
(2007) 01 MP CK 0072

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No's. 9553 and 11673 of 2006

General Manager

APPELLANT

Vs

State of M.P. and another

RESPONDENT

Date of Decision : 16-01-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 25O

Citation : (2009) ILR (MP) 591 : (2007) 3 MPLJ 83

Hon'ble Judges : R.K. Gupta, J

Bench : Single Bench

Advocate : Brian D'Silva, with Sajid Akhtar in W.P. No. 9553 of 2006 Piyush Dharmadhikari in WP. No. 11673 of 2006, for the Appellant; N.K. Tiwari, Government Advocate for Respondent No. 1, Piyush Dharmadhikari, V.S. Shrotri with A.P. Shrotri For Respondent No. 2 in W.P. No. 9553 of 2006 Brian D'Silva with Sajid Akhtar for Respondent No. 1 and N.K. Tiwari, Government Advocate in WP. No. 11673 of 2006, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Gupta, J.

The petitioner by way of filing W.P. No. 9553/2006 (S), before this Court has challenged the order passed by Respondent No. 1-State Govt. by which while granting permission to close down the Industry, certain conditions have been imposed. The copy of the order is filed on record as Annexure P/4 dated 26th June, 2006 to the petition.

The facts leading to the present case are that the petitioner is an Industry and is manufacturing Railway Mono Block Concrete Sleepers under the specification BBRV. According to the petitioner, the said industrial unit was not viable as the requirement of the Railway was to supply them Concrete Sleepers under the RDSO specification. The petitioner was having its Unit at Budni, District Sehore. An application for grant of permission was moved by the petitioner in accordance with Section 25-O of the Industrial Disputes Act, 1947. The said application

earlier was rejected by the State Govt, by an order dated 23rd July, 2005. Against the same, the petitioner preferred a petition before this Court which was registered as W.P. No. 7619/05(s). The said petition was heard by this Court and ultimately an order on 12-12-2005 was passed by which the order passed by the State Govt, on 23rd July, 2005 by which the permission was rejected to close down its Industry at Budni was set aside. This Court while deciding the petition also directed the State Govt, to decide the application afresh within a period of 30 days. The order passed by this Court is Annexure P/I filed by the petitioner. Thereafter, the State Govt, heard the parties afresh on the application which was submitted by the petitioner on 1-4-2005 seeking permission to close down the Industry. The State Govt, after hearing the parties passed an order which is Annexure P/4 to the petition dated 26th June, 2006. This order has been impugned in the present petition.

It is seen in the present petition though while granting permission, the State Govt, has imposed a condition that the petitioner's application is accepted for closing the Unit on the condition that the petitioner shall pay wages and compensation to the employees till the date of passing of the order i.e. 26th June, 2006. This order has been challenged by the petitioner in the present petition.

The Respondent No. 2 Union has also filed a petition before this Court which is registered as W.P. No. 11673/06 wherein the order granting permission has been challenged by the Respondent No. 2 Union. Another petition which was filed by the Management was W.P. No. 7463/06. In the said petition, the employer challenged the order passed by the appropriate Govt, u/s 33-C(1) of the Industrial Disputes Act, 1947. The application before the appropriate Govt, was submitted by the employees by which the employees claimed that since the appropriate Govt, has already refused to grant the permission by an order dated 23rd July, 2005 and the Industry has been closed with effect from 30th of June, 2005, therefore, they are entitled to get the salary. The revenue recovery certificate is issued on that ground by the State Govt, was challenged by the Management in this petition. At the time of hearing of case, the learned counsel for employees Shri V. S. Shrotri, learned senior counsel fairly submitted that they will not recover the amount for which the Revenue Recovery Certificate was issued by the appropriate Govt, u/s 33-C(1) of the Industrial Disputes Act, 1947 until the order passed by the State Govt, on 26th June, 2006 is upheld and, therefore, the said petition was disposed of on the basis of that statement.

Learned counsel for the petitioner in the present case submitted that while granting permission, the appropriate Govt, directed that the permission is granted subject to the condition that if the employer pays the wages and compensation to the employees up to the date of passing of the fresh order which was passed on 26th June, 2006 Annexure P/4 to the petition. It was contended by him that since earlier order by which the permission was refused by the appropriate Govt, by an order dated 23rd of July, 2005 was set aside by

this Court in W.P. No. 7619/05(s) and this Court directed the respondents to consider application of the petitioner which was submitted u/s 25-O of the Industrial Disputes Act, 1947 and subsequent to that when the permission has been granted by an order dated 26th June, 2006 therefore, the permission as such was to be related back to the date of filing the application and the condition as such for payment of salary to the workers till the passing of fresh order i.e. 26th June, 2006 would not have been imposed.

Learned counsel for the respondents and the employees submitted that in pursuance to Section 25-O, Sub-section (7) (M. P. Amendment) since the permission was refused and still the closure was effected by the Management with effect from 30th June, 2005, therefore, in pursuance to the provisions of Sub-section (7) of Section 25-O of the Industrial Disputes Act, 1947, the employees shall be entitled to claim the salary because the closure was effected without there being any sanction.

The submissions as such made by learned counsel for the parties are considered.

In this context it is relevant to mention that the provisions so contained u/s 25-O of the Industrial Disputes Act, 1947 shall have bearing on the matter and it would be profitable to refer the said provisions in the judgment which is 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) Where 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 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) Where an application has been made under Sub-section (1) and the appropriate govt, 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 Govt, 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 Govt, 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) Where 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 Govt, 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 days' average pay for every completed year of continuous service or any part thereof in excess of six months.

On the basis of the aforesaid reading of the provisions, it is clear that the provisions as such is a self contained code, therefore, it being a self contained code, the arguments have to be considered in the light of the provisions as contained hereinabove.

The legality and validity of the said provisions u/s 25-O initially when was inserted in the Act, was challenged before the Apex Court in Excel Wear's case and the Apex Court ultimately struck down the provisions as contained u/s 25-O in its judgment as reported in Excel Wear and Others Vs. Union of India (UOI) and Others, holding that the employer has a fundamental right to carry on the business, therefore, the restrictions as such imposed are extraneous and the restriction as such cannot be imposed. Thereafter Section 25-O was recasted.

The legality and validity of the provisions as such has already been upheld by the Apex Court as the Apex Court had an occasion to consider the said question in various cases i.e. Workmen of Meenakshi Mills Ltd. and Others Vs. Meenakshi

Mills Ltd. and Another, . The Apex Court considered the legality and validity of the provisions u/s 25-O with reference to the fundamental right as enunciated under Article 19(1)(g) of the Constitution of India. Article 19(1)(g), being a fundamental right, it was the discretion of the employer to run the business or not to run the business. The Apex Court while considering said right of the employer to run or not run, held that the provisions as contained u/s 25-O only imposes a reasonable restriction with regard to the exercise of power by the employer when he decides to close the business, therefore, it cannot be termed to be violative of Article 19(1)(g) of the Constitution of India.

Section 25-O, Sub-section (1) deals with the aspect that when an employer intends to close down an undertaking of an industrial establishment to which this Chapter applies shall apply for prior permission at least 90 days before the date on which the intended closure is to become effective. The Sub-section (3) further deals with the power and jurisdiction of the appropriate Govt, to decide the application submitted by the employer. According to the same, the appropriate Govt, shall give 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 and the appropriate Govt, shall refer the reasons to be recorded in writing for grant or refuse to grant such permission.

Sub-section (4) provides the period of limitation for the appropriate Govt, to decide the application within a period of 60 days from the date the application is submitted. It also provides that in case the application is not decided within 60 days then the permission as such shall deemed to have been granted on expiration of the period of 60 days.

Sub-section (7) further provides that where 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.

Sub-section (9) further provides that on grant of such permission for closing the establishment, the workers shall be entitled to receive the 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 relevant question in the present case is that whether the grant of permission u/s 25-O would whether related back to the date of passing the order or from the intended date of closure which was applied for by the employer.

Before interpreting the aforesaid provisions, it would be proper to refer to certain dates.

In the present case the application for closure was submitted by the employer on 1-4-2005. The intended date of closure by the employer was 30th June, 2005. Earlier, the State Govt, rejected the application by passing an order on 23rd July, 2005. This Court set aside the order passed by the appropriate Govt, by deciding the W.P. No. 7619/05 and directed that the appropriate Govt, shall decide the case afresh.

Thereafter, the appropriate Govt, passed a fresh order Annexure P/4 on 26th June, 2006 by which the permission is granted.

With reference to the aforesaid factual backdrop of the relevant dates as mentioned hereinabove, the provisions of Sub-section (1) as well as sub-section (7) of Section 25-O are to be construed. In pursuance to Section 25-O, Sub-section (1) of the Act, by moving an application by the employer, the intended date of closure when it is to become effective has also to be submitted, the application as such has to be submitted before the period of 90 days from the effective or intended date of closure. Accordingly before closing down the Industry from the effective or intended date of closure, an application has to be submitted before 90 days. The application has to be decided by the appropriate Govt, in terms to Sub-section (2) within a period of 60 days and on expiration of the period of 60 days the permission shall be deemed to have been granted.

Sub-section (7) provides that in case the permission is refused by the appropriate Govt, of closing down the Industry from the intended date, then closure shall be deemed to be illegal from the date of closure and the workmen shall be entitled to the benefit under any law for the time being in force as if the undertaking had not been closed down.

Learned counsel for the petitioner submitted that Sub-section (7) shall have no application in the present case because the order by which earlier the appropriate Govt, rejected the petitioner's application by an order dated 23rd July, 2005 since has been set aside by this Court and this Court has remanded the matter back to the appropriate Govt, for passing a fresh order and thereafter since a fresh order has been passed on 26-6-2006 whereby the permission is granted to close down then the permission as such would be effective from the effective date of the intended closure and not from the date the fresh order is passed.

The aforesaid submission was refuted by learned counsel appearing for the employees. It is submitted that since earlier the State Govt, has rejected the application of the employer by an order dated 23rd July, 2005 even though this Court has set aside the said order but the fact remains that the employer has effected the closure from the intended date though there was no permission with the employer on the date when the closure was made effective i.e. with effect from 30th June, 2005. Therefore, the employees shall be entitled for the salary for that period.

In the present case from the provisions which have been discussed in the earlier

paragraph of this judgment it is clear that the provisions as contained u/s 25-O at the first instance does not deal with an eventuality that when the appropriate Govt, passes the illegal order by which the permission is refused then what would be the consequence of such order. Though Section 25-O of Industrial Disputes Act, 1947 is a self contained code but does not deals with such an eventuality. A conjoint reading of Sub-section (1) of Section 25-O, sub- section (4) and Sub-section (7) seems to be that at first instance before 90 days the application for closure has to be applied by the employer wherein the employer has to show the intended date to be become effective and if the application as such is not decided within a period of 60 days then permission after expiry of 60 days shall deemed to have been granted. The legislative intention behind these two Sub-sections i.e. (1) and (4) appears is that the appropriate Govt, has to decide the application for closure before effective date of the closure so that right of the employer may not be jeopardized and also to save him from the burden of paying salary to the employees if the application as such is not decided within a period of 60 days.

Sub-section (7) of Section 25-O stipulates that in case the application is submitted by the employer and the application as such is refused, the closure of an undertaking is made effective from the intended date by the employer then the closure as such shall be deemed to be illegal from the date of closure.

Thus a bare reading of the provisions as contained hereinabove/itself shows that the effective date of closure shall be the date on which the closure was intended i.e. on or after the expiry of the period of 90 days from the date when the application was submitted by the employer. In the present case the application was submitted on 1-4-2005 and the effective date was shown as 30th June, 2005. A Reading of Sub-section (3) itself indicates that grant of permission shall relate back to the date from the date which was intended for the closure and the closure shall be effective after the expiry of the period of 90 days from the date application is made. This period is not depending upon the date of the passing of the order by the appropriate Govt.

Thus the order granting the permission will relate back to date of the intended date of closure. This is the plain reading of the Section 25-O of the Industrial Disputes Act, 1947. The provisions of Sub-sections (1), (4) and (7) of Section 25-O in fact provide the doctrine of relation back which means that after when the permission is granted even from a subsequent date than the intended date, the permission as such will relate back to the date of intended date of closure in terms to Section 25-O of Sub-section (1) of the Industrial Disputes Act, 1947.

The argument of learned counsel for the employees i.e. Respondent No. 2 and Shri V. S. Shrotri appearing for the employees contended as contained in Section 25-O, Sub-section (7) of the Act, the permission since was earlier refused and still the closure was effected that will deemed to have been an illegal closure. After when the order dated 23rd July, 2005 by which the appropriate Govt, refused the permission was set aside by this Court. The effect will be as if no

order by the appropriate Govt, is passed. Even Sub-section (2) states that in the absence of any order by the appropriate Govt., the permission shall be deemed to have been granted after expiry of 60 days. Thus, the submission made by learned counsel for the employees cannot be accepted. If the arguments are accepted, then the order refusing the permission which is set aside by this Court shall have the effect of its revival which cannot be permitted in the eyes of law.

In the present case the doctrine of relation back shall also have its application. The Apex Court while defining the doctrine of relation back in *Director, State Transport, Punjab and Another Vs. Gurdev Singh and Another*, held that in case where the employer has terminated the services of an employee after holding a departmental enquiry, the Labour Court holding the enquiry to be illegal as it was found to be defective. Thereafter the Labour Court directed the employer to adduce the evidence afresh justifying the termination, under these circumstances the order of termination shall relate back to the date of original order of termination passed by the employer and shall not be entitled for any wages till the termination is upheld by the Labour Court.

In this context another judgment shall also be relevant wherein the doctrine of relation back was applied i.e. *D.C. Roy Vs. The Presiding Officer, Madhya Pradesh Industrial Court, Indore and Others*, . Under the same circumstances, in which the said doctrine was applied in *Gurdev Singh (supra)*.

Keeping in view the aforesaid doctrine of relation back, after when the order passed by the appropriate Govt, is set aside by this Court and after when the matter was remanded back to the appropriate Govt, and the appropriate Govt, allowed the application of the employer, the order passed by the appropriate Govt, shall while applying the doctrine of relation back, be effective from the intended date of closure shown by the employer while moving the application u/s 25-O.

Learned counsel for the petitioner further submitted that the restrictions which are imposed while granting permission are covered by Sub-section (2) of Section 25-O of the Act wherein the appropriate Govt, has to apply its mind to the reasons supplied by the employer in the application, its genuineness including the adequacy of the reasons, the public interest and all other relevant factors are also to be considered. On this basis, it is contended that the appropriate Govt, cannot impose a condition that the order shall only be effective until the wages are paid by the employer till passing of the final order by the appropriate Govt, allowing the application. It is contended by him that the appropriate Govt, after when comes to the conclusion after holding the enquiry that the reasons are genuine, adequate and are in public interest and while considering all other relevant factors then passed an order granting permission, the meaning thereby is that scope under Sub-section (2) of Section 25-O is only to grant or refuse the application.

Sub-section (2) does not empower to provide certain conditions for grant of

permission. Learned counsel for the employees contended that the appropriate Govt, shall have jurisdiction to impose condition while granting the permission and the conditions which have been imposed are reasonable.

To appreciate the aforesaid conditions again whole Section 25-O has to be understood in the context of fundamental right of an employer to run a business as empowered under Article 19(1)(g) of the Constitution of India.

The conditions which are enumerated in Sub-section (2) wherein right of the master is restricted to close down the undertaking, the restriction, if any, imposed de hors to the conditions as enumerated in Sub-section (2) of Section 25-O cannot be said to be restriction as imposed by the Legislature. Sub-section (2) does not empower the appropriate Govt, to grant the permission by imposing a condition which he thinks fit and proper. u/s 25-O, he has to either refuse the permission or he has to grant the permission. The impact of grant of permission has to be understood that the appropriate Govt, is satisfied that there had been genuineness and adequacy of the reasons in public interest and, therefore, the application for grant of permission has been accepted. After when the appropriate Govt, is satisfied on the reasons for closure and then grants permission imposing any condition as such would make the order negative and shall also be beyond the scope of Sub-section (2) of Section 25-O of the Act. There is no discretion imposed by virtue of Sub-section (2) of Section 25-O that while granting permission, the appropriate Govt, shall have power to impose any condition which he deems fit and proper.

The learned counsel for the respondents employees heavily placed reliance on a judgment of the learned Single Judge of Gujarat High Court which is reported in 2004 LAB I.C. 1059, Bomin Pvt. Ltd. v. Gujarat Majdoor Panchayat and submitted that Single judge of Gujarat High Court has considered the question with regard to power of the appropriate Govt, while granting permission and it is held that the appropriate Govt, shall have power to impose a condition while granting permission. The facts of the judgment passed by the Gujarat High Court had been that an application for permission under Sub-section (1) was moved wherein intended date of closure was to become effective from 1-3-1993. The Labour Commissioner passed an order on the said application on 20-1-1993. Thus it is apparent that the order itself was passed granting permission by the appropriate Govt. i.e. Labour Commissioner within the stipulated period as contemplated under Sub-section (2) of Section 25-O and while passing the order, the appropriate Govt, imposed a statutory condition as per Section 25-O(9) that order shall be effective only when the retrenchment compensation is paid which is also provided under Sub-section (9) of Section 25-O (M. P. Amendment).

Keeping in view the said backdrop of the case the Hon''ble Single Judge was of the view that such a condition was also be in public interest. If the said ratio is applied in the present case, then it is seen that the facts of the present case are entirely different. In the present case the application was allowed which was earlier rejected. The order of rejection was also set aside by this Court and

ultimately by an order dated 26th June, 2006 the permission was granted. Before the Gujarat High Court it was not the case where the wages were directed to be paid for the intervening period which means that during the period when the Industry was closed till when the final order was passed granting permission, if the appropriate Govt, would have passed the order by granting permission within the stipulated period as prescribed under Sub-section (2) of Section 25-O then the decision would have been different in the case in hand.

But in the present case as discussed earlier, the order itself was passed after the expiry date of intended closure but before Gujarat High Court there was no question for directing for payment of salary but the question was only with regard to the condition which was imposed for payment of the retrenchment compensation.

Section 25-O Sub-section (9) even otherwise stipulates that where an undertaking is permitted to be closed down under Sub-section (3) or where the permission for closure is deemed to be granted under Sub-section (4), every workmen employed in the undertaking shall be entitled to receive the compensation which shall be equivalent to 15 days average pay for every completed years of continuous service. Even though in the order no condition would have been imposed for payment of the said retrenchment compensation yet in pursuance to Sub-section (9) of Section 25-O, the employer was under a legal obligation to pay the retrenchment compensation to the workers. Thus according to this Court imposition of a condition for payment of retrenchment compensation as enumerated in Sub-section (9) of Section 25-O will have no effect in the order which was in Gujarat case (supra) even though the appropriate Govt, is imposing a condition which, is a statutory one.

For the reasons stated hereinabove, the judgment so relied by the learned Counsel for the respondents employees of Gujarat High Court is distinguishable and shall have no application in the present case.

The conclusions which has been arrived at, earlier has to be decided by applying another reason that where the appropriate govt, passes an illegal order by which the permission is refused that order is set at not by the Court and subsequently the appropriate Govt, accepts the application, the employer or any person cannot be permitted to suffer because of the illegal order passed by the appropriate Govt, which ultimately has been set at not by the High Court. For this reason also, the grant of backwages by the appropriate Govt, in the impugned order Annexure P/4 from 30th June, 2005 to 26-6-2006 shall not only resulting into "unjust enrichment but would give the power by acting arbitrarily while considering the application of an employer for the closure of its Industry by encouraging to pass an illegal order and then to make the employer suffer.

The whole object u/s 25-O is to avoid mischief and no provision can be understood to give the authority an absolute discretion where the authority exercises the powers under the Statute shall not to act in an arbitrary manner.

Learned counsel for the petitioner also relied upon the judgment passed by the Apex Court in *Management of Gordon Woodroffe Agencies Pvt. Ltd. Vs. Presiding Officer, Principal Labour Court and Others*, wherein the Apex Court considering the question with regard to jurisdiction of the Labour Court as well as of the High Court to uphold the permission by imposing a condition to pay some additional amount by way of ex gratia payment. The Apex Court held that payment of additional sum by way of ex gratia payment since is not a condition which could be imposed either by the Labour Court or by the High Court u/s 25-O, therefore, imposing a condition as such was found to be outside the scope of the Statute.

The relevant para 13 of the said judgment reads as under:

In our opinion, the ratio laid down in the above case clearly applies to the facts of this case. In the instant case also, the Labour Court came to the conclusion that the closure of the establishment was legally justifiable and the management had, as required under the law, offered apart from the compensation payable for the closure, all other statutory dues which some of the employees collected without demur and in the case of the respondent workmen, even though the same were offered on time, they did not accept it, therefore, the question of paying any additional ex gratia compensation which is not contemplated under the statute, does not arise. This Court in the case of *N. S. Giri* held: (SCC p.701,para 10)

[A]n award under the Industrial Disputes Act cannot be inconsistent with the law laid down by the legislature or by the Supreme Court and if it does so, it is illegal and cannot be enforced.

Thus, it is clear from the pronouncements of this Court that the Labour Court or for that matter the High Court had no authority in law to direct payment of any additional sum by way of ex gratia payment otherwise than what is provided under the statute when the act of the management in closing down the establishment is found to be valid and all legally payable amounts have been paid or offered in time. In such a situation, contrary to the statute, the principles of social justice cannot be invoked since the legislature would have already taken note of the same while fixing the compensation payable.

Thus the amount which can only be directed to be paid in pursuance to the ratio of the Apex Court judgment is only the amount which is provided by the statute or the amount provided which is enumerated u/s 25-O of the Act.

Learned counsel for the respondents employees submitted that as contemplated under Sub-section (3), the word "other relevant circumstances" appearing after the words "genuineness and adequacy of the reasons stated by the employer in public interest" since have been added, therefore, the authority shall have jurisdiction to grant wages to avoid hardships to the employees by exercising other relevant circumstances.

The submission as such cannot be accepted. The other relevant circumstances

are to be construed and understood along with the earlier words "genuineness, adequacy, reasons stated in public interest" and cannot be understood independently. The relevant circumstances does not mean grant of any amount not permissible under law. The other relevant circumstances cannot be understood to me that under that garb; the appropriate Govt, while passing the order impose any condition of payment which is not prescribed under the law. Therefore, the said submission cannot be accepted.

Learned counsel for the petitioner Shri Brian D" Silva has made a submission that the employer, even though the petition is allowed shall pay one- months additional salary to the employees and accordingly the petitioner shall pay one months salary in addition the amount covered by Section 25-0(9) of the Act within a period of sixty days.

In view of the aforesaid, the order dated 26-6-2006 Annexure P/4 is partly set aside wherein the appropriate Govt, has imposed a condition for grant of backwages to the employees from 30th June, 2005 till passing of the order i.e.

26-6-2006 and remaining part of the order is upheld. Accordingly W.P. No. 9553/2006 (S) is allowed.

In W.P. No. 11673 of 2006 (S), S.P.L Employees Association vs. General Manager and another filed by the Union, the petitioner-Union has challenged the permission granted by the appropriate government alleging that the appropriate government has not applied its mind to the genuineness and adequacy of the reasons submitted by the employer along with public interest and all other relevant factors before passing the said order. Under the circumstances, it is contended that the order granting permission has to be set aside. In this reference, the relevant paragraphs in the impugned order are paragraphs 4 and 5. The appropriate-government in para I of the impugned order has considered with reference to issuing the tenders under the RDSO specification for supply of the concrete sleepers, the Management is manufacturing under the German technology (BBRB concrete sleepers). It is stated that the Railway Administration in its letter dated 18-8-2000 has also specified that the Railway sleepers supplied shall be accepted from the relevant places wherein the name of Budhni is not mentioned. It is also stated that the Railway is the only purchaser of the concrete sleepers which is being manufactured by the Management. It is stated that it will not be possible for the Management to run the industry as the Railway is not giving any orders to the Management for supply. In view of this, it is also stated that merely because one sleeper factory at Budhni is closed then that will not affect the public interest.

These were the reasons which have impressed the appropriate government to accept the application for closure. The reasons as such cannot be said to be either extraneous or false. Before the appropriate government, it is reflected from the order that the employees have not been able to produce any evidence or reliable material from which it could be established that at Budhni itself the

sleepers under the new design of RDSO could have been prepared. The reasons which have been stated in paragraphs 8, 9 and 10 of the written statement filed along with W.P. No, 9553/2006 (S) as Annexure P-2, are reproduced as under:

Since 1997 the applicant has not received any orders for supplying BBRV Mono Block Concrete Sleepers. Yet the applicant took part in the tender proceedings and was awarded contracts for the supply of the Mono Block Sleepers manufactured with the BBRV design with the stipulation that there would be no reimbursement of the extra input costs and the applicant would have to take steps to switch over to the RDSO design. The applicant gave an undertaking to manufacture Mono Block Sleepers using the RDSO design in the future and was awarded the contract.

In order to keep its unit alive and in spite of the stipulations in the contract, the applicant took up the matter for reimbursement of extra input costs with the Railway Authorities. The applicant has already brought on record vide covering letter dated 4-1-2006 a statement of the difference in costs incurred and loss suffered on account of manufacture of the Sleepers using the BBRV design. In order to execute the contract of the year 1997 the applicant suffered a loss of Rs. 1,05,36,937.66. To execute the contract of the year 2000 the applicant suffered a loss of Rs. 94,61,315.94. To execute the contract of the year 2003 the applicant suffered a loss of Rs. 1,19,46,424.40 p. In all the applicant suffered a loss of Rs. 3,19,44,678/-.

There being no alternative or any prospect of the railways accepting Mono Block Concrete Sleepers manufactured by using the BBRV design or reimbursing the extra input cost, the applicant was left with no choice but to take a decision to close its unit at Budhni. In compliance of the law, the applicant preferred an application on the 1st of April, 2005 u/s 25-O of the Industrial Disputes Act, 1947. In the said application the applicant sought closure on the ground that since the year 1997 the Railway had ceased to reimburse the extra input costs for manufacture of Railway Mono Block Concrete Sleepers using the BBRV design and after adopting the tender system the applicant was not being awarded any contracts for the said designed sleepers.

The reasons as such which have been accepted by the appropriate government and mentioned by the employer cannot be said to be the false reasons. Before the appropriate government on behalf of employees only one affidavit was submitted, which was of Shri Suresh Malviya along with the written arguments. Shri Suresh Malviya has also not been able to adduce any evidence other than his affidavit. In the affidavit, though it is stated that the application submitted by the Management for closure of the factory of Budhni is based on false and fabricated grounds. In para-5 of the said affidavit it is further contended that the submission of the Management is not correct to say that Railways are not considering the extra input cost of MBC sleepers under the BBRV design since May, 1999 but no material is produced before the appropriate authority that the Railway was prepared to accept the Railway sleepers under the BBRV

specification. No further material was produced to controvert the facts by the Union that the Management was not incurring any extra input cost to prove that the cost of production was less than RDSO specification.

On this basis, the appropriate government while passing the order in para-5 has stated that the Union had not been able to substantiate his case to prove that the reasons which were submitted for the closure were false or the production could have been achieved at a low cost at Budhni.

Keeping in view the reasons as such as supplied by the Management for which no material was produced to substantiate that reasons were artificial or false, it cannot be said that the appropriate government has not applied its mind to the reasons supplied by the employer.

When this Court remanded the matter back to decide afresh by the appropriate government then the employees should have produced sufficient material to controvert the facts and also to prove that reasons for closure as submitted by the Management were false and were artificial one. This Court under the circumstances cannot accept the submissions of the employees that the appropriate government has not applied its mind.

For the reasons stated herein-above, while deciding the case in W.P. No. 9553/2006 (S), this Court has also come to conclusion that the appropriate government while granting permission has accepted the contention of the Management with regard to genuineness and adequacy of the reasons for closure.

In view of the submissions as such this Court does not find any substance and the present Writ Petition No. 11673/2006 (S) stands dismissed.

Order accordingly.