

(2009) 11 AHC CK 0044
In the Allahabad High Court
Case No : Civil Writ Petition No. 3294 of 1985

Modi Textiles Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-11-2009

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6W(1)

Citation : (2010) 124 FLR 360

Hon'ble Judges : S.S. Chauhan, J

Bench : Single Bench

Advocate : Sudhir Chandra, C.B. Gupta and Ms. Kirtika Singh, for the Appellant;
S.C. and K.P. Agarwal, for the Respondent

Final Decision : Allowed

Judgement

S.S. Chauhan, J.—The petitioner through this petition has come forward to challenge the order dated 15.2.1985, by means of which the State Government has refused to allow the application of the petitioner to close down the unit.

An application dated 19.12.1984 was moved u/s 6-W(1) of the U.P. Industrial Disputes Act (for short the "Act") through its chairman. The petitioner is a company incorporated under the provisions of the Companies Act, 1956 carrying on the business of manufacturing synthetic fabrics. The registered office of the petitioner-company is situated at Modinagar, U.P. The present unit prior to 31.8.1983 was a unit of Modi Spinning & Weaving Mills Company Limited. Thereafter, present unit assumed independent establishment and was incorporated as a wholly owned subsidiary of Modi Spinning & Weaving Mills Company Limited. However, the mill was working only to 40% of its capacity in the near past. A new union namely, Kapra Mill Mazdoor Union coming into existence in the year 1979 as against the Indian National Trade Union Congress and it tried to gain strength by indulging into all sorts of subversive activities including the violence on account of inter-union rivalries and resorting to illegal strike. Finding the situation beyond control, the management decided to declare

lockout for about two months in the year 1980-81. It is, thereafter that the Modi Spinning and Weaving Mills Company Limited entered into agreement with the Kapra Mill Mazdoor Union i.e. respondent No. 5 on 25.6.1981 followed by another agreement on 14.10.1982 in terms of which a wage increase to the tune of Rs. 115/- was given to each worker in addition to the increase in index in Dearness Allowance. In return the aforesaid union assured to increase the production by observing discipline in the mill. But on account of low production and poor quality of output heavy losses were incurred and consequently the borrowings not only from the internal resources of the company, but also from the outside agencies such as financial institutions etc. increased. On account of the aforesaid increase in losses borrowings of the petitioner-company was increased to Rs. 1.16 crores in 1983-84. The inter-union rivalries resulted in frequent and intermittent stoppage of work, illegal strike, acts of sabotage, obstructions of the movement of raw materials and finished goods, issuance of threats, endangering life and property and physical assault of supervisors and managerial staff. Between July, 1983 and April, 1984 there were as many as 20 incidents of murder committed by the employees belonging to rival unions and there were approximately 30 incidents of assaults with armed weapons leading to serious injuries. On account of the aforesaid unwarranted situation, which was beyond control the losses of the unit increased heavily i.e. to the tune of Rs. 876.64 lacs. On 9.10.1983 all the workers of the petitioner-company went on illegal strike without any notice and prior to the aforesaid strike hardly 395 workers were attending their duties in various shifts against the minimum requirement of 744 workers and those attending the duties were also not very serious in performing their duties. The management found that it was impossible to run the mill and so all the four shifts of the mill were combined into two shifts. An appeal was made to the workmen by displaying notices on the mill gates and through publication in the newspapers to call off the illegal strike and to report back on duty. Thereafter, when the workmen did not turn up fresh appointments were made in order to continue with the running of mill. The aforesaid efforts resulted in increase of the production, but in spite of that losses of the company increased from Rs. 10 lacs per month to Rs. 235 lacs per month in September, 1984. Again the workers went on strike on 9.7.1984. Thereafter, notices were issued and appeals were made to the striking workers informing that the strike was illegal. It was also found that various letters were written to the labour authorities and when the labour authorities visited the factory premises of the petitioner-company it was found that at the time of shift changes, gates of the factory were open yet the workers were not reporting for duty. Thereafter, labour authorities informed the petitioner-company that in a meeting of the representatives of All India Workers' Federation held on 11.9.1983, representatives of the Workers' Federation passed a resolution, wherein they agreed to refrain from violent activities. The illegal strike in fact commenced from 9.7.1984 and thereafter continued unabated. The petitioner-company moved a representation on 19.12.1984 addressing to the State Government in terms of section 6-W of the Act stating therein that it proposed to close down the petitioner-company w.e.f. 22.3.1985 for reasons

explained in the accompanying documents to the said application and permission was sought to close down the said mill. The application of the petitioner was rejected vide order dated 15.2.1985, inter alia, on the grounds mentioned therein. Hence this petition.

2. Submission of learned Counsel for the petitioner is that in spite of various serious efforts being made by the petitioner-company no fruitful result could be achieved and the losses of the company accumulated and increased continuously. Efforts were made by the petitioner to curtail the losses by making fresh appointments and also rescheduling the shifts, but on account of criminal and subversive activities of Kapra Mill Mazdoor Union the workers were not able to work of their own freewill. There were 20 incidents of murder and 30 incidents of criminal assaults and on account of inter se rivalry the situation was very terrible and there was no certainty of the workers and many workers did not come to work on account of the aforesaid criminal activities of the labour union. He has further submitted that the State Government did not appreciate the matter in a correct perspective and has failed to take into consideration the grounds propounded by the petitioner-company that heavy losses were accumulated on account of the labour unrest and further that an atmosphere of chaos and terror was created by the labour union on account of which supervisory staff and managerial staff were unable to discharge their duties fearlessly and further the workers, who were employed in the company were also not feeling safe and the dates and evidence produced on record have also not been considered by the State Government in the manner it was required. It is also submitted that the machinery of the mill was too old and revival of the mill is not possible now and moreover the mill, which is lying closed since 1983 will require a revamp by heavy investment and no useful purpose will be served by upholding the order of the State Government. It is also submitted that in Civil Misc. Writ petition No. 8891 of 1994 one of the case in respect of Modi Cloth Mills, Ghaziabad Unit of Modi Spinning and Weaving Mills Company Ltd., Modinagar, Ghaziabad through its Manager and Occupier v. State of U.P. and others the order passed by the State Government has been set aside and the matter has been remitted to the State Government vide judgment and order dated 9.1.2006. The aforesaid mill is the parent unit of the petitioner-company and the State Government after reconsidering the matter has allowed closure of the said unit. The petitioner's case is squarely on parity with the aforesaid unit and, therefore, submission has been made that the matter may be remitted to the State Government for deciding the matter afresh in accordance with law by considering the relevant evidence and material on record, which has been ignored without any reasonable justification. In support of his contention, he has placed reliance upon the following decisions:

Modi Cloth Mill, 2006 (109) FLR 242 (All.)

Orissa Textiles & Steel Ltd. v. State of Orissa and others, 2002 (92) FLR 648 (SC)

Excel Wear v. Union of India, 1978 (37) FLR 314 (SC)

Workmen v. Meenakshi Mills Ltd. Case, 1992 (65) FLR 1 (SC)

ACC Limited case, 1989 (1) LLJ 559 and

BPMEL Employees Union and others v. Union of India and others 2001 LIC 3628.

3. Counsel for the opposite party No. 5, Sri K.P. Agarwal, Senior Advocate, on the other hand, has submitted that the grounds put forth before the State Government were not sufficient for allowing the closure and the imaginary figures were submitted by the petitioner to have an edge in respect of his cause of action for closing down the unit. The petitioner has a remedy of review before the State Government and at the same time the matter can be referred to the Industrial Tribunal as provided under the provisions of section 6-W of the Act and, therefore, the writ petition is not maintainable and is liable to be dismissed.

4. I have heard learned Counsel for the parties and perused the record.

5. The State Government while considering the question of loss of production, illegal strike and criminal activities of the workers union recorded a finding that according to the list supplied by the petitioner's company annexed as "B" to the application out of 30 matters of assaults and violence, there were only four matters of labour pertaining to Modi Textiles. Out of these, three incidents took place outside the mill and one incident took place inside the mill among two workers. Therefore, the State Government opined that the said criminal cases do not form a basis for closure of the unit, but the State Government has failed to consider the fact that there were 30 criminal cases, which created great panic and terror on the supervisory staff and managerial staff including the co-workers and the atmosphere prevailing therein was such that normal functioning of the mill could not have been carried out and moreover the criminal activities and violence on account of rivalry between two unions, the workers were also being terrorized and compelled to proceed on strike and not to work. Now when such atmosphere was created in and around the mill, then it was not possible to carry on the production activity as the management apprehended that at any time any untoward incident can take place and the entire responsibility of which will lay on the management. Apart from it, the workers have given in writing, which is evident from Annexure-4 to the writ petition that they will not indulge into any violence and criminal activity. So the reasons given by the State Government do not appear to be proper and without appreciation of evidence and material supplied by the petitioner's unit and, therefore, the matter requires reconsideration by the State Government in the correct perspective. In paras 7, 8, 9, and 13 of the writ petition elaborate reasons have been given for the losses incurred on account of low production and criminal activity, but those paras have not been replied and neither any counter-affidavit has been filed although the matter is pending since 1985.

6. In para 7 of the writ petition, it has been stated that on account of continuous indulgence in gross acts of indiscipline the production suffered and the workers refused to carry out lawful and reasonable orders, physically assaulted senior

officers and staff members and on account of low production and poor quality of output there were heavy losses. The borrowings incurred interest to the extent of Rs. 1.16 crores in the year 1983-84. In para 8 of the writ petition, it has been stated that there were 20 incidents of murder between July, 1983 and April, 1984 on account of rivalry between two unions and there were 30 incidents of assault with armed weapons, leading to serious injuries. The mill, which was earning profits upto 1978-79 ran into heavy losses of crores of rupees, which reached up to Rs. 19,66,20,412/-. The losses of the unit were later on transferred to the petitioner company itself were to the tune of Rs. 673.54 lacs. As on July, 1984 the losses of the petitioner-company were to the tune of Rs. 876.64 lacs. The minimum wage of the workers increased from Rs. 477.14 per month to Rs. 713.10 per month excluding perquisites, which further comes to 30%. There was recession in the textile industry as a whole and the prices of polyester fibre, which was Rs. 135 per Kg. in the month of September, 1983 went up to Rs. 155/-per Kg. and the cost of other yarns also increased. But all these factors have not been taken into consideration and a cryptic finding has been recorded, whereby denying the closure and ignoring the material evidence, which was on record.

7. It is to be noted that mill is having old machinery pertaining to the year 1984 and whether it will be a viable machinery and fit for production and whether machinery installed is worthy of starting production and to what extent the said machinery corresponds to the present need of time and modernized technology. The mill is closed down since 1984, therefore, the viability of running the production and starting the mill on account of aforesaid factors has also to be taken into consideration by the State Government.

8. The chaotic atmosphere, which was created on account of the criminal activities and criminal cases and violence created by the labour unions were also so high that the management was left with no option but to close the mill on account of the fact that it found that the workers were not able to discharge their duties free of fear and the management was also apprehending sabotage including the criminal assault and murder of the managerial staff as well as supervisory staff. The over all situation and scenario was not such that production could have been continued thereafter. Hence, the finding recorded by the State Government does not appear to be based on the evidence, which was supplied by the petitioner-company for closure of the unit. Merely by saying that four incidents were relating to the labour trouble, but the other criminal cases and 20 incidents of murder have not been discussed in detail so as to come to a definite conclusion based on cogent evidence that the closure as demanded by the petitioner-company was not permissible. Only it has been mentioned by the State Government that criminal cases referred to the labour trouble in the main complaint and even if the same was accepted, then out of 30 cases of assault and violence, there were only four matters of labour pertaining to Modi Textiles and out of this three incidents took place outside the mill and one incident took place inside the mill among two workers. With this finding only the matter has

been closed, but the State Government has not considered the other evidence, which was placed on record to prove that there was a chaotic atmosphere and in such atmosphere and situation it was not possible for the petitioner to run the mill. When there were chances of sabotage in the mill and further co-workers were not coming to work on account of terror and threat extended by the labour unions and on account of their criminal activities. So these grounds, in the opinion of the Court, were not appreciated properly and has not been discussed, which were required to be discussed although the said material was supplied by the petitioner along with the application. So the matter requires reconsideration by the States Government.

9. The petitioner has also placed reliance upon the judgment and order passed in Civil Misc. Writ petition No. 8891 of 1994, Modi Cloth Mills, Ghaziabad Unit of Modi Spinning and Weaving Mills Company Ltd Modinagar, Ghaziabad through its Manager and Occupier v. State of U.P. and others In the said case this Court has taken a view to remit the matter to the State Government on the basis of the grounds enumerated in the said case. It is informed that closure has been permitted by the State Government. The question of alternative remedy has also been considered in the aforesaid writ petition and it has been observed as under:

"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 25-O 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 25-O (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 BPMELE Employees' Union v. Union of India, 2001 LIC 3628 wherein Hon''ble O.K. Seth, J. as his Lordship then was has also held that the review provided under sub-section (5) of the section 25-O of the Act is not an absolute bar."

10. In the case of Orissa Textiles (supra) the Apex Court lays down the parameters in para 11, which reads as under:

"11. As has been set out hereinabove, in Excel Wear case one of the reasons why section 25-O (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 25-N Parliament has used terminology which is different from that used in sub-section (2) of section 25-O. In sub-section (2) of section 25-O, 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 25-N, 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 recorded 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....."

Relying upon the aforesaid law, this Court remitted the matter to the State Government for re-consideration.

11. In the case of Union of India (UOI) and Another Vs. Shree Shankar Textiles Ex-employees Union and Others, the Apex Court found that closure scheme formulated by the company was correct and interference by the High Court was found to be incorrect. Para 17 of the aforesaid judgment reads as under:

"17. Additionally, in the absence of any reason having been indicated by the learned Single Judge and the Division Bench as to how the conditions stipulated relating to section 25-O of the Act are arbitrary, the orders are unsustainable. It may be noted here that there was no challenge to parts of conditions stipulated in the scheme. The view of the High Court was that though there was physical closure in 1984, the formal closure would be the date on which the agreement was signed. This view is contrary to the clear terms of the policy mentioning the date on which the mill came to a grinding halt."

12. In the case of BPMEL Employees Union (supra), it was held that alternative remedy of review u/s 25-O (5) of the Industrial Disputes Act was not absolute bar. In para 18 of the judgment it has been held as under:

"18. Having regard to the report contained in Annexure "F" which is also not disputed, it appears that the company has not been running any business since June 1, 1998. It does not seem that simply because the said factors had not been recorded in the order would serve good if the matter is remitted back again. It would be only a formality leading to an infructuous exercise. The materials that have been produced show that there are sufficient grounds and adequate reasons for granting permission for closure. Even if it has not been so recorded in the order impugned, still then if the Court finds from the materials on record or the pleadings that there are sufficient materials even if the same are not mentioned, the Court cannot undertake an infructuous exercise by remanding back the matter once again. But then, the other relevant factors if

outweigh the other factors which have not been considered, then also it cannot be said that the order suffers from any perversity, resulting in an illegality. It might be an irregularity. It will not affect the merit of the order when on record sufficient reasons are in existence and that the other relevant factors themselves are sufficient to grant the permission."

13. On a consideration of the aforesaid reasoning of law, it is established that the State Government has not considered the matter in the correct perspective and relevant material, evidence and documents have been ignored and further the petitioner's unit, which is lying closed since 1984 requires a fresh look by the State Government as stated in the body of the judgment.

In view of the aforesaid reasoning and circumstances and the law considered hereinabove, the writ petition is allowed. The order dated 15.2.1985 passed by the State Government is hereby set aside and the matter is remitted to the State Government for fresh consideration in accordance with observations made hereinabove expeditiously.

There shall be no order as to costs.