

(2015) 07 BOM CK 0308

In the Bombay High Court

Case No : Writ Petition No. 3738 of 2015

Rashtriya Mill Mazdoor Sangh

APPELLANT

Vs

Presiding Officer and Others

RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 25-O, 25-O(1), 25-O(3), 25-O(5), 38

Citation : (2015) 07 BOM CK 0308

Hon'ble Judges : Z.A. Haq, J

Bench : Single Bench

**Advocate : S.D. Thakur, for the Appellant; K.L. Dharmadhikari, A.G.P.,
Advocates for the Respondent**

Judgement

Z.A. Haq, J—Heard learned advocates for the parties.

2. RULE. Rule made returnable forthwith.

3. The petitioner-union has filed this petition challenging the order passed by the Industrial Court granting permission to the respondent No. 2-employer under Section 25-O of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act of 1947") to close down the Weaving Department of the Mill.

4. The respondent No. 2 is a mill having different departments. According to the parties, the number of employees working in the various departments of the mill keeps on changing. The respondent-mill had made an application to the Commissioner of Labour on 11th October, 2010 seeking permission to close down the Weaving Department of the Mill. The respondent mill intended to close down the Weaving Department of the Mill w.e.f. 12th January, 2011. This application was rejected on 7th December, 2010. The respondent No. 2-mill filed review application on or about 5th January, 2011. The Commissioner of Labour, by the order dated 5th August, 2011, referred the application, under Section 25-O(5) of the Industrial Disputes Act, 1947 to the Industrial Tribunal for adjudication. The Industrial Tribunal, by the impugned award, has answered the reference in

favour of the respondent No. 2-mill. The petitioner-union being aggrieved in the matter has filed this writ petition.

5. Shri Thakur, the learned advocate for the petitioner has submitted that the reasons given in the application filed by the respondent No. 2-mill seeking permission to close down the Weaving Department are not genuine, adequate, are not urged in good faith and are grossly unjust and unfair. In support of the submissions, it is pointed out that the application seeking permission for closure is required to be made as per Rule 82-B of the Industrial Disputes (Bombay) Rules, 1957 (hereinafter referred to as "the Rules of 1957") in the prescribed format being Form No.XXIV-C. The learned advocate has pointed out from the details given in the application that the respondent No. 2-mill sought permission for closure of the Weaving Department mainly on the ground that it was not feasible for it to continue with the Weaving Department as it was incurring huge losses. It is further pointed out that while replying to the Item No. 23 of the Format, respondent No. 2-mill stated that it proposed for repairing of loom shed roof as it is very old and can collapse at any time, but the Union adopted negative approach and therefore, the respondent No. 2-mill has proposed for closure. Mr. Thakur, the learned advocate has taken serious exception to the penultimate para of the communication dated 23rd November, 2010 sent on behalf of the respondent No. 2-mill to the Commissioner of Labour which reads as follows :

"As far as the 410 workers to be affected by the closure of proposed weaving shed the average age comes to 51 years and are not adequately qualified to allow us to train them on latest high speed costly machines which are presently handled @ 8 looms per person."

It is submitted that the respondent No. 2-mill cannot be permitted to degrade the employees without there being any chance for the employees to controvert the claim made on behalf of the respondent No. 2-mill. It is submitted that these facts show that the reasons given by the respondent No. 2-employer are not urged in good faith.

6. It is submitted that the respondent No. 2-mill has established a unit at Burkoni in the name and style as "RSR Mohata Mill" and have installed modern Airjet Powerloom from the profits derived from the Weaving Department of the respondent No. 2-mill. It is submitted that this fact is admitted by the General Manager (Finance) of the respondent No. 2-mill in his cross-examination. It is submitted that the balance sheets filed by the respondent No. 2-mill before the Industrial Tribunal are combined balance sheets of all the departments of the respondent No. 2-mill and they do not depict the true picture and it cannot be assessed on the basis of the balance sheets that the Weaving Department of the respondent No. 2-mill is incurring huge losses. The learned advocate for the petitioner has submitted that the Industrial Tribunal has relied on the chart submitted by the respondent No. 2-mill which, according to the respondent No. 2-mill, is the analysis of the performance of the Weaving Department. It is

submitted that the Industrial Tribunal has ignored the relevant evidence and has taken into consideration the irrelevant material which has resulted in the erroneous order. It is prayed that the impugned order be set aside and the application filed by the respondent No. 2-mill seeking permission for closure of the Weaving Department of the respondent No. 2-mill be dismissed.

7. Mr. Marpakwar, the learned advocate for the respondent No. 2-mill has submitted that the application seeking permission for closure of the Weaving Department was required to be made as in spite of the best possible efforts having been made by the respondent No. 2-mill, the Weaving Department was incurring huge losses and it was not feasible for the respondent No. 2-mill to continue with the functioning of the Weaving Department. It is submitted that if the permission for closure of the Weaving Department is not granted, then the respondent No. 2-mill will have to be closed down and it will have adverse effect on the employees working in the other departments. It is submitted that the employees are not co-operating with the management and it is because of their negative attitude, such situation has occasioned. In support of this submission, it is pointed out that Shri Vivek Madhukar (employee) was directed to dismantle the machinery namely RKJ No. 9 and to shift it within the same premises of the Weaving Department, however, after completion of nearly 65% work Mr. Aftab Khan, General Secretary of the Union who is not even the employee of the respondent No. 2-mill restrained the employee from completing the work and the employee left it at that stage and the respondent No. 2-mill is required to file Complaint (ULPA) No. 88 of 2014 before the Industrial Court, Nagpur praying for declaration that the activities carried out by the Union are illegal and the members of the Union be restrained from stopping the work. The learned advocate has submitted that the Industrial Tribunal has considered the cross-examination of both the witnesses examined on behalf of the respondent No. 2-mill, including the cross-examination of the General Manager (Finance) and has recorded that the petitioner has failed to disprove the claim made by the respondent No. 2-mill. It is submitted that the Industrial Tribunal has recorded the findings of fact that the installation of machineries at Burkoni unit is not out of the profits derived by the respondent No. 2-mill from Weaving Department, but Burkoni unit is established with the help of the finance made available to it by the bankers. It is submitted that the respondent No. 2-mill has placed on record the balance sheets for the subsequent years i.e. for 2010-11 to 2013-14 which show that the financial condition of the Weaving Department has deteriorated. It is submitted that the Industrial Tribunal has rightly granted permission for closing the Weaving Department and the Weaving Department has been closed pursuant to the permission granted by the Industrial Tribunal. It is submitted that the petition be dismissed.

8. Mr. K.L. Dharmadhikari, the learned A.G.P. has submitted that the lis is between the petitioner and the respondent No. 2-mill and the respondent No. 1 being a quasi-judicial authority, no submissions are required to be made on its behalf.

9. After considering the submissions made by the learned advocates for the respective parties and examining the documents filed along with the writ petition, I find that the Industrial Tribunal has not adverted to the issue properly. As recorded earlier, the respondent No. 2-mill had filed application seeking permission for closure of the Weaving Department on 11th October, 2010. Section 25-O(1) of the Act of 1947 lays down that an employer who intends to close down an undertaking of an industrial establishment shall apply in the prescribed manner for prior permission, at least ninety days before the date on which the intended closure is to become effective. The provisions of Section 25-O(1) of the Act of 1947 requires the employer to comply with the two necessary things :

- i) submit application in the prescribed manner and
- ii) the application has to be submitted at least ninety days before the date on which the intended closure is to become effective.

The provisions of Section 25-O(3) of the Act of 1947 lays down that if the appropriate Government does not communicate the order granting or refusing permission to the employer within sixty days from the date on which the application is made, the permission applied for is deemed to have been granted on the expiration of sixty days. Thus, the statute prescribes a time-bound programme for taking of the decision regarding grant or refusal of the permission for closure of the undertaking of an industrial establishment and on failure of the appropriate Government to take and communicate the decision within sixty days from the date of application, it is deemed that permission is granted in favour of the employer.

The provisions of Section 25-O(5) of the Act of 1947 provides for power of review and this power can be exercised either by the appropriate Government itself or the appropriate Government may refer the matter to the Tribunal for adjudication. The proviso below sub-section (5) of Section 25-O of the Act of 1947 lays down that if a reference has been made to the Tribunal then it shall pass the award within thirty days from the date of such reference.

There is an apparent object behind the above referred provisions. The decision on the application made by the employer seeking permission to close down the undertaking of an industrial establishment has far reaching effect inasmuch as it affects both the employer and the employees.

10. The Industrial Disputes (Bombay) Rules, 1957 have been made by the State Government in exercise of the powers conferred by Section 38 of the Act of 1947. Rule 82-B of the Rules of 1957 deals with the application which is required to be filed for seeking permission for closure. Rule 82-B(1) lays down that the application under Section 25-O of the Act of 1947 shall be in English and in Marathi also and shall be submitted in form XXIV-C, in triplicate.

The respondent No. 2-mill had submitted the application in the prescribe format.

In reply to Item No. 22 of the format it is stated that the reasons for the proposed closure are given in the letter attached to the application. The substantive reason given by the respondent No. 2-mill for seeking closure was that the Weaving Department was running in losses for the three years prior to the filing of the application and the cumulative losses as on 31st March, 2010 were to the tune of Rs. 720.20 Lakhs. In support of the contention, the balance sheets for the three years i.e. 2007-08, 2008-09, 2009-10 and the other details of the annual production were given as shown in Item No. 5, Item No. 11 and Item No. 21 of the format. In reply to Item No. 23 of the format the respondent No. 2-mill stated that they proposed for repairing of the loom shed roof as it is very old and can collapse at any time, but due to the negative approach of the employees the closure was proposed.

11. On conjoint consideration of the provisions of Section 25-O of the Act of 1947, Rule 82-B of the Rules of 1957 and the details which are required to be given by the employer in the format, it is clear that the authority while considering the application under Section 25-O of the Act of 1947 is required to consider the details as required as per the prescribed format. Item No. 5 of the format requires the details of annual production, item-wise for the preceding three years and the production figures month-wise for the preceding twelve months. Item 11 of the format requires the balance sheets, profit and loss accounts and audit reports of the three years prior to the filing of the application. Item 17 of the format requires details of the selling arrangement for last three years prior to the filing of the application, and any change in the selling arrangement in preceding twelve months. Item 21 of the format requires the annual sales figures for last three years prior to the filing of the application, and month-wise sales figures for the preceding twelve-months, both item-wise and value-wise.

The respondent No. 2-mill sought permission for closure of the Weaving Department on the ground that the Weaving Department is running into huge losses and it is not feasible for them to continue with the Weaving Department. The respondent No. 2-mill rightly submitted necessary details as required under the format. However, the reference has not been decided by the Industrial Tribunal for more than four years six months. As the reference was pending before the Industrial Tribunal for more than four years and six months, in my view it was incumbent on the part of the Industrial Tribunal to ask for the relevant details as required under the format for the subsequent period i.e. till financial year 2013-14. The learned advocate for the respondent No. 2-mill has submitted that the relevant material for the subsequent period has been placed on the record. However, I do not find the consideration of the relevant material in the impugned order. The Industrial Tribunal was under an obligation to consider the relevant material as required by Item Nos. 5, 11, 17 and 21 of the format XXIV-C. Similarly I find that the Industrial Tribunal has not considered the admissions given by the witness examined on behalf of the respondent No. 2-mill i.e. cross- examination of Shri Mukesh Bhaurao Mahajan, General Manager

(Finance). Non-consideration of the relevant material and evidence and the consideration of the irrelevant material vitiates the impugned order. The Industrial Tribunal has committed an error in granting permission to the respondent No. 2-mill to close down the Weaving Department, relying on the details supplied for the three years prior to the filing of the application. As stated above, the Industrial Tribunal should have asked for the relevant details for the subsequent period also and then should have decided the application after considering the relevant material for the subsequent years, as the financial condition of the Weaving Department of the mill during the subsequent period is also relevant and will have to be considered while deciding the claim of the respondent no.2 -mill for closure of the Weaving Department.

12. In view of the above, the impugned order has to be set aside and the matter has to be remitted to the Industrial Tribunal for deciding it afresh, according to law in the light of the observations made above. Hence, the following order :

(i) The impugned order is set aside.

(ii) The matter is remitted to the Industrial Tribunal for deciding the application afresh.

(iii) The respondent-mill/ employer and the petitioner-union will be at liberty to produce documents and to lead evidence and cross-examine the witnesses of the other side on the point of financial condition of the respondent-mill for the period from 2011-2012 onwards. It is clarified that the respondent-mill and the petitioner-union will not be entitled to file any document or to lead evidence and cross-examine the witnesses of the other side on the facts relating to the period till 2010-2011. However, the respondent-mill and the petitioner-union will be at liberty to advance arguments on the entire matter and the Tribunal shall also decide the matter by considering the entire material on the record, afresh.

(iv) The Industrial Tribunal shall dispose the application till 31.10.2015, if necessary by taking up the matter on day-to-day basis.

(v) The learned advocate for the petitioner, on instructions, has submitted that in case the respondent-mill is held entitled for permission under Section 25-O of the Industrial Disputes Act, 1947 to close the Weaving Department, the workmen who are represented by the petitioner will not make any additional claim for the period from 23.03.2015 i.e. the date of award passed by the Industrial Tribunal till 31.10.2015 and the wages which would be paid during this period will be adjusted while determining the amount of retrenchment compensation payable to the workers.

(vi) The authorized person on behalf of the respondent-mill/employer and the representatives of the petitioner-union undertake to appear before the Industrial Tribunal, Nagpur where the matter has been pending, on 27.07.2015 at 11.00 a.m.

Rule is made absolute in the above terms. In the circumstances, the parties to

bear their own costs.