Supreme Court of India
Vazir Glass Works Ltd vs Maharashtra General Kamgar Union ... on 4 January, 1996
Equivalent citations: 1996 AIR 1282, 1996 SCC (2) 118
Author: G Ray
Bench: Ray, G.N. (J)

PETITIONER:
VAZIR GLASS WORKS LTD.

Vs.

RESPONDENT:
MAHARASHTRA GENERAL KAMGAR UNION AND ANOTHER

DATE OF JUDGMENT: 04/01/1996

BENCH:
RAY, G.N. (J)
BENCH:
RAY, G.N. (J)
MAJMUDAR S.B. (J)

CITATION:
1996 AIR 1282 1996 SCC (2) 118
JT 1996 (1) 129 1996 SCALE (1)181

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T G.N.Ray.J.

Leave granted.

Heard learned counsel for the parties.

This appeal is directed against the judgment dated August 9, 1994 passed by the Division Bench of Bombay High Court in Appeal No.460 of 1994 reversing the order dated June 22, 1994 passed by the Single Bench of the High Court in Writ Petition No.1446 of 1994.

By the impugned order, reference to the Industrial Tribunal under Section 25 (O) (5) read with Section 10 (1) of the Industrial Disputes Act made by the Industries. Energy and Labour Department. Government of Maharashtra, on April 7, 1994 was sat aside.

It appears that the appellant, a Company incorporated under the Indian Companies Act had an Unit at Andheri, Bombay. According to the Company, the said unit became a heavily losing business venture for reasons beyond the control of the Company and the said unit started incurring losses from the veer 1991-92. The loss suffered by the said unit was to the tune of Rs.29.20 lakhs. The factory of the appellant-Company at Andheri was closed since November 3, 1992 and since thereafter, no manufacturing activity has been carried on in the said unit.

It is the case of the Company that it had employed 774 workmen originally in the said unit and after the said unit became a losing concern, in order to rehabilitate the workmen of the said unit, the Company offered generous Voluntary Retirement Schemes from time to time to its workmen despite the Company's financial hardship. The Voluntary Retirement Scheme was accepted by the majority of the workmen and out of 774 originally employed, 454 workmen had accepted the said scheme requiring payment to be made to the tune of Rs.560 lakhs. As 320 workmen did not accept the said Voluntary Retirement Scheme, the appellant-Company was constrained to seek closure of its industrial unit at Andheri because the monthly wage bill of the remaining workmen would be Rs.12 lakhs and the other establishment expenses being another 12 lakhs per month, the total cost to be incurred by the Company for the said unit would be about 3 crores per annum.

The Company, therefore, made an application on August 14, 1992 for closure of the said unit at Andheri under Section 25 (O) (1) of the Industrial Disputes Act (hereinafter referred to as Act). Such application, however, was rejected by the State Government on October 12, 1992. The Company thereafter made an application for review of the said order on February 23, 1993 under Section 25 (O) (5) of the Act which was well within one year of the order of rejection.

The said review application was kept pending by the State Government and in exercise of its powers conferred by Section 25 (O) (5) read with Section 10(1) of the Act, instead of reviewing the order of rejection dated October 12, 1992 the State Government made a reference to the Industrial Tribunal for adjudication of the case of closure made by the Company. Such reference was made after notice and opportunity of being heard given to the respondent No.1, namely, the Maharashtra General Kamgar Union.

The Union thereafter moved a writ petition before the Bombay High Court representing the interest of the said 320 workmen, challenging the legality and validity of the order of reference made by the State Government under Section 25(O)(5) read with Section 10(1) of the Act. The said writ Petition No. 1446 of 1994 was rejected by the Single Bench of the High Court by the order dated 22nd June, 1994. The Union thereafter preferred an appeal before the Division Bench of the Bombay High Court being writ Appeal No.460 of 1994 assailing the judgment passed by the learned Single Bench. By the impugned judgment, the Division Bench allowed the said appeal and set aside the judgment passed by the learned Single Bench in the said writ petition. It has been held by the Division Bench that: (1) in terms of Section 25 (O) (4) of the Act, the order passed on the application for closure remains operative for one year from the date of such order and after expiry of such period, the power of review of the order automatically comes to an end. (2) It is not correct to contend that until the review application filed by the company is not finally disposed of, the order passed under Section 25 (O)(2) by the State Government does not become final (3) The State Government is not

empowered to pass order under Section 25 (O) (5) at any time during the pendency of review application even if one veer had elapsed from the date of the order passed under Section 25(O)(2). As admittedly the review application was disposed of by making the said reference under Section 25(O)(5) of the Act, by purporting to dispose of the review application after expiry of one year from the date of the order rejecting the application for permission to close, such order of reference to the Industrial Tribunal was invalid, having been passed without any jurisdiction.

The Company has challenged in this appeal the correctness of such decision of the Bombay High Court in quashing the said reference made by the State of Maharashtra. It will be appropriate to refer to Section 25(O) of the Act as it stood at the relevant time.

SECTION 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 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 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) 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 responsible opportunity of being heard to the employee, 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 of refuse 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.

(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 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, review its order granting or refusing to grant permission under Sub-Section (2) or refer the matter to a tribunal for adjudication:

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.

(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 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 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 go, 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.

(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 under taking immediately before the date of application for permission under this action, 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."

Mr. Bobde learned senior counsel appearing for the appellant-Company has submitted that the Division Bench of the High Court has held that it is not the date of filing of application but the date of the order rejecting the application for permission for closure which must be taken into consideration to examine whether the authority passing the order on review application under Section 25(O)(5) had jurisdiction to pass an order. Mr. Bobde has submitted that the Division Bench has erroneously held that once a period of one year expires from the date of the order passed under Section 25(O)(2) of the Act on the application for permission to close an industrial undertaking, the power of review comes to end notwithstanding presentation of an application for review within the said period of one year and pendency of such review application before the State Government. Mr. Bobde has contended in terms of Section 25(O)(4) of the Act, the order passed under 25(O)(2) of the Act rejecting the application for permission to close, does not attain finality and the review application does not become infructuous after expiry of one year from the date of order under Section 25(O)(2) of the Act. On the contrary, the one year period for c the finality of the order passed under Section 25(O)(2) of the Act gets enlarged till the order is made on the review application. The period of one year as referred to in Section 25(O)(4) is subject to review to be made under Section 25(O)(5) of the Act.

Mr. Bobde has submitted that for giving appropriate meaning to sub-section (4) and sub-section (5) of Section 25(O) of the Act, it should be held that the order passed under sub-section (2) remains valid and operative for one year from the date of such order under sub-section (2) if within the said period of one year, no application for review of the order has been made. But if such application is made within the aforesaid time frame, the order under Section 25(O)(2) does not attain finality but

remains operative subject to order by way of review. Since the order under sub-section (2) does not attain finality during the pendency of review application, the State Government does not cease to have jurisdiction to entertain and consider the review application on merits. Any construction of Section 25(O)(4) and 25(O)(5) of the Act putting an embargo on the exercise of jurisdiction of the State Government to review its order on an application presented by an aggrieved party within one year of the order made under Sub-section (2) of the Act will violate the very purpose of review and would make a review application abortive and infructuous even though a statutory authority had failed and neglected to consider the same.

Mr. Bobde has submitted that in the instant case, admittedly the Company presented the review application before the expiry of one year from the date of rejection of the Company's application for permission to close its unit. After one year, the Company was entitled to make a fresh application for such permission to close despite rejection or its application earlier. But if the application for review has been made within the time frame, neither the State Government is deprived of its jurisdiction to consider the review application on merit nor the Company is deprived of its right to get such review application considered on merit by the State Government and on such application being presented, the State Government has jurisdiction to pass order by itself or to make reference for adjudication by the Industrial Tribunal.

Mr. Bobde has also submitted that the case of closure of an industrial unit is required to be considered by the concerned authority by taking into consideration all relevant factors because such decision has not only an impact on the workmen employed in the concerned industrial unit but it has also an impact on the productivity of the Industry and economy of the country. In the instant case, the Company made an application for review before the State Government by drawing its attention to the relevant facts which according to the Company warrant sanction for the closure. It is not unlikely that the State Government in view of other urgent and pressing problems could not consider the application of the Company before expiry of one year from the date of rejection of the application for permission for closure. It appears that after the said application for review was taken up for consideration, the State Government being alive to serious implication of closure of an industrial undertaking, thought it expedient that such question should be gone into by the Industrial Tribunal in a more effective manner. If on such perception, the State Government has made reference which is neither lacking in jurisdiction hor wholly unreasonable or perverse, there is no question of quashing such reference. Mr. Bobde has submitted that instead of decision by the State Government an adjudication by the Industrial Tribunal is all the more desirable in the interest of both the parties.

Mr.Bobde has also submitted that the view taken by the High Court in the impugned decision that it is the date of filing the application and not the date of the order passed under sub section (2) of Section 25 (O) of the Act, which is to be taken into consideration for deciding the jurisdiction of the State Government to pass order on the review application under Section 25 (5) of the Act, is not correct. The State Government did not cease to have jurisdiction simply with the expiry of one year from the date of order rejecting application for permission to close. It retains its jurisdiction to review and does not become functions officio if within a year, an application for review is made and such application remains pending. In support of such contention, Mr.Bobde has relied on the

decision of this Court in Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and others (1980 Supp. SCC 420). It has been held in the said decision that an application for setting aside its ex parte award made within thirty days from the date of passing the award can be validly entertained by the Tribunal. The contention that the Tribunal had become functions officio and as such lacked in jurisdiction to entertain review application was negatived. It has been held that jurisdiction of the Tribunal had to be seen on the date of the application made to it and not on the date on which it passed the order. Mr.Bobde has submitted that the view taken by the High Court is, therefore, erroneous, being contrary to the decision of this Court.

Mr.Bobde has also referred to another decision of this Court in Western Indian Match Co. Vs. Western Indian Match Co. Workers Union and others (1970 (3) SCR 370) for contending that power to refer to Industrial Tribunal remains unaffected even if on an earlier occasion, Government refused to made reference. If a valid dispute still remains and on consideration of relevant facts, the Government feels that a case for reference has been made out, it can direct for reference. Mr. Bobde has submitted that on the date of passing order of reference the case for closure espoused by the Company had continued and despite earlier rejection for permission to close an industrial unit, the State Government was quite competent to make an order of reference to the Industrial Tribunal by considering relevant factors.

Mr.Bobde has also submitted that power of the State Government to reconsider the case for closure is not limited by any precondition. What is contemplated under Section 25 (O)(5) of the Act is not a limited review within the meaning of Order XVII Rule 1 of Civil Procedure Code. What is intended is a reconsideration of the entire matter including the facts and law omitted while passing the first order as well as new development that took place after the original order was passed. The object for the provision of review is to do justice between the parties by considering whether the original decision is correct or not. In support of such contention, a decision of the Kerala High Court in Laxmi Starch Limited Vs. The Kunda Factory Workers Union (1992 Labour and Industries Cases 1337) has been relied on by Mr.Bobde.

Mr.Bobde has further submitted that the State Government had jurisdiction to consider the case for closure of the industrial unit by entertaining the application for review on merits and the State Government did not become functions officio in entertaining such application for review because the power to review is referable to the date of making the application and not the date on which the order or such review application is made. In the instant case, considering the possible impact on the employees and economy as a whole if closure is effected, the State Government thought it expedient that such consideration should be made by Industrial Tribunal. Such reference, therefore, should not be held invalid. He has also submitted that hearing before the Tribunal was completed and this Court by an interim order directed the Tribunal to pass its award and send the same in a sealed cover. Such award has since been sent in a sealed cover by the Tribunal to this Court. As the reference is legal and valid, the Court should accept the said award and direct for giving effect to such award by treating it as valid award made on a reference under Section 25 (O)(5) read with Section 10 (1) of the Act.

Mr. Deshmukh, learned Senior counsel appearing for the respondent-Union has, however, refuted the contentions of Mr.Bobde. It has been contended by Mr. Deshmukh that the Company is closely held public United Company - its shares being held by family members. The Company made substantial profit in 1991-92 and reserve share of the Company was 489 lakhs against paid up share capital of 65 lakhs.

It was only when the same family had set up a new Company called Neutral Glass and Allied Industries Limited at Kosama in Surat mainly to avail various benefits and tax evations for establishing industry in backward area, the Company had been neglected purposefully. The commercial production of that new venture hear Surat started in 1989-

90. Immediately, production in the Company was cut down and production by the new venture was increased. Even the officials of the Company had written to its clients in 1989 that all future orders should be placed with the said new venture and not with the Company. As a matter of fact, many officials of the Company had worked both for the Company and also for new venture and documentary proof of such detrimental steps had been submitted before the Industrial Court in Reference No. (IT) 25 of 1994. Hence, the bogey of closing down a sick and losing concern is factually incorrect and should not be accepted.

Mr.Deshmukh has further submitted that the main question that requires for consideration is whether or not on the date when reference to Industrial Tribunal was made, the State Government had jurisdiction to entertain the Review Application and pass order on the same. The merits of the application for closure of the said unit at Andheri, however, are not germane for deciding the correctness and validity of the impugned judgment of the Division Bench of the Bombay High Court. Mr.Deshmukh has submitted that having regard to various provisions of Section 25 (O) of the Act and particularly having regard to the stipulation in sub- Section (3) of Section 25 (O) that the permission sought shall be deemed to have been granted if the order on the application for permission is not communicated to the employer within sixty days of the making of the application, it is quite evident that the intention of the legislature that the time should play a dominant role in the proceedings for closure of an industrial unit, is abundantly clear. For any interpretation of true import of Section 25 (O) consisting of various sub-Sections, the importance of time factor should not be missed.

Mr.Deshmukh has contended that closure of an industrial undertaking is bound to have serious repercussions on the employer; workmen and persons connected with the industry and also on the general public. Further, factors having bearing on the decision to close are numerous and many of such factors change with the passing of time. Hence, it is necessary that factors relevant for closure must be considered within a time frame so that with the passage of time, such consideration may not lose its relevance. Precisely for the said reason, legislature in its wisdom, has fixed one year as the outer limit within which the factors placed by an employer for permission to close, may be reviewed by the State Government.

Mr.Deshmukh has submitted that if a review application, though made within the said time frame of one year from the pate of rejecting the employer's application for grant of permission for closure, is

not considered for whatever reason, the employer does not in reality suffer any serious prejudice, Because, the order rejecting the prayer for permission for closure remains in force, subject to any review to be made within that time frame. An employer after one year can make same prayer for permission to close not only on the materials which he had placed earlier but on other or further materials which may crop up with the passage of time.

Mr.Deshmukh has submitted that the decision in Grindlays Bank's case (supra) since relied on by Mr.Bobde, the learned counsel for the appellant Company has no application in the facts of the case. In Grindlays Bank's case, this Court has made distinction between review on procedural lapse and review on merits of the case. After indicating that the ex parte order made in that case was manifestly unjust, it has been indicated that every court or tribunal has inherent jurisdiction to review its order which has resulted in miscarriage of justice in procedural matter. Such exercise of review to correct procedural irregularity is based on the principle that court has a duty to remedy the errors committed by it in following the procedures in a its. In the instant case, the State Government having applied its mind on the application for permission for closure, held that such permission was not justified and accordingly dismissed the application. The State Government had not committed any error in adopting any procedure which has broughts about miscarriage of justice. The Company by filing review application has sought for reconsideration of the application. Such review application, for the reasons already indicated, must be considered within the time frame of one year.

Mr.Deshmukh has submitted that the finality of the order passed under sub section (2) of Section 25 (O) is undoubtedly subject to any order to be made on review application. If an application for permission for closure is rejected and immediately or shortly thereafter the employer makes an application for review and within one year of the order of rejection, the State Government on reviewing the grounds urged in support of closure, accepts the case of the employer and grants permission within the said time frame of one year, there is no manner of doubt that earlier order of rejection will stand superseded. But it will not be correct to contend that because an order of rejection is subject to any order that may be passed on review application made against the order of rejection, such review application may be presented at any time even beyond the said time frame of one year or if review application is made within such time frame, such review application will remain alive for consideration even after expiry of the said time frame of one year.

Mr.Deshmukh has submitted that the decisions in M/s Western India Match Co.'s case (supra) and in Laxmi Starch's case (supra) have no application in the facts of the case in question. The decision in the aforesaid cases do not relate to the consideration of finality of an order passed under sub section (2) of Section 25 (O) of the Act after expiry of one year and consequential invalidity of consideration by way of review after such period. Mr.Deshmukh has submitted that for the constitutional validity of the executive action taken under sub section (2) of Section 25 (O) without making any provision for judicial review of such executive order, the time limit of one year within which the order made under sub section (2) of sub section 25 (O) would remain operative coupled with the provision of making review application even within such period of one year and right to make fresh application for permission for closure after one year have been provided in Section 25 (O). In support of this contention. Mr.Deshmukh has referred to the Constitution Bench Decision of

this Court in Meenakshi Mill's case (1992 (3) SCC 336) and Pappasan Labour Union's case (1995 (1) SCC

501).

Mr.Deshmukh has submitted that if the specific purpose of time frame of one year in Section 25 (O) is kept in mind, the requirement of making a review application and disposal of the same within the said time frame will be quite evident. Since fresh application for permission may be presented after one year from the date of rejection of an application for permission for closure, the question of keeping alive a review application even beyond one year so that a party making such review application does not suffer any unmerited hardship, on account of non consideration of review application within the time frame does not arise.

Mr.Deshmukh has submitted that as the State Government lacked in jurisdiction to deal with the review application after expiry of one year, the reference made by it to the Industrial Tribunal in the purported exercise of jurisdiction to entertain and dispose of review application cannot be held valid. It will, therefore, be an irrelevant consideration that reference to Industrial Tribunal instead of State Government itself taking a decision on merit, is more desirable in the interest of the parties. Mr.Deshmukh has submitted that in the aforesaid facts, this appeal must fail and should be dismissed.

After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the parties, it appears to us that it is quite evident from the Scheme of various sub sections of Section 25 (O) of the Act that whenever an application for closure of an industrial unit is made by an employer, the State Government before whom such application is made, is required to dispose of such application within sixty days from the date of making the application and communicate its decision within the said period of sixty days so that an employer does not suffer any hardship on account of failure on the part of the State Government to dispose of such application for permission for closure expeditiously. In order to impel the State Government to dispose of such application expeditiously not exceeding sixty days, provision has been made that if the decision of the State Government on the application for permission to close an industrial unit is not communicated within the said period of sixty days, it will be deemed that such permission has been granted. Since the decision on the application for permission for closure is to be taken by the executive authority namely the State Government and since no provision for statutory review before other authority has been made, the Legislature has incorporated the provision of review by the State Government of its decision on the application for closure either on its own motion or on the basis of the application to be made by the aggrieved party.

As the decision made by the State Government on the question of closure of an industrial unit cannot but bring about serious consequence affecting productivity, employment opportunities etc., the decision taken on the application for closure, has been made operative for one year only, so that after such period, if an employer still desires that the industrial unit should be closed, it may make a fresh application for permission to close the said unit. It is quite obvious that in such application not only the factors which were indicated in the previous application in justification of closure of the

industrial unit but other factors emerging with the passage of time may be placed before the State Government for taking decision on the application for permission to close. In order to evade any unmerited hardship meted out to an aggrieved party on account of improper or incorrect decision made by the State Government on the application for permission to close, even during the period of one year when the decision of the State Government remains operative the review application may be made by the party aggrieved. Even apart from such application, the State Government may also initiate sub moto proceeding to review its decision. If the State Government passes any order on such review application, such order will supersede the initial order made on the application for permission to close.

Since the decision made on an application for permission for closure is to remain operative only for a year, in our view, it will be only proper to hold that an order by way of review either on the aggrieved party's application or on own motion of the State Government, must be made within the said period of one year. Otherwise, the right to make fresh application for permission to close after expiry of one year from the date of rejection of permission for closure will lose its relevance. It also appears to us that anomalous situation may arise if the application for review, when presented within the said time frame of one year is allowed to be decided even after the expiry of the said time frame of one year when the order passed by the State Government has already ceased to be operative. As an illustration, it may be indicated that a party aggrieved makes an application for review of the order of the State Government within a year during which the order is operative, but for some reason, such application is not disposed of within one year. After expiry of one year, the aggrieved party makes a fresh application for permission to close and on such application an order is made by the State Government or the party obtains a deemed order. This order on a fresh application, subject to any review of the same, will remain in force for one year. If the State Government is permitted to pass order on the review application made against the first order when the right to make fresh application and to obtain an order has already accrued, any order on review to be enforceable must conform to the order passed or deemed to have been passed on suspended application for permission to close. Any other order is not conceivable because an order by way of review supersedes the order reviewed but not the subsequent order on a fresh application made and such subsequent order being operative for the next one year cannot be by passed by any order of review of the earlier order.

Although it has not been expressly indicated within what period a review application validly made is to be disposed of, but the provision that order on an application for closure would remain in force for one year and in the absence of any embargoed to make fresh application for such permission after expiry of one year even if a review application remains pending, makes it abundantly clear that in the scheme of Section 25(O), the review application is to be made before expiry of the said time frame of one year and such application is to be disposed of within such time frame otherwise such review application will become infructuous. The argument that a party should not be made to suffer simply on account of failure on the part of a statutory authority to dispose of review application within a time frame and thereby rendering it infructuous, is not tenable because after expiry of the said time frame of one year, the party aggrieved has a right to make a fresh application by incorporating all the material factors germane for consideration of its application for permission to close, including the factors indicated in review application. Neither the general principle of retaining

jurisdiction to dispose of review application validly made nor the principle that an authority if clothed with the power of review will not become functions officio after expiry of the time frame of one year but it will retain its authority to dispose of the pending review application will arise in the context of the scheme of Section 25 (O).

It also appears to us that the reference to the industrial tribunal for adjudication of the application for permission to close an industrial unit is made under Section 25 (O) (5) of the Act and such reference is not under Section 10 (1) of the Act. Hence, although it was mentioned in the order of the State Government that the reference to Industrial Tribunal for adjudication of the application for permission for closure was made under Section 25 (O)(5) read with Section 10(1) of the Act, such reference has in law been made under Section 25 (O)(5) of the Act without the aid of Section 10(1) of the Act.

In the aforesaid facts, the impugned decision to the effect that the State Government would cease to have jurisdiction to review its order on the application for closure of an industrial unit after expiry of one year from the date of rejection of the application for permission to close, is correct.

It, however, appears to us that after expiry of one year from the date of rejection of the application for permission for closure, the appellant-company was entitled to make a fresh application. Such application has not been made because a review application validly made within the time frame had not been disposed of by the State Government and the appellant-Company had been labouring under an impression that the State Government could pass a valid order on the pending review application and State Government had in fact passed an order of reference for adjudication to the industrial tribunal. The appellant-Company had occasion to feel assured about the validity of the order of reference in view of dismissal of the Writ Petition by the Single Bench of the High Court since moved by the respondent-Union for challenging the validity of the order of reference.

It also appears that on such reference before the Industrial Tribunal, both the parties appeared and had made submissions and the hearing was concluded before the Industrial Tribunal. In the aforesaid circumstances, this Court, during the pendency of special leave petition challenging the order of the Division Bench of the High Court allowing the writ petition and quashing the order of reference, directed the Industrial Tribunal to make the award and send the same in a sealed cover to this Court and such award has been sent in a sealed cover to this Court.

In the special facts and circumstances of the case, it will be only appropriate to treat the application for review which was pending after the expiry of the said time frame of one year as a fresh application for permission for closure deemed to have been made on March 9, 1994 and to treat the order of reference to Industrial Tribunal by the State Government as an order of reference on such fresh application so that the entire exercise made before the Tribunal by both the parties and the award made by the Tribunal are not rendered abortive. It may be indicated that the time limit provided in Section 25 (O)(5) will not apply on the peculiar facts of this case as during the pendency of the writ appeal before the High Court, the proceedings were stayed and pending the proceedings before this Court, the Court had permitted the proceedings to go on but the award was not to be published and to be kept in sealed cover. Such course of action, in the facts of the case, will be only

proper and consistent with the justice to be made in this case, we order accordingly. Let the award be published within one month from the date of receipt of the award on being transmitted to the concerned Industrial Tribunal. It is further directed that date of receipt of the award by the Industrial Tribunal on transmission from this Court will be deemed to be the date of the award. It is clarified that once the award is published, it will be open to the aggrieved party to challenge the same in accordance with law. The appeal is disposed of accordingly without any order as to cost.