

(1996) 09 GUJ CK 0017
In the Gujarat High Court
Case No : S.C.A. No. 835 of 1986

Workmen of Midco Containers Ltd.

APPELLANT

Vs

Midco Containers Ltd.

RESPONDENT

Date of Decision : 12-09-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 17

Citation : (1996) 09 GUJ CK 0017

Hon'ble Judges : R.K. Abichandani, J

Bench : Single Bench

Advocate : T.R. Mishra, for the Appellant; Vimal M. Patel, B.R. Gajjar and M.B. Buch, for the Respondent

Judgement

1. The petitioner-Union challenges the award dated May 31, 1985 of the Industrial Tribunal, Ahmedabad, permitting closure of the respondent No. 1, Undertaking in a Reference made u/s 25-O(5) of the Industrial Disputes Act and directing that the Company shall pay to the concerned workmen compensation as per the provisions of Section 25-O(8) of the said Act within one month from the date of the publication of the award and costs of Rs. 500/-.

2. The respondent No. 1-Company was incorporated in the year 1979 and engaged in the business of manufacturing of LPG cylinders having factory for that purpose at Vatva, Ahmedabad. The respondent No. 1-Company made an application u/s 25-O(1) of the said Act on October 21, 1984 for closing the undertaking. That application was made in Form XXX for a permission to close the undertaking from January 23, 1984 as a result of which 106 employees were to be affected. The Labour Commissioner and the specified authority considered the matter and after hearing both the sides, held that the provision of Rule 82(B) of the Industrial Disputes (Gujarat) Rules, 1966 was violated and further found that the applicant should improve the management to ensure production of LPG cylinders for which there always was a demand. It was held that the Undertaking should not be closed down because of the disputes, raised by workmen. Against

the order of the Commissioner rejecting the closure application Special Civil Application No. 611 of 1985 was preferred by the Company and in that petition a statement was made on behalf of the State Government that it was ready to make a Reference to the Industrial Tribunal u/s 25-O(5) of the said Act which was to be disposed of in one month. This concession made on behalf of the State Government was accepted by the parties including the present petitioner as recorded in the order of the High Court disposing of that petition which is reproduced in paragraph 16 of the award. In view of this arrangement reflected in the order of the High Court dated February 19, 1985, the State Government issued an order date March 1, 1985 u/s 25-O(5) referring the order dated December 21, 1984 of the Labour Commissioner refusing permission for closure, to the Tribunal for its adjudication. It was directed that the award may be passed within the period of 30 days as prescribed in sub-section (5) of Section 25-O. The Tribunal exhaustively dealing with the matter after hearing both the sides held that the respondent-Company had suffered huge loss in the business of manufacturing of LPG cylinders and that there were good reasons for closing down the undertaking. It was also held that because of continued disturbance and labour problems several technicians and officers had left the Company and ISI licence was suspended, orders were cancelled and whole of the capital invested by the Company was wiped out. It was held that the reasons given by the Company for closing the Undertaking were genuine and adequate. The Tribunal therefore granted permission, to the employer to close down its undertaking, to be effective from the date of publication of the award and directed compensation to be paid under sub-section (8) of Section 25-O as aforesaid.

3. The learned Counsel Mr. T. R. Misbra appearing for the petitioner contended that the Tribunal had acted without jurisdiction because no Reference could be made u/s 25-O(5) in absence of an application for review or reference by the Company under the said provision. It was also contended that the Tribunal had gone beyond the terms of reference and acted in excess of its jurisdiction in permitting closure. It was further argued that only the activity of manufacturing of cylinders was stopped and it is not as if the Company was closed down. It was finally argued that the respondent No. 1-Company had not actually closed down and was continuing its activity despite closure order which would remain in force for one year.

4. It was contended on behalf of the respondent No. 1-Company that the petitioner was estopped from challenging the reference on the ground that application of review was not made by the Company u/s 25-O(5) since the petitioner had agreed to a reference being made under the said provision pursuant to the statement made on behalf of the State Government which was recorded in the order dated February 19, 1985 while disposing of Special Civil Application No. 611 of 1985. Relying on the decision of a Division Bench of this Court in *Rajya General Kamdar Mandal and Others Vs. Vice President, Packart Press, Div. Ambalal Sarabhai Enterprises, Baroda and Others*, it was contended

that the Government was under a duty either to review its earlier order or to refer the matter to the Tribunal for adjudication and the fact that the Government made a statement before the High Court in the earlier petition that it was ready to make a reference clearly shows that it had decided not to review the order refusing closure. It was submitted that the Tribunal had on the basis of the material on record arrived at findings of fact that ought not be disturbed, by this Court in exercise of its writ jurisdiction. It was submitted that there were genuine and adequate reasons for closure and that the respondent No. 1-Company was ready to pay the compensation payable under Sub-section (8) of Section 25-O of the said Act as directed under the award. It was submitted by the learned senior Counsel that even now the respondent No. 1-Company was prepared to pay the dues to the workmen pursuant to the closure as per the award and that even though the delay in payment was because the workmen did not come and collect the amount, they were also prepared to pay reasonable interest on the delayed payment as may be fixed by this Court. It was further submitted that the respondent No. 1-Company and the respondent No. 3-Company were independent legal entities and the respondent No. 3-Company was in existence since much prior to the respondent No. 1-Company. It was submitted that the bills and statements annexed with the affidavit in-rejoinder by the petitioner are in respect of the business of the respondent No. 3-Company and there was nothing to show that the respondent No. 1-Company had not closed down the undertaking pursuant to the award. The learned Counsel appearing for the respondent No. 3-Company supported the case of the respondent No. 1-Company on the aspect that it was an independent legal entity and that its activities were not the activities of the respondent No. 1-Company as was alleged by the petitioner in the affidavit-in-rejoinder.

5. The learned Counsel appearing for the State Government submitted that reference was made by the State Government u/s 25-O(5) since it did not want to review the order itself and such reference could be made even without any application of the Company u/s 25-O of the Act seeking revision of the order refusing closure. It was contended that the petitioner having agreed to making of the reference to the Tribunal, was estopped from questioning the order of reference. Reliance was placed in support of this submission, on the decision of the Supreme Court in *The Workmen and Others Vs. Hindustan Lever Ltd.*, in which it was held that where the parties agreed not to raise a particular issue that party was estopped from raising the issue. It was also submitted that when the matter was referred to the Tribunal it had power to record the evidence adduced before it. Reliance was placed, in support of this contention, on the decision of the Supreme Court in *Workmen v. Firestone Tyre and Rubber Company* reported in (1978 ILLJ278) in which in context of the provisions of Section 11A of the said Act it was held that even if no enquiry was held, the parties could adduce evidence before the Tribunal and in that event the Tribunal was required to decide the matter on the evidence adduced before it.

6. The provision of Section 25-O lays down procedure for closing down an

undertaking. The word "closure" means permanent closing down of a place of employment or part thereof, as defined in Section 2(cc) of the said Act. Therefore, closure contemplated u/s 25-O would be a permanent closing down of the undertaking. An undertaking as defined in Section 2(ka) means undertaking in which any industry is carried on and if several activities are carried on in the undertaking and only one or some of such activities is or are an industry or industries then if any unit of such undertaking carrying on any activity, being an industry, is severable from the other units of such undertaking, such unit shall be deemed to be a separate undertaking. Permission of the appropriate Government is a condition precedent @or a valid closure of the undertaking in view of Section 25-O(1). On an application being made, the appropriate Government is required to make an enquiry in which the employer, the workmen and other persons interested are required to be heard. The factors which are to be borne in mind by the appropriate Government while taking a decision which is to be by a reasoned and speaking order, are, genuineness and adequacy of the reasons for closure stated by the employer, the interest of the general public and all other relevant factors. An order granting or refusing to grant the permission is required to be communicated to the employer and the workmen. Such an order remains in force for one year from its date as provided in sub-section (4) of Section 25-O and it is final and binding on all the parties subject to, of course, the provisions of Section 25-O(5) under which the appropriate Government may itself or in an application of the employer or a workman review the order granting or refusing to grant permission under sub-Section (2) or refer the matter to a Tribunal for adjudication.

7. Section 25-O(5) enables the appropriate Government to suo motu take up the order made under sub-section (2) granting or refusing, to grant permission for review or for referring make a reference u/s 25-O(5) of the Act it was implicit that the Government was referring the issue of examining the validity of the order under sub-section (5) of Section 25-O of the Act to the Tribunal, since it did not want to review the order itself. Therefore, apart from the question of estoppel, the State Government was clearly empowered under sub-section (5) of Section 25-O to make a suo motu reference of the order made by the Labour Commissioner under sub-section (2) of Section 25-O to the Tribunal and it cannot be said that the Tribunal has acted without jurisdiction in entertaining the reference in absence of an application made by the employer for review of the order or for a reference.

8. The petitioner was a party in the arrangement of reference being made u/s 25-O(5) because it has been specifically recorded in the order dated February 19, 1985 that the concession of the State Government that it would refer the matter u/s 25-O(5) was acceptable to Mr. Zaveri who in that petition appeared on behalf of the present petitioner. Therefore, it is not open to the petitioner to challenge the jurisdiction of the Tribunal on the ground that the reference was made without there being any application. In any event, as held above, a reference would be made suo motu by the State Government without there being any

application for review or reference u/s 25-O(5) of the said Act.

9. An order of the appropriate Government granting or refusing to grant permission would remain in force for one year from the date of the order. This would mean, in case an order refusing to grant permission is passed, that during the currency of that order no fresh application for permission could be made and on the expiry of one year from the date of the order, afresh application could be made by the employer for permission to close down an undertaking. In context of an order granting permission to close, the concept of its remaining in force for one year would mean that during that one year if the undertaking is not actually closed down as per the permission granted, then after completion of that year there would be no permission on the basis of which the undertaking could be closed. In that event, the employer will have to apply again for a fresh permission to close the undertaking because the order granting permission earlier would be no more in force after one year from its date.

10. When the matter is referred to the Tribunal it is the matter pertaining to the order that is passed by the appropriate Government under sub-section (2) of Section 25-O either granting or refusing permission for closure of the Undertaking. When the order refusing or granting permission to close is passed there would be no question of reviewing it after one year or making a reference after the period of its expiry. The order permitting closure will not be final and binding on the parties if it is taken up in review by the appropriate Government or a reference is made to the Tribunal. A different view can be taken by the appropriate Government on review or by the Tribunal while hearing the reference. While hearing the reference the Tribunal has to examine the question whether the relevant factors required to be taken into account while making an inquiry under sub-section (2) of Section 25-O exist or not. Even if the permission for closure is refused by the appropriate Government, in a reference the Tribunal can take into consideration all relevant aspects which have a bearing on the question of rendering such decision and adjudicate upon the matter which means it can give its own decision. In the process of adjudication and making an award within 30 days from the date of the reference the Tribunal can re-examine the entire issue, take evidence in the process of giving a reasonable opportunity of hearing to the parties and the persons interested and if it finds that there are genuine and adequate reasons given by the employer, then keeping in view the interest of general public and other relevant factors, the Tribunal can hold that permission for closure ought to be granted. When permission of closure was refused by the appropriate Government and the Tribunal on a reference being made permits closure, the life of that order will be one year from the date on which the award becomes enforceable, not under sub-section (4) of Section 25-O, but u/s 19(3) which provides that an award shall, subject to the provisions of that Section, remain in operation for a period of one year from the date on which it becomes enforceable u/s 17A of the Act. In the instant case, reference was made u/s 25-O(5) on March 1, 1985 to the Tribunal in respect of the order of the Labour Commissioner dated December 21, 1984 and the Tribunal made an award

on May 31, 1985 which was within the period of one year of the date of the order of the Labour Commissioner. As held above, even without formal application u/s 25-O(5) the appropriate Government could have referred the matter to the Tribunal. Therefore, the Tribunal has acted within its jurisdiction in making the impugned award and the decision of the Supreme Court in *Vazir Glass Works Ltd. Vs. Maharashtra General Kamgar Union and another*, cannot help the petitioner. In that case it was in terms held that since the decision made on an application for permission for closure is to remain operative only for a year, an order by way of review either on the aggrieved party's application or on own motion of the State Government, must be made within the said period of one year. In the present case, the order of the Tribunal is made within a period of one year from the date of the order of the Labour Commissioner on the application for permission for closure and therefore it is not as if the Tribunal has exercised power after the order ceased to remain in force.

11. The Tribunal was required to consider and adjudicate upon the matter relating to the application of the employer seeking permission for closure. The reference emanated from the provisions of Section 25-O(2)(5) of the Act and in the process the Tribunal was justified in examining all the relevant aspects having bearing on genuineness and adequacy of the reasons for the proposed closure, interest of general public and other relevant factors. It cannot be said that these aspects should not have been gone into in absence of a reference u/s 10(1)(d), as sought to be contended on behalf of the petitioner. As held above, the reference was validly made by the appropriate Government and therefore consideration of the said matter was fully warranted under the provisions of Section 25-O(5) of the Act and it cannot be said that in absence of a reference u/s 10(1)(d), the Tribunal could not have adjudicated upon the question of closure.

12. It was sought to be contended on behalf of the petitioner that despite permission for closure given under the impugned award the respondent No. 1-Company had continued its production activity. Reliance was sought to be placed on the excise statement Form RT 12 and copies of certain bills annexed with the affidavit-in-rejoinder filed by the petitioner on April 8, 1996. It was submitted on the basis of these documents that the Mercantile and Industrial Development Company Pvt. Limited is shown to have manufactured Midco Make Petrol Dispensing Pumps in May 1988 and had supplied heavy duty petrol metering and dispensing pumps. It was submitted that the Company which had carried out retrenchment and closed down was known as Midco Containers Pvt. Ltd. and the abbreviated form of Midco is now expanded to Mercantile and Industrial Development Company Private Limited and that this Court should lift the veil and come to the conclusion that the very same Company was now operating under a different name. It has been brought on record by the affidavits-in-reply filed by the Respondent No. 1 and Respondent No. 3 - Companies that they are independent legal entities. The respondent No. 3-Company was incorporated on November 12, 1949 as a Private Limited Company and converted into a Public Limited Company from December 28, 1989. It has given details of its separate

registration numbers in paragraph No. 4 of its affidavit-in-reply. The respondent No. 1-Company is therefore prima facie a separate legal entity and the documents which are sought to be relied on by the petitioner pertaining to the transactions of the respondent No. 3-Company in 1987 and 1988 in respect of petrol pumps spare parts cannot assist the petitioner for contending that the respondent No. 1-Company which was dealing in LPG cylinders did not close down after the award was made by the Tribunal granting permission for closure u/s 25-O(5) of the Act. The present petition is directed against the award of the Tribunal and the question as to whether closure permission was availed of or not within one year of that award was altogether a separate issue and the petitioner could have raised such issue at the relevant time if it was its case that the closure was not, in fact, effected.

13. On the basis of the material on record the Tribunal found that the workmen had not kept to their assurance under the Settlement of minimum production of 400 cylinders per day and the production of the Company had gone down to as low as 1600 per month. Attempts of the Company to get the production stepped up failed. It was found that the atmosphere of tension was created and loyal workmen were threatened and assaulted bringing everything to a standstill. Some of the supervisors and officers resigned out of fear and the production had totally stopped. The ISI licence of the Company was also suspended and some of the orders placed with the Company were cancelled. It was also noted that the whole capital of the Company was wiped out. On the basis of the oral and documentary evidence adduced before it, the Tribunal found that the Company suffered huge loss in the business of manufacture of LPG cylinders, and, keeping in view the relevant factors including the interest of general public, the Tribunal formed an opinion that there were genuine and adequate reasons for the Company for closing down its undertaking. It is not open to this Court to reappreciate the evidence on record for coming to a different finding. The reasons given by the Tribunal, for holding that a case for closure was made out, are cogent and based on the relevant material on record. If the employer wants to close down his undertaking bona fide and because of financial or commercial compulsions or serious management problems then the authorities will have to grant permission unless there are compelling and overwhelming reasons of general public interest justifying refusal. In the instant case, there are no compelling or overwhelming reasons of general public interest to justify refusal and there is absolutely no warrant for interference with the impugned award of the Tribunal permitting closure of the respondent No. 1-Company.

14. Under the above circumstances the challenge of the petitioner against the impugned award fails. The respondent No. 1-Company however was bound to implement the award regarding payment of compensation as per the provisions of sub-section (8) of Section 25-O of the said Act notwithstanding the pendency of this position. It is stated on behalf of the respondent No. 1-Company that the employees who have not been paid the compensation as per the award will be paid the same at such rate of interest as the Court may direct. It is accordingly

directed that the respondent No. 1-Company will pay the compensation as per the provisions of sub-section (8) of Section 25 as was directed to be paid under the impugned award to the concerned workmen with interest at the rate of 12 per cent per annum with yearly interests from the date on which the amount fell due under the award till the payment is made to the concerned workmen who have not been paid the amount. Subject to these directions the petition is rejected. Rule is discharged with no order as to costs.