

(2004) 01 AHC CK 0185
In the Allahabad High Court
Case No : C.M.W.P. No. 6295 of 1987

Jay Shree Tea Industries Ltd. and Others	APPELLANT
Vs	
Industrial Tribunal-I and Others	RESPONDENT

Date of Decision : 28-01-2004

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6W

Citation : (2004) 2 AWC 959

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : V.R. Agarwal, Piyush Bhargava, P.K. Mukherji, Sudhir Chandra, Vinod Swarup and Vivek Ratan, for the Appellant; K.P. Agarwal, A.K. Sinha and K.N. Tripathi, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—This writ petition has been filed by Jay Shree Tea and Industries Ltd., a public sector company, and Jay Shree Tyres and Rubber Products as well as Sri R. P. Verma, a share holder in Jay Shree Tea and Industries Ltd., to declare Section 6W of the U.P. Industrial Disputes Act, 1947, as constitutionally bad and invalid, violative of Article 19(1)(g) of the Constitution of India, and for a writ of mandamus directing the respondent Nos. 1 and 2 not to enforce the provisions of Section 6W of the Act against the petitioners. The prayer No. 3 is for a writ of certiorari quashing the impugned award dated 26.2.1987 published on 5.3.1987, by the Industrial Tribunal-I, Allahabad in Adjudication Case No. 4 of 1987 (between Jay Shree Tyres and Rubber Products and its workmen), and also the order of the State Government dated 29.9.1986 passed u/s 6W of the Act.

2. The writ petition was heard and allowed, along with other connected petitions, by this Court on 28.3.1990. The Court relied upon the Supreme Court decision in Excel Wear and Others Vs. Union of India (UOI) and Others, , in which Section 25O of the Industrial Disputes Act, 1947, as a whole and Section 25R in so far as

which provided for punishment for the Infraction of Section 25O were held to be constitutionally bad and invalid for violation of Article 19(1)(g) of the Constitution of India. The Supreme Court held that right to close the business is an integral part of fundamental right to carry on a business, but no right is absolute in its scope so is the nature of this right. It can be restricted, regulated or controlled by law in the interest of general public. The provisions of Section 25O, however, were found by the Supreme Court, to be inadequate and did not provide reasonable restrictions. The authority can arbitrarily refuse the permission. It was found that the provision of Section 25-O(2) did not require giving reasons in the order. The order was not made subject to any scrutiny of any higher authority or Tribunal either in appeal or revision and that the order cannot be reviewed.

3. The Rashtriya Jay Shree Tyres Karamchari Union and others filed Civil Appeal No. 3455 of 1990. The State of U.P. also filed an appeal against the judgment of this Court. These appeals along with other civil appeals from other States were decided by a Constitutional Bench of Supreme Court in Orissa Textile and Steel Ltd. Vs. State of Orissa and Others, . The Supreme Court held that the amended Section 25O of the Industrial Disputes Act, as amended by Amendment Act No. 46 of 1982 was similar to Section 25N of the Central Act. Though Meenakshi Mill's case (Workmen of Meenakshi Mills Ltd. and Others Vs. Meenakshi Mills Ltd. and Another, dealt with retrenchment, same principle would apply to closure, which ultimately effects to termination of services, though all the workmen both u/s 25N and Section 25O are in Chapter-V. The object and reasons for enacting these provisions are the same and must be kept in mind while considering amended Section 25O. Section 25O has been enacted to give effect to the directive principles of the Constitution and must be regarded as being in the interest of general public. After the amended Section 25O the appropriate Government is required to make an enquiry and the order has to be in writing and contain reasons. The enquiry postulate the correctness of the facts stated by the employer in the notice served by him and also all other relevant facts and circumstances including the bona fide of the employer. An opportunity of hearing has to be afforded to the employer, the workmen and all interested. The detailed information which the employer gives enables the appropriate Government to make up its mind and collect necessary facts for the purpose of granting or refusing permission. The appropriate Government would have to ascertain whether the information furnished is correct and whether the principal action is necessary, and if so, to what extent. This attributes makes the exercise of functions, quasi-judicial in nature. The words, "after making such enquiry as it thinks fit", only gives discretion regarding the nature of enquiry to be made by the State Government. It was found that the amended Section 25O fixing the time limit for resusing the permission to cure the defects pointed out in Excel Wear's case. Sub-section (4) of Section 25O provides that the order of the appropriate Government shall remain in force for one year from the date of such order, thus, making it open to the employers to again apply for permission of

closure. The time limit for one year makes the restriction reasonable. If the State Government does not communicate the order in 60 days from the time when application is made, the amended Section 25-O(3) deems the permission to be granted. Section 25-O(8) has dispensed with the requirement of three months' notice, and that now the employer is required only to pay compensation equivalent to 15 days average pay for every completed year of continuous service.

4. The Supreme Court found that there is nothing vague and ambiguous in Section 25O. Although the contingencies and situation cannot be enumerated, each case has to be decided on its own facts and on the basis of circumstances prevailing at the relevant time. Sufficient guidelines have been provided in Section 25O. Right of review has been provided u/s 25-O(5) and further the order can be subjected to judicial review and Article 226 and Article 32. It was held that there are sufficient and adequate protections against the arbitrary action in the matter of exercising of powers of the appropriate Government.

5. In para 18 of the Constitution Bench judgment, it was held as follows :

"18, We also see no substance in the contention that the amended section merely deals with the procedural defects pointed out in Excel Wear case and does not deal with the substantive grounds set out in Excel Wear case. In our view the amended Section 25O is very different from Section 25O (as it then stood). It is now more akin to Section 25N (as it then stood) the constitutional validity of which was upheld In Meenakshi Mills case. In Excel Wear case it has been accepted that reasonable restrictions could be placed under Article 19(6) of the Constitution. Excel Wear case recognizes that in the interest of general public it is possible to restrict, for a limited period of time, the right to close down the business. The amended Section 25O lays down guidelines which are to be followed by the appropriate Government in granting or refusing permission to close down. It has to have regard to the genuineness and adequacy of the reasons stated by the employer. However, merely because the reasons are genuine and adequate cannot mean that permission to close must necessarily be granted. There could be cases where the interest of general public may require that no closure takes place. Undoubtedly where the reasons are genuine and adequate the Interest of the general public must be of a compelling or overriding nature. Thus, by way of examples, if an industry is engaged in manufacturing of items required for defence of the country, then even though the reasons may be genuine and adequate it may become necessary. In the interest of the general public, not to allow closure for some time. Similarly, if the establishment is manufacturing vaccines or drugs for an epidemic which is prevalent at that particular point of time, interest of the general public may require not to allow closure for a particular period of time. We must also take a note of Sub-section (7) of the amended Section 25O which provides that if there are exceptional circumstances or accident in the undertaking or death of the employer or the like, the appropriate Government could direct that provisions of Sub-section (1)

would not apply to such an undertaking. This, in our view, makes it clear that the amended Section 250 recognizes that if there are exceptional circumstances then there could be no compulsion to continue to run the business. It must however, be clarified that this Court is not laying down that some difficulty or financial hardship in running the establishment would be sufficient. The employer must show that it has become impossible to continue to run the establishment. Looked at from this point of view, in our view, the restrictions imposed are reasonable and in the interest of the general public,"

6. After holding the validity of amended Section 250, the Supreme Court allowed all the special appeals and sent the matters back to the High Court to be decided in accordance with the law. Under the Rules of this Court, this writ petition against the order of the Industrial Tribunal is required to be heard by single Judge, and that is how this matter has come up before this Court to be decided afresh.

7. I have heard Sri V.R. Agarwal, senior advocate assisted by Sri Piyush Bhargava for petitioners, and Sri K.P. Agarwal, senior advocate for respondents workmen, as well as learned standing counsel for the State Government. The matter was heard on several dates and opportunity was given to parties to file supplementary-affidavits after which judgment was reserved on 27.11.2003. The facts of this case have been discussed in detail in the judgment and order of this Court dated 28.3.1990 and need not be discussed all over again. The brief facts for considering the submissions made by the parties at bar are stated as below.

8. Jay Shri Tea Industries Ltd. is a public limited company with its registered office as Industry House, Camac Street, Calcutta, with its head office at Laldwara Building, New Link Road, Swami Ram Tirath Nagar, New Delhi. It is running various business establishments all over the India. Each of the business of the company is a separate establishment having separate financing management and control. M/s. Universal Tyres Ltd., a public limited company, was running a factory at Naini, Allahabad, manufacturing tyres and tubes. The establishment was running into losses. Jay Shri Tea and Industries Ltd., took over the industrial establishments of M/s Universal Tyres Ltd. at Naini Allahabad, "on leave and licence," basis w.e.f. 1.2.1977 under an agreement dated 21.2.1977 for a period of 12 years, with an option for renewal of the agreement. The unit was thereafter named as Jay Shree Tyres and Rubber Products (Prop, the Jay Shree Tea and Rubber Industries) 21 Malviya Road, Allahabad and employed 389 workmen and staff of 85 including sweeper and maintenance department in the factory. It had licence to manufacture 20 lakhs tyres and 20 lakhs tubes per year. The petitioner No. 1 company provided working capital to the establishment.

9. The Allahabad unit of the company filed applications for permission to lay off enclosing balance sheets and profit and loss accounts of the establishment. The first and second lay off applications were filed on 9.6.1986 and 22.7.1986. The third lay off application was filed on 3.9.1986. An application for closure was made to the State Government on 4.8.1986 with the balance sheet and profit

and loss accounts of the year 1983-84, 1984-85 and 1985-86. The State Government by its order dated 29.9.1986 expressed doubt with regard to two sets of balance sheet and rejected the contention of the employer that they were suffering losses every years. The application was rejected by a reasoned order, after giving opportunity to the employers and the workmen. The State Government found that the employers could not prove that the establishment was running into losses. The establishment admitted before the State Government that they have never informed the workmen about the losses and found that the closure will result into unemployment to 475 workmen/employees. The State Government also found that in the Director's report of the years 1984-85, 1985-86, the Directors had declared that the unit has improved its production and working result for the year, and that the production has some what improved, and the results are likely to further improve. Instead of taking co-operation from the workmen who had increased the production and the quality of the goods, and taking further co-operation from the workmen the company had decided to close the industry in a casual manner for which there was no justification on record. The State Government also drew the presumption on the record, that the employers had not made any effort to save the establishment from closure.

10. The company filed a Writ Petition No. 19090 of 1986, challenging the order of the State Government dated 29.9.1986, refusing the permission for closure. This Court dismissed the writ petition summarily on 7.11.1986 on the ground that the petitioner can raise the questions taken in the writ petition in review petition and thereafter in a reference to be made to the labour court u/s 25-O(5) of the Central Act.

11. The petitioner filed an application u/s 25-O(5) of the Central Act and Section 6W (5) of the U.P. Industrial Disputes Act. The application dated 6.11.1986 was referred by the State Government for adjudication by the Industrial Tribunal-1, Allahabad. The Tribunal issued summons to the petitioners and with consent of parties, fixed the dates for filing written statements, documents and for leading evidence. The summons dated 22.1.1987 fixed 27.1.1987 for written statement, 30.1.1987 for filing reply and documents and 2.2.1987, 3.2.1987 and 4.2.1987 for evidences. After filing written statements, documents and hearing the parties and giving adjournments for leading evidence the Industrial Tribunal by its award dated 26.2.1987, running into about 60 pages rejected the application with findings that the employer's application dated 4.1.1986 for closing down the concern is not only unreasonable but is also illegal.

12. Section 6W (5) of the U.P. Industrial Disputes Act, 1947, provides that where a reference is made to Tribunal, it shall pass an award within 30 days from the date of reference. In this case, the Tribunal discussed the matter with the parties and fixed the date for filing written statements, rejoinder, filing of documents and recording of evidence with their consent. It was observed by the Tribunal that the schedule could not be adhered to, because the employer was seeking

adjournments after adjournments, and that too for sufficiently long time. The employer produced only two witnesses, only after seeking some adjournments. After the evidence of the two witnesses were recorded, they again moved an application for giving time to produce their witnesses. The Tribunal made adverse comments on the conduct of employers, specially when the dates were fixed with the consent of the employers. After finding that the Tribunal is competent to proceed with the case the Tribunal proceeded to decide the matter. After discussing the evidence the Tribunal recorded following findings :

(1) The balance sheet and profit and loss accounts were not prepared by the Chartered Accountants, in their regular course of business, but were prepared for a definite purpose of closure.

(2) The balance sheets were filed with applications for lay off, wherein the financial position of the concern was stated to be fair by the employers themselves.

(3) The balance sheets showing profits were given to the Government authorities and the unions, and thereafter the balance sheets for same years were filed showing losses creating confusion worse founded for which the employers themselves were responsible.

(4) The grounds prepared by the company did not inspire confidence for following reasons ;

(a) The balance sheets exhibits E-5 to E-14 were prepared by a Internal auditor, other than the statutory auditors of the company.

(b) The depreciation was not claimed on the properties of Universal Tyres and was not added back to the profits.

(c) Jay Shree Tea and Industries Ltd. is, owner of Jay Shree Tyres and Rubber products and that it could not have charged interest on its own money and therefore, all the interest amount shown should be added back to the profits ; and

(d) Rs. 20 lakhs which was paid to Universal Tyres Ltd. in terms of leave and licence should have been taken as capital expenditure and not as revenue expenditure.

13. The Tribunal did not accept the submission of the employers that there was a common pool in the head office from where the investments were made in various units according to the requirements and that the interest was charged only on those investments made in the units. It was found that the employers should have furnished the details of common pool and interest paid by head office on that date. For loans of advance to the units, the head office could charge Interest only at the rate the financial institutions were charging. In the absence of that the Tribunal found it difficult to come to definite finding on the accounts, reflecting losses.

14. The Tribunal further found that the employers paid bonus to the workmen at the rate of 8.33% and further ex-gratia of 7.67% each year. If the company was in a bad financial position it could not have paid bonus as ex-gratia, more than prescribed in law. The workmen had good relations with the employers and the production was satisfactory. Every worker was issued appreciation letters and in addition to annual Increments, the workmen were allowed ad hoc increase in wages in years 1979, 1980 and 1983. The Director's report was encouraging and that in the years 1983-84 and 1984-85, they were satisfied with the performance of the unit and its production. They were satisfied that the unit continues to maintain its viability and have improved its production and thus inference can be drawn from these facts that the financial position of the unit was not so bad as it was depicted.

15. The Tribunal also found that no officer of the unit was produced examined to justify the submission that the unit was not viable, No expert was produced to depose that the tyres and tube industry was facing recession. Adjournments were taken by the employers but they produced only one witness and again sought adjournment. On 19.2.1987, the date was fixed for 21.2.1987 and thereafter 24.2.1987. In spite of availing sufficient time they again moved an adjournment application. The Tribunal relied upon the deposition of Workmen Witness No. 2 Bhai Lal who deposed that tyre manufactured by the unit were better in comparison with the tyres manufactured by the similar units namely Radho, Metro, Ralson, International, Dunlop. With increase in vehicles every year on roads, the employers failed to prove that the unit was not viable. Employers admitted that the financial matters were controlled by Jay Shree Tea and Industries Ltd., and that the balance sheet prepared by Jay Shree Tyres were incomplete and did not depict the true financial picture. None of the officers of Jay Shree Tea and Industries Ltd. appeared before the Tribunal in support of the grounds of genuineness of the closure. A finding was recorded that Jay Shree Tea and Industries Ltd. purposely avoided to do so because they knew that they were running into profits. They did not move for closure and allow the Jay Shree Tyres to apply with incomplete accounts. The Tribunal also considered and found that the entire purpose of the "leave and licence" agreement was to run the factory and not to close it. The Jay Shree Tea and Industries Ltd. was not given any authority under the agreement to close down the concern during the period of leave and licence, which was to expire on January 31, 1989. In para 32 of its award, the Tribunal also recorded a finding that if a factory had gone sick the employers should have analyzed its causes and then tried to cure them. In the present case except harping that the financial condition is bad no effort was made to show as to what measures were taken to improve the unit. The employers, it was held did not adopt any measures to make the unit viable and thus the application for closure was found to be premature and against public interest. So far as the plea of accumulation of stocks is concerned an application was made for lay off on that ground on 3.9.1986, which was rejected and the said matter was subjudiced before the High Court. In any case nothing was

established to show that accumulation of stocks was so chronic that it may necessitate closure. No evidence was led to show that due effort was made to market the goods, efficiently and that inspite of efforts the accumulation continued. The Tribunal found that no effort was made to show that the manufactured goods could not be sold in future. The Tribunal concluded that none of the ground taken for closure were valid that the application dated 4.8.1986 was unreasonable and illegal.

16. Sri V.R. Agarwal, senior counsel appearing for petitioner submits that the Tribunal exceeded its jurisdiction in going into the details and finding out the reasons of the sickness and the fact whether the unit was viable. According to Sri Agrawal, the statement of accounts was prepared by the auditors of the company and that the workmen had not challenged the statement. He submits that a common pool of finances was maintained in the head office and that the capital expenses were incurred by the head office for the unit from year to year. The total investment made by the company in the Allahabad unit from 1976-77 to 1985-86 without interest was to the tune of Rs. 3,65,26,301.10. After adding the interest on the Investment; the total investment with interest as on 31.3.1986 came to Rs. 1,245.91 lakhs. The system of account was, that whenever required the money was advanced by the company in a particular year for investment on the fixed assets such as an machinery and buildings, and that the loss or profit suffered by the unit was transferred to the accounts of the head office of the company by the unit at the end of each closing year. Only the working capital advanced by the head office remained in the books of the unit. The balance sheet and profit and loss account of the company was prepared every year in respect of all Independent unit including Allahabad unit for internal administration of the company and each unit prepared its own balance sheet profit and loss accounts and sent the same to the head office for internal administration and for preparation of balance sheet and profit and loss accounts of the company.

17. Shri V.R. Agarwal submitted that the balance sheet and profits and loss accounts of each unit of business or undertakings were taken Into consideration and consolidated. The unit's balance sheet did not reflect the correct profit and loss, as it did not take into consideration the interest on advances and losses and profits on previous years, fixed assets, depreciation on fixed assets, payments to sales staff of the units stationed at head quarters and contribution to gratuity fund of the staff and the workmen. Whenever a question arose whether the unit is running into profit and loss, the interest on the advances, depreciation, salary of sales staff, gratuity fund was taken into consideration. The applications for lay off were moved on account of problem with the boiler and that the documents annexed to these applications for permission for lay off, could not have been taken into consideration for deciding applications for closure. Sri Agarwal further submitted that the accounts prepared by auditors could not have been disbelieved by the Tribunal which had no expertise in accounting. The employers had also established that there were slump in the market. Stocks were piling up day by day and there was no future prospects of the products. The employers

were unable to run the factory profitably. The unit was as such unviable. The Director's reports are based purely on the basis of production and sale and gross profit in comparison with the previous year without taking into consideration the interest. In the end, Sri Agarwal submits that sufficient opportunity was not given to the employers to lead evidence and to prove the losses and unavailability of the unit. Lastly, it was submitted that the petitioners placed on record sufficient material to establish that the unit was running into losses and thus it was neither in the public interest nor in the interest of workmen to reject the application for closure. The Tribunal exceeds its jurisdiction in making unnecessary enquiries. Once it was established that the unit was not running into losses, there was no larger public interest to serve in running the unit, the application for closure should have been allowed.

18. Sri K.P. Agarwal, senior counsel, appearing for the workmen, on the other hand, submitted that the application for closure was not bona fide. The period of leave and licence was coming to an end and that the company took a decision with mala fide intention to close down the unit. The industrial relation between workers and employer were cordial and that apart from statutory bonus the workmen were paid ex-gratia payments, increments and were awarded appreciation letters. The production and quality of tyres and tubes was appreciated by the employers. He submits that stand taken by the employers about the financial viability was mala fide, illegal and invalid. Every company especially those managed by the leading industrial house and prepared true and correct accounts and closely monitor the financial position of every unit. It is difficult to believe that the accounts were not prepared unit-wise. The employers failed to prove that they were running into losses and in fact the whole stand was tainted with falsehood. No one was produced from the head office to prove that the loans were taken from the banks or financial institutions and that the head office was paying interest on such advances given to the units. According to Sri Agarwal, accounts of the unit were cooked up and were not prepared by the statutory auditors of the company and that the entire statement of losses was prepared and signed by an internal auditor on a single day only to support the application for closure. Sri K. P. Agarwal submits that the findings recorded by the Industrial Tribunal after taking evidence are findings of the fact. The Tribunal was required to decide the matter within 30 days and that the dates were fixed with the agreement of the parties. The employers wanted to delay the matter and took adjournments only to frustrate the attempt of the Tribunal to decide the matter within statutory period. The application was rightly rejected and that the Tribunal did not commit any error on record to call for interference from this Court.

19. The Supreme Court in Orissa Textile and Steel Ltd. (supra) held in para 18, that merely because the reasons are genuine and adequate does mean that permission to close must necessarily be granted. There could be cases where the Interest of general public may require that no closure takes place. Where the reasons are genuine and adequate, the interest of general public must be of

compelling and overriding nature. Some difficulty and financial hardships in running establishments would not be sufficient to grant permission to closure. The employer must show that it has become impossible to run the establishment.

20. The unit was taken by the company on leave and licence basis, for a period of 12 years beginning from 1.2.1977. It has admitted to the employers that the financial position of the company was not disclosed either to the workmen or to the State Government in its successive applications for lay off made on 9.6.1986, 22.6.1986 and 3.9.1986. The profit and loss accounts and the balance sheet of the unit were not prepared separately for the unit upto the date the decision was taken to close the unit. No material was produced or evidenced led to show that the company had considered the financial position of the unit in any of the preceding years. The company did not produce any officer or any documentary evidence from the head office to show that at any stage before deciding to close the unit, the financial position of the unit was assessed by the company. The Directors of the company gave encouraging picture in the balance sheet of the years 1983-84 and 1984-85. The reports of the company did not show that the unit was in any financial trouble. No evidence was led by the employer to establish that the loans taken from the bank and financial institutions and any interest was paid by the company on these loans to the banks and financial institutions. It is hard to believe that financial institutions will give loans to the company to defray in any manner whatsoever and especially to a unit which is alleged to be running into losses. The depreciation was not provided. The entire statement of investment made by the company in the unit from 1976-77 to 1985-86 and adding the figures of interest were prepared on a single day by an internal auditor. All along the years from 1976-77 to 1985-86 the workmen were given ex-gratia payments, beyond the statutory bonus and were given increments and appreciation letters. The company was satisfied with the production and the quality of its products. No efforts whatsoever was made with regard to improving the viability of the company. About 389 workmen were employed in the unit and taking into account the staff more than 400 employees were to be loose their jobs on closure.

21. The Tribunal discussed the evidence and has considered each and every document filed in detail. Adequate opportunity was given to both the parties to lead their evidences. The counsel for petitioner, inspite of repeated opportunities was not able to demonstrate any statutory rules or any practice adopted by the auditors of the company in which accounts of the unit are not prepared separately and are not audited by the statutory auditors of the company. He has not been able to assail the finding that the balance sheet of Jay Shree Tyres and Tubes was not audited and that the accounts showing losses were prepared on single day by an internal auditor of the company. There was no evidence on record led by the employer to show that any effort whatsoever was made to improve the viability of the company. They did not lead evidence to show that there was recession in the tyre market and that there was no possibility of financial revival in future. The genuineness and the adequacy of the reasons

stated by the employer were thus not proved on record. It was also not in the public interest to close down an industrial undertakings which was meeting the targets of the production and quality and was employing more than 400 employees. The Tribunal as such did not commit any error of law or Jurisdiction to interfere in the matter.

22. Having regard to the entire circumstances I find that the employer failed to prove that the unit was suffering losses that had lost its viability, or that It was in public interest to close the unit. The order of State Government rejecting the application for closure and the award of the Industrial Tribunal do not require any interference. The writ petition is dismissed with cost on the petitioner employer.