

(2010) 03 OHC CK 0103

In the Orissa High Court

Case No : Writ Petition (C) No. 14807 of 2009

Reliance Industries Ltd.

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 26-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 23
Income Tax Act, 1961 — Section 34
Industrial Disputes Act, 1947 — Section 25N, 25O, 25O(2), 25O(4), 25O(5)
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15(1)

Citation : (2010) 1 ILR (Ori) 830

Hon'ble Judges : L. Mohapatra, J;B.K. Patel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—The Petitioner in this writ application had initially made the following prayer:

Under the aforesaid facts and circumstances, the Petitioner prays this Hon''ble Court to be pleased to issue notice to the opp. parties as to why the writ petition shall not be allowed and in case, the opp. parties fail to show cause or show insufficient cause, this Hon''ble Court may be graciously pleased to declare the closure of Dhenkanal Division of the Petitioner to be genuine and legal, and permit them to take all necessary steps in furtherance of the same.

By way of amendment, the said prayer has been substituted by the following prayer:

Under the aforesaid facts and circumstances, the Petitioner prays this Hon''ble Court to be pleased to issue notice to opposite parties as to why the writ petition shall not be allowed and if the opposite parties fail to show cause, this Hon''ble Court may be graciously pleased to quash Annexure-1 for being passed beyond time and without and/or pass such other order/orders as this Hon''ble Court, in

the interest of justice may deem fit and proper.

2. As it appears from the averments made in the writ application, the Petitioner had submitted an application under Sub-section (4) of Section 250 of the Industrial Disputes Act, 1947 for permission of intended closure of the Petitioner-industry with effect from 6.2.2009 on the grounds mentioned in the petition. The said petition was considered by the appropriate Government in the Department of Labour & Employment and the prayer for permission to close the industry was turned down by order dated 26.12.2008 in Annexure-9. The Petitioner thereafter filed a petition in Annexure-10 u/s 250(5) of the said Act to refer the matter for adjudication by the Industrial Tribunal. The said application having not been disposed of by the appropriate Government, a writ application was filed before this Court by the President of the Petitioner-industry for quashing the order dated 26.12.2008 in Annexure-9 refusing permission to close the industry and also for a direction to the Government to make a reference of the matter to the Industrial Tribunal, Bhubaneswar for adjudication. This Court in the aforesaid writ application (W.P.(C) No. 1837 of 2009) by order dated 5.3.2009 directed the Government to take a decision on the said petition in accordance with law within a specified time. In pursuance of the said order, the appropriate Government in the Department of Labour & Employment passed the order impugned by way of amendment in Annexure-1 not only rejecting the petition but also refusing to refer the matter to the Industrial Tribunal for adjudication.

3. Shri B.K. Mohanti, the learned Senior Counsel appearing for the Petitioner assails the impugned order in Annexure-1 on the ground that the Government after refusing to grant permission for closure of the industrial unit should have immediately referred the dispute to the Industrial Tribunal for adjudication but kept the matter purposefully pending till this Court in W.P.(C) No. 1837 of 2009 vide order dated 5.3.2009 directed the Government to act upon the petition filed for referring the matter to the Industrial Tribunal for adjudication. It was also contended by the learned Senior Counsel that the order in Annexure-1 suffers from non-application of mind and the petition filed in Annexure-10 for referring the matter to Industrial Tribunal has been treated to be a review petition and the same has been rejected illegally.

The learned Advocate General appearing on behalf of the State submitted that in terms of Section 250 of the Industrial Disputes Act, 1947, against an order of refusal for grant of permission to close the industry, the Petitioner can either seek for a review or pray for referring the matter for adjudication by Industrial Tribunal. Both the prayers of the Petitioner had been taken into consideration by the Government and the order in Annexure-1 was passed not only rejecting the prayer for review but also the prayer for referring the matter for adjudication by the Industrial Tribunal. According to the learned Advocate General, the order in Annexure-9 refusing to grant permission for closure of the Industry remained in force for one year and therefore, at present the writ application has become infructuous.

4. There is no dispute that the Petitioner had submitted an application under Sub-section (4) of Section 250 of the Act for grant of permission to close the Industry with effect from 6.2.2009. The said petition was rejected and permission was refused by the Government by order dated 26.12.2008. Under Sub-section (4) of Section 250 of the Act, an order of the appropriate Government granting or refusing to grant permission shall subject to the provision contained in Sub-section (5) of the said Section is final and binding on all the parties and shall remain in force for one year from the date of such order. Sub-Section 5 of the said Section provides that 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. In the present case the prayer for grant of permission was refused on 26.12.2008 and the application for referring the matter for adjudication by the Industrial Tribunal was filed on 30.12.2008. This petition was not disposed of by the Government and only after an order was passed by this Court in W.P.(C) No. 1837 of 2009, the petition was rejected by order dated 22.9.2009 in Annexure-1. The order in Annexure-9 refusing to grant permission having been passed on 26.12.2008, it spent its force by 25.12.2009. Therefore, so far as the order in Annexure-9 is concerned, this writ application has become infructuous. So far as the order in Annexure-1 dated 22.9.2009 is concerned, the same has been passed in terms of Sub-section (5) of Section 250. Under the said provision, the appropriate Government on an application filed by the employer can review its order refusing to grant permission or refer the matter to a Tribunal for adjudication. Therefore, an application filed by the employer challenging the order of refusal of permission can be challenged by way of review or by making a prayer for referring the matter for adjudication by Industrial Tribunal. On a reading of Annexure-1, we find that the Government has taken both the aspects into consideration and rejected the same. It further appears from Annexure-1 that while the petition in Annexure-10 was being considered, the Government had heard the parties concerned, i.e., the Management of Reliance Industries Ltd., the Orissa Synthetics Limited Employees' Union through its General Secretary and three others having interest in the matter on 28.7.2009. After consideration of the facts and circumstances, the Government was of the view that the Management as a stake holder has preplanned liquidation and closure of the plant in ignoring the interest of the employees and the general public. It is further held in the impugned order that functioning of the plant supports livelihood of 850 direct employees in various grades apart from direct employment to more than one thousand persons. The plant has acquired 227 acres of land given by the Government on lease. When the Management took over the plant in the year 2000, it must have realized its viability and the present intention for closure of the plant after seven years only presupposes some hidden agenda of the management against larger interest of the State and its people. With these observations, the prayer for review/referring the matter for adjudication by the Industrial Tribunal has been rejected. This being a finding of fact, it may not be possible on the part of this Court in an

application under Article 226 of the Constitution of India to interfere with the same. Moreover, the Petitioner is not remediless in view of the decision rendered by the Hon''ble Supreme Court in a batch of cases Orissa Textile and Steel Ltd. Vs. State of Orissa and Others, . The Hon''ble Supreme Court in paragraph-12 of the judgment made the following observation:

Another reason why Section 250 was struck down was that no time limit had been fixed while refusing permission to close down. This is now cured by Sub-section (4) of the amended Section 250. This Sub-section provides that the order of the appropriate government shall remain in force for one year from the date of such order. Thus at the end of the year it is always open to the employer to apply again for permission to close. We see no substance in the submission that the employer would not be able to apply again (at the end of the year) on the same grounds. In our view if the reasons were genuine and adequate, the very fact that they have persisted for a year more is sufficient to necessitate a fresh look. Also if the reasons have persisted for a year, it can hardly be said that they are the same. The difficulties faced during the year, provided they are genuine and adequate, would by themselves be additional grounds. Also by the end of the year the interest of the general public or the other relevant factors, which necessitated refusal of permission on the earlier occasion may not prevail. The appropriate Government would necessarily have to make a fresh enquiry, give a reasonable opportunity of being heard to the employer, workmen and all concerned. In our view providing for a period of one year makes the restriction reasonable.

Therefore, the Petitioner can again file an application u/s 250 of the Act for permission for closure of the Industry.

5. The learned Senior Counsel appearing for the Petitioner referred to a decision of the Hon''ble Supreme Court in the case of Crescent Iron and Steel Corporation Ltd. Vs. Union of India (UOI) and Another, . The said decision relates to Section 15(1) of the Sick Industrial Company (Special Provisions) Act, 1985. The factory declared lock-out of the unit in 1985 and a request was made to the Board under the Act for reviving the undertaking at another location and permission was sought for u/s 250 of the Industrial Disputes Act to close down the undertaking. The Board proposed for winding up of the undertaking and the concerned State Government also refused permission for closure of the undertaking. Thereafter a new management claiming to have settled the liabilities of all secured and unsecured creditors as well as the workers employed in the foundry decided that the proposal for winding up of the company will not be in the interest of the company. However, the Board under the Act reiterated its earlier stand regarding winding up. The matter went to the appellate authority and the Hon''ble Supreme Court only remitted the matter back to the Board for passing a fresh order on reconsideration. Though this decision has no direct relevance for the purpose of this case, it has been cited to support the argument of the learned Senior Counsel appearing for the Petitioner that in the meantime the dues of the

workers and officers have been settled and there is no difficulty in granting permission for closure. As held earlier, under the changed circumstances the Petitioner can again apply for permission to close down the undertaking. We are, therefore, of the view that this decision having no direct relevance with the issue, does not help the Petitioner in any way. Another decision cited by the learned Senior Counsel is the case of *Gherulal Parakh Vs. Mahadeodas Maiya and Others*, , it deals with public policy with reference to Section 23 of the Contract Act. On perusal of the said decision, we also do not find any relevance thereof with the present issue. Another decision relied upon by the learned Senior Counsel for the Petitioner is the case of *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, . This decision deals with the jurisdiction of the High Court under Article 226 of the Constitution of India to investigate existence of conditions for exercise of jurisdiction u/s 34 of the Income tax Act by the Income Tax Officer. This decision has also no relevance for the purpose of the case since the question as to whether an industrial unit shall be permitted to be closed or not depends on several factors and it is the subjective satisfaction of the appropriate Government to decide the issue depending on facts of each case. We have already held that reasons have been assigned in Annexure 1 for refusing permission and the reasons appear to be justified. Therefore, even if we exercise our jurisdiction under Article 226 of the Constitution of India to investigate the reasons for refusal, we find that prima facie justifiable reasons were existing at the relevant point of time for refusal of permission. However, if the circumstances have changed, a fresh application can be maintained under the changed circumstances. Another decision relied upon by the learned Senior Counsel is the case of *Oswal Agro Furane Ltd. and Anr. v. Oswal Agro Furane Workers Union and Ors.* reported in AIR 2005 SC 1555. The Hon"ble Supreme Court in the said decision held that obtaining of prior permission from the appropriate Government for closure of an industrial undertaking is mandatory and the settlement arrived at between the employer and the workmen in course of conciliation proceedings would not prevail over statutory requirements u/s 25N and Section 25O of the Act. When initially the prayer for closure was turned down by the appropriate Government, the reasons indicate that it would result in unemployment to huge number of employees at all levels. If in the meantime, there has been a settlement between the employer and the workers, the same could be brought to the notice of the appropriate Government in a fresh application u/s 25O seeking for closure of the Industry.

6. For the reasons stated above, we find no justification to interfere with Annexure-1 and accordingly dismiss the writ application.