Association of Engineering Workers Vs. Multiweld Wire Co. Pvt. Ltd. and ors.

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Court : Mumbai

Decided On : Apr-08-1986

Reported in : [1987(54)FLR239]; (1995)IIILLJ644Bom

Judge : S.P. Bharucha, J.

Acts : Industrial Disputes Act, 1947; Industrial Disputes (Maharashtra Amendment) Act, 1981 - Sections 25O

Appeal No. : W.P. No. 1520 of 1985

Appellant : Association of Engineering Workers

Respondent : Multiweld Wire Co. Pvt. Ltd. and ors.

Advocate for Def. : B.N. Srikrishna, Adv. for R1 and ;N.B. Jaggad, Adv. for R.2 and 3

Advocate for Pet/Ap. : S.J. Deshmukh, ;N.M. Ganguli, ;Suresh and ;S. Pikale, Advs.

Judgement :

S.P. Bharucha, J.

1. The 1st respondent is a private limited company which has a factory at Marol, Andheri, Bombay, and another at Khopoli. All the workmen in the factory at Marol

are members of the petitioner trade union.

2. On 31st March 1984 the 1st respondent made an application under Section 25-0, as amended in Maharashtra, of the Industrial Disputes Act, 1947 (now called 'the said Act') for permission to close down its Marol factory. The petitioner objected. There was a hearing before the 3rd respondent, who was the deciding authority. By an order dated 27th May 1984 the 3rd respondent declined permission. There is some controversy as to the date upon which this order was communicated to the 1st respondent but it is not relevant for the purposes of this petition. Though it was the case of the 1st respondent that the 3rd respondent's order was communicated to it after the expiry of the period of 60 days from the date of receipt of its application by the State Government, it filed an appeal against the order by way of, it said, abundant caution. On 10th June 1985 the Industrial Tribunal allowed the appeal. The petition impugns the order of the Industrial Tribunal.

3. In Excel Wear v. Union of India, : (1978)IILLJ527SC the Supreme Court considered the constitutional validity of Section 25-O of the said Act as it then read. The Supreme Court held that the law could make provisions to deter reckless, unfair, unjust or mala fide closures but not to permit an employer to close down was essentially an interference with his fundamental right to carry on business. The provision as it then stood was struck down.

4. Having regard to the judgment in the Excel Wear case, Section 25-O was re-enacted in the State of Maharashtra to read, inter alia, thus:

Section 25-O. 'Application to be made for obtaining permission to close down an undertaking ninety days before closure:- (1) An employer, who intends to close down an undertaking, of an industrial establishment to which this Chapter applies shall submit, for permission, at least ninety days before the date on which the intended closure is to become effective, an application, in the prescribed manner, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking. A copy of such application shall be served by the employer simultaneously on the representatives of the workmen in the prescribed manner:Provided that, nothing in this section shall apply to an undertaking set up

for the construction of buildings, bridges, roads, canals, dams or other construction works.

(2) On receipt of an application under Sub-section (1), the appropriate Government, after holding such inquiry as it deems fit and after giving reasonable opportunity of being heard to the applicant and the representatives of the workmen may for the reasons to be recorded in writing by order, grant the permission for closure, or if it is satisfied that the reasons given for the intended closure of the undertaking are not adequate and sufficient, or are not urged in good faith or are grossly unfair or unjust, and in any case such closure would be prejudicial to the interests of the general public, it may for the reasons to be recorded in writing, by order refuse to grant the permission and direct the employer not to close such undertaking. A copy of any decision given by the appropriate Government under this sub-section shall sent by it simultaneously to the representatives of the workmen.

(3) Where an application for permission has been made under Sub-section (1), and the appropriate Government does not communicate the refusal to grant the permission to the employer, within a period of sixty days from the date of receipt of the application by it, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) Any employer or any workman affected by any order made under Sub-section (2) or any workman affected by the permission deemed to be granted under Sub-section (3), may, within thirty days from the date of the order or from the date from which the permission is deemed to be granted, as the case may be, prefer an appeal to such Industrial Tribunal as may be specified by the appropriate Government by Notification in the Official Gazette for such area or areas or for the whole State, as may be specified therein. The Industrial Tribunal shall, after holding such inquiry as it deems fit, as far as possible within thirty days from the date of filing the appeal, pass an order, either affirming or setting aside the order of the appropriate Government or the permission deemed to be granted, as the case may be.....'

5. Under the provisions of Rule 82B of the Industrial Disputes (Bombay) Rules, 1957, a form is prescribed for an application under Section 25-O. The form contains an annexure which calls for information. Item 22 of the annexure requires the employer to state the reasons for the proposed closure and item 23 requires the employer to state what specific attempts have been made to avoid the closure.

6. In its application the 1st respondent gave the following as its reasons for closure:

'We are mainly catering to Export Market, more than 80% of our products are exported. Due to heavy recession in the international market, the price has come down considerably and the manufacturers from developed countries are making distress sales with whom we are unable to compete. There are about 11 Companies in Gulf Countries and we find it difficult to compete with them.

The price of raw material i.e. M.S. Wire Rope has come down in the International Market during the past 4 years from U.S. Dollars 400 per MT. to U.S. Dollars 250, per M.T. whereas the price of indigenous raw material during the aforesaid period has gone up by Rs. 2,300/- per M-T. During the said period S.A.I.L. has revised the price of raw material on 4 different occasions.

Further our cargo being bulky the freight involved is quite high making it still difficult to compete in the foreign market. Under the circumstances, we are not able to get sufficient export orders for our product at remunerative prices.

The product of Welded mesh for use in reinforcement of cement is not yet popular in the local market as the cost of construction labourers in India is comparatively cheap.

There are about 15 Companies manufacturing this product in India for general purpose use. Most of them are in Small Scale Industries who get an added advantage in quoting lower price than ours as they are not required to charge 10% excise duty. Therefore, we are not able to push our product in the local market at remunerative prices. Since we are not getting orders from Export and Local Market at remunerative prices and our capacity for production being largest in India, the

machines are very much underutilised.'

There appears to have been a failure to state what attempts, if any, had been made to avoid the closure.

7. The Industrial Tribunal relied upon the documentary material produced by the 1st respondent and observed that the petitioner had not placed any counter-material to question the correctness of the factors relied upon by the 1st respondent. It was found that not a single instance of unfair labour practice on the part of the 1st respondent had been alleged or proved by the petitioner in support of its case that the closure was being effected for extraneous reasons. The statements of accounts upon which reliance was placed by the 1st respondent were duly audited by auditors qualified to audit accounts under the provisions of the Companies Act and were found by the Tribunal to reflect a true and correct account of the affairs of the 1st respondent. They showed that the company's financial position was progressively deteriorating and had become worse because of the refusal of the State Government to permit retrenchment. The Tribunal found that the reasons given for the intended closure of the Marol Factory were adequate and sufficient, fair and just and not prejudicial to the interests of the general public.

8. Having regard to the judgment of the Supreme Court in the Excel Wear case and the provisions of Section 25-O as then operative in Maharashtra, the statement of reasons given by an employer for closing down an undertaking must be examined to determine that the closure is not reckless or unfair or unjust or mala fide, or for inadequate or insufficient reasons and that it would not be prejudicial to the interests of the general public. To enable the authorities to determine this the reasons for the closure must state the factual data upon which the employer has taken the decision to close down the undertaking. The source of such factual data must be indicated and, where possible, annexed so that its correctness is verifiable. The conclusions drawn by the employer from the factual data must be stated. The person or the body of persons which has taken the decision to close down must be pinpointed. The reasons for closure and/or the application for permission to close down must be signed on behalf of the employer

by the person or one of the body of persons which has taken the decision to close down. To the same end the employer must also set out precisely what attempts, if any, it has made to avoid the closure.

9. The 1st respondent's statement of reasons avers that there was a recession in the international market but relies upon no material or publication to support the averment. It does not rely upon any material or publication in support of the averment that prices had come down considerably and manufacturers from developed countries were making distress sales. There is an averment about 11 companies in the Gulf countries with which the 1st respondent found competition difficult, but neither the companies nor the Gulf countries are named. There is no documentary support for the averment that the price of the raw material had come down in the international market during the past 4 years from U.S. $ 400 per M.T. to U.S. $ 250 per M.T. or for the averment that the price of indigenous raw material had during the same period gone up by Rs. 2,300/- per M-T. An averment is made that the freight involved in shipping the 1st respondent's cargo was high so that it was not able to get sufficient export orders at remunerative prices. One would have expected a statement of what prices were considered remunerative, what prices were in fact obtained, and what was considered a sufficient export order. There is an averment about 15 companies manufacturing welded mesh in India, most of which are said to be small-scale industries who could charge a lower price because they were not required to charge 10% excise duty. Which or how many of the 15 companies had the advantage of lower excise duty is not set out, nor what that lower price was. The last averment in the reasons for closure is that the 1st respondent's capacity for production, being the largest in India, was much underutilized. It is a statement glaring in its vagueness. What the 1st respondents installed capacity was and what its utilised capacity was were of greater relevance.

10. There was a failure on 1st respondent's part to state what attempts, if any, had been made to avoid the closure.

11. It is difficult in these circumstances to see how the Industrial Tribunal could have determined that the 1st respondent's decision to close down its Marol undertaking was not reckless or unfair or unjust or mala fide or for inadequate or

insufficient reasons.

12. In the circumstances, the impugned order is quashed and set aside and the matter is remanded to the Industrial Tribunal. The 1st respondent shall be at liberty to file an additional statement of reasons along the lines indicated above and the petitioner shall be entitled to reply to it. The 1st respondent shall also be entitled to rely upon its financial position as on the date on which the Industrial Tribunal considers the matter afresh and the Industrial Tribunal shall take this into account. In the event that the Industrial Tribunal considers that any particular or particulars should be proved, the Industrial Tribunal shall be entitled to call for such proof under the provisions of Rule 17 of the Industrial Disputes (Bombay) Rules. The Industrial Tribunal shall, having regard to the materials on record, the contentions of the 1st respondent and the petitioner and the observations made herein, decide whether permission to close down its Marol undertaking should be granted to the 1st respondent under the provisions of Section 25-O (Maharashtra Amendment) of the said Act.

13. The Industrial Tribunal should, as far as possible, take this decision within a period of 4 months from today.

No order as to costs.

Rule accordingly.