



W.P. No.15678-21981/2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

| Reserved on | Pronounced on |
|-------------|---------------|
| 14.08.2023  | 01.09.2023    |

**CORAM**

**THE HONOURABLE MR. JUSTICE M.DHANDAPANI**

**W.P. NOS.15678 & 21981 OF 2023**

**AND**

**W.M.P. NOS. 21353, 21354, 21356, 15172 & 15173 OF 2023**

**W.P. No.15678 of 2023**

Ambattur Industrial Estate &  
Engineering Employees Union  
Rep. by its General Secretary  
Mr. S.Lenin Sundar @ S.Sundar

.. Petitioner

**- Vs -**

1. The State rep. by  
The Addl. Chief Secretary to Government  
Labour Welfare & Skill Development  
(A2) Department, Fort St. George  
Chennai 600 009.

2. The Deputy Secretary to Government  
Labour Welfare & Skill Development  
(A2) Department, Fort St. George  
Chennai 600 009.

3. The Labour Commissioner



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O/o Labour Commissionerate  
DMS Complex, Teynampet  
Chennai 600 006.

4. The Deputy Commissioner of Labour – II  
O/o The Dy. Commissioner of Labour – II  
Kuralagam, Chennai 600 108.

5. The Management  
Doosan Power Systems India Private Ltd.  
No.18/2A, Senneerkuppam Bypass Road  
Poonamallee, Chennai 600 056.

.. Respondents

**W.P. No.21981 of 2023**

1. P.Anjaneya Reddy
2. S.Aruldass
3. N.A.Kuthbudin
4. Velmurugan

.. Petitioners

**- Vs -**

1. The Government of Tamil Nadu  
Rep. by its Secretary  
Department of Labour & Employment  
Fort St. George, Chennai.

2. The Management of  
Doosan Power Systems India Private Ltd.  
Rep. by its Managing Director  
No.18/2A, Senneerkuppam Bypass Road  
Poonamallee, Chennai 600 056.

.. Respondents



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W.P. No.15678 of 2023 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records pertaining to the order dated 6.4.2023 passed by the 1<sup>st</sup> respondent vide G.O. (Ms.) No.66 and quash the same as illegal and contrary to the Industrial Disputes Act.

W.P. No.21981 of 2023 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records in connection with the impugned order G.O. Ms. No.66, Department of Labour & Employment, Government of Tamil Nadu, dated 6.4.2023 and quash the same.

For Petitioners : Mr. N.G.R.Prasad, for  
Mr. R.Thirumoorthy in WP 15678/23  
Mr. K.Sudalai Kannu in WP 21981/23

For Respondents : Mr. M.S.Premkumar, GA for RR-1 to 4  
In WP 15678/23 & for R-1 in WP 21981/23  
Mr. Sanjay Mohan, for  
M/s.Ramasubramaniam Associates for  
R-2 in WP 21981/23 & R-5 in WP 15678/23

### **COMMON ORDER**

Assailing the Government Order passed by the 1<sup>st</sup> respondent in and by which the application of the Management (2<sup>nd</sup> and 5<sup>th</sup> respondent in the respective petitions) for closure of the establishment u/s 25 (O) of the



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Industrial Disputes Act (for short 'the Act') was accepted by the Management, the present petitions, one by the Union and the other by four individuals have been preferred.

2. Shorn of unnecessary details, the facts, as culled out from the present petitions are as under :-

The Management, a company registered under the Companies Act, 1956, was engaged in the manufacture of boiler pressure plates, which are used in conventional coal plants. However, due to the paradigm shift in the use of green renewable energy and nuclear energy as sources, the demand for the boiler plants dwindled and in view of intense competition in the market among the other stakeholders, the Management started suffering losses for the past five years since 2016-2017.

3. The Management stopped production in the factory since February, 2022 and steps were taken to reduce the cost. Though the Management announced Voluntary Retirement Scheme, but it was taken up by the workmen. During May, 2021, the Management sought permission for



retrenching 350 workmen, which was rejected and in such a scenario, advertent to the gravity of the situation, the Management indulged in talks with the Unions/Associations for the separation of services of the workmen and after prolonged discussions running over several months, settlements were arrived at for the separation of services of workmen by availing Voluntary Retirement Service towards which settlement were signed with three Unions , viz., Doosan Employees Union, Doosan Powers Systems India, Chennai Employees Association and Doosan Technical Employees Association. Pursuant to the said settlement signed with the Unions and the individual workmen in some cases, the benefits, including ex-gratia was settled. Further the settlement with the Union/Association contained a separate clause that when application is filed for the closure of the factory, no objection would be raised by the Unions/Associations.

4. Thereafter, application was filed by the Management before the 1<sup>st</sup> respondent in which it is stated that of the 365 workmen in the employ of the Management, 350 workmen accepted the VRS scheme and received the amount as per the settlement arrived u/s 18 (1) of the ID Act. The Managers



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and Supervisors, in all numbering about 14 filed 2-A petitions individually before the Labour Court claiming themselves to be workmen, which is pending adjudication.

5. In the application submitted before the 1<sup>st</sup> respondent, after affording opportunity to the Management and also to the respective Unions, which had participated in the hearing, of which two Unions, who had accepted settlement, but objected to the closure, the 1<sup>st</sup> respondent, considering all the materials placed before it had rendered a finding that 350 workers had accepted the VRS Scheme and had left the services of the Management and further, the Union/Association having accepted and entered into the settlement, cannot go back and object to the closure of the factory and the settlement of 14 personnel as to their status of workmen being under adjudication and only the outcome of the dispute raised by them would determine the legality of their termination, the 1<sup>st</sup> respondent permitted the application filed by the Management for closure of the factory u/ 25-O of the ID Act with a further direction to the Commissioner of Labour to take further



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action with regard to the pending grievances of the employees/workmen of the undertaking as per the enabling provisions of the Act.

6. Aggrieved by the said order permitting the Management to close the factory, the 14 employees, who had raised the dispute u/s 2-A of the ID Act before the Labour Court contending their status to be workmen and, therefore, their termination from service without following the provisions of Section 25-N of the ID Act have filed W.P. No.15678/2023; on the other hand, four employees have filed W.P. No.21981/2023 contending that before passing the order of closure, they were not heard by the 1<sup>st</sup> respondent, which is mandatory. As both the petitions relate to the legality of the order passed by the 1<sup>st</sup> respondent, they were taken up together and heard by this Court.

7. Learned counsel appearing for the petitioner in W.P. No.15678/23 submitted that prior permission u/s 25-O of the ID Act is a condition precedent for constituting a valid closure. However, in the case on hand, even before obtaining prior permission of the appropriate government, which is imperative, the settlement arrived at between the Management and the



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Union cannot be a binding settlement. Further the said settlement cannot be preceding the application for closure, which is not the intent of Section 25-O.

8. It is the further submission of the learned counsel that the settlement u/s 18 of the ID Act binds the workmen, no doubt, but that cannot negate the safeguards contained u/s 25-N and 25-O of the ID Act, which are required to be complied with in case of closure. Learned counsel further submitted that not only the interest of the workmen, but also public policy and genuineness and adequacy of the reasons of the employer for the closure of the factory have to be established, which should form the basis for arriving at a subjective opinion by the Government.

9. It is the further submission of the learned counsel that the settlement of the employees cannot be the basis to seek closure as the guiding factors for acceding to the closure are provided for u/s 25-O of the Act and the permission for closure would necessarily have to be followed by the fulfilment of sub-section (8) of Section 25-O. It is the further submission of the learned counsel that though the stand of the Management is that it has



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sought for prior permission, however, the material fact, which is forgotten is that the Management cannot enter into a settlement so as to form the basis for seeking permission, as the said settlement would be of no use, as only after permission is granted, the Management can enter into any settlement with the workmen in respect of the dues payable.

10. It is the further submission of the learned counsel that the adjudication of the case of the petitioners in W.P. No.15678/23 by the Labour Court upon reference, if finds favour for the petitioners, the closure of the factory would be against the interest of the petitioners and, therefore, necessarily, the impugned Government Order deserves interference.

11. In support of the aforesaid contentions, learned counsel placed reliance on the following decisions :-

- i) *Oswal Agro Furane Ltd. & anr. – Vs – Oswal Agro Furane Workers Union & Ors. (2005 (3) SCC 224);*
- ii) *Orissa Textile & Steel Ltd. – Vs – State of Orissa & Ors. (2002 (2) SCC 578);*
- iii) *The Central Inland Water Transport Corporation Ltd. – Vs – The Workmen & Anr. (AIR 1974 SC 1604);*



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- iv) *Western India Match Company Ltd. – Vs – Workmen (1974 (3) SCC 330);*
- v) *State of Mysore – Vs – R.V.Bidap (1974 (3) SCC 337);*
- vi) *Workmen of Meenakshi Mills Ltd. & Ors. – Vs – Meenakshi Mills Ltd. & anr. (1992 (3) SCC 336); and*
- vii) *Management, Floram Shoes (India) Ltd. – Vs – The Presiding Officer, Labour Court, Vellore & Ors. (W.P. No.10958/2007, etc. – Batch – Dated 27.3.2007)*

12. Learned counsel appearing for the petitioners in W.P. No.21981/23 submits that against the order of termination issued by the Management, the petitioners have raised an industrial dispute u/s 2-A (2) of the ID Act in I.D. Nos.35 to 37 of 2022 and the same is pending. It is the further submission of the learned counsel that pending the adjudication, the application for closure has been submitted by the Management on the basis of the settlement alleged to have been arrived at with the Unions/Associations and based on which 350 workmen have received the benefits and left on VRS.

13. It is the further submission of the learned counsel that the factory suspended operation with effect from April, 2021, the time at which the petitioners were issued with the order of termination. It is the further



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submission of the learned counsel that the factory was closed without prior permission from the Government, though it is alleged that later in point of time, settlement was arrived at with the majority workers, who had left on VRS and permission was obtained and the factory was closed.

14. It is the further submission of the learned counsel that the petitioners were not given opportunity by issuance of any notice to express their grievance by making their submissions. The petitioners not being members of any Union/Association, necessarily, Section 25-O mandates causing of notice to the individual workmen and hearing them before any order is passed. Further, there is glaring defalcation of the mandate u/s Section 25-O as the application has not been filed prior to 90 days and the intended date of closure is also not mentioned in the application. The representations submitted by the petitioners were not considered by the authority, which clearly shows that enquiry has not been conducted in the proper manner. There being infraction of the provisions of Section 25-O, the impugned order deserves to be set aside.



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15. Per contra, learned counsel appearing for the Management submitted that the decision in *Oswal Agro case (supra)* would not stand attracted to the case on hand as in the present case, permission for closure was obtained. Further, in *Oswal Agro case*, permission for closure was not obtained on the basis that employees had agreed for settlement, but in the case on hand, the settlement was followed by grant of permission.

16. It is the further submission of the learned counsel that even otherwise the settlement was more than seven months prior to the permission for closure and, therefore, the VRS was not immediate to the relevant date contemplated u/s 25-O.

17. It is the further submission of the learned counsel that the 14 persons, who were taken to be persons interested as found in Section 25-O of the ID Act were heard before passing of the order and further the four persons, who are the petitioners in W.P. No.21981/23 had submitted their representation which were also considered and, therefore, the plea of the



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petitioners that they have not been put on notice and were not heard is wholly fictitious.

18. It is the further submission of the learned counsel that so long as the issue with regard to the closure has been put in issue by the petitioners in both the petitions, either on the ground of treating them as workmen or with regard to the alleged retrenchment, it should await the outcome of the disputes and it would not be in the interest of either the Management or the other workmen, who have accepted the VRS and left the services of the Management by accepting the settlement, when the closure was justified, which was accepted by the appropriate Government, which had accepted the application. It is the further submission of the learned counsel that even if the Tribunal finds the closure to be unjustified, it could mould the relief in respect of the petitioners, who are the only persons, who have opposed the closure. Further, the balance of convenience with regard to closure is in favour of the Management, as neither there are any employees on the rolls of the Management nor any production activities are going on and as no activity is going on, necessarily the factory has to be closed.



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19. It is the further submission of the learned counsel that insofar as the petitioners in W.P. No.15678/23 is concerned, the Management is ready to deposit the amount, which would be the entitlement of the petitioners, were they to be held to be workmen within the definition of Section 2 (s) of the ID Act and subject to the outcome of the dispute, the amount may be disbursed in favour of the successful litigant, which would show the *bona fides* of the Management as well. Accordingly, learned counsel prays for dismissal of the present petitions.

20. In support of the aforesaid submissions, learned counsel placed reliance upon the decision in ***Rashtriya Chemicals & Fertilizers Ltd. & Anr. – Vs – General Employees' Association & Ors. (2007 (5) SCC 273)***.

21. This Court gave its careful consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record as also the decisions relied on by the parties.



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22. The facts, which are undisputed are that initially due to prevailing business conditions and the competition in the market and also the viability of running the factory, the Management had floated the VRS Scheme during February, 2021. However, the VRS scheme not having received the requisite response the Management had issued notice of termination to all the workmen on 15.4.2021 and simultaneously filed application for retrenchment on 15.4.2021 before the Government, which application was rejected on 12.7.2021 on the ground that no materials were placed to sustain the plea of retrenchment. Further, the said order, the Management filed review application on 12.7.2021, which was also rejected by the government on 16.9.2021. Thereafter, after talks with the various Unions/Associations, settlement was entered into between the Management and the Unions/Associations in terms of which VRS Scheme was floated and 350 workmen had accepted the VRS Scheme, which was accepted. Consequent upon the response and the discharge of the workmen on the basis of the acceptance of VRS, the application was filed before the 1<sup>st</sup> respondent u/s 25-O of the ID Act on 6.2.2023.



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23. Pursuant to the aforesaid application, while one Union, which had accepted the settlement, had not raised any objection, two Unions, of which one is the petitioner Union in W.P. No.15678/23 raised objection, which were rejected by the Government, while considering the application, on the ground that the Unions have entered into the settlement and, therefore, they are bound by the terms of the settlement, one of which pertained to an undertaking not to object the application for closure. Thereafter, considering the materials placed before it, the 1<sup>st</sup> respondent had affirmatively considered the application and ordered closure of the factory of the Management.

24. The main ground raised by the petitioners have been detailed in the submissions made by the learned counsel for the petitioners. The sum and substance of the contentions revolve around Section 25-N and 25-O of the ID Act, on which it is submitted that there is violation of the aforesaid provisions rendering the order of closure one of non-application of mind and bristles with perversity. For better appreciation, the same is quoted hereunder :-

***“25N. Conditions precedent to retrenchment of workmen.- (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in***



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*continuous service for not less than one year under an employer shall be retrenched by that employer until,--*

*(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and*

*(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.*

*(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.*

*(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen 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*



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*order shall be communicated to the employer and the workmen.*

*(4) Where an application for permission has been made under subsection (1) and the appropriate Government or the specified authority 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.*

*(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.*

*(6) The appropriate Government or the specified authority 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 (3) or refer the matter or, as the case may be, cause it to be referred, 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.*

*(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal*



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*from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.*

*(8) 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 establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of subsection (1) shall not apply in relation to such establishment for such period as may be specified in the order.*

*(9) Where permission for retrenchment has been granted under subsection (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.*

**25-O. 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*



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*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 subsection (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 refused to grant such permission and a copy of such order shall be communicated to the employer and the workman.*

*(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.*



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*(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.*



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

25. While Section 25-N relates to the condition precedent to retrenchment of workmen, Section 25-O pertains to procedure for closing down an undertaking.

26. Insofar as retrenchment is concerned, before any action is taken, the prior permission of the Government is to be obtained and upon such obtainment, the workmen so sought to be retrenched should be put on notice in the manner prescribed in Section 25-N. In respect of the petitioners in W.P. No.21981/23, upon issuance of notice of termination dated 15.4.2021, the start of the notice period came into play as per the terms of their employment and the petitioners are alleged to have been retrenched. However, it is the



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stand of the petitioners that the requirement of obtaining prior permission for such retrenchment has not been obtained from the Government and, therefore, the said retrenchment is bad and in this regard, the permission of retrenchment has not only been rejected by the Government, but the petitioners effort towards conciliation failed and, therefore, they have also moved the Labour Court against the retrenchment by filing petition challenging the said retrenchment.

27. In the aforesaid factual scenario, the issue of retrenchment having been rejected by the Government and against the order of termination, the petitioners in W.P. No.21981/23 have moved the Labour Court by filing the necessary petition raising a dispute, pending the said dispute before the Labour Court, the present application has been filed by the Management for closure of the factory u/s 25-O, resulting in the impugned order herein.

28. Section 25-N and 25-O contains *pari materia* provisions as regards issuance of notice and passing of an order by the appropriate Government.



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29. The petitioners in W.P. No.21981/23 have filed representation before the 1<sup>st</sup> respondent stating that the factory should not be allowed to be closed till finality is arrived at in the dispute raised by them before the Labour Court and alleging violation of principles of natural justice as they have not been heard, it is alleged that the present impugned order has come to be passed.

30. The petitioners in W.P. No.15678/23 have challenged the impugned order on the ground that prior permission for closure as provided for u/s 25-O have not been obtained and, further they have also filed Section 2-A petitions before the Labour Court claiming them to be workmen, which is pending adjudication and, therefore, closure order passed by the 1<sup>st</sup> respondent pending the said petitions is bad.

31. In the above scenario, of necessity, Section 25-O, which has been quoted above, requires to be adverted to. Sub-section (1) therein provides for the employer to file an application for permission for closure of the establishment at least ninety days before the date on which the intended



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closure is to become effective along with the reasons for the intended closure along with a copy of the application served simultaneously on the representatives of the workmen.

32. Sub-section (2) provides for conduct of enquiry on the application by affording reasonable opportunity to the employer, the workmen and all the persons interested with regard to the closure of the factory and pass orders recording reasons in writing, either granting or refusing to grant such permission. Sub-section (3) relates to the deeming grant of permission on the expiration of the period of sixty days from the date of the application for closure, where the Government does not communicate its order to the employer. Sub-section (4) relates to the binding nature of the order, which could be reviewed by the Government under sub-section (5) on an application made by the employer or any workmen for review and it is within the purview of the appropriate Government to refer the matter for adjudication by a Tribunal.



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33. Sub-section (6) deals with no application of permission or where permission has been denied/refused, the closure of the undertaking be deemed to be illegal and the workmen of the establishment would be entitled to all the benefits as if they were on the rolls of the establishment. Sub-section (7) provides the Government with power to exercise its power with regard to the applicability of the provision under sub-section (1) and sub-section (8) deals with the closure of an establishment on permission either under sub-section (2) or (3), the workmen employed in the said establishment would 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.

34. From the above provisions, it transpires that what it necessary is that an application should be filed prior to ninety days of closure mentioning the intending date of closure and in the event of the permission being accorded by the appropriate Government either under sub-section (2) of (3), the payments that are to be made to the workmen have been detailed under sub-section (8).



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35. In the above background of the legal provisions, invoking sub-section (1) to Section 25-O, the Management had given notice of closure seeking permission from the appropriate Government with a clear mandate that upon grant of permission for closure, the workmen employed in the establishment would be given the compensation as mandated under sub-section (8) therein. From a careful perusal of the abovesaid notice, it is evident that the intended date of closure has not been shown therein, which is one of the limb of sub-section (1). However, the Management had put forth their case that such a situation with regard to intended closure did not arise for the reason that the activity in the factory has since stopped, as all the workmen had availed VRS Scheme and have left the establishment. May be by the settlement, the workmen having obtained VRS and left the establishment, the need for fulfilment of Section 25-O (8), were it to arise, stood defeated, but that cannot be the basis for rejecting the permission for closure, so long as the closure had not affected any of the workmen. Therefore, such being the position, which transpires from the record, the compliance of sub-section (1) to Section 25-O stands fulfilled.



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36. Now the next limb, which requires determination, is the act of the appropriate Government in granting permission for closure. A perusal of the impugned Government Order reveals that all the Unions/Associations have been put on notice and opportunity of hearing was afforded to all the Unions/Associations before passing the order. In fact, two Unions/Associations, which were also signatories to the settlement, though objected, however, the said objections were overruled, as they had accepted in the terms of the settlement and are guided and covered by the terms of the said settlement. When a conscious decision has been taken by the Unions/Associations that they would not be objecting to the closure and appended their signature in the settlement, thereby, putting in operation the settlement, considering the said stand, overruling their objections and also in view of the fact that the factory had ceased to operate and that no workmen were in the said factory, the impugned Government Order had come to be passed, the said Government Order cannot be said to be an order passed without recording any reasons and also in violation of principles of natural justice.



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37. However, the only ground on which the petitioners in W.P. No.15678/23 assail the impugned order is that prior permission of the Government had not been obtained before entering into settlement. To give impetus to the aforesaid contention, reliance has been placed on *Oswal Agro case (supra)*, more particularly para-14 and 15 of the said decision, wherein, the Apex Court held thus :-

*“14. A bare perusal of the provisions contained in Sections 25-N and 25-O of the Act leaves no manner of doubt that the employer who intends to close down the undertaking and/or effect retrenchment of workmen working in such industrial establishment, is bound to apply for prior permission at least ninety days before the date on which the intended closure is to take place. They constitute conditions precedent for effecting a valid closure, whereas the provisions of Section 25-N of the Act provides for conditions precedent to retrenchment; Section 25-O speaks of procedure for closing down an undertaking. Obtaining a prior permission from the appropriate Government, thus, must be held to be imperative in character.*

*15. A settlement within the meaning of Section 2(p) read with sub-section (3) of Section 18 of the Act undoubtedly binds the workmen but the question which would arise is, would it mean that thereby the provisions contained in Sections 25-*



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*N and 25-O are not required to be complied with? The answer to the said question must be rendered in the negative. A settlement can be arrived at between the employer and workmen in case of an industrial dispute. An industrial dispute may arise as regard the validity of a retrenchment or a closure or otherwise. Such a settlement, however, as regard retrenchment or closure can be arrived at provided such retrenchment or closure has been effected in accordance with law. Requirements of issuance of a notice in terms of Sections 25-N and 25-O, as the case may, and/or a decision thereupon by the appropriate Government are clearly suggestive of the fact that thereby a public policy has been laid down. The State Government before granting or refusing such permission is not only required to comply with the principles of natural justice by giving an opportunity of hearing both to the employer and the workmen but also is required to assign reasons in support thereof and is also required to pass an order having regard to the several factors laid down therein. One of the factors besides others which is required to be taken into consideration by the appropriate Government before grant or refusal of such permission is the interest of the workmen. The aforementioned provisions being imperative in character would prevail over the right of the parties to arrive at a settlement. Such a settlement must conform to the statutory conditions laying down a public policy. A contract which may otherwise be valid, however, must satisfy the tests of public*



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*policy not only in terms of the aforementioned provisions but also in terms of Section 23 of the Indian Contract Act.”*

38. However, what is more pertinent to be noted in the said case is the fact that the appellant therein did not ask for grant of such prior permission before the appropriate Government disclosing its intention to effect closure of the said unit and such question of grant of prior permission by the State did not arise.

39. In the present case, there can be no quarrel that an application for permission has been submitted for closure of the establishment. However, the only quirk herein is that the factory was non-functional prior to the said period, but the factory was not closed without the approval of the 1<sup>st</sup> respondent. In fact, as already stated above, even the application of the Management clearly spells out that application has been filed seeking permission for closure and that there are no workers in the said factory, as all of them had taken VRS and had left the service of the Management. Merely because all the workers have left the service and that there are no workers in



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the factory cannot be implied to mean that the factory was under deemed closure even before permission was sought for from the Government. The only inference that could be drawn from the aforesaid fact is that the workers, realising the state of affairs of the factory, had found the settlement entered into more beneficial and had left the employ of the Management by taking VRS and that the factory was non-functional since then. Mere non-functionality cannot partake the character of closure as it is within the domain of the Management to have opened the factory at any point of time before submitting the application for closure, had it found an uprising in its economic condition, productivity and saleability of its products.

40. The decision in *Oswal Agro case* emanated only on account of the fact that the appellant therein had not sought for any prior permission before closure. In the case on hand, permission was sought for on 6.2.2023 and by the impugned Government Order dated 6.4.23, permission was accorded to the Management to close the factory. Therefore, it cannot be said that prior permission was not sought for from the Government. The mere fact that seven months prior to seeking closure of the factory, a settlement has been



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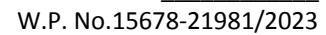
entered into between the Unions/Associations and the Management in and by which VRS Scheme was floated, which has been accepted by the workers cannot be the basis for this Court to strike down the impugned Government Order as the settlement was necessarily entered into to obviate the Unions/Associations from contesting the closure, if any filed at a later point of time.

41. When the Industrial Disputes Act provides for a mechanism u/s 18 to enter into a settlement upon discussions between the Unions/Associations and the Management, so long as the said settlement has been entered into in consonance with the relevant provisions of the Industrial Disputes Act, which has not been put in issue by the Unions/Associations, which were signatories to the said settlement, the mere fact that a settlement had been entered into before application for permission for closure had been filed cannot be the basis for this Court to hold that there is violation of Section 25-O, when Section 25-O does not mandate the Union/Associations to enter into any settlement with the Management before an application for closure is filed.



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42. In *Oswal Agro case*, the Supreme Court has clearly held that the State Government, before granting or refusing permission for closure is not only required to comply with the principles of natural justice by giving an opportunity of hearing both to the employer and the workmen but also is required to assign reasons in support thereof and is also required to pass an order having regard to the several factors laid down therein. *One of the factors which is required to be taken into consideration by the appropriate Government before grant or refusal of such permission is the interest of the workmen.* True it is that the Apex Court had held therein that the aforementioned provisions being imperative in character would prevail over the right of the parties to arrive at a settlement as the said settlement must conform to the statutory conditions laying down a public policy. However, as stated above, in the case on hand, the settlement having arrived at and based on the settlement entered into between the Unions/Associations on behalf of the workmen and the Management, the workmen have exercised their willingness for VRS, finding the lucrativeness in the settlement, which was in the interest of the workmen, which had weighed with the 1<sup>st</sup> respondent before passing the aforesaid impugned order, as the prescription u/s 25-O (8)



43. Further, it is to be pointed out that Section 25-O does not preclude the Management and the workmen from entering into any settlement any time preceding the application for closure. So long as the legal necessities of Section 25-O stood complied with and that the settlement is not in violation of public policy and the statutory conditions, the grant of permission by the 1<sup>st</sup> respondent for the closure of the establishment, by recording reasons, which are valid and reasonable, is not liable for interference.



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44. In the aforesaid backdrop of the conclusion arrived at by this Court, the petitions filed at the behest of the petitioners require consideration.

45. Insofar as the petitioners in W.P. No.21981/2023 are concerned, the said workmen, who were in the employment of the Management were terminated from service way back on 15.4.2021, much prior to the application for closure. The said petitioners had resorted to conciliation proceedings and the resultant failure of the conciliation proceedings, disputes were raised in O.P. Nos.35 to 38 of 2022 and the said petitions are pending before the Labour Court. Such being the undisputed position, the legality of the termination of the said petitioners requires to be determined by the Labour Court and pending the *lis* the petitioners would not derive any right to have a hearing when the closure was permitted by the 1<sup>st</sup> respondent, which was much later in point of time to the termination of the petitioners. However, the petitioners, four in number, have submitted their representation against the closure. Such being the case, the act of the 1<sup>st</sup> respondent cannot be said to be in violation of Section 25-O of the ID Act, as, as on the date of consideration of the closure application, the said petitioners had no *locus* to



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question the application for closure. If at all the petitioners succeed in the industrial dispute raised by them, the petitioners would still be guided by the settlement entered into between the Unions/Associations and the Management and the safeguards provided under sub-section (8) to Section 25-O would also come in aid of the petitioners. Further, even if the petitioners are not inclined to accept the settlement entered into by the Management, even then the service of the petitioners and the benefits to which they would be entitled would still be guided by sub-section (8) to Section 25-O and, therefore, the permission for closure granted by the 1<sup>st</sup> respondent would in no way work any hardship to the petitioners at a later point of time subject to the outcome of the disputes raised by them. Therefore, the prayer of the petitioners to quash the impugned order and to keep the factory operational till their industrial disputes are decided would not be in the interest of the Management, more so, when all the workmen have taken the VRS and got relieved from the services of the Management and, therefore, there could be no claim for violation of principles of natural justice insofar as the workmen are concerned. The petitioners, as on date,



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being terminated workmen, would have to await the orders of the Labour Court before making any claim against the Management.

46. Therefore, the relief sought for by the petitioners in W.P. No.21981/23 deserves to be rejected. However, it is to be noted that the petitioners cannot be left in lurch by negating their petitions, as their entitlement would stand saved on the Labour Court holding in their favour. To that extent a duty is cast upon this Court to keep their interest safeguarded by passing appropriate orders so that at a later point of time, any success achieved by the petitioners should not be an exercise in futility.

47. Insofar as the petitioners in W.P. No.15678/23 are concerned, it is not disputed that they have raised a dispute u/s 2-A (2) of the ID Act claiming themselves to be workmen, which is to be adjudicated by the Tribunal. Only upon the outcome of the dispute, confirming their status either confirming or rejecting their claim as the said petitioners, the benefits of Section 25-O would come into operation. In such a situation, it is the duty of this Court to see to it that the interest of the said petitioners stood safeguarded for the later point



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of time, as otherwise, even if they are to come out successful in the case, they would not be able to relish the fruits of their hard fight against the mighty Management.

48. In the facts and circumstances of the case, this Court feels that interest of justice would be served if the respondents are directed to deposit the amount payable as compensation in respect of the 14 + 4 petitioners (petitioners in both the petitions) which can be paid to the successful party, which shall be subject to the result of the dispute.

49. In such view of the matter, to give a quietus to the issue, this Court is of the considered view that the Management may be directed, on the basis of the settlement which has been entered into by it, to calculate the amount payable as compensation in respect of the 14 + 4 petitioners (petitioners in both the petitions) and the respective amount may be directed to be deposited to the credit of the dispute raised by the respective petitioners before the concerned Labour Court and subject to the outcome of the dispute, the amount may be disbursed accordingly.



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50. For the reasons aforesaid, this Court is inclined to pass the following order :-

- i) *W.P. No.21981/2023 is disposed of with a direction to the Management to calculate the amount in respect of the 4 petitioners and deposit the same to the credit of O.P. Nos.35 to 38 of 2022 raised by the petitioners before the concerned Labour Court and subject to the outcome of the dispute, the Labour Court is directed to disburse the amount to the successful party to the dispute.*
- ii) *W.P. No.15678/2023 is disposed of directing the Management to calculate the amount in respect of 14 petitioners and deposit the same to the credit of O.P. Nos.162 to 175 raised by the petitioners before the III Addl. Labour Court, Chennai, and subject to the outcome of the dispute, the Labour Court is directed to*



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*disburse the amount to the successful party to the dispute.*

iii) *Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.*

**01.09.2023**

Index : Yes / No

GLN



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To

1. The Addl. Chief Secretary to Government  
Labour Welfare & Skill Development  
(A2) Department, Fort St. George  
Chennai 600 009.
2. The Secretary to Government  
Department of Labour & Employment  
Government of Tamil Nadu  
Fort St. George, Chennai.
3. The Deputy Secretary to Government  
Labour Welfare & Skill Development  
(A2) Department, Fort St. George  
Chennai 600 009.
4. The Labour Commissioner  
O/o Labour Commissionerate  
DMS Complex, Teynampet  
Chennai 600 006.
5. The Deputy Commissioner of Labour – II  
O/o The Dy. Commissioner of Labour – II  
Kuralagam, Chennai 600 108.



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**M.DHANDAPANI, J.**

**GLN**

**PRE-DELIVERY ORDER IN  
W.P. NOS.15678 & 21981 OF 2023**

**Pronounced on  
01.09.2023**



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