

(1992) 08 GUJ CK 0024
In the Gujarat High Court

Case No : Spl. Civil Application No. 4985 of 1987

A.P. Patel and Another

APPELLANT

Vs

Gujarat State Machine Tools Corporation Ltd. and Another

RESPONDENT

Date of Decision : 10-08-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 25

Citation : (1993) 1 GLR 573 : (1993) 2 LLJ 519

Hon'ble Judges : S. Nainar Sundaram, C.J.; R.K. Abichandani, J

Bench : Division Bench

Advocate : M.R. Anand, for the Appellant; M.R. Bhatt, for the Respondent

Judgement

S. Nainar Sundaram, C.J.—In this Special Civil Application, the challenge is of the order of the Specified Authority (Rajkot) u/s 25-N of the Industrial Disputes Act, 1947, hereinafter referred to as "the Act", according permission to respondent No. 1 to retrench its workmen, and of the subsequent order declining review. In view of the submissions made before us by Mr. M. R. Anand, learned Counsel for the petitioners, we fell obliged to extract the very provision, Section 25N as a whole as hereunder :

"25N. Conditions precedent to retrenchment of workmen.

(1) No workman employed in any Industrial establishment to which this chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until.

(a) the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette hereafter in this section referred to as the specified authority) has been obtained on an

application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner.

(3) Where an application for permission under sub-sec (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workman concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen 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.

(4) Where an application for permission has been made under sub-sec (1) and the appropriate Government or the specified authority 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.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-sec (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate Government or the specified authority 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 (3) or refer the matter or, as the case may be, cause it to be referred, 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.

(7) Where no application for permission under Sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice has been given to him.

(8) 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 establishment 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 establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, 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,"

2. Sub-section (1) of Section 25N sets forth two conditions that should precede retrenchment of the workman. One of the two conditions has been expressed in clause (a) and that requires giving of three months' notice in writing to the workman indicating the reasons for retrenchment, and the period of notice must have expired or the payment to the workman in lieu of such notice, wages for the period of the notice. The second condition is expressed in clause (b) and that speaks about the obtaining of prior permission of the appropriate Government or such authority as may be specified by that Government on an application made in this behalf. Sub-secs. (2) to (8) are relatable only to the subject of permission. Sub-sec (9) goes further and says that, where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-sec (4) every workman who is employed in that establishment, immediately before the date of application for permission under this section, shall be entitled to receive, at the time of retrenchment, 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.

3. Mr. M. R. Anand, learned Counsel for the petitioners, would first contend that, while considering the application for permission, the specified authority did not afford an adequate opportunity to the individual workmen and has thus violated the requirements of sub-section (3), which speaks about a reasonable opportunity being given to the workmen concerned. Absolutely there is no warrant even to venture to examine this grievance, because in the Special Civil Application this grievance has not at all been ventilated and we do not propose to investigate into this grievance which has got to be done at the factual level when it has not been specifically pleaded. In any event, we find from the main order impugned in the Special Civil Application, the factum of the participation by the Office Bearers of the Unions on behalf of the workmen as well as the participation of some of the workmen, has been recorded. In our view, this line of attack appears to be a desperate after-thought, conceived of at a very belated stage and that too in the course of arguments put forth by the learned Counsel for the petitioner. Hence this contention is not countenanced.

4. Secondly, Mr. M. R. Anand, learned Counsel for the petitioners, would contend that the specified authority erred in not going into the question of giving of notice or payment in lieu of notice as contemplated under clause (a) of Section

25N(1) and since in the present case, according to the petitioners,, neither notice nor payment in lieu of notice preceded the application for permission to retrench, the permission ought not to have been accorded. This contention has got a fallacy in it as we propose to demonstrate hereinafter. We make it clear that we are not going into the factual controversy as to fulfilment of clause (a) in our highly prerogative writ powers. We are only dealing with the contention that the specified authority granting permission as per clause (b) should examine the fulfilment of clause (a). Section 25N(1) is intended to cover conditions precedent to retrenchment of workmen : one under clause (a) and the other under clause (b). Sub-sec (2) deals with the requirements in making the application for permission. Under sub-section (3) the appropriate Government or the specified authority has to make such enquiry as it thinks fit and after giving a reasonable opportunity to the parties mentioned, assess the genuineness and the adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors and to pass orders granting or refusing permission, recording reasons therefore. Referring to the "adequate of the reasons", spoken to in sub-section (3) learned Counsel for the petitioner contends that, a notice under clause (a) of Section 25N(1) also refers to reasons for retrenchment being indicated therein and hence the consideration of "adequate of the reasons" under sub-section (3) could only be of those reasons set down in the notice under clause (a) of Section 25N(1); and viewed in this context the notice under clause (a) of Section 25N(1) must precede the seeking of permission. The expressions "indicating the reasons for retrenchment" occurring in clause (a) of Section 25N(1) have relevance for giving notice under that clause. It must be noted that, sub-section (2) also requires that the application for permission shall set forth the reasons for intended retrenchment. The reasons under both the provisions should be same and not different. There should not be a conflict or divergence between the reasons set forth in the notice and the reasons set forth in the application, There has got to be an assessment of the adequacy of the reasons under sub-section (3). But that does not lead to any deduction that only if a notice under clause (a) of Section 25N(1) setting forth the reasons for retrenchment has preceded the application for permission, there could be assessment of the adequacy of the reasons under sub-section (3). This contention omits to take note of sub-section (2) which requires the very application for permission to set forth the reasons for intended retrenchment. This line of thinking is a far-fetched one.

5. Apparently, sub-section (3) has nothing to do with the fulfilment of condition as per clause (a) of Section 25N(1). To find out and assess as to whether permission could be accorded or not, the scope of the enquiry under sub-section (3) does not take in an enquiry as to the fulfilment condition as per clause (a) of Section 25N(1). Fulfilment of clause (a) of Section 25N(1) is not a condition precedent for according permission under clause (b), but is a condition precedent for retrenchment as such. While both clauses (a) & (b) of Section 25N(1) are conditions precedent for a valid retrenchment, they do not impinge into each

other. But, for retrenchment to be legal and valid, both clauses (a) & (b) of sub-section (1) have got to be fulfilled. The Court cannot lose sight of the implications of the two clauses as they stand set down independent of each other as conditions precedent for retrenchment. As already noted, the working of clause (b) has got to be done by resort to sub-secs. (2) to (8). Fulfilment of condition (a) could be either before or after the fulfilment of condition (b). But both must be fulfilled to make retrenchment valid and effective. Fulfilment of condition (a), without fulfilment of condition (b), and vice versa, will not make the retrenchment valid and effective. When the validity and the legality of retrenchment is put in issue in appropriate proceedings, the forum seized of the same will necessarily have to assess the fulfilment of both the conditions. There is no occasion for the appropriate Government or the specified authority enjoined upon to accord permission under clause (b), which by itself is one of the conditions, precedent for retrenchment, to go anywhere near the investigation as to fulfilment of the other condition expressed under clause (a). That is an independent condition. Even after the obtaining of permission under clause (b), the event of retrenchment may not happen, but if the event of retrenchment happens, the other condition, as adumbrated in clause (a), has got to be fulfilled. Despite fulfilment of condition as per clause (a), permission as per clause (b) could be refused and in such an event, there could be no valid retrenchment and while the order of refusal remains in force for one year as per sub-section (5), any fresh process towards retrenchment is not feasible, except the move for review or reference under sub-section (7), when it said that where permission is not applied for or is refused, the retrenchment shall be deemed to be illegal from the date of notice of retrenchment. In this context, we are also obliged to advert to sub-section (9), which specifically refers to another condition that should also be fulfilled for effective retrenchment, namely disbursement of the compensation at the time of retrenchment. Sub-section (9) will come into play after permission is granted or deemed to have been granted. Compliance with sub-section (9) is de hors clause (a) of Section 25N(1). All these provisions plainly indicate that the conditions as per clauses (a) and (b) of Section 25N(1) are independent of each other, but both must be filled to make retrenchment valid, legal and effective. For the reasons expressed as above, we cannot subscribe our support to the proposition advanced by Mr. M. R. Anand, learned Counsel for the petitioners, that clause (a) of Section 25N(1) has got to be read into sub. section (3). As already noted, retrenchment may or may not happen even if permission as per clause (b) is to be accorded. There is no warrant to bring in any legal embryology over these provisions which are well cut out, chiselled and laid down. Accordingly, we discountenance the second contention put-forth by the learned Counsel for the petitioners.

6. Thirdly, learned Counsel for the petitioners would advance a submission that application for permission had been put forth in an omnibus manner, without defining as to which of the workmen should be retrenched and in this connection he draws our attention to the form that has been adopted by the first

respondent- employer which says that the employment strength is 470 and out of which only 130 are sought to be retrenched. In answer, Mr. M. R. Bhatt, learned Counsel for the first respondent, submits that the form referred to is not the complete application and it has got an annexure. We find that as per the annexure, there is a detailed setting down of the names of the 130 workmen who are sought to be retrenched. Hence, there is no justification for countenancing the plea that without assessing the interests of the concerned workmen, the permission sought for by the first respondent has been accorded. No further plea has been urged pointing out any other infirmity or flaw in the orders impugned. This Special Civil application is, therefore, dismissed with no order as to costs.

7. In view of the discussion set down as above, the petitioners if per chance should prefer to go before any Industrial Forum challenging the order of retrenchment on the ground that clause (a) of Section 25N(1) has not been satisfied, certainly the liberty as theirs and we have no say over matter here.