

(2014) 07 P&H CK 0492
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 1153 of 2012 (O&M)

The Technological Institute of Textile and Science	APPELLANT
Vs	
Financial Commissioner and Principal Secretary to Government of Haryana	RESPONDENT

Date of Decision : 23-07-2014

Acts Referred:

Constitution of India, 1950 — Article 19(6)
Industrial Disputes Act, 1947 — Section 25(4), 25(8), 25(O), 25-N, 25-O

Citation : (2014) 07 P&H CK 0492

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : Ashok Aggarwal, Anand Chhibber, Sr. Advocates, Rohit Khanna, Nipun Malhotra and Saurabh Gautam, Advocate for the Appellant; Kshitij Sharma, AAG, Tara Chand Dhanwal and Pankaj Jain, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

G.S. Sandhawalia, J.—The present writ petition has been filed challenging the orders dated 10.12.2010 (Annexure P-1) whereby, the Government has rejected the application of the petitioner u/s 25-O of the Industrial Disputes Act, 1947 (in short "the Act") for permission to close the textile mill of the institute on the ground that it would be in the public interest specially keeping in view the conduct of the management and it would result in the polarization of the affected population against the management and other social problems also apparent from rendering the workmen unemployed. The subsequent order dated 09.06.2011 (Annexure P-2) wherein, a review application preferred u/s 25-O(5) of the Act was also dismissed on the ground that the petitioner-management had given no cogent reasons on the basis of which the review application could be allowed and is also a subject matter of challenge.

2. The pleaded case of the petitioner is that it is a society registered under the West Bengal Societies Registration Act, 1961 and the Technological Institute of

Textiles and Sciences (TITS) was set up under the aegis of the Birla Education Trust established in the year 1943. The institute celebrated its diamond jubilee in December, 2003 on completing 60 years of service to the Nation and remained part of the said trust upto 30.03.1985. The institute was separated from the Trust from 01.04.1995 and an independent society was formed in the name of Technological Institute of Textiles which is registered under the West Bengal Societies Registration Act, 1961 and the name was subsequently changed to TITS. The society is an educational institution providing Graduate and Post Graduate degrees in Textile Technology, Textile Chemistry, Fashion & Apparel Engineering and Computer Engineering and providing Graduate degrees in Electronics and Communication Engineering, Information Technology and Electronic & Instrumentation Engineering being affiliated to M.D. University, Rohtak. The students' strength was 1611 and management courses of MBA and approved center for Doctoral Research leading to Ph.D. Degree was also there. The factory had been attached to the institute for imparting training to the students under actual mill working conditions and for conducting research and perfecting the process necessary for and incidental to the manufacture of textile yarn. The mill was almost 100 years old and engaged in the manufacture of viscose and viscose blended yarn and had been purchased to provide practical training to the students on the pattern of a hospital attached to a medical college and had its own industrial license covered under various Labour Laws including the Factories Act, 1948. On account of the mill incurring losses over considerable period of time and as per the audited balance sheet dated 31.03.2010, Rs. 254.02 lacs was the loss and the cumulative losses of the society had gone upto Rs. 1,565.01 lacs. The reason for losses was that the plant and machinery had gone age old, traditional and not viable in the present competitive market, high cost of production, poor quality of yarn, low productivity of labour and machines, higher competitive market, rise in cost of raw material, prolonged power cuts, higher power costs, increase in labour costs, lack of adequate working capital and higher interest cost etc. On account of the said facts, the petitioner-institute applied to the State Government on 27.10.2010 u/s 25-O of the Act seeking permission to close down the yarn manufacturing undertaking (mill) run by the institute and the intended date of closure was 01.02.2011, which was beyond the period of 90 days from the date of filing the application.

3. In the first hearing before the Labour Commissioner, one of the Union Mazdoor Sabha, Bhiwani-respondent no. 4 submitted written comments and the management submitted its reply on 25.11.2010 and enclosed balance sheets and income & expenditure accounts. On second hearing on 26.11.2010, the joint written comments were submitted by 5 unions and the management had submitted its reply and joint comments. The third and final hearing was held on 30.11.2010 and one of the Mazdoor Sabha had submitted additional written comments and the management submitted its reply. Eventually, the impugned orders were passed which are subject matter of challenge on the ground that the petitioner had allowed the unit to slide into irretrievable losses was against the

mandate of the Act and the Authority had to only see the basis of existing financial conditions. The logic recorded by the respondent no. 1 that payment of gratuity to employees retiring from time to time would be less economically damaging than payment of compensation on account of closure of the industry was alien to the parameters laid down in Section 25-O of the Act. Merely because the adjoining mill had been modernized and was running well would not mean that the petitioner-institute was not entitled for closure of the industrial unit, which was suffering from heavy losses and the observations that the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 would be applicable to a society were unwarranted for.

4. The respondent-State, in short reply, submitted that proper procedure had been followed as per the provisions of the Act and there was no scope of review and the management during the last few years itself allowed the unit to slide into irretrievable losses and the large number of workers were to retire and the management could close down the unit in the next 2-3 years and it was not necessary to move the application for closure. The management was not bothering about the fate of 464 workers and their families and the Act being a social welfare enactment, the Government had rightly declined the permission. The review application had also been rightly dismissed after affording personal hearing to all concerned. The respondents no. 2, 3, 5 and 7 were proceeded against ex parte on 20.03.2013 and reply on behalf of respondent no. 4 was not filed.

5. In the rejoinder filed to the written statement of the State, pleadings were reiterated and it was submitted that the orders were not speaking orders and they do not contain clear findings and elaborate reasons but were based on extraneous and irrelevant factors and considerations as the genuineness and declaration of the reasons stated by the petitioner for closure were never taken into consideration and the interest of the general public or workers alone would not govern the case.

6. Senior counsels for the petitioner vehemently submitted that as per the provisions of Section 25-O of the Act, under which the application was filed, the reasons were very clear for the intended closure of the undertaking and under sub-clause (2), the genuineness and declaration of the reasons stated by the employer and the interest of the general public and all other relevant factors were to be taken into consideration by the State. The same had not been done whereas, various suggestions had been made as to how to run the industry profitably, take loans and the personal opinion of the officer could not substitute the mandatory provisions of the Act and the factual ground reality of the inability to run the mill. It was accordingly submitted that the reasons given are not germane to the controversy and the said order is liable to be set aside. Similar was the position to the review application which sought to bring to the notice of the State that the order was against the provisions of the statute. The review filed had also been dealt with in a cursory manner and rejected. The petitioner

had a right to apply for closure of the industry and the genuineness and adequacy of reasons had to be taken into consideration as per the application and solely because closure would result in unemployment of large number of workmen would not mean that the application was to be rejected. It was submitted that the observations that the unit could have been managed in a better way and that the unit had slid into losses on account of the mismanagement of the institute while running the mill were not the relevant factors and once there was admittedly a financial loss, the application was wrongly rejected. The petitioners had made several attempts to avoid closure but due to circumstances beyond their control, it was running in losses and the order was based on surmises and conjectures and not the factual aspect that it was not possible to run the unit. It was also submitted that the observation that SICA could be invoked was without any basis since the petitioner was a society and not a company. Reliance was placed upon the Division Bench judgments of this Court in *Bhartia Electric Steel Co. Ltd. Vs. State of Haryana* thorough Financial Commissioner and Secretary to the Government of Haryana (Labour and Employment Department) and Others, ; *Valliappa Textiles and Allied Companies Workers Union Vs. State of Karnataka* and Another, *Associated Cement Companies Ltd. and Another Vs. Union of India* and Others, *Associated Cement Companies Ltd. and Another Vs. Union of India* and Others, Division Bench judgments of this Court in *Bhartia Electric Steel Co. Ltd. Vs. State of Haryana* thorough Financial Commissioner and Secretary to the Government of Haryana (Labour and Employment Department) and Others, and *Lal Jhanda Rockman Cycle Industries Workers" Union Vs. State of Punjab* and Others, and also the judgment of the Karnataka High Court in *Valliappa Textiles and Valliappa Textiles and Allied Companies Workers Union Vs. State of Karnataka* and Another,

7. Counsel for the State argued that the general public interest was a primary consideration which is to weigh with the State while taking a decision as per the provisions of the Act and the Directive Principles have to be kept in mind as the issue of unemployment was a major consideration since the closure would result into unemployment. Reliance was placed upon Division Bench judgment of Madhya Pradesh High Court in *Straw Products Ltd. Vs. Union of India (UOI)* and Others, and *Laxmi Starch Ltd. and Others Vs. Kundara Factory Workers" Union* and Others, to submit that the interest of the workman was to be kept in mind and the State Government would like to urge the employer to explore the possibility of improving the economic situation of its undertaking before it finally goes for closure.

8. Counsel for respondent no. 4-Union submitted that an inquiry was to be made by the State which had been duly done. A reasonable opportunity had been given and the genuineness of the application had been taken into consideration and the State had come to an opinion that it was unfair and unjust application with mala fide intention. The petitioner was a society and it was a non-commercial venture and there was fudging of accounts and a particular accountancy method was allowing them to do so and they were not denying the said fact. Reliance was

placed upon the Constitutional Bench judgment in Orissa Textile and Steel Ltd. Vs. State of Orissa and Others, in support of the said orders. It was further submitted that as per the provisions of sub-section (4), the order was to remain in force for one year from the date of the order and the writ petition was only filed in January, 2012 when the life of the order was over. The State Government had in its orders indicated that the unit could be closed in the next 2-3 years and more employees would have retired by then. It was submitted that the review order was passed on 09.06.2011 and the writ petition was filed only in January, 2012 when half of the life of the order was over and, therefore, it was open to the petitioners to file fresh application before the State.

9. Vide order dated 13.03.2014, the State of Haryana was directed to ensure that the necessary record is present so that the case could be decided. On 08.05.2014, it was noticed that since the replies to the application u/s 25-O of the Act were not on record, counsel for the petitioner was given time to place the necessary documents on record, which formed part of record before respondent no. 1. Accordingly, photocopies of the record were placed on the file in view of the said directions.

10. A perusal of the said record, which is now part of the file, would go on to show that on 27.10.2010, the application was moved under form QA for proposal to close down the undertaking for the reasons explained in the Annexures and the number of workmen whose services were to be terminated on account of the closure down of the undertaking was 464. The permission which was solicited was conditional that every workman at the undertaking to whom sub-section (8) of Section 25-O of the Act applied, would be paid compensation as specified in the provision, which provides that compensation to be equivalent of 15 days' average pay for every completed year of service or any part thereof in excess of six months is the entitlement of the workman. The reasons given for the closure Annexure M (Annexure P-3) spelled out in detail as to how the mill had been set up 100 years back to provide practical training to the students studying in the institution which was at that time affiliated to the Punjab University. It was highlighted that the power loom sector developed rapidly over a period of time and as a result of which, large and medium textile mills started losing markets to the power loom sector which resulted either in closure of various composite mills totally or partial closure of the weaving and processing departments of the mills. The share of total fabric had fallen from 80% in 1950 to 36% in the year 1980-81 and only to 3.2% in the year 2008-09. The number of power looms had increased from 23800 in 1951 to 8.36 lacs in 1994 and to 22.46 lacs in 2010. Due to the liberalized industrial policy of 1991 coupled with the boom in the export market due to which spindle age increased from 26.67 million to 35.10 million (increased by 31.6%) during this period. However, from 2000 to 2010, the growth of spindle age has reduced substantially to 7.4% only due to excess capacity and recession in the domestic and global markets in the spun yarn category.

11. In the changing scenario, the old mills which were having old, obsolete technology and the said mills were not able to compete with the modern mills. The State had seen reduction of 11.5% in spindle capacity and only few mills were working in the State as on 30.06.2010, 449 textile mills (Non-SSI) had faced closure and the mill of the institute had suffered financial crises in the year 1980 which forced the management to sent notices for closure of synthetic fabrics manufacturing undertaking and cotton yarn and fabrics manufacturing undertaking of the mill to the Government. A settlement had been arrived at on 02.09.1980 and the management was permitted to lay off the workmen and also permitted not to fill the vacancies of the posts due to voluntary resignation and termination of the employees. The undertaking was completely closed down in the year 1984. The mill had spinning capacity of 16272 spindles and the financial condition had worsened in the year 1997 and the processing house of the mill was decided to be closed and the closure notice was served upon the Government and permission was granted to close down the processing unit of the mill vide order dated 25.07.1997. Out of the 16272 spindles, only 6483 spindles could be utilized for the production of the yarn. In the year 2009-10, the losses were about Rs. 254.02 lacs and consequently, the accumulated losses of the Society had gone to Rs. 1565.01 lacs. The losses of the mill were also affecting the growth and development of the institute and the intake of students in the Engineering section was 350 while there were around 100 engineering colleges in the State which had intake of students higher than TITS and the institute could not be expanded because of paucity of funds. Similar was the position regarding the MBA course and there was only intake of 40 students while other institutes had intake of 60 students. All India Council of Technical Education had issued revised norms for infrastructure and facilities and the institute needed funds to upgrade the laboratories and the society was in no position to provide funds for infrastructural development of the institute due to the heavy losses suffered by the mill. The details were given regarding the cost of production that had gone up due to frequent power cuts and use of more diesel for production and increase of diesel price and the cost due to increase in minimum wages of the workers in Haryana over a period of time, as wages increased from 68.52% and the liabilities of the society towards gratuity and leave encashment stood at Rs. 544.28 lacs and Rs. 78.15 lacs respectively and the fixed deposits of the employees had gone upto Rs. 514.78 lacs on 31.03.2000.

12. Accordingly, it was pleaded that if the management was not allowed to close the undertaking, the institute would also shut down adversely affecting the future of the students.

13. In the application dated 27.10.2010 of even date (Annexure P-4), the averments regarding specific attempts made to avoid closure were also given out that staff at managerial and supervisory level was reduced, checking functions were reduced, many operations were computerized, cross training was given to employees, non-productive workers were reduced, mill operation done on job

work basis to minimize working capital requirement, product mix was suitably changed, machines stoppages were controlled and energy conservation measures were taken etc.

14. In the reply which is filed on behalf of the Union-respondent no. 4, it was submitted that association of a textile mill with an institute of textile technology is rare in the world and it is only on this account that the institute is ranked among the top engineering institutes in India and the world. The proposed closure would not only ruin the lives of hundreds of workmen employed in the mill but would prove detrimental against the reputation and goodwill of the educational institute being run. The society was set up for establishing schools and colleges and other institutions in different branches of textile technology and to take over and run textile mills for practical training as per its main objects. The motive of running the mill was an in-severable part of the institute and the application was mala fide and the grounds disclosed were far away from the truth. It was pleaded that the Government was trying to attain 9% share in global textile trade by the terminal year of the plan period and the government initiatives to promote investment were there. The manufacturing process was being carried out in three shifts and there was no need to run all the three shifts and a deliberate attempt had been made to conceal the position of the orders procured in the last 10 years and the closure was with intention to sell out the land and mill and to encash the exponential increases in the reality prices seen in and around Delhi, specially in the State of Haryana in the last decade. The same would lead to unemployment of 500 workmen on the closure of the mill. There was an industrial settlement between the workmen and management on 09.12.2001. Part of the settlement dealing with guaranteed minimum work had been implemented but the part dealing with minimum wages had not been settled. That the Government could appoint an expert committee to look into the affairs of the establishment that may enquire into the affairs of the mill as well as the institute pertaining to the last 15 years since the application was against the interest of general public and on false and baseless grounds.

15. The petitioner thereafter filed a counter to the reply by the Union giving out in detail and trying to make out a case that it was a genuine case for closure. The comparison with the Grasim Bhiwani Textile Ltd. was unjustified on various grounds and it was pointed out that job work had been done on the basis of an agreement to undertake the yarn manufacturing and that the three shifts were running with partial capacity because there were some ring frames which were installed in the year 1990-93 and 47.8% of installed spindles and they were utilizing them as far as possible.

16. On the basis of the said applications, the State noticed that the operational losses had now increased from 2.32% to-39.56% for the year 2009-10. It was noticed that grant of 4 crores had been received for acquisition of fixed assets from time to time but had not been reduced from the cost of fixed assets while charging depreciation and resulted into overstatement of expenditure and loss.

The gain arising from sale of fixed assets is recognized in the profit and loss account but had been credited into capital reserve account in the balance sheet. Various other findings were recorded that job charges were showing increasing trend indicating that there was scope of conducting business contrary to what had been contended in the application. A provision for gratuity amounting to 291.94 lacs had been booked in the recent financial years to cover the liability which was actually pertaining to the earlier years. It was further recorded that the management had never approached BIFR for a soft loan or package for revival of the unit. That was in contrasting comparison with the neighbouring unit M/s. Bhiwani Textile Mill which had modernized well in time and was running well and, therefore, the management was trying to kill the unit to slide it into irretrievable losses. The society was operating in profit to the tune of 35% whereas, the mill was in deficit of-38.84 and that large number of workers were retiring in the next year and the mill could be closed down in the next 2-3 years and it would be viable as compensation would not have to be paid and only gratuity had to be paid. The fate of 464 workers also weighed with the Government on account that it would create a social problem.

17. A review petition was thereafter filed on 13.01.2011 whereby, it was pleaded by the petitioner that the observations made in the impugned order were erroneous on the face of the record as per the information furnished in the application and documents annexed to the application u/s 25-O of the Act and also information and documents submitted at the time of hearings. The net loss had gone upto-40.76% and the operational loss of-39.56% and the society had been following the capital approach in accounting for the government grants and had made appropriate disclosure by way of Note 3 in the Schedule of Notes and had been showing assets acquired from grants and subsidy as capital reserve and assets were considered at the full value in the balance sheet and the depreciation was charged on the full value of assets. The appropriate disclosure had been made by way of Note 12 in the schedule of notes attached to and forming part of society's balance sheet as at 31.03.2010. It was inappropriate to recognize government grants in the profit and loss statement since they were not earned but represented an incentive provided by government without related costs. Grants had not been received for acquiring fixed assets and/or meeting the expenses for yarn manufacturing undertaking (mill) but for specific projects undertaken in the Engineering college. Depreciation charged on the assets acquired from grant were shown in the income and expenditure account of the college and not in the yarn manufacturing undertaking (mill). Therefore, the allegations that the expenditure and losses in the mill were overstated was incorrect and frivolous. Similarly, the accounting policy which the society had been following, the difference between the amount realized on the sale of fixed assets and net book value thereof had been adjusted to capital reserve instead of crediting the same to the income and expenditure account. It was averred that the policy had been disclosed by way of Note 2 in the schedule of notes of the Society attached to and formed part of Society's balance sheet and had made

proper disclosure by way of Note 11. The land sold was not used for the purpose of producing or providing goods or service in the normal course of activities of the society and capital gain was large enough to distort the disclosure of actual state of affairs of the activities and operations of the society. The society was taxed as an individual under the Income Tax Act, 1962 and separate heads of income were prescribed as it was done for individuals. Reference was made to the provisions of Section 10(23C)(vi) of the Income Tax Act and it was submitted that the scope of conducting business contrary to what had been contended in the application was erroneous. The job work out of the total yarn packed production had not been considered while comparing vis-à-vis other period. It was submitted that the society had formed a Gratuity Fund and the society had provided for gratuity based on actuarial valuation done as per projected and credit method and appropriate disclosure had been made. Various explanations were also accordingly given that the society is an independent educational society and does not belong to any group or corporate and does not get any support from any group or corporate. It was submitted that only 99 employees were to retire in the next three years and merely because the union was resisting, would not be a ground to deny permission. There was a policy to carry on business but also a right to close down the business as per the provisions of the Act and, therefore, the order was sought to be reviewed.

18. The review application was dismissed by holding out that the original application was rejected on account of mis-management and draining of resources and that timely action not being taken to upgrade the manufacturing facilities and, therefore, the management had not been able to present any new issues. The relevant observations read thus:-

The original application of the management was rejected in public interest on very specific grounds in which the mismanagement and draining of resources over the years was pointed out. Important observation was that timely action was not taken to upgrade the manufacturing facilities resulting in a situation where the cost of such upgradation was escalated. Now the fact remains that the management has the assets to generate resources for running the mill and the other fact is that the workers are at a stage of their career and age that they would be retiring in the coming few years. It was therefore felt that the workers cannot be punished for the incompetence or unwillingness to keep the mill running or let them have an advantage of such factors especially when a large number of workers are at the verge of retirement. It is also the incompetence of the management not to be able to conclude a mutually acceptable separation formula despite the resources available.

Though the management in their application has contested the conclusions drawn in the order as mentioned above, they have not been able to present any issues or give any cogent reason or any new logic on the basis of which the present review application could be allowed.

This application is therefore, rejected for the same reasons of public interest as

the original application. It is ordered thus.

19. Mr. Pankaj Jain, counsel for respondent no. 4 vehemently submitted that a inquiry had been made and proper opportunity had been given and the authority had doubted the genuineness of the petitioner and submitted that it was a mala fide and unfair move by the petitioner-management which was a society and it was a non-commercial venture. The petitioner-institute was resorted into a particular accountancy method which was not denied by them and, therefore, the accounts were not being properly maintained. Lastly, it was submitted that as per the provisions of Section 25(4) of the Act, the order was to remain in force for one year from the date of the said order.

20. Necessarily, reference to the provisions of Section 25-O of the Act will have to be made while dealing with the above contentions wherein, an employer who wants to close down his undertaking has to apply for prior permission to the appropriate government. Under sub-clause (2) of Section 25-O of the Act, the appropriate Government is to make such an inquiry as it thinks fit and after giving reasonable opportunity to both the sides and persons interested in the closure. The factors which had to be kept into consideration are the genuineness and adequacy of reasons stated by the employer and the interest of the general public and other relevant factors are to be taken into consideration while recording the reasons in writing to grant or refuse such permission which is to be done within a period of 60 days from the date when the application is made. The order is to be final and binding on all parties and shall remain in force for one year from the date of such order under sub-clause (4) and is liable to be reviewed under sub-clause (5). Under sub-clause (8), the workmen who are employed in the undertaking immediately before the date of application are entitled to receive compensation which is to be equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months. The relevant provisions read thus:-

[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 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) Where an application for permission has been made under subsection (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 refused to grant such permission and a copy of such order shall be communicated to the employer and the workman.

(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) 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 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.

21. The above said provisions were subject matter of challenge before the Constitutional Bench of the Apex Court in *M/s. Orissa Textile and Steel Ltd.'s case (supra)* as the earlier provision had been struck down in *Excel Wear and Others Vs. Union of India (UOI) and Others*, . The Apex Court noticed that the earlier Section was struck down as no time limit had been fixed while refusing permission to close down and the same had been cured under sub-section (4) which provided that the order would remain in force for one year and at the end of the year, it is always open to the employer to apply again for permission to close. The relevant observations in *M/s. Orissa Textile and Steel Ltd.'s case (supra)* read thus:-

12 Another reason why Section 25-O 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 25-O. This subsection 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.

22. While repelling the challenge to the provisions of Section 25-O of the Act, which stood incorporated by the Amendment Act No. 46 of 1982, it was held that merely because genuineness and adequacy of the reasons stated by the employer could not mean that permission to close must necessarily be granted. The issue of the interest of general public which weighed with the State in the present case was also discussed and it was held that the interest of the general public must be of compelling or overriding nature where an industry was engaged in manufacturing of items required for the defence of the country and, therefore, in the interest of general public, closure may not be permitted for some time. Similarly, it was noticed that if an establishment is manufacturing vaccines or drugs for a epidemic which was prevalent interest of general public may not allow closure for a particular period of time. It was also held that if there are exceptional circumstances, then there could be no compulsion to continue to run the business and merely because there is some difficulty or financial hardship in running the establishment, would not be sufficient cause for closure. The employer had to show that it had become impossible to continue to run the establishment and accordingly, it was held that the restrictions imposed under the Statute were reasonable and in the interest of general public. Accordingly, it was held that each case has to be decided on its own facts on the basis of circumstances prevailing at the relevant time while upholding the amended Section 25-O of the Act. The relevant observations read thus:-

18. We also see no substance in the contention that the amended Section merely deals with the procedural defects pointed out in Excel Wear's case and does not deal with the substantive grounds set out in Excel Wear's case. In our view amended Section 25-O is very different from Section 25-O (as it then stood). It is now mere akin to Section 25-N (as it then stood) the Constitutional validity of which was upheld in Meenakshi Mills' case. In Excel Wear's case it has been accepted that reasonable restrictions could be placed under Article 19(6) of the Constitution. Excel Wear's case recognizes that in the interest of general public it is possible to restrict, for a limited period of time, the right to close down the business. Amended Section 25-O lays down guidelines which are to be followed by the appropriate Government in granting or refusing permission to close down. It has to have regard to the genuineness and adequacy of the reasons stated by the employer. However, merely because the reasons are genuine and adequate cannot mean that permission to close must necessarily be granted. There could be cases where the interest of general public may require that no closure takes place. Undoubtedly where the reasons are genuine and adequate the interest of

the general public must be of a compelling or overriding nature. Thus, by way of examples, if an industry is engaged in manufacturing of items required for defence of the country, then even though the reasons may be genuine and adequate it may become necessary, in the interest of general public, not to allow closure for some time. Similarly, if the establishment is manufacturing vaccines or drugs for a epidemic which is prevalent at that particular point of time, interest of general public may require not to allow closure for a particular period of time. We must also take a note of sub-section (7) of amended Section 25-O which provides that if there are exceptional circumstances or accident in the undertaking or death of the employer or the like, the appropriate Government could direct that provision of sub-section (1) would not apply to such an undertaking. This, in our view, makes it clear that amended Section 25-O recognizes that if there are exceptional circumstances then there could be no compulsion to continue to run the business. It must, however, be clarified that this Court is not laying down that some difficulty or financial hardship in running the establishment would be sufficient. The employer must show that it has become impossible to continue to run the establishment. Looked at from this point of view, in our view, the restrictions imposed are reasonable and in the interest of general public.

19. to 23. xxx xxx xxx

24. We see no substance in these contentions. 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 on the basis of circumstances prevailing at the relevant time. All that can be set out, in the Section, are guidelines. These have been set out in amended Section 25-O.

23. It is in view of the above said law laid down by the Apex Court that the matter has to be examined as to whether the State can compel the management to carry on the operation of the company when it is running at a loss and once the law permits a person to close down the undertaking on account of sufficient grounds and adequate reasons. The question of closure is one of the privileges of the employer which is circumscribed by the rights laid down u/s 25-O of the Act and can it be held that the employer is to compel to continue even if he continue to sustain losses.

24. Admittedly, in the present case, there is no denying the fact that the petitioner-society has suffered losses to the tune of Rs. 254.02 lacs on 31.03.2010 and the cumulative loss had gone upto Rs. 1565.01 lacs. The reason given is that the mill was set up 100 years back to provide practical training to the students studying in the institution and thereafter power loom sector developed at its cost. There was a reduction of 11.05% in the spindle capacity and only few mills were working in the State and as many as 449 textile mills

had faced closure. Even earlier, a settlement had been arrived at on 2.9.1980 and the management had been permitted to lay off the workmen and not to fill up the vacancies and synthetic fabrics manufacturing undertaking had been closed down. Merely because the adjoining mill namely Grasim Bhiwani Textile Ltd. had modernized itself and was running well would not be a ground to deny the closure as the factum of loss being suffered by the society on account of running the mill was not denied which had increased from 2.32% in the year 2005-06 to 39.56% for the year 2009-10. The observations of the Division Bench in *Bhartia Electric Steel Co. Ltd.*'s case (supra) wherein, in similar circumstances, appropriate Government had declined the closure would be relevant wherein, it was held that the principle of the Section was that the employer should not act arbitrarily. It was held that whims of an officer cannot be the reason for declining the permission and merely because the employer was making money in another unit, would not entitle the State Government to decline the relief. The relevant observations in *Bhartia Electric Steel Co. Ltd.*'s case (supra) read thus:-

15..... Is it necessary that a unit must be made to bleed till the company goes sick? Can the Government refuse permission to close down only on account of the fact that the company has reserves and can, thus raise loans? Looking at the manner in which the large number of Public Sector Undertakings have been functioning in this country, the attitude of the bureaucracy may not be surprising. However, the State Government's action in refusing to grant permission indicates a complete indifference to the interests of the petitioner-company. The principle of Section 25-O is not that the Government can rob Paul to pay Peter. The provision is intended to ensure that the employer should not act arbitrarily. It should not close down a unit whimsically or capriciously. Thus, it has been provided that the employer should make an application. The State Government can hold an enquiry and find out as to whether or not the reasons are genuine and adequate. However, even the power to look into the relevant factors should not mean that the State Government can refuse permission to a unit which has been suffering losses for several years only on the ground that it has the means to raise loans. The permission cannot be refused on the ground that the company is making profit elsewhere.

16. "Rich" is not a bad word. Making profits is not a taboo. It is not illegal. It is not immoral. In fact, a proper industrial growth can only be achieved when there is a good return on an investment. However, in the present case, it is the admitted position that the petitioner had faced a continuous decline in the "orders". It cannot sell Railway Bogies and other equipment in the market. Only the Government departments were the purchasers. Once they stopped placing orders, there was no one to buy the goods. Yet, Mr. Kaushik has taken the role of an advisor and told the petitioner that it should raise a project loan of Rs. 3.37 crores for modernisation. It should invest this amount to "run the factory at the competitive rates..... " This is not the function of the State Government. It cannot compel an employer to suffer losses, to take loans and to invest more.

The State Government could have rejected the application if it had found that the petitioner had not suffered losses or that it had adequate orders which would make the running of the unit viable. However, merely because the employer has the money or the reverses or the credibility in the market so as to able to raise loans, did not entitle the Government to say that it should take loans, modernise the technology and then produce goods at competitive rates and this too after acknowledging that there was a decline in the orders. Equally, it is not for the Government to advice an employer to diversify. Into what? why? The order gives no reason. Surely, the whims of an officer cannot be the reason for declining permission.

17. The Constitution guarantees the freedom to carry on business. In order that Section 25(O) is not challenged on the ground of placing unreasonable restrictions, its operation must be confined by enlightened bureaucracy to cases where the employer is acting arbitrarily or unfairly. However, in a case where the Government had already found on two occasions that the reasons given by the petitioner were genuine and adequate, the permission could not have been refused on the tenuous ground that the financial situation of the company being good, it should continue to suffer losses till all the three units have to be closed down. It is bad logic and bad economics.

25. After taking into account the said provisions, the order of closure in the said case was quashed.

26. In similar circumstances, in Associated Cement Companies Ltd.'s case (supra) the company had sought to close down its factories at Porbandar whereby, white cement had been manufactured on the ground that M/s. J.K. Cements was making cement of greater whiteness and superior quality and there was a drop in demand of the applicant-company. It was held that the Government cannot refuse permission on the ground that the employer should have managed its affairs in a better manner or that he should have taken steps for replacing the old machinery and for modernization of the plant. The purpose of the provisions were only to find out as to whether the closure was genuine and adequate and the restriction on the right of the employer to close down merely on the ground that it would result into unemployment could not be good ground and could not be held to be reasonable. It was noticed that the plant in question had been installed in 1914 and had started manufacturing white cement from 1959 and had become obsolete and modernizing it would cost over capital cost of more than 15 crores. It was accordingly held that the State Government could not within the scope of inquiry find fault in the manner in which the petitioner was running the undertaking and it was not for the State Government to advise what was to be done to avoid the situation. Accordingly, the order of the Tribunal rejecting the application was set aside and a direction was issued to hold a fresh inquiry in the light of the observations made in the judgment. The relevant observations in Associated Cement Companies Ltd.'s case (supra) read thus:-

14. Thus, the appropriate Government and the Tribunal will have to strike the

balance between the right of the employer and other relevant factors including the interests of the general public. But to enable itself to properly strike the balance between these parallel and conflicting interests, the appropriate Government and the Tribunal must make themselves aware of these aspects.

15. What we have stated above also indicates the nature and scope of the enquiry contemplated by Section 25-O. The requirement of giving a reasonable opportunity of being heard to the workmen and other persons cannot be carried so far as to make it a regular trial before a Court. The purpose of the enquiry is to find out if the reasons for closure are genuine and adequate and to get itself properly informed about the adverse effects which the closure may have on the interests of other sections of the public. It being a matter between the employer and the appropriate Government, no third party would have any locus standi but for the provision made in this section for giving of an opportunity of being heard to the workmen and the persons interested in such closure.

16 to 24 xxx xxx xxx

25. The Labour Commissioner disposed of the other reasons given by the A.C.C. by stating that "Further, the applicant's submission regarding age of the plant, obsolescence of machinery, non-availability of quality raw material in local area, and business competition cannot be accepted because all these matters are within the authority of the management". The question which the Labour Commissioner was required to consider was whether the age of the plant, obsolete nature of the machinery, non-availability of raw material and lack of demand can be said to be genuine and adequate reasons or not. The scope of the enquiry was not to find fault with the manner in which the Company managed this undertaking. What the Labour Commissioner was required to consider was whether the grounds given by the A.C.C. are correct and adequate or not for the purpose of granting permission. Instead of doing that, the Labour Commissioner has merely held that it is considered not proper to grant permission.

26. The above discussion shows that the Labour Commissioner did not appreciate the true scope of the enquiry which he was required to make and the nature and extent of the power available to him u/s 25-O. That led him to adopt an erroneous approach and he has acted more like a fault-finding authority. It is not the function of the State Government or the Tribunal, while considering an application u/s 25-O, to decide whether an employer has managed his undertaking properly or not, or to advise him what he should have done in order to avoid a situation requiring closure of that undertaking. Merely because the employer has not managed his undertaking properly, it cannot be made a ground for refusing permission to close down his undertaking. Unless it is found as a matter of fact that the situation requiring closure has been brought about deliberately and mala fide, poor management or mis-management of the undertaking can hardly be regarded as a good ground for refusal of permission to close down an undertaking. With respect to the supply of raw material what the

Labour Commissioner was required to consider whether that quality of raw material which is required by the A.C.C. is locally available or not. He ought not to have misled himself by the general opinion of the Geologist that good quality raw material is available locally. What the Geologist regarded as good quality raw material might not be good enough for the A.C.C. to obtain that degree of whiteness which it wants its product to have in order to stand the competition. Similarly, with respect to the demand for white cement, the Labour Commissioner misled himself by taking a view that there is bound to be great demand for white cement. The approach adopted by the Labour Commissioner shows that he examined the application of the petitioner superficially and not in the manner in which he was expected to do u/s 25-O. It becomes apparent from a bare reading of his order that he exercised the power without properly appreciating the limits of that power. We have, therefore, no hesitation in coming to the conclusion that the Labour Commissioner passed the impugned order without proper application of mind and without properly appreciating the nature and incidents of the right of the employer and also the nature and extend of the power available u/s 25-O. The order passed by him will have, therefore, to be quashed and set aside.

27. Thus, keeping in view the above position of law and the right of the petitioners to file an application for closure, this Court is the opinion that the impugned orders are not justified whereby, the application for closure has been rejected on totally alien considerations which do not fall within the interest of the general public, as has been held by the Apex Court. It is not the case of the State that the mill is producing specific goods which are of essential commodity. No finding has been recorded that the mill is producing such an item that it is necessary for the defence of the country or that it has to supply a drug which is necessary for the health of the citizens. It is a matter of fact that the mill was set up a century back and over a period of time, the procedure and machinery has totally undergone a sea change. The operational losses have steadily increased in the last 5 years from a positive of 3.32% to -39.56% for the year 2009-10. The percentage of net loss/total income as also for the same period gone up from -1.82% to -40.76%. The average packed production/man day (kg) has reduced from 12.67% to 9.64%. The employees salary and wages had gone up from 39.18% to 83.66%, as per the chart submitted with the review application. It further showed that the power and fuel operation income percentage had crept up. The chart is reproduced below:-

28. It is a matter of fact that it is a case of the petitioner also that the financial crisis is continuing since 1980 leading to the closure of synthetic fabrics manufacturing undertaking and cotton yarn and fabrics, as per settlement arrived at on 02.09.1980. Merely because the adjoining mill had taken steps and was successfully running would not be a ground to deny closure and any persistence in running the mill might lead to further losses and the running of the institute itself would become impossible. The mere factor of unemployment on account of closure would be a necessary corollary of every application which

would be filed u/s 25-O of the Act and cannot be the only factor which is to be kept into account by the State. The closure will necessarily entail hardship and the workmen will have to be compensated u/s 25(8) of the Act and merely because the workmen will face unemployment would not be a ground to deny the petitioners the necessary relief.

29. The reliance of the counsel for the State upon Laxmi Starch's case (supra) is also without any basis. In the said case, the Kerala High Court also noticed that a losing concern which was incapable of revival could not be compelled to continue. The Legislature wanted to be strict in the matter to avoid the situation of closure but it was only where an employer who was intending to close it down without making any earnest attempts to overcome the difficulties could be denied the permission. In the said case, it was found that as a matter of fact that the financial crisis was a creation of huge commission on sales being paid to a agency of which the managing partner was none else but the Chairman of the company. The Industrial Tribunal in the said case had recorded a finding that the sales commission had been boosted and office expenditure had been inflated and it was held that in view of an actual finding recorded, the High Court would not be justified in setting aside the order. However, liberty was granted to file a fresh petition u/s 25-O of the Act.

30. Similarly, in Straw Product Ltd.'s case (supra), the State Government had found that the petitioner-company's overall financial position continued to remain sound and economically viable and it was a dividend paying company and the share holders were receiving the same at the rate of 20%. The reserves of the company had increased from the year 1975 to 1984 from Rs. 777.01 lacs to Rs. 1860.66 lacs. Therefore, the loss in only 3 years i.e. 1982, 1983 and 1984 was not such a consequence to permit the ground for closure. Rather, it was observed that if the continuance of the industrial undertaking is shown to be economically not viable then this factor has to be given due weight even though the closure results in retrenchment of the workmen who would be rendered unemployed. The interest of the workmen had to be kept in mind by the State Government in urging the employer to explore all possibilities of improving the economic situation. The Court declined to interfere and gave liberty to the petitioners to resort to the remedy of review or for a reference to the Tribunal for adjudication.

31. However, in the present case, one important factor is to be noted that since the initial order was passed on 10.12.2010 and the subsequent order of review was passed on 09.06.2011 and as per the provisions of sub-section (4) of Section 25-O of the Act, the order is only to remain in force for one year and then the life of the order is apparently over. Accordingly, no relief as such can be granted in the present petition. Over a period of last 3 years, several other more workmen would have retired and the liability of the petitioners would have further reduced. As per Section 25-O(8) of the Act, where permission for closure is granted, the workmen who are employed in that undertaking immediately

before the date of application for permission are entitled to receive compensation which is to be equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months. In such circumstances, it would thus be appropriate that the petitioners apply afresh before the respondents and the respondents shall decide the said application keeping in mind the observations made by this Court in the present judgment since the reasons for rejecting the application in the opinion of the Court were not justified.

32. Accordingly, an appropriate inquiry should be made afresh on the application to be filed and the reasons which had earlier prevailed upon the Government to reject the application would not be a ground to reject the application. With the above said observations, the writ petition stands disposed of.