



W.P. No. 2034/2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
27.03.2025	17.04.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 2034 OF 2024

Workmen of Mirra and Mirra Industries
Through United Labour Federation
Regn. No.2657/CNI, rep. By its
President, 4th Floor, C.J. Complex
No.149, Thambu Chetty Street
Chennai 600 001.

.. Petitioner

- Vs -

1. The Management of Mirra and Mirra Industries
Plot No.424, 425, SIDCO Industrial Estate
Ambattur, Chennai 600 098.

2. The Management of Mirra and Mirra
Industries Pvt. Ltd. Rep. By its
Managing Director, Plot No.119, 120
SIDCO Industrial Estate
Manali New Town, Vichoor
Chennai 600 103.

.. Respondents



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WEB COPY Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records of the Hon'ble III Additional Labour Court, Chennai, in connection with I.D. No.579 of 2010 pronounced on 28.12.2022 and quash the same.

For Petitioner : Mr. V.Prakash, SC, for
M/s. S.Gokul

For Respondents : Mrs. D.Veda for R-1
Mr. M.Vijayan for
M/s.King & Partridge for R-2

ORDER

Assailing the award of the Tribunal in and by which the Tribunal had directed the 1st respondent to pay closure compensation to the workers as contemplated u/s 25-F (b) of the Industrial Disputes Act (for short 'the Act') against the claim of lay off compensation and reinstatement, the present writ petition has been filed.

2. It is the case of the petitioner that the employees, who are the members of the petitioner/Union were under the employ of the 1st respondent and since paltry wages was being paid to the workmen, the workers joined a



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trade union, which, thereafter, raised a charter of demands on 1.5.2007 seeking wage revision and other benefits from the 1st respondent. Since there was no proper response, the workers raised an industrial dispute before the Conciliation Officer on 10.5.2007 and the Conciliation Officer called upon the workers and the 1st respondent for conciliation and pending the same, on 2.7.2007, the 1st respondent declared a lay-off of its workers without obtaining prior permission from the Government for the purpose of effecting lay off, as the 1st respondent had employed more than 100 workers.

3. It is the further case of the petitioner that the denial of work by the 1st respondent was not a case of lay off, but in fact an illegal lockout and, thereafter, notice of closure was issued on 24.9.2007 without following the provisions of Chapter V-B of the Act as the 1st respondent failed to comply with the provisions laid down u/s 25-M, 23 and 24 of the Act.

4. It is the further averment of the petitioner that there is no closing down of the place of employment as the business of the 1st respondent has been moved to the 2nd respondent and the act of lay off is only to victimize the



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workers. It is the further case of the petitioner that the 1st respondent has got sufficient orders and few of the workers from the 1st respondent were transferred to the 2nd respondent. Since the stalemate continued in the conciliation talks which ultimately failed, the dispute was referred to the Tribunal for adjudication.

5. On the dispute being referred for adjudication, the Tribunal took up the dispute in I.D. No.579/2010 and during trial, on the side of the petitioner, one witness was examined as W.W.1 and Exs.W-1 to W-21 were marked. On the side of the 1st respondent, M.W.s 1 was examined and on the side of the 2nd respondent M.W.1 was examined and Exs.M-1 to M-24 were marked. On consideration of the oral and documentary evidence, the Tribunal held that the action of the 1st respondent in closing the undertaking is a closure and not a lockdown and further on the basis of the willingness expressed by the 1st respondent that it is willing to pay closure compensation to the workers connected in the dispute, the dispute was dismissed with a direction to the 1st respondent to pay closure compensation to the workers related to the dispute as



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of the date of closure as contemplated u/s 25-F (b) of the Act. Aggrieved by the same, the present writ petition has been filed by the petitioner.

6. Learned senior counsel appearing for the petitioner submits that finding of the Tribunal that it is a case of closure of undertaking and not lay-off is a perverse finding and is contrary to the materials available on record.

7. It is the submission of the learned senior counsel that the shifting of the business from the 1st respondent to the 2nd respondent, by removal of the machineries and also the employment of certain workmen, who were not leaning with the Union clearly indicates that the act of closure is only to victimize the workers, who have come under the umbrella of the Union. It is the further submission of the learned senior counsel that the said factum has been established through the evidence of M.W.s 1 and 2 and Exs.M-20 and 21, and in the light of the said admitted position, the findings of the Tribunal that the shifting of the machineries of the 1st respondent to the 2nd respondent does not mean that the business of the 1st respondent was shifted to the 2nd respondent is contrary to the materials available on record.



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8. It is the further submission of the learned senior counsel that Section 23 of the Act bars lock-out/closure during the pendency of conciliation proceedings. Any violation of Section would deem the lockout as illegal as per Section 24 of the Act. It is the further submission of the learned senior counsel that the shifting of burden with regard to return of raw material to the customers on the head of the petitioner is grossly unjust and perverse, as it is the 1st respondent which has pleaded closure and, therefore, it is the for the 1st respondent to establish the same and the findings contrary to the same by the Tribunal are perverse.

9. It is the further submission of the learned senior counsel that at the time of lay-off, 117 workers were employed in the factory for which evidence has been provided by the petitioner before the Tribunal, however, the same has been properly considered by the Tribunal and the findings rendered on this aspect deserves to be set aside.

10. It is the further submission of the learned senior counsel that the findings of the Tribunal that the 2nd respondent is not in any manner connected



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with the affairs of the 1st respondent is erroneous as the 1st respondent is a proprietary concern being run by the husband, while the 2nd respondent is a partnership concern being run by the husband and wife and the 1st respondent is an integral part of the 2nd respondent and the relationship between the 1st and the 2nd respondent has to be considered holistically but the Tribunal has lost sight of the material fact and had given an erroneous finding, which requires interference at the hands of this Court.

11. It is the further submission of the learned senior counsel that when more than 100 workmen were employed under the 1st respondent, it is incumbent on the 1st respondent to seek for the approval of the Government prior to closure or lay-off by giving notice, which has not been done by the 1st respondent and, therefore, the closure/lay-off is bad in law.

12. In the light of the aforesaid submissions, it is the stand of the learned senior counsel that without properly appreciating the provisions of law as also the materials available on record, the Tribunal has erroneously ordered closure



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compensation, which is per se erroneous and perverse and the same deserves to be interfered with.

13. In support of the aforesaid submissions, learned senior counsel placed reliance on the following decisions :-

- i) *Kays Construction Co. Pvt. Ltd. – Vs – Workmen (1958 SCC OnLine SC 137);*
- ii) *Management of Kairbetta Estate, Kotagiri P.O. – Vs – Rajamanickam & Ors. (1960 SCC OnLine SC 291); and*
- iii) *Management of the Express Newspapers (P) Ltd. Madras – Vs – Workers & Ors. (1962 SCC OnLine SC 153)*

14. Per contra, learned counsel appearing for the 1st respondent, placing reliance on the counter affidavit, submitted that upon raising the charter of demands by letter dated 1.5.2007, the workers began to adopt a Go-Slow tactics, which affected the normal production and, therefore, the 1st respondent could not deliver the goods on the timelines fixed and, therefore, the customers declined to take the orders, which led to the declaration of lay-off at the initial point of time for a period of 15 days from 2.7.07 to 16.7.07, which was



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periodically extended for another three fortnights by issuance of lay-off notices, and since no improvement was found in the attitude of the workmen, notice was issued u/s 25 of the Act on 3.8.07 under Ex.M-7 informing the government about the permanent closure of the 1st respondent on and from 3.10.07 by giving 60 days notice and terminating 47 workers. It is the further submission of the learned counsel that thereafter on 1.9.07, under Ex.M-6, one month prior notice was also issued to the workmen regarding permanent closure from 3.10.07.

15. It is the further submission of the learned counsel that the shifting of the machineries to the 2nd respondent is a counter blast to the act of the petitioner is grossly erroneous as the 2nd respondent is a separate entity and has no integral relationship with the 1st respondent. It is further submitted that no document has been placed either before the Tribunal or this Court to prove that the business activities of the 1st respondent was carried on by the 2nd respondent after closure. In this regard, it is the submission of the learned counsel that while the 2nd respondent was started as early as in the year 2005, the 1st respondent was closed only in the year 2007, which clearly shows that there is no nexus between the two entities, which are distinct in nature.



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16. It is the further submission of the learned counsel that the machineries were shifted from the 1st respondent to the 2nd respondent after 2 to 3 months from the date of closure of the 1st respondent and, therefore, the imputations levelled against the 1st respondent that the act of closure is only to victimize the workers has no legs to stand.

17. It is the further submission of the learned counsel that the provisions of Chapter V-B of the Act would not stand attracted, more particularly, Sections 25-M, 23 and 24 of the Act, as at no point of time, the 1st respondent had employed 100 or more workers in the factory. In support of the aforesaid submission, learned counsel placed reliance upon Ex.W-2, viz., copy of the industrial dispute dated 10.05.2007 raised by the petitioner, wherein, the petitioner, in clear and unequivocal terms have stated that the total number of workers with the 1st respondent is 44. It is further pointed out by the learned counsel that the aforesaid stand is also affirmed during the cross examination of W.W.1, who had stated at the material point of time, the total number of workers employed at the 1st respondent factory was 44.



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18. It is the further submission of the learned counsel that with regard to the 117 names given by the petitioner before the Conciliation Officer, the 1st respondent has given the breakup of the workmen, which includes temporary worker, supervisors, engineers, managers, etc., and the balance are unknown persons, which would be evident from Ex.M-4, the reply given by the 1st respondent. Further, Ex.M-5 and Ex.M-19, the remarks filed by the 1st respondent and the plaint filed by the petitioner in the suit against the 1st respondent would also vouch for the aforesaid fact. The above materials would clearly demonstrate that the total number of workmen employed in the 1st respondent industrial establishment is below 100 and, therefore, Chapter V-B of the Act would not stand attracted.

19. It is the further submission of the learned counsel that the 1st respondent, upon closure, had closed the industrial establishment, including surrendering the licences and also disconnected the HT electrical supply, which would clearly demonstrate that the act of the 1st respondent was not to victimize the workmen, but rather, the go-slow attitude of the workmen had made the



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industrial establishment not conducive of operation which had necessitated its closure. It is the further submission of the learned counsel that the inductment of certain workmen with the 2nd respondent, who were employed with the 1st respondent was by way of fresh appointment, as they had sought for employment and in view of the existing vacancies at the 2nd respondent, they were appointed as fresh appointees and the stand of the petitioner that the workmen, who had not supported the petitioner were appointed under the 2nd respondent is wholly misconceived and placed only to eke the sympathy of this Court.

20. It is the further submission of the learned counsel that the raw materials for the production, which were provided by the customers, were returned to the customers and were not taken over to the 2nd respondent plant, which would be evidenced from the deposition of M.W.1 and the said deposition having not been shaken in any manner during cross examination, the stand of the petitioner with regard to the raw materials is wholly erroneous.



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21. In fine, it is the submission of the learned counsel that following the provisions of Section 25-FFA of the Act, the 1st respondent establishment was closed after offering closure compensation to the workers, though they have refused to receive the same. The 1st respondent is ready and willing to pay the closure compensation to the workers as on date and rightly appreciating the above, the Tribunal has dismissed the dispute directing payment of closure compensation, which does not require any interference at the hands of this Court.

22. Learned counsel appearing for the 2nd respondent fairly concurred with the submissions advanced on behalf of the 1st respondent and further submitted that there is no integral relationship between the 1st and 2nd respondents and only the machineries, which were at the disposal of the 1st respondent were sought to be used, that too, much after the 1st respondent stood closed and the raw materials were moved to the premises of the customer from the premises of the 1st respondent and, therefore, the 2nd respondent cannot be fastened with any liability with regard to payment of compensation as also reinstatement and



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the claim of the petitioner for the reliefs supra is wholly erroneous and misconceived and, accordingly prays for dismissal of the petition.

23. This Court gave its anxious consideration to the contentions put forth on behalf of the parties to the *lis* and also perused the materials available on record as also the decisions relied on by the learned senior counsel for the petitioner.

24. There is a three pronged attack on the impugned award passed by the Tribunal, which are on the following issues :-

- i) The is no compliance of Chapter V-B of the Act as the total number of workmen in the 1st respondent industrial establishment is more than 100;
- ii) The 1st respondent has an integral relationship with the 2nd respondent and only to victimize the workmen, the 1st respondent had closed the unit, which would be evident from the movement of the machineries and raw materials to the 2nd respondent; and



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iii) The workmen are entitled to lay-off compensation and reinstatement and not to closure compensation as awarded by the Tribunal.

25. To address the first issue relating to the total number of workmen employed by the 1st respondent, a perusal of the materials, which have been placed before the Tribunal reveals that the petitioner has spelled out 117 names to be persons, who were employed under the 1st respondent in their claim before the Conciliation Officer. However, Ex.W-2, the copy of the industrial dispute dated 10.05.2007, which has been raised by the petitioner, only spells out 44 workers to have been employed by the 1st respondent. In fact, W.W.1, in his cross examination, had admitted that in the dispute, the petitioner had stated that 44 workmen were affected by the lay-off/closure of the 1st respondent.

26. In this regard, Ex.M-4, the reply given by the 1st respondent to the Conciliation Officer reveals that the 1st respondent has spelt out the details of the 117 names given by the petitioner in which the 1st respondent had admitted that 55 persons were workmen, which includes temporary workers, 21 sere in the



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supervisory cadre such as supervisors, engineers and managers and the rest of the persons are in no way connected to the 1st respondent. The list of the persons, who were on the rolls from July, 2006 to May, 2007, was also provided by the 1st respondent, which shows that it is less than 100 persons.

27. Further, even under Ex.M-5, viz., the remarks of the 1st respondent as also under Exs.M-19, M-10 and M-12, viz., the plaint filed by the petitioner in the suit against the 1st respondent; the notice dated 2.2.2009 sent by the petitioner seeking bonus for the period 2006-2007; and also in the award passed by the Tribunal in ID No.34/2010 in the dispute raised for bonus, the total count of the workmen said to be under the employment of the 1st respondent was below 100.

28. When all the documents, be it the ones filed by the petitioner or the one filed by the 1st respondent, in all, there is a clear vindication of the stand of the 1st respondent that the number of workmen under its employ is below 100, the mere claim of the petitioner that the 1st respondent had employed more than 100 workmen and, therefore, the rigours of Chapter V-B of the Act would stand attracted is wholly misconceived. The petitioner having not established the said



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fact of employment and also no materials have been placed to sustain the aforesaid claim, the Tribunal had rightly adjudicated the issue and held that the provisions of chapter V-B does not stand attracted is fully justified on the materials above and this Court does not find any reason to interfere with the same.

29. Turning back to the second contention raised by the petitioner that there is an integral relationship between the 1st and the 2nd respondent and, therefore, the act of the 1st respondent in closing the unit is only to victimise the workmen. To substantiate the aforesaid contention, the movement of the raw materials and also the machineries from the 1st respondent to the 2nd respondent is pleaded.

30. There is no quarrel with the fact that the machineries were moved from the 1st respondent to the 2nd respondent after about 2 to 3 months from the closure of the unit. The said fact is admitted even by the 1st respondent. The only claim of the 1st respondent is that once the unit stood closed and the raw materials were given back to the customers, the machineries, which were



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unutilised, were given over to the 2nd respondent, who was also involved in the same industry.

31. The 1st respondent is a proprietary firm run by the husband, while the 2nd respondent is a partnership firm run by the husband of wife. The mere fact that the 2nd respondent includes the proprietor of the 1st respondent as a partner in the said firm cannot be taken to mean that there is an integral relationship between the 1st and 2nd respondents. The unalienable relationship between the two entities ought to be proved through materials which alone could form the basis to given any such inference.

32. In the present case, the 2nd respondent was started in the year 2005, while the 1st respondent was closed only in the year 2007. At the material point of time, when the 2nd respondent was started, there was no dispute between the workers of the 1st respondent and the 1st respondent. The partnership firm of the 2nd respondent had no control or interest over the 1st respondent and no material to infer so has been placed either before the Tribunal or before this Court. The mere fact that the proprietor of the 1st respondent is also a partner in



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the 2nd respondent establishment cannot be the basis to show that there is integral relationship between the two entities.

33. Further, it is the claim of the petitioner that the raw materials have been moved from the 1st respondent to the 2nd respondent, which shows its integral relationship in the discharge of its business obligations. Though such a stand has been taken by the petitioner, however, no materials have been placed before this Court or the Tribunal to show that the raw materials were moved from the 1st respondent to the 2nd respondent. It is the specific case of the 1st respondent that the raw materials were sent back to the customers. In the absence of any materials being placed by the petitioner to substantiate its contention that the raw materials were moved from the 1st respondent to the 2nd respondent, the allegation levelled against the 1st respondent cannot be sustained.

34. Neither there is any material evidencing the movement of raw materials from the 1st respondent to the 2nd respondent nor is there any evidence to show that the 1st and 2nd respondent had any integral relationship between



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them and that one was operating for the benefit of the other and such being the case, the relationship between the two entities having not been established through any proper adjudicatory material the contentions advanced on behalf of the petitioner does not merit acceptance.

35. The last and substantial contention advanced on behalf of the petitioner is that the provisions of the Act with regard to closure have not been followed and, therefore, the workmen have only been laid off and, therefore, they are entitled to lay-off compensation, but erroneously, the Tribunal had, on misconstruction and misinterpretation of the materials ordered closure compensation, which requires modification.

36. Lay-off is provided for u/s 25-M of the Act, while Section 25-O provides the procedure for closing down an undertaking. For better appreciation, Sections 25-M and 25-O are extracted hereunder :-

“25M. Prohibition of lay-off.-

(1) No workman (other than a badly workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment to which this Chapter applies shall be



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laid-off by his employer except with the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereinafter in this section referred to as the specified authority), obtained on an application made in this behalf, unless such lay-off is due to shortage of power or to natural calamity, and in the case of a mine, such lay-off is due also to fire, flood, excess of inflammable gas or explosion.

(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 lay-off and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where the workman (other than badli workmen or casual workmen) of an industrial establishment, being a mine, have been laid-off under sub-section (1) for reasons of fire, flood or excess of inflammable gas or explosion, the employer, in relation to such establishment, shall, within a period of thirty days from the date of commencement of such lay-off, apply, in the prescribed manner, to the appropriate Government or the specified authority for permission to continue the lay-off.

(4) Where an application for permission under sub-section (1) or sub-section (3) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable



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opportunity of being heard to the employer, the workmen concerned and the persons interested in such lay-off, may, having regard to the genuineness and adequacy of the reasons for such lay-off, 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 order shall be communicated to the employer and the workmen.

(5) Where an application for permission under sub-section (1) or sub-section (3) has been made 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.

(6) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (7), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(7) 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 (4) or refer the



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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.

(8) Where no application for permission under sub-section (1) is made, or where no application for permission under sub-section (3) is made within the period specified therein, or where the permission for any lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which the workmen had been laid-off and the workmen shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off.

(9) 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), or, as the case may be, subsection (3) shall not apply in relation to such establishment for such period as may be specified in the order.]

(10) The provisions of section 25C (other than the second proviso thereto) shall apply to cases of lay-off referred to in this section.

Explanation.--For the purposes of this section, a workman shall not be deemed to be laid-off by an employer if such



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employer offers any alternative employment (which in the opinion of the employer does not call for any special skill or previous experience and can be done by the workman) in the same establishment from which he has been laid-off or in any other establishment belonging to the same employer, situate in the same town or village, or situate within such distance from the establishment to which he belongs that the transfer will not involve undue hardship to the workman having regard to the facts and circumstances of his case, provided that the wages which would normally have been paid to the workman are offered for the alternative appointment also.

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 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



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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.

(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:



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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.

(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."



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37. A perusal of the above provisions clearly shows that while Section 25-M relates to prohibition of lay-off, Section 25-O relates to procedure for closing down an undertaking. Sub-section (1) to Section 25-M mandates that no person shall be laid-off by the employer except with the prior permission of the appropriate government or such other authority as may be specified by this Government by notification in the official gazette. Sub-section (2) of Section 25-M provides for the manner in which such lay-off is intended to be made by the employer. Sub-section (8) of Section 25-M mandates that where no such application for permission under sub-section (1) of Section 25-M or where no application for permission under sub-section (3) is made within the period specified therein, or where permission for any lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which such workmen had been laid-off and the workmen shall be entitled to all the benefits under any law for the time being in force.

38. Coming to the issue relating to the procedure for closing down an undertaking, sub-section (1) mandates an employer, who intends to close down



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an undertaking of an industrial establishment, shall, in the prescribed manner, apply for prior permission atleast ninety days before the date on which the intended closure is to 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. Sub-section (2) to (5) relates to the power and duties of the Government with regard to the manner in which the application for closure has to be dealt with. Sub-section (6) provides that 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.

39. From a careful reading of the provisions of Section 25-M and 25-O, which have been specifically spelt out above, it manifestly reveals that irrespective of lay-off or closure, prior permission of the appropriate Government is mandatory. In the present case, the 1st respondent has issued the lay-off



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notice, which have been marked as Ex.M-2 series. The lay-off notice has been initially issued for a period from 2.7.2007 to 16.7.2007 and stood extended from 17.7.07 to 31.07.07 and further extended from 1.8.07 to 14.8.07 and then till 3.9.07. The above act of the 1st respondent clearly reveals that the intention of the 1st respondent, initially, was not to close down the unit, irrespective of the act of the workmen in adopting a go-slow tactics, which had caused detriment to the 1st respondent at the hands of its customers.

40. On the heels of the above lay-off notice, Ex.M-7 had come to be issued by the 1st respondent to the government on 3.8.07 informing about the permanent closure of the unit on and from 3.10.07, which is giving clear 60 days notice as mandated u/s 25-O (1) of the Act. Ex.M-6 had also been issued by the 1st respondent to the workmen on 1.9.07 giving one month notice to the workmen informing about the permanent closure of the unit.

41. It is not the case of the workmen that notices have not been issued to them and also to the Government simultaneously, as mandated u/s 25-M (2) of the Act. The lay-off stood extended for four terms and as the workmen did not



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mend their ways, thereby, the 1st respondent was put in detriment, it necessitated the closure of the unit by invoking the provisions of Section 25-O (1) of the Act. There is also due compliance of Section 25-O of the Act.

42. The present case is not a case of lock-out u/s 24 of the Act. Lock-out is for the purpose of suspending the work or refusal by an employer to continue to employ any number of persons employed. The unit was not kept locked out for a purpose; rather the unit was closed once for all, as the survival of the unit was put in peril due to the act of the workmen in adopting go-slow tactics. In spite of lay-off, which was extended four times, the workmen did not revert back to normal work, thereby forcing the employer, viz., the 1st respondent to issue notice of closure u/s 25-O.

43. There is a theoretical distinction between a closure and a lockout, which is, by now, well settled. In the case of a closure, the employer does not merely close down the place of business, but he closes the business itself; and so, the closure indicates the final and irrevocable termination of the business itself. Lockout, on the other hand, indicates the closure of the place of business and not



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the closure of business itself. (*Vide : Management of Express Newspapers case (supra)*).

44. In the present case, closure of the unit was not done for the purposes of throwing out the workmen; rather in the strictest sense, not only the place where the unit was run was closed, the business enterprise itself was closed, which would be evident from the surrender of the various licenses issued by the Governmental authorities and also the electricity supply to the unit being surrendered by the 1st respondent. The above act of the 1st respondent clearly shows that it had literally closed the unit, as per its notice to the Government u/s 25-O (1), meaning thereby, that the unit had ceased to function and the business itself stood closed.

45. In the aforesaid scenario, rightly appreciating the materials placed before it, the Tribunal had concluded that there was no case of lock-out, but not only the place of business, but the business of the 1st respondent was closed once for all and, therefore, Section 25-O of the Act comes into play. The 1st respondent had followed the provisions of Section 25-O, while closing the



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business and there is no infraction with the provisions mandated, as the necessary notice period has been given to the Government as also to the workmen before the 1st respondent was closed. Therefore, rightly interpreting the provisions in the light of the materials placed before it, the Tribunal concluded that the 1st respondent had closed the business establishment u/s 25-O of the Act, which is based on proper adjudication of the materials and the said finding does not require any interference at the hands of this Court.

46. Once the Tribunal concluded that the 1st respondent had, indeed, closed the undertaking, necessarily, the workmen would only be entitled to closure compensation and would not be entitled to lay-off compensation, and had ordered closure compensation in accordance with the provisions of Section 25-F of the Act, to be paid by the 1st respondent to the workmen. However, it is placed on record before this Court that the workmen have not received the closure compensation till date. In view of the fact that this Court has concurred with the view expressed by the Tribunal that the 1st respondent had closed the business and that the workmen are only entitled to closure compensation and



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that the 1st respondent is also ready and willing to pay the closure compensation to the workmen till date.

47. In such circumstances, this writ petition is dismissed directing the 1st respondent to deposit the closure compensation along with 9% interest p.a., if not already deposited, to which each individual workmen is entitled to as of the date of closure u/s 25-F of the Act within a period of four weeks from the date of receipt of a copy of this order to the credit of ID No.579/2010 on the file of the III Addl. Labour Court, Chennai. On such deposit being made, it is open to the workmen to file appropriate petition for withdrawal of the respective closure compensation to which they are entitled to. There shall be no order as to costs.

17.04.2025

Index : Yes / No

GLN

To

The Presiding Officer
III Addl. Labour Court
Chennai.



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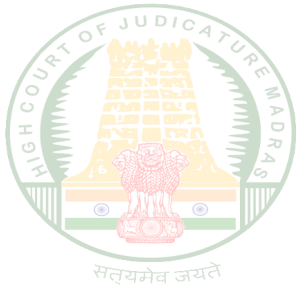
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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NO. 2034 OF 2024**

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17.04.2025