

**IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

Writ Petition No. 2185 of 2022 (M/S)

Zydus Wellness Employees Union, Sitarganj

..... Petitioner

Versus

State of Uttarakhand & Ors.

..... Respondents

Present:

Mr. D.S. Mehta, the learned counsel for the petitioner.

Mr. Vinod Nautiyal, the learned Dy. Advocate General and Mr.

N.S. Kanyal, the learned Brief Holder for the State.

Mr. Nischal Jagdhari and Mr. C.K. Sharma, the learned counsel
for respondent no. 4.

Date of hearing and order: 23.09.2022

Sri S.K. Mishra, J.

Heard.

2. By filing this writ petition, the petitioner-union has prayed for the following relief: -

(I) to issue a writ, order or direction in the nature of mandamus directing to the respondents decide the representation/application of the petitioner union under section 3 (a)(b) of U.P. Industrial Dispute Act pending before the respondent no. 1.

(II) Pass a suitable writ, order or direction in favour of the petitioner workmen and against the respondents which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

3. At this stage of fresh admission, the learned counsel for the petitioner would submit that appropriate directions may be given to the State Government to decide their representation, filed under Section 3(a)(b) of the U.P. Industrial Dispute Act, 1947, (hereinafter referred to as the Act for brevity) (as applicable to the State of Uttarakhand). The learned counsel for petitioner would further submit that the aforesaid provisions is not applicable to the present petitioner as there has been no lock-out by the respondent rather it is a closure. He would also submit that the closure was done without following the provisions of Section 6W of

the aforesaid Act as they do not have more than 300 permanent employees employed in their unit.

4. For the purpose of proper appreciation, the provisions of Section 6W of the Act is reads as follows: -

6W. Procedure for closing down an undertaking.-

(1) An employer who intends to close down an undertaking of an industrial establishment 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 State 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 representative 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) xxxxxxxx.

(3) xxxxxxxx.

(4) xxxxxxxx.

(5) xxxxxxxx.

(6) xxxxxxxx.

(7) xxxxxxxx.

(8) xxxxxxxx.

5. Thus, a plain reading of Sub-section (1) of Section 6W of the Act reveals that before closure, the industrial establishment shall in the prescribed manner apply for permission at least 90 days before the date on which the intended closure has become effective. However, it is clarified by Section 6V of the aforesaid Act, which reads as follows: -

“6V. Application of Sections 6W and 6X

(1) The provision of Section 6-W and 6-X shall apply to an industrial establishment pertaining to an industry other than an industry referred to in sub-clause (r) of clause (a) of Section 2 of the Industrial Dispute Act, 1947 (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than three hundred

workmen were employed 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 State Government shall thereon shall final.

6. The provision of Section 6W shall apply to an industrial establishment pertaining to an industry other than industry referred in Sub-clause (i) of clause (a) of Section 2 of the Act (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than three hundred workmen were employed on an average per working day for the preceding twelve months;

If a question is whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the State Government shall be final.

7. Thus, the provisions of Section 6V of the Act, to be applicable, wherein the following requirement must be satisfied, as enumerated below: -

(i) The industrial units must be a seasonal one or it should be an industrial unit in which work is performed intermittently.

(ii) not less than 300 persons were employed on an average per working day for the preceding twelve months.

8. Thus, it is clear that the industrial unit should be seasonal or intermittently one and should have either 300 employees or less than one.

9. The learned counsel for respondent no. 4 would argue that those 300 employees has to be permanent employees and he admitted that the industrial unit has 150 permanent

employees and more than 1000 contractual labourer. By relying upon a judgment of Bombay High Court in *Dyes and Chemical Workers Union vs. Bombay Oil Industries Ltd. and Ors.*, O.O.C.J. Ref., in W.P. No. 1632 of 2000 along with L.P.A. No. 356 of 2000 decided on 23.01.2001, the learned counsel for the petitioner would submit that the worker engaged on contractual basis are not to be included in calculating figure 300. However, the provision of Section 6W of the Act shall not be followed if two conditions are fulfilled (1) with respect to the number of employees and, (2) with respect to the seasonal or intermittently nature of industry.

10. It is not disputed that the industry is not a seasonal industry. This Court is of the, prima facie, opinion that there has been violation of Section 6W of the Act, and this matter should also be considered by the State Government.

11. Hence, the writ petition is disposed of directing respondent no. 1 to decide the representation given to it through Principal Secretary, Labour Department, Government of Uttarakhand, Dehradun within a period of 30 days from the date of production of certified copy of the order by passing a reasoned and speaking order after affording reasonable opportunity of hearing to the petitioner as well as the representatives/Principal Officer of respondent no. 4 and any such person who may be interested in the proceedings.

12. With such observation the writ petition is disposed of.

(Sanjaya Kumar Mishra, J.)

(Grant certified copy as per Rules.)

