Jayhind Engineering, Unit-i and anr. Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Jan-28-2004

Reported in : [2004(101)FLR1156]; ILR2004KAR1852; 2004(3)KarLJ26; (2004)IILLJ744Kant

Judge : P. Vishwanatha Shetty and ;Ajit J. Gunjal, JJ.

Acts : Industrial Disputes Act, 1947 - Sections 25O, 25O(1), 25O(2) and 25O(3); Karnataka High Court Act, 1961 - Sections 4

Appeal No. : Writ Appeal Nos. 2547 and 2548 of 2000

Appellant : Jayhind Engineering, Unit-i and anr.

Respondent : State of Karnataka and ors.

Advocate for Def. : Ratna N. Shivayogimath, Government Pleader for Respondent-1; ;N. Devadass, Central Government Standing Counsel for Respondent-2; ;B.S. Umesh, Adv. for Respondent-3

Advocate for Pet/Ap. : S. Vijayashankar, Senior Adv. for B.C. Prabhakar, Adv.

Disposition : Appeal dismissed

Judgement :

P. Vishwanatha Shetty, J.

1. The appellants in these appeals were the petitioners in Writ Petition Nos. 36102 and 36103 of 1997. In these appeals the appellants have called in question the correctness of the order dated 20th March, 1999 made by the learned Single Judge in the writ petitions.

2. Facts in brief leading to these writ appeals, may be stated as hereunder:

The first appellant-Jayhind Engineering [hereinafter referred to as the Appellant-Firm] is a registered partnership firm and it has set up one of its factories, which is known as Unit-I at Industrial Estate, Udyambag, Belgaum. In Unit-I of the Appellant-Firm, there are seven separate sections. Crankshaft Light Bay and Development Sections are the two out of the seven sections in the factory. It is claimed by the Appellant-Firm that each section is separate; the activities of each section are independent and there is no inter-dependability between each of the section and the workmen of each section are exclusive and if any one of the section closes, the other section will function without any problem. The Appellant-Firm made an application on 29th August, 1997, a copy of which has been produced as Annexure-A to these appeals, before the first respondent-State Government [hereinafter referred to as the State Government] under Section 25-O of the Industrial Disputes Act, 1947 [hereinafter referred to as the Act] seeking permission to close down Crankshaft Light Bay and Development Sections on the ground that the Appellant-Firm was unable to continue its full activities on account of the circumstances beyond its control; and in spite of best efforts made by it, the existing machinery in those sections having worn out and not giving the desired output on account of wear and tear; and replacing of those machinery with modern equipment would require heavy investments and the Appellant-Firm is not in a position to make heavy investments to replace the machinery, etc. However, the application filed was returned by the State Government to the Appellant-Firm on 19th September, 1997, a copy of which has been produced as Annexure-B to these appeals which was received by the Appellant-Firm on 23rd September, 1997, on the ground that the copy of the application was not served on the representative of the 3rd respondent-workmen [hereinafter referred to as the workmen] as required under Sub-section (1) of Section 25-O of the Act. The Appellant-Firm re-presented the application before the State Government on 24th

September, 1997, a copy of which has been produced as Annexure-C to these appeals, along with a covering letter, which was received by the State Government on 26th September, 1997. While re-presenting the application, the Appellant-Firm pointed out that the copy of the application Annexure-A was sent through Registered Post Acknowledgment Due to the representative of the workmen on 29th August, 1997, which was received by the representative of the workmen on 30th August, 1997 and as such, statutory notice required to be given by the Appellant-Firm was complied with on 29th August, 1997 itself; and since the prescribed Form did not contain any column requiring the Appellant-Firm to state about serving of the copy of the application to the representative of the workmen, the same could not be mentioned in the application filed by the Appellant-Firm before the State Government. After the receipt of the re-presented application, the State Government sent notice dated 7th November, 1997 fixing the hearing of application on 14th November, 1997. Thereafter, the State Government, after hearing the Appellant-Firm and the representative of the workmen, made an order dated 11th December, 1997, a copy of which has been produced as Annexure-L to these appeals, rejecting the application filed by the Appellant-Firm seeking permission to close down the two Units of the Appellant-Firm. The writ petitions filed by the Appellant-Firm challenging the correctness of order Annexure-L having been dismissed, the appellants have filed these appeals.

3. Sri S. Vijayashankar, learned Senior Advocate appearing along with Sri B.C. Prabhakar, learned Counsel appearing for the appellants, challenging the correctness of the impugned order made by the learned Single Judge, made three submissions. Firstly, he submitted that since the application was filed by the Appellant-Firm on 29th August, 1997 after serving a copy of the application on the representative of the workmen and since there was no order made communicating the decision of the State Government refusing to grant permission to the Appellant-Firm within the period of sixty days from the date on which the application Annexure-A was made, i.e., within sixty days from 30th August, 1997, the permission sought for by the Appellant-Firm to close down the Units is deemed to have been granted by the State Government; and therefore the Order Annexure-L passed after the expiry of sixty days prescribed under Sub-section (3) of Section 25-O of the Act must be held to be totally illegal and the one made

without the authority of law. Elaborating this submission, the learned Counsel pointed out that since the statutory requirement of serving a copy of the application on the representative of the workmen was admittedly having been complied with, the State Government had erred in law in returning the application to the Appellant-Firm and the error committed by the State Government should not be put against the Appellant-Firm to deny the benefit of deemed permission statutorily available to the Appellant-Firm. It is also his submission that since it is admitted by the representative of the workmen in the statement of objections filed that the Appellant-Firm had the benefit of the deemed permission, the learned Single Judge has seriously erred in law in holding that the Appellant-Firm was not entitled for deemed permission for closure of the Units in terms of Sub-section (3) of Section 25-O of the Act. Secondly, he pointed out that since admittedly the application Annexure-A re-presented by the Appellant-Firm was received by the State Government on 30th September, 1997 and the Order Annexure-L was passed only on 11th December, 1997, i.e., beyond sixty days prescribed under Sub-section (3) of Section 25-O of the Act, the permission sought also is deemed to have been granted. The learned Counsel pointed out that the reasons assigned by the learned Single Judge to reject this contention of the appellants is totally erroneous in law inasmuch as the learned Single Judge has erred in taking the view that once the notice for enquiry was issued, the deemed permission cannot be set in to nullify the enquiry. The learned Counsel submitted that a duty is cast on the State Government to make an order within sixty days from the date of application; and fixation of date of enquiry will not arrest the time prescribed for the benefit of deemed permission available to the appellant under Sub-section (3) of Section 25-O of the Act. In support of his submission the learned Counsel relied upon the judgment of the Supreme Court in the case of State of Haryana and Anr. v. Hitkari Potteries Limited and Anr. : (2001)IILLJ425SC . Finally, he pointed out that the conclusion reached by the learned Single Judge that even if the deemed permission is granted, it would be available only for a period of one year and the period having been expired long before the hearing of the writ petition, the order Annexure-L must be held to have spent itself and is erroneous in law. It is his submission that the since the order Annexure-L would seriously affect the rights of the Appellant- Firm, the learned Single Judge should have examined the

correctness of the order Annexure-L on merits and on such examination he ought to have held that order Annexure-L is liable to be quashed on the ground that the same came to be passed without application of mind.

4. However, Sri Ram M. Apte, who is the representative of the workmen while strongly supporting the impugned order pointed out that the order Annexure-L does not call for interference by this Court. It is his submission that since the Appellant-Firm has ailed to discharge its statutory obligation of communicating to the State Government that the copy of the application Annexure-A was served on the representative of the workmen, cannot try to take advantage of the benefit of grant of deemed permission in terms of Sub-section (3) of Section 25-O of the Act. Elaborating this submission he pointed out that since admittedly, application Annexure-A filed by the Appellant-Firm was returned to the Appellant-Firm, it is only the date of the receipt of application, i.e., 26th September, 1997, after it was re-presented on 24th September, 1997, alone has to be taken into consideration for calculating sixty days, to avail the benefit of deemed permission and since admittedly before the expiry of sixty days on 24th November, 1997 itself, the State Government had posted the matter for hearing, the non-passing of the order within a period of sixty days from 26th September, 1997, would not enure to the benefit of the Appellant-Firm to contend that the Appellant-Firm was entitled for the benefit of deemed permission in terms of Sub-section (3) of Section 25-O of the Act. He further, submitted that since the State Government, after hearing the parties and on consideration of materials on record, has found that the claim made by the Appellant-Firm for closure of two units was not bona fide and was motivated on account of the fact that the workmen had gone on strike and the said finding being purely a question of fact, the same is not liable to be interfered with by this Court in exercise of its power under Articles 226 and 227 of the Constitution of India.

5. In the light of the rival submissions made by the learned Counsels appearing for the parties as stated above, the only question that would arise for our consideration in these appeals is as to whether the order Annexure-L, dated 11th December, 1997 passed by the State Government and Order impugned dated 20th March, 1999 passed by the learned Single Judge would call for interference by us in these appeals?

6. Now, we will proceed to consider each of the contentions advanced by the learned Counsel appearing for the appellants. The answer to the first contention advanced by Sri Vijayashankar that since there was no order made refusing to grant permission within sixty days from the date of application Annexure-A, the Appellant-Firm was entitled for the benefit of deemed permission, would depend upon the interpretation to be placed on Sub-sections (1), (2) and (3) of Section 25-O of the Act. Therefore, it is useful to extract the said provisions, which read as follows:

'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 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 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 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'.

7. It is not in dispute that application Annexure-A seeking permission was received by the State Government on 30th August, 1997. It is also not in dispute that a copy of the application was sent to the representative of the workmen by Registered Post Acknowledgement Due and it was received by him on 30th August, 1997. The only dispute is that, it was not notified to the State Government by the Appellant-Firm that the copy of the application was notified or served on the representative of the workmen, i.e., the 3rd respondent. Since it was not brought to the notice of the State Government that the copy of application Annexure-A was simultaneously served on the representative of the workmen, the said application came to be returned to the Appellant-Firm on 19th September, 1997. Sub-section (1) of Section 25-O of the Act mandates that the copy of the application filed seeking permission to close down the undertaking of an industrial establishment should 'be served' simultaneously on the representative of the workmen in the prescribed manner. The requirement of communication of the application filed seeking permission to close down the undertaking of an industrial establishment simultaneously to the representative of the workmen, in our view, is mandatory in nature and non-compliance of said the procedural requirement would go to the root of the matter and the filing of such an application would be invalid in law and would not confer any authority or power on the State Government to consider the said application on merits. However, the question is, when an application, as a matter of fact, was served on the representative of the workmen, but serving of such an application was not brought to the notice of the State Government, the question that would arise for consideration is whether such a defect would affect the validity of filing of such an application? No doubt it is the contention of the learned Counsel for the appellants that the Form prescribed does not refer to a column where such an information is required to be set out. In our view, even assuming that the Form prescribed does not provide for a column to furnish such an information, it would not absolve the employer, who intends to close down an undertaking of an industrial establishment, of his duty to furnish the information to the State Government about service of application to the representative of the workmen. The object of simultaneously serving the application to the representative of workmen was, to give an opportunity to the workmen to have their say with regard to the request made in the application seeking closing down

of an industrial establishment. The closing down of an industrial establishment, it cannot be disputed, would have serious consequences depriving the workmen of their right to continue in employment which would eventually affect their right to livelihood. Therefore, when the law mandates that a copy of the application should be simultaneously served on the representative of the workmen, as noticed by us earlier, the said statutory requirement is to be complied with by the employer and there is no escape for the employer from complying with such statutory requirements. If the entire matter is viewed from that point of view, the only course left open to the State Government in such circumstances, is to return the application to the employer to satisfy the statutory requirement. That is what has been done in the present case. Therefore, we are of the view that since the Appellant-Firm has failed to bring to the notice of the State Government that the copy of the application was served on the representative of the workmen, the State Government, was fully justified in returning the application Annexure-A on 19th September, 1997. Therefore, once the application is returned to the Appellant-Firm and thereafter when the application was received by the State Government on 26th September, 1997, in our view, for all purposes the date of receipt of such an application after re-presentation, alone, should be taken as the date of filing of the application seeking permission to close down the industrial establishment for the purpose of determining the period prescribed to get the benefit of deemed permission. The reading of Sub-section (3) of Section 25-O of the Act, to our mind appears that, to get the benefit of deemed permission, two things are required to be complied with - (1) there should be an application filed as required under Sub-section (1) of Section 25-O of the Act; and (2) the Government should not have made an order either granting or refusing to grant permission to the employer within a period of sixty days from the date on which such an application is made.

8. Therefore, since the application filed in the present case on 24th August, 1997 cannot be considered as a valid application filed for want of particulars regarding service of the said application to the representative of the workmen and on that ground that such an application was returned by the State Government, in our view, the date of filing of the application on 24th August, 1997 cannot be taken into account to take the view that since there was no order made within sixty days from

24th August, 1997, the appellant is entitled for the benefit of deemed permission. Further, this matter also could be viewed from another angle. The return of the application by the State Government, even assuming for the sake of argument is not valid in law, since the application was returned, it has to be held under the circumstances that there was an order made by the State Government refusing to grant the permission on such an application. Therefore, we are also of the considered view that if once an application is returned, it must be held that the permission sought, is rejected by the State Government. Therefore, in the light of the discussion made above, we are of the view that there is no merit in the first contention advanced by the learned Counsel appearing for the appellants.

9. With regard to the second contention of the Counsel for the appellant that since Order Annexure-A was not filed within sixty days from the date of re-presentation of the application on 24th September, 1997 which was received by the State Government on 30th September, 1997, the learned Single Judge at paragraph 14 of the order has found that before the expiry of sixty days from receipt of the said application after re-presentation, the State Government initiated the proceedings under Sub-section (2) of Section 25-O of the Act on 7th November, 1997 by issuing the hearing notice to the Appellant-Firm and under those circumstances the running of the period of sixty days under Sub-section (3) of Section 25-O of the Act stood arrested. It is useful to refer to the relevant portion of the observation made by the learned Single Judge, which reads as hereunder:

'. . . . But before the expiry of sixty days therefrom, the 1st respondent initiated the proceedings under Section 25-O(2) on the application submitted by the petitioner on 7-11-1997, by issuing the hearing notice Annexure-H. It means the running of the period of sixty days under Section 25-O(3) is arrested. While the authority is in seizure of the application under Section 25-O and the inquiry is proceeded with as required by Section 25-O(2) of the Act the deeming fiction cannot set in to nullify the inquiry itself. If that is so, there is no deemed permission as contemplated and the petitioner cannot make use of the deeming provision'.

10. We do not find any infirmity in the said conclusion reached by the learned Single Judge. No doubt, as contended by Sri Vijayashankar that when an

application is made seeking closure of the industrial unit, the State Government is required to make an order expeditiously. The observation of the Supreme Court in the case of Indian Hume Pipe Company Limited, supra, relied upon by Sri Vijayashankar also supports our view that the application is required to be disposed of expeditiously. But, that does not mean that the application should be disposed of in a mechanical manner and without application of mind. Sub-section (2) of Section 25-O of the Act makes it obligatory on the part of the State Government, on receipt of the application, to conduct such an enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer and the persons interested in such closure, to make an order either refusing to grant permission or granting permission. While making such an order, the State Government is required to keep in mind the genuineness and adequacy of the reasons stated by the employer and the interest of general public and other relevant factors. Therefore, the nature of the enquiry contemplated under Sub-section (2) of Section 25-O of the Act envisages that some reasonable time, necessarily has to be taken, by the State Government in the course of the enquiry. Therefore, for any valid reasons, if the enquiry goes beyond sixty days from the date of the application filed seeking for closing down of an undertaking of an industrial establishment and in that situation if it is to be held that since no order was made refusing to grant permission, the deemed permission in terms of Sub-section (3) of Section 25-O of the Act is granted to the employer, it would lead to adverse results seriously affecting the rights of the workmen and the general public. Acceptance of such a contention would totally frustrate the very object of an enquiry contemplated under Sub-section (2) of Section 25-O of the Act before an order is made either granting or refusing to grant permission. While interpreting the provisions of law, the Court cannot be oblivious to the consequences of such an absurd result. Therefore, we are of the view, as rightly found by the learned Single Judge, once an enquiry notice is issued on receipt of the application by the State Government, the running of the period of sixty days under Sub-section (3) of Section 25-O of the Act is arrested. Therefore, the second submission of Sri Vijayashankar is also liable to be rejected as one devoid of any merit.

11. So far as the third submission of Sri Vijayashankar that the learned Single Judge was not justified in taking the view that since the validity of the order is only

for one year, the order has spent itself and therefore it may not be necessary to consider the same on merits, it is necessary to point out that the answer to this contention requires two aspects to be dealt with by us - (1) Whether the view taken by the learned Single Judge that the life of the order is only for one year, is justified; and (2) Even if it is so, whether it was not necessary to consider the correctness of the order on merits. So far as the first question is concerned, though Sri Vijayashankar would contend that once an order of deemed permission is granted, the said order must be held to be valid forever, we are unable to accede to that submission. Sub- section (4) of Section 25-O of the Act provides that when an order is made by the State Government either granting or refusing to grant permission, the said order, subject to provisions of Sub-section (5) of the said section, would remain in force for one year from the date of passing of such an order. It is useful to extract the said sub-section, which reads as hereunder:

'25-O. Procedure for closing down an undertaking.-(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(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'.

Therefore, when statutorily, the life of an order either granting or refusing to grant permission is fixed for a period of one year, it is not possible to take the view, merely because, the employer is entitled for the benefit of deemed permission, the life of deemed permission would be beyond the period of one year or for ever as claimed by the learned Counsel appearing for the appellants. When the life of the order expressly made is for a period of one year, in our view, the life of the deemed permission also should be understood as limiting the same for a period of one year only. Having taken the view that the benefit of deemed permission is also limited for one year, now we will proceed to consider whether the learned Single Judge was not justified in examining the correctness of the order impugned on

merits. In our view, in the facts and circumstances of the case, the learned Single Judge was not justified in refusing to consider the correctness of the order on merits. It is so because, if it is held that the Appellant-Firm is entitled for the grant of permission, the Appellant-Firm would be absolved of the consequences set out in Sub-section (6) of Section 25-O of the Act. Therefore, in our view, it was necessary for the learned Single Judge to have examined the question as to whether the Appellant-Firm was either entitled for the benefit of deemed permission as claimed by it or correctness of the order Annexure-L on merits. So far as the claim of the Appellant-Firm for deemed permission is concerned, we have already negatived the said contention while considering the contentions 1 and 2 advanced by the learned Counsel appearing for the appellant and agreed with the conclusion reached by the learned Single Judge. So far as the challenge made by the appellants with regard to order Annexure-L on merits is concerned, no doubt the same is not considered by the learned Single Judge. Normally, we would have remitted the matter for fresh consideration to the learned Single Judge. However, since the claim for permission for closing down of the two Units of the Appellant-Firm is pending consideration since the year 1997 and though we are exercising the appellate jurisdiction under Section 4 of the Karnataka High Court Act, in substance, since the power that is being exercised by us is under Articles 226 and 227 of the Constitution of India, we are of the view, it would be just and proper to consider the contentions advanced by the learned Counsel for the appellant on merits with regard to the correctness of the order Annexure-L, instead of remitting the matter for fresh consideration to the learned Single Judge. In our view, the order Annexure-L is not liable to be interfered with by this Court in exercise of its power under Articles 226 and 227 of the Constitution of India. The State Government, on consideration of the rival claim made by the parties, has found that the circumstances led to the filing of the application seeking permission to close the unit by the Appellant-Firm does not clearly reflect the bona fide intentions. It has also referred to the fact that before filing of the application the workmen went on strike between 13th March to 3rd June, 1997. Under those circumstances, the State Government took the view that the application filed by the Appellant-Firm was not genuine. In this connection it is useful to refer to the observations made by the State Government in order Annexure-L, which reads:

'For closing down the development section, the management has not given any reason. Admittedly, the development section of the manufacturing unit, like the administration section and design section is common to all sections as they require to provide services to them. It has not been explained as to how the services rendered by the Development section will be continued once said section is closed. Permission for closure of an industry or a part thereof can be granted only if there are adequate grounds. Since no case has been made out, the request for permission for closure of development section need not be considered.

With regard to granting of permission for the closure of the Crankshaft Light Bay Section, it is to be observed that evidence in the form of reports by Chartered Engineer, Chartered Accountants have been cited besides several oral assertions and reasoning. It is also to be admitted that the reports are to be presumed as true, unless the contrary is proved. The Union in this case, except making oral assertions, have not made out any case to reject the reports. However, the circumstances that led to the filing of closure application by the employer does not clearly reflect the bona fide intentions. Prior to the filing of the applications, the workmen have formed a Union. The workmen went on strike between 13-3-1997 and 3-6-1997. These two instances and also the management's policy of extraction of no work from the employees of the Crankshaft Light Bay Section and Development sections lead one to suspect the genuineness of the intentions. This is again fortified by the managements action of trying to close down the Development section assigning no reason whatsoever'.

12. We do not find any error, much less an error apparent on the face of the record, in the said conclusion reached by the State Government, which calls for interference by this Court in exercise of its power underArticles 226 and 227 of the Constitution of India. Therefore, we are unable to accede to the submission of Sri Vijayashankar that order Annexure-L is also liable be quashed on merits.

13. In the light of the above conclusion reached, these appeals are liable to be dismissed. Accordingly, they are dismissed. However, noorder is made as to costs.