
(2008) 05 MP CK 0012
In the Madhya Pradesh High Court

M.I.S.C. Karmchari Sangh

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 13-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25C, 25FFA, 25O

Citation : (2008) 118 FLR 979 : (2008) ILR (MP) 2197 : (2009) 1 LLJ 374 :
(2008) 3 MPHT 243 : (2008) 3 MPLJ 569

Hon'ble Judges : Subhash Samvatsar, J; P.K. Jaiswal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.K. Jaiswal, J.

Challenge in this appeal is to the judgment of learned Single Judge dated 6-9-2006 passed in VV.P. No. 8918/03, whereby learned Single Judge dismissed the writ petition filed by the appellant/petitioner which is a union, challenging the orders of closure dated 27-1-2000 and 11-8-2003 passed by the respondent No. 1 in exercise of powers conferred u/s 25O of the Industrial Disputes Act, 1947 (for short "the Act").

Brief facts of the case are that the respondent No. 4 is an undertaking of respondent No. 5-Hindustan Development Corporation Limited and is a public limited company. The Company's Steel Division is at Malanpur and was established in the year 1992. The main raw material of the respondent No. 4 is electrical energy. On 15-10-1998, the transformers were burnt and, therefore, the production of the factory was stopped. The factory was closed on account of stoppage of power supply, therefore, it had declared layoff. The said lay off was challenged and ultimately the order was passed by the Labour (Commissioner, Govt. of M.P., Indore on 16-7-1999 (Annexure A-3). Therefore, the Company applied for closure of industry u/s 25O of the Act before the respondent No. 1 on 29-11-1999.

The appellant raised an objection before the State Government for granting permission for closure of the unit. The respondent No. 1/State after considering the objection of the appellant, vide order dated 27-1-2000 granted permission for closure of the unit u/s 250 of the Act.

The appellant/petitioner which is a union of employees in the organisation of respondent No. 4 has called in question the validity of the said order dated 27-1-2000 passed by the respondent/State under the provisions of Section 250 of the Act by filing a Writ Petition No. 384 of 2000 on the ground that the provisions of Section 250 of the Act, as it now stands, require the Government to give reasons for its order. The requirements are that (a) the appropriate Government after making an enquiry as it think fit, (b) opportunity of being heard to all concerned, (c) the decision will be taken having regard to the genuineness and adequacy of the reasons stated by the employer, (d) the interest of the general public, (e) and other relevant factors. Whereas the respondent No. 1 without assigning any reason and without fulfilling requirement as required u/s 250 of the Act passed the order, granting permission for closure of the unit which is illegal and prayed for quashing the same.

The Writ Court vide order dated 27-2-2003 disposed of the Writ Petition No. 384/2000 and directed the respondent No. 1-State Govt. to reconsider it and thereafter, final decision be taken in accordance with law. Paras 7, 8 and 9 are relevant which read as under:

7. From the records in the present case it is also seen that the order impugned was passed on 27-1-2000 more than 3 years have passed and in the additional affidavits and documents filed by the parties, it has been indicated that most of the employees have received their terminal benefits and their accounts have also been settled. It seems that after passing of the aforesaid order various developments have taken place which have to be taken into consideration or deciding the question with regard to closure of the Establishment. These aspects need factual enquiry and the effect of these subsequent developments are also matters which have to be taken into consideration for deciding the action of the Establishment in closing down the Unit and the subsequently approval accorded by the State Government.

Considering the aforesaid aspect of the matter and the subsequent developments that have taken place as is made out from the return and additional return filed by the employer, it is thought appropriate that the matter should be decided by the State Govt. in the review petition which is pending before it and it would not be appropriate for this Court to consider all these aspects in the present petition. Accordingly, without entering into the merits of the controversy, it is directed that the review petition pending before it shall be proceeded with and decided by the State Govt. in accordance with law and while considering the same, the petitioner Union shall also be permitted to participate in the proceedings and make their submissions.

It is made clear that while considering the review application, subsequent developments that have taken place in the matter shall also be considered by the State Govt. and then a final decision be taken in accordance with law.

Petition is accordingly disposed of with the aforesaid.

That, the respondent No. 1 vide order dated 22-8-2003 (Annexure P-2), after hearing the appellant-Union rejected the review application and upheld the order of closure dated 27-1-2000. Paras 9, 10, 11 and 12 are relevant which reads as under:

9- "kklu }kjk vkns" k fnukad 27&1&2000 }kjk vkosnd laLFkku dks iznku dh xbZ canhdj.k dh vuqefr es ;g vk/kkj foosfpr fd;k x;k gS fd vkosnd laLFkku dks ;i;s 200-00 djsM+ ls vf/kd dk ?kkVk gks pqdk gS A vkns" k fnukad 27&1&2000 ds ckn vHkh rd dh fLFkfr eaas yxHkx lks rhu o" kZ mijkar vkosnd laLFkku ds le{k dkj[kkuk can gksus ds dkj.k ?kkVs dh fLFkfr dkQh vf/kd gks pqdh gksxh A bl laca/ k es ;g rF; egRoiw.kZ gS fd IHkh Jfedks dks "kklu dh vuqefr ds mijUr muds vafre nkoks dk Hkqxrku fd;k tk pqdk gS] bl laca/ k esa i{kks ds e/; dksbZ fookn Hkh ugh gS A mDr nksusk Jfed laxBuks }kjk dsoy ;g eqn~nk mBk;k x;k fd V? kalQkWeZj tyus ds dkj.k izca/ku }kjk fd;k x;k ys&vkWQ oS/kkfud ugh gS] Jek;qDr rFkk mPp U;k;ky; }kjk ys&vkWQ dks oS/kkfud ugh ekuk x;k fQj Hkh Jfedksa dks izca/ku dh vksj ls vk/ks osru dk Hkqxrku vHkh rd ugh fd;k x;k A

10- mDr laca/ k esa tks ifjLFkfr;ka le{k vkbZ gS mlls ,slk izrhr gksrk gS fd u;k V? kalQkWeZj yk;k tkdj dkj[kkus esa iqu% mRiknu izkjaHk djus ds iz;kl gksus pkfg, Fks] fdUrj V?kalQkWeZj tyus ds ckn yEcs le; rd dkj[kkus esa mRiknu can jgk rFkk ckn esa "kklu ls vuqefr fnukad 27&1&2000 izkIr dj oS/kkfud :i ls dkj[kkus dks can dj fn;k x;k A vkt dh fLFkfr esa vkosnd laLFkku ds le{k vkfFkZd le`)rk rFkk dkj[kkuk pykus ds mi;qDr iz;kl dh dksbZ laHkkouk utj ugh vkrh A

11- vr,o iwoZ eas ikfjr vkns" k fnukad 27&1&2000 es fdlh la" kks/ku vFkok ifjorZu ds fy, dksbZ mi;qZDr fLFkfr le{k ugha gksus ds dkj.k egkea=h] vk;ju ,.M LVhy etnwj ,drk ;wfu;u] ekyuiqj] ftyk fHk.M }kjk izLrqr iqufoZyksdu vkosnu fnukad 16&2&2000 ckn esa ,e-vkbZ-,l-lh- deZpkjh la?k }kjk izLrqr vkosnu fnukad 2&4&2003 ,rn~}kjk fujLr fd;k tkrk gS A

12- Jfed laxBuks }kjk lquokbZ ds nkSjku ys&vkWQ dk iw.kZ Hkqxrku Jfedks dks ugh gksuk crk;k x;k gS A pwafd bl laca/ k esa izdj.k U;k;ky; esa fopkj/khu gS] vr% Ik` Fkd~ ls dksbZ funsZ" k nsuk visf{kr ugh gS A

That, the appellant challenged the said orders dated 27-1-2000 and 11-8-2003 by filing W.P. No. 8918/2003.

The Writ Court after relying the Division Bench decision of this Court in the case of Union Carbide Karmchari Sangh Bhopal v. Union of India and Ors. 1993 M.P.L.J. 271, and decision of the Constitutional Bench of the Hon'ble Apex Court in the case of Orissa Textile and Steel Ltd. Vs. State of Orissa and Others, , has held that company is in loss of more than 400 crores and it has already been undergone BIFR and proceedings are going on under the provisions of Sick

Industrial Companies (Special Provisions) Act, 1985 with regard to payment of dues to the other party vide Case No. 158/01 before the Board of Industrial and Financial Reconstruction at New Delhi. It is also held that it is not possible to run the company again and the workers and employees have received their dues as per law on account of closure of the company, the appropriate authority have considered all the aspect of the case and granted permission for closure of the unit and the Writ Court cannot enforce the management to run the company because it would amount to accumulation of further losses. With the above reasons, the Writ Court has held that there is no illegality or irregularity in the permission granted by the appropriate Government for closure of the company and dismissed the writ petition.

Section 25O of the Industrial Disputes Act, 1947 reads as under:

25-O. Procedure for closing down an undertaking.--

(1) An employer who intends to close down an undertaking of an industrial establishment to which this chapter applies shall apply for prior permission at least ninety days before the date on which the intended closure is to become effective, to the State 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 by registered post with acknowledgment due.

(2) Where a notice has been served on the State Government by an employer under Sub-section (1) of Section 25FFA and the period of notice had not expired on the 5th August, 1983, such employer shall not close down the undertaking but shall, within a period of fifteen days from the said date, apply to the State Government for permission to close down the undertaking.

(3) Where an application for permission has been made under Sub-section (1) or Sub-section (2), the State Government after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the person 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.

(4) Where an application has been made under Sub-section (1) or Sub-section (2), as the case may be, and the State 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.

(5) An order of the State Government granting or refusing to grant permission shall, subject to the provisions of Sub-section (6), be final and binding on all the

parties and shall remain in force for one year from the date of such order.

(6) The State 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 (3) 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.

(7) Where no application for permission under Sub-section (1) or Sub-section (2) 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 under any law for the time being in force as if the undertaking had not been closed down.

(8) Notwithstanding anything contained in the foregoing provisions of this section, the State 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.

(9) Where an undertaking is permitted to be closed down under Sub-section (3) or where permission for closure is deemed to be granted under Sub-section (4), 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.

As per Sub-section (3), the appropriate Government, after making such enquiry and after giving a reasonable opportunity of being heard to the employer, the workmen and person 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 for closure of the unit.

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 on account of unavoidable circumstances beyond the control of the employer then they will have to be regarded as genuine and adequate. If the employer wants to close down his undertaking bonafide and because of financial or commercial compulsions or serious management problem then the authorities will have to grant permission unless there are compelling and over-whelming reasons of

general public interest justifying refusal.

Learned Counsel for the appellant submitted that the authority while exercising its powers u/s 250 of the Act, it did not considered all aspect as required under Sub-section (2) of Section 25C) of the Act, granted permission without recording any genuine and adequate reasons and the unavoidable circumstances which is beyond the control of the employer to run the factory or because of financial compulsions, the employer is not in a position to run the industry, granted permission of closure of unit.

On the other hand, Shri Ankur Mody, learned Counsel for the respondent Nos. 4 to 6 in support of the order of closure has submitted that the Appropriate Authority has correctly analyse the pleadings of the party and granted permission for closure of the unit. The Writ Court considered these aspects and upheld the order of the Appropriate Authority while dismissing the writ petition of the appellant/petitioner and in this appeal, there is no justification to interfere with such finding recorded by the Writ Court as well as by the Appropriate Authority. He drew our attention to the pleadings of the parties and report of the Annual General Meeting of the company and submitted that company is running in losses to the tune of crores of rupees and every year, losses are accumulated and, therefore, it was not viable to continue with the production and, therefore, they applied for closure on 29-11-1999. The Appropriate Authority after adjudication granted permission which is just and proper. It is also submitted that orders dated 27-1-2000 and 11-8-2003 clearly disclosed the reasons why the company had become enviable and why it was not able to carry out its activities any further. The reasons assigned by the Appropriate Authority is genuine and adequate and Appropriate Authority was justified in granting permission of closure of the company . With the above, he prayed for dismissal of the appeal.

We have heard the arguments of the learned Counsel for the parties at length and perused the record of the case.

The Division Bench of this Court in the case of Union Carbide Karmchari Sangh Bhopal (supra), while considering the question of closure and power of State Government who grant or refuse permission has held that the scope of an enquiry in a writ petition is limited to the questions as to whether the ultimate opinion formed by the Slate Government is vitiated on account of ignoring any relevant factor, or taking into account any irrelevant, extraneous or non-existing factor so as to disclose any error apparent on face of the record. The High Court cannot in its writ jurisdiction delve into the dark crevices of the files of the State Secretariat for the purpose of probing into and examining the correctness of the conclusion relating to the adequacy of reasons unless there is an error apparent on the face of record.

In the case of Orissa Textile & Steel Ltd. (supra), the Hon''ble Apex Court has upheld the validity of the closure and with regard to right of management and

right of the union and parties in event of closure, has observed the following which reads as under:

4. At this stage a submission made by Ms. Jaising needs to be set out. Ms. Jaising submitted that in Meenakshi Mills case a Constitution Bench of this Court has extracted the reasons why in Excel Wear case Section 250 was struck down. It was submitted that, that decision would be binding on this Court. It was submitted that this Court should not itself go into Excel Wear case to find out the reasons why Section 250 was struck down. We are unable to accept this submission. As has been held by this Court, in the case of Prakash Amichand Shah v. State of Gujarat it is the duty of the Constitution Court to form its own opinion about a given case and to consider the effect of a precedent by reading it over again, instead of relying upon the gloss placed on that precedent by some other decision. In our view the submissions of all the learned Counsel will have to be considered in the light of what is laid down in Excel Wear case and Meenakshi Mills case.

After passing of the order dated 27-2-2003 in W.P. No. 384/2000, the respondent No. 1 considered all the necessary facts, particularly into the genuineness and adequacy of the reasons after giving an opportunity to the appellant, assigned the reason for granting permission for closure of industry. In our view, the reasons assigned by the respondent No. 1 in granting permission for closure is genuine and adequate.

On perusal of the documents and reply filed by the respondent Nos. 4 to 6, due to financial crunch and loss, it has become impossible for them to continue to run the establishment. We also saw no substance in the submissions made by the learned Counsel for the appellant. Learned Counsel for the appellant only drew our attention to the order dated 27-1-2000. During the course of arguments, he could not pointed out that in compliance to the direction issued by the Writ Court in W.P. No. 384/2000, the respondent No. 1-Appropriate Authority again reconsidered the whole matter and after assigning the reasons, upheld the order dated 27-1-2000. The respondent No. 1 while exercising powers of review would be performing quasi-judicial functions. The orders passed by the respondent No. 1 was subject-matter of judicial review under Article 226 of the Constitution of India before the learned Single Judge. The learned Single Judge after examining the matter found that there is no illegality or irregularity in the permission granted by the respondent No. 1 for closure of the company and dismissed the writ petition. The scope in this writ appeal is very limited unless there is an error apparent on the face of the record. The orders dated 27-1-2000 and 11-8-2003 clearly states that the reasons given by the management for closure of the two industrial units appears to be reasonable and genuine. The order says that the reasons shown are reasonable and genuine. Therefore, simply because the order only narrates the facts and finding all the facts given in the application to be reasonable and genuine it cannot be said that there is non-application of mind and the order is not a speaking order. 19, For the reasons aforementioned, there

is no merit in this writ appeal. Accordingly, it is dismissed, but without any orders as to cost.