HINDALCO INDUSTRIES LTD. A

v.

UNION OF INDIA AND ORS.

NOVEMBER 27, 2003

[K.G. BALAKRISHNAN AND P. VENKATARAMA REDDI, JJ.] B

Industrial Disputes Act, 1947:

Section 25-O and 25-O(8)—Procedure for closing down an undertaking—Application of Section—On facts, company asked to stop mining C *activities and submit records for taking decision, letter not to the effect that undertaking will be closed immediately or with effect from any particular date—Company declaring lay off and subsequently mine closed—Company pleading that Section 25-O not aplicable—Held : Section 25-O is applicable since the undertaking of an industrial establishment had to be closed* D *for reason beyond the control of employer—It cannot be said that it is attracted only to a voluntary and intended closure of an undertaking—Further, when permission for closure of undertaking is granted where more than 100 workmen are employed on the average per working day, Section 25-O(8) will apply for payment of compensation.*

E

Appellant-public limited company was carrying out mining activities in the forest land. Divisional Forest Officer asked the appellant to stop mining activities in the forest land and submit map and records for taking a decision in the matter. Appellant replied that their lease was valid upto January, 1997 and they may be permitted to continue F **mining operations but the officer did not agree. Mining activities were stopped and lay off was declared from 31st July, 1993. Appellant closed the mine and sent notice of closure. Appellant filed application for permission to effect closure in abundant caution, even though Section 25-O of the Industrial Disputes Act, 1947 had no application as it was** G **not a voluntarily and intended closure of an undertaking. Appellant also contended that he was liable to pay compensation to the workers under Section 25-FFF. Application was not entertained as it was not filed before ninety days. Thereafter, the first respondent granted permission for closure as per the provisions of section 25-O of the Act; and that compensation was to be paid under Section 25-O(8).** H

A Appellant challenged the order but the same was rejected. Hence the present appeal.

Appellant contended that Section 25-O has no application to the instant case; that section 25 would apply only to a voluntary and
B intended closure of an undertaking; that no prior permission was required for the closure of the mining activities as the appellant never intended to close it down before the expiry of the lease period; that as the mining operations were stopped due to unavoidable reasons, the appellant is liable to pay compensation to the workmen only under
C Section 25-FFF of the Act.

Dismissing the appeal, the Court

HELD : 1.1. Section 25-O of the Industrial Disputes Act, 1947 states that if an employer intended to close down an undertaking of an industrial
D establishment, he shall seek permission at least ninety days before the date of intended closure is to become effective. The reason for the intended closure also should be given in detail and the copy of such application shall be served on the representatives of the workmen in the prescribed manner. It cannot be accepted that Section 25-O would apply only to a
E voluntary and intended closure of an undertaking. If the undertaking of an industrial establishment is to be closed for reasons beyond the control of the employer, provision have been made under sub-Section 7 of Section 25-O of the Act. [299-H; 300-A-B]

F 1.2. In the instant case, Section 25-O would govern the situation as the appellant was asked to stop the mining activities in the forest land by the Divisional Forest Officer. It did not say that the mining activity shall be closed immediately or with effect from any particular date. The appellant was asked to produce map and other relevant records within a period of 5 days on which a decision was to be taken
G in the matter. The appellant declared lay off on 31st July, 1993 itself and the mines were closed on 19th August, 1993. No order has been produced by the appellant to show from which date the mining operations were directed to be stopped by the forest authorities; nor any other documents. Furthermore, from the facts, it is not very clear
H whether the appellant was disabled from obtaining prior permission

of the first respondent at least ninety days before the date of closure of the mining operations. [300-B-D]

1.3. The appellant had an establishment where more than 100 workmen wer employed on an average per working day. In that event, the provisions contained in Chapter V-B of the Act would apply to the appellant. Section 25-O being the provision contained in Chapter V-B of the Act, they are the relevant provisions regarding the procedure for closing down of an undertaking. This clearly shows that Section 25-FFA and Section 25-FFF of Chapter V-A would not apply in respect of the closure of the mining operations of the appellant. The appellant admits that about 211 employees had been retrenched. Under sub-Section 8 of Section 25-O special provision has been made for the payment of compensation to workers when a permission for closure is granted. If the workers are not so far paid their due compensation, the appellant should pay the same within two months. [301-A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14136 of 1996.

From the Judgment and Order dated 19.6.96 of the Patna High Court in C.W.J.C. No. 699 of 1994.

Dr. A.M. Singhvi, Shahid Rizivi, Ms. G. Rastogi, Ms. S. Goel, Ms. Manika Singh and Suman Jyoti Khaitan for the Appellant.

A.G. Choudhary, Mrs. Indra Sawhney, Ms. K. Sawhney Seth, R.N. Poddar and Ms. Sarita Gupta for Mrs. Sheela Goel for the Respondents.

The Judgment of the Court was delivered by

K.G. BALAKRISHNAN, J. The appellant is a Public Limited Company having its registered office at Bombay, engaged in the business of producing aluminium metal and its alloys and its factory is located at Renukoot in Uttar Pradesh. Bauxite being a raw material required for the manufacture of aluminium, the appellant obtained various mining leases in Bihar under the provisions of the Mines & Minerals Regulations and Development Act, 1957. Appellant was thus having a bauxite mining lease

A which was known as Maidanpat Bauxite Mine. The mining operations at the Maidanpat Bauxite Mine were being done in forest land as well as non-forest land. On 24th July, 1993, the Divisional Forest Officer, Ranchi West Forest Division, issued a letter to the appellant to stop the mining activities in the forest land of the Maidanpat Bauxite Mines. The appellant
B was asked to submit map and the records for decision to be taken in the matter. The appellant sent a reply stating that their lease was valid upto January, 1997 and that they may be permitted to continue mining operations. According to the appellant, the Divisional Forest Officer did not accede to its request and the mining operations were abruptly stopped
C and as there was no work for the workmen, a lay off was declared from 31st July, 1993. The appellant alleged that lay off compensation was paid to the workmen.

The learned counsel for the appellant further contended that request was made to the forest authorities but no favourable response was received
D from them and the appellant had to close the mine w.e.f. 19th August, 1993 and this fact was intimated to the Divisional Forest Officer on 20th August, 1993. Thereafter, a notice of closure under Section 25-FFF of the Industrial Disputes Act, 1947 (hereinafter being referred as "the I.D. Act") was sent to the concerned authorities. The appellant further contended that though
E Section 25-O of the I.D. Act had no application, in abundant caution the appellant made an application to the Union of India for permission to effect closure. The application filed by the appellant was not entertained, as it was not filed within ninety days before the date of intended closure. The appellant thereafter explained the position of closing of the mine on 19th
F August, 1993 for which the permission could not be obtained in advance. The first respondent after hearing the appellant as well as the representatives of the workmen passed an order on 6th December, 1993. In that Order passed by the first respondent, the permission was granted subject to the following conditions:-

G (i) The closure would be as per provisions of Section 25-O of the Industrial Disputes Act, 1947;

(ii) Compensation and notice salary would have to be paid to the workmen as per provisions contained under Section 25-
H O(8) of the Industrial Disputes Act, 1947;

(iii) Whenever a fresh permission is granted to the Management for mining in the State of Bihar, the retrenched workmen would be employed as per the provisions contained in Section 25-H of the Industrial Disputes Act.

This permission shall take effect from the date of issue of this letter."

The appellant challenged the order of the first respondent dated 6th December, 1993 before the High Court by contending that Section 25-O of the I.D. Act had no application to the facts of the case as the closure of the work was not intended by the appellant but as a result of the direction given by the Divisional Forest Officer. According to the appellant, a voluntarily, planned and intended closure of an undertaking alone would attract Section 25-O of the I.D. Act and only under such circumstances, prior permission of at least ninety days before the date of intended closure is required to be obtained by the employer. The appellant had also contended before the High Court that the various conditions incorporated in the impugned order of the first respondent were not warranted. But all the pleas raised by the appellant were rejected by the Division Bench of the High Court and aggrieved by the same, the present appeal is filed.

We heard the learned Counsel for the appellant and also the learned Counsel for the Union of India as well as for the workmen. The learned Counsel for the appellant strenuously contended before us that Section 25-O of the I.D. Act has no application and no prior permission was required for the closure of the mining activities as the appellant never intended to close it down before the expiry of the lease period. The learned Counsel for the appellant further contended that as Section 25-O of the I.D. Act has no application, the appellant is liable to pay compensation to the workmen only under Section 25-FFF of the I.D. Act. On a closer analysis of the various provisions contained in the I.D. Act, it is clear that the pleas raised by the appellant are not acceptable. Section 25-O of the I.D. Act reads as follows:-

25-O "(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

A 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:

B

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 C 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 persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the D employer, the interests 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 and a copy of such order shall be communicated to the employer and the workmen.

E (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 F 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 G 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, H review its order granting or refusing to grant permission

under sub-section (2) or refer the matter to a Tribunal for adjudication: A

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. B

(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 C 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 D 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. E

(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 F 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."

G

Section 25-O states that if an employer intends to close down an undertaking of an industrial establishment, he shall seek permission at least ninety days before the date of intended closure is to become effective. The reason for the intended closure also should be given in detail and the copy of such application shall be served on the representatives of the workmen H

A in the prescribed manner. The contention of the appellant that Section 25-O would apply only to a voluntary and intended closure of an undertaking is without any force. If the undertaking of an industrial establishment is to be closed for reasons beyond the control of the employer, provisions have been made under sub-Section 7 of Section B 25-O of the I.D. Act. In the present case, the appellant was asked to stop the mining activities in the forest land by the Divisional Forest Officer by letter dated 24th July 1993. This letter does not say that the mining activity shall be closed immediately or with effect from any particular date. The appellant was asked to produce map and other relevant records within a C period of 5 days and it is important to note that the appellant declared lay off on 31st July, 1993 itself and according to the appellant, the mines were closed on 19th August, 1993. In the letter dated 24th July, 1993, it is stated that the decision would be taken after the receipt of the records from the appellant. No order has been produced by the appellant to show from which date the mining operations were directed to be stopped by the forest D authorities. The appellant has also not produced any other documents. From these facts also, it is not very clear whether the appellant was disabled from obtaining prior permission of the first respondent at least ninety days before the date of closure of the mining operations.

E The next contention urged by the appellant's learned Counsel is that the mining operations were stopped due to unavoidable circumstances, and, therefore, the appellant is liable to pay compensation only under Section 25-FFF of the I.D. Act. This plea is also devoid of merit in view of the specific Section 25-K of the I.D. Act. Section 25-K Chapter V-B reads as under:-

F

> 25K.(1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than [one hundred] workmen were em-
> G ployed on an average per working day for the preceding twelve months.
>
> (2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Govern-
> H ment thereon shall be final."

Admittedly, the appellant had an establishment where more than 100 workmen were employed on an average per working day. This fact is not disputed by the appellant. In that event, the provisions contained in Chapter V-B of the I.D. Act would apply to the appellant. Section 25-O being the provision contained in Chapter V-B of the I.D. Act, they are the relevant provisions regarding the procedure for closing down of an undertaking. This clearly shows that Section 25-FFA and Section 25-FFF of Chapter V-A would not apply in respect of the closure of the mining operations of the appellant. The appellant admits that about 211 employees had been retrenched. Under sub-Section 8 of Section 25-O special provision has been made for the payment of compensation to workers when a permission for closure is granted.

In view of the aforesaid circumstances, the plea of the appellant that Section 25-O of the I.D. Act applies to only planned and intended closure by the employer is devoid of merits and Section 25-O of the I.D. Act will govern the situation. We find no error of jurisdiction or illegality in the impugned judgment. The appeal is without any merits and is dismissed. If the workers are not so far paid their due compensation, the appellant shall pay the same within a period of two months.

N.J. Appeal dismissed.