
(1996) 11 GUJ CK 0013

In the Gujarat High Court

Case No : S.C.A. No's. 6515 and 8691 to 9388 of 1996

Mohansinh Vhikhamsinh

APPELLANT

Vs

Continental Textile Mills

RESPONDENT

Date of Decision : 07-11-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 25(1), 25J, 25O, 25S, 25SS

Citation : (1997) 2 GLR 1534 : (1998) 3 LLJ 24

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : Mukul Sinha, for the Appellant; S.A. Desai and B.Y. Mankad, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

J.N. Bhatt, J.—In this batch of 699 petitions, again age-old dispute and conflict between the labour and the management has come to the surface. The petitioners have questioned the legality and validity of the common judgment and award of the Labour Court, Ahmedabad, dated August 17, 1996, in Recovery Application Nos. 2595 of 1995 and 2953 of 1995, whereby, the applications of the petitioners-workmen came to be rejected. In this batch of petitions, a very interesting and important question of applicability and interpretation of the provisions of Sections 25-O and 33-C of the Industrial Disputes Act. 1947 (I. D. Act for short) has arisen.

2. A few relevant material facts giving rise to this batch of petitions may, initially be, shortly narrated. The petitioners are the workmen of the respondent No. 1 - Continental Textile Mills, Ahmedabad. The respondent No. 1 Mill is a textile undertaking employing around 2,500 workmen. The respondent No. 1 Company had first put a notice on February 2, 1991 declaring that due to disconnection of electric supply, the Mill Company would not be in a position to give further employment to its workmen. Thereafter, by its notice dated February 5, 1991 had declared that it would not be necessary for the employees to attend to their

duties and the workmen would be considered to be in service. The Government of Gujarat had filed Criminal Case No. 100 of 1992 against the concerned officers of the respondent Company for having closed the Mill without complying with the provisions of Section 25-O(1) of the I.D. Act. The concerned officers of the respondent Company pleaded guilty and the Court imposed a fine of only an amount of Rs. 400/- for having illegally closed down the Mill Company. This Court in a "suo motu" action has registered a Criminal Revision Application No. 226 of 1995 for enhancement of the punishment imposed by the Criminal Court and there is no dispute that the said revision application is pending before this Court. Thereafter, the respondent Company neither paid any compensation to the workmen nor did it pay any other benefits including wages to the workmen.

3. The petitioners, therefore, had filed a joint application u/s 33-C(2) of the I.D. Act, for the recovery of wages and all other benefits as they are entitled to u/s 25-O(6) before the Labour Court at Ahmedabad. Similar application was also filed by another group of workmen of the respondent Company. Thus, there were two recovery applications before the Labour Court being Recovery Application Nos. 2595 of 1995 and 2953 of 1995. According to the case of the petitioners-workmen, they were entitled to recover wages from the respondent Company for illegal closure. The total amount claimed in the Recovery Applications came to Rs. 6,63,14,602.15 Ps. It was, inter alia, contended in the Recovery Applications that there was illegal closure with effect from February 2, 1992 and, therefore, the workmen are entitled to wages u/s 33-C(2) of the I.D. Act, the closure of the respondent Mill Company was illegal being in violation of Section 25-O of the I.D. Act; the relationship between master and servants has never been legally terminated and as per the provisions of Section 25-O(6) the workmen were entitled to their wages and other benefits since the provision of Section 25-O(6) is a statutory right and, therefore, Recovery Applications were based on the existing right to claim wages of the workmen. The respondent No. 1 Company opposed the claim made in the Recovery Applications by filing a written reply dated January 1, 1996. It was, inter alia, contended in the reply that the respondent No. 1 Mill Company is not liable for payment of claim made in the Recovery Applications and that the applications u/s 33-C(2) were not maintainable on the ground that there was no established pre-existing right of the workmen.

4. The workmen relied on oral evidence of two workmen in support of their claim and also on documentary evidence. On behalf of the respondent No. 1, one Labour Officer of the Company Shri H.A. Malek was examined, at Ex. 21. The Company has also relied on other documentary evidence.

5. The Labour Court after considering all the facts and circumstances and the evidence and submissions, recorded a common judgment and order dated August 17, 1996 and rejected the Recovery Application on the ground that the applications were not maintainable because there was no pre-existing or established right of the workmen. Being aggrieved by the said judgment and

award of the Labour Court, the workmen have filed this batch of petitions under Articles 226 and 227 of the Constitution of India challenging the legality and validity of the judgment and award of the Labour Court rejecting their application for the recovery of dues in the form of wages and other benefits. The Labour Court has rejected the Recovery Applications u/s 33-C(2) holding that the workmen have failed to show that there was pre-established right for filing an application for recovery under the provisions of I.D. Act. In the opinion of the Labour Court, for exercising the jurisdiction u/s 33-C(2), there must be pre-existing right for becoming entitled to filing application u/s 33-C(2). The contention raised on behalf of the petitioners is that when there is a closure in violation of the mandatory provision of Section 25-O of the I.D. Act, the right of the workmen to claim wages during the period of closure u/s 33-C(2) is statutory and inherently incidental. The contention raised on behalf of the respondent Company is that even in case of breach or violation of the provisions of Section 25-O, the workmen ipso facto could not claim wages by filing Recovery Application u/s 33-C(2) without adjudication of the dispute. Thus, precisely, the question in focus is whether the workmen could claim wages and incidental benefits by filing Recovery Application u/s 33-C(2) in a case of closing down of undertaking without following the procedure statutorily prescribed in Section 25-O of the I. D. Act.

6. It would be, therefore, relevant and material to refer to the provisions of Section 25-O of the I.D. Act which read 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, 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 a 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 (1) 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 open 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.

(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 under any law 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 Sub-section (3), every workman who is employed in the 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 for continuous service or any part thereof in excess of six months."

It would very well be seen from the aforesaid provisions that the Legislature has provided a statutory scheme for closing down an undertaking. The original Section 25-O had been struck down as far back as in 1978 as unconstitutional on the ground that the said section contained no guidelines for exercise of power under Sub-section (2) and no provision for a review or a reference on the order. The present section came to be substituted by the Industrial Disputes Amendment Act, 1982 and came into operation with effect from August 18, 1984. The validity and the vires of the amended Section 25-O is not under challenge in this petition. Thus, there is no dispute that the procedure prescribed in the amended Section 25-O for closing an undertaking is required to be

followed and the controversy in the present case arose after the insertion of the amended Section 25-O(7).

7. The statutory scheme u/s 25-O contemplates that an employer who intends to close down an undertaking of an industrial establishment to which Chapter V-B applies shall have to apply for prior permission under Sub-section (1) at least 90 days before the date of intended closure is to become effective to the appropriate Government with reasons for intended closure and a copy of the said application is required to be served simultaneously on the representatives of the workmen. It is significant to note that power to deal with "closure" matters under this section is vested only with the appropriate Government unlike Section 25-M and Section 25-N, wherein, in addition to the "appropriate Government" the power to deal with "lay-off" and "retrenchment" cases is vested with the Specified Authority as well. The present Section 25-O differs in three respects from Section 25-M or Section 25-N. Firstly, prior permission to close down has to be asked for in advance, i.e., 90 days from the intended closure unlike as in Section 25-M or in Section 25-N. Secondly, the authority to decide on the application u/s 25-O vests only in the appropriate Government, unlike as u/s 25-M or Section 25-N where it can be delegated to Specified Authority and thirdly, specific provision is incorporated keeping in mind the interest of general public unlike u/s 25-M or Section 25-N where the interest of only of the parties concerned in the matter requires to be considered. It appears that these differences are on account of the fact that closure entails much wider implication and dislocation and has a greater ramification than lay-off or even retrenchment. There is no dispute that Section 25-O(7) has also not been invoked by the Company, which provides power to exempt from Section 25-O(1).

Long period of 90 days appears to have been prescribed so as to afford an opportunity to the appropriate Government to make all possible efforts to avert or avoid the intended closure. It may also be noted that Sub-section (1) speaks of an undertaking of an industrial establishment and not just undertaking or just an industrial establishment. It appears that the phraseology implied in subsection is deliberate and with a purpose to connote the closure even of a unit or branch of a multi-unit industrial establishment must be effected in the manner laid down under Sub-section (1). It is true that proviso to Sub-section (1) makes an exception to general rule for applicability under the proviso. The prior permission is not prescribed mandatory to an undertaking set up for the construction of buildings, bridges, roads, canals, dams, or for other construction works. It would not be necessary to minutely examine the underlying purport of the proviso to Sub-section (1) of Section 25-O, but it appears that such undertakings are set up for specific purposes mainly for a short spell and cannot possibly be fitted into the straight-jacket of statutory time limits. Be that as it may. The present case is not governed by the proviso and there is no dispute about this aspect. Sub-section (2) provides power to pass order granting or refusing permission sought by the employer for closing down an undertaking to the appropriate Government. Thus, the appropriate Government is vested with the discretion to grant or refuse

to grant permission to the employer to close down his undertaking. No doubt, before granting or refusing to grant permission, the appropriate Government is required to take into account various aspects in which this Court is not required to go into in the present matter. It is an admitted fact that the respondent No. 1 Company has not sought permission or invoked the power u/s (1) or (7) of Section 25-O. Sub-section (3) makes a provision for deeming fiction. It is very clear that if the appropriate Government fails to 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. Sub-section (4) provides about the finality of the decision of the appropriate Government and the order of the appropriate Government granting or refusing to grant permission shall be final and binding on all the parties and also shall remain in force for one year from the date of such order, of course, subject to the provisions of Sub-section (b) which provides power for review or adjudication of the order by a Tribunal to be referred by the appropriate Government.

8. What are the consequences of the closure without permission ? For that, it will be necessary to look into the provisions of Sub-section (6) which provides when the closure will be illegal. This, sub-section is very relevant and material for effective adjudication in this batch of petitions. Apart from making a closure inoperative in law, Sub-section (6) specifically provides that the closure without permission shall be illegal and the employer who closed down an undertaking without obtaining prior permission or in contravention of the refusal to close down the undertaking will also be exposed to penal consequences of Section 25-R.

It may, therefore, be seriously noted that like automatic sanction under Sub-section (3), there is also a provision for closure to be automatically deemed illegal in Sub-section (6) of Section 25-O. There are two contingencies when such a situation may arise. One, when an employer fails to give prior notice of 90 days before the intended closure and if the closure takes effect, then obviously such a closure will be deemed to be illegal. Secondly, if a closure takes effect even after a permission for closure has been denied, then for such an eventuality also, the closure shall be deemed to be illegal. Section 25-R provides penalty for illegal closure. The automatic deemed illegality of closure would lead to a penal fall out u/s 25-R. Apart from the statutory penalty for illegal closure as provided in Section 25-R, Sub-section (6) of Section 25-O also saddles an erring employer with another financial liability in the form of wages and allowances of the employees. It could very well be visualised from the plain perusal of Sub-section (6) that where a closure deemed to be illegal under the Industrial Disputes Act, 1947, the workmen in the industrial establishment concerned shall be deemed to be in continuous service so long as the illegal closure lasts and therefore, obviously, the employees shall be entitled to full wages and allowances for the entire period. It could, therefore, be concluded without hesitation that the affected workmen do not have to raise a separate "industrial dispute" to claim

their wages and allowances for a period of illegal closure. Therefore, it will be open for the workmen to avail the benefits provided in Section 33-C(2) of the I. D. Act.

9. Therefore, in the opinion of this Court, the workmen will be entitled to wages as they were willing to work but were not offered any work. The management, therefore, cannot be permitted to contend that "no work, no pay" principle should be applied. It will not be open for the management to contend that the workmen will not be entitled to wages due to the closure without undergoing the statutory exercise prescribed in Section 25-O(1) and also in a case where the provisions of Sub-section (6) of Section 25-O are attracted. It is evident that either in a case where no application for permission under Sub-section (1) is preferred within the period specified therein or where permission for closure has been refused, the closure of the undertaking in such a situation shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all benefits under any law for the time being in force as if the undertaking had not been closed down. The provision, of Sub-section (6), therefore, speaks volumes in, unequivocal, phraseology that an employee who has closed down an undertaking without observing the procedure prescribed in Sub-section (1) or who has closed down even after the refusal of such permission by the appropriate Government shall be statutorily obliged to discharge all the obligations towards the workmen and the workmen from the date of such closure shall be entitled to claim all the benefits under any law for the time being in force on the premise as if such an undertaking had not been closed down. It is in this context, the Legislature in its wisdom has provided that the workmen will be automatically entitled to wages and all benefits without adjudication of dispute or right by incorporating the provisions of Sub-section (6) in Section 25-O. The Labour Court has, unfortunately, failed to appreciate this legislative mechanism and intendment manifested in Sub-section (6) of Section 25-O while interpreting the provisions of Section 33-C(2) of the I.D. Act. It will be, therefore, relevant and necessary, at this stage, to examine the provisions of Section 33-C. Incidentally, it may be mentioned that Sub-section (7) of Section 25-O provides for power to exempt from the application of the provisions to such undertaking for such period as may be prescribed in the order by the appropriate Government in case of satisfaction of some exceptional circumstances such as accident in the undertaking or death of the employer or the like. Sub-section (8) provides for compensation to the workmen concerned where the undertaking is permitted to be closed down or where permission for closure is deemed to be granted under Sub-section (3) analogous to the provisions of Section 25-FFF. The liability of the employer to pay the amount of compensation and entitlement of the workmen to receive compensation, therefore, arises upon the closure of the undertaking.

10. The impugned order of the Labour Court is recorded rejecting the applications for recovery u/s 33-C(2). The Labour Court has held that the applications for recovery are not maintainable as the workmen are not entitled to receive wages or incidental benefits on account of illegal closure without there

being an award after adjudication on a reference or a settlement. The view of the Labour Court is, with due respect, patently unjust, unreasonable and illegal in view of the provisions of Sections 33-C and 25-O. Section 33-C reads as under:

"33-C. Recovery of money due from an employer :--

(1) Where any money is due to a workman from an employer under a settlement or an award, or under the provisions of Chapter V-A or Chapter V-B, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money, and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any Rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period of not exceeding three months : Provided that where the Presiding Officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in Sub-section (1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Explanation - In this section "Labour Court" includes any Court constituted under any law relating to investigation and settlement of industrial disputes in force in any State."

Section 33-C(2) is one of the most sought after provisions in the realm of industrial dispute and perhaps next in the use only to Section 25-F. Sub-section (1) prescribes the mode of recovery of money when it is due. The expression "where any money is due" means where the amount of money claimed by a workman is known, and is already decided and where there is no dispute either about the amount or about the workman's claim to it. It is, therefore, evident that the title and the quantum of the claim is clear and possible and or without any dispute, it would be open for the workman to resort to Section 33-C(1) and the remedy is, both inexpensive and speedy.

11. Section 33-C is in two parts. Sub-section (1) provides for recovery of claims to money due in cases specified in the sub-section. In such cases, the amount of money due is already decided and the claim is admitted by the employer or where there is no dispute about it. These are the cases where money is due under a contract or settlement or an award or under the provisions of Chapter V-A of the I.D. Act. In that case, the only thing to be done is to obtain a certificate for recovery of the money due.

12. An application u/s 33-C(2) will be competent where a workman is entitled to receive money or benefit computed to be in terms of money. It would clearly go to show that right to the money or benefit must be exercised (sic.) at the time of making of application for recovery u/s 33-C(2). Therefore, if the right itself is in dispute or the claim is disputed requiring adjudication, then, obviously, the application shall not be competent. The right to the benefit which is sought to be computed u/s 33-C(2), obviously, therefore, must be an existing one. That is to say the right adjudicated upon or provided for and must arise in the course of and in regard to the relationship between the industrial workman and the employer. Therefore, when case falls within the parameters of Sub-section (6) of Section 25-O, owing to the deeming provision, the workman is entitled to wages and other benefits payable and claimable in terms of the contract of employment. Therefore, an employer is bound to pay and the workman is entitled to recover the amount of due wages on account of closure of an industrial undertaking which is either in contravention of the provisions of Section 25-O(1) or in violation of the provisions of Section 25-O(6). It is, therefore, abundantly clear that where no application for permission under Sub-section (1) is made within the period specified therein or in a case where permission for closure has been denied, that will be (sic.) illegal closure in terms of the provisions of Sub-section (6) of Section 25-O from the date of the closure and the workman shall be entitled to all the benefits under any law for the time being in force on the premise as if the undertaking had not been closed down. With the result, the workman without resorting to the process of adjudication by way of reference or without any settlement or award, out of contract or

employment or an incident of service shall be entitled to claim wages during that period as the right to claim wages is arising out of the provisions of Sub-section (6) of Section 25-O and the workmen will be entitled to avail the provisions of Section 33-C(1) or (2) as the case may be.

If the interpretation made by the Labour Court is accepted as correct and legal as contended on behalf of the Management, then in that case it would lead not only to frequent exercise of legal remedies, but also entail a paralytic impact on the statutory or contractual right to claim wages from the Management. Contemplate a situation where an employer on his own without observing the due procedure of law closes down the industrial undertaking or in a given case where the Management does not allow the workers to work, say for example for a week, could it be contended that they are required to again go for an adjudication of the industrial dispute or for a settlement ? The obvious answer would be "No". The right to claim wages is flowing from the contract of employment and supported by statutory provisions. Therefore, the interpretation of the provisions of Section 33-C(2) made by the Labour Court not only sounds illogical, but also is not just and legal. The Labour Court has failed to appreciate the correct interpretation and real purport and design of Section 25-O(6). When the case falls within the parameter of Section 25-O(6), apart from the right to wages available under the contract of employment there is clear statutory mandate in Section 25-O(6), whereby, the workman is entitled to resort to the provisions of Section 33-C. The entitlement contemplated u/s 33-C(2) is flowing from the contract of employment and it is further reinforced by the provisions of Section 25-O(6). It is a mandatory provision. When a case falls u/s 25-O(6), the closure of the undertaking shall be deemed to be illegal from the date of closure entitling the workmen all the benefits under any law for the time being in force as if the undertaking had not been closed down. The Labour Court has, with due respect, failed to examine and appreciate the Legislative intent and mandate of Sub-section (6) of Section 25-O which has culminated into unjust and illegal interpretation of the provisions of Section 33-C(2) and also resulting into miscarriage of justice.

13. The Labour Court accepted the contention of the Management that the workmen will not be entitled to straightway claim the recovery resorting to the provisions of Section 33-C(2) holding that there was no pre-existing right. This view is manifestly wrong, patently unjust and illegal. The right to claim wages for a workman when he is ready to work and is not allowed by the employer to work is flowing; from the contract of employment and again it is reinforced by the provisions of Section 25-O(6). Therefore, the contention of the Management that the application for recovery of wages for the period of unauthorised illegal closure, u/s 33-C(2) is held to be not maintainable cannot be accepted. It was the contention of the Management that no adjudication by any Labour Court in respect of the said right to claim was obtained. The contention of the Management was accepted by the Labour Court that Section 33-C(2) is in the nature of provisions for execution and there must be prior adjudication of the

right to wages for the period from the date of illegal closure. This conclusion is manifestly wrong. Apart from the general inherent and incidental right of the workmen to claim wages under the contract of employment, there is specific statutory provisions incorporated in Section 25-O(6). The entitlement is absolute in the light of the provisions of Section 25-O(6) and therefore, there is no question of adjudication of said right. In such a situation, it is open for the workman to go for execution and implementation and enforcement of such a right or entitlement existing in his favour either by resorting to the provisions of Section 33-C(1) or 33-C(2). Nothing is emerging from the record as to why the better and faster remedy available u/s 33-C(1) was not resorted to even for a claim of wages of the workmen during the period of illegal closure ? The provisions of Section 33-C(2) were resorted to and there also the employer took the plea that there was no adjudication and therefore, there cannot be execution, which unfortunately, came to be accepted by the Labour Court without going into the intention and the importance of the provisions of Section 25-O(6).

14. It was rightly contended by the workmen that the closure of the factory unilaterally by the Management since February 1992 was in violation of the provisions of Section 25-O and therefore, in view of the provisions of Sub-section (6) of Section 25-O, it was to be treated as existing right. Thus, there was statutory deeming fiction of right u/s 25-O(6) and no adjudication was required. Therefore in such a situation, it was open for the workmen to resort to either u/s 33-C(1) or u/s 33-C(2), as the case may be. It must also be remembered that Section 25-O falls under Chapter V-B of the I.D. Act and Section 33-C(1) is covered by Chapter V-B and no adjudication was warranted. Therefore, Sections 33-C(1) and (2) also could be straightway invoked. There is no dispute that the words "Chapter V-B" were added in Sub-clause (1) of Section 33-C by the Amendment Act 32 of 1976. The controversy in the present case relates to the period of 1992 onwards. Therefore, Chapter V-B matters come within the purview of Section 33-C(1). Therefore, no adjudication by any Labour Court was necessary. It is an admitted fact that no application for closure was made u/s 25-O(1). It is also an admitted fact that so far the Management has not filed any application even u/s 25-O(7). u/s 25-O(7), notwithstanding provisions of Sub-sections (1) to (6), if the appropriate Government is satisfied that on account of exceptional circumstances such as accident in the undertaking or death of the employer or the like, it is necessary so to do, direct that the provisions of Sub-section (1) of Section 25-O shall not apply in relation to such undertaking for such period as may be specified in the order itself. The Legislature, therefore, has in its wisdom provided the contingency which is unforeseen due to which the Management is prevented from resorting to the provisions of Section 25-O(1). No application even under Sub-section (7) of Section 25-O is also made by the Management and that aspect is no longer in dispute.

15. Sub-sections (1) and (2) of Section 33-C deal with claims for money due under a settlement or an award or under any of the provisions of Chapter V-A or Chapter V-B. Chapter V-A deals with compensation in the event of a

retrenchment, transfer or a closure of an industrial establishment which employs not less than fifty workmen on an average while Chapter V-B deals with similar problems in the case of an industrial establishment which employs not less than one hundred workmen on an average. The facts of the present group of applications attract the provisions of Chapter V-B. In case of an award or a settlement, the title to, and the amount of money due is determined under the terms of a settlement or the award and in the case of a claim falling either under Chapter V-A or Chapter V-B, the provisions of the relevant Chapter determine the quantum of money due. It is, therefore, clear that there could be no dispute that money is due to the workmen and the claim is right when it is arising either under the terms of settlement or under an award or under the provisions of either under Chapter V-A or Chapter V-B. Section 33-C(1) also makes it very clear that the summary mode of recovery is without prejudice to any other mode of recovery. There are other enactments such as the Payment of Wages Act, or the Minimum Wages Act. or the Motor Transport Workers Act etc. which also provide for recovery of money due. Though the jurisdiction under such Acts and u/s 33-C overlap each other, it would be open for the workmen to opt and make choice of his forum. Therefore, Section 33-C saves recourse to any other remedy that may be available to a workman. It is evident that an application u/s 33-C(2) will be competent where a workman is entitled to receive the money or benefit which is capable of being computed in terms of money. No doubt, it means that the right to the money or benefit must exist at the time of preferring the application. Therefore, if the right to claim money or wages or benefit is disputed obviously, then, the application u/s 33-C shall not lie. The right to money or benefit which is sought to be adjudicated u/s 33-C(2) must be an existing one, that is to say, already decided or provided for and must arise in the course of and in relation to the relationship between an industrial workman and the employer. In the present case, it is an admitted fact that the closure of the Company was effected from February 1992. It is clearly admitted in the affidavit-in-reply in para 12 that there was a closure since February 2, 1992. The Management contended that the wages to all the workmen till February 1, 1992 came to be paid. Thus, it was contended that no wages were outstanding to any workman till date of closure. It is not in dispute that there was a closure from February 2, 1992. It is also not in dispute that for closure, no permission or procedure contemplated under the provisions of Section 25-O of the T. D. Act was taken. Obviously, therefore, the provisions of Section 25-O(6) will be attracted and automatically the workmen will be entitled to claim wages and other incidental benefits. Therefore, the right to claim wages and incidental benefits arose out of the relationship of employee and employer from the contract of employment and the closure since February 2, 1992 was admittedly without any procedure or permission u/s 25-O. With this result, under the contract of employment and also u/s 25-O(6), the right to claim wages existed when the application u/s 33-C(2) came to be made for the recovery. It, therefore, cannot be contended by the Management that in such situation also the workman has to go for adjudication of the right to claim wages during the said period of closure by a reference. In

order to obviate such a situation, the Legislature has clearly provided provisions u/s 25-O(6) that in case the provisions of Section 25-O(6) are attracted, 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. Either in a case of violation of the provisions of Section 25-O(1) or refusal of permission for closure of the undertaking, both the cases, the closure on the part of the Management shall be deemed to be illegal, that too, from the date of closure and the workmen shall be entitled to wages and all other benefits under the relevant statutes. The Labour Court, with due respect, unfortunately, has failed to examine these aspects and the provisions of Section 25-O(6) while upholding the contention of the Management that the application u/s 33-C(2) was not maintainable as there was no existing right.

16. The respondent Company in its defence, inter alia, and particularly in para 13 of the written statement has contended that as a result of serious crisis in the Textile Industry, the respondent Company was required to close down the factory and also due to disconnection of electric supply from February 2, 1992. No doubt, it is also pleaded that the Management despite crisis and financial crunch is trying to find out solution in order to provide relief to the workers who are jobless since February 2, 1992. The defence raised on behalf of the respondent Company is de hors the provisions of Section 25-O. Therefore, it should not have been accepted by the Labour Court. The provisions of Section 25-O are clear, consistent, absolute and mandatory in nature. Therefore, whenever there is a breach or violation of the mandatory provisions of Section 25-O and an industrial unit is closed down by the Management without following the procedure or complying with the provisions of Section 25-O, the workman has a right to claim wages and incidental benefits as a statutory right of the benefits under any law for the time being in force as if the undertaking had not been closed down. Thus, the right was existing and it was, therefore, competent for the workmen to resort to the provisions of Sections 33-C(1) or 33-C(2), as the case may be. The workmen opted to resort to the provisions of Section 33-C(2). They were entitled to claim wages and incidental benefits under the contract of employment and u/s 25-O(6) of the 1. D. Act because of illegal closure of the respondent No. 1 Company. In the result, the view taken by the Labour Court in holding the contention of the Management that the applications u/s 33-C(2) were not maintainable as there was no pre-existing right is unjust, perverse and illegal requiring interference of this Court while exercising writ jurisdiction.

17. Chapter V-B of the I. D. Act specifically prohibits closure, retrenchment etc. which will throw out several hundreds of workmen out of job and u/s 25-O(1) and in Section 25-N(1) specific provisions came to be incorporated by the Legislature in its wisdom, whereby, it is made mandatory for the employer to file an application for prior permission of the Competent Authority or the appropriate Government for either retrenchment or closing down of the establishment. Section 25-O(6) gives wide statutory right to workmen of continuous wages and all other benefits as if the undertaking had never been closed down in case the

employer contravenes the provisions of Section 25-O(1), that is to say, the employer did not file application for obtaining prior permission for closing down the establishment. Keeping in mind the legislative scheme and the underlying purport and design of the provisions of Sections 25-O(1) and 25-O(6), it can safely be concluded and interpreted that there is absolutely no necessity for adjudicating whether the closure is legal or not by any other form once the provision of Section 25-O(1) is contravened. Again by deeming fiction of Section 25-O(6), the workmen automatically become entitled to receive wages despite the closure and therefore, the Labour Court, in the impugned order, has committed serious illegality in holding that the workmen had no pre-existing right

18. It may be noted that it was never the case of the respondent-Management that it had terminated the services of the workmen. Admittedly, the master and servant relationship subsists and exists. In such a factual scenario based on admitted position, even under a contract of employment also, the employer is bound to pay wages irrespective of the fact whether the employer takes work from the workmen or not. It is a settled proposition of law that unless and until the contract of employment is brought to an end in accordance with the provisions of law, the relationship of employer and employee continues and the employee continues to claim or to be entitled to receive wages and incidental benefits. This aspect, unfortunately, is not appreciated and examined correctly by the Labour Court.

19. The Apex Court in the case of Namer Ali Choudhury and Others Vs. The Central Inland Water Transport Corporation Ltd. and Another, interpreted the provisions of Section 33-C(2). Sub-section (2) applies when the amount of money is yet to be computed. If the money due is already calculated then Sub-section (1) will apply. But the ambit of Sub-section (2) is much wider than that of Sub-section (1). Sub-section (2) is not restricted to money due under a settlement or an award or under the provisions of Chapter V-A or V-B as under Sub-section (1) but embraces any money due under any other provisions of the I. D. Act or under any other aspect of employer-employee relationship and the computation of such amount. Therefore, Sub-section (2) also contemplates computation in terms of money or any benefit that may be due to a workman under a contract of service or a settlement or under any statute or any scheme framed under the statute. Therefore, benefit under a bonus scheme under the relevant provisions of the Bonus Act which remained to be computed would fall u/s 33-C(2) and the Labour Court was held competent to do it. Where retrenchment was admitted, the retrenchment compensation could be computed u/s 33-C(2). But when retrenchment itself is disputed and computation of compensation is subsidiary or incidental, a separate adjudication will be necessary because there would be an "industrial dispute". Likewise, if the legal closure is disputed, there would be an industrial dispute requiring adjudication. Such is not the factual scenario in the present batch of petitions. It is an admitted fact that the industrial unit of the respondent Company came to be closed with effect from February 2, 1992. According to the Management the

industrial unit came to be closed down for the reasons beyond their control. But it is also an admitted fact that it came to be closed down without undergoing any statutory procedure or required legal permission and in contravention of the provisions of Section 25-O. Therefore, it cannot be contended that there is pendency of dispute requiring adjudication. It cannot be contended that the workmen should be directed to first establish that there was no legal closure. It would be de hors the legislative scheme and purport and design of the relevant provisions. Therefore, the Management has to show that lay off, retrenchment, or closure is permissible and legal. In this group of petitions, it is an admitted fact that there was a closure with effect from February 2, 1992 without following any statutory procedure or legally required permission u/s 25-O. With the result, apart from the general relationship of employer and employee, the provisions of Section 25-O(6) command and demand that the workman has existing right to wages and incidental benefits available under the law. It is in this context the workmen were entitled to resort to the provisions of Section 33-C(1) or 33-C(2) of the I. D. Act. Therefore, recovery applications under the provisions of Section 33-C(2) preferred by the workmen for their wages during the period of illegal closure are maintainable and competent and rejection thereof by the Labour Court is patently perverse and manifestly illegal.

20. In case the permission is refused u/s 33-C(2)(b), could it be contended that again the workmen should go for adjudication to claim wages? Section 33(2)(b) contemplates that permission must be obtained before making any change in the condition of service of the workmen when the dispute is pending. An application for approval u/s 33(2)(b) is rejected, then the workmen will be entitled to claim the wages and other incidental benefits by resorting to the provisions of Section 33-C(2). This proposition of law is very well expounded and elaborately discussed by the Apex Court in the case of *S.K. Dey v. Naihate Electrical Supply Co. Ltd.* 1986 LIC 769. In *Clifton Electronics v. Lt. Governor*, a Division Bench of Delhi High Court, has held that in case of illegal closure without filing an application u/s 25-O(1), the workmen are entitled to wages during the period of illegal closure and they are entitled to resort to the provisions of Section 33-C(1) itself for the purpose of Chapter V-B which Chapter includes Section 25-O. It is clearly held in the said decision of the Division Bench that Section 33-C(1) could be straightaway invoked.

21. It was also contended that the petitioners are not the members of the recognised Union and the recognised Union has filed applications before the Labour Court. This contention is probably raised as a measure of last resort as one would try to catch a straw when one is drowning. The entire scheme of the provisions of Section 25-O and Section 33-C would clearly go to show that the workmen individually are entitled to pursue remedy unlike remedies available under the Bombay Industrial Relations Act. The provisions of Bombay Industrial Relations Act also will not be applicable in the proceedings, like the one on hand in view of the Gujarat amendment to Section 25-SS of the Industrial Disputes Act which reads as under:

"25-SS. Removal of doubt as to effect of other laws :-- For the removal of doubt it is hereby declared that notwithstanding anything contained in any other law for the time being in force in the State providing for settlement of industrial disputes, the rights and liabilities of employers and workmen in relation to closure shall be determined in accordance with the provisions of this Chapter."

Section 25-S provides for certain provisions of Chapter V-A that they shall apply to an industrial establishment to which Chapter V-B applies. The provisions of Sections 25-B, 25-D, 25-FF, 25-G, 25-H and 25-J in Chapter V-A shall apply also in relation to an industrial establishment to which the provisions of Chapter V-B applies.

22. It could very well be visualised that Section 25-S also incorporates a very essential provision. Indeed, Chapters V-A and V-B relate to common substantial questions and aspects that may come up in the realm of industrial establishment, like that of lay-off, transfer, retrenchment or closure for that purpose. Needless to mention, which shall apply in a particular case, obviously, depends upon the number of workmen employed in the undertaking or an industrial establishment. Chapter V-B deals with the substance of the matter. Many of the procedural aspects have been dealt with u/s 25-B, 25-D, 25-G and 25-H which are equally valid whether the number of workmen employed is less than 100 or not. It is in this context, it may be mentioned that Section 25-S, therefore, lays down that these provisions are applicable as much to industrial establishments falling under Chapter V-A as to those falling under Chapter V-B. Section 25-J creates a very important right on the labour class or workmen. The provisions incorporated in Chapter V-A have supremacy over the provisions in respect of lay-off, retrenchment, transfer or closure or any other law or agreement dealing with any of those matters. It could, therefore safely be concluded without any hesitation whatsoever that Section 25-J must also apply to an industrial establishment falling under Chapter V-B.

23. What is the effect of the laws inconsistent with the provisions of Chapter V-A is evidently laid down in Section 25-J. Section 25-J gives: exclusive jurisdiction on Chapter V-A in matters contained therein such as lay-off, retrenchment, transfer of undertaking and closure subject to two exceptions stated in the proviso and Sub-section (2). Except as provided in the section, no other will have precedence over the provisions of Chapter V-A in matters dealt with therein. The provisions of Section 25-J are also, obviously, applicable to the industrial establishment falling under Chapter V-B in view of the provisions of Section 25-S. Therefore, the provisions of Bombay Industrial Relations Act are not applicable in the proceedings like the one on hand. However, by way of abundant precaution and for the removal of doubt, the Gujarat Government has introduced the provisions of Section 25-SS in the I. D. Act. The Gujarat State Amendment and the resultant introduction of Section 25-SS by the Gujarat Act 20 of 1984 with effect from October 22, 1984 leaves no manner of doubt that the provisions of Bombay Industrial Relations Act under which the recognised Union is required

to move the machinery under the labour law are not applicable. The Gujarat Amendment makes it clear by introducing Section 25-SS applicable to the State of Gujarat that in the State of Gujarat for settlement of industrial dispute, rights and liabilities of employers and the workmen in relation to closure etc. shall be determined only in accordance with the provisions of Chapter V-B.

24. It is evident from the provisions of Section 25-SS that notwithstanding anything contained in any other law for the time being in force in the State of Gujarat, the dispute like the one of closure, can be examined and adjudicated unconcerned and irrespective of the contrary provisions in Bombay Industrial Relations Act. Therefore, unlike the provisions of Section 27-A of the Bombay Industrial Relations Act, Section 33-C(2) read with Section 36 and other provisions of the Industrial Disputes Act provide primacy and supremacy of the representation of parties individually and not collectively through Union. With the result, the contention so vociferously raised that only a recognised Union can file and pursue the claim or application and not the individual cannot be sustained and hence it is rejected being meritless.

25. It may also be clearly mentioned that it is unequivocally stated before this Court on behalf of the petitioners that they have not authorised any Union to espouse or advance their cause before the Labour Court or the Industrial Court, as the case may be. Thus, the petitioners have not authorised any registered Union in this behalf. Having regard to the factual and legal situation obtainable in the entire batch of petitions on hand, this Court has no hesitation in finding and holding that the claim before the Labour Court u/s 33-C(1) or 33-C(2), as the case may be, is, obviously, competent and maintainable and the contrary findings in the impugned award requires to be quashed and set aside.

26. After having regard to the aforesaid discussions and the catalogue of the facts and circumstances emerging from the record of the present batch of petitions and bearing in mind the legislative purport and design, scheme and mandate of the provisions of Sections 25-O and 33-C read with Sections 25-J, 25-S and 25-SS applicable to the State of Gujarat, this Court is fully satisfied that the impugned judgment and award of the Labour Court rejecting the application for recovery of the dues of the workmen u/s 33-C(2), who are the sufferers of illegal closure, by holding that they are incompetent and without existing right are not only unjust, perverse, mechanical, but manifestly illegal and radiating the imprint of non-application of mind requiring interference of this Court by exercising extraordinary, equitable, prerogative writ jurisdiction.

27. In the result, all these petitions are required to be allowed. In view of the peculiar facts and special circumstances and since the claims are u/s 33-C(2) requiring resultant computation and ascertainment of status, etc. it would be just and proper, reasonable and expedient to remit the matter to the Labour Court concerned for expeditious disposal in accordance with law after giving opportunity of hearing to the parties concerned, preferably within a period of three months from the date of receipt of the writ. Consequently, the entire batch

of the petitions is remanded to the Labour Court for expeditious disposal while quashing and setting aside the impugned award. The petitions are allowed accordingly with costs. Rule is made absolute to the aforesaid extent.