
(1998) 07 P&H CK 0153
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8214 of 1997

Oswal Agro Furane Workers Union Etc.	APPELLANT
Vs	
State of Punjab Etc.	RESPONDENT

Date of Decision : 10-07-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 25J, 25N, 25N(1), 25O, 25O(I)

Citation : (1991) 34 ECC 222 : (1998) 119 PLR 826

Hon'ble Judges : V.K. Jhanji, J;B. Rai, J

Bench : Division Bench

Advocate : P.K. Mutneja, for the Appellant; S.K. Bhanot, D.A.G. for Respondent No. 1, J.S. Narang Baljinder Singh, for Respondent No. 2, Sunil Chadha, for Respondent Nos. 3 to 8 and Rajiv Raina, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, J.—In this petition filed under Article 226 of the Constitution of India, prayer made by the petitioners is for issuance of writ of Certiorari quashing notice dated 29.5.1996, Annexure P-2, whereby respondent No. 2 decided to close down its industrial undertaking. Challenge is also to settlement, Annexure P-5 made between the representatives of the employer and the workers in regard to payment of compensation.

2. In brief, the facts are that M/s. Oswal Agro Furane Limited (respondent No. 2) set up an industrial undertaking at village Bhasaur near Dhuri in the year 1987 to manufacture furfural, chemical, rice, rice bran oil and deoiled cakes. According to the petitioners, it is one of the largest factories of its kind in Asia. The Unit was a 100% Export Oriented Unit and nearly 2759 persons were earning their livelihood directly or indirectly by this plant. The Unit was continuously earning profits and in the year 1994-95, it showed a total profit of Rs. 24.95 crores. Petitioners have averred that in spite of huge profits earned by respondent No. 2, its Directors did not have a clear intention and accordingly, filed a number of writ petitions in this court as also in the Delhi High Court. In each of these writ

petitions, the Directors concealed material facts and got orders against payments they had to make to the Government under the Import and Export (Control) Act and Central Excise and Salt Act. However, when the matter was taken to the Apex Court, vide judgment dated 30.4.1996, respondent No. 2 was directed to pay more than Rs. 50 Crores within eight weeks. In this context, see *Agricultural and Processed Food Products Vs. Oswal Agro Furane Ltd. and others*, . Faced with this situation, the Management on 29.5.1996 issued notice (Annexure P-2) for closing down the industrial undertaking permanently w.e.f. 29.5.1996. Petitioners have averred that when the workers affected by this decision tried to rake up a dispute, respondents 2 to 8 with the help of police started exerting pressure on the workers to enter into a settlement. Petitioners have averred that with the closing down of the manufacturing process, the Mill stopped supplying electricity and consequently, in the month of May/June, 1996, the workers had to endure almost 15 days without any electricity and water. Even the salary for the months of March, April and May, 1996 was not paid to the workers. Petitioners have averred that the Assistant Labour Commissioner was on the pay rolls of the Management and was being paid an amount of Rs. 1500/- per month. Petitioners have gone to the extent of saying that even the police and the Sub Divisional Magistrate were on the pay rolls of the Management. It is alleged that because of the pressure exerted on the workers, they were forced to enter into a settlement. In order to show that Assistant Labour Commissioner and Sub Divisional Magistrate, Dhuri, were being paid periodically by the Management, petitioners have produced on record Annexure P-7 an extract from the ledger showing that Assistant Labour Commissioner was paid Rs. 1,500/- per month, i.e. Rs. 4,500/- on 8.2.1996 and Rs. 4,500/- on 23.4.1996. During the course of hearing, petitioners also brought in Court for perusal certain ledgers showing payments made to the Assistant Labour Commissioner and S.D.M. Dhuri. Photostat copies and typed copies thereof have also been placed on record. Petitioner-Union has contended that the action of the Management in closing down the industrial undertaking and retrenching the workmen is violative of various provisions of the Industrial Disputes Act, 1948 (hereinafter referred to as 1948 Act). 3. Upon notice, three sets of written statement have been filed, one on behalf of respondent No. 1; second on behalf of respondent No. 2 and third on behalf of respondent No. 9. Respondent No. 1, namely, State of Punjab in its written statement has stated that on being approached, respondent No. 9 brought about a settlement between the employer and the workmen u/s 12(3) of the 1948 Act on 14.6.1996. It is averred that the settlement was arrived at between the parties willingly and in the interest of the workers. Respondent No. 2 in its written statement has raised an objection in regard to the maintainability of the writ petition on account of settlement having been arrived at u/s 12(3) of the 1948 Act between the management and representatives of the workers. Further, according to respondent No. 2 conciliation came through indulgence of Assistant Labour Commissioner who had examined the terms of the agreement and the same were found to be in conformity and in consonance with the provisions of the 1948 Act. Respondent No. 2 has averred that in pursuance of the Settlement,

workmen accepted payment through cheque/cash against receipt. In regard to closure of the unit, respondent No. 2 has stated that the management had followed the procedure as prescribed under the Act. Respondent No. 2 has further averred that the industrial undertaking had to be closed down on account of unavoidable circumstances beyond the control of the employer. Likewise respondent No. 9 in his written statement has stated that petitioners are estopped by their act and conduct from challenging settlement, Annexure P-5. According to him, petitioners were free not to enter into any settlement with the respondent-company, but having made themselves amenable to the conciliation proceedings, the settlement/agreement which had come into existence and attained legal status u/s 18(3) of the Act is binding on both the parties. Respondent No. 9 has denied the allegation of being on the pay rolls of the management, being false, malicious and defamatory.

4. Mr. P.K. Mutneja, Advocate, counsel appearing on behalf of the petitioners, has contended that the action of the respondents in closing the industrial undertaking is in violation of Section 25-O of the 1948 Act as no permission was sought from the appropriate Government before respondent No. 2 decided to close down industrial undertaking. Mr. Mutneja contended that the settlement, Annexure P-5, purported to be u/s 12(3) being in contravention of Chapter V-A and V-B is not binding. Counsel also contended that the workmen were forced to enter into settlement and this was done by the management in connivance with the Assistant Labour Commissioner who was on the pay rolls of the management. Against this, it is contended by counsel appearing on behalf of respondent No. 2 that industrial undertaking was closed down on account of unavoidable circumstances beyond the control of the employer. He contended that the procedure provided in respect of payment of compensation was strictly complied with and settlement as envisaged u/s 12(3) of the 1948 Act was arrived at. Counsel contended that there is no truth in the allegation that industrial undertaking was closed down in connivance with the Assistant Labour Commissioner or that he was being paid Rs. 1,500/- per month. Mr. Rajiv Ratna, Advocate, counsel appearing on behalf of the Assistant Labour Commissioner, namely, respondent No. 9, has advanced arguments in support of the case of the management. Mr. Raina contended since the settlement as envisaged u/s 12(3) was arrived at between the workmen and the management, petitioners cannot make a grievance that closure is in violation of Section 25-O of the Act. Counsel contended that even if there is a violation of mandatory provisions of the Act, interference under Article 226 of the Constitution of India is not warranted as a matter of course.

5. Record of the case perused and counsel for the parties have been heard at length.

6. Section 25-N lays down conditions precedent to retrenchment of Workman whereas Section 25-O lays down procedure for closing down an undertaking of Industrial establishment. Section 25-M and Section 25-O when juxtaposed, read

as under :-

"25-N. Conditions precedent to retrenchment of workman- (1) No workman employed in any industrial establishment to which this chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,

"25-O: Procedure for 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 copy of such application shall also be served simulatenously on the representatives of the workmen in the prescribed manner.

(a) the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate government or such authority as may be specified by that Government by notification in the official Gazette (hereinafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

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) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simulatenously on the workman concerned in the prescribed manner.

(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 for permission under sub-section (1) has been made, the appropriate Government on the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workman 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) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority 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) An order of the appropriate Government or the specified authority or refusing to grant permission shall subject to the provisions of sub-section (6) be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on 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.

(7) Where no application for permission under sub-section (1) is made or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to workman and the workmen shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(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) 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 establishment 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 (2) every workman who is employed in that 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 of continuous service or any part thereof in excess of six months.

(9) Where permission for retrenchment has been granted under sub-section (4) every workman who is employed in that establishment immediately before the date of application for permission under this Section shall be entitled to receive at the time of retrenchment compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months.

7. Sub-section (1) of Section 25-O and Sub-section (1)(b) of Section 25-N both require the employer desiring to close down an undertaking of industrial establishment or retrench a workman, to serve a notice on the appropriate government and seek permission for such closing down or retrenchment. Likewise, Sub-section (2) of Section 25-D and Sub-section (3) of Section 25-N both require reasons to be recorded in writing by the appropriate Government, having regard to the genuineness and adequacy of the reasons stated by the employer and all other relevant factors while granting or refusing to grant permission sought by the employer to effect closure/retrenchment. In addition, Section 25-O(2) requires that regard should be had to the interests of the general public while section 25-N requires that regard must be had to the interests of the workmen. It is only to this extent that there is a difference between the two provisions with regard to the factors to be taken into account while rendering the decision, Rule 76-B of the Industrial Disputes (Central) Rules, 1957, provides for giving of a notice to the Government by the employer intending to close down an undertaking. He is required to state clearly the reasons for intended closure in the application and to serve a copy of the application on the representatives of the workmen in the prescribed manner. Rule 76-C(1) prescribes that the application under this Section shall be in form "QA" while Sub-rule (2) requires the application to be made in triplicate and Sub-rule (3) enjoins the employer to furnish to the Government such further information as the Government may consider necessary and call from him for arriving at a decision on the application. The information required to be given in form "QA" relates to the production, financial position of the company, percentage of wages, of workmen to the total cost of production, administrative, general and selling cost in absolute terms per year for the last three years and percentage thereof to

the total cost, inventory in respect of finished products, components and raw materials, interests of the Directors and Officers with the Organisations/persons involved in buying raw materials and components for the undertaking, annual sales figures for the three years and month-wise sales figures for the preceding twelve months, reasons for the proposed closure and etc. etc. On receipt of the application for closure of an undertaking and the material provided by the employer in support thereof, the appropriate Government before granting or refusing permission is not only required to make necessary enquiry into the facts and circumstances of the case after giving reasonable opportunity of being heard to the employer, workmen and the persons interested in such closure, but is also required to consider the genuineness and adequacy of the reasons for the closure stated by the employer, interest of the general public and other relevant factors. In case on consideration of the material provided by the employer or the workmen or persons interested in such closure, the appropriate Government finds that permission sought for closure is mala fide, unjust or unfair, it has the discretion to refuse permission for closure on the ground of public interest which includes interest of workers who would be rendered jobless. Sub-section (6) makes closure of an undertaking illegal from the date of closure if no application for permission is made to the appropriate government or where permission for closure has been refused. In the event of closure being illegal, workmen become entitled to all benefits under law as if an undertaking had not been closed down. Section 25-R exposes an employer to penal consequences if an undertaking is closed down without obtaining prior permission or in contravention of the refusal to close down the undertaking.

8. In the present case, vide notice dated 29.5.1996, Annexure P-2, management decided to close down the manufacturing process permanently with immediate effect. From the endorsement appearing on the notice, it appears that copy of notice dated 29.5.1996 was sent to the Secretary to Government, Labour Commissioner, Punjab Assistant Labour Commissioner, Sangrur, and one displayed on the notice board. In its written statement, Management has stated that before closing down the unit, it had followed the procedure as prescribed under the provisions of the Industrial Disputes Act. In order to test the correctness of the averments made by the management, Mr. S.K. Bhanot, DAG, Punjab, was asked to explain the stand of the State in this regard as no reply on this aspect of the case had been given by the State. After getting necessary enquiry made, Mr. Bhanot has placed on record letter dated 21.11.1997 received by Advocate General, Punjab, from the Labour Commissioner, Punjab, stating therein that the management, of M/s. Oswal Agro Furane Limited, Dhuri, closed down their factory w.e.f. 29.5.1996 with simple notice dated 29.5.1996, photocopy of which was sent to the office of Labour Commissioner, Punjab, by the Assistant Labour Commissioner, Sangrur, vide letter dated 11.6.1996. Letter dated 21.11.1997 states that closure notice dated 29.5.1996 was not received either by the office of Labour Commissioner, Punjab, or by the Government. It further states that the management had not made any application for seeking

prior permission as required u/s 25-O of the Act. On placing of letter dated 21.11.1997 on record, counsel appearing on behalf of respondent No. 2 has fairly conceded that before closing down the undertaking, respondent No. 2 had not applied to the appropriate Government for permission to close down the industrial undertaking. This being the position, notice dated 29.5.1996 Annexure P-2, has to be declared illegal being in violation of Section 25-O of the Act.

9. Closure being illegal, it now remains to be decided as to what relief the petitioners are entitled to. Sub-section (6) of Section 25-O provides that if closing down of the unit is illegal, then the workmen are entitled to all benefits under any law for the time being in force as if undertaking had not been closed down. Counsel appearing on behalf of the respondent No. 2 has however, stated that workmen are not entitled to any relief as they have already been compensated vide settlement dated 14.6.1996 Annexure P-5. Counsel contended that settlement being one u/s 12(3) of the 1948 Act is binding. Reference in this regard has been made to Section 18 of the Act. Sub-section (3) of Section 18 makes a settlement arrived at in the course of conciliation proceedings binding on all parties to the dispute and all workmen employed on date and subsequent to dispute. The contention of the petitioners is that the management with the help of police, Assistant Labour Commissioner and S.D.M. Dhuri, exerted pressure on the workers to enter into a settlement. In this regard, it is contended that most of the workers were staying within the Mill premises and were getting electricity through the Mill, but in order to force the workers to enter into a settlement, the Mill stopped supplying electricity and water in the month of May/June, 1996 and the workers had to endure almost 15 days without any electricity and water. Petitioner has also contended that salary for the month of March, April and May, 1996 was not paid to the workers. In support of these averments, counsel for the petitioners has made a pointed reference to letter dated 24.5.1996 Annexure P-3, sent by the management to the Senior Superintendent of Police, Sangrur, asking to increase the police strength of police post under a senior incharge on the plea that the workmen may resort to violence. Reference was also made to the extracts from the ledgers which the workers allegedly took in possession from the officers working in the Mill wherein certain payments have been shown to have been made to Assistant Labour Commissioner, S.D.M. and S.H.O. Counsel appearing on behalf of respondent No. 2 has vehemently denied that any pressure was exerted on the workers to enter into settlement or Assistant Labour Commissioner. S.D.M. or S.H.O. were on the pay rolls of the management. Be that, as it may, indisputably, settlement dated 14.6.1996 took place because of closing down of the undertaking. In other words, closing down of the undertaking is foundation of the settlement. But if the foundation itself is non-existent any settlement arrived at in pursuance thereof is also void. As noticed earlier, in this case no permission was sought from the appropriate Government and therefore, closure of the undertaking was in contravention of provisions of Section 25-O(1) of the Act and resultantly, settlement being in contravention of Section 25-O cannot be sustained in law.

10. There is yet another aspect of this case. Closing down of the undertaking has also resulted into retrenchment of the workmen. Section 25-N imposes two conditions precedent to the retrenchment of a workman, namely, three months notice in writing to the workman indicating the reasons of retrenchment or three months pay in lieu thereof and prior permission of the Government in that behalf. The Apex Court in *Workmen of Meenakshi Mills Ltd. and Others Vs. Meenakshi Mills Ltd. and Another*, has clearly specified that it is mandatory to obtain prior permission of the appropriate government after making an application in that behalf, stating reasons for intended retrenchment. Upon this application, sufficient opportunity has to be given to the workmen by the appropriate government and after taking into account all the factors, the appropriate government has to take the decision, granting or not granting permission to retrench. In case, permission for retrenchment is not sought or is refused by the appropriate Government Sub-section (7) makes retrenchment illegal and entitles a workman to all benefits under law if notice had been given to him. Sub-section (2) of Section 25-I declares that rights and liabilities of employers and workmen insofar as they relate to lay off and retrenchment shall be determined in accordance with the provisions of Chapter V-A. Although Section 25-N relating to retrenchment of a workman employed in an Industrial establishment falls under Chapter V-B but section 25-S makes provisions of Section 25-J falling in Chapter V-A also applicable to an industrial establishment to which provisions of Chapter V-B apply. A conjoint reading of Section 25-J, 25-N and 25-S makes it abundantly clear that industrial dispute relating to retrenchment of a workman employed in an industrial establishment shall be settled only in accordance with the provisions of Section 25-N of the Act. Settlement purporting to be u/s 12(3), of the Act between the representatives of the employer and the representatives of the workmen, is to retrench the employees. Section 18 of the Act which makes settlement binding does not, indicate that the settlement can be in contravention of Chapters V-A and V-B of the Act. Settlement (Annexure P-5) also gives no indication that before closing down the undertaking or retrenching the employees, the employer had entered into any agreement with the workmen for dispensing with provisions of Chapters V-A and V-B of the Act. Compliance of Sections 25-O(1) and 25-N(1)(b) of the Act being mandatory before employer decides, to close down his industrial undertaking or retrenching the employees, any settlement in contravention thereof is not binding on the workmen. Thus, having regard to the provisions of Sub-section (6) of Section 25-O and Sub-section (7) of Section 25-N, the purported closure of the undertaking and retrenchment of the workmen being in violation of Sections 25-O(1) and 25-N(1)(b) have to be held to be illegal w.e.f. 29.5.1996, i.e. the date when notice of closure of undertaking was given. It is accordingly so held.

11. Resultantly, the writ petition is allowed and Annexure P-2, order of Closure and Annexure P-5, Settlement shall stand quashed. The workmen shall be entitled to all benefits under any law for the time being in force as if no notice had been given to them. The amount received by any workmen under the

settlement shall be adjusted from the arrears payable to such workman. Arrears are directed to be paid within six months failing which workmen shall be entitled to interest at the rate of 12 per cent from the expiry of period of six months till realisation. Petitioners shall also be entitled to costs which are quantified at Rs. 2000/-.