
(2008) 12 AHC CK 0374

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 43307 of 2008

Hero Cycle Group Kamgar Union and another

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 05-12-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4F, 6W

Citation : (2008) 12 AHC CK 0374

Hon'ble Judges : Shishir Kumar, J

Final Decision : Dismissed

Judgement

Shishir Kumar, J.

This writ petition has been filed for quashing the order dated 13.8.2008 passed by respondent no.1, contained as Annexure no. 1 to the writ petition. Further sought a writ in the nature of mandamus commanding the respondents not to implement the order dated 13.8.2008.

The facts arising out of the present writ petition are that petitioner no. 1 is a registered trade union of workmen employed by the respondent no. 3. Petitioner No. 2 is the only elected General Secretary of petitioner no.1 (Union) and has been authorised to file this writ petition. M/s Hero Cycle Ltd. Union Sahibabad district Ghaziabad was established in the year 1987 for manufacturing cycles. The respondent no.3 has a sister unit at Ludhiana (Punjab) which is also engaged in production of cycles. The second unit was started at Ghaziabad which has been earning huge profit from the production of cycles. For the ulterior motive and mala fide reasons the respondent no.3 filed an application on 29.8.2007 under section 6W of the U.P. Industrial Disputes Act (hereinafter called as Act) before the respondent no.1 seeking permission to close its factory at Ghaziabad. After receipt of the notice from the respondent no.1 regarding application of respondent no. 3, an objection dated 17.9.2007 was filed. A notice was received from the Additional Labour Commissioner, Ghaziabad dated 1.10.2007 along with

letter of Additional Labour Commissioner, U.P. Kanpur for hearing before him on 5.10.2007. A copy of the order dated 29.10.2007 granting permission to respondent no. 3 to close its factory at Ghaziabad under section 6W of the Act was received by the petitioner.

The petitioner aggrieved by the aforesaid order filed a writ petition before this Court as writ petition no. 58669 of 2007 which was allowed by order dated 4.12.2007 holding therein that as no reasons have been disclosed regarding closure of the factory and the objection filed by the petitioner has not been considered therefore, this Court has directed the State Government to decide the objection of the petitioner as fresh by a reasoned and speaking order within a period of thirty days. It is further mentioned that a compromise was entered between petitioners, respondent no.3 and M/s Fastners World on form no. I prescribed form for compromise under section 4F Rule 5 (1) of the Act.

The order dated 13.8.2008 is manifestly erroneous as it does not contain any reason as required under sub section (2) of Section 6W of the Act. Section 6W of the Act is being quoted hereunder:

"Where an application for permission has been made subsection (1), the State 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".

From the perusal of the language of Section 6W (2) of the Act it is apparent that there must be a reasonable opportunity of being heard to the employer, workmen and persons interested in such closure having regard to the genuineness and the reasons stated by the employer in the interest of general public and all other relevant factors has to be considered by the relevant authority. The authority deciding the dispute regarding closure must take comprehensive circumstances into consideration not only in the interest of employer but the interest of the employees has to be taken into consideration. From the perusal of the impugned order passed by respondent no.1 it is clear that it has only considered the interest of employer. From the perusal of Section 6W of the Act it is obvious that Legislature has fixed time schedule for taking a decision where as the hearing was concluded before respondent no.1 on 10.1.2008 and judgment was reserved but no decision was taken. It was only on the basis of an application moved by the petitioners dated 11.8.2008, on 13.8.2008 judgment was delivered which clearly demonstrates intention on the part of respondent no.1.

The State Government is an authority to take a decision as soon as hearing was over. Therefore, it was obligatory on the part of State Government to take a

decision within thirty days and if the same was not possible there should be a fresh hearing by the parties and thereafter order could have been passed. There is no dispute to this effect that there is a provision for review under subsection (5) of section 6W of the Act providing a remedy for review before the respondents but the petitioner has been advised to state that remedy of review is not an efficacious alternative remedy before the same authority who has rendered the order impugned. The application filed by the respondent seeking closure of the unit does not conform the provision of Section 6W of the Act. Therefore, it is liable to be turned down outrightly instead the respondent no.1 has entertained twice while directing the closure of the unit. The management has moved an application before the Secretary Labour, Government of U.P. seeking permission to close down the operation of the undertaking known as Hero Cycle Ltd. Unit no.2 situate at Site No. 4, Sahibabad, Ghaziabad, U.P. and the said permission was granted on 29.10.2008. There are about 800 permanent workmen including the casual workers providing employment to around 1200 and the present industry is a leading industry in Ghaziabad. In March 2007, the management entered into a settlement with the Union increasing the benefit etc. to the workmen after evaluating the performance and probability of the company. Therefore, there was no occasion that all of sudden in the month of August 2007 the management has moved an application before the Secretary Labour, Government of U.P., Lucknow seeking closure of the establishment on the ground that unit at Sahibabad is running in loss. The balance sheet and statement of account submitted by the management before the competent authority seeking closure of the unit were found to be manipulated to show losses. It was pointed out in the objection filed by the Union that the balance sheet and accounts submitted are not correct and the unit itself is in profit. Making a separate balance sheet for unit no. 2 is not known and as per the information of the Union the said practice was restored only recently after taking a decision to shift the factory. The intention of the management is not to close down the unit but it is to shift the operations from Sahibabad to Ludhiana and management has already made arrangement to supply stock from Ludhiana to U.P., Uttaranchal and Nepal for whom supplies were sent by Unit no.II and to this effect a conclusive proof was filed before the Secretary before whom the application was filed. It was proved before the authority concerned that management was seeking not to close the industry but wants to shift the establishment to Ludhiana but the Secretary Labour has made no effort regarding the allegations made by the petitioners. The effect of closure of the industry will be that about 1200 workmen will become jobless and will not be able to earn their livelihood.

It may be submitted that during pendency of the proceedings a recovery certificate was issued on 24.6.2008 by the competent authority against respondent no.3. Feeling aggrieved the employer filed two writ petitions numbered as 33495 of 2008 and 33496 of 2008 before this Court. While entertaining the writ petitions, this Court was pleased to pass stay order dated

23.7.2008 staying the recovery against the employer subject to furnishing the security. From the facts stated it is clear that the impugned order has been passed regarding closure of unit is not bona fide exercise of powers and the impugned order cannot be passed justifying the provisions of section 6W of the Act.

Learned counsel for the petitioners has further submitted regarding the preliminary objection raised on behalf of respondents that an alternative remedy by way of filing a review is provided in the Statute. As regards the remedy of review under section 6W of the Act in a decision reported in 2006 (1) ADJ 354 (Modi Cloth Mills vs. State of U.P. & others) in which the counsel for the present respondent has appeared for the petitioner by filing a writ petition bypassing the remedy of review, therefore, in such circumstances now the respondent cannot agitate that there is an alternative remedy and that this writ petition is liable to be dismissed on the ground of alternative remedy. In Judgment Today 1998 (7) SC 243 Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & others, the Apex Court has held that an alternative remedy does not operate as an absolute bar in all cases. As regards the second objection regarding alternative remedy in II Schedule Item 10 A is concerned, in Modi Cloth Mills vs. State of U.P. & others (2004 (1) ADJ 57) Hon''ble Single Judge relying upon a decision of Hon''ble Apex Court reported in (1972) 2 SCC 561 (Assistant Collector, Central Excise vs. National Tobacco Company New Delhi has held that alternative remedy is not an absolute bar to entertain writ petition under Article 226 of the Constitution of India, especially in cases where the authorities against whom the Writ is filed is shown to have no jurisdiction. In the Constitution Bench judgment of Hon''ble Apex Court reported in (2002) 2 SCC 578 = 2002 (92) FLR 648 (Orissa Textile and Steel Limited vs. State of Orissa and others) it has been held that section 250 of the Industrial Disputes Act and section 6W of the U.P. Industrial Disputes Act are para materia having the same language therefore, the decision rendered in the proceeding under section 250 of the Industrial Disputes Act would be strictly applicable to section 6W of the Act. In para 15 of the judgment it provides that review or reference under amended Section 250 would be in addition to a judicial review under Article 226 or Article 32 of the Constitution of India. In 1992 (3) SCC 336 (Workmen of Meenakshi Mills Ltd. and others vs. Meenakshi Mills Ltd. and another) it has been held that exercise of power being quasi judicial the remedy of judicial review under Article 226 or Article 32 of the Constitution was an adequate protection against the arbitrary action in the matter of exercising of power by the appropriate authority.

The primary object of the employer to close unit no.2 is only to transfer the plant and entire business to Ludhiana only to prevail the compromise entered into between the parties dated 6.3.2007. The compromise entered was more financially beneficial to the workmen and the compromise was binding for the next three years i.e. from 1.1.2007 to 31.12.2009. The employer did not produce the financial position by producing balance sheet of the company as a whole and not for unit no.2. The management has opened a Hyundai Showroom at

Patparganj, New Delhi by investing twenty crores of rupees and the said amount has also been diverted from unit no.2 where as the losses shown is only Nineteen crores rupees for five years. In the financial year 200506 number of cycles manufactured was 0470587. In the financial year 200607 it was 0421850. It clearly goes to show that only nominal loss in manufacturing of cycle was recorded. From January 2007 production became less though dialogues were continued with employees but no raw material was purchased and in the month of June 2007 it was completely closed. This clearly goes to show the determination made by the employer prior to the date of closure. From the perusal of section 6W of the Act it is clear that State Government has to make a proper enquiry which is mandatory as has been held in the decisions mentioned above and a reasonable opportunity of hearing and genuineness and adequacy of reasons stated by the employer has to be considered by the authority concerned on the relevant factor based on document submitted by the employer as well as the objections raised by the petitioner but the respondent no.1 has failed to consider the legal requirement of the aforesaid provisions. There is nothing on the record to show that any enquiry was ever made by the State Government. Sub Section (3) of amended section 25O of the Industrial Disputes Act provides that if the appropriate Government does not communicate the order within a period of sixty days from the date on which the application is made the permission applied for shall be deemed to have been granted. Thus, this fact has also been cured.

In view of aforesaid facts, learned counsel for petitioners submits that the order passed by the respondent no.1 is liable to be quashed as relevant facts have not been considered and matter be remanded back to the authority below for considering the same.

On the other hand, learned counsel for the respondents submits that the present writ petition filed by the petitioner is liable to be dismissed on the ground of alternative remedy as the petitioner has a remedy of filing a review application before the State Government and State Government is the appropriate authority to consider the same. The review provided under section 6 of the Act is not like a remedy of review provided under the Code of Civil Procedure. In the review application filed under the aforesaid section the authority concerned has full jurisdiction to decide the same as the original application filed before him was considered on the basis of relevant record. In Orissa Textiles case (supra) the Apex Court in para 13 and 15 has held that if any person is aggrieved by grant or refusal of permission should file a review or have reference made and after that he can avail a remedy under Article 226 of the Constitution of India for judicial review. Similar view has been taken in Workmen of Meenakshi Mills" case (supra) . Relevant para 57 is being quoted herein below:

"57. In order to validly retrench the workmen under Section 25N, apart from obtaining permission for such retrenchment under subsection (2), an employer has also to fulfil other requirements, namely, to give three months" notice or pay

wages in lieu of notice to the workmen proposed to be retrenched under clause (a) of subsection (1), pay retrenchment compensation to them under clause () of subsection (1) and to comply with the requirement of Section 25G, which is applicable to retrenchment under Section 25N in view of Section 25G. An industrial dispute may arise on account of failure on the part of the employer to comply with these conditions and the same can be referred for adjudication under Section 10. In addition, an industrial dispute could also be raised by the workmen in a case where retrenchment has been effected on the basis of permission deemed to have been granted under subsection (3) of Section 25N on account of failure on the part of the appropriate Government or authority to communicate the order granting or refusing the permission for retrenchment within a period of three months from the date of the service of notice under clause (c) of subsection (1) because in such a case, there has been no consideration, on merits, of the reasons for proposed retrenchment by the appropriate Government or authority and reference of the dispute for adjudication would not be precluded. What remains to be considered is whether an industrial dispute can be raised and it can be referred for adjudication in a case where the appropriate Government has either granted permission for retrenchment or has refused such permission under subsection (2) of section 25N. Since there is no provision similar to that contained in subsection (7) of Section 25N attaching finality to an order passed under subsection (2) it would be permissible for the workmen aggrieved by retrenchment effected in pursuance of an order granting permission for such retrenchment to raise an industrial dispute claiming that the retrenchment was not justified and it would be permissible for the appropriate Government to refer such dispute for adjudication though the likelihood of such a dispute being referred for adjudication would be extremely remote since the order granting permission for retrenchment would have been passed either by the appropriate Government or authority specified by the appropriate Government and reference under section 10 of the Act is also to be made by the appropriate Government. Since the expression "industrial dispute" as defined in section 2(k) of the Act covers a dispute connected with non employment of any person and section 10 of the Act empowers the appropriate Government to make a reference in a case where an industrial dispute is apprehended, an employer proposing retrenchment of workmen who feels aggrieved by an order refusing permission for retrenchment under subsection (2) of Section 25N can also move for reference of such a dispute relating to proposed retrenchment for adjudication under Section 10 of the Act though the possibility of such reference would be equally remote. The employer who feels aggrieved by an order refusing permission for retrenchment thus stands on the same footing as the workmen feeling aggrieved by an order granting permission for retrenchment under subsection (2) of Section 25N inasmuch as it is permissible for both to raise an industrial dispute which may be referred for adjudication by the appropriate Government and it cannot be said that, as compared to be workmen, the employer suffers from a disadvantage in the matter of raising an industrial dispute and having it referred for adjudication.

The grievance about discrimination in this regard raised by the learned counsel for the employers is thus unfounded. The fourth contention is, therefore, rejected."

Earlier this Court has remanded the matter only on the ground that speaking and reasoned order was not passed. The cases mentioned by the learned counsel for the petitioners was also on the same footing. The writ petition was entertained only on the basis as reasoned and speaking order was not passed, therefore, the matter was remanded back to the authority for reconsideration. But in the instant case the authority has passed a reasoned order after considering the objections of the petitioner as well as documents submitted by the employer and an enquiry to that effect was made as provided under the Statute. Therefore, in such situation, writ petition cannot be entertained and furthermore if efficacious alternative remedy is available and in view of the petitioner if there is any lacuna that can be cured if the review application is filed by the petitioner as per the decision of the Apex Court and the State Government has to decide accordingly taking into consideration the pronouncements of the Apex Court.

The permission for closure can be granted on the ground of losses and on the basis of other considerations. In 2006 (111) FLR 201 (Pharmaceutical Chemical & Allied Employee's Union Bangalore vs. State of Karnataka and another) the Apex Court has settled the controversy holding that closure permission can be granted on account of losses and labour problems. In M/s Orissa Textiles and Steel Ltd. case (supra) in para 23 it has been held that each and every case has to be decided on its own facts and circumstances prevailing at the relevant time. Para 23 is being quoted below:

"13. Further subsection (5) of the amended Section 250 provides that the appropriate Government may, either on its own motion or on an application made by the employer or any workman, review its order granting or refusing permission or refer the matter to a tribunal for adjudication. It has also been provided that if a reference is made to a tribunal (under this subsection) then the tribunal should pass its award within a period of 30 days from the date of such reference. Counsel for the employers submitted that it is left to the discretion of the appropriate Government to either review or make a reference. They submitted that there is no right in the employer to compulsorily seek a review or a reference. The learned Attorney General, fairly submitted that the word "may", in subsection (5) of the amended Section 250 should be read as "shall". He further submitted that the "review" would necessitate the making of an enquiry into all relevant facts, particularly the genuineness and adequacy of the reasons stated by the employer, and the giving of an opportunity of being heard. He submitted that the order passed on review would have to be an order in writing giving reasons. He submitted that even though subsection (5) of amended Section 250, does not lay down any time limit within which the review was to be disposed of, a proper reading of the section would necessarily imply that a review would have to be disposed of within a period of 30 days from the date on which

an application for review was made."

In that case it has been held that when any public interest is involved then closure permission cannot be granted. Under Section 6W and Section 250 permission for closure can be granted for one unit as it clearly states that permission has to be sought for an undertaking of an industry. In 1998, Labour and Industrial Cases 464 (M/s Bhartiya Electric Steel Company vs. State of Haryana and others), the Apex Court has held that permission for closure can be granted to one unit running in losses though there were other units incurring profits.

Further argument has been raised on behalf of respondents that if the contention of the petitioner to this effect is accepted that certain documents have not been considered then this Court while exercising the powers under Article 226 of the Constitution of India can not do the same. Therefore in such circumstances petitioner has to avail the remedy provided under Section 6W (5) of the Act by filing a review application and the review will be an efficacious remedy or the matter can be referred for adjudication in respect to closure. Learned counsel for the respondents on the ground of alternative remedy has placed reliance upon various decisions mentioned below:

- a) 2002 (92) FLR 628, M/s Orissa Textile and Steel Ltd. (Para 13);
- b) 1992 (3) SCC 336, Workmen of Meenakshi Mills (Para 56 & 57);
- c) 2004 (102) FLR 83, Orient Paper Mills;
- d) 1995 (71) FLR 211, RSRTC (at page 226);
- e) 2005 (8) SCC 264, U.P. State Spinning Co.;
- f) 1998 (6) SCC 549, Scooter India Ltd.; and
- g) 2000 (10) SCC 597, Chairman Coal India.

Further contentions raised on behalf of the petitioner regarding that no reasons while passing the order of closure has been recorded. The answering respondent submits that as there were heavy losses and there was less production of cycles produced by the respondent Company besides acute labour problem and the Company has satisfied the ingredients laid down by the Apex Court for grant of permission. Reliance has been placed upon various judgments which are as under:

- i) 2002 (92) FLR 648, M/s Orissa Textile and Steels;
(Paras 10, 13, 15, 17, 18 and 20)
- ii) 1978 (4) SCC 225, Excel Wear (Para 34);
- iii) 1992 (3) SCC 336, Workmen of Meenakshi Mills; (Para 53, 57)
- iv) 2006 (111) FLR 201 (Pharmaceutical Chemical & Allied Employee's Union

Bangalore vs. State of Karnataka and another) ; and

v) 2007 (113) FLR 171, Lal Jhanda Rockman Cycle Industries Workers" Union, Ludhiana vs. State of Punjab and others.

I have heard Sri B.D. Mandhyan learned Senior Advocate assisted by Sri Satish Mandhyan appearing for petitioners, learned standing counsel and Sri Vijay Bahadur Singh learned Senior Advocate assisted by Sri Vijay Sinha appearing for the respondents and have perused the record.

From the record, it is clear that earlier on an application made by the respondents a permission was granted. Dissatisfied with the order, this Court has set aside the order only on the ground that no reason has been recorded regarding satisfaction of the provisions provided under section 6W of the Act. In the impugned order, in case petitioner is dissatisfied regarding submission of account books and the datas and losses the petitioner can avail the remedy provided under the Statute. This Court while exercising jurisdiction under Article 226 of the Constitution of India has to take into consideration the relevant law, whether that has been followed by the relevant authority in true spirit or not. From the finding recorded by the respondent no.1 cogent reasons regarding losses as well as the less manufacturing of cycles have been recorded. As regards the investment of Rs.20 crores for opening a Hyundai Show Room, this fact has been denied by the respondents that any amount from the present Organisation has been invested for the said purpose. The Apex Court in Orissa Textile and Steel Ltd.(Supra) in para 13 has held that order granting or refusing closure permission can be challenged by a review or by a reference made by the Tribunal. Similar view has been taken in 1995 (5) SCC page 75 (The Rajasthan State Road Transport Corporation and another vs Krishna Kant and others) the Apex Court has held that where the dispute involved is an industrial dispute the only remedy is to approach the forums created under the said Act. From the perusal of the relevant section, i.e. Section 6W (5) of the Act gives a power to the State Government either on its own motion or on the application made by the employer or any workmen to review an order for granting or refusing to grant permission under subsection (2) or power to refer the matter to the Tribunal for adjudication.

As the Statute itself provides for making an application for review or reference and if the petitioner is dissatisfied to this effect that the objection filed by the petitioner has not properly been considered and the accounts submitted by the company was not proper account which shows the losses, in that circumstances in my opinion it will be appropriate that the petitioner be relegated to exercise the remedy provided under the Statute by way of filing a review or to refer the matter to the Tribunal. It is well settled law that this Court while exercising powers under Article 226 of the Constitution of India, cannot reappraise the evidence. If the record submitted before the adjudicating authority has not properly been considered the proper remedy to the petitioner or aggrieved party will be to make an application for review. From the perusal of subsection (5) of

Section 6W of the Act it clearly appears that the power of review to the State Government is very wide like the powers provided under subsection (1) and (2) of Section 6W of the Act. Hon''ble the Apex Court has also held that in such situation the proper remedy to the person aggrieved is to file a review or by a reference made before the Tribunal.

In view of aforesaid facts and circumstances, after considering the submissions made on behalf of the parties I am of the opinion that this writ petition is not maintainable at this stage as the petitioner is having an alternative remedy by way of filing a review application or by a reference made before the Tribunal.

The writ petition is hereby dismissed. Interim order, if any, is hereby discharged. It is however, open to petitioner to file a review application before the competent authority for his redress.

No order as to costs.