

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5380 OF 2015

Krantikari Kamgar Union
A Registered Union
Having its office at 180-C,
J.J. Keni Galli, Dharavi Road
Dharavi-Koliwada
Dharavi, Mumbai-400 014

....Petitioner

Versus

1. The Collector/Labour Commissioner
Dadra & Nagar Haveli Silvassa,
Dadra & Nagar Haveli (U.T.)
2. Labour Enforcement Officer/
Conciliation Officer
Administration of Dadra & Nagar Haveli (U.T.)
Labour Department
Silvassa, Union Territory.
3. Hindalo Industries
Ltd. Khutli, Khanvel,
Dadra & Nagar Haveli (U.T.)

....Respondents

...

Mr. Sanjay Singhvi, Senior Advocate a/w Mr. Rahil Fazelbhoy and
Mr. Ghanashyam Thombare i/b Mr. Rahul Kamerkar for the Petitioner.

Mr. J.P. Cama, Senior Advocate with Mr. P.M. Patel i/b Mr. R.V. Talasikar for
Respondent No.1.

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CORAM	:	SANDEEP V. MARNE, J.
RESERVED ON	:	OCTOBER 05, 2023.
PRONOUNCED ON	:	OCTOBER 12, 2023.

JUDGMENT:

1 By this Petition, Petitioner-Trade Union challenges order dated 27 January 2015 passed by the Labour Commissioner granting permission for closure of Industrial Undertaking of Respondent No.3-Hindalco Industries Ltd. at village Khutli, Khanvel, in Union Territory of Dadra & Nagar Haveli at Silvassa.

2 Petitioner is a registered Trade Union of Workmen employed in the factory of Respondent No.3 in the Union Territory of Dadra and Nagar Haveli. In September 2009, the workers employed in the Khanvel factory of Respondent No.3 joined Petitioner-Union. It served a comprehensive charter of demands on Respondent-Company on behalf of the workmen in respect of their wages, benefits and service conditions on 29 August 2012. Since the demands were not accepted, the matter was taken in conciliation proceedings by the Labour Enforcement Officer. It appears that on account of strike called by Petitioner-Union, a lock-out notice was declared by the Respondent No.3-Company. Since the conciliation failed, Respondent No.1 referred the dispute in relation to the lockout to the Labour Court vide order dated 21 November 2013.

3 On 3 October 2013, Respondent No.3-Company issued a closure notice proposing to close the Undertaking with effect from 2 January 2014. Petitioner-Union addressed a letter dated 21 November 2013 to Respondent No.1 opposing the closure application. After hearing the

concerned parties, Respondent No.1, by order dated 30 November 2013 rejected the closure application.

4 Respondent No.3 filed a review application dated 27 December 2013 before Respondent No.1. In the meantime, a settlement was arrived between Petitioner and Respondent No.3 on 8 December 2014, by which Respondent No.3 agreed to make/pay a full and final settlement of legal dues of 95 permanent workmen in respect of their employment. The Petitioner agreed to withdraw all litigations. The Petitioner however continued opposing review application, on behalf of contract workers, filed by Respondent No.3 for closure by filing reply dated 5 January 2015. In its reply, Petitioner *inter alia* contended that under provisions of section 25-O(4) of the Industrial Disputes Act, 1947, (**the ID Act**) the order dated 30 November 2013 remained in force till 30 November 2014 and that therefore it was not open for Respondent No.1 to entertain the application for review.

5 After hearing the parties, Respondent No.1 passed order dated 27 January 2015 holding that the review application could be entertained. Respondent No.1 considered the fact that the permanent employees had already entered into settlement with Respondent No.3 and that no permanent workman was left in the employment. The Respondent No.1 therefore proceeded to grant permission to Respondent No.3 for closure of their industrial undertaking at village Khutli in Union Territory of

Dadra & Nagar Haveli at Silvassa, subject to the four conditions stated therein. One of the conditions is that in the event of the Reference pertaining to 155 contract workers being decided in favour of the said workers, Respondent No.3 will have the responsibility to comply with the orders of the Industrial Tribunal.

6 Petitioner is aggrieved by the order dated 27 January 2015 and has filed the present Petition, essentially espousing the cause of the contract workers, whose demands for treating them as permanent workers of Respondent No.3 are pending in a Reference made to the Industrial Court.

7 Mr. Singhvi the learned senior advocate would appear on behalf of Petitioner Union and submit that the closure order dated 27 January 2015 has been passed by Respondent No.1 in breach of provisions of section 25-O of the ID Act. He would submit that under provisions of sub section 4 of section 25-O, an order passed by the Appropriate Government granting or refusing to grant permission for closure remains in force for one year from the date of the order. That since the permission was earlier refused on 30 November 2013, the said order continued to remain in force till 29 November 2014. He would further submit that once the period of one year provided for in section 25-O(4) of the ID Act gets over, the only option for the employer is to file a fresh application for closure. That review, as contemplated under sub section 5 of section 25-

O of the ID Act, can neither be filed nor be decided after the period of one year comes to an end. He would submit that if review is permitted to be entertained or decided after the end of period of one year, the same would result in passing of conflicting orders. In support of his contentions, he would rely upon the judgment of the Apex Court in ***Vazir Glass Works Ltd. vs. Maharashtra General Kamgar Union & Anr.***, (1996) 2 SCC 118. He would submit that in that judgment, the Apex Court has, in no uncertain terms, held that even if application for review is filed within one year, the same cannot be entertained or decided after expiry of the period of one year.

8 Mr. Singhvi would further submit that the law expounded by the Apex Court in ***Vazir Glass Works Ltd.*** (supra) has been further amplified by judgment of learned Single Judge of this Court in ***Ambika Silk Mills Company Limited vs. Maharashtra General Kamgar Union and Anr.***, 1998 (2) L.L.N. 208, in which this Court has reiterated that application for review can be made and decision thereon can be taken only within a period of one year from the date of decision on application under section 25-O(1) of the ID Act. He would further rely upon the judgment of learned Single Judge of this Court in ***Bon Limited, Mumbai vs. Hindustan Liver Employees Union***, 2008 (1) Mh.L.J. 683, in support of his contention that the exception for filing of application for review or for decision of review beyond period of one year is applicable only when such application is filed by workmen. That for an Undertaking, the law declared by Apex court in ***Vazir Glass Works Ltd.*** (supra) would apply,

under which application for review can neither be filed nor entertained after expiry of period of one year. He would also rely upon the judgment of the learned Single Judge of this court in ***United White Metal Ltd. vs. Bharatiya Kamgar Sena & Ors., 2006 (2) L.L.N. 628.***

9 Mr. Singhvi would also take me through the merits of the decision dated 27 January 2015 and contend that Respondent No.1 has erroneously granted permission for closure only on account of settlement executed with permanent employees. He would submit that Respondent No.1 was made aware of pending demands of contract workers and that the contract is actually a sham and that the contract workers are actually the workers of Respondent No.3. He would submit that the rights of contract workers are being adversely affected on account of grant of permission for closure as there is no settlement entered with them. Inviting my attention to provisions of sub-section 2 of section 25-O of the ID Act, he would submit that even the contract workers are entitled to be heard before granting permission for closure as the provision contemplates grant of a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure. He would further submit that the interest of general public as well as other relevant factors are also to be taken into consideration before granting permission for closure and therefore, permission for closure could not have been granted on a singular consideration of absence of any demands by the regular workmen.

10 The Petition is resisted by Mr. Cama, the learned Senior Advocate appearing for Respondent No.3. He would submit that Petitioner has no *locus* to file the present Petition as it did not make any pleadings on behalf of regular workmen before Respondent No.1. That the contract workers are not the workmen of Respondent No.3 and that therefore they do not have any *locus* to oppose application for closure. He would invite my attention to the Reference order dated 21 November 2013 to submit that the Reference is made with an express admission that the concerned workers are 'contract workers'. He would submit that as on the date of closure, the Company did not have even a single contract worker and that the contract of the concerned contractor has already expired by efflux of time. In support of his contention that the workers on whose behalf of present Petition is filed by Petitioner are mere contract workers who cannot be treated as workmen, Mr. Cama would rely upon the judgment of Apex Court in ***the Workmen of the Food Corporation of India vs. M/s. Food Corporation of India***, AIR 1985 SC 670.

11 So far as the period of one year specified in section 25-O(4) of the ID Act is concerned, Mr. Cama would submit that the period for decision of review or for making reference is merely directory and not mandatory. That this principle is recognized in ***Britannia Industries Limited vs. Maharashtra General Kamgar Union and another***, MANU/MH/0899/2007. He would submit that this principle has been recognized in the judgment of this Court in ***Bon Limited*** (supra). He would submit that the law requires that application for review must be filed within one year

and there can be no time limit for decision of such application. He would submit that once the application is filed within the prescribed time limit, the decision of the application is something which is beyond the control of the Undertaking. So far as the judgment in ***Vazir Glass*** (supra) is concerned, Mr. Cama would submit that the Supreme Court treated the application for review as a fresh application for closure. He would further submit that in paragraph 35 of the judgment, the Apex Court has noted that though the employer could have made a fresh application for closure after one year, it did not do so on account of pendency of validly made review application within the time frame. It is in these circumstances that the Apex Court concluded that the application for review could be treated as a fresh application for closure. That the directions to treat application for review as fresh application for closure are not issued by the Apex Court in ***Vazir Glass*** under Article 142 of the Constitution of India and that therefore this Court can also issue similar directions. Mr. Cama would also invite my attention to the judgments in ***Ambika Silk Mills*** (supra) and ***Bon Limited*** (supra) to contend that the judgment in ***Vazir Glass*** has been distinguished in peculiar facts and circumstances of each case of this Court. He would submit that the judgment in ***Vazir Glass*** cannot be cited in support of an absolute proposition that in no case, application for review filed within prescribed period would be decided by the government after expiry of one year. That the judgment of this Court in ***United White Metal*** (supra) has been considered in ***Bon Limited*** (supra) as not laying down correct law.

12 Mr. Cama, would submit that the Company has legally closed its undertaking vide review order dated 27 January 2015 after settling with all the regular workers. That the Respondent No.3 had engaged about 250 regular workers and only about 92 contract workers, out of whom 69 have subsequently settled with the contractors and there are no pending disputes. That as of today there are only 23 contract workers who are seeking to set aside Company's closure order. That since majority of the contract workers have also settled with their respective contractors, this Court would be loathe in entertaining the present Petition seeking to raise issues on behalf of just 23 contract workers. He would pray for dismissal of the Petition.

13 Rival contentions of the parties now fall for my consideration.

14 Order dated 27 January 2015 granting permission to close the Industrial Undertaking of Respondent No.3 is challenged in the present Petition. It is admitted position that though Petitioner-Union, at one point of time, represented both permanent as well as contract workers, is now espousing cause only on behalf of contract workers. Mr. Singhvi has fairly admitted that the closure is being opposed at the behest of only contract workers. Before I proceed to examine the main issue of permissibility for the Appropriate Government to pass an order of closure after expiry of period of one year from the date of previous decision, it is necessary to first decide the issue of *locus* of Petitioner to file the present Petition.

15 Mr. Cama has contended that since the Petitioner-Union represents only contract workers in the present Petition, contract workers being engaged by contractors, are not the workmen of Respondent No.3 and therefore they have no *locus* to challenge the closure decision. Mr. Singhvi on the other hand has contended that opposition to closure application cannot be restricted only to regular workmen and even contract workers can oppose the application for closure. Mr. Singhvi would rely upon sub-section 2 of section 25-O of the ID Act which reads thus:

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

(1)

(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.'

16 Thus perusal of the provisions of sub-section 2 of section 25-O of the ID Act would indicate that three categories of persons/entities need to be granted opportunity of hearing while deciding application for closure viz. (i) employer, (ii) the workmen and (iii) the persons interested in such closure. Furthermore, while deciding the application, the Appropriate Government is required to keep in mind 'the interest of general public and all other relevant factors'. It is therefore difficult to

hold that only permanent workmen of an establishment can participate in the proceedings while deciding the application for closure. Sub-section 2 of section 25-O of the ID Act specifically refers 'the persons interested in such closure'. In my view, since a Reference made at the behest of contract workers for treating them as a regular workman is already pending before the Labour Court, they would be covered by the expression 'the persons interested in such closure'. It is, therefore, difficult to hold that such contract workers would not have any *locus* to oppose the closure application or to file the present Petition. This view is also fortified by the action of Respondent No.1, who has not only considered the objections raised by Petitioner on behalf of contract workers but has included a caveat to protect them, while granting closure permission. The permission is granted subject to the following condition No.2 is as under:

'2) In case the reference pertaining to 155 contract workers is decided in favour of the said workmen the responsibility to comply with the orders of Industrial Tribunal shall rest with M/s Hindalco Industries Limited.. The Company shall be liable to pay the dues as per order of Industrial Tribunal which shall be recoverable from the respective Contractor by the Company.'

17 Since Petitioner representing contract workers is heard by Respondent No.1 while deciding closure application of Respondent No.3. it cannot be said that it would not have *locus* to file the present Petition. The objection of locus raised by Respondent No.3 therefore deserves to be repelled.

18 Coming to the main issue of permissibility to entertain or decide an application for review beyond the period of one year, it would be necessary to refer to the provisions of sub-sections 4, 5 and 6 of section 25-0 of the ID Act as under:

'25-0. Procedure for closing down an undertaking. -

(1)

(2)

(3)

(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.'

19 Thus under sub-section 4 of section 25-0 of the ID Act, an order made by Appropriate Government refusing to grant permission remains in force for a period of one year. In the present case, the order refusing to grant permission for closure was passed on 30 November 2013 and the same thus continued to remain in force till 29 November 2014.

20 Under sub-section 5 of section 25-O of the ID Act, the appropriate government is empowered to either review its order granting or refusing to grant permission or to make a reference to the Tribunal for adjudication. It is Petitioner's contention that such an application for review must not only be filed but also be decided within a period of one year as specified in under sub-section 4 of section 25-O of the ID Act. The sheet-anchor of Petitioner in support of this contention is the Apex Court's judgment in *Vazir Glass* (supra). The Apex Court held in paragraph 31 as under:

'31. Since the decision made on an application for permission for closure is to remain operative only for a year, in our view, it will be only proper to hold that an order by way of review either on the aggrieved party's application or on own motion of the State Government, must be made within the said period of one year. Otherwise, the right to make fresh application for permission to close after expiry of one year from the date of rejection of permission for closure will lose its relevance. It also appears to us that anomalous situation may arise if the application for review, when presented within the said time-frame of one year is allowed to be decided even after the expiry of the said time-frame of one year when the order passed by the State Government has already ceased to be operative. As an illustration, may be indicated that a party aggrieved makes an application for review of the order of the State Government within a year during which the order is operative, but for some reason, such application is not disposed of within one year. After expiry of one year, the aggrieved party makes a fresh application for permission to close and on such application an order is made by the State Government or the party obtains a deemed order. This order on a fresh application, subject to any review of the same, will remain in force for one year. If the State Government is permitted to pass order on the review application made against the first order when the right to make fresh application and to obtain an order has already accrued, any order on review to be enforceable must conform to the order passed or deemed to have been passed on subsequent application for permission to close. Any other order is not conceivable because an order by way of review supersedes the order reviewed but not the subsequent order on a fresh application made and such subsequent order being operative for the next one year cannot be by passed by any order of review of the earlier order.'

21 Thus in *Vazir Glass*, the Apex Court has held that an order by way of review either on the aggrieved party's application or on own motion of the government must be made within the period of one year. These observations are made by the Apex Court essentially by taking into consideration the fact that the employer has a right to make fresh application for permission to close after expiry of one year from the date of rejection. The Apex Court also held that if entertainment of application for review is permitted after expiry of period of one year, an anomalous situation would arise where application for review does not get decided within one year and the establishment files a fresh application for permission to close after expiry of one year. It is in these circumstances that the Apex Court held that the application for review must be decided by passing an order within the period of one year.

22 It must however be noted that in *Vazir Glass* the Apex Court ultimately proceeded to treat the application for review, which was pending after expiry of period of one year, as a fresh application for permission for closure. The Apex Court held in paragraphs 35 and 37 as under:

'35. It, however, appears to us that after expiry of one year from the date of rejection of the application for permission for closure, the appellant-Company was entitled to make a fresh application. Such application has not been made because a review application validly made within the time-frame had not been disposed of by the State Government and the appellant-Company had been labouring under an impression that the State Government could pass a valid order on the pending review application and State Government had in fact passed an order of reference for adjudication to the industrial tribunal. The appellant-Company had occasion to feel assured about the validity of the order

of reference in view of dismissal of the writ petition by the Single Bench of the High Court since moved by the respondent-Union for challenging the validity of the order of reference.

37. In the special facts and circumstances of the case, it will be only appropriate to treat the application for review which was pending after the expiry of the said time-frame of one year as a fresh application for permission for closure deemed to have been made on 9-3-1994 and to treat the order of reference to Industrial Tribunal by the State Government as an order of reference on such fresh application so that the entire exercise made before the Tribunal by both the parties and the award made by the Tribunal are not rendered abortive. It may be indicated that the time-limit provided in Section 25-0(5) will not apply on the peculiar facts of this case as during the pendency of the writ appeal before the High Court, the proceedings were stayed and pending the proceedings before this Court, the Court had permitted the proceedings to go on but the award was not to be published and to be kept in sealed cover. Such course of action, in the facts of the case will be only proper and consistent with the justice to be made in this case. We order accordingly. Let the award be published within one month from date of receipt of the award on being transmitted to the Industrial Tribunal concerned. It is further directed that date of receipt of the award by the Industrial Tribunal on transmission from this Court will be deemed to be the date of the award. It is clarified that once the award is published, it will be open to the aggrieved party to challenge the same in accordance with law. The appeal is disposed of accordingly without any order as to cost.'

23 In *Ambika Silk Mills* (supra) relied upon by Mr. Singhvi, the issue was slightly different. The issue was whether the 30 days' period provided for under sub-section 5 of section 25-0 of the ID Act for decision of reference by the Tribunal would also be included in the overall time limit of one year provided under sub-section 4 of section 25-0 of the ID Act. This Court held in paragraph 23 is as under:

'23. In *Vazir Glass Works, Ltd.* [1996 (1) L.L.N.430] (vide supra), the Apex Court was seized with the question whether decision of the State Government is reviewable only within one year from the date of decision on the application under S.25-0(1) and whether such review application has to be filed within one year and if the review application filed within one year becomes

infructuous if not disposed of within one year. The Apex Court considered the scheme of various sub-sections of S.25-O of the Act and held that since the order on an application for the closure would remain in force only for one year and in the absence of any embargo to make fresh application the review application has to be made before the expiry of the time frame of one year and such application is to be disposed of within such time frame otherwise such review application will become infructuous. The Apex Court did not deal with the question where the application of review was made within one year from the date of decision of the State Government on the application under S.25-O(1) and the State Government made the reference of the matter to the Tribunal for adjudication also within one year of its decision but the Tribunal passed the award beyond 30 days from the date of such reference and beyond one year from the date of decision of the State Government under S.25-O(1). Proviso appended to Sub-sec.(5) of S.25-O makes a provision that the Tribunal shall pass an award within a period of 30 days from the date of such reference but such time frame cannot be held to be mandatory and it cannot be said that the Tribunal would become functus officio and cease to have any jurisdiction in the matter if it fails to pass the award within 30 days from the date of such reference. **A reference which was validly made to the Tribunal will not be rendered invalid if the Tribunal fails to pass the award within 30 days for the circumstances which may be beyond the control of the parties as well as beyond the control of the Tribunal.** A reference made by the State Government to the Tribunal for adjudication under S.25-O(5) may not be adjudicated within a period of 30 days for varied reasons and in case the award is passed by the Tribunal beyond 30 days, it cannot be said that such award would be rendered without jurisdiction. **The observations made by the Apex Court in Vazir Glass Works, Ltd. [1996 (1) L.L.N.430] (vide supra), regarding making of an application for review and decision thereof within one year from the date of decision on the application under S.25-O (1) cannot be extended to the reference made to the Tribunal by the appropriate Government under Sub-sec. (5) of S. 25-O.** Take a case where reference is made by the State Government under S.25-O (5) to the Tribunal on the last day of one year from the date of decision of the refusal or grant of permission passed under S.25-O(1). In that situation obviously the adjudication by the Tribunal shall be beyond the period of one year from the date of decision by the State Government under S.25-O(1).'

(emphasis supplied)

24 Thus it is held that once a Reference is validly made to a Tribunal, the same will not be rendered invalid if the Tribunal fails to pass an order

within 30 days. It is further held that the observations of the Apex Court in **Vazir Glass** regarding making of an application for review and decision thereof within one year cannot be extended to the reference made by the Tribunal. In my view, the judgment in **Ambika Silk Mills** would not throw any light on the issue involved in the present Petition as the issue in that case was about time frame for decision of a reference by the Tribunal.

25 In **Bon Limited** (supra) the issue of before this Court was whether the time frame of one year would also be attracted in a case where review is to be filed by the workmen. This Court held in paragraphs 16, 17 and 18 as under:

‘16. In *Ambika Silk Mills Co. Ltd vs. Maharashtra General Kamgar Union and anr.*, 1998(1) Mh.L.J. 568 = 1998(1) C.L.R. 425, the learned Single Judge of this Court has distinguished the judgment of the Supreme Court in *Vazir Glass Works Ltd.* case while considering the issue whether the provisions of section 25-O(5) and more particularly proviso to the said sub-section, held that the said provision is directory and not mandatory and the Award passed by the Industrial Tribunal after 30 days from the date of reference would not be rendered bad in law on that count. In that case, the Award was made after one year and eight months. The learned Judge while distinguishing *Vazir Glass Works Ltd.* case noticed that the Supreme Court did not deal with the question where the application for review was made within one year from the date of decision of the State Government on the application under section 25-O(1) and the State Government made the reference of the matter to the tribunal for adjudication also within one year of its decision but the tribunal passed the Award beyond 30 days from the date of such reference and beyond one year from the date of such decision of the State Government under section 25-O(1). In short, it was held that the period of 30 days as also the period of one year was directory and did not make the tribunal functus officio. It appears that this judgment in *Ambika Silk Mills Co.* case was either not brought to the notice of the learned Single Judge in *United White Metal Ltd.* case or it was not noticed by the learned Single Judge.

17. In the present case, the situation that falls for my consideration and the situation that fell for the consideration of the Supreme Court in *Vazir Glass*

Works Ltd. is exactly contrary to each other. In Vazir Glass Works Ltd., as pointed out earlier, the application of the employer under section 25-O was rejected and the review was sought and instead of reviewing the order of rejection a reference was made to the tribunal after the period of one year stipulated under section 25-O(4). While in the present case, initially the application was rejected and the order was reviewed at the instance of the employer well within time so also the application made by the union seeking reference under section 10 read with section 25-O of the ID Act. The Supreme Court in paragraph 31 of the judgment in Vazir Glass Works Ltd. has considered an illustration and has reached observed that any order on the review passed by the appropriate Government is not conceivable because an order by way of review supersedes the order reviewed but not the subsequent order on a fresh application made and such subsequent order being operative for the next one year cannot be passed by any order of review of the earlier order. Let me consider an illustration exactly opposite to one that was taken by the Supreme Court. If an application seeking closure of an undertaking is allowed, as in the present case, either at the very inception under section 25-O(2) or on the review under section 25-O(5) the party aggrieved would be only workmen who have a remedy of either seeking review of such an order or to seek reference to a tribunal for its adjudication. If a review or reference, though made within the time stipulated, is not disposed of within one year as contemplated by sub-section (4) of section 25-O, the proceedings would lapse if the contention urged on behalf of the petitioner is accepted. In that case the employee will be either rendered remedyless or for no reason will have to apply afresh under sub-section (4) of section 25-O and pursue a new beginning, which does not appear to be the intention of the legislature. Such interpretation put on the language of section 25-O(4) and (5) cannot be accepted to render the remedies available to the workmen infructuous.

18. Upon plain reading of section 25-O it is clear that none of the sub-sections, except sub-section (7), is prefaced by non obstante provision overriding the other provisions in the ID Act. It is true that section 25-O is a special provision but that does not exclude the remedy available to the workmen to apply for reference against the order of closure, passed under sub-section (2), under section 10 read with section 25-O(5) of the ID Act. If a reference made at the instance of workmen, as in the present case, is not decided within one year that would close the doors for the workmen and they would not have any remedy available in law. The basic proposition that a party cannot be rendered remedyless has to be borne in mind while interpreting a provision such as the one that falls for my consideration in the present case. At the highest, section 25-O is a special procedure seeking permission to close if the predicates set out therein are satisfied. So read, a balance would be struck between the special provision seeking permission to close and general remedy to the workmen under section 10 to raise an industrial dispute before the Tribunal to look into all aspects of the legality or otherwise of closure. The test, which the

tribunal has to consider while adjudicating an industrial reference, can be different from those which the appropriate Government consider while granting permission to close under section 25-O(2) of the ID Act. ‘

26 Thus in ***Bon Limited***, this Court held that the fact situation fell for its consideration was different than the one before the Apex Court in ***Vazir Glass***. According to this Court, the fact situations were contrary to each other. This Court held that if an application seeking closer of an undertaking is allowed and workmen are aggrieved by such decision and file an application for review within the time stipulated and the government does not decide the same within one year, the workmen would be rendered remediless. It is by relying on these observations of this Court in ***Bon Limited*** that Mr Cama has strenuously contended that the time frame sought to be suggested in ***Vazir Glass*** cannot be put in a straightjacket formula in each and every case where fact situation might be different.

27 In ***United White Metal Limited*** (supra) relied upon by Mr Singhvi, this Court held in paragraph 9 as under:

‘9. The view taken by the Apex Court is that once the period of one year has expired and even if review application is pending then the said review application does not survive. While considering the review application the Apex Court has also considered the case where there is a reference to the Industrial Tribunal for adjudication that once there is a reference under S. 25-O(5) and not under S.10(1) then in that event the reference must fail on expiry of period of one year and cannot be proceeded with. In the present case also reference is under S. 25N and not under S. 10(1) and thus the reference must fail on the expiry of period of one year.”

28 In ***United White Metal*** thus, the learned Single Judge of this Court

was considering a case arising from the application filed by employer under section 25-N of the ID Act for retrenchment of workmen. After grant of permission for retrenchment, Union sought a review, but the Specified Authority referred the matter to Industrial Tribunal. The issue was therefore altogether different, and the judgment would not assist the case of either of the parties for deciding the issue involved in the present case.

29 After having considered the statutory provisions relating to closure of Undertaking as well as the relevant case laws on the subject, the issue that arises for consideration is whether the application made by Respondent No.3 for review of the order dated 30 November 2013 on 27 December 2013 could have been entertained or decided by the appropriate government after expiry of period of one year on 27 January 2013. There is no doubt to the position that the application for review was made within one year. It has been decided after one year period. In my view, the observations made by the Apex Court in *Vazir Glass* essentially apply to a fact situation where the establishment has a right to make a fresh application after expiry of period of one year of refusal to grant permission for closure. As held by the learned Single Judge of this Court in *Bon Limited*, the observations in *Vazir Glass* would not be applicable where the workmen get affected by the decision for closure and file an application for review. If the government sits on the application for review filed by workmen and does not take a decision thereon within a period of one year, the workmen would be rendered

remediless, which cannot be the objective behind prescribing the time framed under section 25-O of the ID Act. This aspect has been highlighted by the judgment in the case of ***Bon Limited*** where this Court held in paragraphs 16, 17 and 18 that a party cannot be rendered remediless while interpreting a provision. It therefore cannot be stated that, in respect of every application for review which remains pending after expiry of period of one year specified under section 25-O(4) of the ID Act, the appropriate Government would be precluded from taking a decision thereon.

30 In the present case, there is no dispute to the position that Respondent No.3 made application for review within the period of one year on 27 December 2013. It was not the fault of Respondent No.3 that the application remained pending for consideration before the appropriate government. Respondent No.3 did not have any control over the time frame within which the appropriate government would decide its review application. Once the period expired on 29 November 2014, it was permissible for Respondent No.3 to file a fresh application for closure. There is no dispute to this proposition even by Mr. Singhvi. The question therefore is what prejudice would be caused to the Petitioner if the application for review dated 27 December 2013 could be treated as a fresh application for seeking permission for closure. The answer to the question would be in the negative. This is because though the application dated 27 December 2013 is in the nature of 'review', while deciding the same is not 'reviewed' in strict sense. While deciding the review under

sub-section 5 of section 25-O of the ID Act, the powers of appropriate government are wide and what it reviews are not just the reasons recorded in the earlier order granting or refusing to grant permission for closure. While conducting review, it can also take into consideration the developments that have taken place after refusal of permission on previous occasion. The activities of an Undertaking may deteriorate or improve after passing of earlier Order granting or refusing to grant closure permission. It cannot be said that such developments would be altogether excluded by the government while deciding the application for review. This is exactly what has happened in the present case, where during the window period of rejection of earlier application and decision of review, all the permanent workmen settled with Respondent No. 3 and opted for VRS. It would be too farfetched to suggest that since application was for 'review' those developments needed to be excluded while deciding that application. Since the review is decided essentially taking into account the events that occurred after rejection of earlier application, it was indeed in nature of a fresh application, when the government took it up for decision after expiry of period of one year.

31. In the present case, order dated 27 January 2015 would indicate that the appropriate government has granted full opportunity to Petitioner while taking decision on application for review. The manner in which the order dated 27 January 2015 is passed would show that each and every aspect pointed out by the rival parties has been taken into consideration. Therefore it cannot be stated, by any stretch of

imagination, that either of the parties suffered any prejudice on account of branding of the application as 'review', instead of treating the same as a 'fresh application'.

32 I am also fortified in my view in treating the application dated 27 December 2013 as a fresh application seeking permission for closure on account of observations made by the Apex Court in paragraphs 35 and 37 of the judgment in ***Vazir Glass***. It must be borne in my mind that the directions to treat the review application as fresh application in ***Vazir Glass*** have not been issued by the Apex Court in exercise of jurisdiction under Article 142 of the Constitution of India. Therefore, even this Court would be justified in directing that the review application dated 27 December 2013 can be treated as a fresh application seeking permission for closure.

33 I am therefore of the view that the order dated 27 January 2015 granting permission for closure would not be rendered illegal only on account of the fact that the same is passed after expiry of period of one year from the date of earlier decision dated 30 November 2013.

34 Coming to the merits of the decision dated 27 January 2015, it is undisputed position that only contract workers were opposing closure before the appropriate government through the Petitioner. Respondent No.1 has specifically recorded in the order that '*it is observed that KKU*

has not pleaded anything on behalf of any of the regular workmen'. Mr. Singhvi has also fairly admitted that the Petitioner representing only contract workers in the present Petition. As contended by Mr. Cama by referring to the judgment of the Apex Court in ***The Workmen of Food Corporation of India*** (supra), contract workers do not fall within the definition of term 'workman' under section 2(s) of the ID Act. Since this position is not in dispute, I need not delve deeper in that issue.

35 The question is whether few contract workers who are yet to establish any employer employee relationship with the establishment can oppose or delay closure of an establishment. Their *locus* to participate in hearing conducted while deciding the application for closure is an altogether different aspect than decision for closure affecting any of their rights and contentions. In the present case, Reference is pending before the Labour Court in which following dispute is referred:

"Whether the action of the Management of M/s. Hindalco Industries Ltd., Khutli in refusing to concede the demands of union placed on behalf of contract workers as contained in their letter dated 20/02/2010 and contract workers demands as contained in their letter dated 11/03/2010 is legal and justified?

If not, to what relief the contract workmen are entitled?"

36 The demands made by the Union on behalf of the contract workers in letter dated 20 February 2010 are as under:

'SCHEDULE

WE DEMAND THAT THE WORKERS WHOSE NAMES IS MENTIONED IN ANNEXURE "A" TO THIS LETTER BE TREATED AS THE PERMENENT, DIRECT AND REGULAR WORKERS OF YOUR ESTABLISHMENT AT VILLAGE KHUTLI, DADRA & NAGAR HAVELI SINCE THE DATES ON WHICH THEY JOINED WORK, AS MENTIONED IN ANNEXURE "A" AND THAT THEY BE PAID THEIR ARREARS OF WAGES AND BENEFITS AS SUCH, FORTHWITH.'

37. Till the Industrial Court decides the above dispute, it cannot be said that the establishment of Respondent No.3 must continue. If the contract workers succeed in their dispute, they may be in a position to demand payment of arrears of wages and benefits on par with regular workmen and also the same benefit of settlement (voluntary retirement) as offered to regular workmen prior to sanction of closure application. However, till determination of the issue as to whether contract workers are workmen of Respondent No.3, closure of establishment of Respondent No.3 could not be kept pending. The Respondent No.1 has already protected the interest of contract workers, whom Petitioner represents, by directing that Respondent No.3 shall comply with the order of the Industrial Tribunal as and when their Reference is decided.

38 In my view therefore, no error can be traced in the order passed by Respondent No.1 granting permission for closure of establishment of Respondent No.3. Writ Petition, being devoid of merits is dismissed without any orders as to costs.

(SANDEEP V. MARNE, J.)