2025 INSC 801

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
(Arising out of SLP(C)No.4268/2023)

HARINAGAR SUGAR MILLS LTD.
(BISCUIT DIVISION) & ANR. …APPELLANTS

VERSUS

STATE OF MAHARASHTRA & ORS. …RESPONDENTS

WITH

CIVIL APPEAL NO. OF 2025
(Arising out of SLP(C)No.4645/2023)

J U D G M E N T

SANJAY KAROL J.,

This judgment, for clarity and ease of reference, is divided as follows:

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Leave Granted.

THE APPEALS

2. These appeals by special leave, question the correctness of a judgment and order passed by the High Court of Judicature at

Bombay, dated 17th February 2023[1], in Writ Petition No.3447 of 2019 and Writ Petition No.3397 of 2019, preferred by the appellants herein in Civil Appeal arising out of SLP(C)No.4268 of 2019 and by the appellant in Civil Appeal arising out of SLP(C)No.4565 of 2023, respectively.

BACKGROUND TO THE WRIT PETITIONS

3. The factual backdrop in which the writ petitions came to be filed is indisputably identical. As such we refer to the facts of the first appeal, which are as below :

3.1 Harinagar Sugar Mills Limited (Biscuit Division)[2] is a company incorporated under the Companies Act, 1956 and was engaged in biscuit manufacturing for Britannia Industries Limited[3].

3.2 Such manufacturing by HSML had been exclusively for BIL, and had been ongoing for more than three decades, under Job Work Agreements[4], granted by the latter to the former and extended from time to time.

3.3 JWA was terminated by BIL with effect from 20th November 2019, vide letter dated 24th May 2019, stating that the 180-day notice period, as mandated by clause 20.3.1

[1] Hereinafter 'impugned judgment'
[2] Abbreviated as 'HSML'
[3] Abbreviated as 'BIL'
[4] Abbreviated as 'JWA'

of the JWA signed on 22nd May 2007, would begin from 1st June 2019. The letter is extracted as under :-

"ANNEXURE P/1

BRITANNIA INDUSTRIES LIMITED
Prestige Shantiniketan, White Field Main Road
Mahadevpura Post, Bengaluru-560048

Without prejudice
By Speed Post/Courier/Email

Date: 24th May 2019

To,
M/s Harinagar Sugar Mills Limited
207, Kalbaddevi Road,
Mumbai-400002, Maharashtra, India

CC: World Trade Centre, Centre-1, 10th Floor,
Caffe Parade, Mumbai-400 005

Kind Attention : Mr. Ashok Kumar Jasrpuria
Sub : Termination of the job work Agreement
Ref: a. Job work Agreement dated 22nd May, 2007.
b. Job Work Agreement Renewal dated 23rd Oct, 2013 (effective from 18th Feb 2013 till 17th Feb 2023)

Dear Sir,

We refer to job work agreement dated 22nd May, 2007 entered for period of 10 years effective from 21st February, 2003 and renewed on same terms and conditions for another period of 10 years effective from 18th February, 2013 whereby based on your representations, we have appointed you as our Contract Manufacturer on the terms and conditions contained therein.

Pursuant to clause 20.3.1 of the Job Work Agreement, we hereby serve you One Hundred Eight (180) days written notice commencing from 1st June 2019 ("Effective date"). The business relationship between the parties under the Agreement shall stand

terminated on the close of business hours of 27th November, 2019.

You are requested to discontinue the operations under the agreement accordingly upon termination and cease to the know-how-return, all copies of the Know-how without retaining any part thereof, and deliver entre quantity of goods manufactured, ingredients, packing material and Raw Material etc. which are in your possession or custody as per the terms of the agreement.

Further, you are requested to return all the documents containing information relating to products and Intellectual Property Rights of the Company and refrain from sharing, exchanging or selling or making any copies, summaries or transcripts of confidential information of the Company.

Sd/-
Britannia Industries Ltd."

(Emphasis supplied)

3.4 Resultantly, applications for closure of business were made to the competent authorities on 26th August 2019, as per Form XXIV-C prescribed under Rule 82-B(1) of the Industrial Dispute (Maharashtra) Rules, 1957 read with Section 25-O(1) of the Industrial Disputes Act, 1947[5]. The workers of HSML were informed vide closure notices dated 28th August 2019. The letter is extracted below:

"**HARINAGAR SUGAR MILLS LIMITED**
(BISCUIT DIVISION)
Conductors of the Factory & Business of
Shangrilla Food Products Limited
Regd. Office : 207 Katbadevi Road, Mumbai-400002

[5] Hereinafter, 'the Act'

Pl. Correspondence to:
L.B.S. Marg. Bhandup (W),
Mumbai-400078.

Ref No.

Dated : 28.08.2019

From-XXIV-C
(To be submitted in triplicate)
[See Rule 82-B(1)]

From of application for permission of closure to be made by an employer under sub-Section (1) of Section 25-O of the Industrial Disputes Act, 1947 (14 of 1947)

To,
The Secretary to the Government of Maharashtra
Industries, Energy and Labour Department, Mantralaya, Mumbai-32.

Sir,
Under Section 25-O of the Industrial disputes Act, 1947 (14 of 1947), I hereby inform you that I propose to close down the undertaking specified below.

M/s Harinagar Sugar Mills Ltd. (Biscuit Division), (herein after referred to as Biscuit Division), L.B.S. Marg, Bhandup (W), Mumbai-400078 w.e.f. 28/11/2019.

The Biscuit Division had entered into, a job, work agreement with M/s Britannia Industries Ltd. (BIL) to manufacture biscuits of Britannia brand. BIL used to forward to the Biscuit Division its weekly plan as per the market demand of various varieties of Britannia Brand. The Biscuit Division then used to manufacture the biscuits as per the plan forwarded by BIL in the factory premises A written termination notice was received by the Biscuit Division on 31-05-2019 from BIL stating that the business relationship between the parties shall stand terminated on the close of business hours, of 27/11/2019. Thus BIL has terminated the job work agreement with the Biscuit Division and the said Division has no other

manufacturing avenue, since the said Division was manufacturing biscuits only for BIL. In view of the above, the Biscuit Division has no other alternative but to close down, the manufacturing activities.

2. The number of workmen whose service will be terminated on account of the closure of the undertaking is 178 permanent workmen.
3. Permission is solicited for the proposed closure.
4. I hereby declared that in the event of approval for the closure being granted every workmen in the undertaking to whom sub-section (9) of the said section 25-O applies will be given notice and paid compensation as specified in section 25N of the Industrial Disputes Act, 1947 (14 of 1947), as if the workman had been retrenched under that section.

Yours faithfully
For Harinagar Sugar Mills Ltd. (Biscuit Division)

Sd/- Illegible
(Authorised Signatory)

CC: 1) The Commissioner of Labour,
Maharashtra, Mumbai
2) The Industries Commissioner,
Maharashtra, Mumbai
3) The Joint Director of Industries, Mumbai"

(Emphasis supplied)

3.5 Letter dated 25th September 2019 sent by the Deputy Secretary, Government of Maharashtra, informed HSML that they failed to disclose their efforts to prevent closure, nor had they given cogent reasons for closure. They were, therefore, asked to resubmit their application. This letter forms an important aspect of the respondents' case before

the High Court and, therefore, it would be appropriate for it to be extracted. It reads :

"**ANNEXURE P/5**

Government of Maharashtra

No. Closure-82019/C.No.3/L-2
Industry, Energy & Labour Dept.
Madam Cama Road
Hutama Rajguru Chowk
Mantralaya, Mumbai-400032

Dated : 25TH September, 2019

To,
Authorised Signatory,
M/s. Hari Nagar Sugar Mills Limited,
L.B.S. Marg, Bhandup (W)
Mumbai-400 078.

Subject:- Application for obtaining permission U/s. 25(O)(1) for closing down establishment of M/s Hari Nagar Sugar Mills Ltd. at L.B.S. Marg, Bhandup (W), Mumbai-78

Reference: Your application dated 28/8.2019.

Sir,

With reference to the above referred application, you as authorised signatory of M/s. Hari Nagar Sugar Mills Ltd. have submitted an application to the Government on 28/8/2019 u/s 25(O)(1) of the Industrial Disputes Act, 1947 for closing down the unit at L.B.S. Marg, Bhandup (W) Mumbai-78.

2. On reviewing the said application it is observed that the job contract agreement signed by M/s. Hari Nagar Sugar Mills Ltd. with M/s. Britania Industries Ltd. for production of biscuits will be

cancelled with effect from 27.11.2019 and therefore the management of the Company has given the reason that the said Biscuit Division will not be able to provide any work in the said Division, and therefore the application to obtain permission to close down said Biscuit Division was submitted to the Government on 28.08.2019.

3. However, no pros and cons about the efforts for not closing down the said Unit were discussed/enlisted in the said application. Also, any justifiable and consummate reasons were also not provided for closing down the said Division. Therefore, it will be possible to take action only if you can submit the application again by providing explanation regarding other efforts initiated by you for not closing down the Division, providing justifiable as well as consummate rationale for this action.

Yours faithfully,
Signed
Dy. Secretary, Govt. of Maharashtra

Copy :

1. Hon. Labour Commission, Kamgar Bhavan, C-20, E-Block, Bandra-Kurla Complex, Bandra (E), Mumbai-400 051.
2. Private Secretary to Hon. Minister (Labour)"

(Emphasis supplied)

3.6 By way of reply dated 10th October 2019, HSML furnished the particulars as asked for. It is to be noted here that the 60-day period provided for under Section 25-O(3) of the Act ran out on 27th October 2019. The said letter reads as under :

"**Annexure P/6**

HARINAGAR SUGAR MILLS LIMITED
(BISCUIT DIVISION)
Conductors of the Factory & Business of
Shangrilla Food Products Limited
Regd. Office : 207 Katbadevi Road, Mumbai-400002

Pl. Correspondence to :
L.B.S. Marg. Bhandup (W),
Mumbai-400 078.

Ref. No.76/19-20 Date: 10.10.2019

To
Shri S.M. Sathe,
The Dy. Secretary,
State of Maharashtra
Mantralaya Mumbai

Sub: Permission sought under Section 25-(O)(I) of Ld. Act for closure of M/s. Harinagar Sugar Mills Ltd. (Biscuit Division)

Ref: Your letter dated 25.09.2019.

On 01.10.2019 we have received your letter dated 25.09.2019 with regard to the aforesaid subject.

It is a fact that for last 32 years, the Company used to do job work of manufacturing biscuits only for Britannia Industries Ltd. For manufacturing biscuits for Britannia Industries Ltd., the raw material as well as necessary plant and machinery used to be provided and installed by Britannia Industries Ltd. After receiving termination of Job work agreement from BIL, the Company Immediately persuaded the management of BIL to continue agreement and the job work with the Company. However, said persuasion did not work or yield any result. The Company had then approached other biscuit manufacturers such as M/s. Mondelez India

Limited and Us. ITC Ltd. On 15.07.2019, the top management of the Company had meeting with Mr. T. Arunkumar, CMO, Manager of M/s. Mondelez India Limited and then as per his requirement had forwarded e-mail on 24.07.2109. However, thereafter there was no response. Similarly the top management of the Company had discussed with Mr. Divi of M/s. ITC, Foods. However, on 17.07.2019 Mr. Div replied that there is no requirement of contract manufacturing unit to them at present. Once again on 24.07.2019 mail was forwarded to Mr. Divi of M/s. ITC Foods but there was no response to the said mail. We enclose copies of e-mails forwarded to M/s. Mondelez India Ltd. and Ms. ITC Foods The management of the Company had also talked and discussed with Mr. Ajay Chauhan of Parle Biscuits to provide job work to the Company. However, there was no positive response even from Parle Biscuits.

The reason for closing down the manufacturing activities is there is no job work which can be done in the said factory. As stated in the closure application the company for last 32 years was doing only the job work for Britannia Industries Ltd. And the efforts mentioned hereinabove will support the contention of the company that there is no other way out but to close its manufacturing operation.

For Harinagar Sugar Mills Ltd.
(Biscuit Division)
Sd/-
Authorised Signatory)"

(Emphasis supplied)

3.7 The authorities once again found the response lacking. *Vide* letter dated 4th November 2019 said that their earlier response did not, once again, cover all aspects, i.e., the possibility of the employees' absorption into other manufacturing divisions and also the possibility of HSML

moving to the production of other goods, apart from biscuits. They were once again asked to resubmit their application.

3.8 On 22nd November 2019 HSML, in their response, contented that by virtue of Section 25-O(3) of the Act, the permission of closure is deemed to have been granted, and the authorities have now become *functus officio*. The workers' unions also opposed the closure, registering the same *vide* letter dated 4th November 2019. They cited 'ulterior motives' and lack of *bona fide* reasons.

3.9 The Deputy Commissioner, Labour, sent to HSML two letters, dated 20th and 22nd of November 2019 asking them to be present for a meeting on 26th November 2019, and conveying to them that the State Government was yet to grant permission for closure and as such, they should not close down the business on 27th November 2019, respectively.

3.10 Workers' unions on the same day as their letter also approached the Industrial Tribunal seeking to restrain HSML from going forward with the closure. An ad-interim order came to be passed by the Tribunal, granting said relief.

3.11 These letters dated 4th November 2019, 20th November 2019 and 22nd November 2019 were the subject matter of challenge before the High Court.

THE IMPUGNED JUDGMENT

4. The proceedings before the High Court, the culmination of which was the judgment impugned in these appeals, were as follows: -

4.1 Order dated 28th November 2019 records the statement of Mr. Ravi Kadam, Senior Counsel appearing for HSML that the salaries for the month of November shall be paid without insisting that the employees attend work. It is also recorded therein that the employees shall maintain peace and harmony.

4.2 On the next date, i.e., 12th December 2019 it was directed that the salaries for December be paid on or before 6th January 2020.

4.3 Arguments were heard and concluded on 7th February 2023.

4.4 The findings in the impugned judgment can be summarised thus :

Firstly, the Court discussed the scheme of Section 25-O of the Act and found that an application for closure has to be made to a competent authority at least 90 days prior to the date from which the closure is sought to be made effective; the reasons for such closure must be clearly stated; on receipt of such application, the 'appropriate Government' is to make an enquiry; provide an opportunity

for hearing all concerned - workmen, employer and persons interested in closure, and then pass a reasoned order, also keeping in view interests of the general public. Section 25-O(3) provides that if such an appropriate authority fails to communicate an order made thereby, granting or denying permission within 90 days of the application being preferred, it shall be deemed that the permission was granted at the expiry of 60 days. Other parts of Section 25 of the Act were also taken note of such as the power of review, the remaining in force of the order of the competent authority for a period of one year etc.

Secondly, it was observed that the case of the petitioners (appellants before us) was that orders had not been passed by the competent authority within the statutorily prescribed time frame, and consequently, the deeming fiction provided for in the Act would come into force and permission of closure would be deemed granted upon the expiry of 60 days from the application, since more than 90 days had passed since such making of application. The stand of the State was also taken into account - which was that the communication dated 25th September 2019 constituted an order refusing the grant of requisite permission. It would be appropriate to extract the

consideration made by the High Court, of these contrasting submissions. It is as follows :

> "24. The first objection of Mr. Naidu is that even if communications dated 25 September 2019 were to be assumed as decisions, the decisions are not taken by the authority, viz. Hon'ble Minister for Labour but the same is taken by the Depute Secretary. To counter the contention, the State Government has placed on record the file noting on the basis of which the communications dated 25 September 2019 were issued. The file noting would indicate that note was prepared by Desk Officer on 30 August 2019 stating that as per notification dated 25 June 2013, the powers under Section 25-O (2) are conferred upon the Hon'ble Minister for Labour. It is further stated that the petitioners' applications were required to be forwarded to the Hon'ble Minister for further action. However, there appears to be an endorsement in hand writing towards the end of the noting to the effect that petitioners failed to furnish complete and cogent reasons in their applications. The noting was approved by various officers in the hierarchy and finally came to be approved by Hon'ble Minister with a remark accepting hand written endorsement with further direction that the establishment should be intimated to file application with cogent reasons. In accordance with the above decision of the Hon'ble Minister, the letters dated 25 September 2019 were addressed to petitioners. We therefore repel the objection of the petitioners that the decision in communication was not taken by the Hon'ble Minister."

Thirdly, the contention of HSML that the application dated 28th August 2019 was complete in all respects and it ought to have been treated as such was considered. It was submitted that the letter dated 10th October 2019 (reproduced supra) was in response to the authorities asking

them to resubmit. They supplied thereby, additional reasons for closure and the steps taken to prevent that eventuality. It was held that since the undisputed position is that vide letter dated 10th October 2019 HSML sought to furnish additional reasons, that *ipso facto* would amount to an acceptance that the application was not complete in all respects. That being the case, the deeming fiction would not come into play. Since the application was deficient, the State Government need not pass orders thereon. It was thereafter held as under:

> "30.…The fact that authority was not convinced with the application of the petitioner and had communicated that cogent reasons are not spelt out in the application would be sufficient to conclude that the authority did not grant the application for closure. What was contemplated by letter dated 25 September 2019 was "re-submission" of the application. Petitioners however chose to add reasons to the pending applications on 10 October 2019. Petitioners failed to submit fresh applications by providing statement of reasons as directed by State Government vide letters dated 25 September 2019. This is the reason why the State Government was once again required to convey to petitioners that they were required to resubmit the applications by subsequent communications dated 4 November 2019. It is only after receipt of letters dated 4 November 2019 petitioners took a stand of deemed permission under Section 25-O(3) of the ID Act in their letters dated 22 November 2019.
>
> 31.We are therefore unable to accept the contention raised on behalf of the petitioners that the closure applications filed by them on 28 August 2019 were complete in all respects so as to trigger deemed permission under provisions of Section 25 O(3) on

> expiration of period of 60 days. Petitioners themselves accepted the position that the closure applications were incomplete by seeking to adduce reasons for closure by letters dated 10 October 2019. It therefore cannot be held that the establishments of the petitioners are deemed to have been closed on expiration of period of 60 days from the date of submission of closure applications dated 28 August 2019."

The Writ petitions were dismissed.

SUBMISSIONS OF THE PARTIES

5. We have heard Mr. Mukul Rohatgi, learned Senior Counsel for the appellant - HSML as also the learned counsel appearing for the respondents.

A. Appellants

i. The impugned judgment is based on an erroneous reliance on the 'wrong form', which originated out of a submission of learned Counsel for the State. Reliance was placed by the learned Division Bench on Form XXIV and instead, it should have considered Form XXIV-C.

ii. The finding that the applications were incomplete is based on a misunderstanding/misapplication of the forms.

iii. Noting in the internal office file cannot be used to construe what constitutes an order. Reference is

made to ***Bachhittar Singh v. State of Punjab***[6]; ***Sethi Auto Services Station v. DDA***[7]; and ***Shanti Sports Club v. Union of India***[8] to submit that the internal file noting does not constitute an order. Furthermore, even such a contention that the letter dated 25th September 2019 is based on such noting is belied, for it does not say so. Instead, it only asks for details of the efforts made to avoid closure.

iv. An application for closure can only be disposed of by an order in accordance with Section 25-O(2). If it is not so done, what has been provided for in Section 25-O(3) will kick in.

v. The previous iteration of Section 25-O was struck down by this Court *vide* its judgment in ***Excel Wear v. Union of India***[9] on the ground that it did not prescribe a time limit for deciding the applications for closure. It was found that the restrictions were not in accordance with Article 19(6) of the Constitution of India. The amended iteration was upheld *vide* judgment in ***Orissa Textile and Steel v.***

[6] AIR 1963 SC 395
[7] 2009 (1) SCC 180
[8] (2009) 15 SCC 705
[9] (1978) 4 SCC 224

State of Orissa[10], wherein it was held that the requirement to conduct an enquiry, give a hearing, pass a reasoned order, and also the time limit was the curing of defects present in the previous version of the section. It has been so submitted by the appellants to show that the 60-day requirement is mandatory. If not so observed, it would violate Article 19(1)(g).

vi. It has not been shown by the respondents, how the applications made by the appellants are defective/incomplete. Providing of further information cannot mean that the original application was defective. The decision in ***State of Haryana v. Hitkari Potteries***[11] was relied upon to show that even when the application was belatedly rejected on the ground that it was incomplete in certain respects, this Court held the deemed permission to be granted.

vii. The 60-day time period provided for in the Act cannot be extended, including on the pretext of resubmission of the application for closure. There were two letters issued by the State authority, one

[10] (2002) 2 SCC 578
[11] (2001) 10 SCC 74

on 25th September 2019 and the other on 4th November 2019, with the latter one being beyond the said time period. Thereafter were two further letters dated 20th and 22nd November 2019 directing their presence for a meeting, both clearly beyond the time limit. Further, it is said that there is no provision for resubmission. Permitting the same would unsettle the scheme of the law.

viii. The Labour Minister is the "appropriate Government" within the meaning of the Act, hence all actions contemplated under Section 25-O could have been undertaken by him only. No further delegation thereof is provided for or permissible without notification to such effect under Section 39 of the Act. Be that as it may, it has been held in ***Orissa Textile and Steel*** (supra) that sub-delegation of *quasi* judicial function is impermissible. No communication has been addressed by the 'appropriate Government' within the time frame.

ix. The letter dated 25th September 2019 is by no means an order. Had it been so, there was no basis for the State's further letters. In fact, letter dated 4th November 2019 makes reference to the application for closure dated 28th August 2019. Said letter was

also not marked to the workmen/their representatives which is a requirement under Section 25-O(2).

B. <u>Respondents</u>

The Workers Union, namely the Maharashtra Rajya Rashtriya Kamgar Sangh (INTUC) has filed written submissions. Their stand is that the impugned judgment is justified and takes the correct interpretation of facts and law. It has been argued therein, *inter alia*, that :

i. The first response of the State to the closure application, i.e., letter dated 25th September 2019 is not within the sphere of challenge.

ii. The communication which took place regarding the alleged closure of HSML and Shangrila[12] total approximately 300 workers, and non-inclusion of their recognised union in such discussions is absolutely detrimental to the interests of these workers.

iii. The intent of Section 25-O is to protect the fundamental rights of the employees, i.e., livelihood. The stand of the State is in consonance

[12] Appellants in the connected SLP

therewith, keeping in view important factors such as genuineness and adequacy of reasons.

iv. No question of law arises in the present matter which requires or would justify, the interference of this Court under its jurisdiction under Article 136 of the Constitution of India.

v. The deeming provision under Section 25-O(3) of the Act has to be read in continuation with Section 25-O(1) thereof. Since the employees were never informed of the enquiry as contemplated under Section 25-O(2) of the Act and the same never took place, closure cannot be deemed to have been granted thereunder.

vi. The incompleteness of the applications was accepted by the appellants themselves since they produced additional reasons. Also, the argument of respondent No.1 that internal noting of the file being used to show that the file had not been delayed, has been adopted by the Respondent-Union.

vii. Since the learned Industrial Tribunal had granted stay on 26th November 2019, and the writ petition subject matter of these appeals, was filed before the High Court on the same day, there has been no effective order of closure thus far.

viii. The question of Respondent-State as to whether the workers could be accommodated in other ongoing concerns under the control of the HSML – was justified. None of the monetary proposals have been accepted by the workers as placed before the Court and so, they are entitled to full benefits of Section 25-O(6) of the Act.

ix. In furtherance of their submissions, reliance is placed on a judgment of the High Court of Judicature at Madras in ***Sree Meenakshi Textile Mills Ltd. v. Madurai Textile Workers Union (CITU) & Ors.***[13]

QUESTIONS TO BE CONSIDERED

6. Having heard the learned counsel at length and captured their submissions as above, the following questions would fall for our consideration :

A. Whether letter dated 25th September 2019 can be construed to be an order - Connectedly, whether the appellants would be entitled to the relief of deemed closure, as on 27th October 2019 by virtue of the deeming fiction present in Section 25-O(3) of the Act?

[13] 1979 (38) FLR 213

B. What would be the meaning of the phrase 'appropriate Government' and whether in the facts of this case, it was the appropriate Government acting in the matter of the closure - if not what is the effect in law, thereof?

ANALYSIS AND DISCUSSION

7. At the outset, two aspects must be taken note of. One is that the Constitution of India under Article 19 provides for the freedom of trade, profession, occupation and business. Meaning thereby that all citizens of the country have freedom to choose a location of their choice and run it as they deem it fit, subject to the reasonable restrictions that may be made by the legislature. When it comes to industry which is covered under Article 19, the field of the statute is occupied by the Industrial Disputes Act, 1947. As such, its scope must be set out.

First

In ***Cooverjee B. Bharucha v. Excise Commr.***[14], a Bench of five learned Judges, while dismissing an application under article 32 of the Constitution of India arising from the grant of license to sell country liquor to a person, allegedly in contravention of the Rules set out for such purpose, i.e., in a

[14] (1954) 1 SCC 18

manner, which according to the petitioner, violated his right under Article 19(1)(g), held :

> "**7.** Article 19(1)(*g*) of the Constitution guarantees that all citizens have the right to practise any profession or to carry on any occupation or trade or business, and sub-section (6) of the Article authorises legislation which imposes reasonable restrictions on this right in the interests of the general public. It was not disputed that in order to determine the reasonableness of the restriction regard must be had to the nature of the business and the conditions prevailing in that trade. It is obvious that these factors must differ from trade to trade and no hard-and-fast rules concerning all trades can be laid down. It can also not be denied that the State has the power to prohibit trades which are illegal or immoral or injurious to the health and welfare of the public. Laws prohibiting trades in noxious or dangerous goods or trafficking in women cannot be held to be illegal as enacting a prohibition and not a mere regulation. The nature of the business is, therefore, an important element in deciding the reasonableness of the restrictions. The right of every citizen to pursue any lawful trade or business is obviously subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, order and morals of the community…"

Second

A Constitution Bench of this Court in ***Hindustan Antibiotics Ltd. v. Workmen***[15] held as below noting the object of industrial law :

[15] 1966 SCC OnLine SC 106

> "**9.** At the outset, it will be convenient to consider the question of principle. The object of the industrial law is two-fold, namely, (*i*) to improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life, and (*ii*) by that process, to bring about industrial peace which would in its turn accelerate productive activity of the country resulting in its prosperity. The prosperity of the country, in its turn, helps to improve the conditions of labour."

This Court in ***Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service Society Ltd.***[16], in the paragraphs extracted below, discusses the intent of the legislation and its history, in the following terms :

> **"5.** ...The Act is intended not only to make provision for investigation and settlement of industrial disputes but also to serve industrial peace so that it may result in more production and improve the national economy. In the present socio-political economic system, it is intended to achieve cooperation between the capital and labour which has been deemed to be essential for maintenance of increased production and industrial peace. The Act provides to ensure fair terms to workmen and to prevent disputes between the employer and the employees so that the large interests of the public may not suffer. The provisions of the Act have to be interpreted in a manner which advances the object of the legislature contemplated in the Statement of Objects and Reasons. While interpreting different provisions of the Act, attempt should be made to avoid industrial unrest, secure industrial peace and to provide machinery to secure the end. Conciliation is the most important and desirable way to secure that end. In dealing with industrial disputes, the courts have always emphasized the doctrine of social justice, which is founded on the basic ideal of socio-economic equality as enshrined in the Preamble of our Constitution. While construing the provisions of the Act, the courts have to give

[16] (1999) 6 SCC 82

them a construction which should help in achieving the object of the Act.

6. The history of the legislation with respect to the industrial disputes would show that for the first time in the year 1920 the Trade Disputes Act was enacted which provided for courts of enquiry and Conciliation Boards and forbade strikes in public utility service without a statutory notice in writing. The Act did not make provision for any machinery for settling of industrial disputes. The said Act was repealed and replaced by the Trade Disputes Act, 1929 which started the State intervention in the settlement of industrial disputes and armed the Government with the power which could be used whenever considered fit to intervene in industrial disputes. This Act was amended in the year 1938 authorising the Central and Provincial Governments to appoint Conciliation Officers for mediating in or promoting the settlement of industrial disputes. Shortly thereafter the Government of India promulgated the Defence of India Rules to meet the exigency created by the Second World War. Rule 81-A gave powers to the Government to intervene in industrial disputes and was intended to provide speedy remedies for industrial disputes by referring them compulsorily to conciliation or adjudication by making the awards legally binding on the parties and by prohibiting strikes or lockouts during the pendency of the conciliation or adjudication proceedings. The Industrial Employment (Standing Orders) Act, 1946 was enacted which made provision for framing and certifying of standing orders covering various aspects of service conditions in the industry. The Industrial Disputes Bill was introduced in the Central Legislative Assembly on 8-10-1945 which embodied the essential principles of Rule 81-A of the Defence of India Rules and also certain provisions of the Trade Disputes Act, 1929 concerning industrial disputes. The Bill was passed by the Assembly in March 1947 and became the law w.e.f. 1-4-1947. The present Act was enacted with the objects as referred to hereinabove and provided machinery and forum for the investigation of industrial disputes, their settlement for purposes analogous and incidental thereto. The emergence of the concept of a welfare State implies an end to the exploitation of workmen

> and as a corollary to that collective bargaining came into its own. The legislature had intended to protect workmen against victimisation and exploitation by the employer and to ensure termination of industrial disputes in a peaceful manner. The object of the Act, therefore, is to give succour to weaker sections of society which is a prerequisite for a welfare State. To ensure industrial peace and pre-empt industrial tension, the Act further aims at enhancing the industrial production which is acknowledged to be the lifeblood of a developing society. The Act provides a machinery for investigation and settlement of industrial disputes ignoring the legal technicalities with a view to avoid delays, by specially authorised courts which are not supposed to deny the relief on account of the procedural wrangles. The Act contemplates realistic and effective negotiations, conciliation and adjudication as per the need of society keeping in view the fast-changing social norms of a developing country like India. It appears to us that the High Court has adopted a casual approach in deciding the matter apparently ignoring the purpose, aim and object of the Act."

8. Since both the questions that arise for our consideration are intertwined, they shall be taken up together. The instant dispute pertains to the closure of HSML and Shangrila, industrial units engaged in manufacturing for BIL. Section 25-O of the Act deals with this situation. The extract as it relates to the dispute herein, reads :

> "[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.
> …"

9. Sub-section 1 states that an employer who wants to close down his business concern must, write to the concerned 'appropriate Government'-

(a) at least 90 days before the date of intended closure;

(b) stating reasons for such closure;

(c) undertaking that the copy of this application has been served on the representatives of the workmen.

As per sub-section (2), the appropriate is to,

(a) Making a suitable enquiry;

(b) After providing a reasonable opportunity of hearing to the employer, the workmen and those interested in the closure of such business;

(c) And considering the genuineness, adequacy of reasons, interests of the general public & all other relevant factors;

by an order in writing, recording reasons, grant or refuse such permission. Such an order is to be communicated to the employer and the workmen.

Sub-section (3) deems the grant of permission for closure as requested if the appropriate Government does not, within sixty days of the application, make an order.

10. If there exists the freedom to set up and run a trade/business as one sees fit, necessarily, there has to be a set of rights vesting with the proprietor/owner to take decisions as may be in his best interest. At the same time, it is true that the law does not permit such owner or proprietor to take any and all decisions without having considered and accounted for the impact that it shall have on the employees or workers that are part of this establishment. This is evidenced by the provision extracted above providing for a detailed procedure to be followed when a person wishes to 'shut shop', but concomitant providing that if the concerned Government does not take action with reasonable expediency, the business owner should not be saddled with the costs and responsibilities of running the business

indefinitely, till such time the authority arrives at a proper and just decision. The sum and substance are that Article 19(1)(g) includes the right to shut down a business but is, of course, subject to reasonable restrictions. This interplay of Article 19(1)(g) and Section 25-O of the Act engaged in the attention of a Constitution Bench of this Court in ***Excel Wear*** (supra), when it was cast with considering the constitutionality of Section 25-O as it then stood. It has subsequently been amended, challenged before this Court and upheld in ***Orissa Textile and Steel*** (supra), which we will discuss further ahead.

11. In ***Excel Wear*** (supra), N.L Untwalia, J., writing for the Court made some pertinent observations which we see fit to reproduce with profit :

> "20… But then, as pointed out by this Court in *Hatisingh case* the right to close down a business is an integral part of the right to carry it on. It is not quite correct to say that a right to close down a business can be equated or placed at par as high as the right not to start and carry on a business at all. The extreme proposition urged on behalf of the employers by equating the two rights and placing them at par is not quite apposite and sound. Equally so, or rather, more emphatically we do reject the extreme contention put forward on behalf of the Labour Unions that right to close down a business is not an integral part of the right to carry on a business, but it is a right appurtenant to the ownership of the property or that it is not a fundamental right at all. It is wrong to say that an employer has no right to close down a business once he starts it. If he has such a right, as obviously he has, it cannot but be a fundamental right embedded in the right to carry on any business guaranteed under Article 19(1)(*g*) of the Constitution."

12. A Constitution Bench in ***Orissa Textiles*** (supra) through Variava J., observed as follows about the current iteration of Section 25-O :

> "**18.** We also see no substance in the contention that the amended section merely deals with the procedural defects pointed out in *Excel Wear case* [(1978) 4 SCC 224 : 1978 SCC (L&S) 509 : (1979) 1 SCR 1009] and does not deal with the substantive grounds set out in *Excel Wear case* [(1978) 4 SCC 224 : 1978 SCC (L&S) 509 : (1979) 1 SCR 1009] . In our view the amended Section 25-O is very different from Section 25-O (as it then stood). It is now more akin to Section 25-N (as it then stood) the constitutional validity of which was upheld in *Meenakshi Mills case* [(1992) 3 SCC 336 : 1992 SCC (L&S) 679] . In *Excel Wear case* [(1978) 4 SCC 224 : 1978 SCC (L&S) 509 : (1979) 1 SCR 1009] it has been accepted that reasonable restrictions could be placed under Article 19(6) of the Constitution. *Excel Wear case* [(1978) 4 SCC 224 : 1978 SCC (L&S) 509 : (1979) 1 SCR 1009] recognizes that in the interest of general public it is possible to restrict, for a limited period of time, the right to close down the business. The amended Section 25-O lays down guidelines which are to be followed by the appropriate government in granting or refusing permission to close down. It has to have regard to the genuineness and adequacy of the reasons stated by the employer. However, merely because the reasons are genuine and adequate cannot mean that permission to close must necessarily be granted. There could be cases where the interest of general public may require that no closure takes place. Undoubtedly where the reasons are genuine and adequate the interest of the general public must be of a compelling or overriding nature. Thus, by way of examples, if an industry is engaged in manufacturing of items required for defence of the country, then even though the reasons may be genuine and adequate it may become necessary, in the interest of the general public, not to allow closure for some time. Similarly, if the establishment is

> manufacturing vaccines or drugs for an epidemic which is prevalent at that particular point of time, interest of the general public may require not to allow closure for a particular period of time. We must also take a note of sub-section (7) of the amended Section 25-O which provides that if there are exceptional circumstances or accident in the undertaking or death of the employer or the like, the appropriate government could direct that provision of sub-section (1) would not apply to such an undertaking. This, in our view, makes it clear that the amended Section 25-O recognizes that if there are exceptional circumstances then there could be no compulsion to continue to run the business. It must however be clarified that this Court is not laying down that some difficulty or financial hardship in running the establishment would be sufficient. The employer must show that it has become impossible to continue to run the establishment. Looked at from this point of view, in our view, the restrictions imposed are reasonable and in the interest of the general public."
>
> (Emphasis supplied)

13. What can be deduced regarding the scope of section 25-O from the above extract is –

i. the right to close the business is subject to the interest of the general public;

ii. any application seeking permission for closure must disclose adequate and genuine reasons which the authority has to have regard for;

iii. in certain cases, however, even if the reasons are genuine and adequate, it does not mean that permission to close ought to be granted;

iv. if it is found that the reasons are generally adequate, and despite that the appropriate Government decides

for refusal of permission of foreclosure, then the interest of the general public involved in that particular case must be "compelling" and "overriding";

v. financial difficulty on its own cannot constitute the reason for shutting down the business. An employer must demonstrate exceptional circumstances or an impossibility of running the business.

14. In the instant facts, the application for closure was duly addressed to the authority, which was acknowledged to be on 28 August 2019. The Deputy Secretary, Ministry of Labour Government of Maharashtra, responded on 25 September 2019 stating that no sufficient reasons had been provided for closure. The letter read- *"it will be possible to take action only if you can submit the application again by providing explanation regarding other efforts initiated by you for not closing down the Division, providing justifiable as well as consummate rationale for this action."* Hereby, it was informed that action could not be taken on the application as it stood and that they would have to resubmit with better particulars.

15. It is contended by HSML that the Deputy Secretary made such an order without the requisite authority since he was not the "appropriate Government" to deal with applications under section 25-O. As such, the order to revise and resubmit would be *non-est* in law. It is an undisputed position, as also noted by the

High Court, that the powers under section 25-O rest with the Minister. There is no difficulty in that respect. The State Government, being the appropriate Government, has delegated its power specifically to the Minister for Labour. Section 39 of the Act provides for such a situation. It reads :

> "39. Delegation of powers.- The appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also,--
> (a) where the appropriate Government is Central Government, by such officer or authority subordinate to the Central Government or by the State Government, or by such officer or authority subordinate to the State Government, as may be specified in the notification; and
> (b) where the appropriate Government is a State Government by such officer or authority subordinate to the State Government as may be specified in the notification."

There is nothing on record to show that the Deputy Secretary has been duly authorised to conduct communication and/or accept or reject applications for closure made by industrial units. The concerned authority in that regard is only the Minister. If it is considered that the Minister for Labour himself represents the State Government or is merely an agent of the State Government, then for the Deputy Secretary to act, there ought to have been a notification in that respect. Otherwise, if the Minister for Labour is a delegate of the State Government, then there has to be a notification therefor as well. According to the impugned

judgment, a notification to this effect dated 25 June 2013 is present. However, the same is not on record. The Respondent-State has contended that the internal noting placed on record before the High Court shows that the file had travelled up to the Minister, and, therefore, any action consequent to such approval by the Minister is in accordance with the law.

16. We find it difficult to accept this contention for two reasons. There is no express authority resting with the Deputy Secretary. This we have already observed. Second, reliance cannot be placed on internal noting to establish compliance with procedure. This Court in ***Pimpri Chinchwad New Township Development Authority v. Vishnudev Coop. Housing Society***[17], in a case pertaining to proceedings under the Land Acquisition Act, 1894 concerning the issue of whether the State is at liberty to withdraw from an acquisition, held *" ...a mere noting in the official files of the Government while dealing with any matter pertaining to any person is essentially an internal matter of the Government and carries with it no legal sanctity;..."*. [Also see ***Bachhittar Singh*** (supra); ***Sethi Auto Services Station*** (supra); and ***Shanti Sports Club*** (supra)].

Hypothetically, assuming that the letter dated 25 September 2019 was sent to HSML with the approval of the Minister, as allegedly shown by the internal noting in the office

[17] (2018) 8 SCC 215

file, and was thereby issued by the competent authority, even in that case, we find the 'order' to be lacking. The order accepting or rejecting an application for closure is undoubtedly an administrative order. It is noted that the file originated from the desk officer and travelled up through the desks of various authorities and made its way to the Minister. One of these authorities, it is unclear which one made the noting that the closure application did not disclose cogent reasons. The Minister endorsed this finding and noted in the file that they should be asked to submit the application afresh. This is tried to be shown as a decision of the Minister. For the competent authority to take a decision, as the law understands it, there has to be 'application of mind'. The question that needs to be addressed is whether endorsement of a noting made by a subordinate officer can be 'application of mind'. To show the same, it is generally prudent that reasons are recorded. In decades past, there was a belief that the Government would be brought to a standstill if it had to provide reasons for each administrative action, keeping in view the fact that it functions through a myriad of agencies and authorities[18]. Even here, it was stated that when such a decision affects the rights of parties, reasons should be accorded. It may be observed here that Section 25-O specifically provides *"by order and for reasons to be recorded in writing,"* and so, reasons

[18] Mahabir Jute Mills Ltd. v. Shibban Lal Saxena, (1975) 2 SCC 818

are a statutory necessity. With time, it is now settled that administrative authorities are also required to give reasons for a decision made. In ***Star Enterprises v. City and Industrial Development Corpn. of Maharashtra Ltd.***[19], a three-Judge Bench in the context of tenders invited by a corporation which is 'State' within the meaning of Article 12 of the Constitution of India, held as follows in regard to giving reasons for its decisions:

> "**10.** In recent times, judicial review of administrative action has become expansive and is becoming wider day by day. The traditional limitations have been vanishing and the sphere of judicial scrutiny is being expanded. State activity too is becoming fast pervasive. As the State has descended into the commercial field and giant public sector undertakings have grown up, the stake of the public exchequer is also large justifying larger social audit, judicial control and review by opening of the public gaze; these necessitate recording of reasons for executive actions including cases of rejection of highest offers. That very often involves large stakes and availability of reasons for actions on the record assures credibility to the action; disciplines public conduct and improves the culture of accountability. Looking for reasons in support of such action provides an opportunity for an objective review in appropriate cases both by the administrative superior and by the judicial process. The submission of Mr. Dwivedi, therefore, commends itself to our acceptance, namely, that when highest offers of the type in question are rejected reasons sufficient to indicate the stand of the appropriate authority should be made available and ordinarily the same should be communicated to the concerned parties unless there be any specific justification not to do so."
>
> (Emphasis Supplied)

[19] (1990) 3 SCC 280

Reasons, therefore, are important and ought to be recorded. It could be said that the conclusion reached by the office of the Minister that HSML had not supplied sufficient reasons for closure would itself be sufficient to qualify as 'reasons'. However, can an endorsement of the view taken by an undisclosed officer of the Ministry be said to be an 'application of mind' by the competent authority when the Minister is the sole authority? We think not. The decision had to be Top Down and not otherwise. Had it been that this conclusion of insufficiency of reasons was the Minister's conclusion, and then they would have directed the Deputy Secretary to communicate the decision to HSML, then our conclusion may have been different.

17. Given the above discussion, the necessary conclusion is that the letter dated 25 September 2019 addressed by the Deputy Secretary to HSML cannot be constituted to be an order since such order to resubmit the application was without any authority since it was not the appropriate Government acting in that regard and not an order rejecting or accepting the application. The same conclusion can be reached on a second count - the 'order' suffered from the vice of non-application of mind by the competent authority.

18. Section 25-O provides that the appropriate Government may, after making an enquiry and hearing all the concerned parties, pass an order in writing accepting or rejecting the

application for closure. It also provides that if the appropriate Government does not communicate and order within 60 days of the date of application, there shall be deemed closure. We have held that the appropriate Government had not acted in respect of the application made by HSML since the Minister, who was the competent authority, had not applied his mind to the administrative 'order' nor, did the Deputy Secretary have the authority to do so. In other words, the appropriate Government failed to make and communicate any order on the application for closure. The deemed closure would, therefore, come into effect.

19. Separately, we may observe that the reasoning furnished by the Deputy Secretary to reject the application for closure made by HSML is insufficient, and it appears to have been given for the sole purpose of rejecting the application without due application of mind. As discussed supra, an employer seeking to close his business must show compelling and overriding circumstances. The application for closure clearly states, as already reproduced supra that *"Thus BIL has terminated the job work agreement with the Biscuit Division and the said provision has no other manufacturing avenue, since the said Division was manufacturing biscuits only for BIL. In view of the above, the biscuit division has no alternative but to close down, the manufacturing activities."*. We may add HSMC to have clarified that since inception no job work for anyone else was ever done

and that now there is no further scope of executing work for anyone else. We are quite certain that this spells impossibility. It is not the case of the Respondent-State that the statement made by HSML is incorrect and that they had other opportunities ongoing and available, and despite the same, they had sought permission for closure. Then, we ask ourselves, when there is no opportunity or avenue for production, what shall the employees do?

20. *Arguendo*, if we keep aside the 60-day time period for the deemed closure to take effect, we find that in the subsequent letter dated 10 October 2019, the position stands further clarified that for the last 32 years, HSML undertook work only from BIL and in doing so, the raw material and necessary plant and machinery were provided by the latter itself. Upon receipt of the notice of closure, in an attempt to save the division, they tried to persuade BIL to reconsider its decision but were not met with success. They subsequently approached other companies seeking manufacturing work, but to no avail. In the attending facts and circumstances, we hold that there did indeed exist sufficient compelling circumstances for closure.

21. The High Court, in our considered view, erred in placing reliance on Form XXIV-B, instead of XXIV-C which, resulted into an erroneous appreciation of statutory provisions.

CONCLUSION

22. In that view of the matter, we hold that application dated 28th August 2019 was complete in all respects, and the 60-day period for the deemed closure to take effect would be calculable from said date. Second, the Deputy Secretary was not the appropriate Government who could have asked HSML to revise and resubmit the application for closure. That authority is only vested with the Minister concerned. The Minister did not, even in the slightest, consider the merits of the matter independently, much less with or without any application of mind. Sub-delegation to the officer was not permitted by law, and, therefore, any communication made by him would be without any legal sanction.

23. The appeals are allowed. It is, however, clarified that the money paid to the employees by orders of the High Court in the pendency of the writ petitions would not be recoverable from them. At this juncture, we may refer to the order made by this Court preserving the matter for judgment. It was recorded therein as follows :

> "O R D E R
> …
> 5. Shri Rohatgi, learned senior counsel, on instructions, states that a sum of Rs.4 Crores (approximately) already stands deposited. In

> addition, a further sum of Rs.10 crores can be paid by the petitioner to the respondent workmen. He clarifies that the said amount would be in addition to the amount of gratuity (approximately Rs.4 crores) which the workmen are otherwise entitled to.
>
> 6. The entire sum, i.e., the amount of gratuity plus the enhanced amount can be distributed as compensation amongst the workmen who may be eligible and entitled to, for being on the rolls of the company.
>
> 7. This, of course, is by way of an endeavour to put an end to the controversy and without prejudice to the respective rights and contentions of the parties."

24. Considering that some of the employees may be, with the closure of this concern, losing the only job they have known and still others would be, for no fault of their own, rendered unemployed, we appreciate the gesture made by HSML. Such a statement is taken on record. At the close of the hearing, Mr. Mukul Rohtagi, learned Senior Counsel had left the issue of further enhancement of the amount to the Court. Having given thoughtful consideration, we deem it just and proper to further enhancing the appellants' offer by a sum of Rs.5 crores, thus, making it Rs.15 Crores instead of Rs.10 Crores, as mentioned in our order extracted supra. Let the amount be released forthwith, as per their entitlement, in favour of the employees and, in any case, not later than eight weeks from the date of the judgment.

Pending applications, if any, shall stand disposed of.

…….....…….J.
(SANJAY KAROL)

…….J.
(PRASHANT KUMAR MISHRA)

4th June, 2025;
New Delhi.