

(2006) 04 KAR CK 0042
In the Karnataka High Court
Case No : Writ Petition No. 25008 of 2000

Pharmaceutical Chemical and Allied Employees" Union	APPELLANT
Vs	
State of Karnataka and Another	RESPONDENT

Date of Decision : 19-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25 O

Citation : (2006) 111 FLR 201 : (2007) 1 LLJ 66

Hon'ble Judges : R. Gururajan, J;C.R. Kumaraswamy, J

Bench : Division Bench

Advocate : B.T. Venkatesh, for Alternative Law Forum, for the Appellant; B. Veerappa, High Court Government Advocate for Respondent 1 and Kasturi Associates for and Gayathri Balu, (Khaitan and Company) for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—Petitioner is a registered trade union of the second respondent-Company. Second respondent-Management is engaged in the manufacture of health care, oral hygiene, personal care, medicinal and surgical products. The second respondent's unit at Bangalore is engaged in the manufacturing of Sutures. It employed about 157 workmen. On 27-11-1995 the management resorted to laying off G6 workmen on the ground of power cuts. On 1-12-1995, the management issued notice suspending the manufacturing operations at the Bangalore Unit. Management approached the Government for permission to close down the establishment. An application was filed. Same was rejected. Subsequently another application was filed on 14-5-1999. That was again rejected. The said order was challenged in W.P. No. 19042 of 1996. This Court rejected the petition in terms of its order dated 17-4-1998. Aggrieved by this order, management filed a Writ Appeal No. 1925 of 1998. During the pendency of the writ appeal, the management filed an application dated 14-5-1999 seeking permission u/s 25-O of the Act to close down its establishment at Bangalore.

Detailed objections were filed. Thereafter, the State Government has chosen to pass an order ordering rejection of the application on the ground of pending writ appeal. The management filed W.P. No. 31365 of 1999. This Court set aside the order of the Government and remitted the matter for reconsideration. Thereafter the Government issued notice and ultimately passed an order of approval of closure u/s 25-O of the Act on 22-6-2000. Petitioner in these circumstances is before us challenging the order of the Government dated 22-6-2000.

2. Respondents have entered appearance and they have filed their detailed statement of objections. The management in its statement of objections justifies the order of closure. They say that there is no violation of rules of natural justice in the case on hand. They further say that there is no sale for the past five years and other major companies like Johnson and Johnson have captured 95% of the market. The unit at Bangalore is under lockout for the past five years and the machinery has become outdated and it is incurring loss. It was in those circumstances, the company made an application and after considering all aspects of the matter, Government thought it fit to order closure of the company.

3. Heard the learned Counsels for the parties.

4. This writ petition is referred to us in the light of the connected appeals (W.A. No. 1924 of 1998, 1925 of 1998 and 4211 of 2001, DD:). Learned Counsel for the workmen would reiterate the facts and grounds raised in the writ petition. He would also argue that without hearing the Union, the Government has chosen to accept the closure application. Even on merits, learned Counsel would say that the Government could not have accepted the closure application on the facts of this case. He relies on several judgments. Per contra, learned Counsel for the management and learned Counsel for the State would support the impugned order passed by the Government.

5. In the light of rival contentions we have carefully perused the order of the Government. The Company made an application dated 14-5-1999 seeking for permission to close down their undertaking at Bangalore. Along with the application several Annexures were provided by the company. Annexure-1 deals with the number of workmen affected and their monthly wages. A Director's report is available along with the application and so also the financial reports. Objections have been filed by the workmen in terms of Annexure-B. Thereafter the Government has chosen to fix the hearing on 10-5-2000, 18-5-2000, 19-5-2000, 22-5-2000 and 23-5-2000. Matter was fixed on 10-5-2000. On that date, the Union sent a letter and it was posted to 18-5-2000. On 18-5-2000, a request was made by the Union and it was posted to 19-5-2000. On 19-5-2000 a letter was submitted for adjournment. It was posted on 22-5-2000. It was made clear that no further opportunity would be given on 22-5-2000. On 22-5-2000, the management was present. Representative of the Union was also present. But they submitted a letter to the Government seeking for an order not to proceed with the case. The Government did not accept the request and noticed its earlier endorsement of non-consideration of the closure application in the light of a

pending appeal and also a direction of the High Court with regard to consideration of the second application despite a pending appeal in this Court. After noticing the conduct of the workmen and the order of the High Court the Government had chosen to proceed with the proceedings. In the given circumstances, it cannot be said that no opportunity was provided to the Union in terms of the grounds raised in the petition.

6. We have also seen the reasoning adopted by the Government in the impugned order. The Government has noticed that the company had incurred losses year after year. The Government has also seen that only 99 employees are remaining on the rolls of the company and 58 employees have left the company. The Government has also noticed that the company is virtually not conducting any operations for the last two years. After noticing all these aspects of the matter, the Government in its wisdom has chosen to accept the closure application. Law is well-settled in this regard.

7. The Supreme Court in *Orissa Textile and Steel Ltd. Vs. State of Orissa and Others*, , has considered the validity of Section 25-O and thereafter it has ruled that it is constitutionally valid. The Supreme Court in para 24 has ruled as under:

Amended Section 25-O is the law which lays down the restriction. As has been set out above, there is nothing vague or ambiguous in its provision. It is Section 25-O which gives the power to grant or refuse permission. It would be impossible to enumerate or set out in Section 25-O all different contingencies or situations which may arise in actual practice. Each case would have to be decided on its own facts and circumstances prevailing at the relevant time.

The Supreme Court in 1971ILLJ343 (sic) has considered the closure issue and it has ruled the Industrial Tribunal has no power to issue orders directing the company to restart, if the company had in fact closed it down.

In *Associated Cement Companies Ltd. and Another Vs. Union of India and Others*, , the Gujarat High Court has ruled that the questions whether the reasons given by employer are genuine and adequate will, no doubt, depend upon the facts of each case.

8. In the light of these clear pronouncements of law, and in the light of a well-reasoned order, particularly in the light of a factory remaining closed for more than three years, the closure cannot but be real and genuine. We are told that even as on today, the unit is closed and no efforts are made to restart the unit. In these circumstances, we do not find any unreasonableness on the part of the Government in accepting the closure application.

9. The argument of the petitioner-Union that the Government has chosen to reject the closure application on an earlier application, cannot be a ground to set aside the subsequent closure acceptance order in the light of subsequent developments. The Supreme Court has ruled in terms of earlier discussion that each case stands on a different footing. The Government in the light of the

circumstances prevailing then has chosen to reject the closure application, which we have accepted in the connected appeal. But in the light of the subsequent development of subsequent closure application and the subsequent inactivity for more than three years. It cannot be said that the earlier order would come in the way as sought to be argued by the workmen. We are also not impressed by this that the Bangalore Unit could not have been closed in the given circumstances. The workmen have provided the facts and after considering the facts an order was passed by the Government accepting closure. We have no hesitation in holding that the impugned order is in consonance with Section 25-O of the Industrial Disputes Act. We are also not impressed that the suspension of operation would come in the way of the closure order. Law is fairly well-settled that when an authority has accepted the application based on relevant facts, this Court would not be justified in interfering with such orders under Article 226 of the Constitution of India.

10. Petition stands rejected. However, the workmen are entitled for closure compensation in terms of the Industrial Disputes Act. We are told that the closure compensation has not been made over to the workmen. In the light of dismissal of this writ petition and in the light of the age of closure, we deem it proper to direct the management to make over the closure compensation in accordance with law to the eligible workmen within a period of three months from the date of receipt of a copy of this order.