WWW.LIVELAW.IN

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
02.11.2021	31.12.2021

Coram

THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.Nos.5360 and 5365 of 2021
and W.M.P.Nos.5953, 5954, 5957 & 5958 of 2021

W.P.No.5360 of 2021

Swadeshi Panchalai Thozilalar
Urimai Padukappu Sangam
No.23, 1st Floor, Middle Street,
Veeman Nagar, Thilaspet,
Puducherry-605 009.
Rep. By its President
Mr.K.Mohandass ... Petitioner

-vs-

1. The Secretary,
   Industries and Commerce,
   Government of Puducherry,
   Puducherry.

2. The Secretary (Labour),
   Government of Puducherry,
   Puducherry.

3. M/s.Pondicherry Textile Corporation Limited,
   A Government of Puducherry Undertaking
   AFT Mill Premises, Cuddalore Road,
   Pondicherry-605 004.
   Rep. by its Director

4. M/s.Swadeshee-Bharathee Textile Mills Ltd.,
   A unit of M/s.Swadeshee Bharathee Textile Mills Ltd.,
   A Government of Puducherry Undertaking

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

Maraimalai Adigal Salai,
Pudduchery-605 004
Rep. by its Managing Director

5. The Managing Director
M/s.Swadeshi Cotton Mill
A unit of M/s.Swadeshee Bharathee Textile Mills Ltd.,
A Government of Puducherry Undertaking
Maraimalai Adigal Salai,
Pudduchery-605 004

6. Thiru. E.Vallavan, I.A.S.,
The Secretary to Government (Industries and Commerce),
Chief Secretariat, Puducherry-605 001. ... Respondents

(***R6 suo motu impleaded by an order dated 27.04.2021***)

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for records relating to the impugned notice dated 29.09.2020 issued by the 5th Respondent and quash the same and consequently, direct the Respondents to take appropriate steps to make the 5th Respondent Mill operative.

W.P.No.5365 of 2021

Sri Bharathi Mills Thozilalar
Urimai Padukapppu Sangam
No.23, 1st Floor, Middle Street,
Veeman Nagar, Thilaspet,
Puducherry-605 009.
Rep. by its President Mr.K.Mohandass ... Petitioner

-vs-

1. The Secretary,
Industries and Commerce,
Government of Puducherry,
Puducherry.

2. The Secretary (Labour),
Government of Puducherry,

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

Puducherry.

3. M/s.Pondicherry Textile Corporation Limited,
A Government of Puducherry Undertaking
AFT Mill Premises, Cuddalore Road,
Pondicherry-605 004.
Rep. by its Director

4. M/s.Swadeshee-Bharathee Textile Mills Ltd.,
A unit of M/s.Swadeshee Bharathee Textile Mills Ltd.,
A Government of Puducherry Undertaking
Maraimalai Adigal Salai,
Pudduchery-605 004
Rep. by its Managing Director

5. The Managing Director
M/s.Sri Bharathi Mills,
A unit of M/s.Swadeshee Bharathee Textile Mills Ltd.,
A Government of Puducherry Undertaking
Maraimalai Adigal Salai,
Pudduchery-605 004

6. Thiru. E.Vallavan, I.A.S.,
The Secretary to Government (Industries and Commerce),
Chief Secretariat, Puducherry-605 001. ... Respondents

(***R6 suo motu impleaded by an order dated 27.04.2021***)

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for records relating to the impugned notice dated 29.09.2020 issued by the 5th Respondent and quash the same and consequently, direct the Respondents to take appropriate steps to make the 5th Respondent Mill operative.

For Petitioners : Mr.Anil Relwani

For R1 & R2 : Mr.G.Djenary
Govt. Advocate

For R3 to R5 : Mrs.N.Mala

WWW.LIVELAW.IN

WEB COPY

Govt. Pleader (Puducherry)

*****

C O M M O N O R D E R

These Writ Petitions have been filed, seeking to quash the impugned notice dated 29.09.2020, by which a notice was issued by the 5th Respondent with regard to closure of two Mills, namely, M/s.Swadeshi Cotton Mill and M/s.Sri Bharathi Mills. The Petitioner / Union also sought a direction to the Respondents to take appropriate steps to make the 5th Respondent Mill operative.

2. The Petitioners / Sangam are the registered Unions under the Trade Unions Act, 1926. According to Sangam, the Mills are in existence for more than 90 years and on account of loss, it has been decided to wind up the Mills by means of filing a closure application under Section 25-O of the Industrial Disputes Act, 1947 (in short 'the I.D.Act, 1947'). The Management has issued a closure notice dated 29.09.2020, indicating that the Mills would be closed with effect from 30.09.2020.

3. According to the Sangam, the notice under Section 25(O) of the I.D.Act, 1947 was issued in the prescribed format only on 02.06.2020 and as there was a defect in the application, the said application was returned, which was re-submitted on 01.07.2020. In the closure application dated 02.06.2020, it was decided to close Mills with effect from 01.09.2020. The Mills were closed on

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

30.09.2020 and according to the Sangam, no notice of enquiry was issued for making objection before the Authority concerned and without taking up the matter for hearing, the Government has replied stating that there is a deemed closure after 60 days in terms of Section 25(O) of the I.D.Act, 1947. The stand of the Government was that if no orders were passed within 60 days from the date of receipt of application, the closure will come into effect and that Mills have been closed with effect from 30.09.2020.

4. The grievance of the Sangam was that when a specific provision is stipulated under the Act, it is the duty cast upon the Authority concerned to hear necessary and proper parties, including the aggrieved parties, and pass orders on the application in respect of closure of Mills. Keeping the application under lock and seal, and thereafter informing that the period had already expired is not the real intention of the fairness of the I.D.Act, 1947, and therefore, the closure is bad in law. According to them, the closure was to be given effect with effect from 01.09.2020 and strangely, without assigning any reason, the date was fixed as 30.09.2020.

5. The Management contended that the Workers have been paid compensation in part and stages, which have been accepted without any protest

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

and that when there was a genuine reason to close down the Mills, the Workers have no right to question it, more so, in the light of the deemed provision. According to the Government, the Mill is a part of Government of Puducherry and that there was a huge loss and therefore, the question to revive the Mill at this stage is not possible. The reasons given by the Mill in the closure application are perfectly valid and that the documents produced before the Authorities would reveal that there was a loss and that they are unable to cope up with the situation. Since private Sector Entities cater the demands more efficiently than the Management Mill, they were unable to regain the financial wealth even under the Chairmanship of an IAS Officer and therefore, it has been decided to close down the Mill by giving compensation under Section 25(FF) of the I.D.Act, 1947. The stand of the Management was that they have no financial resources for procurement of raw materials to operate the Mills and the machineries have become faulty due to frequent breakdown and it cannot be repaired any further.

6. Thiru.E.Vallavan, I.A.S., who has been *suo motu* impleaded as R6, has filed a counter affidavit dated 08.06.2021, wherein, it has been *inter alia* stated as follows:

i) Swadeshee and Bharathee Textile Mills Limited, Puducherry were two separate Mills and they started functioning during the French Colonial Period. In 1985, Swadeshee Cotton Mill was taken over by the National Textile Corporation

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

(NTC), whereas the Bharathee Mill, which was started in the year 1897, was taken over by NTC during 1974. The Management of NTC decided to close down these two Mills in 2005 and the Government of Puducherry had taken over these two Mills from NTC;

ii) It was stated that SITRA, Coimbatore was requested to study the techno-economic viability of Swadeshee-Bharathee Textile Mills Limited in the year 2007, which, in turn concluded that these two Mills were operating below the standard industry norms on account of outdated technology and therefore, recommended for closure of Mills. Subsequently, Government of Puducherry has constituted an Expert Committee to study for restoration of financial health of the Mills under the Chairmanship of one Thiru.B.Vijayan, I.A.S. (retired) and the said Committee also recommended for closure of the Mills under Section 25(FF) of the I.D.Act, 1947, which was placed before the Cabinet;

iii) It was further stated that Cabinet, vide Resolution dated 13.01.2019, approved the implementation of Voluntary Retirement Scheme (VRS), which was issued to Anglo French Textiles by an order dated 02.01.2013 to Swadeshi Bharathee Textile Mills. There was a difference of opinion between the Lieutenant Governor and Chief Minister/Council of Ministers in implementation of the recommendations of the Committee and therefore, the subject was referred to the Home Ministry, New Delhi and the Board of Directors concluded that the continuance of operation of the Mill is not feasible;

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

iv) It was also stated that the Managing Director, Swadeshee-Bharathee Textile Mills Ltd., filed Form O-3 dated 13.09.2019 and thereafter, filed a letter dated 11.10.2019 along with lay-off notice in Form O-3 and sought permission to lay off 135 Workmen employed in M/s.Sri Bharathi Mill, Puducherry. As per G.O.Ms.No.177/80-Lab dated 01.09.1980, the Secretary to Government, Labour Department, Puducherry is the 'Specified Authority' to exercise the powers and perform the functions in connection with grant of permission for lay-off. The Sangams filed a joint representation dated 30.12.2019 and raised their objections to give permission for lay-off and requested to run the Mill effectively. The Managing Director, Swadeshee-Bharathee Textile Mills Ltd., filed Form O-3 dated 11.10.2019 along with lay-off notice in Form O-3 and sought permission to lay off 70 Workmen employed in M/s.Swadeshi Cotton Mill, Puducherry. As per Section 25-A & 25-C of the I.D.Act, 1947, an industrial establishment employing 50 to 100 workmen shall pay 50% of the total of the basic wages and dearness allowance for all days during which he is so laid off. Further, as per Rule 75-A of the Industrial Disputes (Central) Rules, 1957, if any workman employed in an industrial establishment as defined in Section 25-A of the Act, is laid off, the employer shall given notice of commencement and termination of such lay-off i Form O-1 and O-2 respectively within seven days of such commencement or termination. Hence, Form O-3 dated 11.10.2019 was returned to file the same in Form O-1 in accordance with the relevant provisions of the Act and Rules;

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

v) In the counter affidavit, it was stated that accordingly, two separate Closure notices in Form QA dated 02.06.2020 were filed for permission in respect of the proposed closure of M/s.Sri Bharathi Mill and M/s.Swadeshee Cotton Mill, Puducherry and the number of workmen, whose services will be terminated on account of closure of undertaking is 119 and 68 respectively. Since there were certain discrepancies, it was returned for rectification. It was stated that Section 25(O) of the I.D.Act, 1947 is not applicable to M/s.Swadeshi Cotton Mill and Section 25FFA (Chapter V-A) of the I.D.Act, 1947, alone will be applicable to them. However, it was further stated that though two separate Factory License under the Factories Act, 1948 were obtained, they were registered as a Single entity as M/s.Swadeshee-Bharathee Textile Mills Ltd., Puducherry under the Companies Act and therefore, the provisions of Chapter V-B will be applicable only if single Form QA in respect of Mills is filed together and only then, a reasonable opportunity of being heard may be provided to the Workmen. As per Sub-Section (1) of Section 25-O of the Act, the employer, who intends to close down an undertaking shall apply for prior permission at least ninety days before the date of intended closure;

vi) It was also stated that the appropriate Government for granting or refusing to grant permission of closure under Section 25(O) of the Act is the Administrator and on 01.07.2021, the file was submitted for orders of the Lieutenant Governor, Puducherry and subsequently, the Labour Minister had

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

returned the file on 08.07.2020 for want of a copy of Board Resolution and the Chief Secretary minuted to bring on record quickly, thereby the Management of Mills was requested to furnish necessary reply immediately, in response to which, the Management had enclosed the following documents:

a) Copy of the Board Resolution for closure of SBTML Mills, viz., M/s. Sri Bharathi Mill, Puducherry and M/s. Swadeshi Cotton Mill, Puducherry.

b) Copy of the I.D. Note of the Lieutenant-Governor's Secretariat, Puducherry, vide No.1141/LGS/2019 pertaining to the interim direction for filing notice of closure of SBTML, Mills under Section 25(O) of the Industrial Disputes Act, 1947.

c) Copy of the I.D. Note of the Directorate of Industries & Commerce, Puducherry vide No.01/GEN/SNTML/2019-20/498 pertaining to the action taken upon the above mentioned interim direction of the Lieutenant Governor of Puducherry.

vii) It was further stated in the counter affidavit that though the file was re-submitted on 14.07.2020 for orders of the Lieutenant Governor, Puducherry for making an enquiry under Section 25(O)(2) of the I.D.Act, 1947, it was help up with the Office of the Welfare Minister, Puducherry till 19.11.2020 and subsequently, it was decided to implement VRS, which was issued to Anglo French Textiles dated 02.01.2013. Though the Bharathiya Labour Union, Puducherry wanted to close down

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

the Mill and sought for a fair settlement, the Lieutenant Governor stated that the elected Government chose not to submit the file of Labour Department to the competent authority, viz., Lieutenant Government in respect of closure notice dated 02.06.2020 of SBTML and therefore, directed to close Mill with effect from 30.09.2020 as per statute and the Department of Industries sanctioned an amount of Rs.1.71 Crore as grant-in-aid to M/s.SBTML towards part payment of closure compensation to workers;

viii) It was also stated that since the decision of appropriate Government was not received from Labour Department, Puducherry, the Management presumed the grant of permission and closed the Mills officially on 30.09.2020 and returned the file to the Labour Department on 27.11.2020, with a direction to ensure timely payment of closure compensation to the workers. It was finally stated that there was no delay on his part and he was not aware of the closure notice dated 29.09.2020 issued by the 4th Respondent, as he was not allocated with the subject at the time of closure of the Mills.

7. According to Mrs.N.Mala, learned Government Pleader (Puducherry), in terms of Section 25(O)(6), in case no application is filed for permission as contemplated under sub-section (1) within the period specified therein or where the permission for closure has been refused, then only the closure becomes illegal and the employees would be entitled to all the benefits. In this case, the

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

application has been made and the defects were rectified and thereafter, the closure has taken effect in the subsequent date and therefore, the submission put forth by the Writ Petitioners that there is a violation of Section 25(O) of the I.D.Act, 1947 cannot be accepted. It was further contended that since there was no order passed, the deeming provision has come into effect.

8. Heard the learned counsel for the Petitioners, learned Government Pleader (Puducherry) for R3 to R5 and the learned Government Advocate for R1 & R2, Thiru.E.Vallavan, I.A.S. (R6) and perused the material documents available on record.

9. It is seen that the closure application has been made on 02.06.2020 to close down the Mills with effect from 01.09.2020. Pursuant to the return of the application, it was re-submitted on 01.07.2020 after complying with the defects mentioned therein and subsequently, it was decided to close down the Mills with effect from 30.09.2020.

10. De hors the change in the date of closure, the issue to be decided is as to whether the provisions of Section 25(O) of the I.D.Act, 1947 has been complied with in its strict sense. For the sake of convenience, Section 25(O) of the I.D.Act,

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

1947 is extracted hereunder:

"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 sub-section *(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 workmen.

(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:

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

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.]]”

11. In terms of the aforesaid Section, it is mandatory on the part of Employer to issue notice to close down the Undertaking by giving three months' notice and specify the date of closure by simultaneously making an application before the Authorities concerned for closing down the Undertaking. The concerned Authority, after scrutinizing the records and after rectification of defects will have to decide the application within 60 days from the date of original application for closure or within 60 days from the date of re-presentation.

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

12. In this case, admittedly, the Authority concerned did not conduct any enquiry / hearing and allow the period to automatically get lapsed, thereby, deeming provision has come into operation. The core issue involved is whether the deeming provision can be read in isolation, when the Authorities have not discharged their statutory obligation mentioned therein. After receipt of the application for closure under Section 25(O) of the I.D.Act, 1947, especially when more than 100 workmen were employed on an average per working day for the preceding twelve months, the issuance of notice to the Workmen or their representative and hearing all the parties, who are interested and likely to be affected, is obligatory before closing down an Undertaking within a period of 60 days as mentioned supra. In case of any adverse order, the employees are entitled to seek for reference under Section 25(O)(3) of the I.D.Act, 1947 and the Tribunal shall pass an Award within 30 days from the date of receipt of Reference and that the Government cannot refuse to refer the matter for adjudication.

13. In this case, not even a hearing has been conducted and no reference has been made. When the Authorities fail to discharge their duties, it is obligatory on the part of the Government to refer the matter for adjudication before appropriate Tribunal. As stated supra, the Government cannot keep the application for closure in a cold storage and wake up from slumber and say that deeming provision has

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

come into play. The purpose of deeming provision provided under the Act is for a different aspect and not for sending a communication about the receipt of application by the Government and hearing thereafter.

14. If the contention of Mrs.N.Mala, learned Government Pleader (Puducherry) is accepted, it will make mockery of the entire provisions of Section 25(O) of the I.D.Act, 1947. Admittedly, in this case, an application has been filed, seeking permission for closure and the same was re-presented after curing the defects. If the Authority is allowed to operate the deeming provision without conducting any enquiry, the very purpose of the provisions of the Act itself will be defeated, as there is not even an attempt to conduct enquiry, which is mandatory on the part of the concerned Authority under Section 25(O)(2) of the I.D.Act, 1947. Though the Government and the 6th Respondent have filed counter affidavits, narrating several details, including financial loss, etc, all these particulars should have been referred to in detail in an order after conducting an enquiry by the authority concerned and not after effecting the closure, which would amount to putting a cart before a horse.

15. The Supreme Court in the case of ***Orissa Textile & Steel Ltd. vs. State of Orissa and Others***, reported in ***AIR 2002 SC 708*** held that the appropriate Government exercising quasi-judicial function cannot pass orders arbitrarily or whimsically. For the sake convenience, the relevant paragraphs of the said

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

judgment are extracted hereunder:

WEB COPY

"5. In Excel Wear's case, this Court negatived 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 negatived. It was held that Chapter V-V 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 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.

"11....Under the unamended Section 25-O, the order as to be passed on a subjective satisfaction of the appropriate Government. Now, in amended Section 25-O the words used are "the appropriate Government may, after making such enquiry

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

as it thinks fit, and after giving a reasonable opportunity of being heard to the employer, the Workmen and persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, interest of the general public and all other relevant factors by order and for reasons to be recorded in writing, grant or refuse to grant such permission." Thus now the appropriate Government before passing an order is bound to make an enquiry. Now, the order passed by the appropriate Government has to be in writing and contain reasons. As in the case of retrenchment so also in closure, the employer has to give notice by filing up a form in which he has to give precise details and information. The requirement to make an enquiry postulates an enquiry into the correctness of the facts stated by the employer in the notice served by him and also all other relevant facts and circumstances including the bona fide of the employer. **Now an opportunity to be heard would have to be afforded to the employer, workmen and all persons interested. The detailed information which the employer gives would enable the appropriate Government to make up its mind and collect necessary facts for the purposes of granting or refusing permission. The appropriate Government would have to ascertain whether the information furnished is correct and whether the proposed action is necessary and, if so, to what extent. The making of an enquiry, the affording of an opportunity to the employer, the workmen and all interested persons and the necessity to pass a written order containing reasons envisages exercise of functions which are not purely administrative in character but quasi-judicial in nature. The words "the appropriate Government, after making such enquiry, as it thinks fit" does not mean that the Government may dispense with the enquiry at its discretion. These words only mean that the Government has discretion about the nature of the enquiry it is to make."**

22. Again, in the case of Premium Granites v. State of Tamil Nadu MANU/SC/0466/1994 : [1994]1SCR579 , it has been held that the phrase "public interest" finds place in the Constitutional and in many enactments and has since been noted and considered by this Court in various decisions. It has been held that the said expression is of a definite concept and that there is nothing vague about it. Undoubtedly, in Maneka Gandhi's case it had been held that a fundamental right had not been breached. However, that would make no difference to the understanding of the term "in the interest of the general public". In our view, the phrase "in the interest of the general public" is the phrase of a definite connotation and a known concept. This phrase, as used in amended Section 25-O, has been bodily lifted from Article 19(6) of the Constitution of India. As stated in Maneka Gandhi's case if it is not vague in the Constitution, one fails to see how it becomes vague when it is incorporated in amended Section 25-O.

23. It was submitted that the restriction in order to be valid must be imposed by law made by the Government. It is admitted that such law could include delegated legislation or subordinate legislation. It is submitted that mere executive order or mere executive determination was not permissible. It was submitted that the law itself must define the content of the restriction. It was submitted that the Parliament cannot leave it to the executive to determine the content of the restriction. It was submitted that the object of the restriction must be

WWW.LIVELAW.IN

WEB COPY

differentiated from the restriction itself. It was submitted that Articles 19(2) to (6) of the Constitution lay down the grounds or objects of the restriction. It was submitted that the actual restriction had to be defined by "law". It was submitted that otherwise it would not be possible to say whether the restriction laid down by the specific law conforms to the standards specified in the Constitution and/or whether it was proximate thereto and reasonable. It was submitted that if the content of the restriction was not laid down by the law but was left to be decided by the executive on a case by case basis then there would be an impermissible delegation of legislative functions.

24. We see no substance in these contentions. Amended Section 25-O is the law which lays down the restriction. As has been set out above, there is nothing vague or ambiguous in its provision. It is Section 25-O which gives the power to grant or refuse permission. It would be impossible to enumerate or set out in Section 25-O all different contingencies or situations which may arise in actual practice. Each case would have to be decided on its own facts and on the basis of circumstances prevailing at the relevant time. All that can be set out, in the Section, are guidelines. These have been set out in amended Section 25-O."

From the above observation of the Supreme Court, it is clear that enquiry is mandatory. Though the nature of enquiry vests with the Government, it does not mean that enquiry can be dispensed with in view of the judgment of the Apex Court, especially Paragraph No.11. If the present employer is allowed to stick on the deeming provision alone, it will set a bad precedent to other employers to follow the same and ensure that the Authority concerned does not pass any order within 60 days and thereafter, would extend the benefit of compensation on the ground that no order has been passed within 60 days and to say that in the light of deeming provision the closure has come into effect. At this moment, it is useful to refer to the preamble of the I.D.Act, 1947, which states as follows:

> "An Act to make provision for the investigation and the settlement of industrial disputes, and for certain other purposes."

16. The purpose of the I.D.Act, 1947 is for a speedy remedy and that is why,

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

an outer time limit has been prescribed for passing an award for the appropriate Forum to decide the issue within a time frame. Even though the I.D.Act, 1947 prescribes an outer time limit, such provision is only directory in nature and not mandatory. Merely because an award has not been passed within time, it will not make the reference made by the Government is bad or the powers of the Court are extinguished / *functus officio,* whereas the time limit prescribed under Section 25(O)(3) is mandatory and it has got to be complied with in its entirety. The Authority must render a finding about the genuineness and adequacy of the reasons stated by the Employer. The interest of the Public will have to be taken into consideration before arriving at any conclusion with regard to closure. By closing down a Government Establishment, there is a deprivation of livelihood, which is in violation of Article 21 and 39 of the Constitution of India.

17. This Court cannot go into the factual aspects regarding the genuineness of the closure and the veracity of the loss (whether true or created one) can be decided only by the Authority / Tribunal. This Court cannot adjudicate the disputed question of facts and hold (or put a rubber stamp) that the Authority's decision in not performing the duties cast upon him is correct. There was an interim order passed by this Court, directing the Government to pay 50% of the balance amount without prejudice to the rights of the parties on 29.04.2021.

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

18. The Government has produced a copy of the Report of the Expert Committee, wherein in Page No.2 under the head 'Methodology', it has been mentioned as follows:

> ".....Further, a detailed stakeholder consultation with the trade unions, associations, individual labourers and the mill management were also carried out and in the process eliciting opinions regarding the health of the company."

In the report, though it has been described that trade unions were heard, it cannot be construed that it is an hearing under Section 25(O) of the I.D.Act, 1947, firstly for the reason that Expert Committee is not an Authority and secondly, when there is a notice issued under Section 25(O) of the I.D.Act, 1947, the parties ought to have been heard. Therefore, it is crystal clear that there is a procedural irregularity in the light of the judgment of the Apex Court (referred to supra), which entitles the employees to get all the benefits as if there is no closure in the eye of law. If the closure of an establishment is illegal and not justified, even an individual workman can raise an Industrial Dispute, stating that there is non employment on account of the illegal closure and the concerned Labour Forum is empowered to adjudicate the same and render an award. The period of limitation under Section 2-A will commence only after the issue in these Writ Petitions is resolved and not earlier.

19. In the present case on hand, Thiru.E.Vallavan, I.A.S., Secretary, who has

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

been *suo motu* impleaded as R6 by this Court in this case has come forward for the first time, saying that he was not the Authority. Till he was impleaded, the issue was proceeded on the assumption that he was the concerned Authority. When this Court insisted that he should file a counter, he has narrated several details, but however, stated that he was not the Authority to decide the issue and the Administrator was the Authority, who is dealing with the matter. When the Industrial Disputes Act was enacted in 1947, the powers have been conferred on the Government Officials to decide the quasi judicial matters and almost all the Establishments have obeyed the orders of the Authority under the various Labour Enactments. Now, they are under various pressure. The Appropriate Government must think of amending the provisions of the Act to ensure that the powers are vested with the Industrial Tribunal, thereby the Review provisions can be deleted. The above suggestion for amendment has been made based on the decision of the Supreme Court in the case of ***Krishna District Co-operative Marketing Society Limited vs. N.V.Purnachandra Rao, (1987) 4 SCC 99***, wherein suggestion for amending the provisions of the Industrial Disputes Act was made and the relevant paragraph is extracted hereunder:

> "11. We may incidentally observe that the Central Act itself should be suitably amended making it possible to an individual workman to seek redress in an appropriate forum regarding illegal termination of service which may take the form of dismissal, discharge, retrenchment etc. or modification of punishment imposed in a domestic enquiry. An amendment of the Central Act introducing such provisions will make the law simpler and also will reduce the

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

> delay in the adjudication of industrial disputes. Many learned authors of books on industrial law have also been urging for such an amendment. The State Act in the instant case has to some extent met the above demand by enacting section 41 providing for a machinery for settling disputes arising out of termination of service which can be resorted to by an individual work- man. **In this connection we have one more suggestion to make.** The nation remembers with gratitude the services rendered by the former Labour Appellate Tribunal which was manned by some of our eminent Judges by evolving great legal principles in the field of labour law, in particular with regard to domestic enquiry, bonus, gratuity, fair wages, industrial adjudication etc. The Industrial Disputes (Appellate Tribunal) Act, 1950 which provided for an all-India appellate body with powers to hear appeals against the orders and awards of Industrial Tribunals and Labour Courts in India was repealed in haste. If it had continued by now the labour jurisprudence would have developed perhaps on much more satisfactory lines than what it is today. There is a great need today to revive and to bring into existence an all- India Labour Appellate Tribunal with powers to hear appeals against the decisions of all Labour Courts, Industrial Tribunals and even of authorities constituted under several labour laws enacted by the States so that a body of uniform and sound principles of Labour law may be evolved for the benefit of both industry and labour throughout India. Such an appellate authority can become a very efficient body on account of specialisation. There is a demand for the revival of such an appellate body even from some workers' organisations. **This suggestion is worth considering**. All this we are saying because we sincerely feel that the Central Act passed forty years ago **needs a second look** and **requires** a comprehensive **amendment.**"

20. Thiru.E.Vallavan, I.A.S. had already invited the wrath of this Court. In an Industrial Dispute, pertaining to suspension, he, as a Conciliation Officer, revoked the suspension and ordered for reinstatement, when he has no powers to do so in the capacity as a Conciliation Officer. In yet another case, this Court warned him and thereafter, granted time to withdraw the wrong order passed by him and to

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

refer the matter for conciliation. Since some of the IAS Officers are not familiar with the provisions of certain enactments, I have made the above suggestion for amendment.

21. In the typeset of papers at Page No.36, a reply dated 21.12.2020 to the query raised under RTI Act has been annexed, wherein it was stated that the Labour Department of Puducherry had not issued any order granting permission for closure in respect of the Mills. Thus, it is obvious that there is no order of closure as such and hence, the Government is harping upon the deeming provision.

22. It is seen that even though two separate Writ Petitions have been filed by the Sangam, as per the Status Report on Swadeshee-Bharathee Textile Mills Ltd., Puducherry dated 27.11.2018 (annexed at Page No.15), both Swadeshi Cotton Mills and Sri Bharathi Mills were taken over by Pondicherry Textile Corporation (A Government of Puducherry Undertaking) with effect from 01.04.2005, thereby both Mills were brought under one umbrella and therefore, fresh application to comply with the provisions of Section 25(O) of the I.D.Act, 1947 will have to be filed in respect of all the employees, namely, 119 and 68. There appears functional integrity between the two Mills of NTC, which was jointly vested with the Government of Puducherry.

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

23. Once the closure is held to be illegal in terms of Section 25(O)(6) of the I.D.Act, 1947, Workmen are deemed to be in service and therefore, they are entitled to wages. It is made clear that this order is applicable only to those, who questioned the closure and will not apply to those, who received benefits and left. That apart, in the interim order dated 29.04.2021, this Court has already made it clear that a Five Man Committee can raise a dispute or Seven Workmen can join together, form a Trade Union, questioning the closure. Since the Workmen have been deprived of their employment, they are entitled to question the non-employment, on account of illegal closure individually by raising a dispute under Section 2-A of the I.D.Act, 1947, which is maintainable. The other provisions of the I.D.Act, 1947, namely, Section 25(F), 25(FF) and the like have also not complied with and therefore, the Workmen before this Court should be construed to be in employment.

24. The Hon'ble Supreme Court in the case of **Jaipur Zila Sahakari Boomi Vikas Bank Ltd vs. Ram Gopal Sharma and others**, reported in **(2002) 2 SCC 244** held

> "13...It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed...."

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

The Apex Court in the aforesaid decision clearly held that the interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. The decision has been rendered in the context of interpretation to Section 33(2)(b) of the I.D.Act, 1947, to decide as to whether it was mandatory on the part of the employer to comply with the said provision or to allow the employee to take recourse to a complaint under Section 33-A of the I.D.Act. The Apex Court in Paragraph No.15 of the said case made it very clear that when no application is made or the one made is withdrawn, the contention of the Management, that there is no order of refusal of such application on merit and as such the order of dismissal or discharge does not become void or inoperative unless such an order is set aside under Section 33A, was rejected therein. It was further made clear by the Apex Court that the conditions stipulated under Section 33(2)(b) has got to be complied with in letter and spirit, which is mandatory.

25. Similarly, insofar as the provisions of Section 25(O) are concerned, a duty is cast upon the Government / Authority / Tribunal to decide the application, when it is filed under the said provision. The contra contention of the respondents, that there is a deeming provision, which will enable the employer to close down an Undertaking, will not hold good. Admittedly, the Mills belong to the Government and the Authority and Management should be a model employer to comply with the

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

mandatory provisions prescribed under the I.D.Act, 1947. That being the case, if the contention of the respondents is accepted, then the provisions of Section 25(O) will get diluted and the employer cannot be allowed to gain any advantage over the default committed on account of non-consideration of the application within the time prescribed.

26. Normally, this Court would direct the Authorities to consider the application afresh, but, in terms of Section 25(O)(4) of the I.D.Act, 1947, the order will be in force for a period of one year. Of course, in this case, there is no order in the eye of law, as, on account of inaction of the Government, the closure can be given effect to from the prospective date, after an order is passed in terms of Section 25(O) of the I.D.Act, 1947. Hence, the employer need to file afresh application, seeking for closure of the Establishment based on the existing number of employees as on date, including those, who have accepted the compensation under protest and not other employees, who have already received the compensation without protest. In case the total number of employees is less than 100 as on date after excluding those employees, who have accepted the compensation without protest, then there is no requirement to file an application under Chapter V-B, but of course, other mandatory provisions of Chapter V-A will have to be complied with, if applicable. A Division Bench of this Court in ***The Management of Chandra Textiles Private Limited Coimbatore vs.***

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

N.Palaniswami and Others, reported in ***(1987) I LLJ 458 Mad*** observed as follows:

> "26. Mr.Venkataraman, learned counsel for the first Respondent, referred to the definition of the words, "**under protest**" in the Law Lexicon of Venkataramiah, Vol. II. Besides that, he referred to Supdt. (Tech, I) Central Excise, I. D. D., Jabalpur v. Pratap Rai (1978) II S.C.J. 490 which has considered the meaning of the words, "**without prejudice**". In the view which we have taken on the facts of the case, it is not necessary for us to consider those decisions. We rest content by pointing out that the conduct of the first respondent is not one from which it can be inferred in any matter that he had accepted the award of the Labour Court to be correct. On the other hand, he was been unequivocally pointing out the other way.
>
> 27. In the view which we have taken on the facts of this case, the authorities relied upon by the learned counsel for the appellant will not apply to this case. Each case will have to depend on its own facts. In the present case, the conduct of the appellant was not such that he became disentitled to the discretionary relief under Article 226 of the Constitution of India by the doctrine of approbation and reprobation or any other principle of law. The decisions cited by learned counsel for appellant will not help him in the present case.
>
> 28 & 29 .....
>
> 30. In view of the fact that the first respondent had been kept out of employment for nearly fifteen years by the fault of the Management and the fact that the Management has failed to place before the Labour Court or his Court any material for refusal of back-wages, we think it just and proper to grant the consequential relief of back-wages."

From the above judgement, it is clear that the Authority concerned / Labour Court / Tribunal will have to look into the **the doctrine of approbation and reprobation** and in case an employee accepted any amount under protest, then he is entitled to agitate his grievance before the appropriate Forum. In all fairness, the demand

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

raised by the Sangam in these Writ Petitions is valid and hence, the impugned notice is liable to be interfered with.

27. In fine, ***these Writ Petitions are allowed*** and both the impugned notice dated 29.09.2020 is hereby set aside. The amount already received under protest shall be adjusted and the remaining amount shall be paid within a period of six months from the date of receipt of a copy of this order. In the meanwhile, it is open to the employer to make afresh application for closure of the Undertaking in terms of the provisions of the Act, if so advised, after complying with the mandatory statutory provisions and after the waiting period, if any provided under the Act, the matter may be taken up by the Authority concerned. This Court is of the view that Corporation is a part of the Government of Puducherry and in case any closure application is filed, it can be scrutinized by the concerned Authority and the matter can be straight away referred to a Tribunal, so that, instead of two adjudications, namely, one before the Authority and the other one before the Tribunal, a comprehensive decision can be taken. The I.D.Act, 1947 need to be amended to enable a Labour Court or Tribunal to decide the issue, as the IAS Officers, who are entrusted with such quasi judicial work, lacks familiarity with the strict provisions of the Act on account of their other administrative / official duties. It is made clear that if any of the Workmen have already settled the dispute and accepted the monetary benefits, they will not be entitled to any relief. The

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

employees, whose claims have already been settled, cannot be allowed to have the best of both the benefits. No costs. Consequently, connected miscellaneous petitions are closed.

31.12.2021

Index: Yes / No
Internet: Yes / No
Speaking Order: Yes / No
ar

S.VAIDYANATHAN, J.
ar

To:

1. The Secretary,
   Industries and Commerce,
   Government of Puducherry,
   Puducherry.

2. The Secretary (Labour),
   Government of Puducherry,
   Puducherry.

3. The Director
   M/s.Pondicherry Textile Corporation Limited,
   A Government of Puducherry Undertaking
   AFT Mill Premises, Cuddalore Road,
   Pondicherry-605 004.

4. The Managing Director,
   M/s.Swadeshee-Bharathee Textile Mills Ltd.,
   A unit of M/s.Swadeshee Bharathee Textile Mills Ltd.,
   A Government of Puducherry Undertaking
   Maraimalai Adigal Salai,
   Pudduchery-605 004

5. The Managing Director

https://www.mhc.tn.gov.in/judis

WWW.LIVELAW.IN

WEB COPY

M/s.Swadeshi Cotton Mill
A unit of M/s.Swadeshee Bharathee Textile Mills Ltd.,
A Government of Puducherry Undertaking
Maraimalai Adigal Salai,
Pudduchery-605 004

6. Thiru. E.Vallavan, I.A.S.,
The Secretary to Government (Industries and Commerce),
Chief Secretariat, Puducherry-605 001.

PRE-DELIVERY ORDER IN
W.P.Nos.5360 and 5365 of 2021