IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 2473 OF 2008

PRESIDENT,MAZDOOR SABHA MODI G.C.S.WORKS ...APPELLANT(S)

VERSUS

MODI SOAP WORKS & ORS. ...RESPONDENT(S)

O R D E R

Heard learned counsel for the parties.

The appellant is questioning the correctness of the findings recorded by the Division Bench of the Allahabad High Court whereby it has affirmed the order dated 18.10.2005, passed by the learned Single Judge, in Writ Petition No. 37815 of 1982, wherein the Modi Soap Works (respondent herein), for short 'the Unit', has challenged the legality of the notice/show cause notice dated 17.09.1992 issued by the Assistant Labour Commissioner, Uttar Pradesh, Ghaziabad (U.P.) for contravention of Section 25-O and 25-Q of the Industrial Disputes Act, 1947 (for short 'the I.D.

Act'). The notice/show cause notice dated 17.09.1992 described the respondent herein as a registered industry under the Factories Act, 1948 to which the provisions of the Industrial Disputes Act, 1947 applies. The notice called upon the respondent-Unit to file a suitable reply within 7 days as more than 100 workmen are employed and the employer has closed the unit in which approximately 105 workmen are working at midnight on 04.08.1992 without obtaining prior permission of the State Government being the appropriate Government as required in law. Therefore, according to the notice, the closure of the Unit by the respondent without taking permission of the appropriate Government is violation of Section 25-O & 25-Q of the I.D. Act, which is a statutory offence.

The correctness of the aforesaid notice was challenged by the respondent by filing writ petition before the High Court on various grounds contending that the number of workmen employed in the Unit was only 105 i.e. less than 300 and consequently, the closure, affected in respect of the Unit did not require to obtain any prior permission of the State Government and nor the provisions of Section 25-O of the I.D. Act were attracted. The respondent-Unit

placed reliance on the decision of this Court rendered in the case of Engineering Kamgar Union v. Electro Steels Castings Ltd., (2004) 6 SCC 36. Hence, the High Court, in exercise of its power, quashed the show cause notice holding that the closure effected by the respondent herein cannot be said to be in violation of Section 25-O and 25-Q of the I.D. Act.

The correctness of the aforesaid decision of the learned Single Judge was challenged by the appellant before the Division Bench of the Allahabad High Court in Special Appeal No. 1375 of 2005 urging various legal grounds. Learned senior counsel for the appellant herein inter alia contended that the challenge to the show cause notice dated 17.09.1992 is wholly unsustainable in law. Per contra, learned counsel for the respondents-Unit contended that the findings and reasons recorded by the learned Single Judge are not erroneous in law. Therefore, the Division Bench rightly affirmed the order passed by the learned Single Judge and the same does not call for interference by this Court. That is how the appellant is before us seeking setting aside of the impugned judgment and order.

Learned senior counsel appearing on behalf of the appellant contended that the High Court quashed the notice dated 17.09.1992, issued under Section 4(1) of the U.P. Industrial Peace (Timely Payment of Wages) Rules, 1981 (for short 'the Rules'), without there being any prayer to this effect, that the strength of the workmen of the respondent-Unit is approximately 3000 and therefore, the decision of this Court rendered in Engineering Kamgar Union (supra) does not apply to the facts of the instant case and the provisions of Section 25-O of the I.D. Act and Section 6-W of the U.P. Industrial Disputes Act, 1947 apply mutatis mutandis to the facts and circumstances of the instant case. He further contended that the case of the appellant is squarely covered by the decision of this Court in the case of S.G. Chemicals and Dyes Employees' Union v. Management, (1986) 2 SCC 624. Therefore, the appellant requested to set aside the impugned judgment and sought further direction to the Assistant Labour Commissioner to proceed with the matter.

Per contra, learned counsel for the respondent-Unit sought to justify the impugned order passed by the

Division Bench inter alia contending that the Division Bench rightly held that undisputedly there is only 105 employees working in the Unit. Therefore, the respondent-Unit was not required to take prior permission of the appropriate Government, namely, the Uttar Pradesh Government. The learned counsel further submits that the decision on which the appellant has placed the reliance is not applicable to the facts and circumstances of the case.

In the case of S.G. Chemicals (supra), this Court after interpreting Section 25-O and 25-K of the I.D. Act, has succinctly laid down the following law at Paragraphs 23, 24 and 26, which are worthwhile to be extracted hereinbelow:

> "23. The last contention on the merits which was raised on behalf of the Company was that though the Company might have acted in contravention of the provisions of section 25-0 of the Industrial Disputes Act, it nonetheless would not amount to a failure to implement the Settlement dated February 1, 1979, entered into between the Company and the Union and, therefore, the act of closing down the Churchgate Division was not an unfair labour practice under section 28 of the Maharashtra Act read with Item No. 9 of Schedule IV to the said Act. This contention too found favour with the Industrial Court. For reaching the conclusion that the closing down of the

Churchgate Division was not an act of unfair labour practice on the part of the Company, the Industrial Court relied upon the decision of a learned Single Judge of the Bombay High Court in the case of Maharashtra General Kamgar Union v. Glass-Containers Pvt. Ltd., (1983) 1 Lab LJ 326 (Bom). The relevant passage in that judgment is as follows (at page 331) :

> **"It is difficult to accept the submission made on behalf of the Union that non-compliance with any statutory provisions such as Section 25-FFA must be regarded as failure by the employer to implement an award, settlement or agreement. The position might be different in relation to certain statutory provisions which are declared to hold the field until replaced by specific provisions applicable to certain specific undertakings. For example, the Model Standing Orders may govern a particular employer and his workmen till repulsed or substituted by certified Standing Orders specially framed for that employer and approved in the manner provided under the statute or the rules. This would not imply that provisions such as those contained in Section 25-FFA or Section 25-FFF of the Industrial Disputes Act can be held or deemed to be a part of the contract of employment of every employee. Any such interpretation would be stretching the language of item 9 to an extent which is not justified by the language thereof".**

It is not possible to accept as correct the view taken in the said case. It is an implied condition of every agreement, including a settlement, that the parties thereto will act in conformity with the law. Such a provision is not required to be expressly stated in any contract. If the services of a workman are terminated in violation of any of the provisions of the Industrial Disputes Act, such termination is unlawful and ineffective and the workman would ordinarily be entitled to reinstatement and payment of full back wages. In the present case, there was a settlement arrived at between the Company and the Union under which certain wages were to be paid by the Company to its workmen. The Company failed to pay such wages from September 18, 1984, to the eighty-four workmen whose services were terminated on the ground that it had closed down its Churchgate Division. As already held, the closing down of the Churchgate Division was illegal as it was in contravention of the provisions of section 25-0 of the Industrial Disputes Act. Under sub-section (6) of section 25-0, where no application for permission under sub-section (1) of section 25-0 is made, the closure of the undertaking is to be deemed to be illegal from the date of the closure and the workmen are to be entitled to all the benefits under any law for the time being in force, as if the undertaking had not been closed down. The eigty-four workmen were, therefore, in law entitled to receive from September 18, 1984, onwards their salary and all other benefits payable to them under the settlement dated February 1, 1979. These not having been paid to them, there was a failure on the part of the Company to implement the said settlement and consequently the Company was guilty of the unfair labour practice specified in Item 9 of Schedule IV to the Maharashtra

Act, and the Union was justified in filing the complaint under section 28 of the Maharashtra Act complaining of such unfair labour practice.

24. It was lastly submitted that several employees must have taken up alternative employment during the intervening period between the date of the closure of the Churchgate Division and the hearing of this Appeal and an inquiry, therefore, should be directed to be made into the amounts received by them from such alternative employment so as to set off the amounts so received against the back wages and future salary payable to them. It is difficult to see why these eithty-four workmen should be put to further harrassment for the wrongful act of the Company. It is possible that rather than starve while awaiting the final decision on their complaint some of these workmen may have taken alternative employment. The period which has elapsed is, however, too short for the moneys received by such workmen from the alternative employment taken by them to aggregate to any sizeable amount, and it would be fair to let the workmen retain such amount by way of solatium for the shock of having their services terminated, the anxiety and agony caused thereby, and the endeavours, perhaps often fruitless, to find alternative employment.

xxx xxx xxx

26. In the result, this appeal must succeed and is allowed and the order dated July 26, 1985, passed by the Industrial Court, Maharashtra, Bombay, dismissing the Complaint (ULP) 1273 of 1984 filed by the appellant-Union against the respondents is set aside and the said complaint is allowed and it is declared that the closure of the Churchgate

> **Division of S.G. Chemicals and Dyes Trading Limited was illegal and the workmen whose services were terminated on account of such illegal closure continued and are continuing in the employment of the Company on and from September 18, 1984, and are entitled to receive from the Company their full salary and all other benefits under the Settlement dated February 1, 1979, entered into between the Company and the appellant-Union, from September 18, 1984, until today and thereafter regularly until their services are lawfully terminated according to law. If any workman whose services were purported to be terminated by the closing down of the Churchgate Division of the Company has received retrenchment compensation from the Company, the amount of back wages will be set off against such retrenchment compensation and if after such setting off any balance of retrenchment compensation still remains, it will be adjusted by deducting twenty per cent from the periodic salary payable to such workmen."**

After carefully going through the aforesaid judgment and the material available on record, we are of the considered view that the view taken by the Division Bench that the respondent-Unit is an industrial establishment which must have 300 employees to attract the provisions of Section 4(1) of the Rules read with Section 25-O of the I.D. Act, to seek permission prior to closure of its Unit is contrary to the statutory provisions laid down by this Court in the S.G. Chemicals (supra). Therefore, we set aside the impugned judgment and order and consequently,

allow the appeal.

We direct the Assistant Labour Commissioner to proceed with the show cause notice against the respondent and its concerned officer. We make it very clear that the workmen are at liberty to work out their right for which they are entitled to under Section 6-W(8) of the U.P. Industrial Disputes Act, 1947 read with Section 25-O(8) of the I.D. Act, by making appropriate application before the concerned Labour Commissioner for compensation and wages from the date of illegal closure.

The appeal is allowed with the aforesaid observation, direction and liberty.

................J.
(V. GOPALA GOWDA)

................J.
(C. NAGAPPAN)

NEW DELHI,
OCTOBER 16, 2014

ITEM NO.103 COURT NO.12 SECTION XV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 2473/2008

PRESIDENT,MAZDOOR SABHA MODI G.C.S.WORKS Appellant(s)

VERSUS

MODI SOAP WORKS & ORS. Respondent(s)

(with interim relief and office report)

Date : 16/10/2014 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE V. GOPALA GOWDA
HON'BLE MR. JUSTICE C. NAGAPPAN

For Appellant(s)
Mr. S.B. Upadhyay, Sr. Adv.
Ms. Kumud Lata Das, Adv.
Mr. Kaustuv P. Pathak, Adv.
Mr. Param Mishra, Adv.
Ms. Sharmila Upadhyay,Adv.

For Respondent(s)
Mr. Naveen Chawla, Adv.
Mr. T. Mahipal,Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

(VINOD KUMAR) (MALA KUMARI SHARMA)
COURT MASTER COURT MASTER

(Signed order is placed on the file)