

Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6133 OF 2021

D.N. Wind Systems India Pvt. Ltd.

...Petitioner

V/s.

State of Maharashtra, Labour Dept. & Ors.

...Respondents

Mr. J. P. Cama, Senior Advocate with Mr. Avinash Jalisatgi i/b. Mr. Vaibhav Jagdale for Petitioner.

Ms. Vaishali Nimbalkar, AGP for State.

Mr. Nilesh Patil for Respondent No.4.

CORAM : G. S. KULKARNI, J.

DATE : DECEMBER 15, 2021

PC :

1. This petition challenges an order dated 23 July, 2021 passed by the Hon'ble Minister of Labour, Maharashtra State, whereby the application dated 25 May, 2021 submitted by the petitioner under Section 25-O(1) of the Industrial Disputes Act, 1947 (for short, "the Act") seeking permission for the closure of its undertaking has been rejected.

2. Mr. Cama, learned senior counsel for the petitioner submits that such an application under the said provision was made as the financial condition of the petitioner was not viable so as to continue with the business which was undertaking. His further contention is that the market scenario is not favourable and it has become impossible to run the said business. His submission is that all these facts are specifically pleaded in the application

as filed on behalf of the petitioner. Mr. Cama contends that while passing the impugned order, the Hon'ble Minister has not considered relevant issues as raised by the petitioner. As also the observations made by the Hon'ble Minister are totally untenable in as much as it has been observed in the impugned order that the petitioner ought to conduct its business in a better manner which according to him, can never be the reason to dismiss an application filed under Section 25-O(1) of the Act. It is also submitted that in fact the entire impugned order proceeds considering the case of the respondent and that not of the petitioner. It is also the petitioner's grievance that the reply which was filed on behalf of the respondent before the Hon'ble Minister was also not served on the petitioner. In these circumstances, Mr. Cama would submit that it would be in the interest of justice that the matter is remanded to the Hon'ble Minister for a decision afresh on the petitioner's application in question.

3. On the other hand, Mr. Patil, learned counsel for respondent no.4 opposing this petition and supporting the impugned order which is passed after taking into consideration the facts of the case, would justify the rejection of the said application. In addition to the submissions on merits, in supporting the impugned order, learned counsel for respondent no.4 would also draw my attention to sub-section (5) of Section 25-O of the Act

to contend that the impugned order can be reviewed by the appropriate Government as provided for in sub-section (5). Sub-section (5) of Section 25-O is required to be noted which reads thus:-

“25-O. Procedure for closing down an undertaking.—

(1)

(2)

(3)

(4)

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication.”

4. Having heard learned counsel for the parties and having perused the impugned order, in my opinion, it would be in the interest of justice that the Hon’ble Minister re-considers the petitioner’s application in as much as the specific issues which have been agitated on behalf of the petitioner ought to have been considered in passing the impugned order. Also the reply affidavit as filed on behalf of the respondents was not served on the petitioner. Thus, it cannot be said that it was an effective adjudication on the petitioner’s application.

5. In so far as the contention as urged on behalf of the respondent is concerned, referring to sub-section (5) of Section 25-O of the Act, in my opinion, as the impugned order itself has been set aside with a request to

the Hon'ble Minister to re-consider the application, the provisions of sub-section (5) of Section 25-O of the Act cannot be made applicable in these circumstances. In any event the circumstances under sub-section (5) would arise in the context when the review of the order is sought. Here in the present case, the principal order itself is set aside and the matter is being remanded to the Hon'ble Minister for afresh decision as discussed above. Hence, such contention as urged on behalf of the respondent relying on sub-section (5) cannot be entertained. The petition is accordingly disposed of by passing the following order:-

ORDER

- i. The impugned order dated 23 July, 2021 passed by the Hon'ble Minister of Labour, Maharashtra State is quashed and set aside.
- ii. The Hon'ble Minister is requested to re-hear the parties on the application of the petitioner dated 25 May, 2021 as filed under Section 25-O of the Act and decide the same as expeditiously as possible and in any event within a period of six weeks from today. All contentions of the parties are expressly kept open.
- iii. The parties at the first instance shall appear before the Secretariat of the Hon'ble Minister on 28 December, 2021 at 02.30 p.m.
- iv. Parties to act on an authenticated copy of this order.

(G. S. KULKARNI, J.)

Corrected as per speaking to minutes dated 17 December, 2021.