
(1994) 04 OHC CK 0020
In the Orissa High Court
Case No : O.J.C. No. 1808 of 1991

Orissa Textile and Steel Ltd.	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 12-04-1994

Acts Referred:

Constitution of India, 1950 — Article 19(1)
Industrial Disputes Act, 1947 — Section 250

Citation : (1994) 78 CLT 511 : (1995) 70 FLR 199 : (1995) 1 LLJ 673

Hon'ble Judges : G.B. Patnaik, J;B. Panigrahi, J

Bench : Division Bench

Advocate : B.B. Mohapatra, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Patnaik, J.—The constitutional validity of Section 250 of the Industrial Disputes Act, 1947, has been challenged in this case alleging, inter alia, that the said provision is vio-lative of the fundamental rights guaranteed to a citizen under Article 19(1)(g) of the Constitution and, therefore, is ultra vires.

2. In nutshell the petitioner's case is that the "right to continue business" within the meaning of Article 19(1)(g) of the Constitution includes right to close down a business and the very fact that the citizen cannot exercise the said right, inasmuch as permission of the State Government is required u/s 250 before closing ; down the business, infringes the right guaranteed under Article 19(1)(g) of the Constitution. This contention of the petitioner is based upon the decision of the Supreme Court in the case of Excel Wear and Others Vs. Union of India (UOI) and Others, wherein the Supreme Court struck down Sections 250 and 25B, as they stood prior to amendment in the year 1984. The infirmities pointed out by the Supreme Court in the aforesaid case were rectified and amendment was brought about and it is the amended provisions which are now sought to be assailed in this writ application.

3. Mr. Mohapatra appearing for the petitioner advances an argument basing on the decision of a learned single Judge of the Karnataka High Court in the case of Stumpp Schuele and Somappa Ltd. and M. Shivkumar Vs. State of Karnataka, Union of India and Workmen of Electronic Divisions of Stumpp Schuele and Somappa Ltd., , which undoubtedly supports his contention, but that decision of the learned single Judge has been set aside and reversed by a Division Bench of the Karnataka High Court in the case of Union of India Vs. Stumpp, Scheule and Somappa Ltd., . After an elaborate consideration of the law on the subject, the learned Judges held that the provisions of Section 250 of the Act, as it now stands, require the Government to give reasons for its order and the factors to be considered by the appropriate Government are indicated in Section 250(2) of the Act and the appropriate Government has to strive to strike a balance between the various interests involved in the background of a particular situation and under the circumstances, the impugned provision contained in Section 250 cannot be said to have re-imposed unreasonable restriction on the fundamental right of the employer guaranteed under Article 19(1)(g) of the Constitution. The Court in the aforesaid case held that the single Judge was in error in applying the ratio of Excel Wear's case to the provision of Section 250 of the Act Thus the very basis on which Mr. Mohapatra had advanced his argument on the constitutionality of Section 250 is no longer there, in view of the Bench decision of the Karnataka High Court, referred to supra. It would be appropriate to extract the ultimate conclusion of their Lordships of the Karnataka High Court (p. 19):

"In our conclusion, we are of the view that the present Section 250 of the Act is denuded of the infirmities found in its predecessor. The provisions of Section 250 of the Act, as it now stands, require the Government to give reasons for its order; the factors to be considered by the appropriate Government are stated in Section 250(2); an objective approach in arriving at the decision by the Government, is now imperative; the factors stated in Section 250(2) which are to be considered, are to be understood in the light of the decision in the Excel Wear's case (supra), the appropriate Government has to strive to strike a balance between the various interests involved, in the background of a particular situation; any unreasonable order can be corrected by judicial review; the Government itself may review its order or refer the matter for decision by a Tribunal for adjudication; the application of the employer has to be considered by the appropriate Government and the order to be communicated within sixty days from the date on which the application is made, failing which the permission is deemed to have been granted; there is always an assumption that the Government would exercise its power reasonably. In the Excel Wear's case (supra), the Supreme Court recognised that a law may provide to deter reckless, unjust, unfair or mala fide closures; therefore, requirement of prior permission for closure by itself cannot be an unreasonable restriction on the fundamental right of the employer. In this view of the matter, we hold that, it is not possible to declare Section 250 of the Act as violative of Article 19(1)(g) of the Constitution."

The learned Judges relied upon two decisions of two different High Courts, namely the decision of the Madhya Pradesh High Court in the case of Straw Products Ltd. v. State of Maharashtra, (Misc. Petition No. 2012 of 1983) and a Full Bench decision of the Delhi High Court in the case of D.C.M. Ltd. v. Union of India (C.W.P. No. 1281 of 1986). The aforesaid Full Bench decision of the Delhi High Court has since been reported in AIR 1989 Del 193 (FB). Their Lordships of the Delhi High Court analysed the provisions of the Act as well as the challenge to the act on the ground of violation of fundamental rights guaranteed under Article 19(1)(g) of the Constitution and came to the conclusion that placing of a fetter on the exercise of fundamental right to close down the business is only a reasonable restriction within the meaning of Article 19(6) and the right is not absolute in its scope and can certainly be restricted, regulated or controlled by law. Their Lordships also took note of the fact that the procedural safeguards which were lacking in Section 250 prior to the same being struck down by the Supreme Court in Excel Wear's case have now been incorporated in the amended provision like holding an enquiry on the application for permission to close; giving of reasonable opportunity of being heard to the employer as well as to the workmen and persons interested in such closure; consideration of the genuineness and adequacy of the reasons stated by the employer; the interests of the general public and all other general factors; recording of reasons in writing in the order refusing or granting such permission; and communication of the order to the employer as well as to the workmen. Further a provision for review either on its own motion or on the application made by the employer or any workman has also been provided. Besides, an order of the Government refusing or granting permission is to remain in force for one year from the date of the order and there is a deeming provision by which if the Government does not communicate the order granting or refusing to grant permission 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. We think it appropriate to extract the following paragraphs of the judgment of the Full Bench decision of the Delhi High Court (at pp. 215, 216):-

"43. Section 250 of the I.D. Act has similarly recognised the dominant role of the appropriate Government in the scheme of the I.D. Act in firstly considering the applications for closing down an industrial undertaking, but no finality is attached to its decision. Section 250, prior to the amendment, as considered in Excel Wear's case did not provide for any machinery for review or adjudication against the orders passed under Sub-section (2) of Section 250. Their Lordships of the Supreme Court in Excel Wear's case (supra) in para 27 of the report had observed that the order passed by the authority is not subject to any scrutiny by any higher authority or Tribunal either in appeal or revision and the order cannot be reviewed either. Sub-section (5) of Section 250 inserted by Act 46 of 1986 (with effect from August 21, 1984) now provides that the appropriate Government may, either on its own motion or on an 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. The procedural safeguard of a reference of the matter to a Tribunal for adjudication takes care of any whimsical, capricious or arbitrary order of the appropriate Government to be tested in the quasi-judicial industrial adjudication by an established Court. It can, therefore, be safely assumed that the appropriate Government will exercise the powers in a reasonable and responsible manner and if there is any abuse of power, it can always be tested in the quasi-judicial industrial adjudication.

44. The new Section insofar as it empowers the appropriate Government to refuse to grant permission to an employer to close his industrial undertaking does not, in our view, infringe the fundamental rights guaranteed: by Articles 14 and 19(1)(g) of the Constitution being saved by Article 19(6) of the Constitution, which provides:-

"Nothing in Sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes or prevents the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,-

(i) the professional or technical qualification necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a Corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

Mr. Nariman accepted that placing of a fetter on the exercise of the fundamental right to close down a business is possible by putting reasonable restrictions within the meaning of Article 19(6). It is not absolute in its scope and can certainly be restricted, regulated or controlled by law. "It is abundantly clear that fundamental rights enshrined in Part III of the Constitution are neither absolute nor unlimited but are subject to reasonable restrictions which may be imposed by the State in public interest under Clauses (2) to (6) of Article 19. As to what are reasonable restrictions would naturally depend on the nature and circumstances of the case, the character of the statute, the object which it seeks to serve, the existing circumstances, the extent of the evil sought to be remedied as also the nature of "restraints or restrictions placed on the rights of the citizens." (See *Laxmi Khandasari and Others Vs. State of U.P. and Others*, ."

The same question has also been considered by a learned single Judge of the Kerala High Court in the case of *Laxmi Starch Ltd. v. Sundara Factory Workers' Union* (1993) 68 FLR 863 and with elaborate reasoning, the learned Judge has held the provision of Section 250 to be ultra vires and the provisions of Section 250 as amended by the Parliament in 1982, do not infringe the fundamental rights guaranteed under Article 19(1)(g) and the restrictions in question are

regulatory in nature and saved by Article 19(3) of the Constitution. The learned Judge has observed :-

"..... I do not find any ground to disagree with the opinion that amended Section 250 does not suffer from any constitutional infirmity especially when the order is operative only for a temporary period of one year. The amended provision has sufficiently regulated the balancing factors in order to protect and balance the interest of the employer, workmen and the general public for which straight-jacket guidelines are not possible as applicable in all cases....."

4. Before a Constitution Bench, in the case of Workmen of Meenakshi Mills Ltd. v. Meenakshi Mills Ltd. the vices of Section 25N came up for consideration and their Lordships of the Supreme Court on elaborate discussion came to the conclusion that Section 25N does not suffer from the vice of unconstitutionality on the ground that it is violative of the fundamental right guaranteed under Article 19(1)(g) of the constitution. This decision would equally apply to the provision of Section 250, as amended. Mr. Mohapatra, in course of hearing, advanced an argument that the appropriate Government while passing an order u/s 250 has not borne in mind the relevant factors and has passed the order without giving any reasons. On that ground a particular order may be vitiated, but not the provision itself. It is too well-settled that if the competent authority passed an order in exercise of his power under a statute without conforming to the statutory requirements, then the order gets vitiated and can be struck down if challenged before a court of law, but that does not make the statute itself unconstitutional. The right to close a business is an integral part of the fundamental right to carry on business and is guaranteed under Article 19(1)(g) of the Constitution. The closure of any industrial undertaking is likely to have adverse impact on the interest of the working class and, therefore, the Legislature enacted the provision of Section 250 of the Industrial Disputes Act to consider the interest of the workers employed in a large industrial undertaking. The interest of the labour has not to be ignored and, therefore, a balance has been struck by prescribing the manner of seeking permission for closure and by providing for dealing with the said application by the competent authority and providing guidelines for the exercise of such power. In view of the authoritative pronouncements of the Karnataka High Court Union of India Vs. Stumpp, Scheule and Somappa Ltd., Kerala High Court and Delhi High Court, (Supra) with which we are in respectful agreement, as well as the observations of the Supreme Court in Meenakshi Mills" case (Supra) we do not find any substance in the arguments of Mr. Mohapatra and we hold that the amended provisions of Section 250 of the Industrial Disputes Act do not violate the fundamental right guaranteed under Article 19(1)(g) of the Constitution.

5. In course of arguments, Mr. Mohapatra wanted us to examine the validity of the order of the State Government by which closure sought for was refused. But we express our inability to examine the same since the petitioner had filed an application for amendment in that respect which was registered as Misc. Case

No. 5688 of 1992 and a Bench of this Court by order dated September 2, 1992 refused the prayer for amendment. Therefore, it is not open for us to examine the validity of the order of the State Government.

6. In the result, therefore, the writ application fails and is dismissed, but in the circumstances, there will be no order as to costs.

B. Panigrahi, J.

I agree.