

**(2009) 11 BOM CK 0084**

**In the Bombay High Court**

**Case No :** Notice Of Motion No. 168 of 2009 and Appeal No. 11 of 2009 in Writ Petition No. 1934 of 2007

IVP Limited

APPELLANT

Vs

IVP Limited Workers Union and The Industrial Tribunal

RESPONDENT

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**Date of Decision :** 12-11-2009

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 10A, 17B, 2, 25O(1), 25O(5)

**Citation :** (2010) 3 BomCR 203 : (2010) 1 BomCR 201 : (2009) 111 BOMLR 4542

**Hon'ble Judges :** Swatanter Kumar, C.J;A.M. Khanwilkar, J

**Bench :** Division Bench

**Advocate :** C.U. Singh and N.R. Patankar, for the Appellant; Sanjay Singhvi and Bennet D"Costa, for the Respondent

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**Judgement**

Swatanter Kumar, J.—The present appeal is preferred against the judgment and order passed by the learned Single Judge declining to interfere in the award dated 19th July, 2007 passed by the Industrial Tribunal, Mumbai. The appellant is a Public Limited Company incorporated under the provisions of the Companies Act, 1956 and is having various factories engaged in manufacture of various products like Vanaspati including bakery shortening and refining of edible oils and processing of industrial chemicals etc. Their factory at Reay Road was in operation till it was closed on 24th August, 2006. The appellant had filed an application on 19th May, 2006 (which was subsequently revised on 26th May, 2006) came to be dated 26th May, 2006 u/s 25O(1) of the Industrial Disputes Act, 1947 (hereinafter to be referred to as the Act) seeking permission for closure of its undertaking at Ghorapdeo, Mumbai on various grounds including economical unavailability due to high cost, high wages and salary, huge losses, imposition of high import duty, increase in imposition of cess, Municipal taxes, octroi duty, noncooperation of employees and import of Vanaspati being allowed at the lower rates. This application is related to the period of 20032004 and 20042005 and the Commissioner of Labour, the specified authority under the Act

after taking into consideration all grounds, by a reasoned order dated 21st July, 2006 granted permission for closure of its Reay Road undertaking at Ghorapdeo, Mumbai. The order passed by the authority was communicated to the workmen by its notice dated 21st July, 2006. The workmen filed an application u/s 250(5) of the Act on 25th July, 2006. Reply in objection of the same was filed by the appellant. The Commissioner of Labour vide order dated 17th August, 2006 made a reference of the application u/s 250(1) to the Industrial Tribunal, Mumbai viz. respondent No. 3 to the petition. The Industrial Court made an award dated 19th July, 2007 rejecting the application seeking permission to close down its said undertaking and directed the appellant to pay full wages to all the concerned workmen treating their service as continued till the month of publication of award within two months from the date of publication of the award and to go on paying their wages until they retire.

2. Aggrieved from the said award dated 19th July, 2007, the appellant challenged the legality and correctness thereof by filing the writ petition No. 1934 of 2007 before this Court which also came to be dismissed vide order dated 28th November, 2008, giving rise to the present appeal.

3. The challenge to the order passed by the learned Single Judge inter alia but mainly is on the ground that the order of the Tribunal and the learned Single Judge suffers from manifest error of law as both have misread and misconstrued the evidence and documents on record. No power was vested in the Tribunal to examine the application de novo when the application was decided by quasi judicial authority. The order of reference is construed by referring the application and not order which is not the correct position of law. The reference itself was improper.

4. This appeal was admitted by the court vide its order dated 17th December, 2008 where after an application has been filed viz. Notice of Motion No. 168 of 2009 praying for stay of the operation of the award and the judgment of the learned Single Judge dated 28th November, 2008. This application was heard.

5. We will have to examine with reference to the facts of the present case, whether the judgment under Appeal and the Award of the Industrial Court should or should not be stayed, if stayed conditionally or otherwise and what relief the no Applicant will be entitled to, if any, in regard to the claim raised by them on the basis of Section 17B of the Act. According to the Appellant, in a case covered under the provisions of Section 250 of the Act, the provisions of Section 17B would not be attracted inasmuch as it is not an Award as contemplated under other provisions of the Industrial Disputes Act as there is no termination of the services of the workmen. It is a case of declining permission for closure and is not at parity with the cases where termination is set aside and services of the workmen is reinstated with back wages. It is also the contention that the Award is no Award in the eyes of law and thus is liable to be stayed inasmuch as the Industrial Court was to consider the entire matter and not redecide the application for closure. It is a Reference of the matter and not alone of the

original application. While considering the question of closure, the Industrial Court is expected to go into various factors and the entire matter as contemplated u/s 250(1) of the Act. On the contrary, on behalf of the workmen, it is contended that the provisions of Section 17B of the Act are applicable to an Award made u/s 250(5) as it is an appropriate determination of the questions raised in a Reference made by the Government to the Industrial Court. It being an adjudication, it satisfies all the ingredients of an Award as contemplated u/s 2(b) of the Act. Besides this, the provisions of Section 250(6), which reads as under:

250. Application to be made for obtaining permission to close down any undertaking ninety days before closure.

(1) ...

(2) ...

(3) ...

(4) ...

(5) ...

(6) Any order refusing to grant permission for closure made by the appropriate Government under Sub-section (2) shall remain in force for a period of one year from the date of such order, unless it is set aside earlier by the Industrial Tribunal in appeal.

It provides for a specific relief in regard to entitlement to all benefits in accordance with law as if the undertaking had not been closed wherever the permission is declined. On the correct interpretation of the provisions of Section 250 in its entirety and with particular reference to the provisions of Section 250(6), the Award is an Award of reinstatement. In any case, in the present case, a specific direction has been issued in the Award for reinstatement and payment of all wages and manifest dues to the workmen.

6. The questions of law which have been raised before us certainly require detailed examination and parties should have the liberty to address the arguments on those issues. Presently, we are concerned with the two aforesaid interim prayers made by the parties to the Appeal. The learned Single Judge by a detailed judgment upheld the findings of the Tribunal that the application has to be adjudicated by the Tribunal and after discussing other issues had dismissed the Writ Petition itself on merits. The learned Single Judge has also commented upon the intentions of the Company for seeking closure and expressed that the Court was not satisfied. The Award dated 19th July 2007 thus granted complete relief to the workmen and required the Company to pay the dues of the workmen.

7. The Full Bench judgment of this Court in the case of Britannia Industries Ltd. v. Maharashtra General Kamgar Union and Anr. 2009 (4) Mh. L.J. 948, stated certain principles of law in relation to the determination and adjudication of a

Reference made to the Tribunal u/s 25O(5) of the Act. It was held that the expression "matter" would include an application or proceeding before the appropriate Government and an order which would lead to invocation of a remedy u/s 25O(5). Thus, it is not only the application which is referred but it is the entire matter, Reference of which is made to the Government. We are bound by the legal dictum stated by the Full Bench. It will be useful to refer to the answer provided by the Full Bench to Question Nos. 2 and 3:

Answer to Question Nos. 2 and 3.

71. The phrase `refer the matter' occurring in Section 25O(5) does not empower the appropriate Government to make a Reference of the order passed by it for examining the legality, validity or correctness of the order as such. The phrase `matter' would cover application, proceedings recorded after granting reasonable opportunity to the parties of being heard and the order passed by the appropriate Government as well. The order would form part of relevant record to be looked into by the Industrial Tribunal. However, the Industrial Tribunal would have to come to its own conclusions while satisfying itself as to the existence of the parameters specified by the Legislature in Section 25O(2).

8. The Industrial Court is expected to make an Award while adjudicating a Reference made to the Tribunal u/s 25O of the Act. Award has been defined u/s 2(b) to mean an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made u/s 10A. Thus, the definition is wide enough to include any adjudication made under the provisions of the Act which would be a determination of the dispute that might have arisen between the parties. The language of the section is not restricted as the legislature has not limited the application of the provision to only an "industrial dispute" but has widened the scope by using the expression "of any question relating thereto by any Labour Court". This clearly demonstrates that the definition of award is incapable of being construed strictly as such narrow interpretation may result in frustrating the very object of the Industrial Disputes Act which is aimed at deciding all disputes between the workmen, the Management and other specified persons expeditiously.

9. A Full Bench of Delhi High Court in Delhi Transport Corporation v. Sh. Jagdish Chander 2005 II LLJ 390, while dealing with a case where the Industrial Tribunal rejected the application u/s 33(2)(b) filed by the Corporation and directed reinstatement of the workman, decided the question of applicability of the provisions of Section 17B of the Act to such cases. The Full Bench held as under:

27. ...The expression `award' u/s 2(b) is incapable of being given a restricted or a limited meaning. The expression "of any question relating thereto" indicates the wide meaning i.e. intended to be given by the framers of law to the expression. Of course linguistic distinction between the word `award' and `an order' cannot be wiped out by interpretative process. In substance, it is not

necessary for the Court to substitute the word award by an order as used in Section 17B of the Act. The provisions of Section must be read together and every word of the Section should be given a meaning so as to give it, its true effect, and achieve the purpose and object of the Statute. We have already discussed above that the award by itself cannot be read in isolation and given a meaning so as to render the expression direct reinstatement ineffective or inconsequential.

28. The language of Section 17B of the Act cannot be stated to be unambiguous but the rule of liberal construction would have to be applied to the interpretation of this Rule so as to keep in line with the settled canons of interpretative jurisprudence and to achieve the social goal underlining this provision. In order to determine the scheme and object of the legislation, it is necessary to read the Act as a whole and not attempt to interpret a word or a line of the provision, in isolation. The term `award" should be read in complete conjunction with the direction for reinstatement and an order thus passed u/s 33(2)(b) of the Act, would by necessary implication, incorporate a direction as in law the services of the workman were never terminated. Furthermore, an interpretation which would help in avoiding multiplicity of litigation should be more acceptable to the one which would generate more litigations. Why the workman should be compelled to keep on litigating even after his order of termination/dismissal has been found to be ineffective and inoperative? Therefore, it would meet the legislative object as well as be in the interest of administration of justice that an order which is passed upon complete determination and after complete proceedings be treated and construed as a part of expression `award directing reinstatement" having all attributes that of an award.

10. The Full Bench answered the question referred to it as under:

40. Thus, our answer to the following formulated question "as to whether the provisions of Section 17B of the Industrial Disputes Act will be applicable in a case where the management in the writ petition has challenged the order of the Labour Court/Industrial Tribunal whereby its application u/s 33(2)(b) of the Act seeking approval of the order of dismissal was dismissed by such Court or Tribunal"" is as under:

The provisions of Section 17B of the Industrial Disputes Act will be applicable in a case where the management in the writ petition has challenged the order of the Labour Court/Industrial Tribunal whereby its application u/s 33(2)(b) of the Act seeking approval of the order of dismissal was dismissed by such court or tribunal, subject to the conditions stated in Section 17B itself.

11. In the light of the above decisions, we have no hesitation in concluding prima facie that the order passed by an Industrial Court u/s 250(5) is capable of being construed as an Award within the scope of Section 17B of the Act. Furthermore, there could be no doubt that such an order has the effect of an award as it specifically directs reinstatement of the workmen. In the present case, we have

already noticed that the Award directs reinstatement of the workmen and gives full back wages. Various intricacies of the causes for no grant of prayer of closure as claimed by the Management as well as the infirmities pointed out in the impugned judgments have to be examined in greater detail at the final hearing of the appeal. At this stage, we are expected to take only prima facie view and nothing more.

12. Another aspect of the case has certainly a very deep impact on the matter in issue before us. Provision of Section 250(6) which mandates that wherever a permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of the 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. This provision would further make the workmen in present entitled for their prayer u/s 17B of the Act. Where the statute itself grants benefit to the workmen, it will be difficult to say that on any ground whatsoever, the provisions of Section 17B of the Act would not be attracted. The application where it is refused by the Government in that event it will be entirely controlled by Section 250(6) and where an award has been made and during the pendency of the proceedings wherever the court grants stay of award granting reinstatement to the workmen, they would be entitled to last drawn wages. This claim of the workmen, in fact, would be further backed by the statutory command contained in the provisions of Section 250(6). We may reiterate that it is a prima facie view expressed by us and the examination of the contentions raised in greater detail would be required at the final hearing of the appeal.

13. The Government had granted permission for closure of the undertaking vide order dated 21st July, 2006 which was overturned and such permission was declined by the Tribunal vide order dated 19th July, 2007. Thus, it would be from the date of the award that applicants workmen would be entitled to the benefit in terms of Section 250(6). The writ was dismissed by order dated 28th November, 2008. The present appeal was admitted vide order dated 17th December, 2008. Thus, the workmen would be entitled to the benefit of the provisions of Section 17B from the date of admission of this appeal as stay can be granted by the court only subject to such condition. Keeping in view the facts and circumstances of the case and the fact that the appeal has merit, we direct that operation of the award passed by the Industrial Court dated 19th July, 2007 shall remain stayed during the pendency of the present appeal subject to the condition that the appellant shall pay to the workmen the last drawn wages in accordance with the provisions to Section 17B of the Act during the pendency of the appeal and also deposit in court 50% of the wages due to the workmen from the date of refusal of permission for closure till the date of admission of the appeal.

14. Application is disposed of with the above directions.