

(2006) 04 KAR CK 0025
In the Karnataka High Court
Case No : Writ Appeal No. 1925 of 1998

J.L. Morison (India) Ltd. and Another	APPELLANT
Vs	
The Secretary Labour and Social Welfare Dept. and Another	RESPONDENT

Date of Decision : 19-04-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 25 (O)

Citation : (2006) 110 FLR 732 : (2006) 3 KCCR 1561 : (2007) 1 LLJ 41

Hon'ble Judges : R. Gururajan, J;C.R. Kumara Swamy, J

Bench : Division Bench

Advocate : Kasturi and Associates for Gayathri Balu, Kahithan and Co, for the Appellant; B. Veerappa, HCGA for R1, T. Narayanaswamy, S. Narahari and M. Roopa Chitra Balakrishana for R2, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—M/s J L Morison (India) Ltd., (for short "the company") has preferred this appeal being aggrieved by the order of the Learned Single Judge dtd. 17-4-1998 passed in WP No. 19042/1996.

2. The facts in brief are as under:

The Company is engaged in the manufacture of health care, hygiene and personal care, medical and surgical products. At the Bangalore factory it is engaged in the manufacture of surgical sutures. The total number of workmen employed at the Bangalore Factory was 157 out of which 22 have opted for retirement. The appellant lost its market as it was unable to modernize and keep pace with fast changing technology. The main competitor of the appellant was M/s Johnson and Johnson. It has captured more than 97% of the market share giving them a monopoly status. Appellant met with financial losses during the year 1992-1993, 1993-94 and 1994-95. In those circumstances, an application was filed seeking for permission u/s 25(0) of the Act. The Government has chosen to refuse to grant permission sought for by the appellant in terms of an

order dtd. 9-4-1996. Same was challenged in WP No. 19042/96. Learned Single Judge dismissed the writ petition on 17-4-1998. It is in these circumstances, appellant is before me.

3. Sri Kasturi, Learned Senior Counsel took me through the pleadings and the material on record to say that the impugned order challenged in writ petition requires consideration in these appeals. In so far as the rejection of the closure application is concerned, he took me through the material on record to say that sufficient material was placed for the purpose of closure and the same was not properly considered by the Government. The poor market shape in the light of international competitor by name Johnson and Johnson made the Bangalore unit a non-viable unit in terms of material facts he would further elaborate by saying that the old technology of the appellant could not withstand the market monopoly of Johnson and Johnson. He would further say that several small sector units have come into the field causing additional marketing difficulties. He would further invite our attention to the scarcity of raw material in the case on hand. He would therefore say that sufficient material was placed with regard to the case of closure in the case on hand. The Government without proper application of mind has chosen to reject the case of the appellant. When the same was challenged before the Learned Single Judge, according to the Learned Counsel, the Learned Single Judge has not taken into consideration the requirement of law while rejecting the writ petition filed by the petitioner/appellant. He invites our attention to the order of closure to say that the order was virtually at the instance of the Minister for Labour in terms of the finding. He would further say that the Government has taken into consideration several irrelevant factors for the purpose of rejection of the case. Learned Single Judge according to the petitioner, has committed a serious error in not accepting the case of the petitioner.

4. Per contra, Learned Counsel for the contesting respondent/workmen would support the order of the Learned Single Judge in rejecting the case of the petitioner/appellant.

5. Before considering the order of the Court let us see the law governing closure.

Apex Court in 1970 I LLJ 343 has noticed that the tribunal did find that the closure of the eight depots was genuine and real and was not adopted as a device for carrying on the same business in a different manner. If the same business had continued though under a different guise, the claim of the workmen not be retrenched could possibly be considered by the tribunal but on the finding that there was a genuine closure of the business that used to be carried on at depots, no question could arise of the retrenchment.

The Apex Court in *The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen*, has considered the meaning of "establishment" in its judgment.

The Apex Court in *Parry and Co. Ltd. Vs. P.C. Pal and Others*, has ruled that it is

well established that it is within the managerial discretion of an employer to organise and arrange his business in the manner he considers best. So long as that is done bonafide, it is not competent to a tribunal to question its propriety if a scheme for such organisation results in surplusage of employees no employer is expected to carry the burden of such economic dead weight and retrenchment has to be accepted as inevitable.

In Associated Cement Companies Ltd. and Another Vs. Union of India and Others, Gujarat High Court has ruled that a right to close down a business being an integral part of the fundamental right to carry on business, the words, "genuine and adequate" must have that meaning which is consistent with the nature of that right. If the closure is bonafide or an account of unavoidable circumstances, beyond the control of the employer, then they will have to be regarded as genuine and adequate.

6. In the case on hand, we have seen the material placed by the management and the consideration of the same by the authorities.

7. Admitted facts would reveal that the petitioner made an application on 19-2-1996 u/s 25(0) of the Act before the State Government. An enclosure with regard to reasons was enclosed with the application. Government issued notice to the parties and there after it has chosen to reject the request of the petitioner. It is seen from the order of the Government that the Minister of Labour appealed to the management not to effect closure. It is thereafter the present order has been passed. In the order, the Government has noticed the financial position for the financial years 1992-93, 1993-94 and 1994-95. In the year 1992-93 it is seen that the sales figure shows on increasing trend. Thereafter it is seen that there is some market value for these products. The Government has also noticed various other material on record for the purpose of rejection. It is no doubt true that the Government while referring the matter has chosen to refer to certain aspects of the matter, which strictly speaking is unnecessary on the facts of this case. But, the Government has referred to necessary details for the purpose of rejection of the closure order. A certain reference to certain material which are of general nature would not be itself affect the order as a whole, as argued by the Learned Counsel. When this order was challenged, Learned Single Judge after noticing the Government order, material placed before the Court, the balance sheet reflecting the financial position and the case laws on the subject has accepted the rejection of closure order. When a fact finding authority has chosen to consider the relevant material and has proceeded to pass an order, this court cannot sit in appeal over such order unless those facts are totally irrelevant for the purpose of consideration of the matter by the authority. It is the specific case of the management that they are incurring losses. But no material was placed with regard to the Bangalore Plant as stated by the authorities. It is also seen that the market is not so bad, requiring closure. After all closure is the last resort. The Government has considered the relevant factors in terms of Section 25(0) of the ID Act which has been rightly accepted by the Learned Single Judge.

8. We are also not impressed by the argument that the order is not an acceptable one in the light of the Labour Minister's request not to close down the undertaking. This Court cannot forget that Minister of Labour might have made a request not to close down in the larger interest but that by itself would not in any way nullify the order rejecting the closure application. When the closure application is not based on facts, this Court would not be justified in interfering with the impugned order unless the other party is able to show that the said order suffers from errors of fact and errors of law. We are satisfied that rejection of the order of closure is based on facts and it has been rightly accepted by the Learned Single Judge. In these circumstances, we are not inclined to interfere with the order of the Learned Single Judge.

9. In the result, this writ appeal is dismissed. The order of the Learned Single Judge passed in WP No. 19042/96 dated 17-4-1998 is confirmed.