

(2002) 09 OHC CK 0022

In the Orissa High Court

Case No : Original Jurisdiction Case No. 14611 of 1997

Orissa State Handloom Development Employees Union and
Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 25-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 41

Citation : (2002) 09 OHC CK 0022

Hon'ble Judges : M. Papanna, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : J. Patnaik, A.A. Das, B. Mohanty, T.K. Patnaik, S. Das and R. Rath, for the Appellant; S.K. Das, Additional Government Advocate for O.Ps. Nos. 1 to 3, A. Das and S.K. Mandal for O.P. No. 4, for the Respondent

Judgement

A.K. Patnaik, J.—The Petitioner No. 1 is a registered Trade Union of employees working in the Orissa State Handloom Development Corporation and the Petitioner No. 2 is its working president. Apprehending that the Orissa State Handloom Development Corporation will be closed down, the two Petitioners have filed this writ petition with the prayer to declare the action of the opp. parties in closing down the Orissa State Handloom Development Corporation (for short, "the Corporation") as illegal and arbitrary and to direct the opp. parties to consider a scheme for revival of the Corporation and to take remedial measures to make the Corporation a viable organisation. In the alternative, they have also prayed for a direction on the opp. parties to absorb all the existing employees in the Corporation against the vacant post in different departments of the Government or the Government Undertakings.

2. The decision to close down the Corporation was taken by a Sub-Committee of the State Cabinet in 1997. After the writ petition was filed on 21.10.1997 an order was passed by the Court on 28.10.1997 for holding Government level meeting with the representatives of the Petitioner No. 1 Union before any final

decision is taken regarding closure of the Corporation and an order was also passed on 18.12.1997 by the Court that before any final decision is taken, leave of this Court shall be taken. Thereafter, a meeting took place on 16.01.2001 in the Chamber of the Minister, Co-operation. Textiles and Handlooms in presence of the representatives of the Petitioners' Union and it was decided therein that the C.M.D. of the Corporation and the Corporation and its employees would take steps to approach the commercial banks to get finance for revival of the Corporation. After the said decisions were taken at the meeting held on 16.01.2001, the audit was completed and the audit report disclosed that the Corporation had already incurred cumulative loss to the tune of Rs. 19.31 crores as on 31.03.2002 and the Corporation had liabilities to the tune of Rs. 22.96 crores. In view of the aforesaid huge cumulative loss and liabilities of the Corporation, the authorities took the view that no useful purpose would be served in approaching the commercial banks for financial assistance for revival of the Corporation as such revival was not financially feasible. However, on 3.7.2002 this Court took the view that since the audit was completed pursuant to the decisions taken at the meeting held on 16.1.2001 in the office of the Minister, Textiles. Handloom and Sports Department, Anr. meeting should be held in the office of the Minister. Textile, Handloom and Sports Department in presence of the principal Secretary Government of Orissa, Textile, Handloom and Sports Department. Managing Director of Orissa State Handloom Development Corporation Ltd. and the representatives of the Employees' Union and accordingly, the Court passed an order on 3.7.2002 for holding such a meeting to take a decision as to whether any effort at all should be made for revival of the Corporation in view of the financial position of the Corporation as disclosed in the audit report. In the said order dated 3.7.2002 the Court took note of the fact that the Sub-Committee of the Cabinet had earlier taken a decision for closure of the Corporation and took note of the limitation on the part of the Minister to supersede the decision taken by the Sub-Committee of the Cabinet. But the Court observed that in case in the meeting held in the Minister's level, a view is taken that the Corporation can be revived, it will always be open for the Minister to submit a proposal for reconsideration by the Cabinet or its Sub-Committee. Pursuant to the said orders passed by this Court on 3.7.2002, a meeting appears to have been held on 29.7.2002 to examine the possibility of reviving the Corporation and the meeting was presided over by the Minister, Textile and Handloom Department. At the said meeting, the Agricultural production Commissioner who was in-charge of Textile and Handloom Department the Managing Director of the Corporation and the representative of the Petitioner's Union were also present. The affidavit filed by that Agricultural Production Commissioner on 5.8.2002 in this Court shows that in the said meeting it was decided that there was no justification to initiate any proposal for revival of the Corporation and to reconsider the earlier decision of the Government considering the financial position of the Corporation. This being the final decision of the Government at the highest level, the question, the Court will now have to decide, is whether a direction can be given by this Court under Article 226 of the

Constitution to the opp. parties not to close down the Corporation.

3. In *BALCO Employees Union (Regd.) Vs. Union of India and Others*, , the Supreme Court considering its earlier decisions on the point as to whether the Court in exercise of power of judicial review can interfere with policy decision of the Government has held:

It is evident from the above that it is neither within the domain of the Courts nor the scope of the judicial review, to embark upon an enquiry as to whether a particular public policy is wise or whether better policy can be evolved. Nor are our Courts inclined to strike down a policy at the behest of a Petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

Thus, a policy decision is not within the domain of Courts and it is not within the scope of judicial review to embark upon an enquiry as to whether a particular policy is correct or wise. The Court will, therefore, not interfere in a policy decision of the Government to close down the Corporation which has suffered cumulative losses and has incurred huge liabilities. Further, in such matters which relate to the finances or economics of the Government or its Corporation, the Court will have to give a greater latitude to the Government or its Corporation to take its own decisions. We do not think that in exercise of our power of judicial review under Article 226 of the Constitution, we can interfere with the decision taken by the Government for closure of the Corporation and we accordingly, refuse to interfere with the decision of the Government to close down the Corporation.

4. The Petitioners however have alternatively prayed for a direction on the opp. parties to absorb the existing employees of the Corporation against vacant post in different departments of the Government or Government Undertakings. It appears that 175 employees of the Corporation have already opted for the benefits of V.R.S./V.S.S. and the Corporation and the Government are taking steps to pay the said benefits to the said 175 employees. If these 175 employees of the Corporation voluntarily leave the Corporation under the V.R.S/V.S.S. the Corporation will be left with approximately 39 employees. These 39 employees have remained in employment under the Corporation for quite some time having been given employment under the Corporation. If the Corporation is closed down, these employees may lose their jobs and as a result of the loss of their jobs, their families who have remained dependant on these employees of the Corporation for their living will also suffer immense hardship and it will be unfair and unreasonable to remove these employees from service on closure of the Corporation.

5. In *Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others*, , the Supreme Court while considering a case of regularisation of employees held that it will be unfair and unreasonable to remove people who have been rendering service since sometime as such removal has serious consequences not

only on the employee but also his family. In the language of the Supreme Court.

...It is unfair and unreasonable to remove people who have been rendering service since sometime as such removal has serious consequences. The family of the employee which has settled down and accommodated its needs to the emoluments received by the bread winner will face economic ruination if the job is suddenly taken away. Besides, the precious period of early life devoted in the service of the establishment will be wholly wasted and the incumbent may be rendered "age barred" for securing a job elsewhere. It is indeed unfair to use him generally hope and a feeling of security in him, attune his family to live within his earnings and then suddenly to throw him out of job. Such behaviour would be an affront to the concept of job security and would run counter to the constitutional philosophy, particularly, - the concept of right to work in Article 41 of the constitution...

Thus as per the aforesaid decision of the Supreme Court, it is unfair to use an employee, generate hope and a feeling of security in him, attune his family to live within his earnings and then suddenly to throw him out of job. The employees of the Corporation, therefore, who have not opted for voluntary retirement cannot be compulsorily retired before their age of superannuation, if they have still long years to go before superannuation. If they are removed from the service altogether, such removal would be unfair and unreasonable and would violate their rights under Article 14 read with Article 41 of the Constitution. Such employees are, therefore, entitled to appropriate writ/direction from this Court for alternative employment under the State Government or Government Undertakings.

6. For the aforesaid reasons, while we refuse to interfere with the decision of the Government to close down the Corporation, we direct that the employees of the Corporation who do not go on voluntary retirement will be provided with alternative employment appropriate to their qualification and experience and will not be thrown, out of employment altogether.

The Government and the Corporation will work out their own scheme as to how the employees who do not go on voluntary retirement will be provided alternative employment under the Government or the Government Undertakings. The Corporation is further directed to pay the arrear dues towards salary etc./of the employees payable under law.

Considering the facts and circumstances of the case, the parties shall bear their own costs.

M. Papanna, J.

7. I agree.