

28-02-2024
ct no. 13
Sl. No. 4
sp

WPA 27249 of 2023
DIC India Limited & Anr.
-Versus-

The State of West Bengal & Ors.

Mr. Jishnu Saha, Id. Sr. Adv.,
Mr. Arkaprava Sen,
Mr. Sandip Gorver,
Mr. Aditya Nayar,
Mr. Ishwar Upneja,
...for the petitioners

Mr. Somnath Ganguli, Id. A.G.P.,
Ms. Priyamvada Singh
...for the State

Ms. S. Shaw,
Mr. Snehashis Sen
...for the Kolkata Port Trust

1. This Court has carefully heard the submissions made on behalf of the Additional Secretary, Government of West Bengal, particularly, the Labour Department. The reasons indicated in the order dated February 21, 2024 do not stand to reason or law.
2. The reasons advanced by the Additional Secretary for refusing permission for closure of the petitioner's business and manufacturing unit at Kolkata are set out as follows:

“After examination of the reasons advances by the parties concerned, the

interests of the general public and the possible impact of the proposed closure on local economy, the State Government refuses to grant permission for closure of the Kolkata Unit of DIC India Ltd. on the following grounds:

1. *The management of DIC India Ltd. did not submit to the State Government any alternative plan to run the factory.*
 2. *The management of DIC India Ltd. did not submit any re-structuring plan and cost controlling measures to rejuvenate the factory.*
 3. *The management of DIC India Ltd. want to close the Kolkata Unit only but the it will run the Units in other States. The management refuses for closure of Unit of DIC India Ltd. located only in West Bengal to disturb the equilibrium prevailing in the industry in region.*
 4. *The State Government could not be convinced as to whether the management closes the Kolkata Unit of DIC India Ltd. finally and irrevocably. The intention of the management of DIC India Ltd. is not clear. It appears that the management merely intends to close down of the Kolkata Unit of DIC India Ltd.*
 5. *The issues including the livelihood of the 61 Contract Labours, being the person interested in such closure, were not considered.*
 6. *The livelihood of the people around the factory will be affected because such closure.*
 7. *The business and economic activities around the factory will be affected because of such closure.*
 8. *The job and professions on which the livelihood of the large number of the people depend will be affected because of such closure.*
 9. *If the factor is closed then industrialization in the State will be affected adversely.”*
3. In addition thereto, it has been stated that there are 61 contractual labourers who are still working in the company and the

employer has not indicated as to whether such contractual employees are appropriately secured.

4. Mr. Saha, learned Senior Counsel appearing for the petitioners submits that out of 61 contractual labourers, only 26 remain. The rest have been paid and discharged upon completion of the period of contract. The 26 remaining contractual labourers are required for the purpose of dismantling and securing the remaining facilities at the employer's manufacturing unit.
5. The other grounds as set out hereinabove indicated by the State, appear to be under the expression "in the interest of the general public" under Section 25 (o) of the Industrial Disputes Act, 1947 read with the definition of closure under Section 2CC thereof.
6. The meaning and purport of the expression "in the interest of general public" has been succinctly explained by the Supreme Court in the case of ***Orissa Textiles & Steel Ltd. Vs. State of Orissa and others*** reported in ***(2002) 2 SCC 578***, particularly at paragraph 80, which is set out hereunder;

"18. We also see no substance in the contention that the amended section merely deals with the procedural defects pointed out

in *Excel Wear case* [(1978) 4 SCC 224 : 1978 SCC (L&S) 509 : (1979) 1 SCR 1009] and does not deal with the substantive grounds set out in *Excel Wear case* [(1978) 4 SCC 224 : 1978 SCC (L&S) 509 : (1979) 1 SCR 1009] . In our view the amended Section 25-O is very different from Section 25-O (as it then stood). It is now more akin to Section 25-N (as it then stood) the constitutional validity of which was upheld in *Meenakshi Mills case* [(1992) 3 SCC 336 : 1992 SCC (L&S) 679] . In *Excel Wear case* [(1978) 4 SCC 224 : 1978 SCC (L&S) 509 : (1979) 1 SCR 1009] it has been accepted that reasonable restrictions could be placed under Article 19(6) of the Constitution. *Excel Wear case* [(1978) 4 SCC 224 : 1978 SCC (L&S) 509 : (1979) 1 SCR 1009] recognizes that in the interest of general public it is possible to restrict, for a limited period of time, the right to close down the business. The amended Section 25-O lays down guidelines which are to be followed by the appropriate government in granting or refusing permission to close down. It has to have regard to the genuineness and adequacy of the reasons stated by the employer. However, merely because the reasons are genuine and adequate cannot mean that permission to close must necessarily be granted. There could be cases where the interest of general public may require that no closure takes place. Undoubtedly where the reasons are genuine and adequate the interest of the general public must be of a compelling or overriding nature. Thus, by way of examples, if an industry is engaged in manufacturing of items required for defence of the country, then even though the reasons may be genuine and adequate it may become necessary, in the interest of the general public, not to allow closure for some time. Similarly, if the establishment is manufacturing vaccines or drugs for an epidemic which is prevalent at that particular point of time, interest of the general public may require not to allow closure for a particular period of time. We must also take a note of sub-section (7) of the amended Section 25-O which provides that if there are exceptional circumstances or accident in the undertaking or death of the employer or the like, the appropriate government could direct that provision of sub-section (1) would not apply to such an undertaking. This, in our view, makes it clear that the amended Section 25-O recognizes that if there are exceptional circumstances then there could be no compulsion to continue to run the business. It must however be clarified that this Court is not

laying down that some difficulty or financial hardship in running the establishment would be sufficient. The employer must show that it has become impossible to continue to run the establishment. Looked at from this point of view, in our view, the restrictions imposed are reasonable and in the interest of the general public.”

7. At paragraph 5 of the said judgment, settled law that a right to close a business is an integral part of the freedom of trade and practice under Article 19(g) of the Constitution of India, has been reiterated.

“5. In *Excel Wear case* [(1978) 4 SCC 224 : 1978 SCC (L&S) 509 : (1979) 1 SCR 1009] this Court negated a submission that a right to close down a business was not a fundamental right and that it was merely a right appurtenant to ownership of property. This Court held that the right to close down a business was an integral part of the fundamental right to carry on business as guaranteed under Article 19(1)(g) of the Constitution. It was held that there could be a reasonable restriction on this right under Article 19(6) of the Constitution. It was held that the law could provide to deter reckless, unfair, unjust and mala fide closure. A challenge under Article 14 of the Constitution was negated. It was held that Chapter V-B dealt only with comparatively bigger undertakings and of a few types only and thus the classification was reasonable. It was held that reasonableness of the restrictions must be examined both from procedural and substantive aspects of the law. This Court then considered whether the restrictions imposed by Section 25-O (as it then stood) were reasonable and saved by Article 19(6) of the Constitution. It was held that the restrictions imposed by Section 25-O were unreasonable for the following reasons:

(i) Section 25-O did not require giving of reasons in the order. Even if the reasons were adequate and sufficient, permission to close could be denied in the purported public interest of labour as it had been left to the whims and caprice of the authority to decide one way or the other. Thus the order could be whimsical and capricious.

(ii) No time-limit was fixed whilst refusing permission to close down.

(iii) That there was no deemed provision for according approval in the section. It was held that the result would be that if the government order was not communicated to the employer within 90 days, strictly speaking, the criminal liability under Section 25-F may not be attracted if on the expiry of that period the undertaking is closed, but the civil liability under Section 25-O(5) would come into play on the expiry of the period of 90 days.

(iv) The order passed by the authority was not subject to any scrutiny by any higher authority or tribunal either in appeal or revision and the order could not be reviewed even after some time.

(v) The employer was compelled to resort to the provision of Section 25-N even after approval of closure.

(vi) The restriction imposed was more excessive than was necessary for the achievement of the object and thus highly unreasonable. It was suggested that there could be several other methods to regulate and restrict the right of closure e.g. by providing for extra compensation over and above the retrenchment compensation.”

8. The reasons given by the Additional Secretary in the order dated February 21, 2024, fall foul of the expression “interest of general public”, under Section 25(o) of the Act of 1947.
9. For the purpose of closure of a business, an employer is not required to submit any alternative or restructuring plan or disclose any cost control exercise, to revive or rejuvenate and run the manufacturing unit.
10. The decision of the petitioner to close down the Kolkata Unit and run other units in different parts of the Country or while

running other units is a commercial decision. The State has no say under Section 25(o) of the Act of 1947, in that regard.

11. There is no ambiguity on the part of the petitioner that they want to finally and irrevocably close their manufacturing activity at Kolkata. The livelihood of the people around the factory or the business and economic activities thereat, cannot be the subject matter of any decision under Section 25(o) of the Act of 1947.
12. The same is not a consideration within the meaning of the expression “in the interest of general public” as clarified by the Supreme Court in the case of **Orissa Textiles & Steel Ltd. (surpa)** set out hereinabove.
13. The effect of the closure of the factory on industrialization in the State is again a matter for the State to ponder upon and not a ground for refusing permission under Section 25(o) of the Act of 1947.
14. This Court is therefore of the clear and unequivocal view that the refusal to grant permission under Section 25O of the Act of 1947 as applied for the petitioners is bad in law, tainted by manifestly arbitrary and not

sustainable and is liable to be quashed and set aside.

15. Consequently, the petitioner shall be entitled to permission under Section 25(o) of the Industrial Disputes Act, 1947 for closure of its manufacturing unit at Kolkata.
16. This Court has passed the aforesaid directions as no useful purpose would be served in remanding the matter back to the authorities, any further.
17. With the aforesaid observations, the writ petition shall stand disposed of.
18. The aforesaid order shall not prevent any creditor of the company from taking steps in accordance with law.

(Rajasekhar Mantha, J.)