



W.P.No.9293 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

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The General Secretary,
Kempf Employees Union through R.Selvaraj
132, APM Nagar, Eachanari Anjal Nilayam,
Chettipalayam Road,
Coimbatore - 641 021.

... Petitioner

Vs.

The Management of Kempf India Limited,
271/2, Pollachi Road,
Malumichampatti Post,
Coimbatore - 641 021.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in I.D.No.34/2013 passed in the Industrial Tribunal Chennai dated 28.02.2020 and quash the same and direct the respondent Management to provide the benefits as claimed by the petitioner in its claim petition and allow the claim petition filed by the petitioner.

For Petitioner : Mr.V.Sivakumar

For Respondent : Mr.R.Asokan



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ORDER

The General Secretary, Kempf Employees Union is the petitioner challenging the orders dated 28.02.2020 in I.D.No.34/2013 by the Industrial Tribunal, Tamilnadu, Chennai.

2.First, briefly, into the facts of the case.

The respondent Company is KEMPF India Limited with its registered office in Coimbatore was into the manufacture of Propeller shafts and Universal Cross Joint Kits used in Automobile Industry. With huge labour unrest and accumulating financial losses the respondent Company sought permission under Section 25-O of the Industrial Act, 1947 to close down the manufacturing unit in Malumichampatti, Coimbatore. The petitioner Union countered the claim of the company. The Commissioner of Labour vide his orders dated 11.06.1990 refused to grant permission for closure. The Labour Commissioner had opined that the unit was a viable one and such drastic step would be against the public interest. The respondent Company filed a review petition on

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22.06.1990 before the Government based on which G.O.(ID) No.269 dated 06.09.1990 was issued for adjudication. The petitioner Union challenged this G.O. in a Writ Petition W.P.No.15835/1990 which was dismissed on 25.10.1990 by this Court. Later, an appeal in W.A.No.1101/1990 was filed and on 21.12.1990, it was ordered to the Government to implead the petitioner Union also as one of the parties for conciliation. Pursuant to this order, the Government conducted hearings on 18.02.1991, 25.02.1991 and 12.03.1991 in which the petitioner Union participated. Subsequently, G.O.(ID) No.644/1991 dated 17.06.1991 was issued ordering the closure of the manufacturing unit. This G.O. was challenged in W.P.No.9069/1991 and it was dismissed. Subsequent to the closure of the manufacturing unit on 25.06.1991, cheques for closure compensation were sent to the workmen which were refused to be accepted. A reference was made to the Tribunal by the Government in G.O.(ID). No.499 dated 29.09.2013. The Industrial Tribunal after analysing documentary and oral evidence in I.D.No.34/2013 found no jurisdiction in the demand of the union and dismissed the petition vide its orders dated 28.02.2020.



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3. The learned counsel for the writ petitioner Union would contend that the order of the Industrial Tribunal was erroneous for the following reasons :

- (a) The closure order of the Government was dated 17.06.1991 which is after the expiry of the validity of rejection of closure request dated 11.06.1990 by the Labour Commissioner as the validity is only for one year.
- (b) The respondent Management had discriminated against the members of the petitioner Union by utilising the services of the members of the rival Union in the sister concern to which the machineries and other equipments were shifted.
- (c) The request for closure of the unit in Coimbatore by the respondent Company was based not on any business interest but merely to get rid of the petitioner Union and therefore, was an act of unfair labour practice as defined in Industrial Act, 1947. The viability of the project was only a pretext.
- (d) The unit address ordered for closure was not the one requested for



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Therefore, he prayed for quashing of the order of the Industrial Tribunal.

4. The learned counsel for the respondent Company had a different version to argue. He listed out the reasons as to how and why the decision of the Industrial Tribunal was correct.

(a) The respondent Company was reeling under severe financial distress and also labour unrest. It was a vicious cycle and the decision of closure was a tough one for the company also.

(b) The respondent Company had filed the review petition immediately after the rejection of the 'closure' request by the Labour Commissioner and there was no delay.

(c) The petitioner Union had approached the Court with petitions due to which the Government was constrained to hold negotiations before deciding on the closure as per the orders of the Court.

(d) Therefore, in the actual terms there was no delay. Even assuming there was delay, the respondent Company was free to reapply for the closure any time and the one year validity was not a bar on



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- (e) This petition after 32 years of closure of the unit defies logic.
- (f) The Labour Commissioner exceeded his brief by going into the viability of the unit instead of dealing with the loss of reputation due to delay in executing orders, uncertainty in running of the factory, declining pace of new orders, all caused due to the militancy exhibited by petitioner union members.
- (g) The respondent Company had to be a profit making one and it was not a charitable institution to concentrate only on the cause of the public without minding on the profit.

He therefore, prayed for dismissal of the present writ petition.

5. The matter of dispute rests on two points.

- (a) Whether the closure order of the Government issued after one year of the rejection order by the Labour Commissioner, is valid.
- (b) Whether any unfair labour practice as alleged by the petitioner union was adopted by the respondent Company in getting its unit closed to 'punish' the petitioner union.



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6. To understand the closure order issued by the Government
let us quickly browse through the dates

(a) Request for closure made to the Labour Commissioner in closure
Application No. 2/1990 under Section 25-O of the Industrial
Disputes Act, 1947 - **16.04.1990**.

(b) Rejection of the application by the Labour Commissioner -
11.06.1990.

(c) Review petition filed by the respondent Company - **22.06.1990**.

(d) W.P.No.15835/1990 filed by the petitioner's Union.

(e) Dismissal of W.P.No.15835/1990 by this Court - **25.10.1990**.

(f) W.A.No.1101/1990 filed by the petitioner's Union.

(g) Judgement in W.A.No.1101/1990 - **21.12.1990** - impleading the
petitioner's union.

(h) Conciliation talks on **18.02.1991, 25.02.1991 & 12.03.1991**.

(i) G.O.(ID).No.644/1991 dated **17.06.1991** permitting closure of



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It can be easily seen from the dates listed above that the Government did not sleep over the matter and had acted once the legal hurdles were cleared. Thus the validity of the order of the Government is not in doubt and is perfectly in order. It cannot be said to be a belated order.

7. Secondly, as regards the alleged 'unfair labour practice'.

The petitioner Union has claimed that the closure itself was a colourable exercise to 'shunt out' the petitioner union members and promote the rival union members, by accommodating the latter in the sister unit of the respondent Company. In the opinion of this Court, any manufacturing unit runs on two wheels one of which is the employees and the other, the Management. Though the Management invest their money in the unit, it is for the employees to ensure success of the business venture. No business venture can be run on loss and sustain for the sake of 'public interest'. The acts of the petitioner Union in working against the interests of the respondent Company have been elaborated not



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only by the Government in its order dated 17.06.1991 but also in the order dated 11.06.1990 of the Labour Commissioner, who rejected the 'closure' request.

8. The Labour Commissioner in his order stated "*coming to the contention of the Management relating to militancy, violence, non cooperation etc. on the part of the workmen, it may be true that there may be stray instances as seen from the reply of the Coimbatore District General Engineering and Mechanical Workers' Union. But I wonder whether such activities with a slender strength of 186 workmen in afford to create a major outbreak of industrial restlessness*".

9. I do not comprehend this statement as to how a manufacturing unit will survive if the labour force sabotage the growth. I do not find any merits in such an interpretation by the Labour Commissioner. Viability alone does not count for any business venture if large scale labour unrest prevails and erodes the company. Further, the contention of the Union that the closure order was for a different unit has



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been demolished by the respondent Company by stating that the registered office is at No.38, Mettupalayam Road, Coimbatore and the closure of Maruti Shaft Unit is in 271/2, Malumichampatti, Pollachi Road, Coimbatore. There appears to be no unfair labour practice also.

10. In view of the foregoing reasons, I do not find any merit in the writ petition. In the result, this Writ Petition is dismissed.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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