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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1163 OF 2022

Manugraph Unit-2 Employees Union,
C/o. Manugraph India Limited,
Unit No.-2, Kodoli, Taluka Panhala
District- Kolhapur, Maharashtra … **Petitioner**

V/s.

1. **The State of Maharashtra**,
   through the Department of Labour,
   having its office at Sachivalaya,
   Backbay Reclamation,
   Mumbai – 400 020

2. **Manugraph India Limited**,
   Sidhwa House, N.A. Sawant Marg,
   Colaba, Mumbai – 400 005 … **Respondent**

Mr. Sanjay Singhvi, Senior Advocate i/by Mr. Ghanshyam Thombare for the petitioner.

Ms. V.S. Nimbalkar, AGP for respondent No.1/State.

Mr. Sudhir Talsania, Senior Advocate with Mr. Kiran Bapat i/by Mr. Sandeep Mutalik for respondent No.2.

CORAM : AMIT BORKAR, J.

RESERVED ON : JANUARY 5, 2024

PRONOUNCED ON : FEBRUARY 9, 2024

JUDGMENT:

1. By this writ petition under Article 226 of the Constitution of India, the petitioner/Trade Union is challenging impugned orders dated 3 September 2020 and 5 October 2021 passed by the Appropriate Government granting permission for closure of Unit No.2 of respondent No.2 and rejection of review under Section 25-O(5) of the Industrial Disputes Act, 1947.

2. Respondent No.2 on 5 July 2020 applied for closure of its manufacturing Unit No.2 mainly on the ground that there has been no production in its Unit No.2 since 22 April 2019 and all 200 employees are sitting idle. The company was running in losses continuously for three to four years and total losses mounted were about Rs.33.76 crore. There was no possibility of any business flowing in 12 months after the date of filing of the application. Unit Nos.1 and 2 are functioning separately. Unit No.2 is a separate industrial establishment. There was a major worldwide impact on the newspaper industry resulting in the international market of the news industry being affected and many industries were forced to close down their business, which had an impact on the Indian market. The turnover of the company in the year 2007-2008 was Rs.423 crore which scaled down to Rs.239.35 crore. No manufacturing orders were forthcoming from local and global markets despite adopting remedial measures. The Management was, therefore, left with no other option but to initiate the process of closure.

3. The petitioner/Trade Union contested the closure contending that losses at the end of the financial year shown by respondent No.2 in its balance sheet are diversion of funds by way of commission to related parties, making provisions for diminishing value of investment. Two promoters drew 5.5% salary out of the total salary paid to employees and also received commissions to the tune of Rs.10.38 crore in the year 2018-2019 through a company owned by the promoter's family. Respondent No.2 had filed a similar application for closure in the year 2017 and amicably settled by settlement dated 30 October 2017 whereby respondent No.2 withdrew its closure application. Therefore, the fresh application indicates the mala fide intentions of respondent No.2. The petitioner denied the averments of respondent No.2 that the growth of electronic media and digital news adversely affects the print newspaper industry. If the company offers good compensation, it can be considered by the workers. The petitioner, therefore, prayed for the rejection of the closure application.

4. The Appropriate Government by order dated 3 September 2020 permitted respondent No.2 to close Unit No.2 by holding that production in the company was completely stopped from 22 April 2019. The company announced a voluntary retirement scheme in the year 2019 offering Rs.7 lakh as an incentive in addition to legal payment of dues. The said scheme was not accepted by the recognized Union. If the permission of closure of Unit No.2 is not granted, it will directly affect Unit No.1 and its workers.

5. On 25 September 2020, the petitioner filed a review application under Section 25-O(5) of the Industrial Disputes Act, 1947. Respondent No.2 opposed the review application by filing a reply. In Writ Petition No.2445 of 2020 filed by the petitioner, this Court directed the Appropriate Government to decide to review the application filed by the petitioner within six weeks. The Appropriate Government by order dated 5 October 2021 rejected the review application. Aggrieved thereby, the petitioner has filed a present writ petition.

6. Learned Senior Advocate for the petitioner submitted that the Appropriate Government failed to consider relevant factors while granting permission to close the unit. The material on record indicates that Unit Nos.1 and 2 are inter-connected and cannot be termed as separate units. In the written statement filed in the year 2002, the Management raised a plea that Unit No.2 was connected with Unit No.1. The chart produced by the petitioner along with its written arguments indicates that the losses shown are nothing but payments made to promoters through the company controlled by promoters. There is no genuine or bona fide reason for applying closure on the ground of losses. The company holds its credit huge cash reserves, mutual funds and inventories and, therefore, the company is relatively safe from an immediate cash crisis.

7. Per contra, learned Senior Advocate on behalf of respondent No.2 supported the impugned orders by contending that the company was sustaining heavy losses from 2016-2017 till July 2020. Unit No.2 had to face a "no orders and no work" situation since 22 April 2019 for a period of more than eighteen months due to which the company had to pay salaries to its employees from April 2019 till its closure though they were sitting idle. There was no manufacturing of a single machine as no order inflow was received. The business of respondent No.2 pertains to the "make to order basis" for the printing industry and due to the heavy recession being faced by the main customer line being "newspaper industry", the demand for its company's products dropped drastically. Therefore, respondent No.2 bona fidely waited for a substantial period but it had to face a "no production, idle work force" situation for more than eighteen months period. Therefore, it was left with no other alternative but to file a closure application. The respondent No.2/company had almost reached "no future orders position in the coming months" for the company. The review application of the petitioner was properly considered by respondent No.1. The accounts statement of the company was audited by the statutory auditors. The financial statements of the company were prepared as per accounting standards issued under Section 133 of the Companies Act, 2013. There is no adverse remark by any statutory auditors for the referred expenses. Respondent No.1/company introduced a voluntary retirement scheme for employees which indicates bona fide efforts taken by respondent No.2. The financial position of respondent No.2/company was critical. Unit No.1 was also struggling hard for its survival and, therefore, entered into a settlement of a wage reduction of 35%. After the passing of the impugned order, the Unit No.2 is already closed. All licenses and registrations of Unit No.2 stand cancelled and there is no possibility of Unit No.2 functioning again. There is no improvisation in the financial position of Unit No.1 despite the closure of Unit No.2 as it is not getting requisite orders from customers for its production. 40 to

50% of the workforce of Unit No.1 remains idle due to a lack of orders for manufacturing purposes.

8. Rival contentions fall for consideration. Before entering into the rival contentions, it is necessary to consider the scope and purpose of Section 25-O of the said Act. It is well settled that the requirement of Section 25-O is like a restriction imposed upon the right of the employer to close down the business. Section 25-O lays down guidelines that are to be followed by the Appropriate Government in granting or refusing permission to close down. To protect the interest of the affected parties, the Legislature in its wisdom has introduced restriction of time as regards filing, entertainment and time of decision. It is also well settled that the provisions of Section 25-O have to be read and construed keeping in mind two factors: firstly, to carry on or close business is a fundamental right of an individual; however, this right is controlled by specific and reasonable restrictions or due setbacks. Secondly, the industrial law is primarily entitled to create industrial harmony and ensure the protection and working of industrial units to aid and help the national economy.

9. The nature of inquiry required to be completed by the Appropriate Government has been left by the Legislature to the discretion of the Appropriate Government. The Appropriate Government needs to hold an inquiry having regard to the genuineness and adequacy of reasons stated by the employer; the interest of the general public and other relevant factors concerning Rule 76(6)(c) of the Central Rules. Moreover, additional factors such as the procedure, opportunity, reasoned order and satisfaction of the Authority are also of considerable importance. It is permissible to consider as a matter of fact that the situation requiring closure has been brought about deliberately and with mala fide intention. It is not the function of the Government or Tribunal while considering an application under Section 25-O to decide whether an employer has managed his undertaking properly, or not or to advise him what he should have done to avoid a situation requiring closure.

10. Before proceeding to consider the aforesaid issues in the light of rival contentions, it would be profitable to consider the contours of writ jurisdiction. Writ of certiorari with which I am essentially concerned is an extraordinary common law remedy. It is not a writ of right but one of discretion. The object of the writ of certiorari is to curb the excess of jurisdiction to keep inferior Courts and Tribunals within their bounds. The ground on which certiorari jurisdiction may be invoked is 'an error apparent on the face of the record' and not every error either of law or fact can be corrected by Appellate or Revisional Authority. The error must be something that can be termed as manifest on the face of the record. The mere formal or technical error even though of law will not be sufficient to attract extra-ordinary writ jurisdiction of certiorari. The Court does not substitute its own decision nor does it direct the body whose decision is quashed as to the decision it is to get on reconsideration of the matter.

11. In the light of parameters of Section 25-O of the said Act and writ jurisdiction of this Court, the following aspects ought to have been addressed which are: (i) genuineness and adequacy of reasons stated by the employer; and (ii) interest of the general public and (iii) other relevant factors.

12. The reasons assigned by the company justifying closure are:

(i) The company on the date of filing of closure application did not have any orders from buyers and had no hope of getting orders in the near future;

(ii) The company was running down any losses continuously for three to four years before filing the application;

(iii) Major worldwide impact on the newspaper industry affecting many industries forcing them to close down their businesses due to circulation of newspapers having drastically dropped;

(iv) Business of the company declined rapidly having a turnover of Rs.423 crore in 2007-2008 which came down to Rs.239.35 crore during 2018-2019;

(v) Workman's strike from 1 June 2017 to 22 September 2017 for 98 days paralyzed the company's activities;

(vi) The Management was constrained to adopt an alternative plan for the revival of the company to save Unit No.1 so that the employment of 296 employees in that unit could be saved; and

(vii) Timely measure of closure of Unit No.2 is in the interest of employees and the public at large.

13. The Appropriate Government, based on material produced by the company and employees, recorded a finding that the reasons assigned by the company for the closure of Unit No.2 were sufficient allowing them to close the unit. On perusal of the material furnished, it appears that the application filed by the respondent/company conforms to the requirements of the law referred to in paragraph 12 this judgment. The employer had furnished all necessary information in support of his case that the company was facing huge losses of about Rs.33.76 crore as compared to the losses of the earlier year of Rs.11.85 crore. Perusal of the application along with material produced before the Appropriate Government not only gives a detailed description of the financial position of the company but also provides for attempts made by the company to avoid proposed closure. It also appears that the company has taken certain measures and policies to introduce a voluntary retirement scheme. The Appropriate Government in the impugned order has taken into consideration not only the genuineness and adequacy of reasons but also other relevant factors, such as a result of refusal would affect 296 workers in Unit No.1, profit and losses and financial position. Therefore, based on the material placed on record, the Appropriate Government while exercising its power in terms of Section 25-O (1) of the Act has followed due procedure granted sufficient opportunity of hearing to the employees and recorded satisfaction about the parameters of inquiry.

14. While exercising the power of review in terms of Section 25-O(5), the Appropriate Government has taken into consideration reasons assigned by it while granting permission to close Unit No.2. The Appropriate Government, while exercising power under Section 25-O(5) has considered the fact that after permission for closure by order dated 3 September 2020, the company has paid all legal dues to the workers of Unit No.2 and services of all employees were lawfully ended and company surrendered factory license. It noted that the review application did not mention any new point for rejection of the closure application. It also noted that unit No.2 became unviable as it was not getting any work orders and all workers were sitting idle. Unit No.1 is also running with 30 to 40% capacity and, therefore, permission for closure of Unit No.2 was not granted. It will also affect Unit No.1 and its workers. The review order discloses that the appropriate government has taken into consideration all relevant factors necessary for exercising the power of review.

15. Learned Senior Advocate for the petitioner submitted that Unit Nos.1 and 2 are inter-connected and cannot be termed as separate units. However, on perusal of the record, it appears that both units had independent factory licenses and separate recognized unions. Unit No.1 was started under a different name in the year 1972 and Unit No.2 was started in the year 1988. The service conditions of employees in both units are governed separately; Unit No.2 was a separate industrial establishment under Section 2(k)(a) of the Industrial Disputes Act, 1947. Therefore, the submission on behalf of the petitioner that Unit Nos.1 and 2 are inter-connected and cannot be termed as separate units has no force.

16. Learned Senior Advocate for the petitioner next submitted that the losses shown in the books of account are nothing but payments made to the promoter through a company controlled by the promoters. It is not in dispute that the company had produced on record an audited balance sheet of profit and loss along with the original application. The companies are required to prepare their financial statements in compliance with the Companies Act, 2013. The audited balance sheet carries presumptive value that the entries contained therein are prima facie correct as under the provisions of the Income Tax Act, 1961 companies are required to submit audited financial statements along with tax returns. The statutory auditors provide a report along with audited financial statements which includes their opinion on the accuracy of financial statements and compliance with accounting standards. Therefore Audited balance sheet carries rebuttable presumption. Such presumption needed to be rebutted by producing on the record opinion of an expert or any other cogent material. Therefore, in the absence of contrary evidence or expert opinion produced on record on behalf of the petitioner, no fault can be found with the Appropriate Government for accepting entries in the audited account books.

17. Learned Senior Advocate then contended that the Appropriate Government instead of exercising power under Section 25-O(5) of reviewing its order ought to have referred to the Industrial Court. However, such submission is not available to the petitioner given the order passed by this Court in Writ Petition No.2445 of 2021 dated 5 July 2021 wherein the petitioner made a grievance that the application for review was not decided by the Appropriate Government and, therefore, sought direction to hear and decide review application. Accepting the request of the petitioner, this Court directed the Appropriate Government to decide the application for review on merits. Therefore, no fault can be found with the decision of the Appropriate Government not to refer to the Industrial Court. It is well settled that once the Appropriate Government exercised power under Section 25-O(5), it cannot refer the issue to the Industrial Tribunal under Section 25-O(5).

18. To sum up, it is evident that the Appropriate Government while exercising power in terms of Section 25-O(2) has recorded satisfaction with the genuineness and adequacy of the reasons stated by the employee. It also records a satisfaction that such closure is in the interest of employees of both units. The Appropriate Government has followed the procedure laid down under Section 25-O(2) granted opportunity to the employees and passed a reasoned order recording satisfaction as regards relevant factors. The Appropriate Government while exercising power under Section 25-O(5) has taken into consideration submissions made on behalf of the petitioner that the company had paid all legal dues to the workers of Unit No.2 and the company had surrendered factory license. The Appropriate Government has also considered review application on merits and assigned plausible reasons.

19. Therefore, I do not find an error apparent on the face of the record nor it can be stated that the Appropriate Government failed to proceed in accordance with the essential requirements of the law which it was meant to administer. It is not permissible for this Court to substitute its own decision by re-appreciation of entire material on record.

20. Since pending writ petition this Court had granted *status quo*, the same is continued for a period of four weeks from today.

(AMIT BORKAR, J.)