

(2003) 12 AHC CK 0147

In the Allahabad High Court

Case No : C.M.W.P. No. 17647 of 2002 and 13 other writ petitions

Amar Nath and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-12-2003

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 7

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 3(1)(O)

Citation : (2004) 2 AWC 1698 : (2004) 56 SCL 529

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Ashok Khare, Mukesh Kumar and V.K. Singh, for the Appellant; V.K. Bir, Alok Singh and R.K. Srivastava and Y.K. Srivastava, S.C., for the Respondent

Final Decision : Disposed Of

Judgement

Sunil Ambwani, J.—The U. P. State Sugar Corporation Limited, is owned and controlled by the State Government. The Corporation is running and managing various sugar mills in the State of Uttar Pradesh. It suffered recurring losses. On 31.3.1992, its accumulated losses aggregated to Rs. 37,159.98 lacs, which completely wiped out its net worth. The reasons for losses included, outdated equipment, high prices to cane growers, high power tariff, inadequate modernisation and overstaffing. It had 10448 workers, in its units besides managerial and supervisory staff. With losses mounting to Rs. 58,604 lacs far in excess of its net worth of Rs. 46740 lacs, on 31.3.1995, the Corporation filed a petition before the Board of Industrial Finance and Reconstruction. On 21.8.1995, the Board declared the Corporation as a sick industries company within the meaning of Section 3(1)(O) of the Sick Industries (Special Provisions) Act, 1985. The BIFR on its hearing dated 30.7.2001 sanctioned a rehabilitation scheme submitted by the Corporation for revival/ rehabilitation of its units. It was proposed that the 11 closed units shall be transferred to newly created subsidiary company of the Corporation, and then the same shall be privatised in phased manner. The employees of these closed units were to be given an

invitation to retire voluntarily. The 11 units of the Corporation were finally closed down in two phases (5 mills were closed by Government orders dated 8.9.1998 and the remaining 6 mills in the second phase by Government orders dated 12.11.1999).

2. The employees working in the Corporation are known as the Corporation employees, whereas the employees working in the industrial units are in the category of wage board employees. By Government order dated 29.1.2001, U. P. State Sugar and Cane Development Corporation Limited, was constituted as subsidiary company of the Corporation, comprising of 18 units (including all the closed units). Apart from closing down 11 units of the Corporation, 8 more units were declared unviable in the meeting of Board of Directors of the Corporation held on 11.6.2003. It was decided that the 8 unviable units will also be finally closed down from the crushing season 2003-04. At present only 11 units of the Corporation are functioning. The High Level Investment Committee of the State of U. P. has issued a notification inviting "expression of interest" for giving the 11 running units of the Corporation on lease. The process is still going on. The Managing Director of the Corporation vide its letter dated 15.3.2003 directed all the Executive Directors and General Managers of its units to reduce the manpower by 30% and to offer voluntary retirement scheme to these employees. These directions were issued in pursuance of the recommendations of the BIFR. It was also directed that those of the surplus staff determined cadre-wise, who do not accept offer of voluntary retirement may be retrenched and proceeding for retrenchment may be initiated against them.

3. For convenience the subject writ petitions can be classified, mill wise into five categories :

A. (i) Civil Misc. Writ Petition No. 17487 of 2002. Amar Nath and 82 Ors. v. State of U. P. and Ors. ;

(ii) Civil Misc. Writ Petition No. 15125 of 2002, Qumar Khan and 11 Ors. v. State of U. P. and Ors. ;

(iii) Civil Misc. Writ Petition No. 19043 of 2002, Karuna Shanker Shukla and 35 Ors. v. State of U. P. and Ors. ;

(iv) Civil Misc. Writ Petition No. 21540 of 2003, M. M. Sharma v. State of U. P.

4. All these writ petitions relate to the permanent and seasonal employees of the Rampur Unit of the Corporation which was closed down in the second phase of closure, along with 5 other units by Government order dated 12.11.1999 w.e.f, 17.11.1999. The 182 employees including 107 permanent and 73 seasonal were served with notices for retrenchment dated 8.4.2002. Out of 107 permanent employees, 99 have been received retrenchment compensation through the retrenchment notices. In respect of 4 employees the retrenchment has been stayed by this Court, and one employee has superannuated. Out of 75 seasonal employees, 73 employees have received retrenchment compensation.

5.

B. (i) Civil Misc. Writ Petition No. 12442 of 2002, Neeraj Sharma and 6 Ors. v. State of U. P. and Ors. ;

(ii) Civil Misc. Writ Petition No. 27172 of 2001, Smt. Maya Devi and Anr. v. State of U. P. and Ors. ;

(iii) Civil Misc. Writ Petition No. 24696 of 2001, Bhagwan Das and 4 Ors. v. State of U. P. and Ors..

These writ petitions have been filed by employees of Nekpur Unit at Bareilly, which were closed down w.e.f. 8.9.1998 by Government order dated 8.9.1998. All the wage board employees, including permanent and seasonal employees were offered V.R.S., w.e.f. 17.6.2000, which was extended upto 30.6.2001. The unit alongwith 4 other units was closed down in the first phase. Retrenchment notices dated 11.3.2002 were served individually on all the 22 employees who did not accept V.R.S., including 7 permanent and 15 seasonal employees. Retrenchment compensation by demand draft was sent to each of the employees individually by registered post on 24.5.2003.

6.

C. (i) Civil Misc. Writ Petition No. 15459 of 2002, Lalit Kamar Bammi and 69 Ors. v. State of U. P. and Ors. ;

(ii) Civil Misc. Writ Petition No. 15781 of 2002, Rohtas Kumar and 14 Ors. v. State of U. P. and Ors.

These writ petitions have been filed by permanent and seasonal employees of Meerut Unit of the Corporation. In Writ Petition No. 15459 of 2002, all the 70 petitioners are permanent employees and in Writ Petition No. 15782 of 2002, all the 15 petitioners are seasonal employees. The unit was closed down in the second phase along with 5 other units by Government order dated 12.11.1999. Retrenchment notice dated 15.3.2002 was served individually on the 95 employees and they were retrenched w.e.f. 15.4.2002, and were required to collect their retrenchment compensation in the form of Bank Draft and that subsequently the compensation was sent to these employees by registered post.

7.

D. (i) Civil Misc. Writ Petition No. 30695 of 2003. G. P. Vishwakarma and 7 Ors. v. State of U. P. and Ors. ;

(ii) Civil Misc. Writ Petition No. 30961 of 2003, Chandra Deo Singh and 3 Ors. v. State of U. P. and Ors. ;

(iii) Civil Misc. Writ Petition No. 40157 of 2003, Mandeo Shah and Anr. v. State of U. P. and Ors. ;

(iv) Civil Misc. Writ Petition No. 40232 of 2003, Sachindra Naik and 2 Ors. v.

State of U. P. and Ors. ;

(v) Civil Misc. Writ Petition No. 30694 of 2003, Sanjay Kumar and 6 Ors. v. State of U. P. and Ors..

These writ petitions have been filed by the employees of Munderwa unit of the Corporation at District Basti which was closed down along with 5 other units by Government order dated 12.11.1999. Retrenchment notices were sent to petitioners on 25.4.2002 by registered post. Subsequently fresh retrenchment notices were sent to the petitioners on 3.5.2003 by registered post and that 4.6.2003, the notice was published in the Dainik Jagran (Basti Edition). Nine employees including petitioners were retrenched w.e.f. 13.6.2002, and were directed to collect the compensation amount in Bank Draft. Subsequently this amount was sent to the employees in the form of Bank Draft by registered post.

8.

E. (i) Civil Misc. Writ Petition No. 16972 of 2002, Rajesh Kumar Tewari v. State of U. P.

This writ petition relates to permanent and seasonal employee of Ghugli unit of the Corporation at District Maharajganj which was also closed in the second phase along with 5 other units by Government order dated 12.11.1999. Retrenchment notices were sent to the petitioner on 7.3.2002 by registered post. The demand drafts were sent to petitioner Nos. 1, 4, 5, 6, 8, 9, 10 and 11 on 14.4.2003 and their services were retrenched w.e.f. 14.4.2003. The retrenchment order along with compensation was sent to petitioner Nos. 2, 3 and 7 by registered post on 18.4.2003 and they were retrenched w.e.f. the date. 3 out of 5 permanent employees have accepted the retrenchment compensation.

9. Sri Rajendra Kumar Srivastava appearing for the Corporation has raised preliminary objections as follows :

(a) Some of the petitioners have filed successive writ petitions and that they have sought similar reliefs in the writ petitions included in this bunch. Chapter XXII, Rule 7 of the Rules of the Court prohibits filing of second writ petition on the same cause of action. He has relied upon the Division Bench judgment of this Court in M/s. Brij Mohan Rice Mill and others Vs. Regional Manager, Uttar Pradesh Financial Corporation and another, . It is submitted that these writ petitions are not maintainable. Specific reference has been made to Writ Petition No. 12442 of 2002 between Neeraj Sharma and State of U. P. which according to counsel for respondents is the fourth writ petition seeking similar reliefs. Earlier a Writ Petition No. 47697 of 2000 was dismissed on 20.3.2002, and that these petitioners are also included in Writ Petition Nos. 27172 of 2001 and 24696 of 2001 in the present bunch of the writ petitions. Similarly the petitioners in writ petition Nos. 40157 of 2003, 40232 of 2003, 30695 of 2003. 30961 of 2003 and 30694 of 2003, all relating to Munderwa unit were parties in Writ Petition No. 22105 of 2001 filed by 49 employees including the present petitioners. In this

writ petition, this Court did not grant any interim relief.

(b) All the petitioners have been retrenched and that disputes raised by them are essentially questions of fact, which may not be considered by this Court in the writ jurisdiction. The appropriate remedy for these petitioners is to raise industrial disputes under the U. P. Industrial Disputes Act, 1947. Counsel for respondents has relied upon a Full Bench judgment of this Court in Chandrama Singh v. Managing Director, U. P. Cooperative Union and Ors. 1991 (2) AWC 1005 : (1991) 2 UPLBEC 898 and Scooters India and Others Vs. Vijai E.V. Eldred, .

10. Sri Ashok Khare, senior advocate appearing for petitioners in Writ Petition No. 17847 of 2002 between Amar Nath and 82 Ors. v. State of U. P. and Ors.. Writ Petition No. 15125 of 2002, relating to Rampur unit, and Writ Petition Nos. 12442 of 2002, 15459 of 2002, 15781 of 2002 of Meerut unit and Writ Petition No. 16972 of 2002 of Ghugli Unit of the Corporation, submits that by a communication of the Chairman of the Corporation dated 8.5.1998, and the Government order dated 8.9.1998, it was decided that the services of all the employees of the mills which were closed down shall not be terminated, and instead they will be allowed to continue in service, and absorbed/posted in other functional units of the Corporation. The Corporation has about 11 functional units in which there are large number of vacancies which can be filled up by transfer/absorption of the petitioners. The surplus employees of the Corporation stand on the same footing as the employees of functional units and that discrimination between them is whole arbitrarily and irrational. He has relied upon judgments of this Court in U. P., Chal Chitra Nigam Limited Karamchari Association v. State of U. P. and Ors.. (1990) AWC 1463 ; and Umesh Chandra Pandey v. State of U. P. and Ors. (1991) AWC 496 . Sri Khare has also challenged the validity of retrenchment notices. According to him, these notices are in contravention of Section 6N of the U. P. Industrial Disputes Act, 1947. These notices were issued on 8.4.2002 to dispense with petitioners' services on the expiry of one month period from the date of notice. The retrenchment compensation and other dues were neither simultaneously paid nor even tendered. After expiry of one year fresh notices dated 14.4.2003, were issued referring to the earlier retrenchment notice dated 8.4.2002 and forwarding cheques with certain amounts. These notices could not be treated to be valid notices and that the payment/tender is not a valid tender u/s 6N of the Act. The termination according to him does not become effective till the preconditions are complied with. He has relied upon judgments in The State Bank of India Vs. Shri N. Sundara Money, ; Narottam Chopra v. Presiding Officer (1989) 2 SCC 97 ; Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, and Municipal Corporation of Delhi Vs. Prem Chand Gupta, (2000) 10 SCC 115 .

11. Sri Ashok Khare submits that the payment of compensation must be made simultaneously with the retrenchment notice. He has relied upon the judgments

in National Iron and Steel Company Limited v. State of West Bengal. (1967) 2 LLJ 23 ; Pepsu Transport Co. Put. Ltd. v. State (1968) Lab IC 351 ; Rajasthan Canal Project v. Rajasthan Canal Rashtriya Mazdoor Union (1976) 2 LLJ 25 , and Secretary, Kottayam Dt. Co-operative M.S.U. Ltd. Vs. Industrial Tribunal, . In some of these writ petitions the retrenchment notices have been stayed on the ground that these notices cannot by way of one month notice nor one month's salary was paid in due of notice. The retrenchment compensation was computed only on the length of service upto 8.4.2002 and not on the basis of the length of service upto 14.4.2003. and that reasons for retrenchment were not specified in the notice dated 14.4.2003. In other writ petitions, the Court has only stayed the eviction from the residential quarters.

13. Sri Ashok Khare further submits that the payment of compensation has been broken into the length of service rendered in seasonal capacity and permanent capacity. Whereas for seasonal employment 7 or 8 days salary, and for permanent employment 15 days salary, for one completed year of service has been worked out. This distinction, according to him, is irrational and contrary to Section 6N of the Act. He also submits that the closure of these units is not in accordance with the Section 6W of the U. P. Industrial Disputes Act, 1947 as there was no prior permission taken from the State Government for closure. He relied upon the U. P. Absorption of Retrenched Employees of Government and Public Corporation in Government Service Rules, 1991 for their absorption in any post or service under the Government. These rules cover the petitioners appointed prior to 1.10.1986. Sri Khare has also challenged the justification of cut off date of 1.10.1986 in these Rules. He states that it has an apparent relationship with the regularisation of ad hoc employees of the State Government, which has been subsequently extended to 30.6.1998 and thus, according to him, the cut off date in the Absorption Rule of 1991 should also be read as 30.6.1998 instead of 1.10.1986. He has relied upon judgment in Bageshwari Prasad Srivastava and others Vs. State of U.P. and others, , which has been confirmed by a Division Bench on 19.11.2001 and against which the SLP has been rejected on 18.3.2002, a judgment of this Court in Devi Shanker Pandey and Ors. v. State of U. P. and Ors. 1994 (1) AWC 454 : (1994) 1 HVD 422.

14. Coming first to the preliminary objections raised by counsel for Corporation, I find that Writ Petition No. 12442 of 2002 between Niraj Sharma v. State of U. P., is liable to be dismissed as the earlier Writ Petition No. 47697 of 2000 filed by the petitioner was dismissed on 20.3.2002 and that Writ Petition Nos. 27172 of 2001 and 24696 of 2001 are still pending and are connected with this bunch. Reliefs claimed in these writ petitions are similar as in other writ petitions under Chapter XXII of Rule 7 of the Rules of this Court, a second application for the same relief, or the cause of action is not maintainable. This Court has time and again deprecated the practice of filing repeated writ petitions on the same cause of action, and for substantially the same reliefs. In Brij Mohan Rice Mill (supra), Division Bench of this Court raised disturbing notes on this practice, and held

that repeated writ petitions on same cause of action are not maintainable. It was open to the petitioner to amend the pending writ petition. The Writ Petition No. 12442 of 2002 is consequently dismissed.

15. Petitioners in Writ Petition Nos. 30695 of 2003, 30961 of 2003, 30694 of 2003, 40157 of 2003 and 40232 of 2003 are the same petitioners who have earlier filed a Writ Petition No. 22105 of 2001. These employees are the employees of Munderwa unit of the Corporation. These writ petitions are also dismissed as these petitioners have already filed Writ Petition No. 22105 of 2001, which is still pending. In case they are aggrieved by retrenchment notice given to them subsequently they can amend the pending writ petition.

16. Sri B. N. Singh appearing in Writ Petition No. 21540 of 2002, between Man Mohan Sharma v. State of U. P. and Ors., relating to Rampur unit of the Corporation, submits that the petitioners of closed unit can be transferred and absorbed in the running units. He submits that all the petitioners are employees of the U. P. Sugar Corporation Limited and that they cannot be discriminated on the ground that the unit in which they were working have suffered losses and have been closed down. He has prayed for transfer and absorption of all the surplus staff in the existing and future vacancies in the running units, and has prayed that a scheme may be framed by this Court directing the Corporation to absorb the surplus staff, according to their seniority, in the vacancies which may arise in future in the running units. He has cited several examples where the Corporation transferred permanent and seasonal employees of the running units and has claimed hostile discrimination as against these selective transfers.

17. The submission raised as above give rise two issues to be decided in the surviving writ petitions :

(1) whether the retrenchment is valid and is in conformity with Sections 6N, 6P, 6W of the U. P. Industrial Disputes Act, 1947 ; and

(2) whether the petitioners have any right to be transferred/absorbed in the running units of the Corporation in the existing and future vacancies.

18. So far as the first question is considered, I find that it essentially involves the determination of the questions of fact. The Court has been called upon to decide whether the second notice of retrenchment was required to give reasons, and has been followed by valid tender of retrenchment compensation. It further involves the determination of question whether, a valid retrenchment compensation was paid to these employees and such compensation was actually tendered at the time of retrenchment. In Scooters India and Others Vs. Vijai E.V. Eldred, , it was held by Supreme Court that where a question of validity of termination, of the services of workmen is involved, the High Court should not entertain the dispute in writ petition directly by adjudication of an industrial dispute, involving the determination of the disputed question of fact, for which remedy under the Industrial Laws is available to the workmen. In the present case, apart from the validity of the retrenchment notice, the Court has been

asked to enter into question of fact which requires validity of the individual notice. In *Chhandrama Singh v. Managing Director, U. P. Co-operative Union and Ors.*, (supra) Full Bench of this Court held that in such cases a workman has an efficacious alternative remedy of approaching the forums created under the Industrial Disputes Act, 1947. In almost similar circumstances, this Court in Writ Petition No. 33589 of 2001 in *Balwant Singh Yadav and Ors. v. State of U. P.*, by a judgment dated 4.9.2002 in respect of acceptance of voluntary retirement scheme offered by U. P. State Sugar Corporation held that where serious disputes of fact exists, and the matter cannot be properly decided without recording oral evidence, and in such cases the remedy of the high prerogative writ is not appropriate for settling such controversial issues of fact.

19. The next question, is the right of transfer/absorption of the petitioners in the running units. The petitioners are wage board employees, and that their services are regulated by Certified Standing Orders of the individual mills/units. They cannot be equated with the employee of the Corporation, who can be transferred. The State Sugar Corporation has a corporate entity. Its units are owned and controlled by the Corporation, But for the purpose of service conditions of the workmen whether permanent or seasonal, these units are individual and independent establishments under the Industrial Disputes Act, 1947. The closure of an undertaking does not mean a closure of the entire business and industry. It was held in *Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd.*, , that where one unit is capable of functioning in isolation, the closure of such unit does not lead the closure of the other. The functional integrality assumes significance in case of closure of a branch or unit, The workmen cannot question the motive of closure of a unit, when the closure has actually taken place. Where under the guise of closure, the establishment is being carried out in some shop and firm or at a different place, closure may be only a ruse or pretence, and in such cases the Court shall interfere. The employer cannot be compelled to carry out his business if he chooses to close up the unit in trouble and reality for reasons of his own. There is nothing wrong for an employer to close down an establishment to follow the steps of closure in stages. It may be in the nature of business to take recourse to such a mode, which cannot ordinarily be and per se be considered as unfair and illegitimate. The workers can also be retrenched in batches subject to rules of retrenchment. The U. P. Industrial Disputes Act, 1947 does not make any provision for compensation in case of closure.

20. In the present case, the U, P. Sugar Corporation Limited was incorporated for taking over certain Sick Sugar Mills. The Corporation incurred huge losses in the year 1995, and the matter was referred to the Board of Industrial Finance and Re-construction. After various meetings, attended by the Banks and the representatives of workers" union, the Corporation was declared as "sick industrial company" on 21.8.1995 u/s 3(1)(O) of the Sick Industries (Special Provisions) Act, 1985. After deliberations, the BIFR sanctioned a rehabilitation scheme on 30.7.2001, submitted by the Corporation for revival/rehabilitation of

its units. It was proposed that the closed units shall be transferred to a newly created subsidiary company of the Corporation and then the same shall be privatised in a phased manner. The employees of the sick units were to be offered voluntary retirement scheme. All the petitioner in the present writ petitions were offered voluntary retirement scheme. They have not accepted it. The 11 units of the Corporation were finally closed down. By Government order dated 8.9.1998, 5 units were closed down in first phase and by a subsequent Government order dated 12.11.1999 the remaining 6 units were closed in the second phase. The Corporation had taken permission for such closure from the State Government. Once these units have been closed down under a statutory rehabilitation scheme by BIFR, and that a voluntary retirement scheme was offered to the workmen, under the rehabilitation scheme, and thereafter the workers who did not accept the VRS have been retrenched, they have no legally enforceable right to be absorbed in running units. The running units of the Corporation are separate and distinct industrial establishments. The employees of the closed units do not have right under the Certified Standing Orders or any other service conditions to be transferred to the running units. The letter of the Chairman of the Corporation dated 5.8.1998 and the Government order dated 8.9.1998 were issued before the rehabilitation scheme was sanctioned by the BIFR on 30.7.2001. Even otherwise, a proposal to absorb the surplus staff of the closed units cannot operate as promissory estoppel against the Corporation.

21. Coming to the last question of petitioners' absorption as retrenched employees of the Public Corporation in any Government service under the Absorption Rules of 1991, I find that those petitioners who were appointed prior to 1.10.1986, have a right to apply for retrenchment certificate and to claim appointment from the State Government. These Absorption Rules of 1991 have been repealed, but since the petitioners who were appointed prior to 1.10.1986 were retrenched prior to the repeal, they have a right to be considered for absorption in Government service in accordance under these Rules. However, I do not find any substance in the submission of counsel for petitioner that the cut off date given in the Rules of 1991 should be read as 30.6.1998 on the ground that the cut off date in the U. P. Regularisation of Ad hoc Appointments (Outside the Perview of Public Service Commission) Rules, 1979, as amended by its third Amendment Rules, 2001, has been extended. Both these rules operate in different fields and have different object and purpose to be achieved. In any case after the Rules of 1991 have been repealed, no such exercise can be undertaken by the Court to grant relief to those employees who were appointed after 1.10.1986, The writ petitions in respect of the employees who were appointed before 1.10.1986, for their absorption as retrenched employees in some other services by the State Government is consequently allowed. They will be entitled to consideration under the Absorption Rules of 1991, if they accept the retrenchment compensation and obtain a certification in this regard from the Corporation. If they want to challenge the retrenchment notices under the U. P. Industrial Disputes Act, 1947, their rights for absorption as retrenched

employees under the Rules of 1991 will come into force, only if retrenchment is found to be valid in the industrial adjudication.

22. All the writ petitions except those which have been dismissed on the ground that they are second petitions, are disposed of with the aforesaid directions. There shall be no order as to costs.