
(2008) 07 BOM CK 0149
In the Bombay High Court
Case No : O.O.C.J.W.P. No. 1332 of 2007

Kansai Nerolac Paints Limited

APPELLANT

Vs

Paints Employees Union

RESPONDENT

Date of Decision : 28-07-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 25(5), 25(N), 25FFA, 25N(6), 25O

Citation : (2008) 5 ALLMR 531 : (2008) 119 FLR 137 : (2009) 1 LLJ 76 : (2009) 2 MhLj 213

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : J.P. Cama, R.N. Shah, Sanjay Udeshi, Mahesh Londhe, instructed by Sanjay Udeshi and Co, for the Appellant; Meena Doshi, for the Respondent

Final Decision : Allowed

Judgement

S.A. Bobde, J.—This writ petition is filed by the employer challenging the order dated May 5, 2007 passed by the Industrial Tribunal, Maharashtra, holding that the petitioners are not entitled to effect closure of its Lower Parel Establishment and directing them to pay full wages to all the concerned workmen with effect from February 2, 2003. The petitioner had applied u/s 25-O of the Industrial Dispute Act (for short "I.D. Act") for permission to close its Lower Parel Unit. That application was allowed on March 27, 2003 by the Commissioner of Labour. On April 15, 2003 the respondent union applied for review or reference of the permission of closure u/s 25-O(5) of the I.D. Act. On April 24, 2003, the Commissioner Labour who is the Specified Authority u/s 25-O declined to review permission for closure and instead referred the matter to the Industrial Tribunal for adjudication. The question is whether by declining to review, the Specified Authority has rejected the application for review. Therefore, whether the Specified Authority could have thereafter referred the matter to the Industrial Tribunal for adjudication u/s 25-O(5) of the I.D. Act.

2. Mr. Cama, the learned Counsel for the petitioners submitted that the order of the Industrial Tribunal rejecting the petitioners application for closure is passed without authority of law since the order making the reference dated April 24, 2003 was itself without authority of law and incompetent. The learned Counsel relies on Section 25-O(5) of the Act and the decision of the Supreme Court in Cable Corporation of India Ltd. Vs. Additional Commissioner of Labour and Others, interpreting an identical scheme Section 25(N) of the I.D. Act. Section 25-O(5) reads as follows:

25-O. Procedure for closing down an undertaking.- (I) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure or the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner: Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

(2) ...

(3) ...

(4) ...

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under Sub-section (2) or refer the matter to a Tribunal for adjudication.

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

In short the submission on behalf of the petitioner is that Specified Authority could have on the respondents application either reviewed the order of the company granting or refusing to grant permission for closure or refer the matter to a Tribunal for adjudication. It had no authority to reject the application for review and refer the matter to the Tribunal for adjudication.

3. This contention is clearly supported by the judgment of the Supreme Court in the case of Cable Corporation of India (supra), interpreting Section 25-N(6), which reads as follows:

25-N: Conditions precedent to retrenchment of workmen. - (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until:

(a) ...

(b) ...

(2) ...

(3) ...

(4) ...

(5) ...

(6) The appropriate Government or the specified authority may, either on its motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under Sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication.

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

4. In the case before the Supreme Court both the application for review and the application for reference has been rejected. However, the High Court had directed that a Reference be made. The Supreme Court" reversed the order of the High Court holding that the appropriate Government could either review the matter or refer the matter to the Tribunal. It could not do both. The Supreme Court in paragraph 15 observed as follows:

15. A plain reading of the provision makes the position clear that two courses are open. Power is conferred on the appropriate Government to either on its own motion or"; on an application made, review its order or refer the matter to the Tribunal. Whether one or the other of the courses could be adopted depends on the fact of each case, the surrounding circumstances and several other relevant factors.

There is no reason why Section 25-O(5) should not be construed similarly. In the present case, it is clear that the respondents union applied for a review of the order granting permission for closure and in the alternative prayed for a Reference of the dispute to the Specified Authority. The Specified Authority considered the application and declined a Review in the following words:

...I am also of the opinion that the Applicant Union has not made out a case for review of the order dated March 27,2003.

Instead it referred the matter u/s 25-O(5) of the Act, in the following words:

...hereby referred u/s 25-O(5) of the said Act to the Industrial Tribunal, Mumbai consisting of Smt. S.V. Ayarekar.

5. Ms. Doshi, learned Counsel for the respondent submitted that the Order of the

Specified Authority cannot be construed as an order rejecting the respondents application for review but is liable to be construed only as an order giving reasons why the Authority decided to refer the matter u/s 25O-O(5) of I.D. Act. It is not possible to construe the order in the manner suggested by the learned Counsel for the respondents. The order clearly says no to the application for review and yes to the Reference u/s 25-O(5) of the I.D. Act.

6. At this juncture, it may be noted that the respondents had not disputed before the Tribunal that Commissioner of Labour decided the Review Application on merits and declined to call back his order of granting permission to close down the Lower Parel Unit.

7. It was next contended on behalf of the respondent that if the order is to be construed as an order rejecting the review, the respondents would be entitled in law to challenge that order and might still challenge that order. The respondents are certainly free to take such steps as may be advised in regard to the order but as a fact today there is no challenge to the order and therefore this submission does not merit any consideration.

8. The learned Counsel for the respondent next contended that the order dated April 24, 2003 allegedly declining Review cannot be said to be in accordance with the law. The learned Counsel relied on the judgment of the Supreme Court in Orissa Textile and Steel Ltd. Vs. State of Orissa and Others, In paragraph 16, the Supreme Court observed as follows:

...As submitted by the learned Attorney General, in a review the appropriate government would have to make an enquiry into all necessary/acts, particularly into the genuineness and adequacy of the reasons stated by the employer. An opportunity of being heard would have to be given to the employer, workmen and all interested persons. The order on review would have to be in writing giving reasons.

In any case its validity has not been questioned by the respondent and it is not necessary to deal with this question. It must be noted that the learned Counsel for the respondent urged this Court to decide the entire controversy in the matter and not merely the competence of the Tribunal to go into the Reference. It is obviously not necessary to do so, if the reference is found to be incompetent. It was pointed out on behalf of the respondent that the petitioners have further purported to effect the closure to their undertaking Lower Parel Unit after the closure in dispute u/s 25-FFA of the I.D. Act and therefore the validity of the entire order of the Tribunal should be decided in this matter. The subsequent closure is not in issue in these proceedings.

9. Mr. Cama, the learned Counsel for the petitioners submitted that the subsequent closure has been effected without prejudice to the rights under the earlier permission. However, it appears that there is no reason why the entire controversy should be decided if it is seen that the Reference was not competent.

10. In this view of the matter, I am of opinion that the Specified Authority could not have referred the matter to the Tribunal in exercise of its power u/s 25-(5) of the I.D. Act, having rejected the application for Review. The power of the Specified Authority to deal with and decide an application made to it u/s 25-(O) stood exhausted on the rejection of the Review application and a Reference to the Tribunal thereafter was not competent.

11. In this view of the matter, the petition succeeds. Rule is made absolute in terms of prayer Clause (a), which reads as follows:

(a) That this Honourable Court be pleased to issue a Writ of Certiorari or a Writ in the nature of certiorari of any other Writ, Order or Direction under Article 226 of the Constitution of India, calling for the records and proceedings of Reference (IT) No. 37/2003 from the office of the Trial Court and after examining the legality, validity and/or propriety of the impugned Award dated May 5, 2007 and after hearing all the parties to the Petition, quash and set aside the impugned Award dated May 5, 2007, which is annexed at Exhibit "R" hereto;

12. At the request of the learned Counsel for the respondents, the petitioners shall not withdraw the Bank Guarantee furnished by them for a period of six weeks from today.