

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7596 of 2020

1. Lucky Biscuit Company Head Office- Hajiganj, Patna City, Patna- 800008, through its Partner- Madhukar Nath Bareria, Son of Late Dwarka Nath Bareria, aged about 62 years, Gender- Male.
2. Madhukar Nath Bareria, S/o Late Dwarka Nath Bareria, Partner, Lucky Biscuit Company, resident of Jay Krishna Road Hajiganj, Lucky Biscuit Company, Patna City, Nagla, Patna - 800008.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Labour Resources Department, Niyojan Bhawan, Bailey Road, Patna- 800001.
2. The Principal Secretary, Labour Resources Department, Niyojan Bhawan, Bailey Road, Patna- 800001.
3. The Additional Principal Secretary, Labour Resources Department, Niyojan Bhawan, Bailey Road, Patna- 800001.
4. The Labour Commissioner, Bihar, Labour Resources Department, Niyojan Bhawan, Bailey Road, Patna- 800001.
5. The Joint Labour Commissioner, Bihar, Labour Resources Department, Niyojan Bhawan, Bailey Road, Patna- 800001.
6. The Deputy Labour Commissioner, Bihar, Labour Resources Department, Niyojan Bhawan, Bailey Road, Patna- 800001.
7. The Chief Inspector of Factory, Labour Resources Department, Niyojan Bhawan, Bailey Road, Patna- 800001.
8. The Inspector of Factory, Labour Resources Department, Niyojan Bhawan, Bailey Road, Patna- 800001.
9. Lucky Biscuit Mazdoor Union, Registration No. 3223, having its Registered Office at - Kedar Bhawan, Adalatganj, Patna - 800001 through its General Secretary, Shri Shiv Pujan Singh, Son of Heman Singh, resident of Village- Bikrampur, P.O. and P.S.- Fatuha Bikrampur, District- - Patna- 803201.

.. ... Respondent/s

Appearance :

For the Petitioner

: Mr. Alok Kumar Sinha, Advocate
Mr. Indrajeet Bhushan, Advocate
Mr. Manish Kumar, Advocate

For the Respondent/s

: Mr. Rohitabh Das, AC to AAG-13

For the Respondent No. 9

: Mr. Rajesh Ranjan Advocate
Ms. Maria Nazir, Advocate



CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 01-02-2023

In the instant petition, petitioner has prayed for the following relief(s):-

“That the Petitioners humbly pray for issuance of an appropriate writ(s), order(s), and/or direction(s) for grant of the following Reliefs):-

A). For quashing/setting aside the order bearing झापांक-3/डी.-08/2020 अ.स.-1625 dated 19 06.2020 (Annexure ‘1’) issued by the Government of Bihar under the signature of the Additional Principal Secretary, Labour Resources Department, Government of Bihar (Respondent no.3), whereby the State Government has acted wholly without jurisdiction by illegally and arbitrarily giving decision to not close the petitioners factory situated at Banka Ghat, Patna City and for keeping the same operational as before, after the said factory /establishment had already been permanently closed w.e.f 27.04.2020 and the workers employed therein had stood terminated following the due procedure of law as provided by Section 25-0 of the Industrial Disputes Act, 1947 (hereinafter for brevity referred to as the ID Act') read with Rule 76-B of the Industrial Dispute (Bihar) Rules, 1961 (hereinafter for brevity referred to as the ID Act (Bihar) Rules), and

B). For holding and declaring that after the petitioners factory had stood permanently closed w.e.f 27.04.2020 and the services of all workmen had been terminated with



effect from the date as a consequence of the permission for closure having been deemingly granted in light of the legal fiction contained in Section 25-O (3) of 'the ID Act', the entire proceeding initiated vide Notices bearing no. 1112 dated 21.04.2020 (Annexure '10/1'), bearing no.1235 dated 13.05.2020 (Annexure '11') and bearing no.1332 dated 27.05.2020 (Annexure '12') which culminated in the passing of the impugned order dated 19.06.2020 (Annexure '1') by the Additional Principal Secretary, Labour Resources Department, Government of Bihar was/is entirely without jurisdiction, illegal, arbitrary and thus unsustainable in law, and

C). For holding and declaring that once a factory or an establishment has been permanently closed and the services of the workers employed therein terminated following the due procedure of law, the same cannot be ordered by the State Government to be re- opened, and

D). For granting such other relief(s) as the Petitioners may be entitled to in the facts and circumstances of the case.”

The petitioner-company is stated to be ancillary unit to the M/s. Parle Biscuits Pvt. Ltd. M/s. Parle Biscuits Pvt. Ltd refuses to provide raw material in the year 2019. Therefore, compelling the petitioner - Lucky Biscuit Company to close its unit. In the result, petitioner-company invoke section 25-O of the Industrial Disputes Act, 1947 to the State Government while completing the formalities like providing copy of the application



to the union. State Government did not act on the petitioner's application for closure of their unit. On the other hand, Union is stated to have filed objections on 13.02.2020. If there is any inaction on the part of the State either accepting or rejecting the application for closure of unit, in that event, there is deeming provision under Section 25-O (3). Accordingly, petitioner proceeded to close the Industrial unit on 27.04.2020. Pursuant to closure of the the unit 169 employees have settled their payments with the petitioner out of 247 employee. The remaining persons have not come forward to settle their score with the petitioner even to this day. When things stood thus State respondent issued an order on 19.06.2020 asking the petitioner to commence the company situated at Banka Ghat, Patna City. The petitioner feeling aggrieved by the State Government's order dated 19.06.2020 presented this petition in the year 2020 on 07.07.2020 and obtained an interim order to the extent of staying the operation of Government's order dated 19.06.2020.

During pendency of the present petition, the petitioner is stated to have disposed all machineries during the month of May-July 2022.

In this backdrop, whether order dated 19.06.2020 of



the government asking the petitioner to recommence or restart the company is in order or not?

Learned counsel for the petitioner submitted that there is a deeming provision under Section 25-O. Therefore, with reference to closure application dated 27.01.2020, on 27.04.2020 petitioner-company was closed and machineries were disposed in the month of May-July 2022. In this backdrop, the State Government cannot compel the petitioner to restart its company. Deeming provision would assist the petitioner's grievance.

Per contra, learned counsel for the State resisted the aforesaid contentions and submitted that in the light of the Apex Court in the case of *Suo Motu Writ Petition (C) No. 3 of 2020* that Covid period is required to be excluded for the purpose of any time limit stipulated under various acts and litigations. Therefore, he supported the order dated 19.06.2020.

Learned counsel for the Union resisted the contentions of the petitioner stating that there is no proper closure of petitioner-company in the light of the fact that closure application dated 27.01.2020 would survive till 19.06.2020, since Covid-19 period was in vogue and in the light of Apex Court's decision. It is also submitted that disposal of



machineries during pendency of the present petition is contrary to provisions of Industrial Disputes Act read with the order dated 19.06.2020.

Heard learned counsel for the respective parties.

Before advertng to the contention of the respective parties, it is necessary to reproduce section 25-O.

Section 25-O of the Industrial Disputes Act reads as under:-

“Procedure for closing down an undertaking. - (1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

(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 workmen.

(3) Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.

(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:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(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.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) 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 of fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months."

The petitioner submitted closure of their company on 27.01.2020 to the competent authority- State official respondent while forwarding copy of the closure application to the Union. State could not take steps either accepting or rejecting. In other



words, they slept over the petitioner's application dated 27.01.2020. In such an event, deemed provision of acceptance would operate in favour of the petitioner under Section 25-O (3). In other words, as and when 60 days is completed and if there is inaction on the part of the competent authority in either accepting or rejecting closure application, it is deemed that it has been accepted by the competent authority.

Accordingly, petitioner proceeded to close the petitioner's company on 27.04.2020. Further on 19.06.2020 State has passed an order asking the petitioner to recommence their company. The petitioner's contention is that they have already disbursed the machineries in the month of May and July 2022 in the light of the fact that they have an interim order on 19.06.2020 of the Government order. It is therefore, order dated 19.06.2020 cannot be given effect to in recommencing the petitioner company unit in the absence of machineries and further petitioner is only an ancillary unit to the M/s. Parle Biscuits Pvt. Ltd. M/s. Parle Biscuits Pvt. Ltd stopped in supplying the raw materials in the year 2019 itself. Therefore, it is beyond the control of the petitioner to recommence or restart the company.

No doubt order of the in the Hon'ble Supreme Court in



the case of Suo Motu Writ Petition (C) No. 3 of 2020 would have assisted the respondent. At the same time, it is impracticable to recommence the petitioner company in the absence of machineries and M/s. Parle Biscuits Pvt. Ltd in providing raw material to the petitioner. Moreover, after closure of the petitioner's unit, among 247 workers 169 workers have settled their score with the petitioner company. The petitioner company is ready to settle monetary benefits insofar as such of those workers against whom settlement has not completed.

The contention of the State cannot be appreciated at this belated stage. Moreover, order dated 19.06.2020 would be in operation for a period of one year in the light of sub-section 4 of Section 25-O. Therefore, the present petition has become virtually infructuous.

In the light of these facts and circumstances, order dated 19.06.2020 could not be given effect beyond one year period and that apart, interim order was operating as on today.

Accordingly, petitioner has made out a *prima facie* case so as to set aside the order dated 19.06.2020. Accordingly, it is set aside, reserving liberty to such of those workers who have not settled their monetary benefits with the petitioner. Workers are permitted to approach the petitioner company for



settlement, if any, within a period of 8 weeks from today.
Petitioner would settle monetary benefits to such of those
workers, did not settlement, within a reasonable period of 6
months from today.

Accordingly, present writ petition stands allowed.

(P. B. Bajanthri, J)

shoaib/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.02.2023.
Transmission Date	NA

