

(2008) 03 MP CK 0083
In the Madhya Pradesh High Court

Hind Syntex Ltd.	Vs	APPELLANT
Dewas Mazdoor Sangh and Others		RESPONDENT

Date of Decision : 31-03-2008

Acts Referred:

Constitution of India, 1950 — Article 19, 226
Industrial Disputes Act, 1947 — Section 250

Citation : (2009) 120 FLR 659 : (2008) ILR (MP) 1410 : (2008) 3 LLJ 372 :
(2008) 2 MPLJ 614

Hon'ble Judges : Viney Mittal, J

Bench : Single Bench

Judgement

Viney Mittal, J.

This order shall dispose of two writ petitions being W.P. No. 1892/2005(s) and W.P. No. 2612/2005(s). As a matter of fact, both these writ petitions are cross petitions challenging the award dated June 20, 2005 passed by the Madhya Pradesh Industrial Tribunal, Indore (Hereinafter referred to as the Tribunal). Whereas W.P. No. 1892/2005(s) has been filed by the company Hind Syntex Limited, other Writ Petition W.P. No. 2612/2005(s) has been filed by the-workers-union-Dewas Mazdoor Sangh. For the sake of convenience, henceforth the management company Hind Syntex Ltd. would be referred as petitioner-company, whereas Dewas Mazdoor Sangh would be referred as i workers-union.

Facts

The petitioner-company is a company incorporated under the Companies Act and is having an industrial undertaking at village Birgod, Tehsil Tonkkhurd, District Dewas. The said industrial unit was engaged in manufacture of synthetic blended yarn. According to the petitioner-company, it had commenced the industrial operations in the said undertaking in the year 1983 and had made substantial profits up to the year 1997. However, thereafter there was a drop in the demand of its product. It has also been claimed that the government policies also became adverse and there was a shortage of electricity. Non-co-operation of the

workmen of the industrial undertaking has also been alleged. On account of the aforesaid reasons, it is claimed by the petitioner-company, that it started running in losses and for the period 1998 till 2003, the accumulated losses amounted to Rs. 17.56 crores.

In these circumstances, it is claimed by the petitioner-company, that left with no other alternative, it applied to the State Government through an application dated December 11, 2003, filed u/s 25-O of the Industrial Disputes Act, 1947 (hereinafter referred to as Act), seeking a permission to close down the industrial undertaking run by petitioner-company. As required under Sub-section (1) of Section 25-O of the Act, the intended date of closure was given as March 15, 2004 in the said application i.e. beyond a period of 90 days, from the date of filing the application. It appears that the aforesaid application was taken into consideration by the State Government. The pleas of the petitioner-1 company, as well as of the workers-union, were considered. An order dated "February 7, 2004 was passed, whereby the State Government opined that the matter be resolved through negotiations and discussions between the petitioner- company and workers-union, through the intervention of the Labour Commissioner. Vide the said order dated February 7, 2004, the State Government ordered that "keeping in view the aforesaid option, the application filed by the applicant seeking permission for closure is not being considered." A copy of the order dated February 7, 2004 passed by the State Government has been appended as Annexure P-1 with the present petition.

The petitioner-company maintains, that although u/s 25-O of the Act, on filing of the application seeking permission to close the industrial undertaking, the State Government had only a power, either to grant the aforesaid permission or refuse the same, and in absence of passing the said order, after expiry of 60 days of filing the application, such a permission to close the undertaking shall be deemed to have been granted, still with a view to seek a clarification, in order to avoid any further complications, the petitioner-company filed an application for review of the order dated February 7, 2004. In the said review application filed by the petitioner-company, the State Government referred the matter to the Industrial Tribunal for adjudication, vide a reference order dated June 15, 2004.

In the reference proceedings before the Tribunal, a claim petition was filed on behalf of the petitioner-company, which was contested by the workers-union, by filing a reply thereto. The parties also led their evidence and placed the requisite material on record in support of their respective pleas. Ultimately, an order dated June 20, 2005 was passed by the Tribunal, which was pronounced on July 6, 2005, whereby the Tribunal held that the request made by the petitioner-company, seeking a permission to close the undertaking, was absolutely justified. Consequently, it held it to be a fit case for granting permission for closure. As a consequence thereof, 823 workmen of the industrial undertaking were found entitled to compensation, for loss of employment, according to law. In addition, the Tribunal also ordered that the aforesaid workmen "will be given full wages up

to July 6, 2005 and retrenchment compensation as per Section 25-O(8) of the Act by the employer Hind Syntex Limited." A copy of the award dated June 20, 2005 (pronounced on July 6, 2005) by the Tribunal, has been appended as Annexure P-5 with the petition.

Whereas the petitioner-company has challenged the directions issued by the Tribunal to the effect that 823 regular workmen of the industrial undertaking would be entitled to full back wages upto July 6, 2005, and as such has approached this Court through W.P. No. 1892/2005(s), the workers-union has approached this Court challenging the permission for closure granted in favour of the petitioner-company, and has approached this.. Court through W.P. No. 2618/2005(s).

I have heard Shri Brian D'Silva, learned senior Counsel for the petitioner-company, and Shri S.H. Moyal, learned Counsel for the workers-union, at some length and with their assistance, have also gone through the record of the case.

Shri Brian D'Silva learned senior counsel for the petitioner-company, at the 31 outset, has stated that the petitioner-company is not raising any contest against the grant of retrenchment compensation to 823 regular workmen of the industrial undertaking as per the requirement of Section 25-O of the Act, nor 3; is raising any challenge to the entitlement of the aforesaid workmen to get full wages upto the date of closure i.e. March 15, 2004, which had been indicated by the petitioner-company in its application filed u/s 25-O of the Act, 41 but is merely aggrieved against the additional directions issued by the Tribunal, whereby the aforesaid workmen of the industrial undertaking of the petitioner-company have been held entitled to full wages upto July 6, 4 2005. The learned senior counsel has argued that under the provisions of Section 25-O of the Act, an intended date of closure was required to be indicated by an employer, who sought a permission to close down the undertaking of an 51 industrial establishment. The said date had to be beyond a minimum period of 90 days from the date of filing of the application and the State Government was obliged in law to pass appropriate orders thereupon and communicate to the applicant-management, within a period of 60 days from the date of filing of the said application, either granting the said permission or refusing the said permission, failing which, after expiry of 60 days, the aforesaid permission shall be deemed to have been granted. The learned senior counsel maintains that in the present case the application in question was filed by the petitioner-company on December 11, 2003, in which the intended date of closure was indicated as March 15, 2004. Although an order on the said application was passed on February 7, 2004 (Annexure P-I), but the said order was neither an order refusing to grant permission nor permission had been granted. According to Shri D' Silva, the legal consequence of the aforesaid action of the State Government was that the permission to close the industrial undertaking would be deemed to have been granted to the petitioner-company, after expiry of 60 days from the filing of the said application and the closure would become effective from March

15, 2004 (the date as notified by the petitioner-company). It has further been contended by the learned senior counsel that an application for review was filed by the petitioner-company, only by way of abundant caution, and when the State Government had thought it appropriate to refer the controversy to the Tribunal, the Tribunal was also bound in law to answer the said reference within a period of 30 days and from the receipt thereof and a decision was required to be taken before the intended date of closure, and intimated to the A management. In any case, even if the Tribunal chose to take a decision after expiry of 30 days, the permission granted by the Tribunal would become effective from the date of closure, as originally notified by the management in the application u/s 25-O of the Act. Shri D" Silva elaborates that the aforesaid date of closure, as intended by the management, could neither have been altered by the State Government nor by the Tribunal, and therefore, while pronouncing its award on July 6, 2005, the Tribunal could not have directed the management (petitioner-company), to pay full wages to the workmen of the industrial undertaking up to the date of pronouncement of the award. According to the learned senior counsel, the aforesaid directions by the Tribunal are not only erroneous and contrary to law, but in fact beyond the jurisdiction of the Tribunal, and therefore, are not sustainable.

The aforesaid contentions raised on behalf of the petitioner-company I have been refuted by Shri S.H. Moyal, learned Counsel appearing for the workers-union. Additionally, the learned Counsel for the workers-union has also challenged the permission for closure of the undertaking, granted by the Tribunal to the petitioner-company. Shri Moyal has argued that there was absolutely no justification for the Tribunal to have granted the permission to close the undertaking, inasmuch as, the petitioner-company had failed to bring its case within the parameters, as required under the provisions of Section 25-O of the Act. According to the learned Counsel, the losses suffered by the petitioner-company were, in fact, on account of its own mis-management and therefore, the petitioner-company could not be permitted to take advantage of its own defaults/mis-management, so as to render a large number of its workmen as unemployed. Learned Counsel for the workers-union has also justified the directions issued by the Tribunal by claiming that unless and until a permission was legally granted to the management to close an industrial undertaking, the closure thereof by the management itself was illegal, and therefore, since the permission had been granted to the petitioner-company by the Tribunal on July 6, 2005, therefore, the Tribunal had rightly directed the payment of the full wages to the regular 823 workmen of the undertaking upto that date. Shri Moyal has in fact maintained that since the very permission granted by the Tribunal for closure of the undertaking of the petitioner-company is not sustainable, therefore, the workmen of the industrial undertaking of the petitioner-company are not only entitled to full wages upto July 6, 2005, but for the entire period thereafter also. The learned Counsel has also argued that very application filed by the petitioner-company, seeking permission to close the undertaking, was not

in accordance with law and therefore, no permission to close the undertaking could be granted on such a defective application.

I have duly considered the rival contentions raised by the learned Counsel for the parties. I have also perused the various findings recorded by the Tribunal in its award Annexure P-5.

At this stage, before proceedings any further, it would be appropriate to notice that the relevant findings recorded by the Tribunal in its impugned award as follows:

16. Now the matter has been referred to this Tribunal for "adjudication" The Tribunal has also to keep in view the guidelines given by the Parliament in Section 25-O of the Act. The Tribunal has to test the "genuineness and adequacy of the reasons stated by the employer and keep in view the interest of the general public and all other relevant factors." Both sides were directed by the Tribunal to submit the statement of claims, produce the relevant documents and file affidavits. Opportunity has also been given to both the parties to cross-examine the deponents.

The information furnished in the application and the documents annexed to the application u/s 25-O(1) of the Act have been considered by this Tribunal. The balance-sheets, profit and loss accounts and audit reports for the last three years have been examined. The figures of losses from the years 1998-99 to 2003-04, as given above, have been taken into account. There was total accumulated loss of Rs. 17.56 crores when the application was submitted and it became Rs. 19.70 crores when the application for review was made. The reasons for the closure have been supported by affidavit of the Executive Director of the company who has been cross-examined at length. There is no denial that the company has been suffering losses continuously for the last six years. It is found that the productivity of the machines is low in spite of the installation of some new machines at a cost of Rs. 6.19 crores and the captive power plant at a cost of Rs. 7 crores. The cess or duty imposed on captive power plant is very huge and it has cast heavy financial burden on the company. No dividend has been paid to the share-holders for the last five years. The workmen are not prepared for reduction in wages or for increase in the workload. There are no funds to buy raw material and the sale of the yarn is poor due to reduced demand. The production has come to stand-still from October 10, 2003.

There are 823 regular workmen who are going to be adversely affected by the proposed closure. The interest of the workmen looms large heavily while considering the application for closure or retrenchment. They would be thrown out of employment. They would get retrenchment compensation according to law to tide over the financial difficulty for sometime. That would not last long. The possibility of getting alternative employment is not very bright. The workmen have highlighted these aspects in their replies and affidavits. Their plea is that they are not responsible for the losses which the company is suffering. They say

that there is mismanagement. But no specific details have been given to show what kind of mismanagement has been there.

Shri S.K. Mishra, Executive Director of the company has been cross-examined at length. He has stated in cross-examination that there were losses when new plant and machinery and captive power plant were installed and all this was done in the hope that the conditions would improve and the unit would start giving profits. According to him, the Banks stopped giving credit or advances for buying raw material in the year 2003 and, therefore, the production has stopped. He has stated in cross-examination that the company has another unit in Pilu Khedi which has been established in the year 1994 for spinning work. He was asked that the company has purchased the shares of two other companies as mentioned in the balance sheet. He could not deny it. On reference to the balance sheets, it is found that an amount of Rs. 2, 40, 55,000/- has been invested in the shares of the Dewas Soya Limited and Hind Filters Limited and in the mutual fund of Morgan Stanley Mutual Fund in the year ending March 31, 2001. It is mentioned in the balance-sheet that the "shares have been pledged against inter corporate deposit." It is contended on behalf of the workmen that the investments in the shares and mutual funds of other companies should not have been made and this money could be utilized for running the undertaking. The argument on behalf of the workmen on this score is plausible to some extent. It has been submitted by the counsel for the company during the course of arguments that some money was invested in the shares of other companies as Hind Syntex Limited was incurring heavy losses. On over all consideration of all the material it cannot be said that these investments were made with any mala fide intention. The company was still having accumulated loss of about Rs. 15 crores (17.56-2.50). The other factors discussed above are definite indicators that there is no chance of revival and turning the undertaking of the company at Dewas into a viable unit. It is difficult to run it into profits and pay the regular wages of the employees. There is no working capital and the Banks are not giving credit as the undertaking is bleeding and suffering continuous losses. The demand in the market for synthetic yarn has declined. The reasons given by the employer for the closure are genuine and adequate. On balancing the interest of both the sides, this Tribunal is of the opinion that the permission for closure should be granted so that out of the assets which are available, retrenchment compensation may be paid to the workmen. If the permission for closure is refused or delayed the assets of the company may further depreciate and deplete and it may be that there may be difficulty in the payment of compensation according to law which is going to be a huge amount. In that situation, the workmen would not get that succour which can be provided to them at the moment.

It has further been held by the Tribunal as follows:

The continuous losses has crippling effect on the undertaking. The situation is unfortunate. Even if the workmen are not directly to be blamed for such a state

of affair how long a loss making undertaking can be directed to run its business in the interest of the labour. After careful consideration of all the aspects in favour of the management and also in favour of the workmen this Tribunal is of the opinion that this is a fit case for granting permission for closure and 823 regular workmen would be entitled to compensation for loss of employment, according to law. They will be given full wages upto July 6, 2005 and retrenchment compensation as per Section 25-O(8) of the Act by the employer Hind Syntex Limited.

Since both the learned Counsel for the parties have repeatedly referred to the provisions of Section 25-O of the Act, during the course of their arguments, it would also be advantageous to extract the aforesaid provisions for ready reference. It may be pertinent to point out that through Act No. 32 of 1983, the State of Madhya Pradesh had substituted the aforesaid provisions of the Central Act. In the State amendment, a new Sub-section (2) was inserted, whereas Sub-sections (2) to (8) of the Central enactment were renumbered as Sub-sections (3) to (9). Except for the aforesaid insertion of Sub-section (2), there is no difference in the language of Section 25-O of the Central enactment and as substituted by the State amendment. However, it is very fairly conceded by the learned Counsel for the parties that the provisions of Sub-section (2) of the State amended provisions are not at all relevant for the controversy in question. In these circumstances, in order to avoid any unnecessary confusion, the provisions of Section 25-O of the Central Act are being reproduced.

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 applied 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 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) Where 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) 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 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 days' average pay for every completed year of continuous service or any part thereof in excess of six months.

The first question which needs to be determined by this Court is as to whether there was any justification for the petitioner-company to have, applied for permission to close its industrial undertaking and as to whether the Tribunal was justified in accepting the said request?

The detailed findings of fact recorded by the Tribunal have already been reproduced above. The Tribunal has examined the entire controversy between the parties, rightly, by attempting to find out as to whether the application filed by the employer, seeking the permission was based upon "genuineness and adequacy of the reasons" and also by keeping in view the interest of the general

public and other < relevant factors. In the aforesaid back drop, the Tribunal has examined that the figures of losses from the year 1998-99 to 2003-04 had accumulated to Rs. 17.56 crores, when the application was filed by the petitioner company before the State Government and, in fact, had further risen to Rs. 19.70 crores, when the application for review was made. The factum of the petitioner company suffering the aforesaid huge losses has not even been denied by the workers-union. The Tribunal has also noticed that the productivity of the machines of the undertaking is low, in spite of the installation of some new machines at a cost of Rs. 6.19 crores, and the setting up of the captive

5 power plant at the cost of Rs. 7 crores. The Tribunal has also found that no dividend had been paid to the shareholders and even the workmen were not prepared for reduction in wages or for increase in, the work load. It has also been found by the Tribunal that an amount of Rs. 2,40,55,000/- had been invested by the petitioner-company in shares of Dewas Soya Ltd. and Hind Filters Ltd. and in some mutual funds in the year ending March 31,2001. After deducting an amount of Rs. 2.50 crores, the accumulated loss of the petitioner-company, on the date of application, has been determined as Rs. 15 crores and in these circumstances, the Tribunal has opined that there was neither any working capital nor any credits available from the banks and therefore, there was no chance of revival and turning the undertaking into a viable unity

In my considered view, the aforesaid facts determined by the Tribunal wholly justify the request made by the petitioner-company for closure of its undertaking, more-so, when the Tribunal itself has found that there was no chance of revival and making the undertaking viable.

It is well settled by now that under the provisions of Article 19(1)(g) of the Constitution of India, when there is a fundamental right to carry on business, the said right inherently contains a right to close down the business also, subject to reasonable controls. The provisions of Section 25-O of the Act, provide reasonable restrictions against the uncalled for and unreasonable closure of an undertaking by the employer. The detailed procedure is laid therein. The State Government is required to consider the application filed by the employer, within the parameters provided under the said provision. The aforesaid parameters are also to be required to be kept in view when the matter is being adjudicated by the Tribunal, or even by this Court, while exercising the powers under Article 226 of the Constitution of India. However, when the findings of fact recorded by the Tribunal are not shown to be erroneous or contrary to the record or even wanting in parameters, as required u/s 25-O of the Act, then, this Court, while exercising the powers of judicial review, cannot act as a Court of appeal and the findings of fact cannot be reopened, unless and until it is shown that the aforesaid findings are perverse or based upon no evidence.

In the present case, nothing has been" pointed out by the learned Counsel for the workers-union that any of the aforesaid grounds exist, on account of which the order of the Tribunal, Annexure P-5, suffers from some, infirmity,

necessitating an interference from" this Court. Consequently, it has to be held that the order Annexure P-5, whereby the permission to close the industrial undertaking has been granted to the petitioner-company, is wholly justified and the grievance made by the" workers-union, while filing W.P. No. 2612/2005(s), is wholly without any basis.

This brings me to the challenge made by the petitioner-company with regard to the-directions to it to pay full wages of the regular 823 workmen of the industrial undertaking up to July 6, 2005. It is not in dispute that an application, under Sub-section (1) of Section 25-O of the Act was filed by the petitioner-company on December 11, 2003. As required in law, the intended date of closure had been indicated as March 15, 2004. The said date was clearly, beyond a period of 90 days from the date of filing of the application. Although an order dated February 7, 2004 (Annexure P-I) was passed by the State Government, but it is clear from the perusal thereof that the State; Government had merely opined that the matter be resolved between the management and the workmen by negotiations and talks, through the intervention of the Labour Commissioner, and on that basis, it was ordered that the application filed by the petitioner-company seeking permission to close the undertaking "is not being considered." A bare reading of Section 25-O of the Act leaves no manner of doubt that such a course was not even open to the State Government. It could have either granted the permission, sought by the petitioner-company, or refuse the same. While passing the order, Annexure P-I, the State Government did not choose to do either. Consequently, the petitioner-company has claimed that a permission would be deemed to have been granted to it, in terms of Sub-section (3) of Section 25-O of the Act. Still an application was filed by it for review, under the provisions of Sub-section (5), with a view to avoid any difficulty. On the aforesaid application, the matter was referred by the State Government to the Tribunal for adjudication.

Under Sub-section (5), the Tribunal is also required to pass an award within a period of 30 days from the date of such reference. The intention of the Legislature to settle the entire controversy within a total period of 90 days of filing of the application is apparent. The Government is required to take a decision within a period of 60 days. A further period of 30 days has been provided to the Tribunal, in case, a reference is made. The time limit provided in Sub-section (3) and Sub-section (5) clearly reflect that the State Government, as well as the Tribunal, are required to meet the deadline of intended date of closure, which had been indicated by the employer, while filing the application under Sub-section (1). In these circumstances it has to be inferred that whenever a decision is taken by the State Government or by the Tribunal, in case of a reference, the intended date of closure, specified by the employer in the application filed under Sub-section (1), cannot be changed. Whereas, after expiry of 60 days, in case of default by the Government, the permission shall be deemed to have been granted and the intended date would remain unchanged, by necessary inference, it has to be taken, that in case, the Tribunal also fails to finalize its adjudication within a period of 30 days, then any permission granted

by the Tribunal thereafter shall also operate from the intended date of closure, specified by the employer, and the Tribunal would have no jurisdiction to fix any other future date. If it were to be presumed that the Tribunal could fix any other date for closure of the undertaking, then it would not only be against the spirit of Section 25-O of the Act, but would also lead to an anomalous situation, inasmuch as, the employer, who had] already suffered huge losses and had applied for permission to close on account of the aforesaid fact, would be made further liable to carry the extra burden for no fault of his.

The aforesaid inference is also justified if provisions of Sub-section (6) are taken into consideration. Sub-section (6) provides for a situation where no application for permission under Sub-section (1) is filed within, the period specified therein or where the" permission for closure is 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 t the time being in force as if the undertaking had" not been closed down. Thus, the aforesaid provision postulates a situation where an undertaking is closed by an employer, pending an application seeking permission to close, and provides that when the permission for closure". as been refused, the said closure of the undertaking shall be deemed to be illegal and in such a situation, the workmen shall be entitled to all benefits, as if the undertaking had not been closed down. Therefore, it must necessarily; follow that in a reverse situation, when the permission sought under Sub-section (1) is granted, the closure of the undertaking by the employer shall be deemed to be legal, from the date of closure. In my considered view, the very, language employee by Sub-section (6) is a complete answer to the objection raised by the learned Counsel for the workers-union and therefore, it has to be held that the Tribunal, while directing the payment of full wages upto July 6,2005, or in other words by fixing the date" of closure up to the date of pronouncement of the award, has clearly acted beyond its jurisdiction. As a matter of fact, while issuing the aforesaid directions, the learned Tribunal has ordered the awarding of certain amounts, to which the workmen are not entitled in law, thus granting them the benefits beyond the provisions of Sub-section (8).

At this stage, certain observations made by the Apex Court in the case of Management of Gordon Woodroffe Agencies Pvt. Ltd. Vs. Presiding Officer, Principal Labour Court and Others, may be extracted below at p. 542ofLLJ:

12. Having heard the learned Counsel for the parties and perused the records, we are satisfied that so far as the legality and genuineness of the closure is concerned, the Labour Court after considering the evidence brought on record has given a conclusive finding in favour of the appellant which finding has been confirmed by the learned single Judge as well as the Division Bench of the High Court and the same has become final. Therefore, we will have to consider whether consequent to such finding of the Labour Court, it can-direct payment of further compensation over and above what is contemplated under the Act. The answer to this question is found in the two judgments relied on by learned

Counsel for the appellant before us. In the case of Om Oil and Oilseeds Exchange Ltd., Delhi Vs. Their Workmen, this Court held:

...If the management was entitled to retrench 30 workmen and did so after paying wages for the period of notice and retrenchment compensation, we fail to appreciate the grounds on which an order for payment of 50 per cent of the wages in addition to retrenchment compensation may be made. Retrenchment compensation is paid as solatium for termination of service resulting in unemployment, and if that compensation be paid there can be no ground for awarding compensation in addition to statutory retrenchment compensation. If the Industrial Tribunal comes to the conclusion that an order of retrenchment was not properly made, and the Tribunal directs reinstatement an order for payment of remuneration for the period during which the employee remained unemployed, or a part thereof may appropriately be made. That is because the employee who had been retrenched for no fault of his had been improperly kept out of employment, and was prevented from earning his wages. But where retrenchment has been properly made and that order has not been set aside, we are not aware of any principle which may justify an order directing payment of compensation to employees properly retrenched in addition to the retrenchment compensation statutorily payable.

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 Vs. The Corporation of City of Mangalore and Others, held:

(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 principle of social justice cannot be invoked since the legislature would have already taken note of the same while fixing the compensation payable.

Since I have already held that the date of closure of the undertaking, as specified by the petitioner-company being March 15, 2004, could not have been altered or

modified, either by the State Government or by the Tribunal, therefore, it must necessary follow that the workmen of the industrial undertaking were not i entitled to any wages w.e.f. the aforesaid date and in case of permission to closure having been granted, the said permission would relate back to the date notified by the management. In such a situation, the workmen were only ; entitled to receive compensation as per the provisions of Sub-section (8) and no further amount. Granting of any further amount being not permissible under the provisions of Section 25-O of the Act, the same could not have been awarded. An identical view has been taken by this Court in the case of General Manager Stresscrete Pvt. Ltd. v. State of M.P. and Anr. W.P. No. 9533/2006(s) on January 16, 2007 (Principal Bench).

Needless to say that Section 25-O of the Act is a complete code in itself and provides for a detailed procedure for dealing with the application filed by the management seeking permission to close the undertaking. The rights and duties of the management and its workmen flow from the said provisions. Neither any rights could be denied to either of them nor anything extra could be made available. In my considered view, the directions issued by the Tribunal, while passing the order Annexure P-5, for payment of full wages up to July 6, 2005, cannot be legally sustained and as such are hereby quashed

Before parting with this order, it may be relevant to notice certain developments, which had taken place during the course of hearing in the present petitions. When the arguments in these writ petitions were heard in part on September 24, 2007, an effort was made to resolve the controversy between the parties, by way of an amicable settlement. The following order was passed:

Shri Brian D" Silva, senior advocate with Shri Vijay Assudani, and Shri Sajid Akhtar, advocates for the petitioner along with Shri S.L. Mundra, Executive Director of the petitioner-company in person. Shri S.H. Moyal, advocate for respondent No. 1 union with Shri Ravindra Singh Thakur, Secretary, and Shri Rajendra Yadav, Treasurer for Dewas Mazdoor Sangh-respondent No. 1. Arguments heard in part.

Shri S.L. Mundra, Executive Director of the petitioner-company, who is present in Court has undertaken that the entire wages upto December 31, 2003 of the workmen, who were employed with the petitioner-company shall be paid on November 6, 2007, provided that the aforesaid workmen make themselves available in the factory office of the petitioner-company on the aforesaid date at 11 A.M.

Shri Mundra further states that the petitioner-company shall also take up the; matter with the competent authorities and" the Monitoring cell to find a way to amicably settle the matter. Shri Mundra also states that the remaining wages upto March 15, 2004, which are not in dispute in any manner, shall, be paid to the workmen thereafter, as per" directions which may be issued by this Court.

Shri S.H. Moyal, learned Counsel for respondent No. 1 accepts the offer made on

behalf of the petitioner-company and Shri" Ravindra Singh Thakur, Secretary of respondent No. 1-Dewas Mazdoor Sangh, who is present in Court undertakes to inform the concerned workmen with regard to the present order.

To come up for remaining arguments on November 20,2007. The matter be treated as part heard.

On the adjourned date when the matter was taken up further hearing on November 20, 2007, the following order was passed:

Shri Brian D" Silva, Senior Advocate with Shri Vijay Assudani, Advocate, for the petitioner.

Shri S.H. Moyal, Advocate, for respondent No. 1. Shri Brian D" Silva, learned senior counsel for the petitioner informs the Court that an amount of Rs. 51,99,570/- has been disbursed by the petitioner-company to the 630 workmen who had come present on November 6, 2007 to receive the payment. Learned senior counsel further states that the aforesaid amount had been paid keeping in view the directions issued by this Court on September 24, 2007 and the petitioner-company is further ready to comply with any further directions which this Court may issue with regard to the payment to the workmen. However, Shri S.H Moyal, learned Counsel for respondent No. 1-union states that the workmen have not been paid their due wages up to December 31, 2003. Shri Moyal also states that the respondent-union would like to argue the matter on merits of the controversy and it may not be possible to settle the dispute amicably.

List on January 29, 2008.

The matter be not treated as part heard.

It is in the light of the aforesaid developments that the arguments have been heard by the Court on merits of the controversy.

As a result of the aforesaid discussion, writ petition No. 1892/2005(s) filed by the petitioner- company is allowed to the extent that the directions issued by the Tribunal, to pay the full wages to the workmen of the industrial undertaking up to July 6, 2005, shall stand quashed. However, the petitioner-company would be required to pay the aforesaid workmen, compensation in terms of Section 25-O(8) of the Act, while deducting the payments already made to the workmen in terms of the orders dated September 24, 2007 passed by this Court. As a necessary corollary, writ petition No. 2612/2005(s) filed by the workers-union is dismissed.

There shall be no order as to costs.