

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL SIDE

WRIT PETITION NO.4290 OF 2016

Association of Engineering Workers ... Petitioner

Versus

M/s Shah Malleable Casting Ltd And
Another

... Respondents

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Mr. N.M. Ganguli for the Petitioner.

Mr. Kiran Bapat i/b M/s Desai And Desai Associates for Respondent No.1.

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CORAM : S.C.GUPTE, J.

DATE : 20 JULY 2016.

P.C. :

Heard learned Counsel for the parties.

2 The Petition challenges an order passed by the Industrial Court at Thane, dismissing the Petitioner's complaint of unfair labour practice against Respondent No.1 under Items 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971.

3 The impugned order is passed as far back as on 21 November 2013. There is no credible explanation on record as to why the impugned order is challenged after nearly three years.

4 The subject matter of the controversy in the present Petition is about
closure of Respondent No.1-Company under Section 25-O of the Industrial
Disputes Act, 1947. The grievance of the Petitioner is that the closure

could not have been declared, since the application seeking permission for closure under Section 25-O was rejected by the appropriate Government on 9 June 2004, and that before expiry of one year from the date of that order, Respondent No.1 could not have declared the present closure. Learned Counsel for the Petitioner relies on sub-section (4) of Section 25-O in this behalf. What is important to note is that the closure is not under Section 25-O, but under Section 25FFF. Between the date of the order rejecting permission of closure under Section 25-O and the date of the subject closure, many workmen of Respondent No.1 have either superannuated or retired voluntarily. As a result, the total number of workmen working in the establishment has fallen below 100, and Section 25-O is no longer applicable to the closure of the establishment. Sub-section (4) of Section 25-O provides that an order of the appropriate Government granting or refusing to grant permission for closure under Section 25-O shall remain in operation for a period of one year and the same shall be final and binding on all parties. What this means is that in the face of an order refusing to grant permission under Section 25-O, no closure can be declared under that Section for a period of one year from the date of the order. It does not mean that even if, as a result of any change in circumstances, such as superannuation or voluntary retirement or other cessation of employment within the establishment, Section 25-O becomes inapplicable, the undertaking cannot declare closure under Section 25FFF of the Industrial Disputes Act, 1947. Such closure is not in breach of sub-section (4) of Section 25-O. Since this is the only ground of challenge in the present Petition, there is no merit in the Petition.

4 The Petition is, accordingly, dismissed. No order as to costs.

(S.C.GUPTE, J.)