

(2006) 01 AHC CK 0049

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 8891 of 1994

Modi Cloth Mills, Ghaziabad Unit of Modi Spinning and Weaving Mills Co. Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-01-2006

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 76C(1)

Industrial Disputes Act, 1947 — Section 25N(2), 250, 250(1), 250(2), 250(4)

Citation : (2006) 5 AWC 4818 : (2006) 109 FLR 242 : (2006) 2 UPLBEC 1473

Hon'ble Judges : Bharati Sapru, J

Bench : Single Bench

Advocate : V.B. Singh and Vijay Sinha Kirtika Singh, for the Appellant; K.P. Agrawal, Pankaj Mithal, Ekta Singh Rathor, Suman Sirohi, Bushra Maryam and S.C., for the Respondent

Judgement

Bharati Sapru, J.—This petition has been filed by M/s. Modi Cloth Mills, Modinagar, Ghaziabad against an order dated 3.3.1994 passed by the Deputy Labour Commissioner who is the appropriate authority u/s 250(4) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), The petitioner mill had moved an application on 11.12.1993 u/s 250 of the Act, seeking permission to close down its unit at Ghaziabad as it had ceased to be viable.

2. The facts of the case are that petitioner mill was established in 1949 and over the years, the petitioner company could not modernize its unit and the company started facing heavy losses. By the year 1993 the condition of the petitioner unit was very poor as neither the company was able to update and modernize its plant and machinery nor it was able to cope with the other financial liabilities and was unable to run its unit.

3. In fact the petitioner unit had been declared as a sick unit on 15.6.1990 and the matter was pending before the BIFR which declared the unit as sick unit from that date.

4. It is the contention of the petitioner company that the company being faced with continuous losses, had no option but to approach the appropriate authority u/s 250 of the Act by way of moving an application to seek permission to close down the industry.

5. The petitioner company had made an application u/s 250 of the Act on 11.12.1993 in the required format as prescribed under the Act and gave specific details as to why the company wished to get the unit closed.

6. The petitioner company sought permission for closure of its unit by moving an application with full and complete details in Form Q-A under Rule 76-C(1) of the Industrial Disputes Rules, 1947 read with Section 250 of the Industrial Disputes Act, 1947, Full and complete details are to be supplied in the said form. The reason being the Section 250 of the Act contemplates a proper "enquiry". Before passing an order for permission or denying it by, an authority under the said Act has to conduct a full-fledged enquiry and only thereafter he is in a position to give reasons for coming to his conclusion whether or not. the permission should be granted or whether the prayer made in the application u/s 250 of the Act, should be refused.

7. The excerpt of Sub-section (2) of Section 250 of the Act is quoted hereinbeow:

(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 a reasonable opportunity of being heard to the employer, the workmen and the 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.

8. Thus the above provision provides that the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of hearing may, having regard to the genuineness and adequacy of the reasons shall record in writing, grant or refuse to grant such permission.

9. I have heard learned Counsel for the parties.

10. Sri V.B. Singh, learned Senior Advocate assisted by Sri Vijay Sinha have argued that the impugned order dated 2.3.1994 is vitiated because the authority under the said Act while passing the impugned order failed to give a. reasoned or speaking order and did not deal specifically with the material supplied by the petitioner to show that it had been incurring losses and was unable to continue with its manufacturing activities.

11. Sri Singh has also argued that the authority has simply said that if the petitioner company had not failed to pay its electricity dues, it would have able to carry on with its manufacturing activities. This itself was not a good reason to reject the petitioner's application u/s 250 of the Act.

12. Sri Singh has next argued that this conclusion has been drawn by ignoring material evidence on record produced by the petitioner company during the enquiry before the authority concerned to show that in fact the petitioner could not carry on further with its manufacturing activities.

13. Sri Singh has further argued that this conclusion in fact also does not reflect anything about genuineness or the adequacy of the reasons supplied by the petitioner for accepting or refusing the application filed u/s 250 of the Act.

14. Learned counsel for the petitioner has drawn attention of the Court to the decision of the Hon"ble Supreme Court in the case of Orissa Textile and Steel Ltd. Vs. State of Orissa and Others, wherein in para 11 of the said decision, the Hon"ble Supreme Court held as below:

11, As has been set put hereinabove, in Excel Wear case one of the reasons why Section 250 (as it then stood) was struck down was that it did not require giving of reasons. Now the order granting or refusing permission has to be in writing and be a reasoned order. In Meenakshi Mills case in para 29-30, it has been held as follows: (SCC pp. 363-66)

In Sub-section (2) of Section 250, Parliament has used terminology which is different from that used, in Sub-section (2) of Section 250. In Sub-section (2) of Section 250, Parliament had used the expression "the appropriate government may, if it is satisfied that the reasons for intended closure of the undertaking are not adequate or sufficient or such closure is prejudicial to the public interest" which implied that the order refusing to grant permission to close down the undertaking was to be passed on a subjective satisfaction of the appropriate government about the adequacy or the sufficiency of the reasons for the intended closure or the closure being prejudicial to the public interest. In Sub-section (2) of Section 250, the words used were "the appropriate government or authority may, after making such enquiry as such government or authority thinks fit, grant or refuse, for reasons to be recoded in writing which indicates that the appropriate government or authority, before passing an order granting or refusing permission for retrenchment, is required to make an enquiry though the precise nature of the enquiry that is to be made is left in the discretion of the appropriate government or authority and further that the order that is passed by the appropriate government or authority must be a speaking order containing reasons

15. The position of law as it explained by the Hon"ble Supreme Court is explicit. Before passing an order granting or refusing permission to close down a unit, it is incumbent upon the appropriate Government that having made an enquiry after giving both parties a proper opportunity of hearing, the authority must pass a speaking order containing reasons. The authority must also enquire into the correctness, genuineness and adequacy of the facts as adduced by the employer who seeks permission to close down.

16. In the present case, the petitioner company had given detailed information

and the authority concerned has failed to give a speaking order on the detailed facts as supplied by the petitioner company.

17. I have also heard Sri K.P. Agarwal, learned Senior Counsel who argued that the reasons given by the authority are adequate and if the petitioner company had paid the electricity dues and met their financial obligations, the company would be in running position. But the fact is that neither the petitioner was able to pay its electricity dues nor was able to meet its other financial obligations. Furthermore the petitioner company was not able to modernize its industry resulting huge losses and it had become a sick unit, the petitioner company therefore moved an application seeking permission to close down.

18. Having heard learned Counsel for the parties and having perused the record, I am of the firm opinion that the submissions as made by the learned Counsel for the petitioners have substance and therefore I accept the same. The authority under the Act while passing order u/s 250 of the Act should have given a speaking order while accepting or rejecting the application, the order in the present case is "bald" in nature. It does not deal with the detailed facts as supplied by the petitioner and even though the detailed facts were there, there is not even a whisper about the facts as stated by the petitioner in the said impugned order. The authority concerned has failed to comply with the mandate of Section 250(2) of the Act and the impugned order is liable to be set aside.

19. It is also noted that the petitioner company instead of availing the remedy of filing a review application against the impugned order passed by the appropriate Government as is provided under Sub-section (5) of Section 250 of the Act, opted to seek relief by way of present writ petition. Learned counsel for the petitioner has also argued that to move an application u/s 250(5) of the Act would simply be a case of going from "ceaser to ceaser's wife". In support of his argument, he has relied upon a case in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, in which the apex court has held that an alternative remedy does not operate as an absolute bar in all cases. Learned counsel for the petitioner has also relied upon another case of BPME Employees' Union v. Union of India as reported in 2001 LIC 3628 wherein Hon'ble D.K. Seth, as his Lordship then was has also held that the review provided under Sub-section (5) of the Section 250 of the Act is not an absolute bar.

20. In the result, the writ petition is partly allowed. The impugned order dated 3.3.1994 passed by the Deputy Labour Commissioner, Ghaziabad is quashed and the matter is remanded back to the authority concerned who will pass a fresh order, after giving both parties an opportunity of hearing. He shall consider entire material before him and shall pass a speaking order preferably within a period of six months from today, looking into the genuineness and adequacy of reasons as supplied by the petitioner.

21. There shall be no order as to costs.