

CASE NO.:
Appeal (civil) 4800 of 2007

PETITIONER:
Managing Director, Karnataka Forest Development Corporation Ltd

RESPONDENT:
Workmen of Karnataka Pulpwood Ltd. & Ors

DATE OF JUDGMENT: 11/10/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T
[CA 4802 of 2007 arising out of SLP (C) No.21054 of 2006]
(Arising out of SLP (C) No.19783 of 2005)

S.B. Sinha, J.

1. Leave granted.
2. These appeals are directed against judgments and orders dated 22.6.2005 and 19.07.2006 passed by a Division Bench of the Karnataka High Court whereby and whereunder the judgment and order dated 7.2.2005 passed by a learned Single Judge of the said High Court dismissing writ Petition Nos. 1651-1685 of 2005 filed by the respondents herein claiming their absorption in the appellant-Corporation.
3. Indisputably the private-respondents herein were the workmen of Karnataka Pulpwood Ltd. (the company). It was a Government company. It was running at a loss. Karnataka Pulpwood Ltd. is a joint sector company of Karnataka Forest Development Corporation Ltd. and and Karnataka Harihar Polyfibres Ltd., the share capital was fixed in the ratio of 51:49.
4. The Government stood as a guarantor in respect of the loans to be raised by the joint sector company from the commercial banks. A lease was granted in favour of the said company. Karnataka Pulpwood Ltd. which is said to be a subsidiary of the appellant-Corporation faced hostility from the local people for various reasons. A public interest litigation was also filed before this Court against lease of forest lands, inter alia, on the ground that the same was violative of the provisions of the Forest (Conservation) Act, 1980. This Court granted an order of stay regarding possession of the said leasehold property. Protracted legal battle adversely affected the commercial viability of KPL project. Great difficulty was also experienced in the matter to of obtaining loans from banks for raising of maintenance of plantations.

A question, therefore, arose as to whether the said company should be wound up. By reason of a decision taken by the State of Karnataka on or about 24.10.1991, it was, inter alia, directed :
\023(a) To wind-up Karnataka Pulpwood Ltd., a Joint Sector Company. The company is directed to take steps in this connection following prescribed procedure under Companies Act, 1956.

(b) That all the Assets and Liabilities of the Karnataka Pulpwood Ltd. and any guarantee given by the Government to Karnataka Pulpwood Ltd. for raising loans are transferred to Karnataka Forest Development Corporation Ltd.

(c) Karnataka Forest Development Corporation is directed to settle obligations contained in promoters an agreement amicably through the dialogue between the promoters or in

terms of arbitration clause in case of any dispute between the parties.

(d) Karnataka Forest Development Corporation is directed to absorb the staff of Karnataka Pulpwood Ltd. in Karnataka Forest Development Corporation.

(e) To return the enquiry to M/s. Harihar Polyfibers Ltd. The question regarding payment of interest on equity has to be negotiated and settled between the promoters viz., Karnataka Forest Development Corporation and M/s. Harihar Polyfibers.\024

5. An attempt was made to wind up the said industrial undertaking in terms of the provisions of the Companies Act. On or about 16.11.1993, the State accorded its approval for merger of the said company with the appellant herein in place of closure of the former. It is, however, not known as to whether formalities required to be complied with for merger of the said companies under the Companies Act were undertaken or not. Apparently, such an exercise was undertaken. A proposal was also mooted that a voluntary retirement scheme be floated in regard to the employees of the company and in its meeting held on 27.1.2003, it was resolved :

\023The matter was also discussed in the meeting of the High Power Committee on Public Sector Undertakings under the chairmanship of the Chief Secretary on 20.01.1993. It was pointed out that in the HPC a decision has been taken to close the KPL revising the earlier decision of merger with KFDC.\024

6. Yet again, a Government order was issued on 02.01.2004 directing :
\0231. Close down KPL.

2. Extend financial help to KPL in order to extend VRS to all its employees. Those employees who do not opt for VRS should be terminated as per Industrial Disputes Act.

3. KPL should obtain necessary permission from the Government\022s Labour Dept. for closure under Section 25-O of the Industrial Disputes Act.\024

7. Pursuant thereto and in furtherance thereof, an application was filed for closure of Karnataka Pulpwood Ltd. before the State Government.

Respondent-Union was also given an opportunity of hearing in the proceedings initiated therefor. It was, inter alia, observed :

\023All the employees of KPL are ready and willing to accept the VRS as proposed by the Management of KPL in its letter dated 14.02.2003 and the VRS scheme revised upto 31.03.2003 as per G.O. of DPAR (RPE) dated 10.08.2001 provided other conditions are fulfilled\024

It was opined :

\023Therefore, the union pleads to either to reject/dismiss the application of the KPL or to defer its consideration till after the absorption of the KPL staff in the KFDC or at least after the judgment of the Hon\022ble High Court in WP No.39406-455/2003. In the alternative, refer the application to the Tribunal for adjudication in the interest of justice.

As against the above, objections of the unions, the advocate appearing for the management has stated that the majority of the objections raised by the

union are regarding absorption of the KPL staff to that of KFDC. These points are not relevant in the matter of closure and the union can raise all these points before the appropriate authority, as this authority is not concerned to the absorption of KPL employees. Therefore, the management has requested to over rule the objections and to accord sanction for closure as requested by the management as unless the closure is decided the absorption of KPL employees cannot be decided.

The reasons advanced by the management for closure of their company the objections of the union and counter objections of the management have been examined by the Government. As could be seen from the various objections raised by the union, which are all relating to the absorption of workers in the KFDC, voluntary retirement etc. , the Government considers that these issues or objections of the union are not relevant to the request of the closure or non-closure of the company. The union has not refuted anywhere in their objection about the losses incurred non-functionality of the company for the purpose, which was established. The union has also not questioned the genuineness and adequacy of the reasons advanced by the management. Though the union has pointed out that the closure is not justified and there is no adequacy and genuineness in the reasons, but it has not substantiated as to how the closure is not justified and how the reasons are not adequate and genuine. The issues to be considered for closure of the company are status of the company, its viability to pursue its objective etc. The union has not made out its strong case on these issues. Therefore, Government after taking into consideration all aspects of the matter has decided to allow the application of the management and to grant permission for closure as required under Section 25-O of the Industrial Disputes Act, 1947.

Accordingly the following orders.

G.O. No.LD559 IDG 2004, Bangalore dated 23.11.2004

In the circumstances explained in the preamble, the permission of the Government is hereby accorded as required under Section 25-O of Industrial Disputes Act, 1947, to the management of M/s. Karnataka Pulpwood Ltd., Bangalore to close down the above industrial undertaking as proposed by them.\024

8. Aggrieved by and dissatisfied therewith, the respondents filed a writ petition before the High Court of Karnataka which was marked as Writ Petition Nos.1651-1685 of 2005. In the said writ petitions, the following prayers were made :

\023a) Issue a writ of certiorari or any other appropriate writ, order or direction quashing the order bearing reference LD559, IDG 2004, Bangalore dated 23.11.2004 issued by the 2nd respondent, a true copy of which is produced and marked as Annexure-J since the same is unjust, arbitrary and opposed to the scheme of the Industrial Disputes Act, 1947.

b) issue a writ of mandamus or any other appropriate writ, order or direction, directing the

respondents 1, 3 and 4 to immediately absorb the services of the petitioners 2 to 35 in KFDC pursuant to Government Order dated 24.10.1991 vide Annexure-B and also representations submitted by the 1st Petitioner Union vide Annexure-E to H since non-consideration of the same by the respondents 1, 3 and 4 is unjust, arbitrary and violative of Articles 14 and 16 of the Constitution of India.\024

9. It appears that another writ petition was filed by another union, i.e., Karnataka Pulpwood Ltd. Employees Union (Regd) which was marked as Writ Petition Nos.3520-3533 of 2005. A learned Single Judge of the High Court of Karnataka by a judgment and order dated 28.1.2005 held as under :

\023The learned counsel for the Petitioner submits that all the employees are not interested in VRS scheme, some of them are interested in taking closure compensation and absorption in the services of the third respondent and further submits that the petitioners have no objection for the closure, but their rights have to be properly protected and the benefits available under law have to be properly ensured.

In view of the submission made at the Bar, it is directed that the second respondent is permitted to close the undertaking by 7.2.2005. The first respondent shall act upon the proposal of VRS scheme within three months from the date of closure. The petitioners those who are willing to opt VRS can apply for VRS otherwise they can place the request for absorption in the services of the third respondent and closure compensation to be payable to the petitioners who are eligible for closure compensation in accordance with law and to be payable as on the date of closure.

Accordingly, the writ petition is disposed of.\024

10. When the writ petition filed by the respondents herein came up for consideration before another Bench, it by a judgment and order dated 7.2.2005 held :

\023I respectfully agree with the conclusion reached by this Court in the aforesaid writ petitions. Hence, these writ petitions are disposed of in terms of the order dated 28th January, 2005 in WP Nos.3520-3533/2005 (S-R).

The petitioners herein are at liberty to opt either for VRS scheme or for closure compensation with request for absorption in Karnataka Forest Development Corporation Ltd. on or before 28th February, 2005.\024

11. Both, the Management as also the workmen, preferred intra court appeals thereagainst. A Division Bench by an order dated 22.6.2005 directed the Principal Secretary of the Government to inform the Court as to whether the Government order dated 24.10.1991 on which reliance had been placed by the respondent-workmen was subsisting or not. It, however, does not appear from the records that any response thereto was made. When the writ appeals preferred by the parties hereto came up for consideration before the Division Bench, it allowed the appeals filed by the workmen and dismissed the appeals preferred by the Management stating :

\023What is contended by the learned counsel appearing for the Corporation is that the Government order dated 24.10.1991 stands superseded by the subsequent decision taken by the State Government. He referred to the

averments made in the written statement filed by the Corporation before the learned Single Judge and we find that the Corporation has nowhere stated that the said order stands superseded. Be that as it may, no such order of the State Government was produced before the learned Single Judge which could show that the earlier order dated 24.10.1991 stood withdrawn or superseded. The learned State counsel, on the other hand, on receipt of instructions from the Secretary of the Department who is present in Court, informs us that the Government order dated 24.10.1991 has not been superseded. This obviously puts an end to the controversy. This being so, we are clearly of the view that the appellants are entitled to be absorbed in the service of the Corporation and that the learned single Judge was in error in not issuing such a direction.

It was, however, noticed :

We may, however, make it clear that the prayer made in the writ petition for quashing the order of the Government granting permission to close down the company was not pressed before us and the same stands rejected.\024

12. Mr. Kailash Vasdev, learned counsel appearing on behalf of the appellant, would submit that the matter in regard to closure of the company being no longer in dispute, the High Court committed a serious error in directing absorption of the workmen of the company by the appellant. According to Mr. Vasdev, the financial implication of the said order comes to about Rs.60 lac per year and the losses suffered by it would not be borne by the Government.

13. We may, however, place on record that during the pendency of this SLP, a meeting was held on 21.6.2006 in regard to the claim of absorption of the workmen concerned wherein it was resolved :

\023Agreeing with the views of Sri Sogadu Shivanna MLA and others, the Hon\022ble Minister instructed that the following action be taken immediately :

1) Necessary action to be initiated to withdraw the SLP filed before the Hon\022ble Supreme Court on the High Court order dated 22.6.2005 by following necessary procedure without taking much time for the same and after this action to be initiated to absorb these 81 employees.

Action : Managing Director, KFDC Ltd. And Principal Secretary, FEE\024

2) Arrears of differential salary on account of release of increments and D.A. be released to the employees at an early date.

Action : Managing Director KFDC Ltd. and Principal Secretary, FEE

3) Any dues to be settled to VRS optees such as difference in ex-gratia etc. be settled without giving scope for the KPL employees to approach Court of law again.

Action : Managing Director, KFDC Ltd. and Principal Secretary, FEE

All the officers present in the meeting assured their full co-operation in solving these

issues in a time bound manner.\024

14. We are informed by Mr. Sanjay Hegde, the learned counsel appearing on behalf of the Government of Karnataka that the question of absorption of the retrenched employees in the appellant-Corporation is pending before the Cabinet. We do not intend to make any observation as regards consequence arising therefrom.

15. Mr. Naveen R. Nath, learned counsel appearing on behalf of the respondents would submit that the State of Karnataka as also the appellant Corporation had all along been representing to the workmen that services of those employees who have been working under the company would be absorbed by the Corporation and in that view of the matter, this Court should not interfere with the impugned judgment. It was furthermore contended that the State as also the Corporation had allowed the order of the learned Single Judge dated 28.1.2005 passed in Writ Petition No.3530-3533 of 2005 to attain finality and in that view of the matter, there is absolutely no reason as to why the other workmen would not be treated at par with them.

16. It is unfortunate that the State of Karnataka as also Appellant-Corporation did not specifically take one stand or the other. It has been prevaricating its stand from stage to stage. The relationship between the company and the respondents being employer and workmen is governed by the provisions of the Industrial Disputes Act, 1947. The Management of an industrial undertaking is entitled to take recourse to closure of its undertaking in terms of the provisions of the said Act itself. Section 25-O of the said Act lays down the procedure for closing down an undertaking. Once the permission had been given by the State Government, all consequences would ensue. In terms of sub-section (8) of Section 25-O, all the workmen would be entitled to receive compensation which shall be equivalent to 15 days\022 average pay for every completed year of continuous service or any part thereof in excess of six months. Section 25-S provides that in relation to a closure of an undertaking governed by Chapter V-B, the provisions of Sections 25-B, 25-D, 25-E, 25-F, 25-G, 25-H and 25 would also apply. Section 25-J provides that the provisions of Chapter VA shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Indisputably in the event an undertaking is closed down, the only right which accrues in favour of the workmen is to obtain compensation as provided for. We may notice that sub-section (4) of Section 250 provides that an order of the appropriate Government is final and binding on the parties.

17. Before the Division Bench of the High Court, as we have noticed hereinbefore, the order of the State Government directing prior permission for effecting closure of the industrial undertaking has not been questioned. In fact, even the learned Single Judge had made observations to the effect that the closure may be affected. Having regard to the fact that rights of the workmen flow from the provisions of the Industrial Disputes Act, a writ court could not have issued any other direction. One of the questions which had arisen for consideration before the Division Bench was as to whether the order of the State Government dated 24.10.1991 subsists. For considering the said question, it was not necessary for the High Court to ascertain the view point of the State. In the year 1991, a decision was taken not to close down the undertaking of the company. The 1991 decision was modified by a subsequent order that the undertakings also as that of the company are merging with each other. No order of merger has been passed. No decision by a competent authority under the Companies Act had been taken. Indisputably, the appellant and the company have not merged. In absence of any valid order of merger of two different entities, evidently the relationship of employer and employee between the respondents and the said company, as had been obtaining, continued. Furthermore, as soon as the closure of an undertaking became effective, it is trite that the said relationship ceased to exist.

18. The right of the workmen, therefore, was only to receive the amount of compensation. If the State is not in a position to take upon itself the financial burden of the appellant-Corporation for appointing the concerned workmen; direction to continue their services could not be issued. There cannot be any doubt whatsoever that the said order dated 24.10.1991 has been superseded by necessary implication. Both merger of two undertakings

and the closure of one undertaking do not stand together. If the workmen, therefore, think that any other or further right has accrued to them in terms of the purported assurance given by the State, it may take recourse thereto before an appropriate forum but a writ petition was not maintainable.

19. For the foregoing reasons, we are of the opinion that impugned judgment cannot be sustained. It is set aside accordingly. The appeals are allowed. No costs.

JUDIS