claim filed before the Industrial Tribunal. On 24th October, 2005 the company petitioner contended that the Industrial Tribunal has no jurisdiction to continue the reference after the expiry of period of one year from the date of permission of Section 25N i.e. 17th September, 2004. The Industrial Tribunal on 8th December, 2005 rejected the said contention and held that the reference is valid and being continued to remain after expiry of one year and therefore the writ petition was challenged. Admittedly, the application was u/s 25N and not u/s 250 of the I.D. Act, though the basic procedural provisions are *pari-materia*.

48. The learned Single Judge based on the Vazir Glass (supra) where Section 250 Sub-section 4 and 5 of the I.D. Act was involved therein the view was that once period of one year expired, the said order ceases to operate and therefore, Industrial Tribunal cannot have the jurisdiction and to entertain and to try the reference about the validity of the said order. But the fact remained and as concluded in the said judgment itself that the Apex Court has considered and directed to treat the said review application as the second application of the employer. The Apex Court did not dismiss and or accept the contention that the Tribunal had no jurisdiction and or the concerned officer becoming *functus officio*. The single Judge in United White Metal, held that the Division Bench Judgment of this Court in Association of Engineering Workers (AEW) was impliedly overruled in view of the Vazir Glass (supra). There is no finding given in the Vazir Glass that the period of time limit prescribed in the Act was mandatory and that on expiry of the time period, the Government would cease to have jurisdiction. But based upon that by treating the Section 25N as *pari-materia* to Section 250 of Section 5 and 6 set aside the impugned order and hold that the Tribunal has no jurisdiction to entertain and determine the reference u/s 25N of the I.D. Act. The facts are totally distinct and distinguishable. On facts itself the ratio of the judgment is not applicable to the present case. Therefore, all contentions of the petitioner is rejected on this count also.

49. The another facet is the earlier judgment of the single Judge in Ambica Silk Mills (supra) was not considered while deciding the matter by the single Judge in United White Metals (supra). The decision of the Ambica Silk Mills was based upon the Division Bench Judgment as referred above. AEW (supra) was in

reference to the issue about the time limit of 30 days in proviso to Sub-section (5). There was no issue with regard to one year limit of Sub-section (4).

50. In *Ambica Silk Mills* (supra), subsequently, a single Judge of this Court following the *Association of Engineering Workers* (supra) confirmed even after more than 12 years that the time limit of 30 days as prescribed in proviso of Section 25(O)(5) is directory.

51. I am not inclined to accept the submission that the *Association of Engineering Workers* (supra) and *Ambica Silk Mills* (supra) are impliedly overruled by the subsequent judgment in view of the *United White Metals* (supra) and or *Santosh S. Salkar* (supra). The facts and circumstances are totally distinct and distinguishable.

52. In *Ambica Silk Mills* an application for closure was filed on 05/07/1992. The order of Government was of dated 30/08/1992. The application for review was made on 09/09/1992. The date of reference dated 28/04/1994. The date of award was 13/06/1995. So total period in this period also was one year and 10 months even after the date of order.

53. The single Judge of this Court in *Ambica Silk Mills* (supra) rightly interpreted *Vazir Glass Works* (supra) and came to the conclusion that *Vazir Glass works* (supra) was dealing with the issues of reference made after the expiry of the period of one year. Now further reiterated by this Court in *Bon Ltd. v. Hindustan Lever Employees Union* (Supra). The relevant observations as per para 16 of *Bon Ltd.* (supra) is as under:

16. In *Ambika Silk Mills Co. Ltd. v. Maharashtra General Kamgar Union and Anr.* 1998(1) C.L.R.425 the learned Single Judge of this Court has distinguished the judgment of the Supreme Court in *Vazir Glass Works Ltd.* case while considering the issue whether the provisions of Section 25O(5) and more particularly proviso to the said sub-section, held that the said provision is directory and not mandatory and the Award passed by the Industrial Tribunal after 30 days from the date of reference would not be rendered bad in law on that count. In that case, the Award was made after one year and eight months. The learned Judge while distinguishing *Vazir Glass Works Ltd.* case noticed that the Supreme Court did not deal with the question where the application for review was made within one year from the date of decision of the State Government on the application u/s 25O(1) and the State Government made the reference of the matter to the tribunal for adjudication also within one year of its decision but the tribunal passed the Award beyond 30 days from the date of such reference and beyond one year from the date of such decision of the State Government u/s 25O(1). In short, it was held that the period of 30 days as also the period of one year was directory and did not make the tribunal functus officio. It appears that this judgment in *Ambica Silk Mills Co.* case was either not brought to the notice of the learned Single Judge in *United White Metal Ltd.* case or it was not noticed by the learned Single Judge.

54. The further submission that AEW and Ambica Silk Mill (supra) be treated as impliedly overruled in view of the constitutional Bench of Supreme Court in Orissa Textile and Steel Ltd. (supra) is also unacceptable. As noted above, there is no direct decision to that effect. In view of the clear provisions like this, i.e. Section 250 and with reference to the period of 30 days cannot be treated as mandatory by extending the observation of the Supreme Court in Orissa Textile and Steel Ltd., as there was no such issue raised and or discussed therein. The period of 30 days referred only in reference to the application for review. Apart from this, in the present case as already referred above by the Tribunal as well as the Court had extended the period and thereafter the parties participated in the proceedings and therefore, such submission now at the instance of petitioner is untenable and is liable to be rejected.

55. The logic and reasoning applicable to a review cannot be extended to a reference. The review and the reference under the Act have different and distinct meaning and the purpose. These are separate procedural aspects and remedies against the Judicial and or quasi Judicial orders. The review is against the order already passed of closure by the Government. The reference here is that of the "matter in the closure application itself". The reason and the placement of review and reference u/s 250 is totally different and distinct. An appropriate order passed u/s 250(2) of the I.D. Act is normally for one year. If no action taken or initiated like a review then reasonable period of one year from the date of order of the Government u/s 25(2), the order passed by the government ceases to exist. But in case such appropriate applications as referred in the present case if filed, is need to be disposed of in view of Orissa Textile and Steel (supra) as far as possible within 30 days. As observed in para 16 which is as under:

In our view a period of 30 days would be a reasonable period for disposing of a review also. This review or reference under the amended Section 250 would be in addition to the Judicial review under Article 226 of Article 32.

56. The Supreme Court, therefore, no way to held the said period as mandatory. On the contrary a further observation in the same para is as under: "Thus in exercising power of review, the appropriate Government performing quasi judicial functions. Sub-section 5 of the amended Section 250 provides that the award should be passed within a period of 30 days from the date of reference. Even though it does not provide a time framed within a review was disposed of. It is settled law that the same should have to be disposed of within a reasonable period of time."

57. It is desirable that considering the scheme and purpose of the Act, it is in the interest of all the parties that such application of closure must be disposed of as early as possible and as expressed within a reasonable period of time. In the present case, both the parties have agreed and as Courts have passed the order, the matters were adjourned from time to time. The term "reasonable period of time" is need to be considered from the practical point of view of the Tribunal or of the Court. Unless all parties concerned agreed and fully co-operate and

proceed without any default and or adjournment then only, the case can be disposed of within the reasonable period. But if any one or other for whatever may be the reason, unable to proceed in the fixed time and or alternative time and or seek adjournment and or the courts adjourned the matter on request and for some other reasons, the provisions just cannot be said to be without jurisdiction.

58. As noted in the present scheme of Section 25O even if decision is taken on the foundation that the reasons are genuine and adequate that itself is not sufficient to grant the said permission of closure. The Court or Tribunal is also required to consider the interest of public. Therefore, the substantive rights of the workers even after the decision of the closure as provided just cannot be overlooked. It is expected that there should be no intentional delay. Such proceedings need to be adjudicated as early as possible at all stages as prescribed. But that does not mean that the proceedings like this which are pending even after the period of 30 days and or one year that itself should be held to be without jurisdiction and or nullity.

59. Section 25N of the I.D. Act specially Clause 1 is also reproduced for convenience. 25N. Conditions precedent to retrenchment of workmen.-(1) No workman employed in any, industrial establishment to which this Chapter applies, who has been to continuous service for not less than one year under an employer shall be retrenched by the employer until,

a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

60. There is no dispute that Section 25N(2) to (9) and Section 25O(2) to (8) are quite similar as held as *pari-materia* in *United White Metals* in reference to the procedure to be followed after such application for permission, u/s 25N for retrenchment of workmen and Section 25O for closing down of undertaking. The condition precedent to retrench of workmen cannot be compared with the procedure for closing down the undertaking. The purpose and object of both the Section are different and distinct.

61. The submission is that the Supreme Court in *Strawboard Manufacturing Co. Ltd. Vs. Gutta Mill Workers' Union*, *Martin Burn Ltd. Vs. The Corporation of Calcutta*, *The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur*, *Balasinor Nagrik Cooperative Bank Ltd. Vs. Babubhai Shankerlal Pandya and Others*, *DLF Universal v. Appropriate Authority* AIR 2000 SC 1985, *Nasiruddin and Others Vs. Sita Ram Agarwal*, and *Gopal Sardar v. Karuna Sardar* (2004) SCC 252, has consistently held that where the statute lays down a strict time limit for disposal of proceedings or passing of a decision, the Court,

Tribunal or Authority concerned ceases to have jurisdiction at the expiry of such time limit. The scheme and purpose of the statute are different in above cases.

62. In answer to this submission is that whenever legislature intends the provisions would be mandatory it provides with the conclusion of the consequences. *Ramington Rand and Workmen Balwant Singh and Others Vs. Anand Kumar Sharma and Others*, and *Wang v. Commissioner of Inland Revenue* 1995 (1) All E.R. 367. I am also of the view that as there is no consequences provided or specified in the case in hand. The public functionary when performs a public function within a time framed the same would be directory (See *Balwant Singh* (supra)). In Section 25O, except 25O(2) there is no such consequences provided for a failure on the part of the appropriate Government or authorities to pass an appropriate order within the period so prescribed.

63. This can be clarified further in reference to the *State of Haryana and Anr. v. Hitkari Potteries Limited and Anr.*, (2001) 2 LLJ 425SC whereby the Apex Court while considering Section 25(O)(2) of the I.D. Act, has expressed that as the order was passed after the expiry of prescribed 60 days it was non-est as permission was deemed to have been granted on the expiry of the 60 days.

64. There is no such provision made in any other part of Section in Section 25O. The consequences are provided for a particular procedure and not provided for others. It also means and reflect the intention of the Legislature that Section 25(O)(2) is mandatory but not the other sections. Based upon this difference I am of the view that other sections cannot be read and or treated as mandatory as sought to be contended by the learned Counsel appearing for the petition in reference to the Section 25O(4) and (5) i.e. 30 days and or one year. This is an addition to the fact that both the parties have acted and consented to proceed with the matter beyond the so called mandatory period in view of the orders passed by the High Court of granting extension of time to complete the proceedings and even otherwise also.

65. Therefore, the submission based on *Mukand Ltd. Vs. Mukand Staff and Officers' Association*, about jurisdiction is not applicable at all, as in that case no such scheme and issues were raised and or decided.

66. Even on merits I am of the view that there is no case of lack of inherent jurisdiction as expressed in *Chiranjilal Shrilal Goenka (Deceased) through Lrs. Vs. Jasjit Singh and Others*, . The substantive right just cannot be thrown away by either of the parties at this stage of the proceedings.

67. Thus, submission based on the constitutional Bench of the Supreme Court, in *Orissa Textile and Steel Ltd. (supra)* that *Association of Engineer Workers and Ambica Silk Mills (Supra)* have been impliedly overruled is unacceptable.

68. Having once acted upon by the parties and participated before the Tribunal, even after one year without any objection, now to raise such plea of award being nullity and without jurisdiction is impermissible. The parties, inspite of Orissa

Textile and Steel Ltd. (Supra) knowing fully the ratio of the said Judgment and participated in the proceedings, pursuance to the order passed by the Division Bench of this Court of granting extension to complete the trial is also very important facet which goes against the petitioners. The parties were aware of the situations and the circumstances.

69. There is some force in the contention raised by the learned Counsel appearing for the petitioner and even considering the scheme and purpose of Section 250, it is necessary that all the concerned should take steps and complete the proceedings as far as possible within the period prescribed under the Section, which includes the period of 30 days for passing an award from the date of reference and further the Government's order as passed, should remain in force for one year. However, the proceedings pending before the Tribunal as initiated prior to expiry of one year but pending after the one year just cannot be thrown out as contended by the learned Counsel appearing for the petitioner, by holding it to be ceases to exist and or; the Tribunal become functus officio.

70. The mandate is that parties must act expeditiously as possible to complete the order on the closure which will be in the interest of both the parties employer as well as employee also. The rights to employer to close the business if the case is made out and specially when the competent authorities and or Government accept the said application, further delay to implement such order definitely cause great hardship and injustice to all.

71. The submission that after one year, the employer can file fresh application for closure on given facts and circumstances of the case is also no reason to accept the case of the petitioner that after expiry of one year, the Tribunals has no jurisdiction to deal with the pending reference and to pass any order thereon. The requirement of giving full opportunity to the employees and all concerned parties means that on the first application itself there should be clear decision on merits. The employees just cannot be rendered remediless after expiring of one year by overlooking various such other factors and uncontrollable circumstances, because of which the Tribunal is unable to complete the said proceeding within one year. The effect of consent adjournments, and opportunity to lead the evidence to support their case just cannot be curtailed even after expiry of one year. This would lead to wastage of time and energy of all.

72. In view of this, the preliminary objections are disposed of accordingly. The issue Nos. 1 to 7 are answered in negative and issue Nos. 8 and 9 are answered in affirmative.

73. Resultantly, the matter be placed on the final hearing board for hearing on merits, after six weeks.

74. Order accordingly.