
(2002) 12 BOM CK 0111

In the Bombay High Court

Case No : A.C.J. W.P. No's. 1957 of 2000 and 2041 of 2002

Voltas Employees Union

APPELLANT

Vs

Voltas Ltd. and Another

RESPONDENT

Date of Decision : 20-12-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 25O

Citation : (2003) 3 BomCR 533 : (2002) 93 FLR 731 : (2003) 2 LLJ 31

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : J.P. Cama and A. Shaikh, instructed by Sanjay Udeshi and Co, for the Appellant; K.K. Singhvi and C.U. Singh, instructed by Salgaonkar and Co., for the Respondent

Judgement

Nishita Mhatre, J.—These Writ Petitions impugn the Award dated March 2, 2002 of the Industrial Tribunal made in a reference u/s 25-O of the Industrial Disputes Act, 1947 for permission to close down two units of Voltas Ltd. - the Petitioner Company in Writ Petition No. 2041 of 2002. The Petitioner Company in Writ Petition No. 2041 of 2002 has challenged the Award in so far as it refuses permission to close down their Research and Development Unit at Thane (hereinafter referred to as "R&D"). In Writ Petition No. 1957 of 2002, the Petitioner Union, namely, Voltas Employees Union, has challenged the Award of the Industrial Tribunal granting permission to close down the Cooling Appliances Business Division (hereinafter referred to as "CABD") of Respondent No. 1 Company at Thane. Since these are Cross-Writ Petitions, it would be easier to refer to the Petitioner in Writ Petition No. 1957 of 2002 and Respondent No. 2 in Writ Petition No. 2041 of 2002 as the "Union" and the Petitioner in Writ Petition No. 2041 of 2002 and Respondent No. 1 in Writ Petition No. 1957 of 2002 as the "Employer".

2. The factual matrix of the case is as follows:

(a) The employer has a factory at Thane employing about 1000 workmen. There

are different Plants in this Thane establishment including the CABD Plant and the R & D. These employees are all represented by the Union. Since May 20, 1994, the Employer and the Union entered into various Memoranda of Undertaking (hereinafter referred to as "MOU"). The first MOU was signed on May 20, 1994. The Union thought it necessary to enter into the MOU because it apprehended that due to reorganisation or restructuring of the Company, the work force would be reduced. Under this MOU, the Employer gave an undertaking that the Company would be considered as a single entity and that the employees' demands would be considered on the basis of a single balance-sheet and profit and loss accounts and not on the basis of the group balance-sheets. On this basis, the Union agreed to withdraw the pending complaints and other cases filed before the various authorities.

(b) Thereafter, the employer decided to set up a manufacturing Plant of CABD at Dadra & Nagar Haveli. Again, the Union apprehended that consequent upon such a Plant being set up, the work-force in the Thane establishment would be reduced. Another MOU was entered into on December 19, 1995 by the Voltas Employees Federation of which the Union was a constituent and the employer. The understanding arrived at between the parties was that CABD Plant at Dadra and Nagar Haveli was to be set up in order to meet with the employer's expansion plans and due to the increased demand for CABD products in the market. However, it was agreed that the manufacturing facilities at Thane would be utilised taking into account the business requirement and various commitments made to the Union/Federation earlier. By this MOU, the employer assured the workmen that there would be no adverse effect on the employment in Thane including the CABD Unit. It also assured the workmen that it would continue to invest in the CABD at Thane with a view to expand/improve the infrastructural facilities in order to meet the competition in the market.

(c) The employer then decided to transfer limited components, sub-assemblies of PAC to the Dadra Unit in a phased manner for the final assembling. Again, the employer allayed the apprehension of the Union/Federation that this would lead to the Thane operations being reduced by undertaking in the next MOU to load sufficient activities into the CABD Plant at Thane. The employer also assured that the components which were being manufactured in the CABD at Thane would be continued to be manufactured in the same place and would be sent to Dadra only for final assembling of the products. The employer also assured the Union that a large investment would be made on the machinery and technology to increase the productivity in the Thane manufacturing Unit. At the same time, the employer agreed that there would be no reduction in manpower in the Thane Unit and the offer of recruitment guarantee would continue.

(d) The last of these MOUs was entered into by the parties on January 20, 1998. This essentially reiterated the earlier MOUs and also stipulated the manner in which re-deployment of employees from one department to the other would be done.

(e) In 1999, a Voluntary Retirement Scheme was introduced by the employer. This action of the employer was challenged by the Union by filing a Complaint being Complaint (ULP) No. 480 of 1999 under Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the "MRTU and PULP Act"). The Industrial Court by its order dated August 10, 1999 declared that the employer had committed an unfair labour practice under Items 9 and 10 of Schedule IV of the MRTU & PULP Act and the employer was directed not to implement the Voluntary Retirement Scheme and to comply with the terms and conditions set up in various MOUs between the parties. The order of the Industrial Court was impugned by the employer by filing Writ Petition No. 5165 of 1999. By an order dated October 29, 1999, this Court stayed the impugned order of the Industrial Court dated August 10, 1999 in so far as it directed the employer not to execute and implement the Voluntary Retirement Scheme of 1999. The Letters Patent Appeal filed by the Union against the said order of this Court was rejected.

3. On June 18, 1999, the employer displayed a notice suspending temporarily the second shift operation from June 21, 1999. The workers were directed not to report for work, but were informed that their salaries, wages and other allowances would be paid. Aggrieved by this, the Union filed another Complaint under Items 9 and 10 of Schedule IV of the MRTU & PULP Act being Complaint (ULP) No. 429 of 1999. An interim order was passed by the Industrial Court restraining the employer from acting upon its notice of June 18, 1999 and directing it to permit the 199 workmen affected to resume their duties as usual. Another Complaint being Complaint (ULP) No. 126 of 1999 was filed by the Union as the employer was removing machinery from CABD and shifting it to Dadra and Hyderabad. This process of shifting was done as about 170 workmen were sitting idle at Thane and the machinery was required for being used in the manufacturing activities at Dadra and Hyderabad. An application was moved in this Complaint by the employer for removing certain machines from CABD, Thane. This application was rejected by the Industrial Court vide its order dated August 23, 2001 by declining to grant permission to remove the machineries mentioned in the Annexures to the said application. The order of the Industrial Court dated August 23, 2001 was impugned by the employer by filing Writ Petition No. 4054 of 2001 in this Court. This Writ Petition was rejected and the Complaint was expedited. Complaint (ULP) No. 126 of 1999 was finally heard and dismissed by the Industrial Court on September 5, 2002. Complaint (ULP) No. 532 of 2000 was also filed by the Union for a declaration that the employer had committed an unfair labour practice by shifting the manufacturing activities from Thane to Dadra & Nagar Haveli. By an interim order of July 11, 2001, the Industrial Court restrained the employer from outsourcing AC and RBG manufacturing from Thane so as to adversely affect the manufacturing activities of that Plant. This Complaint came to be dismissed by the Industrial Court on July 4, 2002.

4. The employer then made an application u/s 25-O of the Industrial Disputes

Act, 1947 (hereinafter referred to as the "I.D. Act"), to the State Government for permission to close down the CABD Plant at Thane. The main reason given by the employer for closure was that the employees employed in the CABD Plant numbering about 164 had become surplus as it was necessary to close down the undertaking and continue the entire operations in Dadra, the profitability of the CABD, Thane Plant having deteriorated. The contention raised by the employer in the said application was that, if permission was not granted to effect the closure of the CABD Plant at Thane, the profits would be wiped out totally and the Company itself would make huge losses. The employer also requested permission to close down the Research and Development Section affecting the livelihood of 22 out of the 164 workmen employed in the undertaking. It was the case of the employer that the R & D was attached to the CABD Unit and if the CABD was allowed to be closed, consequential closure of the R & D would also have to be effected. The employer claimed that the work in the R & D had come to a standstill and sought permission to close down the section.

5. The Union submitted its objections to the application for closure contending therein that the CABD was not a separate undertaking but an inseparable business activity of the employer in Thane. The Union also contended that the application for permission to close down was contrary to the Memoranda of Understanding signed between the employer and the Union. The Union further contended that the proposed closure was sham and bogus as the business activity carried out in the CABD at Thane was to be continued in Dadra. They also refuted the employer's contention that the financial position was not stable and further submitted that the proposed closure would be against the public interest. The Union further submitted that the reasons for closure were neither genuine nor adequate. As regards the closure of the R&D Section, it was contended that the R&D was meant for the entire Company and not just the CABD. The research and development work carried out in this Section was for the benefit of all the Units of the employer since it was a Corporate R&D and, therefore, the reasons put forth by the employer for closure of the R&D Section were not at all genuine.

6. The Commissioner of Labour allowed the employer to close down their business at CABD, Thane. The Commissioner of Labour also directed the employer to permit the workmen to avail of the Voluntary Retirement Scheme of November 1, 2000 or to pay them retrenchment compensation at the rate of 30 days instead of 15 days per year of service, whichever is higher. A review was sought for by the Union which was refused. The employer thereupon informed the workmen that their employment would come to an end on January 23, 2002 and there would be immediate suspension of operation of the CABD Plant from December 21, 2001 which would continue upto January 23, 2002. On January 16, 2002, the Commissioner of Labour referred the matter for adjudication to the Industrial Tribunal at Thane. Being aggrieved by the order of December 20, 2001 passed by the Commissioner of Labour, the Union filed Writ Petition No. 144 of 2002 in this Court. Certain interim orders were passed in the said Writ Petition

which were to continue while the Reference was pending before the Industrial Tribunal at Thane and the petition was disposed of accordingly. After the pleadings were filed by the parties before the Industrial Tribunal, evidence was led by the parties. The employer examined as many as five witnesses, namely, S.C. Kakade, Works Manager, N.R. Chaube, Chief Financial Officer, A.M. Mehta, Partner of Damji Merchants & Co., Chartered Accountants, R.L. Gajwani, Vice President (Operations) and M.B. Phadke, Corporate Manager- Employee Relations. The Union examined one Shashank Jaywant, Committee Member of the Union and General Secretary of the Federation of Voltas Unions. After hearing both the parties in support of their case, the Industrial Tribunal at Thane by its Award dated March 2, 2002 partly allowed the Reference. The employer was permitted to close down the CABD at Thane but not the R&D Section. Being aggrieved by this Award, the employer and the Union have filed these two Writ Petitions.

7. Against this backdrop of facts, Mr. Cama learned counsel appearing for the Union, submits that the impugned Award granting permission to the employer to close down its Cooling Appliances Business Division u/s 25-O of the I.D. Act has been made disregarding the provisions of law as well as the judgments in this regard. He submits that the CABD is part and parcel of the Thane Plant as is stipulated in various MOUs entered into by the parties. Therefore, to permit closure of only CABD is illegal and not permissible in law. He also submits that the various MOUs have been held to be binding on both the employer and the Union and when the employer had in these MOUs assured the Union that it would not take any adverse steps against the employees while commencing and continuing the production in Dadra, the closure of the CABD at Thane was contrary to these MOUs and, therefore, bad in law. He further submits that while considering an application u/s 25-O of the I.D. Act, the Tribunal has to ascertain the genuineness and adequacy of the reasons for closure as also the interest of the general public and all other relevant factors. According to the learned counsel, the Tribunal has completely misdirected itself while coming to the conclusion that because of the financial difficulties faced by the employer, the closure was justified. He further submits that the material on record brought by the employer to justify the closure has not been proved and, therefore, has no evidentiary value. In his submission, the Tribunal has not correctly construed the phrase "the interest of the general public" while permitting closure of the CABD Plant. To buttress his arguments, Mr. Cama has relied on the judgments in *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, *Vazir Glass Works Ltd. Vs. Maharashtra General Kamgar Union* and another, *Industrial Perfumes Ltd. Vs. Industrial Perfumes Workers Union*, and *Orissa Textile and Steel Ltd. Vs. State of Orissa and Others*, . On the basis of these judgments, he urges that the employer should be able to show that it was impossible to continue to run the establishment and only then permission for closure could be granted u/s 25-O of the I.D. Act. While relying on the judgment in *Vazir Glass Works* (supra), he submits that the statements produced by the

employer to demonstrate that losses were incurred by the CABD Unit were of no avail as it was necessary to prove the same as although the strict rules of Evidence Act are not applicable, the principles thereof have to be followed. Mere production of charts, tables and figures would not constitute evidence, according to the learned counsel. He further submits that what is "in public interest" has been considered in Vazir Glass Works" case (supra) by the Division Bench of this Court and the Division Bench has held that public interest would include the interest of the State. In support of his contention that the closure was a sham and bogus, Mr. Cama relied on the judgment in Express Newspapers Ltd, (supra) wherein it has been held that, in the case of closure, the employer does not merely close down the place of business but closes the business itself and the closure is final and irrevocable termination of the business itself. He also relied on the judgment in the case of Industrial Perfumes Ltd. (supra) to support his case that because there is no closure of business, the business being transferred or shifted to Dadra, the closure of CABD Plant at Thane was a sham.

8. Mr. Singhvi, learned counsel appearing for the employer, per contra submitted that the MOUs between the parties cannot bind them when considered under the I.D. Act as this Act defines a settlement to mean an agreement signed u/s 2(p). MOUs, according to Mr. Singhvi, are at best contracts between the parties but cannot be considered to bind the parties under any of the provisions of the I.D. Act. He submits that the Dadra Unit was set up in 1985 itself and had been doing business since then with reasonable profits and, therefore, to suggest that the business activities from CABD, Thane had not closed down and had been shifted to Dadra would be incorrect. He also submits that the judgment of the Apex Court in Orissa Textiles Ltd. (supra), if construed properly, would indicate that once the employer is able to show genuineness and adequacy of reasons based on material to be provided before the Industrial Tribunal, the Industrial Tribunal would necessarily have to permit closure. In his submission, the "impossibility to run the Unit" which the Apex Court has referred to in the Orissa Textiles case (supra) was restricted to the construction and interpretation of Section 25-O(7) of the I.D. Act. What is required to be produced before the Tribunal in support of the case of closure is merely material on which the Tribunal can assess whether the reasons for closure are genuine and adequate and whether it is in the interest of public which, according to the learned counsel, does not include the interest of the workmen. He next submits that there can be no estoppel against law and the MOUs could not restrict the right of the employer to close down his business in accordance with the provisions of Section 25-O of the I.D. Act. In support of this submission, he relies on the judgments in Garden Reach Workshop Ltd. Clerks Union and Another Vs. Garden Reach Ship Builders and Engineers and Others, , Mumbai Mazdoor Sabha and Another Vs. S.A. Patil and Others, . He further submits that the Tribunal being an expert body it need not give long drawn out reasons for accepting the case of the employer for closure so long as there is sufficient material on record to support the employer's case. In support, Mr. Singhvi has relied on the judgments in Blue Star Ltd. v. All India

Blue Star Employees Federation and Anr. delivered by the Division Bench of this Court in Writ Petition Nos. 2093, 2094 and 2095 of 1996. *Bhartia Electric Steel Co. Ltd. v. State of Haryana and Ors.* 1998 ICLR 1168 and *Sarva Shramik Sangh, Mumbai v. Silk and Art Silk Mills Research Association and Ors.* 1999 (81) FLR 672. He then submits that the financial status and condition of the unit which is to be closed down has to be considered and not the financial position of the entire Company. He also submits that there was absolutely no work for the workmen at CABD and, therefore, it was necessary to close down the Unit. With regard to the R&D Unit, Mr. Singhvi submits that 22 employees were involved with this Unit. According to the learned counsel, R&D was attached to the CABD because all the research carried out pertained to and was applicable to the CABD. Once the CABD was closed down, the learned counsel urges that it would be necessary to close down the R&D as a consequence.

9. Before proceeding to consider the submissions of the learned counsel, it would be useful to set out the definition of "closure" as contained in Section 2(cc) of the I. D. Act which reads as under:

"(cc): "closure" means the permanent closing down of a place of employment or part thereof.

10. The next provision of the I.D. Act which is relevant for our purpose is Section 25-O which reads as under:

"25-O. Procedure for closing down an undertaking.- (1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking 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 Sub-section (1), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the relevant factors, by order and for reasons to be recorded in writing grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) 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 subsection (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 an 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 subsection, it shall pass an award within a period of thirty days from the date of such reference.

(6) Where no application for permission under Sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of Sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) where an undertaking is permitted to be closed down under Sub-section (2) or where permission for closure is deemed to be granted under Sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this Section, shall be entitled to receive compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months".

11. The definition of "closure" has been included in the I.D. Act by an amendment of 1982. This amendment is in terms different from the meaning attributed by the Apex Court to the word "closure" in the Express Newspapers (supra). There the Apex Court had held that closure meant not only closing down place of business but the business itself and that indicated the final and irrevocable termination of the business itself. Closure as defined under the I.D. Act means closure of a place of employment or part thereof permanently. Now, the first submission of the learned counsel for the Union that the CABD is part of the Thane establishment and, therefore, cannot be closed down on its own since the Thane works are to be considered as a single legal entity cannot be accepted

as the definition of "closure" permits the closing down of part of a place of employment. Assuming the CABD is part of the Thane works, the closing down of that part is permitted by the I.D. Act. Significantly, this definition does not speak of closure of the business as the Apex Court has had in the Express Newspapers case (supra). Therefore the submission of the Union that the closure of CABD is not a closure in the eyes of law as the business itself has been shifted to Dadra is of no avail.

12. The next submission of the learned counsel for the Union that the closure of CABD was contrary to the MOUs and, therefore, illegal will have to be considered on the basis of the definition of "settlement" contained in the I.D. Act. The I.D. Act defines the term "settlement" u/s 2(p) thus:

"(p): "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the Conciliation Officer".

However, there is no definition of the term "agreement" in the I.D. Act. Section 18(1) of the I.D. Act provides that the settlement which is arrived at between the employer and workman otherwise than in the course of conciliation proceeding is an agreement which shall be binding on the parties thereto. Is it necessary that it must be in accordance with the definition of the term "settlement" u/s 2(p) of the I.D. Act only? The Fifth Schedule has been incorporated in the I.D. Act in 1984. This lays down the unfair labour practices on the part of the employers and the trade unions. Failure to implement award, settlement or agreement is an unfair labour practice under the Fifth Schedule of the I.D. Act. However, although "award" is defined in Section 2(b) and "settlement" in Section 2(b), there is no definition of the term "agreement" in the I.D. Act. Therefore, one must consider it as a contract between the two contracting parties, the terms of which are binding on them. To suggest, therefore, that the effect of an MOU between the parties thereto is not binding upon them or should not be considered by the Industrial Tribunal while considering the closure application u/s 25-O would be incorrect, unreasonable and hyper- technical. Therefore, in my view, the effect of the MOUs would have to be seen by the Tribunal while considering the closure application.

13. The procedure for closing down an undertaking as stipulated in Section 25-O requires the employer to make an application in the prescribed format at least 90 days prior to the intended date of closure to the appropriate Government stating the reasons for closing down. The application must be in accordance with Rule 82- B of the Industrial Disputes (Bombay) Rules, 1957 and in Form XXIV-C. The application requires the employer to give certain details regarding the industrial establishment proposed to be closed, such as, number of workers and their categories who would be affected by the proposed closure, product/products of

the undertakings; details relating to the licensed capacity, installed capacity and the utilised capacity; annual production, item-wise for the preceding three years; production figures, month-wise, for the preceding twelve months; work in progress, item-wise and value-wise; any arrangements regarding off-loading or sub-contracting of products or any components thereof; balance sheets, profit and loss accounts and audit reports for the last three years and the financial position of the company amongst other details. The reasons for the proposed closure and the specific attempts made by the employer to avoid the proposed closure are also required to be given. The appropriate Government is required to make an enquiry after giving reasonable opportunity to the employer, workmen and persons interested in such a closure to be heard. This enquiry has to be made in the light of the genuineness and adequacy of reasons stated by the employer, the interest of the general public and all other relevant factors. After such an enquiry, the appropriate Government is required to communicate the order either refusing or granting permission to the employer within a period of sixty days of the application being made. The appropriate Government may review its order granting or refusing to grant permission and/or may refer the matter to the Tribunal for adjudication. Therefore, what the Tribunal has to consider while deciding such a dispute, is whether the reasons for closure, as stated in the application of the employer, as genuine and adequate and whether the closure is in the interest of the general public and the conclusion must also take into account all other relevant factors. Now, what are reasons adequate and genuine is to be considered on the facts and circumstances of each case. The Apex Court in Orissa Textiles case (supra) has elucidated the provisions of Section 25-O thus:

"..... Amended Section 25-O lays own 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 an 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 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

recognises 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".

The main consideration of the Tribunal would be the genuineness and adequacy of reasons stated by the employer. However, merely because the reasons are both genuine and adequate, permission to close down need not necessarily be granted. This is because the Section requires the appropriate Government and the Tribunal to consider the interest of the general public and all other relevant factors. One of the relevant factors would, in my view, definitely be the termination of service of a large body of workmen, It is for this reason that the Government or the Tribunal is required to hear the workmen at such proceedings as they have an interest in these proceedings. The employment or non-employment of the workmen due to the closure would certainly be an aspect which the Tribunal would have to bear in mind while considering "all other relevant factors". When the livelihood of a large body of workmen is to be stopped all of a sudden, surely this would be a relevant factor to be borne in mind. The Tribunal cannot permit closure without considering this aspect of the matter. Over-riding public interest would also be a reason to restrict closure of an undertaking even though the reasons for closure are found to be genuine and adequate. Illustrations of such cases have been set out by the Apex Court in Orissa Textiles case (supra), such as, if the industry is engaged in manufacturing of items required for defence of the country, establishments manufacturing vaccines or drugs for an epidemic which is prevalent at that particular point of time.

14. The Division Bench of this Court in Vazir Glass, (supra) has considered as to what is the connotation of the term "public interest" and "other relevant reasons". The Division Bench has observed thus:

"27. That takes us to the question whether the public interest and other relevant reasons would include State interest. The State is very much concerned with the closure of industries as it has an adverse effect on employment potential in the State and the soundness of its economy. In fact the legislature itself has recognised this fact by calling on a company/undertaking to move an application u/s 25-O of the Act to the appropriate Government. There is a purpose behind this. It is the State Government which can give concessions in the form of tax facilities, reduction of power tariff etc. in order to enable an industry to stand on its own feet and/or to obviate its financial and other difficulties. The State invites entrepreneurs to set up industries in backward area of the State, provides infrastructural facilities, gives subsidies, and tax concessions etc. with a view that more and more industries will be attracted which will help the State provide

employment to its residents and bring in resources to meet the expenditure on its welfare schemes for the economically backward and public at large. If an employer who has set up an industry in a State has prospered therein afterwards because of the increase in cost of production arising out of higher wages and cost of raw material, decides to pack off and set up the same industry in some other State facilities, benefit of low wages and other such concessions, is allowed to close down the industry without making attempts or taking steps to overcome the difficulties the State will be faced with a situation of industries running away to States which offer more facilities as and when cost of production on account of higher wages and/or raw material goes up. In the case like the city of Mumbai where the cost of land has shot up astronomically, industrialist would prefer to close down industries and make their fortune by developing the land and go to neighbouring States to set up such industries. This would lead to a flight of industries which no State can permit. Section 25-O has behind it this aspect also. Having considered all these aspects we are of the considered opinion that the Tribunal should have refused permission for closure on the ground of public interest also".

15. In the light of the provisions of law and various decisions, it is necessary to ascertain whether the Tribunal has considered the various aspects which are necessary prior to permitting closure of an undertaking. The main submission of Mr. Cama, learned counsel for the Union, is that the employer has merely shown financial disability to run the CABD Unit at Thane. According to him, there is nothing on record however to show that it is impossible to continue to run the establishment. He further submits that what was on record before the Tribunal are the balance-sheets and profit and loss accounts of the Company and not that of CABD. All that was produced before the Tribunal were charts showing the information required in compliance with Form XXIV-C. According to the learned counsel, this does not constitute evidence especially in view of the fact that the source of the material on which these charts were based was not proved before the Tribunal nor placed before it. He submits that although the strict rules of the Evidence Act may not apply to a proceeding under the I.D. Act, it is necessary that the material must be such that it must support the employer's case. The Tribunal, according to Mr. Cama, has brushed aside this aspect of the matter by relying on the judgment of the Apex Court in Food Corporation of India Workers Union Vs. Food Corporation of India and another, wherein the Apex Court has held that there should be only "material" and not evidence as required by the Evidence Act. The approach of the Tribunal was found to be incorrect by the Apex Court as the Tribunal had stated that the evidence of the workmen was not "duly proved", "legally proved" or "proved beyond reasonable doubt". The Tribunal, according to the Apex Court in that case, has considered minute particulars in the light of the requirements of the Evidence Act. On this basis, it was found by the Apex Court that the Tribunal had misdirected itself by requiring evidence as permissible under the Evidence Act.

16. Considering the material on record, admittedly the balance sheets and profit

and loss accounts of CABD Unit at Thane have not been placed on record. The source of the charts and tables provided by the employer in accordance with the requirement of Form XXIV-C also is not brought out on record. Although, Tribunals need not follow the strict rules of evidence under the Evidence Act, they must be careful in evaluating such material and should not glibly swallow whatever material is produced before them. The mere fact that there is material in the form of charts would not absolve the employer from its responsibility of proving its case for closure. Production of charts, tables and figures cannot take the place of evidence, more so when they are not admitted and the basis of these documents is not placed before the Tribunal. Therefore, the Tribunal's finding that the reasons for closure were genuine and adequate on account of the CABD unit being a loss-making one unfounded. In fact, the Chartered Accountant who is the only independent witness examined by the employer, has stated that the Company did have a system of divisional accounting. Tables and charts were prepared by the representatives of the Company which he had perused. But, he could not, as a matter of fact, state as to whether the tables annexed to the application for closure were the same as were verified by him. Therefore, it was necessary for the employer to produce the divisional accounts i.e., the accounts for CABD rather than relying only on the tables and charts appended to their application for closure. Again, the witnesses for the employer have admitted that the employer has concentrated its production activities in CABD at Dadra in the last two or three years. It is probably for this reason that the tables show there is fall in production at CABD, Thane. In fact, the Vice President (Operations), who was examined by the employer, has stated in his cross-examination that for the last one and half years the Company is exclusively dealing from Dadra for all the orders and that orders booked by dealers were sent to Dadra for execution. He has also admitted that the growth of CABD in the last financial year before a joint venture between the employer and Fedders International Limited was formed was 36% as against the market growth of 15%. The only reason given by this witness for the employer for closure of the Undertaking at CABD, Thane is that the market forces were such that there was extreme competition in the products manufactured by various Companies and the cost of production at Thane was much more than in Dadra and, therefore, it was necessary to close down the CABD at Thane. Although, the witnesses claim that there is a loss of Rs. 36 crores to the CABD Unit at Thane, a separate balance-sheet or profit and loss account of this Unit has not been produced by the employer. The balance-sheets of the Company on the other hand show substantial profits and, therefore, if one considers the same, the reason given by the employer for closing down the undertaking cannot be termed as "genuine" or "adequate".

17. The "relevant factors" which the Tribunal was required to consider have also not been weighed by it. The argument of the employer in Vazir Glass Works" case (supra) that it was more profitable to run the Unit in the State of Gujarat as the taxes in that State were low and all other benefits and incentive for production were accorded to a fledgling unit is the same as the submission of the

employer in this case. The contention of the employer is that Dadra being a place where the taxes, octroi and other costs of production including workers' wages are far lower than in Thane, it was felt that the company would benefit by closing down the CABD Unit at Thane instead of running at losses. However, this cannot be considered as a genuine reason for closure of the undertaking. It is nobody's case that it has become impossible to run the establishment in Thane. In fact, the employer has not been able to indicate as to what are the steps taken by it for resurrecting the CABD Unit at Thane. As held by the Apex Court, some difficulty or financial hardship in running an establishment would not be sufficient to permit an employer to close down its business. The employer must demonstrate that it has become impossible to continue to run the establishment. In the present case, merely because the profits have dwindled, it would not indicate that it has become totally impossible to run the CABD Unit at Thane. If the workers are kept idle at CABD, Thane and work is not provided to them by the employer for reasons best known to the employer, it is but natural that the unit will become a loss-making one. Figures based on these factors to show that there is no production or that it is because of the stubbornness of the Union that matters have come to such a pass, would not justify a closure. It is the case of the employer that it cannot sustain its existence when there is complete absence of utilisation of the installed manufacturing capacity and workmen are being paid full salaries at the same time. In my view, this position has occurred because the employer has chosen not to provide employment to these workers at CABD, Thane and instead to direct all manufacturing operations at the Dadra Unit. It is true that an employer will not run his business at losses, but on the other hand, Section 25-O requires an employer to indicate the measures taken to avoid the closure. In fact, the application for closure requires the employer to indicate the specific measures undertaken by the employer to avoid the proposed closure. The application for closure mentions that the employer attempted to avoid the closure by introducing a Voluntary Retirement Scheme for that Unit. The other method of making the Unit at CABD, Thane viable was, according to the employer, to concentrate on manufacturing products at Dadra in order to survive the market as the cost of production was less there. Cost cutting measures had also been implemented to avoid the closure, According to the employer, in the absence of any support and cooperation from the Union, it was impossible to run the CABD Unit at Thane. These measures, as detailed in the application for closure, hardly indicate the genuine effort made by the employer to avoid the closure at CABD, Thane. There is no material on record to demonstrate that the employer had introduced new and modern methods of production or that the technology in the CABD Unit at Thane had been improved in order to compete with other manufacturers in the market. In fact, in the MOUs between the employer and the Unions, the employer had assured the workmen through their Unions that a large investment would be made on the machinery and technology to increase the productivity in CABD, Thane. There is no evidence to show that such steps have been adopted by the employer to resuscitate the Unit. Therefore, in my view, the Tribunal has not correctly considered the "other

relevant factors" while granting permission for the CABD Unit at Thane to close down.

18. The Tribunal was expected to consider the interest of the public while deciding the closure application u/s 25-O of the I.D. Act. What is meant by "interest of the public" is considered by the Division Bench of this Court in the case of Vazir Glass Works (supra). The submissions made on behalf of the employer that by having their manufacturing process done in Dadra for CABD they stand to gain as the Union Territory provides infrastructural facilities, gives subsidies and tax concessions and production costs are lowered, are similar to the submissions made by the employer in Vazir Glass Works (supra). However, the Division Bench has held that an employer who has set up an industry in a particular State and has prospered, cannot merely because of increase in cost of production arising out of higher wages and cost of raw material, decide to close down the concern and concentrate on the same Industry or unit in another State only because the facilities, benefits of low wages and other concessions are available to him. If steps are not taken to overcome the difficulties, the State would be faced with a situation of industries moving out of the State to others where cost of production on account of lower wages and/or raw material is less. The Division Bench has observed that such a situation would lead to a flight of industries from the State and, therefore, has held that while considering a closure application, the Tribunal should take into account the interest of the State as that would constitute "public interest". Closure can be prevented in such a situation by the Tribunal.

19. The Tribunal in this case has not considered the hardships which would be faced by the workers being thrown to the winds on account of closure of the CABD, Thane. This certainly would be a "relevant factor" which is necessary for the Tribunal to consider. In a closure application the Tribunal would be expected to assess the equities and judge whether the workers could be thrown out of employment merely because the employer finds that he would gain more profits if a particular unit is closed down and is continued in another State. The Tribunal would have to then bear in mind that the unemployment of these workers would lead to grave hardships for themselves and their families for no reason whatsoever. In the present case, this "relevant factor" has not been taken into account by the Tribunal. The jobs of 164 workmen would be thrown into peril. They would be faced with the vagaries of the job market merely because the employer insists on closing down the Unit at Thane. This could lead to their economic death. The Tribunal in this case has only considered the adequacy and genuineness of the reasons given by the employer and has come to the conclusion that the reasons for closure are genuine and adequate and that permission for closure ought to be granted. However, this is contrary to the view taken in Orissa Textile (supra) where the Apex Court has held that despite reasons being genuine and adequate, the Tribunal must also bear in mind "public interest" and "other relevant factors" while deciding a closure application. The Award of the Tribunal does not in any manner indicate that it has so assessed the

situation. I am, therefore, of the view that the Award of the Tribunal is not based on the law regarding closure as reflected in the judgments of the Apex Court and this Court.

20. As regards the R&D Section, the witnesses for the employer have stated that R&D was not a Corporate R&D and was merely available to the CABD. The evidence on record shows that muster rolls for the employees of R&D were separate. The Employee Code Number for R&D was not continuous with that of the CABD. The Tribunal, on the basis of evidence before it and on a correct assessment and appreciation of it, has come to the conclusion that R&D Section is a separate Unit from the CABD being a Corporate R&D and, therefore, has disallowed the closure of R&D. The Tribunal has considered the evidence on record and has come to the conclusion that the R&D is not a separate unit. It has also come to the conclusion based on the evidence before it that the work of 22 workmen employed in the R&D was related to all the Divisions at Thane as well as other establishments of the employer. The submissions made on behalf of the employer that the research in this department is confined only to the CABD, Thane, is not borne out by the evidence on record. In any event, if, according to the employer, the Research and Development Department was only meant for research in CABD, this Division in any event is working in Dadra and, therefore, the question of closing down the R&D does not arise. Moreover, the application for closure shows that it was made for permission to close down the Research and Development Section of the Undertaking i.e., CABD. Now, if the R&D Section was in fact part of the CABD, there was no need for the employer to make an application to close down this Section. The Tribunal has, therefore, correctly refused permission to close down the R&D.

21. Taking an overall view of the matter, I am of the considered opinion, that the Tribunal has erred in permitting closure of CABD Unit at Thane. Hence, Rule made absolute in Writ Petition No. 1957 of 2002 and Rule in Writ Petition No. 2041 of 2002 discharged. There shall be no order as to costs.

22. Mr. Singh, learned counsel appearing for the employer, seeks stay of this order for six weeks. The operation of this order is stayed for six weeks. Since the prayer for stay of this order is granted, the interim orders already passed in these writ petitions to continue for further period of six weeks.

23. Parties to act on an authenticated copy of this order.

24. Issuance of certified copy expedited.