

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10589 OF 2019

1. Prabhakar Sakaram Garad
aged: Major, Occ- Nil,
R/o: Kharvad, Tq: Kalamuri
Dist. Hingoli.
2. Babanrao Manikrao Chavan
aged: Major, Occ- Nil,
at post, Isarwadi, Tq. Paithan
Dist. Aurangabad.
3. Gangadhar Pandurang Jagdhane
aged: Major, Occ- Nil
at post, Pimpalwadi, Tq. Paithan
Dist. Aurangabad.
4. Ramnath Suryabhan Pachode
Aged: Major, Occ- Nil,
at post Rahatgraon, Tq. Paithan
Dist. Aurangabad.
5. Madhukar Kanhu Phasate
aged: Major, Occ- Nil
at post Rahatgraon, Tq. Paithan
Dist. Aurangabad.
6. Ravindra Khanderao Rajebhosle
aged: Major, Occ- Nil
R/o. Sakharkhana, Tq. Paithan,
Aurangabad.
7. Uddhav Sampatr Nalawde
aged: Major, Occ- Nil
R/o. Dharegaon, Tq. Paithan
Dist. Aurangabad.
8. Krishnarao Achutrao Kauthekar
aged: Major, Occ- Nil
R/o. Aurangabad.

9. Ramhari Gangadhar Kawade
aged: Major, Occ- Nil
R/o. Aurangabad.
10. Machindra Saduram Mane
aged: Major, Occ- Nil
R/o. Sant Eknath Sakhar Karkhana
Paithan, Dist. Aurangabad.
11. Pandurang Manikrao Bobde
aged: Major, Occ- Nil
R/o. Near Sant Eknath Sakhar Karkhana
Paithan, Aurangabad.
12. Bhausahab Shivram madke
aged: Major, Occ- Nil
R/o. Near Sant Eknath Sakhar Karkhana
Paithan, Aurangabad.
13. Sahebrao Deoraw Kamble
aged: Major, Occ- Nil
R/o. Near Sant Eknath Sakhar Karkhana
Paithan, Aurangabad.
14. Uttam Chagan Rathod
aged: Major, Occ- Nil
R/o. Near Sant Eknath Sakhar Karkhana
Paithan, Aurangabad.
15. Raosaheb Rambhau Popalghat
aged: Major, Occ- Nil
R/o. SESSK, Tq. Paithan, Dist. Aurangabad.
16. Baburao Pandharinath Bobde
Aged: Major, Occ- Nil
R/o. Isarwadi, Tq. Paithan
Dist. Aurangabad.
17. Ankush Appasaheb Rode
aged: Major, Occ- Nil
R/o. Narayangaon, Tq. Paithan
Dist. Aurangabad.

18. Ravindra Vaijinath Divekar
aged: Major, Occ- Nil
R/o.
19. Parmeshwar Manikrao More
Aged: Major, Occ- Nil
R/o. Joshi Galli, Paithan,
Dist. Aurangabad.
20. Arjun Ganpatrao Kharat
aged: Major, Occ- Nil
R/o. Near Sant Eknath Sakhar Karkhana
Paithan, Aurangabad.
21. Dilbarkha Jamalkha Pathan
aged: Major, Occ- Nil
R/o. Pimpalwadi, Tq. Paithan,
Dist. Aurangabad.
22. Rustum Munjaji Durpade
aged: Major, Occ- Nil
R/o. Near Sant Eknath Sakhar Karkhana
Paithan, Aurangabad.

...PETITIONERS

VERSUS

Bagasse Pulp Mills,
M/s. Nath Pulp & Paper Mills Ltd.,
Wahegaon, Tq. Paithan, Dist. Aurangabad

...RESPONDENTS

.....
Mr. Yatin I. Thole, Advocate for the petitioners.
Mr. Sachin V. Dankh, Advocate for the respondent.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 11th JULY, 2023

PRONOUNCED ON: 24th AUGUST, 2023

JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally
with the consent of parties.

Bhagyawant Punde

2. This petition is filed under Article 226 and 227 of the Constitution of India, seeking following reliefs:

- "a) Grant Rule;*
- b) Allow this Petitions;*
- c) Record and proceedings may please be called for;*
- d) Hold that the reasons assigned by the Respondent in application dated 23.06.2008 for closure of Bagasse Pulp Mill and thereby to terminate services of the petitioners are not adequate, genuine, legal and proper.*
- e) Hold that, the Respondent is not entitled for permission for closure of its Unit- Bagasse Pulp Mill.*
- f) Hold that the termination of the Petitioners w.e.f. 24.08.2008 is bad in law, not proper and not justifiable.*
- g) Hold that the Petitioners are deemed in the services with Respondent and they are entitled to receive all the benefits from the Respondents.*
- i) Quash and set-aside the Judgment/Award dated 04.01.2018 passed in Reference (IT) No. 04/2008 by the Industrial Court, Aurangabad.*
- j) Direct the Respondent to reinstate the Petitioner in services with continuity and prevailing rates of minimum back wages and house rent allowances from time to time.*
- k) Direct the Respondent to pay to the Petitioners the amount of gratuity who retired during the pendency of Reference before the Industrial Court along with all benefits of back wages;*
- l) Direct the Respondent to pay compensation of Rs. 5,00,000/- to each of the Petitioner for hardship caused to them due to illegal termination."*

3. Facts in brief can be stated thus:

Respondent/company on 26.06.2008 filed application before Deputy Labour Commissioner, Aurangabad, under section 25-O(1) of the Industrial Disputes Act, 1947 (for short 'ID Act'), in Form XXIV-C Rule 82-B(i) of the Industrial Disputes (Bombay) Rules, 1957, and applied for closure of Bagasse Pulp Mill, w.e.f. 24.08.2007. In the application, it is mentioned that 38 employees working at that time will be terminated on account of closure. Petitioners are 22 employees from 38 employees. Notices were issued to the petitioners and the petitioners opposed to the application. By order dated 21.08.2008 the application was allowed and permission was granted to the respondent for closure. By notice dated 24.08.2008, respondent terminated services of the petitioners.

4. Petitioners filed review application under section 25-O(5) of the ID Act. In review, specified authority referred the application of closure dated 23.08.2008 to the Industrial Court, Aurangabad, for adjudication. Accordingly, the Industrial Court registered the Reference (IT) No. 4/2008.

5. Respondent filed statement of claim and petitioners filed written statement opposing the same. After recording evidence and hearing parties, Industrial Court passed award on

04.01.2018, thereby confirming the permission granted by the appropriate Government for closure of respondent company. This order is impugned in the present petition.

6. Heard the learned advocate for the petitioners and learned advocate for the respondent at length. Perused the memo of writ petition, its annexures, award and the citations.

7. Learned advocate for the petitioners challenged the permission granted by appropriate government as well as award passed by the Industrial Court on various grounds, including that the finding recorded by the Industrial that the respondent is already declared sick unit by BIFR was irrelevant to the subject matter. There were no adequate and genuine reasons mentioned in the application dated 23.06.2008, for closure. Termination orders issued to the petitioners are therefore illegal. Industrial Court has recorded perverse findings contrary to the record and illegal evidence is admitted by the Industrial Court. Therefore, the award passed by the Industrial Court is unsustainable in law and facts. In support of his submission, he relied on *Britannia Industries Ltd. and Maharashtra General Kamgar Union and another*, 2008 (122) FLR 800.

8. On the other hand, learned advocate for the respondent supported the impugned award. By relying on *Dyes and Chemicas Workers Union vs. Savita Chemicals Pvt. Ltd & Others*, 1993 II L.L.N. 285, *Savita Chemicas Pvt Ltd vs. Dyes & Chemicals Workers Union & Anr.*, (1999) 2 SCC 143, *Municipal Committee Tauru vs. Harpal Singh & Another*, (1998) 5 SCC 635 and *Bombay Gas Public Ltd & others vs. Bombay Gas Company Employees Union & others*, 2000 (3) L.L.N. 208, he submits that the Industrial Court has properly appreciated the material on record and the evidence led by the parties and has rightly recorded findings in favour of the respondent. No fault can be found with the reasons assigned by the Industrial Court. He further submits that Petitioner Nos. 9, 13 and 15 expired during the pendency of writ petition and accordingly purshis to that effect is filed on record. He therefore submits that there is no merit in the writ petition, the petition is liable to be dismissed.

9. Admittedly, all the petitioners were serving in the respondent-company. It is the case of the respondent that from the year 1997 recession started in the paper market due to implementation of GATT agreement. Therefore, respondent stated incurring heavy losses and was unable to repay the loan

amount. In the year 2000-01, respondent submitted application for rehabilitation to the appropriate government authorities, and respondent went under BIFR in the year 2002. The drought situation due to which since 2000 onwards many sugar factories in Marathwada region were closed for one or other reason. Sufficient bagasse was not available in Marathwada region. Due to this respondent-company was constrained to file Form Q-A and Form XXIV C-3.

10. From perusal of said forms it is clear that the respondent has submitted form in a prescribed proforma published by the Maharashtra Government, thereby seeking permission of the concerned authority for closing down the undertaking. Requisite information is submitted in both the forms. Since the said form satisfies the essential ingredient of seeking permission of closure and substantially informs the appropriate government as to the grounds on which closure is sought, the technical objection raised by the petitioners about not filing application under section 25-O of the ID Act in a prescribed proforma cannot be sustained. It is clear that respondent has filed application for closure under the provisions of State amendment and it was necessary to file said application

under the Central Act. Perusal of both the forms show that format provided under both these provisions are one and the same. Hence, said technical objection raised by the petitioners is rightly negated by the Industrial Court.

11. Second contention of the petitioners that application for closure is submitted on 23.06.2008 and the concerned authority received the application on 26.06.2008. The order passed by the concerned authority on 21.08.2008, which is received by the respondent on 24.08.2008 and therefore, 90 days period as mentioned in Section 25-O(1) is not completed and therefore sanction given by the appropriate government is illegal. There is no merit in this objection also as it is clear from the evidence on record that the respondent-company is closed from 2004. Therefore, said objection is also rightly rejected by the Industrial Court. It is a matter of record that by order dated 09.11.2001 the authority has declared respondent/company as a sick unit. Therefore, it is clear that since then, there is no production in the respondent/company. This fact is also admitted by the witness of the petitioners in cross examination. The order of BIFR has become final. In that view of the matter, also it is clear that the respondent/company was sustaining huge losses.

12. Section 25-O(2) apart from other relevant factors contemplates three conditions before granting permission for closure i.e. financial condition, genuineness and adequacy of reasons stated by the employee and interest of general public.

13. From perusal of the order of BIFR, it is clear that, while declaring the respondent/company as a sick unit, all the relevant factors are taken into consideration. Considering the financial condition of the respondent/company it is declared as sick unit. The audit reports produced by the with list Exhibit-C-8 from the year 2005-2006 shows that the company is sustaining huge losses. In the cross examination of witness of the petitioners, it is admitted that the company is declared as sick unit and workload is not available in the Bagasse Pulp Mill as it is closed. It is therefore obvious that the respondent/company is not running and it is closed. Due to financial condition respondent/company is not able to run the unit. There is nothing on record to show that there is possibility of improving financial condition of respondent/company. Therefore, the company has proved that its financial condition is not good to run the respondent-company.

14. Shri. Kashinath Iyer, witness of the company has stated that sufficient raw material was not available to run the company, they were purchasing raw material from sugar factories. But sugar factories have started their own plants. Bagasse is used for production of alcohol, methanol and energy. Bagasse is the main raw material of the company. Petitioners witness has stated in his cross examination that Bagasse is not manufactured in the factory of respondent and it is required to be collected from other places, which is available only in sugar factory. He also admitted that it is main raw material required for paper mill. Thus, it is clear that raw material was not available to the respondent/company for production of paper, as other sugar factories have started their own plants and therefore respondent/company was unable to get required raw material from outside. Non availability of raw material is also a relevant reason for taking decision of closure, which is proved on record by the respondent.

15. Evidence is brought on record by the respondent that while processing the harmful effluents black liquor is generated. Therefore, government of India had made it mandatory for all the mills to set up soda recovery plant. Respondent/company

invested Rs. 17 Crores for installation of soda recovery plant and therefore the company was manufacturing paper till 1997. After 1997 due to GATT agreement recession started in the paper market and hence, the company started incurring heavy losses and was unable to repay the loan amount. It has come in the evidence of petitioners' witness that since 2004 Bagasse Paper Mill is closed and as a result of closure of pulp mill and recovery plants, employees working there were shifted to another plant of Nath Pulp & Paper Mills and there is no production in the Bagasse Pulp Mill.

16. It is a matter of record that petitioners filed Complaint (ULP) 153/2009 with a prayer that respondent/company be directed not to remove, shift, alienate, dispose of, sale or transfer in any manner the movable property during the pendency of complaint. In the said complaint application Exhibit-U-2 is granted. The company then challenged the said order by filing Writ Petition No. 1988/2010. This Court directed the company to deposit Rs. 45 Lakhs in the Industrial Court, Aurangabad and on that condition the order passed below Exhibit U-2 is set aside. After passing of the order by this Court, respondent has sold machinery in Bagasse Pulp Mill and

deposited amount of Rs. 45 Lakhs in the Court. It is therefore clear that as the machinery and plants is sold by the respondent/company and there is no possibility of further production in the company.

17. All the 37 workers who contested the reference, have received their closure compensation, after the company sold plant and machinery and deposited amount in the Court. Thus, due to the closure of company there is no possibility of recruitment and hence the public interest is not likely to be affected.

18. In Bombay Gas Public Ltd. (supra) it is held that, *"finances are blood line of a unit and once finances are lost, blood is lost and machinery cannot function. In such circumstances, it is necessary to give permission to close down the undertaking and it is also necessary to consider the adequacy and genuineness or reasons given by the employer for closure. Financial condition is one of the ground for giving permission for closure."* These observations are squarely applicable to the facts of the present case. There is sufficient evidence on record to show that financial condition of the respondent is not good, respondent/company is declared as sick

unit by BIFR, plant and machinery is sold to give closure compensation to the workers, the workers have withdrawn the compensation pursuant to the orders of this Court. There is sufficient evidence on record to show that respondent/company has incurred huge losses, therefore, respondent company has proved the relevant ingredients for closure. In that view of the matter, the appropriate government has rightly granted permission for closure to the respondent and Industrial Court is justified in confirming the said permission by the impugned award.

19. There is no patent illegality or perversity in the award passed by the Industrial Court. No jurisdictional error or error of law is committed by the Industrial Court while passing the impugned order. No case is made out by the petitioners to warrant interference in the extra ordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

Rule stands discharged.

[NITIN B. SURYAWANSHI, J.]