2078 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CWP-27483-2016 (O&M)

Rambir Panchal and others ...... Petitioners

Versus

Union of India and others .... Respondents

CWP-25068-2016

Dewan Chand and others ...... Petitioners

Versus

Union of India and others .... Respondents

CWP-3828-2017

Ram Kumar and others ...... Petitioners

Versus

Union of India and others .... Respondents

CWP-3947-2017

Rajpal and others ...... Petitioners

Versus

Union of India and others .... Respondents

Date of Decision: 08.08.2022

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. D.S.Patwalia, Senior Advocate, with
Mr. Gaurav Rana, Advocate,
for the petitioners (in CWP-27483-2016).

Mr. Amit Jhanji, Senior Advocate, with
Ms. Zaheen Kaur, Advocate,
for the petitioners (in CWP-3947-2017)

Mr. Arun Gosain, Senior Panel Counsel,
for the respondents-UOI.

Mr. Ashish Gupta, Advocate, for
Mr. Prateek Mahajan, Advocate,
for the respondent-UOI (in CWP-3828-2017).

Mr. Shikhar Sarin, Advocate, and
Ms. Shreya Bhakoo, Advocate,
for respondents-HMT Ltd.

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RAJBIR SEHRAWAT, J. (ORAL)

These four petitions, i.e. CWP-27483-2016, CWP-25068-2016, CWP-3828-2017 and CWP-3947-2017, are being disposed of by a common order because almost similar facts and the same preposition of law are involved in these matters. However, for the sake of brevity, the facts are being taken from CWP-27483-2016.

The facts, in brief as mentioned in the present case, are that the Hindustan Machine Tools Limited (for short, 'HMT Limited') is a Central Public Sector Enterprises, under the Ministry of Heavy Industries and Public Enterprises, Government of India. This Central Public Sector Enterprises was having a Tractor Manufacturing Unit at Pinjore. The said HMT Tractor Division happened to be in profit till the year 2002-2003. Thereafter, the HMT Tractor Division started incurring repeated losses. Efforts were made to revive the profits of the said HMT Tractor Division in the year 2007-2008. Accordingly, an amount of about Rs.1083 crores was infused in the operations of the said HMT Tractor Division in the year 2013. However, the revival of the said HMT Tractor Division could not fructify. Therefore, the proposal was made to initiate closure of the HMT Tractor Division situated at Pinjore. Since, the Central Government happens to be a majority stake share holder in the HMT Limited, therefore, any proposal to initiate the closure of any unit, has to be approved by the Central Government. Accordingly, the matter was put up before and was considered by the Cabinet of the Central Government, which vide decision dated 27.10.2016 approved the proposal of initiating closure of the HMT Tractor Division situated at Pinjore. Further, provisions of the funds for the retrenchment compensation or the Voluntary Retirement Scheme (for short, 'VRS'), as per the options of the concerned employees, was also approved. After the approval was granted by the Union Cabinet, the statutory proceedings were initiated by the management of the company under Section 25(O) of the Industrial Disputes Act, 1947 (herein after referred to as, 'the Act') for closure of the unit. After undergoing the statutory procedure, the appropriate Government, in exercise of its statutory powers, approved the closure of the said HMT Tractor Division, Pinjore, vide order dated 14.02.2017. In the process, 850 employees had opted the VRS offered by the company even before the formal closure order could be passed and the rest of the employees were paid the retrenchment compensation at the time of closure. The petitioners in the present set of petitions have challenged the order of closure of the HMT Tractor Division at Pinjore, as such. Still further the petitioners had not opted for the VRS offered by the Government of India on their perception that it is not framed in reasonable terms.

However, during the pendency of the present petitions, all the petitioners herein have been paid the retrenchment compensation, as stated by the learned counsel for respondents No.3 and 4. It is in this gamut of facts that this Court is called upon to adjudicate upon the issues raised by the learned counsel.

Arguing the case, learned Senior counsel for the petitioners (in CWP-27483-2016) has submitted that the order of closure of the HMT Tractor Division, Pinjore, stands vitiated on account of the fact that the Central Government, which is also the appropriate Government in the case of the unit involved in this case, had already taken a decision to close down the same. The subsequent procedure of compliance of Section 25(O) of the Act was the sham procedure and a mere formality. To buttress his argument, learned Senior counsel has submitted that the fact that the closure was finally approved even before making of the application under Section 25(O) of the Act stands clarified by the fact that some of the employees were even offered the VRS benefits before making application under Section 25(O) of the Act. Hence, it is submitted by the learned Senior counsel that the entire process of closure stands vitiated. The same deserves to be set aside. The respondents deserve to process the closure, if necessary, again, but in accordance with law. Learned Senior counsel for the petitioners has further submitted that even if the said HMT Tractor Division, Pinjore, was to be closed, the employees like the petitioners were required to be adjusted in the other units of the Tractor Division of the HMT Limited. However, that has not happened. The petitioners had not even opted for the VRS because the same was couched in unreasonable terms, under which the persons who were younger in age were getting financial benefit for more number of years then the persons elder in aged. Still further, it is submitted by the learned Senior counsel that VRS was discriminatory as well, since the persons on the managerial side were granted higher packages under the VRS scheme whereas, the workman section of the HMT Tractor Division was offered lower VRS packages.

On the other hand, learned counsel for the respondents-Union of India has submitted that the Cabinet of the Central Government had considered only proposal to initiate the closure sent by the management of the HMT Limited, being a majority stake holder in the share holding of the company. That exercise was mandatory even under the Companies Act. However, that decision making of the Cabinet does not have anything to do with the statutory procedures required to be followed in case of closure of the unit. After approval of the proposal by the Union Cabinet, as a majority stake holder, the due process of closure of the HMT Tractor Division, Pinjore was started and the same has been carried into the effect as per the law. The Union Cabinet had only approved the proposal to initiate closure; with making provisions for necessary funds; in case the closure happens and the employees opted for VRS or the retrenchment compensation, as the case may be.

Learned counsel for respondents No.3 and 4 has submitted that being a majority share holders of the HMT Limited, the Central Government had approved the proposal to initiate closure of the said HMT Tractor Division, Pinjore. Thereafter, the necessary application for closure, as required under Section 25(O) of the Act, was duly made by the management of the company; in the prescribed form. That proposal was duly considered by the appropriate Government, i.e. the Ministry of Labour and Employment of Central Government. All the parties, as required under the Act, were duly heard and they participated during the process of decision making by the appropriate Government. Ultimately, finding the proposal of the closure to be justified, the appropriate Government had approved the proposal of the HMT Limited to close down the said HMT Tractor Division at Pinjore. Learned counsel has further submitted that the employees were offered the alternatives of the VRS or the retrenchment compensation. Most of the employees had opted for VRS scheme, and they were paid off accordingly. However, those who did not opt for the same, were paid their retrenchment compensation at the time of closure, in accordance with the statutory provisions. Hence, there has been no person who was not paid either the VRS benefits or the retrenchment compensation on closure of the said HMT Tractor Division. Qua the reasonableness of the VRS, learned counsel for the respondents has submitted that the said scheme was framed in accordance with the broad guidelines issued by the Government of India for all the Public Sector Undertakings. The employees were given options to opt VRS which had different modalities of calculation of the amount actually to be paid to the opting employees. In any case, all the employees who had opted for the VRS, stood paid under the policy and none of the employees had ever raised any grievance. The petitioners never opted for VRS scheme; so they were paid the retrenchment compensation. Hence, these petitions deserve to be dismissed.

Having heard the learned counsel for the parties, this Court does not find any substance in the arguments raised by the learned Senior counsel for the petitioners. The argument of the learned Senior counsel for the petitioners that the Government of India had already taken a decision to close down the said HMT Tractor Division, Pinjore, and therefore, the subsequent proceedings undertaken under Section 25(O) of the Act, were mere formality, is not supported either by the facts or the legal propositions. It is not even in dispute that the Central Government is the majority stake share holder in the HMT Limited in question. Under the Companies Act as well, all decisions of the HMT Limited have to be taken by the resolutions of the company through majority decisions. Therefore, any proposal of the management of the HMT Limited for going for closure was required to be put up to the Central Government; as majority stake holder. Only that much exercise has been done by the Union Cabinet while approving the proposal put up before it by the management of the HMT Limited. However, that exercise has been done only in the capacity of the Government of India; as majority stake holder in the HMT Limited. That exercise can, by no means, be confused with the statutory procedure required to be followed by the appropriate Government under the provisions of the Act. It is clear from the record that after the Union Cabinet had approved the proposal for initiating the process of closure, necessary application with all statutory details, was duly moved by the management of the HMT Limited, as required under Section 25(O) of the Act. The said application has been duly processed by the appropriate Government, which in this case is the Government of India; in the Ministry of Labour and Employment. Only after following the due process, as prescribed under the Act, including hearing the workmen, the appropriate Government, as required under the statutory provisions, has approved the closure of the said HMT Tractor Division at Pinjore. Mere fact that the Central Government happens to be majority stake holder in the HMT Limited, being a Public Sector Undertaking, would not denude the designated authority specified under the Act; of its powers to process the application for closure as required under the Act. The Union Cabinet, deciding as a majority stake share holder; and the designated statutory authority as appropriate Government, which happens to be a particular department of the Government of India, cannot be confused as the same entity. One functions as the Union Government in its constitutional executive sphere so as to rationalize its financial investments; and the other has acted as 'appropriate Government' under the statutory provisions; prescribed for granting permission to closure of the unit after assessing the justification for the closure. The very fact that the decision of the Union Cabinet qua approving the initiation of process of closure was required to be assessed, and was actually assessed by the appropriate Government qua its justification; shows that these are two different entities, operating in different spheres and for different purposes. Mere fact that employees opting for VRS scheme might have got their financial benefits even before the final approval of the closure by the appropriate Government; is also of no help to the petitioners. VRS scheme was totally optional. Any employee could have opted for the same at any time after it was issued by the company, even before final closure of the company; if it was perceived by him as more beneficial than the statutory compensation payable on statutory closure. Those who opted for VRS scheme before final statutory closure were rightly paid VRS benefits before final order of closure of the unit. Hence, the argument qua the decision already having been taken by the Central Government qua closure and the subsequent proceeding being only formality; is liable to be noted only to be rejected.

The argument of learned Senior counsel for the petitioners that the petitioners and the other employees should have been considered for absorption in another units of the Tractor Division of the HMT Limited, is also found to have been addressed by the considerations of the HMT Limited, as reflected from the record. The aspect of absorption in another unit was duly considered and was decided only to be the need based, if at all there was requirement in another unit of the HMT Tractor Division. However, as has come on record, the HMT Limited as such was running in losses and the Tractor Division was over-staffed, therefore, none of the workmen retrenched from the said HMT Tractor Division at Pinjore could be absorbed anywhere else.

The next argument of the learned Senior counsel for the petitioners qua the reasonableness of the scheme stands already frustrated by the fact that none of the petitioners had opted for VRS as such. All those persons who opted for the scheme already stood paid as per the scheme and none of the said beneficiaries have come to the Court to question the reasonableness or validity of the said scheme. So far as the petitioners are concerned, undisputedly, they had not opted for VRS scheme and, therefore, they have been paid the retrenchment compensation and not the VRS benefits. Learned Senior counsel for the petitioners has failed to point out any discrepancy or deficiency in the amounts of compensation as paid to the petitioners by the HMT Limited under the provision of the Act. Hence, even this argument of the learned Senior counsel has to be rejected.

No other argument was raised.

In view of the above, finding no merits in the present writ petitions, the same are dismissed.

Since, the main petitions are disposed of, all the civil miscellaneous applications, if any, are also disposed of, accordingly.

(RAJBIR SEHRAWAT)
JUDGE

08.08.2022
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No