
(1991) 11 P&H CK 0094
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3559 of 1991

Karnal Leather Karamchari Sangathan (Regd.)	APPELLANT
Vs	
State of Haryana	RESPONDENT

Date of Decision : 22-11-1991

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 25O(5)

Citation : (1992) 102 PLR 224

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : Gobind Goel, for the Appellant; Jaswant Singh Bhagat, I.K. Mehta and Manmohan Singh Kohli, for the Respondent

Judgement

Jawahar Lal Gupta, J.—M/S. Liberty Enterprises (respondent No. 2) made an application u/s 25O of the Industrial Disputes Act, 1947 for permission to close the establishment. Vide orders dated March 12, 1991, the Financial Commissioner and Secretary to Govt. Haryana, Labour and employment Departments, accepted this application. A copy of this order is at Annexure P-I. Aggrieved by this order, the Karnal Leather Karamchari Sangathan (Regd.) (hereinafter referred to as the petitioner) has approached this Court through the present petition. The order has been challenged inter alia on the grounds that the pleas raised ore behalf of the workmen have not been considered. The unit had functional integrity with three other establishments within the same premises and that the authority should have ordered the absorption of the employees in the other units. Learned counsel at the hearing also submitted that application dated March 8, 1991 (Annexure P-2) should have been considered as an application u/s 25O(5) and a reference to the Industrial Tribunal should have been made.

2. On behalf of the respondents, a preliminary objection has been raised. It has been averred that u/s 125O(5), the petitioner has an effective alternative

remedy to challenge the order. According to the respondents, the petitioner can seek a review of the order impugned in this petition. The appropriate authority after considering the matter can either decide to review or "even decide to refer the matter to the Industrial Tribunal. Since the petitioner has effective alternative remedy, it is contended on behalf of the respondents that the controversy raised in this petition cannot be gone into in a petition under Article 226 of the Constitution of India.

3. I have heard Mr. Govind Goel, learned counsel for the petitioner. Mr. F. K. Mehta and Mr. Jaswant Singh have argued the case for the respondents.

Section 25O provides as under : -

"25O. Procedure for closing down an undertaking.- (1) An employer who intends to close down an undertaking or 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 of 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) Where an application for permission has been made under sub section (1), the appropriate Government, after making such enquiry as it thinks fit and after giving reasonable opportunity of being heard to the employer, the workmen and persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) Where an application has been made under sub-section (I) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period, of sixty days.

(4) An 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.

(5) The appropriate Government, may either on its own motion or on the application made by employer or any workman review its order granting or refusing to grant permission under subsection (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.

(6) Where no application for permission under sub-section (1) is made within the period specified, therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits wider any Jaw for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under subsection (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of. six months."

On a perusal of Section 250, it is apparent that the appropriate Government after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and other persons interested in the matter, can if it comes to the conclusion that the reasons stated by the employer are genuine and adequate, permit the closure of the unit. Any party aggrieved by this order has the. right to move for review under clause (5). On consideration of the matter, the appropriate Govt, can either review the order or refer the matter to a tribunal for adjudication. In my view, the controversy, on facts, as raised in this petition, cannot be gone into by this Court under Article 226 of the Constitution. The petitioner has to plead the facts before the appropriate authority. Thereupon, it will be open to the said authority to go into the matter in accordance with law and if it finds that there are adequate grounds for review, it can review its order permitting the closure of the establishment. If the authority finds that the facts pleaded by the parties require an investigation, it can refer the matter to a Tribunal for adjudication.

4. On a consideration of the matter I find that the parties are at variance on almost every material fact. There is a controversy with regard to identity of the establishment. The petitioners claim that Liberty Enterprises (the respondent) is one of the units of the Liberty Group under the same management. It is claimed that the Liberty Enterprises, Liberty Footwear Company, Liberty Life International, Liberty Group of Marketing Division and Liberty Shoes Ltd.

constitute one establishment and are working in the same premises. It is farther claimed that Liberty Enterprises has suffered no losses and had in fact made substantial profits. On these premises, it has been contended that there was no justification for permitting the closure of the unit. It has also been claimed that in fact the closure was against public interest and had been arbitrarily permitted. On behalf of the respondents all these averments have been controverted. In such a situation, it is not possible for this Court to record evidence and give a positive finding either way. I, therefore, deem it proper to relegate the petitioner to the alternative remedy of seeking review u/s 250(5)

5. Mr. Govind Goel,. suggests that the application for review and reference to the Tribunal has already been made by the petitioner He refers to the application dated March 8, 1991 (Annexure P-2). An application made before the passing of the order dated March 12, 1991 cannot be considered to be an application for review of that order. This application had been filed even before the passing of the impugned order. It was by order dated March 12, 1991 that the appropriate Govt. had decided to permit the closure of the unit. Accordingly, the application dated March 8. 1991 cannot be treated as an application under clause (5) of Section 250. However, if the petitioner so desires, it can make an application for review of the order as envisaged u/s 250(5). As and when such an application is made by the petitioner, the appropriate Govt., shall consider that application and decide as to whether or not any review or reference of the matter to a Tribunal is called for. Any party aggrieved by that order shall have the right to resort to such remedy as may be permissible under law.

6. Mr. Goel states that the petitioner shall make an application as envisaged u/s 250(5) within a week from today If such an application is made and advance copy thereof is served on the Management, the appropriate Govt is directed to decide the application within four weeks of its receipt.

7. The writ petition is accordingly disposed of. In the circumstances of the case, the parties are left to bear their own costs