

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	26.08.2019
PRONOUNCED ON	23.10.2019

CORAM

**THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
and**

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A. (MD)No.459 of 2019

1.The Management of Tamil Nadu
Textile Corporation Limited,
No.15, Dr. Munusamy Garden Road,
Coimbatore.

2.The Management of Somasundaram
Super Spinning Mills Limited,
Muthanendal, Manamadurai Taluk,
Sivagangai District.

... Appellants/
1st and 2nd Respondents

vs.

1.Sundarapandian
2.R.Shanmugam
3.V.Pandi
4.U.Sugumaran
5.K.Dhanasekaran
6.V.Chandran
7.R.Kasper
8.S.Arumugam
9.M.Kaluvan
10.R.Thangaraj
11.M.Marimuthu
12.P.Ramasamy

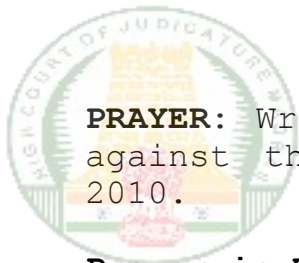
... Respondents 1-12/
Writ Petitioners

13.The Presiding Officer,
Labour Court,
Madurai.

... 13th Respondent/
3rd Respondent

14.The Assistant Labour Commissionr,
O/o.The Assistant Labour Commissioner,
K.Pudur, Madurai.
(R-14 is impleaded as party vide order dated
02.11.2017 in WMP(MD)No.3684 of 2016)

... 14th Respondent/
4th Respondent



PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent Act against the order dated 19.11.2018 made in W.P.(MD) No.14709 of 2010.

Prayer in WP(MD) . 14709/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ or order or direction more in the nature of Writ of Certiorarified Mandamus to call for the records of the proceedings of the Learned Labour Court Judge, Madurai made in I.D.Nos. 163/2007 to 174/2007 dt.17.12.2009, and to quash the same as illegal and directing the 2nd respondents to reinstate the petitioners in his establishment with all back wages and other benefits.

For Appellant : Mr.ME.Ilango

For Respondents : Mr.N.G.R.Prasad Senior Counsel
for Mr.M.C.Swamy for 1 to 12

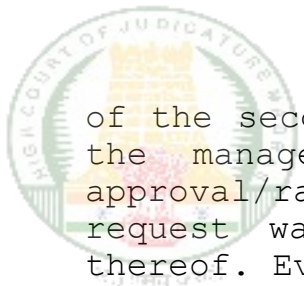
Mr.V.R.Shanmuganathan
Special Government Pleader for R-14

JUDGMENT

Judgment of the Court was made by SENTHILKUMAR RAMAMOORTHY, J.

This Writ Appeal is filed against the order dated 19.11.2018 in WP (MD) No. 14709 of 2010 whereby the Writ Petition filed by Respondents 1 to 12 herein was allowed, albeit by moulding the remedy. In the said Writ Petition, Respondents 1 to 12 herein challenged the order dated 17.12.2009 of the 13th Respondent herein in ID Nos.163 to 174 of 2007 dated 17.12.2009 whereby the said IDs were dismissed and for a consequential direction to reinstate the said Respondents in the Appellants' establishment with back wages and other benefits.

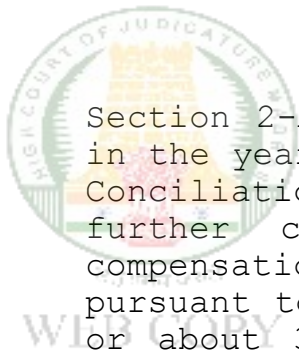
2.The facts that are relevant for the purposes of disposal of this Writ Appeal may be stated briefly herein. The second Appellant mill was promoted and managed by Mr. Somasundaram Chettiar. The said mill was closed on 8.10.1976 on account of heavy losses. In order to alleviate the problems faced by workmen in view of the said closure, the Government of India declared the first Appellant as the "authorised person" under the Industries (Development and Regulations) Act, 1951 for purposes of taking over the second Appellant mill. Notwithstanding such takeover, it is stated that the losses continued to accumulate and, therefore, the Government of Tamil Nadu enacted the Somasundaram Super Spinning Mills (Acquisition and Transfer) Act, 1986 whereby the mill was acquired and entrusted to the first Appellant with assumption of liability from the "appointed date" specified therein. However, the net worth



of the second Appellant continually eroded. In these circumstances, the management filed an application dated 28.06.1994 seeking approval/ratification for laying-off about 218 workmen and the said request was rejected as was the review application in respect thereof. Eventually, the mill ceased to function from 18.7.1994.

3. Shortly after the mill ceased to function, the first Appellant was declared as a relief undertaking industry as per section 3 of the Tamil Nadu Relief Undertaking (Special Provisions) Act, 1969 by G. O. (2 D) No. 26 dated 28.9.1995. By the said notification, the provisions of Section 33-C and Chapter V-B of the Industrial Disputes Act, 1947 (the ID Act) were made inapplicable to the first Appellant. The said notification was challenged by a trade union and an interim stay was granted by this Court; eventually, the Writ Petition was closed as infructuous in view of the one year sunset clause in the notification. Thereafter, it is stated that the State Government issued orders on an ongoing basis to exempt the first Appellant from Section 33-C and Chapter V-B of the ID Act for periods of one year from the date of the respective notification and the last notification that is produced is dated 24.02.2009.

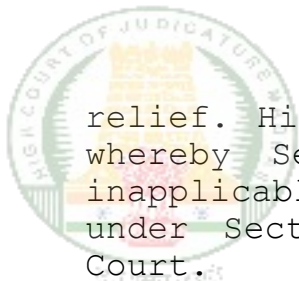
4. In the circumstances, about 187 workmen of the second Appellant, including Respondents 1 to 12 herein, and about 8 staff filed claim petitions before the Labour Court, Madurai, in CP No. 87 of 1996 and CP No. 240 of 1996 respectively. In the said claim petitions, the workmen and staff concerned claimed wages for half a month in June 1994 and full wages from July 1994 together with other allowances and monetary benefits on the basis that the second Appellant mill was illegally closed. While these claim petitions were pending, five major trade unions representing about 167 workmen of the said second Appellant mill entered into a settlement under Section 18 (1) of the ID Act (the Settlement) whereby the said trade unions and workmen accepted a voluntary retirement scheme agreeing to the closure of the mill subject to payment of full and final monetary benefits, as specified therein, up to the date of superannuation of the respective workman. Pursuant thereto, 167 workmen received compensation as per the Settlement. After advertenting to the said Settlement, the Labour Court, by order dated 5. 9. 2001 in CP Nos. 87 and 240 of 1996, allowed the claim petitions by granting the workmen half a month's wages for June 1994, full wages from 01.07.1994 to 18.07.1994 and compensation for closure as per section 25-O (8) of the ID Act. In the said order, the Labour Court held that the legality or otherwise of the closure should be determined, on reference, by the Industrial Tribunal under Section 10 (1) of the ID Act and not in the claim petitions. Accordingly, the workmen concerned were granted leave to initiate such proceedings if so intended. This order of the Labour Court was not challenged and attained finality. It is also the admitted position that separate proceedings were not initiated to declare the closure as illegal. However, the documents on record disclose that Respondent 15, Dhanasekaran, raised an industrial dispute under



Section 2-A of the ID Act after the Labour Court's order, sometime in the year 2002, and after conducting an enquiry on 26.07.2002, the Conciliation Officer submitted a failure report on 08.08.2002. It is further clear from the documents on record that closure compensation under Section 25-O (8) of the ID Act was received pursuant to the order of the Labour Court by Respondents 1 to 12 on or about 31.12.2003 and that gratuity was sent by cheques on or about 25.10.2004 and, upon refusal thereof, the said gratuity dues were deposited with the authority concerned. The Writ Court records that Respondents 1 to 12 received gratuity while the Writ Petition was pending but the relevant documents are not on record.

5. After receiving such compensation, Respondents 1 to 12 herein raised industrial disputes for reinstatement and back wages for the period of non-employment upon failure of conciliation by filing ID Nos. 163 to 174 of 2007 before the Labour Court. The said IDs were contested by the Appellants on the primary ground that the workmen had already received closure compensation and that gratuity had been deposited and, therefore, the IDs were not maintainable. By a common award dated 17.12.2009 (the Award), the Labour Court dismissed these IDs on the basis that the workmen concerned had already received closure compensation under Section 25-O (8) of the ID Act. Because the workmen were aggrieved by the said Award, the Writ Petition was filed for the same relief that had been requested from the Labour Court, namely, reinstatement and back wages. By order dated 19.11.2018, the Writ Court moulded the relief and declared that the workmen were not entitled to reinstatement but were entitled to benefits in relation to a deemed illegal closure under Section 25-O (6) of the ID Act. The said order is impugned herein.

6. The learned counsel for the Appellants, Mr. M.E. Elango, raised the following contentions. His first contention was that only the Industrial Tribunal can declare a closure as illegal. Consequently, in the admitted fact situation of there being no declaration by an Industrial Tribunal that the closure is illegal, he contended that it cannot be concluded that the closure of the second Appellant mill is illegal. His second contention was that Respondents 1 to 12 herein received closure compensation under Section 25-O (8) of the ID Act and the said order of the Labour Court attained finality. On account of not challenging the said order and instead receiving closure compensation pursuant thereto, according to the learned counsel for the Appellants, the said Respondents acquiesced in the payment of closure compensation under Section 25-O (8) of the ID Act and, consequently, waived any right to claim benefits under Section 25-O (6) of the ID Act. His next contention was that the Settlement, which was accepted by 167 workmen representing five major trade unions, is binding on the minuscule minority that did not accept such Settlement. His fourth contention was that Respondents 1 to 12 herein did not request the Labour Court or the Writ Court for benefits under section 25-O (6) of the ID Act and, therefore, the Writ Court erred in granting such



relief. His last contention was that Government Orders were issued whereby Section 33 and Chapter V-B of the ID Act were made inapplicable to the Appellants and that, consequently, benefits under Section 25-O(6) should not have been granted by the Writ Court.

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7. In support of his contentions, the learned counsel for the Appellants referred to and relied upon the following judgments, which are set out below along with context and principle:

(a) **Maruti Udyog Ltd. vs. Ram Lal (2005) 2 SCC 638**, (the Maruti Udyog Case) wherein, at paragraphs 26 and 44, the Hon'ble Supreme Court held that there is a distinction between retrenchment and closure and that upon closure, the workmen concerned can only claim compensation and nothing more.

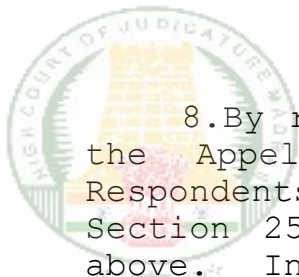
(b) **R. Seeniyappan vs. Industrial Commission and Director of Industries and Commerce, Chepauk (DB) (2009) 4 MLJ 955** wherein, at paragraphs 9 and 14, the Division Bench of this Court held that once a valid closure comes into effect, the relationship of employer and employee does not survive and compensation is required to be paid to the workmen as a consequence thereof and for no other purpose.

(c) **Herbertons Ltd. vs. The Workmen of Herbertons Ltd., AIR 1977 SC 322**, wherein, at paragraphs 15 to 28, the Hon'ble Supreme Court held that the voluntary settlement entered into by a recognised and registered union would be binding on all the workers although a very small number of workers were not members of the majority union.

(d) **Bombay Gas Company Ltd. vs. G.S. Baj and others 2008 III LLJ 365 (Bom)** wherein, at paragraphs 6, 9 and 10, the Bombay High Court followed the judgment of the Hon'ble Supreme Court (cited above) and held that a settlement accepted by 1004 out of 1240 workmen is binding on all the workmen and that the industrial tribunal should have passed an award in terms of the said settlement.

(e) **Johnson and Johnson Ltd. vs. Maharashtra General Kamgar Union 1997 II LLJ 1157** wherein, at paragraph 9, it was held that the settlement accepted by 357 workmen out of 362 settles the issue.

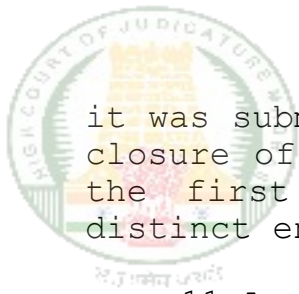
(f) **Andhra Laundry (Proprietor) vs. Assistant Labour Court (1968) I LLJ 356 (Mad)** (the Andhra Laundry Case) wherein, in paragraphs 10, 11 and 12, this Court held that the concerned workmen had received closure compensation and thereby waived their right to claim statutory benefits under the ID Act because the ID Act does not prohibit contracting out of the statute as regards closure compensation. It was further held therein that they are estopped in law from claiming benefits under the statute after receiving compensation in full and final settlement.



8.By relying upon the above judgments, the learned counsel for the Appellants concluded his submissions by contending that Respondents 1 to 12 herein are not entitled to claim benefits under Section 25-O (6) of the ID Act for several reasons adverted to above. In a nutshell, they have already received closure compensation under Section 25-O (8) of the ID Act; the order of the Labour Court, in this regard, has attained finality; the closure has not been declared as illegal by the Industrial Tribunal under section 10 (1) of the ID Act; they have waived their right to claim additional benefits and are estopped from making such claims; and section 33 and Chapter V-B of the ID Act are not applicable to the Appellants.

9.In response and to the contrary, the learned counsel for Respondents 1 to 12, Mr.N.G.R.Prasad, assisted by Mr. M.C. Swamy, made the following submissions. His first submission was that the closure of the second Appellant was admittedly done without even filing an application for permission under Section 25-O (1) of the ID Act. Consequently, it is deemed that the closure is illegal and, therefore, benefits are payable as per Section 25-O (6) of the ID Act. As regards the earlier order of the Labour Court in the claim petitions, it was submitted that the Labour Court granted leave to the claimants therein to seek benefits under Section 25-O (6) of the ID Act. Therefore, it was contended that Respondents 1 to 12 herein did not waive their rights or acquiesce in the payment of compensation under Section 25-O (8) of the ID Act merely by receiving such payment. In this regard, it was further submitted that the management had not produced relevant records to show that the workers accepted the compensation in full and final settlement. In such a situation, Respondents 1 to 12 herein are entitled to benefits as per statute. The learned counsel also refuted the contention of the learned counsel for the Appellants that the closure had not been declared illegal. On the facts of this case, the learned counsel for Respondents 1 to 12 submitted that it is the admitted position that no application was submitted by the Appellants for permission to close the mill. When an application is not submitted, no adjudication is necessary by the Industrial Tribunal with regard to the legality of the closure. In other words, the closure is undoubtedly illegal and no declaration is required for this purpose. As a consequence, Section 25-O (6) of the ID Act is automatically triggered and thereby a statutory right to the benefits specified therein is created in favour of Respondents 1-12 herein.

10.With regard to the contention that Section 33 and Chapter V-B of the ID Act were made inapplicable to the Appellants, it was contended that such a submission was not made either before the Labour Court or before the Writ Court. It was further submitted that the relevant Government Orders were also not produced before the said courts. Consequently, it was submitted that the said Government



it was submitted that these Government Orders were subsequent to the closure of the second Appellant and that the exemption was only for the first Appellant and not the second Appellant, which is a distinct entity that was not merged with the first Appellant.

11.As regards the judgments that were relied upon by the learned counsel for the Appellants, it was submitted that the said judgments were not in the context of an illegal closure and some of the judgments were pronounced prior to the introduction of chapter V-B in the ID Act. As a result, it was contended that the said judgments do not apply to this case.

12.In support of the submissions, the learned counsel for Respondents 1 to 12 referred to and relied upon the judgments set out below along with context and principle:

(a) **Oswal Agro Furane Ltd. vs. Oswal Agro Furane Workers Union Ltd. (2005) 3 SCC 224** (the Oswal Agro Furane Case), wherein it was held that a settlement under Sections 12(3) read with 18 (3) of the ID Act, which was entered into without complying with the mandatory provisions of Section 25-O of the ID Act, is opposed to public policy, violative of Section 23 of the Contract Act, 1872 and void.

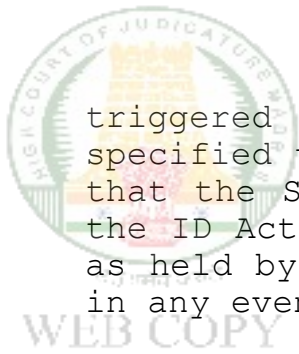
(b) **The Management of Chemech Engineers Ltd. vs. The Presiding Officer, Principal Labour Court, W.A. No.57 of 2012, order dated 5.2.2012**, wherein, at paragraph 21, the court relied on the deeming fiction in Section 25-O (6) of the ID Act and held that once the said deeming fiction applies, the workers are deemed to have continued in employment. It was further held therein that when a claim is made under chapter V-B, no adjudication may be required.

(c) **The Management of RSL Industries (Textile Division) vs. The Presiding Officer, Labour Court, Coimbatore and others, W.P.No.5497 of 2006, order dated 22.07.2011**, where it was held, at paragraph 13, that "once no approval application is filed before the Government or approval application is rejected then in terms of Section 25-O (6), the workmen are entitled to get all benefits under law."

(d) **Orissa Textile and Steel Ltd. vs. State of Orissa (2002) 2 SCC 578**, where the constitutional validity of Section 25-O of the ID Act was upheld by a Constitution Bench of the Supreme Court.

(e) **Workmen of Subong Tea Estate vs. Outgoing Management of Subong Tea Estate, AIR 1967 SC 420**, where it was held that the workmen were not barred from claiming reinstatement with continuity of service because they received retrenchment compensation.

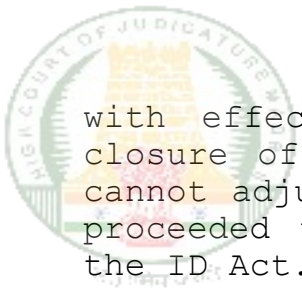
13.On the basis of the above judgments, the learned counsel for Respondents 1 to 12 concluded his submissions by contending that the said Respondents did not waive their rights to claim benefits under Section 25-O (6) of the ID Act and that in light of the admitted position that no application was made for permission for closure, a declaration by the Industrial Tribunal is unnecessary and the legal fiction under Section 25-O (6) of the ID Act is automatically



triggered and the Respondents herein are entitled to benefits as specified therein until the age of superannuation. He also submitted that the Settlement, which was entered into under Section 18(1) of the ID Act, in this case, a fortiori, does not validate the closure as held by the Supreme Court in the Oswal Agro Furane Case and is, in any event, not binding on Respondents 1 to 12.

14.The records were examined and the oral and written submissions of both sides were considered carefully. Although the contention that the Appellants are exempted from Chapter V-B of the ID Act was raised last, we deal with it first because if this question is answered in the affirmative, it becomes unnecessary to deal with the other contentions. In the counter to ID Nos. 163-174 of 2007, the Appellants referred to six Government Orders, which were issued between 06.01.2000 and 05.01.2005 with regard to this exemption. Out of these six Governments Orders, the first and last were filed as Management Exhibits 5 and 6. However, there is no pleading that Chapter V-B of the ID Act does not apply. We also do not find any discussion on this issue in the Award of the Labour Court. On the contrary, we find that the first Appellant by letter dated 31.03.2003 to the Commissioner of Handlooms and Textiles (pp.22-23 of the II additional typed set filed by the Appellants) stated categorically that Somasundaram Super Spinning Mills was under the purview of Chapter V-B of the ID Act until 21.12.2002. Moreover, closure compensation was paid to Respondents 1 to 12 under Section 25-O(8) of the ID Act pursuant to the order of the Labour Court in the claim petitions and Section 25-O(8) is also a part of Chapter V-B. We further find that each of these notifications contains a sunset clause and the last of these expired on or about 24.02.2010. Moreover, these notifications grant exemption to the first Appellant but not to the second Appellant and there is no merger between the two entities. For all these reasons, this contention of the Appellants is rejected.

15.This leads to the principal question that arises for consideration, namely, whether Respondents 1 to 12 herein are entitled to claim benefits under Section 25-0 (6) of the ID Act notwithstanding the fact that they admittedly received closure compensation under Section 25-0 (8) of the ID Act and the gratuity dues also thereafter. In other words, by receiving compensation, can it be said that they waived their rights under Section 25-0(6) of the ID Act or acquiesced in the payment of compensation under section 25-0(8) of the ID Act? When the order of the Labour Court in the claim petitions is examined, it is clear that the Labour Court did not decide as to whether the closure is illegal and, consequently, whether the workmen concerned are entitled to benefits under Section 25-0 (6) of the ID Act. In this regard, it is relevant to note that the Appellants contended, in the said claim petitions, that there was no closure as per the ID Act and that it was proposed to revive the mill. However, the Labour Court negated the said contention and held that there was a closure, as per the ID Act,



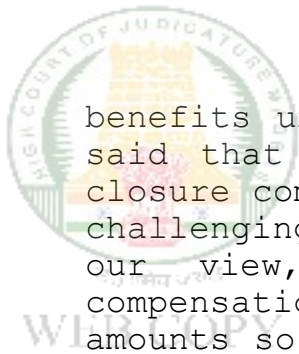
with effect from 18.07.1994. After concluding that there was a closure of the industrial establishment and that the Labour Court cannot adjudicate on the validity of such closure, the Labour Court proceeded to grant closure compensation under Section 25-O (8) of the ID Act. Section 25-O (8) reads as follows:

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"Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months."

16. In light of the language of Section 25-O (8) of the ID Act, it is evident that closure compensation is payable under this provision only if there is a lawful closure and not otherwise. Therefore, once the Labour Court concluded that it could not decide on the validity of the closure, closure compensation ought not to have been granted under Section 25-O (8) of the ID Act. Given the fact that neither the workmen nor the management challenged/persisted with the challenge to the Labour Court's order, it becomes necessary to consider the implications of the Labour Court order both for the workmen and the management. The withdrawal of the writ petition, which was filed by the management to challenge the order, implies that the finding of the Labour Court that there was, indeed, a closure of the industrial establishment on 18.07.1994 became final and binding.

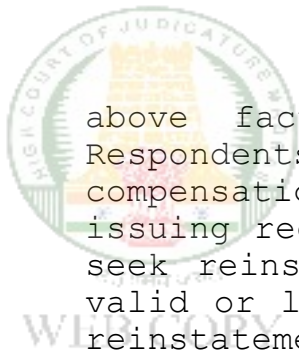
17. The implication of the workmen not challenging the order remains to be considered. The said order of the Labour Court discloses that the workmen concerned were granted leave to claim benefits under Section 25-O (6) of the ID Act after challenging the closure before the Industrial Tribunal. Thus, not challenging the Labour Court's Order per se does not result in relinquishment of the workmen's rights under Section 25-O(6) of the ID Act. Nevertheless, the consequences of: (a) there being no reference under section 10 (1); and (b) the lack of consequential adjudication by the Industrial Tribunal should be considered. To put it differently, given that admittedly no application for permission was filed by the management, is a declaration that the closure was illegal necessary as a pre-requisite for claiming benefits under Section 25-O(6)? In our considered view, when an application for permission for closure was admittedly not submitted by the management, the closure is self-evidently illegal and no declaration is necessary in this regard by the Industrial Tribunal. Therefore, the question arises as to whether the workmen concerned would be automatically entitled to



benefits under Section 25-O (6) of the ID Act or whether it can be said that they waived their right to such benefits by receiving closure compensation under section 25-O (8) of the ID Act and by not challenging the order of the Labour Court in the claim petitions. In our view, one irrefutable consequence of receiving closure compensation pursuant to the order of the Labour Court is that the amounts so received would be required to be reckoned and set-off if it is held that Respondents 1 to 12 are entitled to benefits under Section 25-O(6). The other logical corollary, in our view, is that reinstatement cannot be requested for by the workmen because there is a categorical finding by the Labour Court that there was a closure on 18.07.1994.

18.However, the more contentious issue regarding acquiescence, waiver and estoppel with regard to benefits under Section 25-O(6) needs to be examined in light of subsequent developments. After the Labour Court granted closure compensation under Section 25-O(8) of the ID Act, about eight of the contesting Respondents herein, by letter dated 11.06.2002, requested the Managing Director of the Tamil Nadu Handloom and Khadi Department (the TN HK Department) to ensure that the Appellants herein pay compensation as per the Labour Court's order and also permit reinstatement. Thereafter, the first Appellant by letter dated 18.07.2002, in reply to the letter dated 25.06.2002 from the TN HK Department, informed the TN HK Department that it is not possible to re-open the mill and that, therefore, reinstatement is not possible. As stated earlier, the record shows that Respondent 5 raised an industrial dispute under section 2-A of the ID Act in the year 2002 seeking reinstatement with continuity of wages and by report dated 08.08.2002, the Conciliation Officer communicated the failure of conciliation as per Section 12(4) of the ID Act. Thereafter, by letters dated 31.12.2003, closure compensation was sent to Respondents 1 to 12 on the basis of G.O. No.522 dated 08.05.2003. The gratuity dues were also sent subsequently under a letter from the management stating that the said payment is full and final but the cheques were returned and the amounts were subsequently deposited with the authority under the Payment of Gratuity Act. The Writ Court records, in the impugned order, that these amounts were received by the workmen while the Writ Petition was pending on a "without prejudice" basis. Significantly, the receipts from the workmen are not on record so as to test if the workmen accepted the compensation and the gratuity dues in full and final settlement.

19.Meanwhile, it appears that W.P.Nos.8686 to 8697 of 2007 were filed by Respondents 1 to 12 herein in respect of non-action on the failure report dated 08.08.2002 of the Conciliation Officer and pursuant to order dated 08.03.2007 in the said Writ Petitions, the Labour and Employment Department, by communication dated 12.07.2007, granted permission to approach the Labour Court under Section 2-A of the ID Act. On this basis, ID Nos. 163-174 of 2007 were filed before the Labour Court seeking reinstatement with back wages. When the



above facts are considered holistically, it is evident that Respondents 1 to 12 do not appear to have accepted the closure compensation under Section 25-O(8) in full and final settlement by issuing receipts to that effect. On the contrary, they continued to seek reinstatement with back wages on the basis that there is no valid or lawful closure. While they do not have the right to claim reinstatement after accepting the Labour Court order in the claim petitions that there was a closure on 18.07.1994, in our view, they have not waived or relinquished their rights to claim benefits under Section 25-O(6) either expressly or by conduct. In this regard, it was held by the Hon'ble Supreme Court in **Waman Shrinivas Kini Vs. Ratilal Bhagwandas and co., 1959 Supp:(2) SCR 217** that a plea of waiver of a statutory right is not sustainable. In light of the fact that these benefits are statutory, an estoppel cannot operate against Respondents 1 to 12 on account of the receipt of benefits under Section 25-O(8). However, no definitive conclusions can be drawn as to the implications of the receipt of gratuity in light of the non-availability of the receipts and other documents in that regard.

20. In this case, another aspect needs to be considered: about 167 workmen out of about 187 accepted the Settlement, albeit under Section 18 (1) of the ID Act, and received full and final benefits under a voluntary retirement scheme and also agreed to the closure of the mill. However, Respondents 1 to 12 herein did not participate in the said Settlement and, therefore, it needs to be examined as to whether they are bound by the Settlement. In the Supreme Court decision in the **Oswal Agro Furane Case**, in the fact situation of a settlement under Section 18(3) of the ID Act in respect of an industrial establishment that had not applied for permission for closure under Section 25-O(1), the Hon'ble Supreme Court held that such a settlement is violative of public policy; consequently, of Section 23 of the Contract Act, and, therefore, void. The fact situation, in this case, is that claim petitions were filed seeking closure compensation under Section 25-O(6) but closure compensation was granted under Section 25-O(8). However, unlike in the **Oswal Agro Furane Case**, the Settlement, in this case, would not be void because it is payment in terms of a voluntary retirement scheme that was accepted by the 167 workmen and not closure compensation. Nonetheless, the judgment of the Supreme Court in the **Oswal Agro Furane Case** makes it clear that it is not possible to validate an illegal closure by a settlement and, therefore, the Settlement, in this case, does not have the effect of validating the closure. Moreover, as regards Respondents 1 to 12 herein, who admittedly did not accept the Settlement or receive the benefits thereof, we are of the view that the Settlement is not binding on them and it cannot be said that they contracted out of the benefits of Section 25-O(6) either on account of the Settlement or by receiving benefits under Section 25-O(8). In this regard, the judgment in the **Andhra Laundry Case** (cited supra) which upholds contracting out, in the context of



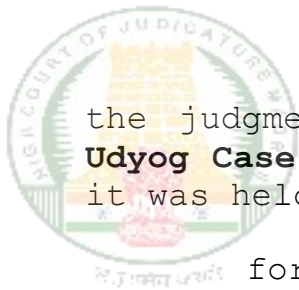
closure compensation, was rendered when Chapter V-B had not been introduced and does not represent the correct position in the changed statutory context and in light of the judgment in the **Oswal Agro Furane Case**.

21.The next issue that should be considered is whether the Writ Court erred in the exercise of the power of judicial review by holding that Respondents 1 to 12 are entitled to benefits under Section 25-O(6) in a Writ Petition wherein the dismissal of industrial disputes for reinstatement and back wages was challenged and benefits under Section 25-O(6) were not expressly requested. In this connection, it may be noted that the violation of Section 25-O(1) was expressly adverted to in the affidavit filed by Respondents 1 to 12 in support of the Writ Petition. In that context, the Writ Court entered findings that the Settlement is not binding on Respondents 1 to 12 herein and also that reinstatement is not possible in the facts and circumstances but that the Petitioners therein were entitled to benefits under Section 25-O(6). In arriving at such findings, it is evident that the Writ Court did not advert to the receipt of closure compensation under Section 25-O(8) or the implications thereof but concluded that the receipt of gratuity during the pendency of the Writ Petition was on a "without prejudice" basis. The finding that the receipt of gratuity was on a "without prejudice" basis is tenuous and unsustainable in the absence of relevant documents. Nevertheless, subject to the observations herein, we are of the view that the conclusion of the Writ Court that Respondents 1-12 herein are entitled to benefits under Section 25-O(6) is not liable to be interfered with in light of our findings that there was no waiver or acquiescence by Respondents 1 to 12 by receiving compensation under Section 25-O(8).

22.The final issue that is required to be examined is with regard to the nature and extent of benefits that Respondents 1 to 12 would be entitled to under Section 25-O(6) of the ID Act. In this regard, the language of Section 25-O(6), which reads as under, should be considered:

"25-O(6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down."

23.The expression "benefits" in Section 25-O(6) is not defined and the width and scope of the legal fiction is also undefined but the Hon'ble Supreme Court in **the Oswal Agro Furane Case**, in the specific context of Section 25-O(6) of the ID Act, expressly adverted to other judgments on the effect of a legal fiction. One of



the judgments referred to therein is the judgment in **the Maruti Udyog Case**, which is cited supra, wherein, at paragraphs 35 and 36, it was held as under:

"35. In construing a legal fiction the purpose for which it is created should be kept in mind and should not be extended beyond the scope thereof or beyond the language by which it is created. Furthermore, it is well known that a deeming provision cannot be pushed too far so as to result in an anomalous or absurd position. The court must remind itself that the expressions like "as if " are adopted in a law for a limited purpose and there cannot be any justification to extend the same beyond the purpose for which the legislature adopted it.

36. In a recent decision, the Constitution Bench of this Court in K. Prabhakaran v. P. Jayarajan (2005) 1 SCC 754 opined (at paragraph 39):

A legal fiction presupposes the existence of the state of facts which may not exist and then works out the consequences which flow from that state of facts. Such consequences have got to be worked out only to their logical extent having regard to the purpose for which the legal fiction has been created. Stretching the consequences beyond what logically flows amounts to an illegitimate extension of the purpose of the legal fiction...."

24. When the question as to the nature and extent of benefits is examined both in the light of the language of Section 25-O(6) and the law on the scope of legal fictions, it is clear that workmen should derive greater benefits than that applicable in the case of a lawful closure and should be put in a position that is comparable, to the extent feasible, to what would have prevailed if the undertaking had not been closed. Nevertheless, it is clear that certain service and monetary benefits that would or could accrue when an industrial establishment is actually operational, such as the right to be considered for promotion or increments would not accrue. On considering the above in light of the facts of this case, the following factors, inter alia, are pertinent and should be considered for the purposes of determining the benefits under Section 25-O(6) of the ID Act:

(a) The amount received as compensation under Section 25-O(8) should be reckoned and set-off against the benefits under Section 25-O(6).

(b) Whether the workmen concerned were employed elsewhere during the claim period and the implications thereof.

(c) The receipts, if any, and any other documents

relating to receipt of gratuity should be examined



so as to determine the implications thereof on the receipt of benefits under Section 25-O(6).

(d) On what basis should benefits be calculated and for which period and whether the calculation made by Respondents 1-12, in this regard, is correct.

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25. The above exercise for the determination of such benefits cannot be carried out in this proceeding or in the Writ Petition and, therefore, the case is remitted to the Labour Court for the purpose of determining the benefits that Respondents 1 to 12 would be entitled to under Section 25-O(6) of the ID Act. Needless to say, the observations and findings contained herein would need to be borne in mind in such proceedings.

26. In the result, the order of the Writ Court is affirmed with regard to the entitlement to benefits under Section 25-O(6) of the ID Act subject to the observations herein and the case is remitted to the Labour Court, Madurai for the purpose of determining the benefits that are payable to Respondents 1-12 herein under Section 25-O(6). Consequently, this Writ Appeal is disposed of on the above terms.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The Presiding Officer,
Labour Court, Madurai.

2. The Assistant Labour Commissioner,
O/o. The Assistant Labour Commissioner,
K. Pudur, Madurai.

+1 CC to M/s. M.C. SWAMI, Advocate SR-94728.

+1 CC to M/s. M.E. ILANGO, Advocate SR-94745.

**W.A. (MD) No. 459 of 2019
23.10.2019**

CS (15.11.2019) 14P 5C