
(1991) 12 CAL CK 0011
In the Calcutta High Court
Case No : Civil Order No. 5489 (W) of 1990

Jay Engineering Works Ltd. and Another	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision : 20-12-1991

Acts Referred:

Constitution of India, 1950 — Article 19(6)
Industrial Disputes Act, 1947 — Section 25O

Citation : 96 CWN 774 : (1992) 65 FLR 302 : (1993) 3 LLJ 779

Hon'ble Judges : K. Ganguli, J

Bench : Single Bench

Advocate : Subrata Bose, Dipak Roy and Subir Banerjee, for the Appellant; Subal Chandra Moitra and Dipti Mitra, for the Respondent

Judgement

Kalyanmoy Ganguli, J.—This application under Article 226 of the Constitution of India, inter alia, challenges an order passed on 31 March 1990, issued by the Deputy Secretary, Labour Department, Government of West Bengal, refusing permission u/s 25-O of the Industrial Disputes Act, 1947, as amended, to close down one of the undertakings of the petitioners. The impugned order has been annexed to the writ petition marked with the letter B.

2. The petitioners also pray for a declaration that Section 25-O of the Industrial Disputes Act, 1947, as amended by Section 14 of the Industrial Disputes (Amendment) Act, 1982, is ultra vires Article 19(1)(g) of the Constitution of India.

3. Elaborate arguments were made by all the parties and such elaborate arguments only succeeded in confusing the real issues involved in the case. The matter itself is not as complicated as it was sought to be made by both the parties. Petitioner 1 is engaged, inter alia, in one of its independent and separate units in the manufacture and sale of fans at its fan division situated at Roynagar Bansdroni, Calcutta-700 070, and the fans manufactured by Petitioner 1 are sold under the brand name of "USHA" Fans. The petitioners assert that the said fan

division is a separate and independent undertaking and the terms and conditions of employment of the employees working in the said fan division are separate and independent of the conditions of service of the other employees and workmen working in the other undertakings of Petitioner 1.

4. The Fan Division of Petitioner 1 was started sometime in the year 1956 but according to the petitioners the said division, in recent times started incurring huge losses, so much so that the said division was not being able to make payment of dues to its suppliers and others. According to the petitioners their accumulated losses in the fan division of the petitioners, in fact, were dragging down the other undertakings of Petitioner 1 and was heading towards a total collapse of all the undertakings of Petitioner 1 like the gravitational collapse of a supernova star causing "Black Holes".

5. In the circumstances, according to the petitioners, a formal application for permission to close down the fan division was made on 14 February 1990, a copy of which has been annexed to the writ petition marked with the letter A. The said application was made u/s 25-O of the Industrial Disputes Act, as amended by Section 14 of the Industrial Disputes (Amendment) Act, 1982 hereinafter referred to as the Act. In the said application in terms of the provisions of Section 25-O read with the relevant rules the reasons for the closure were disclosed.

6. In support of their contention the petitioners were heard by Respondent 2, the Deputy Secretary, Department of Labour, Government of West Bengal.

7. It appears from the impugned order that the respondent workmen's unions were also asked to make their submissions on the issue but such opportunity was given to the unions of the workmen behind the back of the petitioners and the petitioners were not apprised of the nature of the submissions made by such unions of the workmen. It is contended by the petitioners that although technically both the parties were heard yet as each of the parties was heard in the absence of the other party, it was not a bilateral hearing so far as the parties are concerned. In fact, the management being totally in the dark about the submissions made by the unions of workmen were not able to put forth their views on the submissions made by such unions of workmen.

8. By the order impugned in this application, dated 31 March, 1990, respondent 2 rejected the petitioner's application u/s 25-O of the Act for permission to close down.

9. The above are undisputed facts relating to the matter in issue.

10. The petitioners principally took the following points, namely:

(i) that the amended Section 25-O of the Act is ultra vires Article 19(1)(g) of the Constitution as was the unamended section held to be so by the Hon'ble Supreme Court in *Excel Wear v. Union of India and Ors.* 1978 II L.L.J. 482: 1978 (2) LLJ 527 inter alia, inasmuch as the same vices pointed out by the Hon'ble

Supreme Court rendering the earlier section invalid still, inhibits the amended provisions:

(ii) that the impugned order, even if the section is found to be intra vires Article 19(1)(g) of the Constitution, is legally invalid for the following reasons:

(a) that the Government acted arbitrarily and without application of mind in considering the application for permission by the petitioners:

(b) that the Government failed to pass a valid order within the meaning of Section 25-O(2);

(c) proper reasons have not been recorded in writing; and

(d) no reasonable opportunity of being heard within the meaning of the section has been given to the petitioners;

(iii) that the writ petition has not become infructuous as was sought to be established by the respondents, u/s 25-O(4) of the Act, inter alia, inasmuch as the said section contemplated an order which is otherwise a valid order and if the order itself is invalid or is a still-born order then the question of application of Section 25-O(4) will not arise.

11. The question of the vires of the amended Section 25-O will be taken up last as that will go into the root of the matter but may not be able to resolve the dispute. So the other two points will be taken up first.

12. First, the legality of the impugned order is to be considered. The petitioners referred to the case of Travancore Rayon Ltd. Vs. Union of India (UOI), . In the said case it has, inter alia, been observed that the disclosure of reason, in support of an order enables a party aggrieved to demonstrate before the Court that the reasons which persuaded the authority to reject his case were erroneous. It was also held in the said case that the obligation to disclose reasons also operated as a deterrent against possible arbitrary action by the executive authority. The petitioners next referred to the case of Uma Charan v. State of Madhya Pradesh and Anr. 1982 I L.L.J. 5. In the said case it was, inter alia, observed that the disclosure of the reasons is the only remaining visible safeguard against possible injustice and arbitrariness in making an order. These reasons disclose how mind is applied to the subject-matter for a decision whether such decision is purely administrative or quasi-judicial. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. These reasons should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decision recorded be shown to be manifestly just and reasonable.

13. In the light of the above observations Sri Dipankar Gupta, the learned counsel appearing for the petitioners, submitted that the impugned order does not disclose any reasons at all. That the truth of the statement made by the company or their bona fides have not been questioned or controverted. The

statement that the management cannot fully utilise the installed capacity of the fan division of Bansdroni is itself being treated as a purported reason for rejecting the company's contentions. It was contended by the petitioners that the company has itself asserted that they were not being able to fully utilise the installed capacity of the unit and the company gave reasons in its application u/s 25-O of the Act as to why, according to them, this has happened. According to the submissions of Sri Gupta no attempt was made by the authority concerned to deal with the company's case regarding the causes for low utilisation of the installed capacity. Sri Gupta further contended that the Government has not stated that any of the causes put forward by the company of low productivity are either untrue or not bona fide far less giving reasons for the same. No reasons are disclosed, according to Sri Gupta, for the conclusion that the company's reasons were inadequate. According to Sri Gupta none of the statements contained in the impugned order can be considered to be reasons within the meaning of the section and none of the factors mentioned in Section 25-O(2) have been kept in view and the Government, in passing the impugned order has not dealt with either the genuineness or the adequacy or otherwise of the reasons stated by the company. Sri Gupta strongly contended that the impugned order does not show that permission had been refused either on account of any overriding interest of the general public or any factor other than those raised by the company itself and that the impugned order does not address itself at all to the questions as to whether the reasons stated by the management were genuine or adequate or whether the interest of the general public will be affected by the proposed closure or any relevant factor.

14. Sri Gupta further contended that the factual position, namely, that the fan division's capacity is not being utilised fully itself being treated as a purported ground for rejecting the company's application without going into the reasons put forward by the company as to why the company could not fully utilise its installed capacity. According to Sri Gupta the impugned order is totally silent on this aspect of the matter but simply accepts the statement of the company and bases its conclusion to reject permission for closure on accepting the statement of the company itself without going into the reasons thereof. It was further contended that in terms of Section 25-O(2), the State Government did not apply its mind, inter alia, inasmuch as the impugned order does not pay any regard to three vital aspects of the matter as stated hereinbefore, namely, the genuineness and adequacy of the reasons stated by the employer, the interest of the general public, and all other relevant factors. In fact, according to the petitioners whatever passed through the mind of the appropriate authority has not been reflected in the order impugned and the thought process of the authority concerned was not translated into words. It is peculiar to note that in the impugned order the authority concerned has not even rejected the reasons for the proposed closure as put forward by the management being not genuine or adequate and the impugned order is eloquently silent on the question of the repercussion of the closure vis-a-vis any interest of the general public.

15. To the argument sought to be advanced by the respondents to the effect that the closure should not be permitted because interest of labour will be affected, Sri Gupta referred first to the case of Excel Wear and Others Vs. Union of India (UOI) and Others, the parent case which struck down the provisions of Section 25-O before its present amendment. Sri Gupta: wanted to establish that the interest of labour alone cannot be sole criterion for refusing permission to close down because in all cases of closures there will be resultant unemployment. On this aspect of the matter Sri Gupta also referred to the case Associated Cement Companies Ltd. and Another Vs. Union of India and Others, In para. 12 of the said decision of the Gujarat High Court, the learned Division Bench, inter alia, observed that: if prevention of unemployment is regarded as the sole basis or paramount consideration then in no case closure can be or should be permitted. The learned Division Bench further observed that such a construction would render the restriction unreasonable and make it ultra vires An. 19(1) (g). It has further been held in Para. 18 of the said decision that if the employer wants to close down his business bona fide and the reasons given by him are genuine and adequate it will not be proper to refuse permission on the ground that it will result in unemployment, unless for some special reasons or because of some extraordinary circumstances refusal on that ground can be regarded as reasonable.

16. The reasons sought to be urged by referring to the various materials on record that the reasons given by the company in its application were not genuine or adequate, the Respondents further submitted that in granting or refusing to grant permission to close down an undertaking the interest of the general public have to be kept in view. The respondents further urged that regard being had to the materials available on record and considering the interest of the general public the order impugned cannot be assailed by the petitioners and the reasons given for refusal is adequate on an overall consideration of the various aspects of the matter. In this connection a reference may be made to the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, of the said decision observes as follows:

"The second equally relevant matter is that when a statutory functionary makes an order passed on certain grounds its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise an order and in the beginning may, by the time it comes to Court on account of a challenge get validated by additional grounds later brought out". We may here draw attention to the observations of Bose, J, in Commissioner of Police, Bombay Vs. Gordhandas Bhanji,

"Public orders publicly made in exercise of an authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the acting and conduct of those to whom they are addressed

and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.'''

17. In this connection Sri Gupta also referred to the case of D.C.M Ltd. v. Union of India and Ors. AIR 1989 Delhi 193 (Full Bench). In the aforesaid case the petitioners therein contended that the undertaking was continuously incurring heavy losses and such losses were draining on the petitioner's resources and cash flow. The petitioners therein also gave certain figures yearwise, the highlight and the quantum of losses for the years 1978-79 to 1983-84. The petitioners in the said case also submitted the application in the proforma prescribed for such application and stated that it was no longer possible for the company to make the necessary investment for undertaking the necessary renovation and modernisation of the undertaking in view of the fact that the undertaking was located in a non -conforming area and it had to be shifted out of its present location in order to comply with the necessary provisions of the Act and direction of the Delhi Administration.

18. The Delhi High court observed in Para. 66 of the aforesaid judgment that in the order impugned before the said Court the Delhi Administration had not dealt at all with that ground and the reasons enumerated in the petitioner's application for closure. There was no indication in the order or the reasons recorded that the authority had perused the reasons advanced that the industrial undertaking was uneconomic, unprofitable and unviable.

19. In the instant case also the authority concerned did not consider the reasons given by the petitioners for such proposed closure but based its decision on the admitted data supplied by the petitioner and in coming to decision the authority concerned merely reiterated the facts stated by the petitioners as a ground for closure. In passing the impugned order in the case the authority concerned did not even consider as to whether the facts stated by the petitioners in their application for permission for closure, were correct or not. It has simply based its decision on the fact that the company was reducing production of fans gradually below the installed capacity and were buying more and more fans from outside sources and selling them at a profit and in fact it was the admitted position that by buying fans from the outside sources and selling them at a profit the company was earning comfortable profits for themselves but that is not a ground for refusing to give permission to close down the undertaking. It was incumbent on the authority concerned to consider what prompted the company to take recourse to such action, namely, why the company was gradually reducing the quantum of manufacture of fans in its own undertaking and instead started purchasing fans from outside. The authority concerned did not find that such reduction in the manufacture of fans was done deliberately with the motive of retrenching the workmen of the undertaking. If the authority concerned has found as a matter of fact that the company was deliberately reducing production of fans in its own undertaking solely with a view to retrenching workmen then

the matter would have been different but the company gave a reason for adopting the admitted course of action, namely, reduction of production and taking recourse to purchases from outside and the reason given by the company for adopting such a procedure was not dealt with by the authority at all.

20. The authority concerned also did not address itself on the question posed by their Lordships of the Hon^{ble} Supreme Court in the case of *Excel Wear v. Union of India and Ors.* 1978 II L.L.j. 482 (vide supra), namely, in Para 25, at page 495:

(i) ...Is it possible to compel the employer to manage the undertaking even when they do not find it safe and practicable to manage the affairs?

(ii) Can they be asked to go on facing tremendous difficulties of management even at the risk of their person and property...?

The impugned order is eloquently silent on this aspect of the matter.

21. It was sought to be argued by the respondents=union and the State that in coming to the conclusion the appropriate authority relied on the data supplied by the petitioners and on a perusal thereof the authority concerned held that the reasons were not adequate. It appears that at least the impugned order does not say so.

22. Without multiplying the case-laws on this aspect of the matter it can be said from the discussions made hereinbefore that in passing the impugned order of refusal to grant permission to close down the undertaking of the petitioners, the appropriate authority did not give any reasons therefore.

23. The next point urged by the petitioners was that no reasonable opportunity of being heard was given to the petitioners as is mandatorily required under Sub-section (2) of Section 25-O of the Act, inter alia, inasmuch as truncated and segregated hearings were given to the parties which do not conform to the requirement of the aforesaid provisions of law. The respondents-workmen were heard behind the back of the petitioners and the petitioners did not have any opportunity of refuting the contentions of the workmen at all and the petitioners were not given the opportunity of meeting the points raised by the workmen although the workmen had that opportunity inasmuch as the petitioners' contentions were naturally made available to them

24. A point was raised by the respondents specially by the State that the writ application has become infructuous, inter alia, inasmuch as Sub-section (4) of Section 25-O provides that the 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 and as admittedly one year has elapsed since the passing of the order the impugned order is deemed to have spent its force.

25. To this argument of the respondents the petitioners submitted that this contention does not arise in the instant case, inter alia, inasmuch as the

provisions of Sub-section(4) of Section 25-O will apply only in case of a valid order, that is to say if the order passed by the appropriate authority is a valid one then it will remain valid for a period of one year from the date of the order but if for any reason the impugned order is not a valid order then the question of continuance of its validity for a year does not arise at all. The petitioner's main contention in the writ petition is that the order passed by the appropriate authority is not at all a valid order and is as such non est and if that be so then the question of the period of validity of an invalid order will not arise and that will mean a contradiction in terms.

26. For the reasons stated hereinbefore it may be stated that the order impugned in the instant writ petition is not a valid order and as such should be struck down.

27. If the petitioners had not raised the question of vires of Section 25-O of the Act, the writ petition could have been disposed of by making the same absolute and by setting aside the impugned order. But elaborate arguments were made on the point of vires of the amended provision of Section 25-O and this Court will be failing in its duty if it ignores the submissions made on that score specially in view of the submission made by the petitioners that this amended Section 25-O has also been declared to be ultra vires by another learned Single Judge of this Court, in the case of *Molins of India Ltd. and Anr. v. State of West Bengal and Ors.* 1989-II LLJ 400. Baboolal Jain, J., held that the entire Section 25-O and part of Section 25-R as amended by Act 14 of 1982 is ultra vires Article 19(1)(g) of the Constitution of India.

28. Sri Gupta forcefully argued that sitting in a co-ordinate jurisdiction, another Single Judge should not be allowed to take a divergent view as that will lead to judicial anarchy and indiscipline and the decision of one Single Judge should bind another Single Judge sitting in a co-ordinate jurisdiction.

29. Ordinarily, it is so. But as the question is of far reaching consequence and as with the greatest of respect I could not agree with Baboolal Jain, J., it is my duty to record my dissenting voice in this judgment and to ask the Hon'ble the Chief Justice to form a larger Bench for a final determination of the question. The question of constitutional validity of a provision of an important branch of law is too serious to be lulled by authority of precedents, created by a Single Judge sitting in a co-ordinate jurisdiction.

30.1 record my reasons for differing with the views of Baboolal Jain, J., in the following paragraphs:

31. The said case namely, *Molins of India Ltd.* 1989-II LLJ 400 (vide supra), declared the amended Section 25-O in its entirety and part of Section 25-R ultra vires Article 19(1)(g) of the Constitution, inter alia, on the ground of the difficulty in the law itself that permission to close down can be rejected even if the grounds are genuine and good. His Lordship further held that the language used is vague and uncertain and permission to close may be refused on the ground of

public interest alone or other relevant factors which are also not defined. Whether the grounds are adequate or not, is likely to vary from person to person and opens up the gate of arbitrariness. This is particularly so in the absence of any guidelines in the section. It was further held in the case that no attempt even was made by the Deputy Secretary who was the deciding authority to find out the quantum of loss that could be accountable to the Behala unit and the Deputy Secretary had not considered the question as to why the factum of continued losses which was quite disproportionate to the amount invested to the capital in the company should not be held to be an adequate or sufficient ground for the closure of the business. It was further held in the said decision by Baboolal Jain, J., that a man cannot be required to carry on or continue the business if it has been incurring huge losses year after year and whether it is reasonable to expect him to do so, had not been discussed at all in the order impugned in the said decision. It was further held that in that case also the labour unions were heard separately and employer was also heard separately and the petitioner had no opportunity to know about or deal with the submissions and/or contentions of the labour unions and such practice was contrary to the principles of natural justice and denial of an opportunity of being heard.

32. It may be stated at this stage that against the decision of Baboolal Jain, J., the respondents have preferred an appeal which still is pending before the learned Appeal Bench. It is the contention of Sri Gupta that pendency of an appeal does not make decision any the less final.

33. Molins case 1989 2 CLR 210 (vide supra), was primarily based on the Single Judge decision of Stumpp, Schuele and Somappa Ltd. v. State of Karnataka 1986 I CLR 28. It however, appears that the said judgment of the Single Judge now stands reversed by a judgment of the Division Bench of the Karnataka High Court itself in appeal from the said judgment. In the case of Union of India Vs. Stumpp, Scheule and Somappa Ltd., the learned Appeal Bench of the Karnataka High Court observed, inter alia, in Para. 8 of its judgment the submissions made by Union of India on the question of vires. It has observed, quoting the submissions of the appellants therein that the present provision is only an extension of the earlier law governing the closure under the Act and in Excel Wear case 1978 II L.L.j. 482 (vide supra), the Hon"ble Supreme Court has not stated that the law regulating the right of closure by itself is an unreasonable restriction and, therefore, the said question has to be decided independently of the said decision though many of the observations made in the said case have to be followed as guiding principles. In Para. 12 of the decision reported in 1989 I CLR 683 (vide supra), the learned Appeal Bench of the Karnataka High Court first of all proceeded to consider the scope of the decision in Excel Wear case in Para. 13, at page Union of India Vs. Stumpp, Scheule and Somappa Ltd.,

13.1 Earlier Section 25-O also required the employer to seek permission of the appropriate Government for closure. Application is to be filed as per Section 25-

O(1). As per its Clause (2), Government may direct the employer not to close down the undertaking if it is satisfied

- (i) that the reasons for the intended closure are not adequate and sufficient,
- (ii) such closure is prejudicial to the public interest.

No procedure as to enquiry and hearing by the Government was prescribed, before the Government has to arrive at its satisfaction. The section did not compel the Government to state its reasons for the refusal of the permission. Further, even in a case, where the employer establishes that the reasons for the intended closure are adequate and sufficient, Government may refuse permission on the ground that such closure would be prejudicial to the public interest.

13.2. The language of earlier Section 25-O was couched in such a manner that it empowered the Government to refuse permission on any one of the grounds, i.e., either because the reasons for the intended closure were not sufficient and adequate or the closure would be prejudicial to the public interest. Thus, even when the reasons for the intended closure were sufficient and adequate, permission could be refused on the ground of public interest.

13.3. Further, the said provision nowhere compelled the Government to dispose of the employer's application within a particular time, failing which, permission was to be deemed to have been granted. Thus, the application of the employer may be kept pending without consideration for any length of time.

34. Paragraph 14.2 of the said decision discusses the respective contentions of the learned counsel in the case reported in 1978 II L.L.j. 482 (vide supra), and states that in Paras 7 and 8 of the said decision the respective contentions of the learned counsel for the parties was, summarised: Paras. 10 to 16 trace the history of the development of the said branch of law, i.e., the various amendments to the Act, provision governing retrenchment of employees and the relevant decisions of the Supreme Court on these questions; at Para. 17 provisions of Section 25-O were quoted and in Para. 18 the said provisions were analysed, Para. 19 refers to Section 25-R and its applicability under a particular situation. At Para. 20 the Hon'ble Supreme Court considered two extreme contentions put forward on either side as to the alleged right to close down an undertaking. The Division Bench of Karnataka High Court held that in Excel Wear case 1978 II L.L.J. 482 (vide supra), neither of the two extreme propositions were accepted by the Hon'ble Supreme Court and proceeds to observe in Para. 14.3 of the judgment by the Division Bench of the Karnataka High Court that the inference that can be drawn from entire Para. 20 in Excel Wear case (vide supra), and it is quite clear that there is no absolute fundamental right vested on the employers to close his business and the right to close a business is not same qualitatively as the right not to start a business altogether. Since the right to close down a business is a fundamental right embedded in Article 19(1)(g) it is subject to Article 19(6), as observed in Para. 21 in Excel Wear case (vide supra), by the Hon'ble Supreme Court. The Hon'ble Supreme Court in Excel Wear case

(vide supra), observed in Para. 21 that such right to close down a business can certainly be restrained, regulated or controlled by law in the interest of general public.

35. Having analysed the Hon''ble Supreme Court's decision in Excel Wear case 1978 II L.L.J. 482 (vide supra), the Karnataka High Court observed in Para. 16 that if the requirement of a prior permission for the closure by itself is an unreasonable restriction. Sub-section (1) of Section 25-O would have been independently struck down by the Hon''ble Supreme Court in Excel Wear case (vide supra). In Para. 17.1 the Division Bench of the Karnataka High Court observed that with utmost respect their Lordships were constrained to take a view differing with the view of the learned Single Judge regarding the ratio of the decision in Excel Wear case (vide supra). Paragraph 17.3 of the judgment observed that old Section 25-O was held to be unreasonable because the section gave alternative ground to reject an application. The said provision enabled the making of an unreasonable cryptic order and it enabled the Government to procrastinate over the application without arriving at any decision within a prescribed period; in the circumstances, the provision was found to be unreasonable. Paragraph 17.4 of the judgment observes that the Hon''ble Supreme Court had not categorically laid down as an absolute proposition, that it was not possible to strike a balance between the parallel and conflicting interest. The said paragraph further observes that the Hon''ble Supreme Court at Para. 29 of the judgment in Excel Wear case (vide supra), pointed out that it was not always easy to strike a balance between the parallel and conflicting interest and the Division Bench of the Karnataka High Court held that the inference to be drawn from the observation of the Hon''ble Supreme Court is that a reasonable law can be contemplated which would provide for balancing diverse interest involved in the matter of closure of an undertaking and in fact the Division Bench observed that the Hon''ble Supreme Court recognised the need to have a law to deter the reckless, unfair, unjust or mala fide closures (at page 541 of 1978 II L.L.J. 482) Para. 17.5 of the Division Bench Judgment of the Karnataka High Court states that the restriction against the right to close the undertaking flows out of requirement to obtain permission. It further held that the question is under what circumstances, the restriction will become unreasonable. Annihilation of the person affected (employer) as apprehended in the judgment under an appeal in the said case will be an arbitrary or capricious order of refusal and not by the provision requiring the employer to obtain permission.

36. It was observed by the Karnataka High Court Division Bench in Para. 17.6 that the observation in the judgment under appeal that there was no difference between the earlier section and the present one except a few more words is not also acceptable to their Lordships. Their Lordships observed that the earlier provision gave the power to the Government to direct the employer not to close down undertaking on any one of the two grounds, namely:

(i) If the reasons for the intended closure are not adequate and sufficient;

(ii) such closure is prejudicial to the public interest.

These alternatives vested a vast power to reject an application even when a case for closure is made out. The present provision of Section 25-O(2) requires the Government to grant or refuse permission sought by the employer "having regard "to:

- (i) The genuineness and adequacy of the reason stated by the employer;
- (ii) interest of the general public; and
- (iii) all other relevant factors.

The cumulative effect of the ground falling under the three heads of factors to be recorded is different from the earlier power (under old Section 25-O) enabling the rejection of the application solely on the ground of public interest. Their Lordships of the Karnataka High Court Division Bench further held that it would be assumed that the Parliament had considered the observation of the Hon''ble Supreme Court in *Excel Wear* 1978 II L.L.J. 482 (vide supra), and accepted the various factors referred to therein as relevant factors while enacting the new Section 25-O and that while exercising its power u/s 25-O(2) the appropriate Government would consider the scope of Section 25-O(2) bearing in mind those observations.

37. It was held in Para. 17.7 of the said judgment that the interest of the workmen or need to maintain production, etc., each by itself will not be the basis to reject the employer's application. The present impugned provision of Section 25-O satisfies those requirements. The observations of the Single Judge that specific grounds on which permission could either be granted or rejected are not stated in Section 25-O were not acceptable to the Division Bench and the Division Bench held that the present Section 25-O read with the decision of the Hon''ble Supreme Court in *Excel wear's* case 1978 II L.L.J. 482 (vide supra), provides sufficient guidelines to appropriate Government to consider the scope and effect of the three factors to which the Government should have due regard while considering the application for permission.

38. In this connection it may be mentioned that the Hon''ble Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, held that the phrase "in the interest of general public" is not a vague or uncertain term and when a power is entrusted to the Government it can be assumed that the Government will exercise that power in a reasonable and responsible manner and abuse of power in a certain circumstance cannot be lightly assumed and finally if there is any abuse of power in a given case the arms of the Court are long enough to reach out and strike it down. The Division Bench of the Karnataka High Court held that those principles apply aptly to the provisions of present Section 25-O also. In fact it was held by the Hon''ble Supreme Court in the case of *Hem Raj Vs. The State of Ajmer*, that the grant or refusal of a permit is to be governed by the policy and the discretion given to the Textile Governor is to be exercised in

such a way as to effectuate this policy and the conferment of such a discretion cannot be called invalid and if there is any abuse of the power there is ample power in the Court to undo the mischief. The Division Bench of the Karnataka High Court held that the statement that the employer has a fundamental right to close the undertaking as and when he desires is given not an acceptable reposition. It is undoubtedly true that if permission is refused even when the situation warrants closure then it will be an order of unreasonable compulsion and may become tyrannical but it should not be assumed that the Government (Central or State) would resort to the making of an unreasonable order since reasons are to be recorded and such order can be easily scrutinised by the High Court or Hon'ble Supreme Court and the Court's Judicial power would strike at such an unreasonable order. It is further observed that the High Court is not always compelled to refer the matter to the Government for fresh consideration, after setting aside an unreasonable order. If the existing material is sufficient to lead to the only reasonable conclusion that permission has to be granted the Court may issue a mandamus to Government to accord permission. It has been stated in Para. 19 of the judgment of the learned Division Bench of the Karnataka High Court in *Union of India Vs. Stumpp, Scheule and Somappa Ltd.*, that since the appropriate Government has to consider the application of the employer objectively and after giving reasonable opportunity of being heard to the employer, the workmen and the persons interested in such a closure, such a procedure is a salutary one.

39. One more aspect has to be noted in this connection that the order and refusal of closure under the amended Section 25-O of the Act will be in force only for one year. Therefore the restriction on the right of the employer operates only temporarily and this enables the employer, the workmen, the Government or others to intervene and save the undertaking.

Reference may be made to a Full Bench decision of the Delhi High Court in the case of *D.C.M. Ltd. v. Union of India and Ors.* AIR 1989 DelHI 193 (vide supra). The said decision has discussed in detail about the various aspects of the vires of the amended Section 25-O of the Act by referring to various cases in 54 paragraphs of the said judgment and ultimately arrived at the conclusion that Section 25-O of the Act is intra vires Article 19(1)(g) of the Constitution. Although I was tempted to quote extensively from the said decision yet that would only lengthen this judgment but I agree with respect with the observation and the conclusion of the said Full Bench decision that Section 25-O of the Act is intra vires Article 19(1)(g) of the Constitution. I also adopted the reasons ; given there for upholding the vires of Section 25-O as my reasons for a like conclusion.

41. Reference may also be made to the case of *Straw Products, Ltd. Bhopal and Ors. v. Union of India and Ors.* 1986 II L.L.N. 931, where also the Division Bench of the Madhya Pradesh High Court upheld the vires of Section 25-O of the Act and this Madhya Pradesh High Court judgment has also been referred to in the Delhi High Court Full Bench judgment in *D.C.M. case* AIR 1989 Del. 193 (vide

supra).

42. Of course the Gujarat High Court has held that Section 25-O as ultra vires Article 19(1)(g) but the overwhelming majority view seems to be in favour of upholding the validity of Section 25-O of the Act as amended.

43. On an analysis of all the cases, I am constrained to hold that the amended Section 25-O of the Act is no arbitrary, nor does it confer uncanalized power to the executive authority nor is it devoid of guidelines for the guidance of the executive authorities. I hold that Section 25-O of Act as amended is constitutionally valid and the restrictions imposed on the right of closure of an undertaking come within the scope and ambit of Article 19(6) of the Constitution of India.

44. In the circumstances, I am also constrained to differ with the decision of my learned brother Baboolal Jain, J., in Union of India Vs. Stumpp, Scheule and Somappa Ltd., and I refer the matter to the Hon''ble the Chief Justice for constituting a larger Bench, preferably a full Bench of this Court for consideration of the constitutional validity of the amended Section 25-O afresh so that the law relating to closure is clarified by a final pronouncement of this Court.

45. As the matter cannot be finally disposed of by me for the reasons stated above the interim order already passed will continue till it is varied by a superior Bench.

46. Let the matter be placed forthwith before the Hon''ble the Chief Justice for necessary orders for constitution of a larger Bench at an early date as pendency of the litigation may cause immense financial loss to either of the parties. There will be no order as to costs.