IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.713 OF 2022

Aurangabad Majdoor Union,
Through its Secretary .... Petitioner

Versus

M/s. Citrus Processing India Pvt. Ltd.
Through its Managing Director
and another .... Respondents

......

Mr. Yatin I. Thole, Advocate for the Petitioner
Mr. V.P. Golewar, Advocate h/f Mr. A.R. Joshi, Advocate for Respondent No.1
Mr. Ashok V. Patil, Advocate for Respondent No.2

WITH
WRIT PETITION NO.3777 OF 2022

Aurangabad Majdoor Union,
Through its Secretary .... Petitioner

Versus

M/s. Citrus Processing India Pvt. Ltd.
Through its Managing Director
and another .... Respondents

......

Mr. Yatin I. Thole, Advocate for the Petitioner
Mr. V.P. Golewar, Advocate h/f Mr. A.R. Joshi, Advocate for Respondent No.1
Mr. S.R. Yadav Lonikar, AGP for Respondent No.2
Mr. Ashok V. Patil, Advocate for Respondent No.3

......

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 17th AUGUST, 2023

ORDER :

1. Since both these petitions raise similar question of fact and law, both were heard together and are being decided by this common judgment.

2. In writ petition No.713 of 2022, the petitioner/Union has challenged the order passed below Exhibit U-2 dated 24/12/2021, by the learned Member, Industrial Court, Jalna in Complaint (ULP) No.70 of 2021. In writ petition No.3777 of 2022, the petitioner/Union has challenged the order passed below Exhibit U-2 and C-4 dated 22/02/2022, passed by the learned Member, Industrial Court, Jalna in Complaint (ULP) No.8 of 2022.

3. The litigating parties shall, hereinafter, for the sake of brevity, be referred to as, petitioner as 'Union', respondent No.1 as 'Company', respondent No.2 as 'State Government' and respondent No.3 as 'Liquidator'.

4. Facts in brief leading to these petitions are that, the Union filed Complaint (ULP) No.8 of 2022 under Section 26 and 28 read with Item-5, 9 and 10 of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, MRTU & PULP Act,

1971), challenging the closure notice dated 27/12/2021, issued by the Company and subsequent termination of 43 workmen with effect from 25/02/2022, contending that, while issuing the closure notice, provisions of Section 25-FFA of the Industrial Dispute Act are violated and as the procedure prescribed in the Rules is also violated, the decision of closure of the factory is unfair labour practice, and the notice of closure is bad in law. Along with the complaint, application for interim relief under Section 30(2) of the MRTU & PULP Act, 1971 is filed seeking stay to the closure notice.

5. By filing application Exhibit C-4, the Company prayed for permission to sell and to dispatch approximately 100 MT finished goods and further sought direction that workers should not obstruct to the same. By common order dated 22/02/2022, the Industrial Court has rejected the application Exhibit U-2 and allowed application Exhibit C-4. The Union aggrieved by the same has filed present petitions.

6. Heard the learned advocate for the Union, learned advocate for the Company, learned advocate for the Liquidator and the learned Assistant Government Pleader for the State.

7. Learned advocate for the Union strenuously contended that there is non-compliance of provisions of Section 25 of the Industrial Dispute Act. Because of the said non-compliance, there was no indulgence on the part of appropriate Government in the matter. Intention of closure was not informed by the Company, but the decision of closure was informed, which is non-compliance of Section 25FFA of the Industrial Dispute Act. Further submission is, notice of termination issued to the workers is not as per rules. There is violation of Rule 82-A of Industrial Dispute (Bombay) Rules, 1957. The intimation is not given in prescribed proforma. The Industrial Court has failed to consider all these aspects and has erroneously proceeded to reject the application filed by the Union seeking interim relief, and has erroneously proceed to allow the application filed by the Company for interim relief. Therefore, the impugned order is liable to be quashed and set aside.

8. In reply, learned advocate for the Liquidator, who is appointed on 23/02/2022 on the Company, submits that, first petition i.e. writ petition NO.713 of 2022 is rendered *infructuous,* as after rejection of the interim relief, the machinery was transferred to the original owner on

14/01/2022 as lease period was over. He submits that in writ petition No.3777 of 2022, the only notice of closure is challenged, which was Sixty days' notice. In terms of the notice, the closure is effected on 25/02/2022. All the workers were paid their legal dues, compensation, gratuity etc., and period of one and half year is lapsed from the closure. The land of the company is transferred on lease to M/s. Sahyadri Firm. According to him, since actual closure and termination is not challenged by the Union, nothing remains in the present petition as closure notice has merged in the closure order.

9. By relying on ***Poonvasi and others Vs. Crown Silk Weaving Industries and another, 1994 Mh.L.J. 847***, he submits that compliance of section 25FFA of the Industrial Dispute Act is not mandatory, and it is not a condition precedent for effecting closure. Therefore, he submits that there is no merit in the petitions, and petitions are liable to be dismissed.

10. Perused the writ petitions memo, annexures thereto, impugned orders, and the citations relied upon by the learned advocates for the Union and the Liquidator.

11. Before considering the rival submissions, it is apposite to consider relevant provisions of Section 25FFA of

the Industrial Dispute Act. Section 25FFA of the Industrial Dispute Act, reads thus;

> "***25FFA.*** *Sixty days' notice to be given of intention to close down any undertaking.-*
>
> *(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking: Provided that nothing in this section shall apply to –*
>
> *(a) an undertaking in which --*
>
> > *(i) less than fifty workmen are employed, or*
> >
> > *(ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,*
>
> *(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.*
>
> *(2) Notwithstanding anything contained in sub-section (1), 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 provisions of sub-section (1) shall not apply in relation to such*

undertaking for such period as may be specified in the order."

12. Perusal of the notice of closure shows that, due to unavoidable circumstances, the Company had decided to permanently close down its factory with effect from 25/02/2022. Therefore, Sixty days' notice was being served in accordance with provisions of the Industrial Disputes Act, and the workers were informed that, their services would stand terminated with effect from 25/02/2022, and they will be paid compensation as per the statutory provisions. The appropriate Government was informed in form 'Q', i.e. form of notice of closure under Section 25FFA of the Industrial Disputes Act on 27/12/2021. The said notice is duly served on appropriate Government.

13. The industrial Court has recorded a finding that a decision of close down the industry is taken under most inevitable and compelling circumstances, more particularly due to the continuous financial losses and as the company was never able to utilize of factory to its capacity and has incurred about cumulative losses of Rs. 140 Crore since inception. As detailed in Annexure 'A' of notice under Section 25FFA of the Industrial Disputes Act, sent to the Government, it was also

specified that even after exploring various options in the past it could not reach any success. The Industrial Court, therefore, held that the Company cannot be compelled to run the factory in spite of suffering huge losses and, when it has become difficult due to financial constraints and recession of demand of its products, raw material and alike issues to run the factory.

14. In ***Indian Hum Pipe Company Ltd. Vs their workman, 1969(I) LLJ,* 242**, it is held that, Industrial Court cannot go into the question as to the 'motive of closure'. Considering the record placed before it, the Industrial Court has arrived at a conclusion that no *prima facie* case is made out by the union. If interim relief is granted in favour of the union, the company would be constrained to bear future financial losses when there is no production, no income to the factory and when it is already under huge financial stress. It is, therefore, concluded that, hardship likely to be suffered by the union would be comparatively less than that of the company, particularly when it is specifically undertaken by the company that the workmen will be paid compensation as per the statutory provisions.

15. It is a matter of record that the closure has taken effect on 25/02/2022 and all the workers are paid their

respective dues including compensation, gratuity, etc. Admittedly, the Union has not challenged the closure.

16. In ***Poonvasi and others*** (supra), the learned Single Judge of this Court, held;

> *"From a reading of the two above sections.....*
> *(1). Section 25-FFF deals with compensation to workman in case of closing down of an undertaking. This however comes into operation only after the undertaking has been closed down. The controversy is in regard to the consequences of the failure of the employer to give the notice of his intention to close down an undertaking to the appropriate Government as contemplated under Section 25-FF. What has to be decided is whether such notice is a condition precedent or it is a procedural requirement and whether failure to comply with the same would render the closure itself illegal or non-est or it would merely make the employer liable for some other consequences.*
>
> *6. On a careful consideration of the object and scheme of the two sections, it appears that notice under Section 25-FFA is not a condition precedent for closure of an undertaking and non-compliance therewith cannot have the effect of rendering the closure illegal and non-est from its very commencement..........*

.... This section however gives an indication in regard to the legal position prior to its incorporation. Prior to insertion of Section 25-O, the only requirement for closure was contained in Section 25-FFA which does not require an employer to apply for permission of the appropriate Government to close down its undertaking. What is required in that case is only to give sixty days notice to the appropriate Government of the employers' intention to close down an undertaking. No consequence of failure to give such a notice has been set out in Section 25-FFA as has been done in Sub-section (7) of Section 25-O of the Act.........

7. The decision of the Supreme Court in S. G. Chemicals and Dyes Trading Employees Union v. S. G. Chemicals and Dyes Trading Ltd. 1986 I-CLR 360 on which reliance was placed by the learned counsel for the petitioner has no application to the present case, because in that case Section 25-O was applicable and in that view of the matter it was held that where no application for permission under Sub-section (1) of Section 25-O is made, the closure of the undertaking is deemed to be illegal from the date of closure and the workmen are entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

17. In ***B.M. Dhup, General Secretay, Maharashtra Mazdoor Gongress, Bombay and Vegetable Vitamin Foods Co (P) Ltd and others, 1979 (II) L.L.J., 241***, the learned Single Judge of this Court held that, the Regulation framed by the Industrial Court under the Act and Rules cannot be equated to statutory provisions. In that case, the strike notice given was found satisfying the essential requirements, and it was received by the employer. In this fact, it was held that the said notice cannot be said to be invalid or illegal merely because it is not by registered post or because copies of it are not sent to the four authorities concerned. Those provisions were held to be directory and not mandatory.

18. In ***Azad Kamgar Union Vs. M/s Metagraphs Pvt. Ltd., 2001(90) FLR, 798***, the learned Single Judge of this Court has followed the decision in ***Poonvasi and others*** (supra).

19. In ***S.G. Chemicals & Dyes Trading Employees Union Vs. S.G. Chmicals & Dyes Trading Ltd & another, 1986 SCC (L & S), 303***, relied upon by the learned advocate for the petitioner, provisions of Section 25 (O) of the Industrial Disputes Act were taken into consideration, and in the facts of that case, it was held that, for non following the prescribed provision of Section 25FFA of the Industrial Disputes Act, the

closure is illegal and the same amounts to commission of unfair labour practice.

20. Similar is the ratio in ***Association of Engineering Workers Vs. Multiweld Wire Co. Pvt. Ltd. & Ors, 1995 (Suppl-3), 644 (Bombay High Court)***, that ruling is also on Section 25-O. Both the rulings did not further the case of the union.

21. Taking into consideration the aforestated ration and facts of the present case, and the fact that closure is effected on 25/02/2022, and the workers have been paid their respective dues, compensation, gratuity etc., the machinery is already transferred to other company, this Court is not inclined to entertain the petitions in extraordinary writ jurisdiction. Both the petitions are, therefore, dismissed. No order as to costs.

22. It is made clear that these observations are *prima facie* and they shall not influence the Industrial Court, while deciding the Complaint on merits.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane