
(2009) 01 BOM CK 0129

In the Bombay High Court

Case No : Appeal No. 446 of 2008 in Writ Petition No. 1332 of 2007

Paint Employees Union

APPELLANT

Vs

Kansai Nerolac Paints Ltd. Formerly known as Goodlass
Nerolac Paints Ltd.

RESPONDENT

Date of Decision : 15-01-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Industrial Disputes Act, 1947 — Section 10, 25FF(A), 25N(6), 25O, 25O(1)

Motor Vehicles Act, 1988 — Section 167

Citation : (2009) 111 BOMLR 839 : (2009) 121 FLR 294 : (2009) 3 LLJ 543 :
(2009) 2 MhLj 722

Hon'ble Judges : Ranjana Desai, J;K.K. Tated, J

Bench : Division Bench

Advocate : Meena Doshi, for the Appellant; J.P. Cama and C.U. Singh, instructed by , Sanjay Udeshi and Co., for the Respondent

Final Decision : Dismissed

Judgement

Ranjana Desai, J.—The appellant is the original respondent and the respondent is the original petitioner in Writ Petition No. 1332 of 2007. The said writ petition was filed by the respondent challenging order dated 24/4/03 passed by the Commissioner of Labour, Maharashtra State insofar as it dealt with review of earlier order dated 27/3/03. It is necessary to begin with the facts of the case.

2. The respondent is a company registered under the Companies Act, 1956 ("the respondent company" for convenience). It has various manufacturing units in different parts of the country. It had a manufacturing unit at Lower Parel. The appellant is a registered trade union and has been representing the employees of the Lower Parel unit of the respondent company since 1945. It is a recognized union under Chapter II of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("MRTU & PULP Act" for short). For convenience, we shall refer to the appellant as "the appellant union."

3. On 27/1/03, the respondent company made an application seeking permission to close down the Lower Parel factory unit u/s 25-O of the Industrial Disputes Act, 1947 ("the said Act" for short). In the application several reasons for proposed closure were noted. It was stated that the financial condition of the Lower Parel factory unit had deteriorated to a great extent; that the Lower Parel factory unit as a whole had incurred losses of about Rs. 320 lakhs in the first half of the current year; that it is estimated that the same trend would follow in the second half of the current financial year and that there are no chances of revival of the unit. This application was resisted by the appellant union. On 27/3/03, after hearing the parties the Commissioner of Labour who is the Specified Authority under the said Act ("Specified Authority" for convenience) granted permission to the respondent company to close down the Lower Parel unit. On 15/4/03 the appellant union filed an application u/s 25-O(5) of the said Act seeking review of the order dated 27/3/03 or a reference to the Industrial Tribunal. That application was opposed by the respondent company.

4. The Specified Authority passed order on 24/4/03. The Specified Authority observed that it was of the opinion that the appellant union had not made out a case for review of the order dated 27/3/03 granting permission to effect the closure. The Specified Authority further observed that it had gone through the submissions made by both the parties and had come to the conclusion that the matter needs judicial scrutiny. The Specified Authority, therefore, referred the matter u/s 25-O(5) of the said Act to the Industrial Tribunal.

5. The proceedings before the Industrial Tribunal were held. Parties filed their documents and led oral evidence. Written submissions were also filed before the Industrial Tribunal. The respondent company raised objection as regards maintainability of the reference u/s 25-O(5) of the said Act on the ground that the review was rejected by the Specified Authority and the reference was consequentially barred as the Specified Authority did not have the power to adjudicate the review application and also make a reference to the Industrial Tribunal.

6. The Industrial Tribunal by its order dated 5/5/07 refused permission to close down the Lower Parel Factory Unit. The reference was rejected and it was held that the workmen were entitled to the wages for the period from 2/5/03 onwards.

7. It needs to be noted at this stage that on 20/6/07 the respondent company issued notice informing individual workman that without prejudice to its contention that the closure dated 2/5/03 is legal and valid, it had decided to close down the Lower Parel unit vide notice dated 20/6/07 issued u/s 25FF of the said Act. It appears that a separate complaint is filed by the appellant union under the provisions of the MRTU & PULP Act, 1971 in respect of the said notice.

8. Being aggrieved by the award dated 5/5/07 passed by the Industrial Tribunal refusing permission to close down the Lower Parel unit, the respondent company filed Writ Petition No. 1332 of 2007 praying inter alia that the said award dated

5/5/07 be quashed and set aside.

9. By order dated 28/7/08 learned Single Judge made the Rule absolute in terms of prayer clause (a) i.e. he quashed and set aside the award dated 5/5/07. While setting aside the award learned Single Judge observed that the Specified Authority could not have referred the matter to the Tribunal in exercise of its power u/s 25-O(5) of the said Act, having rejected the application for review. He observed that the power of the Specified Authority to deal with and decide an application made to it u/s 25-O stood exhausted on the rejection of review application and a reference to the Tribunal thereafter was not competent. The said order is challenged in this appeal.

10. Mr. Cama, learned Counsel for the respondent raised a preliminary objection. He submitted that before filing the present appeal, the appellant union had filed Writ Petition No. 1794 of 2008 challenging order dated 24/4/03 passed by the Specified Authority u/s 25-O(5) declining to review permission granted for closure and instead referring the matter to the Industrial Tribunal for adjudication. In that petition in paragraphs b to e, the appellant union had contended that the order dated 24/4/03 is not an order amounting to rejection of the review application preferred by the appellant union. The appellant union withdrew those grounds with the permission of the court. Mr. Cama submitted that by withdrawing the said grounds the appellant union has accepted the existence of the order of review, therefore, the appellant union is estopped from raising a contention that the Specified Authority has not decided the review; that there is no order passed by it on the review application and, therefore, the reference is validly made. The present appeal is, therefore, not maintainable.

11. Ms. Doshi, learned Counsel for the appellant union on the other hand submitted that Section 25-O(5) grants a statutory remedy to a party who seeks review or reference. Relying on the judgment of the Supreme Court in Orissa Textile and Steel Ltd. v. State of Orissa 2002 2 SC 578 she submitted that this remedy is in addition to the judicial review under Article 226 and Article 32 of the Constitution of India. She submitted that Writ Petition No. 1794 of 2008 seeks judicial review of the order dated 24/4/03 without prejudice to the right of the appellant union to file an appeal challenging the impugned order. Therefore, filing of Writ Petition No. 1794 of 2008 will not come in the way of the appellant union in prosecuting the present appeal.

12. So far as the deletion of grounds is concerned, Ms. Doshi submitted that the said grounds were deleted because at the stage of admission of Writ Petition No. 1794 of 2008 a contention was raised by the counsel for the respondent company that since learned Single Judge had concluded vide his judgment and order dated 28th July, 2008 in Writ Petition No. 1332 of 2007 that the order of the Specified Authority was a clear rejection of a review, another writ petition on the said issue could not be filed by the appellant union. Ms. Doshi submitted that, therefore, and in view of the fact that learned Single Judge had so held, he permitted the appellant union to withdraw the last sentence of paragraph 3 and

grounds (b) to (e). She submitted that, learned Single Judge permitted her to raise these grounds in the present appeal memo and accordingly she has raised them.

13. Though, we find some substance in Mr. Cama's argument, we do not want to go into this aspect because in the circumstances of the case, we feel that correct approach will be to deal with the case on merits. We shall deal with the appeal on merits.

14. Extensive arguments have been advanced by learned Counsel for the parties. We have carefully read the written submissions filed by them. We shall deal with their submissions as we discuss the various issues which have been raised in this case.

15. Since we are concerned here with Section 25-O of the Industrial Disputes Act, it is necessary to quote it. Section 25-O, so far as it is relevant for the present case reads 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....

(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 the 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) ...

(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 shall 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.

(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) ...

(8) ...

16. Before we go to the rival contentions it is necessary to see how the Supreme Court has interpreted Section 25-O(5). At this stage it must be noted that there is no dispute about the fact that Section 25-O(5) of the said Act is in pari materia with Section 25-N(6) of the said Act.

17. In *Engineering Mazdoor Sabha v. Addl. Commissioner of Labour and Ors.* 2005 II LLJ the respondent company made an application for permission to retrench workmen. The said application was partly allowed by the Addl. Commissioner by granting permission to retrench only 276 workmen. Against that order the petitioner Mazdoor Sabha filed an application u/s 25-N(6) of the said Act for review of the said decision or for reference of the matter for adjudication. That application was rejected inter alia on the ground that no new point was raised in the review proceedings which warranted examination. The petitioner Mazdoor Sabha challenged the said order in this Court. Learned Single Judge of this Court was of the view that the Addl. Commissioner was right in holding that no new point was raised in the review application. Learned Single Judge held that that part of the order needs no interference. Learned Single Judge then considered whether the Addl. Commissioner was obliged to make reference. It was argued by the employer company that once review application is rejected there was no question of making reference. Learned Single Judge held that rejection of prayer of review cannot be the basis to decline the remedy of reference as is provided in Section 25-N(6) of the said Act. Learned Single Judge, therefore, modified the order of the Addl. Commissioner by directing him to refer the matter for adjudication. That judgment was carried in appeal to the Division Bench. The Division Bench concurred with learned Single Judge and dismissed the appeal.

18. The judgment of the Division Bench was challenged in the Supreme Court. It was argued before the Supreme Court that once the review application was disposed of there is no scope for further making a reference in view of the clear language of Section 25N(6) which provides for the alternative and does not empower a reference after the review petition is rejected. The Supreme Court referred to its earlier decision in *Orissa Textile's case* (supra) and observed that in that case it was considering the question whether the provision of review and

reference were in addition to judicial review and it never said that they are cumulative and not alternative. The Supreme Court further held that had the legislature intended that the reference could be made after the Government or Specified Authority deals with the review power, it could have said so specifically by specific words. It could have provided for a direct reference. The Supreme Court further observed that a plain reading of the provision makes the position clear that two courses are open. Power is conferred on the appropriate Government to either on its own motion or on an application made, review its order or refer the matter to the Tribunal. Whether one or the other of the courses could be adopted depends on the facts of each case, the surrounding circumstances and several other relevant factors. In the circumstances the Supreme Court allowed the appeal.

19. In view of the above clear enunciation of law there need not be any debate over the interpretation of Section 25-O(5) of the said Act. The Specified Authority can on its own motion or on an application made to it, review its order or refer the matter to the Industrial Tribunal. Once review application is disposed of there is no scope for further making a reference.

20. It is now necessary to refer to the facts of this case. The appellant union has prayed in its application that the Specified Authority may review its order dated 27/3/03 granting permission to close down the Lower Parel unit or in the alternative it may refer the matter to the Industrial Tribunal. In the words of Ms. Doshi counsel appearing for the appellant union it is a consolidated application seeking a review or a reference u/s 25-O(5). Ms. Doshi argued that in the case of a consolidated application the Specified Authority has to either say "yes" to one prayer and "no" to another prayer. She submitted that in this case the Specified Authority has decided to refer the case. There is no categoric rejection of the review application. It has decided to choose one option i.e. to refer the matter to the Industrial Tribunal. Ms. Doshi submitted that one cannot read one observation made by the Specified Authority in isolation thereby ignoring the final conclusion reached by it to refer the matter. Ms. Doshi submitted that while considering application u/s 25-O(5) the Specified Authority has to consider the same factors which it has to consider while deciding an application u/s 25-O(2) seeking permission to close down an undertaking i.e. (a) whether the reasons are genuine (b) whether the reasons are adequate (c) whether granting permission is in general public interest and (d) other relevant factors. She submitted that in this case the Specified Authority has not categorically rejected the application. It has stated that it was of the opinion that judicial scrutiny is required and has referred the matter for adjudication. There is no finality to its order in the sense that the order indicates that the Specified Authority was of the opinion that since judicial scrutiny is required there is no need to review the order. Mr. Cama, learned Counsel for the respondent company on the other hand relied on Cable Corporation case (supra) and submitted that the above argument of Ms. Doshi must be rejected in view thereof. Relying on the Supreme Court's judgment in National Insurance Co. Ltd. Vs. Mastan and Another, , Mr. Cama

submitted that a party must in law elect one of the two available remedies. If it does not expressly elect in its application as to whether it seeks a review or a reference it runs the risk of the Government taking up the matter by way of a review and by rejection thereof precluding an order of reference.

21. It is difficult to accept the submission of Ms. Doshi that since the application was a composite application, the Specified Authority has to say "yes" to one prayer and "no" to other. This view will run counter to the authoritative pronouncement of the Supreme Court in Cable Corporation's case (supra). At the cost of repetition, it must be stated that in that judgment the Supreme Court has referred to its judgment in Fakir Mohd. (dead) by Lrs. v. Sita Rani : AIR2002SC433 where it was held that the word "or" is normally disjunctive. The use of the word "or" in a statute manifests the legislative intention of the alternatives prescribed under law. The Supreme Court has observed that had the legislature intended that the reference could be made after the Specified Authority deals with the review power, it would have said so specifically by specific words. It could have provided for a direct reference. These observations of the Supreme Court make it clear that, if the Specified Authority exercises its review power it cannot make a reference. Now to ascertain whether the Specified Authority's order is in consonance with the judgment of the Supreme Court in Cable Corporation's case (supra) or not, it is necessary to quote the relevant paragraphs of the Specified Authority's order dated 24/4/03. They read as under:

As regards various prayers made by the Applicant Union in the review and stay application, I have to state that there is no provision u/s 25-O of the Industrial Disputes Act, 1947 to grant such prayers, therefore, I am of the opinion that various prayers made by the Applicant Union cannot be granted. I am also of the opinion, that the Applicant Union has not made out a case for review of the order dated 27/3/2003.

I have gone through the submissions made by both the parties in the instant matter and have come to the conclusion that the matter needs judicial scrutiny. Hence, I pass the following order:

ORDER

The matter in the application dated 27/1/03 of M/s. Goodlas Nerolac Paints Ltd., Ganpatrao Kadam Marg, Lower Parel, Mumbai 400 013 u/s 25-O(1) of the Industrial Disputes Act, 1947 seeking permission of closure of its Lower Parel Unit situated in the abovementioned address is hereby referred u/s 25-O(5) of the said Act to the Industrial Tribunal, Mumbai consisting of Sou. S.V. Ayarekar.

22. There is no dispute about the fact that the reference made by the Specified Authority in it's order to various prayers made in the application and its observation that for those prayers there is no provision u/s 25-O of the said Act, relate to prayers regarding interim relief. The question is whether the sentence "I am also of the opinion, that the Applicant Union has not made out a case for review of the order dated 27/3/2003", should be read as rejection of the prayer

for review or not. We have no doubt that when the Specified Authority expresses its opinion, that no case is made out for review, it exercises its jurisdiction to deal with the review application and rejects it. Merely because it does not categorically state that review application is rejected, it cannot be said that review application is not rejected. The opinion expressed by the Specified Authority is not worthless. The law contemplates that, if it expresses that in its opinion, no case for review is made out, the matter must end there. Once it expresses opinion, that no case for review is made out the application cannot be processed further. It is not possible to interpret this order to mean that the Specified Authority proceeded on the basis that since judicial scrutiny is required it need not review the order. In this case when the Specified Authority expresses that no case for review is made out, it is clear that it has applied its mind to the rival contentions which it has reproduced in detail and formed an opinion. It has dealt with the application. It has exercised its review jurisdiction and rejected it. The order is susceptible to no other inference.

23. We must, however, record that in our opinion the doctrine of election has no application here and the reliance placed by Mr. Cama on National Insurance Co's case (*supra*) is totally misplaced. In that case the court was considering two remedies available to an injured workman to get compensation. He is entitled for compensation under the Workmen's Compensation Act, 1923 and also under the Motor Vehicles Act, 1988. u/s 167 of the Motor Vehicles Act, 1988 the aggrieved party has the option to elect either of them but not both. Observations of the Supreme Court will have to be read against the background of these facts. We are not concerned here with a provision akin to Section 167 of the Motor Vehicles Act, 1988. The said judgment has, therefore, no application to this case.

24. It is pointed out by Mr. Cama that before the Tribunal, the appellant union had conceded that the Specified Authority had decided the review application on merits. This is recorded by the Tribunal in its order. In the impugned order learned Single Judge has also said so. Mr. Cama submitted that the appellant union is estopped from taking a contrary stand now.

25. It is pertinent to note that in the statement of claim filed by the respondent company in the reference which was decided by the Industrial Tribunal pursuant to the Specified Authority's order dated 24/4/03, the respondent company clearly stated that the Specified Authority had rejected the review application, however, in view of the mandatory provision of Section 25-O of the said Act, the Specified Authority had referred the matter of permission for closure to the Tribunal. Even in its written arguments filed before the Tribunal, the respondent company specifically raised this contention. It is significant to note that the appellant union in its written arguments filed before the Tribunal stated that scope of Section 25-O(5) is akin to the powers of the Tribunal u/s 10 of the said Act and as such the Tribunal would have the same powers u/s 25-O(5) of the said Act. Reliance was placed by the appellant union on the judgment of this Court in Cable Corporation's case. Obviously it is on this basis that the Tribunal

observed in its award dated 29/4/03 that it was not disputed that the Specified Authority decided the review application on merits.

26. It is equally important to note that in the affidavit in reply dated 6/9/07 filed in Writ Petition No. 1332 of 2007, the appellant Union has reiterated the same submission. Reliance is placed on this Court's judgment in Cable Corporation's case. The point to note is that in paragraph 21 of the Tribunal's award, the Tribunal has recorded that it is not disputed that the Specified Authority decided the review application on merits. In paragraph 6(1) of the affidavit in reply there is a reference to the said paragraph 21. However, it is not stated that the appellant union had not disputed that the review application was decided on merits. On the contrary it is stated that the contention raised by the respondent company that after hearing the review application on merits, the Specified Authority has no power to make reference has been rejected by the Tribunal and this finding cannot be characterized as misdirection in law on the part of the Tribunal. It appears that after considering the pleadings, more particularly the affidavit in reply filed by the appellant union and after hearing learned Counsel for the parties, learned Single Judge has observed in the impugned order that it was not disputed before the Tribunal that the Specified Authority has decided the review application on merits. In our opinion, there is strong basis for the above observation made by the Tribunal as well as by learned Single Judge.

27. Ms. Doshi argued that no such concession was made before the Tribunal and even before learned Single Judge it was argued that no concession was made before the Tribunal. Mr. Cama, learned Counsel for respondent company has seriously disputed this statement made by Ms. Doshi.

28. It is well settled that if a party feels that any statement made by him or his counsel has been wrongly recorded in the judgment it has to approach the same learned Judge to get the order corrected. In State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, the Supreme Court dealt with this point. We may quote the relevant observation of the Supreme Court.

If a party thinks that the happening in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error (per Lord Buckmaster in Madhu Sudan Chowdhri v. Chandrabati Chowdhrain). That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but he may not call in question the very fact of making the concession as recorded in the judgment.

29. The above judgment was followed by the Supreme Court in Commissioner of

Endowments and Others Vs. Vittal Rao and Others, . It was, therefore, necessary for learned Counsel for the appellant union to approach learned Single Judge and get the order corrected. In fact we asked Ms. Doshi whether she wanted to approach learned Single Judge in this connection. However there was no positive response from her. In our opinion, this stand taken by the appellant union makes a dent in its case.

30. Ms. Doshi submitted that even if the extracted observation of the Tribunal is to be treated as a concession the said concession cannot bind the appellant union as a concession made by the advocate on a question of law would not bind the party. In support of this submission, learned Counsel relied upon *Uptron India Limited Vs. Shammi Bhan and Another*, . In that case the issue before the court was whether a provision in standing orders for automatic termination of service of an employee was valid. It appears that in an earlier judgment the Supreme Court had recorded that counsel appearing on behalf of the employee had not contested this point. When this concession was pointed out the Supreme Court held that a wrong concession on a question of law made by counsel is not binding on his client. Such concession cannot constitute a binding precedent.

31. In *P. Nallammal Etc. Vs. State Rep. by Inspector of Police*, on which reliance is placed by Ms. Doshi, the Under Secretary to the Government of India had filed a counter affidavit conceding the legal position espoused by the appellants. It was argued before the Supreme Court that it was not open to the Government of India to retrace from a concession once made in the court on a legal proposition. The Supreme Court rejected this submission. The Supreme Court observed that the construction of statutory provision cannot rest entirely on the stand adopted by any party in the lis. A party cannot be nailed to a position on the legal interpretation which it adopted at a particular point of time because saner thoughts can throw more light on the same subject at a later stage. For the same proposition Ms. Doshi also relied on *Union of India (UOI) and Others Vs. Mohanlal Likumal Punjabi and Others*, in which the Supreme Court reiterated that a wrong concession made by counsel cannot bind the parties when statutory provisions clearly provide otherwise.

32. In view of the law laid down by the Supreme Court in the above judgments, it is not possible for any one to contest the proposition that a wrong concession made by a party or its advocate on a statutory provision cannot bind them. However, in our opinion, facts of this case are different. We are not concerned here with merely a concession made by a counsel. The appellant union took a stand that u/s 25-O(5), the Specified Authority can review its order and also make a reference and that the Specified Authority had in fact reviewed its order on the basis of judgment of this Court in *Cable Corporation's* case which held the field at that time. We have already noted that this legal stand of the appellant union is reflected in its arguments filed before the Tribunal and in its affidavit-in-reply filed in this Court. Thus the concession flows from the pleadings of the parties. The appellant union accepted the factual existence of a valid review

order and thereafter sought to defend its stand on the basis of this Court's judgment in Cable Corporation's case. After the Supreme Court set aside this Court's judgment in Cable Corporation's case the appellant-Union is trying to contend that such statement was never made. In any case it is pertinent to note that in Commissioner of Endowment's case (supra) the Supreme Court has observed that a party may resile from a concession of law but it cannot call in question the very fact of making the concession as recorded in the judgment. We may also mention that in Writ Petition No. 1794 of 2008 which is filed by the appellant union prior to the filing of this appeal, the appellant Union proceeded on the basis that there is a factual order of review. It only seeks to contend that the said order has been passed illegally. The conclusion is inevitable that the appellant union is adopting inconsistent stands and its conduct reflects on the credibility of its case.

33. It is then submitted by Ms. Doshi that in Orissa Textile's case (supra) the Supreme Court found that the recast provision of Section 25-O after its amendment is constitutionally valid on various grounds including the ground as regards the provision specifically made for a review or a reference u/s 25-O(5). She submitted that by interpreting the order of the Specified Authority in the manner suggested by the respondent company, the workmen would be deprived of the said remedy which was found to be a necessary remedy by the Supreme Court.

34. It is not possible to accept this argument. Undoubtedly the remedy of review or reference is a valuable remedy. But the legal position is clarified by the Supreme Court in Cable Corporation's case (supra). The two remedies are alternative remedies. If review jurisdiction is exercised and review application is rejected then there can be no further order of reference. In this case there is no question of denial of remedy to the appellant union. The application of the appellant union has been considered by the Specified Authority and the Specified Authority has rejected it. The appellant union adopted the remedy available in law and the Specified Authority adjudicated the application. Once Specified Authority considers the application of the appellant union merely because the decision of the Specified Authority is against the appellant union it cannot contend that it was deprived of the valuable right of review. We have already concluded that the Specified Authority exercised its review jurisdiction and rejected the review application. The order of the Specified Authority cannot be interpreted in any other way. Any attempt made by us to interpret it differently would be doing violence to the law settled by the Supreme Court in Cable Corporation's case (supra).

35. Ms. Doshi submitted that in the reference made u/s 25-O(5) the Tribunal has in fact found that the reasons seeking permission to effect closure are neither genuine nor adequate and not in public interest. The Tribunal found that the termination orders issued to the workmen were illegal and that the workmen were entitled to wages and other benefits from 2/5/03 as they are deemed to

have been continued in service. Ms. Doshi pointed out that the amount which the workmen are entitled to receive works out to approximately Rs. 7.8 crores. Ms. Doshi submitted that while admitting the appeal this Court has directed the respondent company to furnish security to the satisfaction of the Prothonotary & Senior Master of this Court to protect the interest of the workmen. Learned Counsel pointed out that the workmen are without job since 2003.

36. Learned Counsel further pointed out that after the rejection of the reference the respondent company has purported to effect the closure vide its notice dated 20/6/07 without prejudice to the earlier closure. Ms. Doshi submitted that when the reference was made this Court's judgment in Cable Corporation's case (supra) was holding the field and, therefore, the reference made in the light of that judgment was legal. Learned Counsel urged that it is necessary to adjudicate the legality and propriety of the award dated 5/5/07 made by the Tribunal on merits because in the proceedings initiated by the appellant union challenging the purported closure as per the notice dated 20/6/07 the legality and propriety of the closure effected in 2003 cannot be gone into by the Industrial Court.

37. We are not impressed by this submission. The Tribunal made its award pursuant to the Specified Authority's order dated 24/4/03. Once that order is found to be illegal, the award must fall to the ground. This is a settled legal position which cannot be overlooked. If the award goes, the consequences must follow. The argument that the reference order is in consonance with this Court's judgment in Cable Corporation's case which held the field at that time and, therefore, the reference is legally valid is fallacious. The legal position has been clarified by the Supreme Court now and what preceded the reference order must be examined in the light of the Supreme Court's judgment in Cable Corporation's case (supra).

38. We are mindful of the fact that here, we are concerned with closure of a factory unit which is bound to result in unemployment and hardship to workmen. Ms. Doshi has laid stress on this aspect. But we will have to go strictly by law. Impugned order is in tune with the Supreme Court's judgment in Cable Corporation's case (supra). Hence we are of the considered opinion that no interference is necessary with it. Hence appeal is dismissed.

39. At this stage, learned Counsel for the appellant states that the interim order passed by this Court may be continued for a period of eight weeks as the appellant is desirous of approaching the Supreme Court. In the circumstances of the case, we direct that the security furnished by the respondent company be continued for a period of eight weeks from today.