

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 3069/2001**

% Judgement reserved on: 21.01.2015

Judgement pronounced on: 11.03.2015

D.D. GEARS LIMITED

..... Petitioner

Through: Mr.Lalit Bhasin, Advocate alongwith
Ms.Ratna D.Dhingra and Ms.Bhawna
Dhami, Advocates.

versus

**LABOUR COMMISSIONER CUM SECRETARY (LABOUR)
& ANOTHER**

..... Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. Vide this writ petition, the petitioner has challenged the order dated 15.12.2000 of Labour Commissioner-Cum-Secretary (Labour) whereby the their application dated 18.10.2000, seeking permission for closing down the industrial establishment, was rejected.

2. The petitioner vide its application dated 18.10.2000 had applied for closing down the undertaking at A-34, G.T.Karnal Road Industrial Area with effect from 18.01.2001 for several reasons. In the application they had disclosed that about 336 workers were in their service and undertook to pay compensation to every workman in the undertaking covered under sub-

Section (8) of Section 25-O. The closure was sought on the ground that the establishment was virtually closed due to illegal strike with effect from 13.12.1999 and consequent lock out with effect from 13.01.2000 and the production was down due to the general recession in the market and continuous labour problems for the last three years. The denial of permission to retrench 156 workers under Section 25 (N) of the Industrial Dispute Act (hereinafter referred to as 'the Act') vide order dated 30.07.1999 and then subsequent dismissal of review application vide order dated 14.06.2000 is also shown as one of the reasons for inability to run the establishment. Along with the said application the balance sheet of the years ending 1998 and ending 1999 were also submitted. Annexure showing financial position and the losses suffered by the applicant was annexed to show the comparative study of profits and losses of establishment during this period. Vide a separate statement the applicant had also pleaded that the establishment was undergoing irretrievable financial crises which had put the establishment to heavy financial burden and despite taking all possible steps during the year 1997 to 2000 for efficient and good management of the company and despite infusion of more capital and finances, the establishment was not showing any improvement. Other reasons affecting

the functioning of establishment are claimed to be the illegal activities by its workers such as illegal strikes since 1997, indiscipline, insubordination, demonstrations, gherao, assault, tool down strike, declaring holidays by the workers. In the application, reference is also made of letters written by petitioner, asking the Labour Commissioner to intervene to sort out the issues of illegal strike etc, which the authorities failed to do in time.

3. This application of the petitioner was contested by the workers before the labour commissioner wherein the workers had blamed the management/petitioner for everything. It is submitted that the workers were forced to sit outside the factory during the period 24.04.1997 to 22.08.1997 and were not paid wages for that period. An industrial dispute with regard to the wages for that period had been raised and pending before the P.O.I.T.No.III, Delhi. It was stated that the management started handing over its work to contractors and started claiming that it had no work for the workers and also manipulated its balance sheets and engineered the losses in the said balance sheets through its expert chartered accountant. That the management had recently installed latest machineries in its work units making it compatible to other manufacturers of motor parts; that it had invested around 15 crores in the said plant and machinery and so there was

no reason for incurring losses and the losses shown were artificial with the object to victimize the workers. The workers in the reply had also given the list of the outsider agencies from whom the management was getting its work done. It was also alleged that the management was selling its goods in the market through its other firms like D.B.Axle, D.B.A. etc.

4. The commissioner however, vide the impugned order dated 15.12.2000 rejected the said application and declined the closing down of the establishment.

5. The said order has been challenged by the management on the grounds that the labour commissioner had not applied his mind to the relevant factors and reports and had passed the order in mechanical manner. That the material on record had not been considered and the order is influenced by extraneous factors. It is submitted that the refusal of the permission to close down the establishment has made the provisions under Section 25-O of the I.D.Act redundant and the employer has been forced to run a sick company despite incurring fall in production due to the illegal activities resorted to by the workmen and general recession in the market. It is argued that commissioner is a quasi judicial body and is required to do enquiry into the matter and then pass a speaking order. That the impugned

order being non-speaking and arbitrary, is liable to be set aside. Reliance has been placed on the finding of the Supreme Court in ***Workmen of Meenakshi Mills Ltd. and Others vs. Meenakshi Mills Ltd. and Another.***

6. This petition has been challenged by the workmen. It is submitted that the petitioner is guilty of violating the orders dated 05.02.2001 in CWP No.3401/2000 passed by the court wherein the petitioner was directed to pay 25% of wages to the workers for the period of lockout within one month and the petitioner had paid only Rs.5 lakhs which were deposited under the directions of this court in CWP No.2997/2001. It is submitted that the petition is liable to be dismissed since the same is vague and misleading.

7. However, during the trial the workers conceded to the closure of establishment with condition of expeditious payment of statutory dues. The ordersheet dated 25.04.2003 as reproduced reads as under:

“Learned counsel for respondent no.2 states that he has no objection to the writ petition being allowed and the closure permission is granted, if the statutory dues pursuant to the closure are paid expeditiously

Learned counsel for the petitioner seeks time to obtain instructions.

List the matter on 5th May, 2003.”

This offer was subsequently withdrawn by the workers on 29.05.2003.

8. The workers, however, stopped attending the proceedings of the court

since January 2015.

9. The arguments on behalf of the petitioner have been heard. I have perused the record and have given due consideration to the contentions of the parties and material on record.

10. Under Section 25-O (2) of the I.D.Act, the appropriate Government while dealing with the request to close down a unit is required to give its reasons. The relevant provision is reproduced as under:

“25 (O) Procedure for closing down an undertaking

(1)

(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 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 workman.”

11. While interpreting this provision, this court, in case of ***D.C.M. Ltd. vs. Lt.Governor, Delhi and Others: 1989 LAB.I.C. 1652***, in para 11 has held as under:

11. The procedural safeguard of recording of reasons has now been incorporated in Section 25-O(2) of ID Act by Act 46 of 1982. The reason are now required to be set

out and should not only be intelligible which determine the right of the petitioners to close the Mill but should also deal with the substantial points that have been urged. Reasons are required to be recorded in writing in granting or refusing to grant permission for closure. We do not expect a reasoned judicial decision but the Lt. Governor must indicate how his mind worked and what was his basis to reject the ground of mandatory provisions of the Master Plan requiring the Mill to be permanently closed at the present site with effect from January 18, 1989. When an adjudicating authority is called upon to decide a question and is obliged to record his reasons in writing, but advances no reasons, the necessary inference is that he has no good reasons to advance. In "Padfield v. Minister of Agriculture & Fisheries", 1968 AC 997, it was held that "if he does not do so, the court may infer that he has no good reasons". The impugned order is thus capricious and entitled to be struck down on this short ground."

12. The Supreme Court in ***The Workmen of Meenakshi Mills Ltd. and Others vs. Meenakshi Mills Ltd. and Another: AIR 1994 SC 2696*** has held as under:

"29. In sub-section 2 of section 25-N, Parliament has used terminology which is different from that used in sub-section (2) of section 25-O. In sub-section (2) of Section 25- O, Parliament had used the expression "the appropriate Government may, if it is satisfied that the reasons for intended closure of the undertaking are not adequate or sufficient or such closure is prejudicial to the public interest" which implied that the order refusing to grant permission to close down the undertaking was to be passed on a subjective satisfaction of the appropriate Government about the adequacy or the sufficiency of the reasons for the intended closure or the closure being prejudicial to the public interest. In sub-section (2) of

section 25-N, the words used were "the appropriate Government or authority may, after making such enquiry as such Government or authority thinks fit, grant or refuse, for reasons to be recorded in writing" which indicates that the appropriate Government or authority, before passing an order granting or refusing permission for retrenchment, is required to make an enquiry though the precise nature of the enquiry that is to be made is left in the discretion of the appropriate Government or authority and further that the order that is passed by the appropriate Government or authority must be a speaking order containing reasons.

... ..

30. It would thus appear that the employer is required to furnish detailed information in respect of the working of the industrial undertaking so as to enable the appropriate Government or authority to make up its mind whether to grant or refuse permission for retrenchment. Before passing such order, the appropriate Government or authority will have to ascertain whether the said information furnished by the employer is correct and the proposed action involving retrenchment of workmen is necessary and if so, to what extent and for that purpose it would be necessary for the appropriate government or authority to make an enquiry after affording an opportunity to the employer as well as the workmen to represent their case and make a speaking order containing reasons. This necessarily envisages exercise of functions which are not purely administrative in character and are quasi-judicial in nature. The words "as such government or authority thinks fit" do not mean that the government or authority may dispense with the enquiry at its discretion. These words only mean that the government or authority has the discretion about the nature of enquiry which it may make.... .."

13. Thus, it is established principle of law that the order must show the application of mind by the authority and also the basis of rejection while

refusing or granting permission for closure.

14. In the present case from the application of closure it is apparent that that the petitioner had applied for closure on account of non production in the factory due to illegal strike with effect from 13.12.1999 and consequent lockout with effect from 13.01.2000 which position continued till filing of the application. Other ground was continuous labour problem for the last three years and fall in production and the losses suffered by the applicant during the years 1997 to 2000. It has also placed on record the copies of the balance sheet of three years. The undisputed facts are that there was an industrial dispute between the applicant and its workers claiming wages for the period 24.04.1997 to 22.08.1997 which were not paid due to illegal strike and the said industrial dispute was pending disposal before the labour court. The workers union in its reply had claimed that the balance sheets have been manufactured and manipulated. They had also raised the contention that the management had invested about Rs.15 crores in the plant and machinery and had installed latest machinery in its work units and also that it had been handing over its work to the several other contractors. The order of the labour commissioner shows no inquiry into these factors before it had rejected the application. It has passed a cryptic order to the effect

“that the management has no cogent reason for seeking permission”. The order also does not show that the labour commissioner had made any enquiry into the contention of the management that it had been incurring losses due to recession in market or non-production in the unit. The order also does not show that the labour commissioner had applied its mind on the possibility of the revival of the establishment on its refusal to close down. The impugned order shows that the permission was declined on the ground that earlier vide order under Section 10 (3) dated 10.02.2000 the applicant was prohibited from continuing with the lockout (started on 13.01.2000). It is pertinent to mention here that the said order of the labour commissioner under Section 10 (3) of the I.D.Act was held illegal by the Division Bench of this court in L.P.A.No.658/2004.

15. The impugned order also does not show that any enquiry was done to find out if the contention of the management that there was no production in the factory for the last three years was right or wrong. The provisions of Section 25-O (2) of the I.D.Act require the enquiry into the genuineness and adequacy of the reasons, but the order does not show any inquiry being done into the reasons showing that the labour commissioner had applied its mind. The impugned order also does not show that the facts on which

closure was sought, existed or did not exist. It does not even say that the claim of the management was not genuine or was inadequate. The impugned order does not show that it had considered the contention of the union that the management had manipulated the balance sheet. There is no enquiry being done into the balance sheets. The impugned order does not show that the labour commissioner before passing the impugned award made any enquiry and applied its mind. The impugned order shows that the mind of the Labour Commissioner was influenced by the fact that it had earlier refused the permission of retrenchment of 156 workers sought by the petitioner and also that vide order dated 10.02.2000 under Section 10 (3) of the Act he prohibited the continuance of lock out. In L.P.A.No.658/2004, the Division Bench has clearly held that the petitioner was justified in continuing with lock out. It is also a fact that the workers had resorted to strike before the petitioner declared a lock out. The admitted facts remain that due to the strike in the establishment, the management had declared a lock out which continued despite order of the Labour Commissioner dated 10.02.2000 under Section 10 (3) of I.D.Act and the lockout was declared justified by the division bench of this court in L.P.A. No.658/2004. Undisputedly the factory is lying closed with effect from 13.01.2000 and

thus is dysfunctional for the last so many years.

16. In the light of above discussion, it is apparent that the impugned order since being in violation of Section 25-O (2) of the I.D.Act is not sustainable and the same is hereby set aside.

17. The writ petition stands disposed of with directions to the petitioner to comply with the provisions of Section 25-O Sub Section (8) of the I.D.Act within eight weeks from the date of this order.

**DEEPA SHARMA
(JUDGE)**

MARCH 11, 2015
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