

(2010) 01 P&H CK 0179
In the Punjab And Haryana At Chandigarh

Bharat Seats Employees Union

APPELLANT

Vs

The Specified Authority Under Section 25-N of the Industrial
Disputes Act, 1947 and Another

RESPONDENT

Date of Decision : 08-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 125 FLR 767 : (2010) 4 LLJ 87 : (2010) 158 PLR 213 : (2010) 2 RCR(Civil) 204

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.

I. The Lis

1. The writ petition on behalf of the workmen raises the issue of the validity of the order issued by the government granting the permission to the management to retrench some workmen in an application filed by it u/s 25-N of the Industrial Disputes Act.

II. The genesis of dispute

2. The gradual souring of relations between the workers and the management commenced with a strike call given by the workers on 03.04.2001 and got aggravated when the management purported to take a decision to jettison 90 permanent workers and moved an application before the Government on 12.09.2002 seeking for permission to retrench them u/s 25-N of the Industrial Disputes Act. The justification of the management was that during the time of strike it had begun outsourcing the work of making seat covers for the cars manufactured for Maruti Udyog Limited. It was found to be a viable option and having regard to some increased commitments which they had to give for the production of the seat covers, as per the demands of Maruti Udyog Limited, they

decided to close the stitching unit and avail themselves the services of an independent contractor. The workmen responded to the request to the Government made by the management through a plea that the action proposed was an act of victimization towards to the members of the petitioner-union and that such permission ought not to be granted. The Government granted the permission on 10.10.2002 but restricted the number of persons to be retrenched from 90 to 82 workmen and an application for review of the decision made by the petitioner-union did not result in any change of the decision but affirmed the same on 09.11.2002. The writ petition, as we have stated already, challenges the order passed by the Government on 10.10.2002 accepting the plea of the management for closure of a particular unit and giving them the liberty to retrench 82 workmen and the dismissal of the application for review.

III. The grievance of workmen

3. The contention of the learned Counsel appearing for the petitioner is that the Government had not considered the relevant factors which were required to be addressed namely, the want of bonafides of the management in seeking for permission for retrenchment and how it was a culmination of series of acts indulged by the management as a measure of victimization against the workmen for their participation in the strike and bolster their own preference to engage several workmen through contractors, even without going through proper legal process in the manner contemplated by Contract Labour (Regulation and Abolition) Act. The further objection to the order issued by the Government was that the primary attempt of the management was only to close down the stitching unit and a part of a unit being an establishment as defined u/s 2(ka) of the Industrial Disputes Act, the decision to close the unit must be treated as a decision to close the establishment and that therefore the appropriate procedure would have been only to apply to the Government for closure in the manner sought u/s 25(o) of the Industrial Disputes Act and resort by the management for permission through an application u/s 25-N was not competent.

IV. The management's defence

4. The contest was entered by the management principally on the ground that the extent of judicial review available for a decision of the Government u/s 25-N was limited and the statutory requirement of a mandate to conclude the hearing for retrenchment and to pass an order within a month as contained u/s 25-N(3) itself was indicative of the fact that the law requires only a summary adjudication and if the management had decided to retrench some workmen on valid grounds, the Court shall be loathe to interfere with such a management decision unless it was spirited by wrong motivations. Again, the contention in defence was that if in the altered scheme of administering the affairs of the management, it required that some of the workmen could not be retained, the fact that it required one of the units to be closed was irrelevant and a consequence on a closure of one of the units may not still take it away from the scope of enquiry from Section 25-N of the Industrial Disputes Act. It was also the contention of

the management that their own activity was exclusively for the particular manufacturer of cars, namely, a single producer and the market for its products was limited and dependent on a single customer. The demand by Maruti Udyog Limited to reduce the price of articles forced the management to reduce the selling price by 4.5% w.e.f. 01.04.2001 and when the Maruti Udyog demanded the further cost reduction by 25% during the span of next 3 years starting from April 2002, it had perforce to accommodate the requirement of its customer. The scaling down of operation and reducing the economies of scales resulted in reorganization of the assembly line department, PU department, stitching department, maintenance department, stores and quality control.

V. Extent of judicial review

5. The most decisive sign post for understanding the scope of Section 25-N obtains through the decision of the Hon'ble Supreme Court when the validity of the said section itself was examined in *Workmen of Meenakshi Mills Ltd. and Others Vs. Meenakshi Mills Ltd. and Another*, . The judgment laid down authoritatively that even the absence of provisions for an appeal against the decision of the Government could not be said to be inadequate since the remedy of judicial review under Article 226 of the Constitution was an adequate protection against arbitrary action. The workmen still have the remedy the same way as an employer to move for reference by raising a dispute and seeking for reference u/s 10 relating to retrenchment, if it felt aggrieved by an adverse order granting or refusing the permission for retrenchment.

6. The scope of judicial review must be understood in the context of the expediency of giving primacy to a quasi judicial decision taken by the Government while approving or rejecting the permission for retrenchment. The Court will be considering at least two circumstances referred to Sub-section (7) namely, whether the retrenchment was by way of victimization or whether retrenchment was not being in the interest of maintenance of industrial peace. If the industrial disputes should be examined on the touchstone of either of these two conditions, it could be adjudicated by the Industrial Tribunal only after reference. The two conditions laid down under Sub-section (7) which govern the withdrawal of disputes pending at pre-reference stage and transfer for adjudication to the specified authority, it was held it could not be equated with the consideration which would weigh with the appropriate Government while exercising the power to grant or refuse permission for retrenchment under Sub-section (2). Sub-section (7) itself has been substantially amended by Act 49 of 1984. The power itself could be exercised merely to retrench all the workmen. It could be also applied in cases where only some of the workmen are proposed to be retrenched and the Government has even the power to refuse such permission for the rest of the workmen.

VI. Issue of bonafides of the management's decision

1. The learned Counsel appearing for the workmen placed at the forefront his

arguments that the complete lack of bonafides of the management could be seen from the fact that when a notice had been issued to the workmen informing them about their application to the Government on 13.08.2002, the reasons given for retrenchment was stated to be the alleged deficiency of orders from customer Maruti Udyog Limited and the position of market regarding Maruti cars as having gone down resulting in the manufactured goods namely, the seats were getting accumulated and there was no job for the workers. However, in the application given to the Government for grant of permission to retrench workmen in form K sent on 12.08.2002, the management had given varied reasons such as, reorganization of its operations and to adopt measures of economy for its survival and to absorb the cost reduction as demanded by Maruti Udyog Limited. Several reforms that the management had set out as reasons for retrenching the workmen had all been done more than 2 years earlier to the application and the decision to retrench itself was only to inflict a severe punishment to the workmen for their participation in the strike. Reduction of the scale of operations or reducing the size of the workforce was not an inevitable imperative but the management had actually been indulging in fresh recruitment drive ever since March 2002 which fact was also brought to the attention of the Labour Commissioner through the representation on 26.03.2002 and to the Labour Inspector by representation dated 28.03.2002. The entire details of fresh recruitment had been given in the objections to the Government which included making pointed references to several letters written by the Union at various times to the higher officials in the Labour Department. The learned Counsel Sh. Shailender Jain also argued that the Labour Conciliation Officer, Circle-I, Gurgaon had actually even sent a report on 28.03.2002 regarding the illegal new recruitment of workers during the strike, when it was noticed that about 112 casual workers had been recruited through contractors. It was also confirmed by the Deputy Labour Commissioner, Gurgaon. The fact that several persons had been illegally recruited and put to work were also borne out through admitted figures of production revealed by the management as regards the "seatsets" produced during that period from February 2002 to May 2002 which production would not have been possible but for such illegal engagement by virtue of the fact that the workers had actually been observing a strike during that period.

8. In *Parry and Co. Ltd. Vs. P.C. Pal and Others*, , the Hon"ble Supreme Court recognized the right of an employer as falling within his managerial discretion to organize or arrange his business in the manner he considers best. So long as that was done bona fide, it was not competent for a Tribunal to question its propriety. If the scheme formulated by such reorganization resulted in a surplusage of employees, no employer was expected to carry the burden of such economic dead-weight and retrenchment had to be accepted as inevitable, however unfortunate it is, so long as it was not vitiated by consideration of victimization or unfair labour practice.

9. In this case, the workmen"s perception that the management"s decision to retrench was taken only subsequent to the incident of large scale strike must be

properly examined by what impelled the management to take such a decision. If it was only the strike, then the wrong motivation cannot be missed. If, on the other hand, the management had some other reasons as well and that was borne out through records, to impute mala fides may not be possible. It is no doubt true that the decision to retrench some workmen had been taken subsequent to the strike by the workmen. It is in evidence that the management at that time had to keep to its schedule and had carried on with its production by outsourcing the work in the stitching department. In fact, it is not even denied that the workmen had outsourced work through independent contractors. The management had come to some benefit in the process. They realized that without upsetting its production schedules it was possible to get a portion of the work in a long chain of manufacturing process to be given out to some outside agency and keep the continuity going for its end results. It had obtained greater financial freedom. Simultaneously came also the pressing demand from the only consumer of the establishment viz., Maruti Udyog seeking for reduction of the price of the products. A sustainable continuation of manufacturing process through the outsourcing that reduced the costs and increased its own profits were all the circumstances that went into the reckoning. It could be seen, therefore, that the decision to outsource was not due only to the strike; it might be said that the management's had to look for other options but if they chose to stick by such altered decision, it could be seen that such decision made sound business sense. It was needed to be reviewed only to allow the workmen to continue. If the law provided for the exit, no fault could be attributed for a management that decided to avail of the statutory benefits provided it followed the procedure prescribed under the Act. I cannot see in the chain of events that the management was driven by wrong motivations though it could be seen that the decision to look for alternative modes of production became imperative only with the commencement of the strike.

VII. Could a decision to retrench be taken under 25N, if it results in closure of the unit?

10. Shri M.L. Sarin, the learned senior counsel for the respondent refers to a decision of the Hon'ble Supreme Court and the High Court that set out propositions of law as regards the extent of judicial review permissible and the scope of applicability of Section 25-N also to cases where apart from legitimizing the retrenchment of some workmen, it could still be applied to situations when one department or unit is closed. This is in response to a contention by the petitioner that the closure of the stitching department in the respondent factory entailed a closure of an establishment as defined u/s 2(ka) and therefore, the permission ought to have been taken only u/s 25(o) of the Industrial Disputes Act.

11. In J.L. Morison (India) Ltd. and Another Vs. The Secretary Labour and Social Welfare Dept. and Another, , the Karnataka High Court held that a decision of the Government u/s 25(0) according permission for closure of the factory on the

basis of relevant materials, the Court could not sit in appeal over such an order unless the facts themselves are totally irrelevant. In *Narkeshar Prakashan Limited v. Nagpur Press Kamghar Sangh and Ors.* 1994-II-LLJ-530, the Division Bench of the Bombay High Court was considering a plea for retrenchment of some workmen when the workmen complained that it was on account of the management's decision to apply a different technology and that without serving a notice of change of terms and conditions of service u/s 9-A, permission u/s 25-N could not be applied for. The statement of law was made in the context of a contention that when photo-copying machines were installed, some of the workmen working in an establishment of printing daily newspapers became redundant. In that case, the Division Bench held that the retrenchment itself was not covered by any of the items in Schedule IV of the Act and therefore, no notice of change u/s 9-A was necessary before effecting retrenchment. It held that issue of notice for effecting retrenchment u/s 25-F and notice u/s 9-A contemplated two different situations that were mutually exclusive.

12. The answer to this question could be seen through a decision of a single Judge of the Bombay High Court in *Hindustan Lever Employees' Union v. State of Maharashtra and Ors.* 1989, FLR 594. It dealt with the reverse situation of when a decision to close the factory and shift its operations elsewhere was taken and an application u/s 25(O) had been made. The contention on behalf of the workmen was that since the decision of the management resulted in retrenchment of workmen, the application should have been made only u/s 25-N. It was then reasoned by the Bombay High Court that Section 25(O) itself made no reference to retrenchment of workmen having regard to the scheme of the Industrial Disputes Act and the provisions of the said section. It was only when a closure of undertaking brought about retrenchment of workman, then the provisions of Section 25(O) could have applied. The Court held that it cannot be said that retrenchment of workman is not sine qua non for making an application for permission to close down. To an argument that was proposed on behalf of the workmen that the closure of the one department or an establishment would enable the management to retrench the workman at a later date on the ground that the same are in surplus was found as not justified, for an application for permission to retrench will then have to be made.

13. The decision of the Government has been taken on a due consideration of the management's plea being driven by the decision to reduce its cost and entrust the work in one department to outside agency, All the requisite parameters laid down u/s 25-N have been complied with. The ultimate decision may have result in several of the workmen losing the jobs. The Government's decision ultimately did not allow the entire request of the management but still provided for a partial relief to the workmen when against the decision of the management to terminate the services of 90 workmen, the Government had granted the permission only to 82 workmen. The management itself has not preferred any appeal or taken any challenge against the finding decision of the Government. In my view, there is no impediment to permit retrenchment of some or all workmen u/s 25 N, if it

resulted in a process of closing down the unit.

VIII. Conclusion

14. There are no reasons justifying any judicial intervention in the matter. The writ petition is, accordingly, dismissed. There shall be however no direction as to costs.