
(1999) 08 MP CK 0025

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2657 of 1995

Bilaspur Spinning Mills and Industries Ltd.

APPELLANT

Vs

Deputy Labour Commissioner and Others

RESPONDENT

Date of Decision : 04-08-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(1)

Citation : (2000) 3 LLJ 1296 : (2000) 1 MPLJ 10

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.P. Khare, J.

This is a petition under Article 226 of the Constitution of India challenging the order dated August 27, 1994 (Annexure P-9) passed by respondent No. 1 Deputy Labour Commissioner, Raipur u/s 33C(1) of the Industrial Disputes Act, 1947 (hereinafter to be referred to as the Act) for recovery of Rs. 11,00,299.52 paise as arrears of land revenue.

The petitioner is a Public Limited Company carrying on the business of spinning at Bilaspur. A Receiver was appointed by the High Court of Bombay in a civil suit filed by the Industrial Development Bank of India for recovery of its dues and the receiver took possession of the petitioner's Mill on March 25, 1992. It remained in possession of the Receiver upto August 3, 1994. It was released as a result of settlement between the petitioner and the IDBI in the civil suit. On January 30, 1993 the respondent No. 2 union had submitted an application u/s 33C(1) of the Act for recovery of the wages of certain workers for the period March 16, 1992 to March 31, 1992. On that application the respondent No. 1 passed the impugned order. The petitioner had not obtained any permission from the state Government for "lay off" or "closure".

The petitioner's case is that no notice was given to it on the application of the

Union. There was breach of the principles of natural justice as the petitioner was not given an opportunity of hearing before the impugned order was passed. The application was not legally maintainable. The contention of the respondent No. 2 that there was lay off from March 16, 1992 to March 24, 1992 and undeclared closure from March 25, 1992 to December 31, 1992 is not correct.

The respondent No. 2 has filed the return. It is stated therein that the workers were laid-off on March 16, 1992 whereas the possession of the Mill was taken over by the Receiver on March 25, 1992. The amount was recoverable under Chapter V-B of the Act. The petitioner cannot deprive the workers of their wages simply because the Receiver was appointed for failure of the petitioner to pay the dues of the Bank. Similar petitions of the petitioner have been dismissed. There was no need of any notice to the petitioner before the impugned order was passed as there was no defence available to it.

During the course of arguments it has been stressed on behalf of the petitioner that the impugned order entails payment of a heavy amount and the petitioner was entitled to "fair hearing" before this order could be passed. There was violation of the principle of natural justice. Reliance is placed on *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, and *S.L. Kapoor Vs. Jagmohan and Others*, . On the other hand it is argued on behalf of the respondents that there is no specific provision in Section 33C(1) of the Act for any notice or hearing to the employer. The workers were not paid their wages and, therefore, the situation was such in which the requirement of hearing the employer, if any, could be dispensed with. It is open to the petitioner to seek a post-decisional hearing.

The arguments of both the sides have been considered. It is admitted that there is no specific provision in Section 33C(1) of the Act for a pre-decisional hearing to the employer. The question is whether such a requirement is implicit in this provision and whether in the absence of notice the order is rendered invalid. The answer is that it would depend upon the facts and circumstances of each case and on the finding whether any prejudice has been caused to the petitioner. The general rule is that even if there is no provision in the statute about giving of notice, if the order in question adversely affects the rights of any one, the notice must be given. The soul of this rule is fair-play in action. This rule can be jettisoned in exceptional circumstances and one of those exceptions is where the facts are not disputed and there is no prejudice to the person affected. Natural justice cannot be placed in a straitjacket. Its rules are not embodied and they do vary from case to case and from one fact situation to another. There is exclusion of the application of *audi alteram partem* rule to cases where nothing unfair can be inferred by not affording an opportunity to present and meet a case. The rule cannot be applied to defeat the ends of justice.

In *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, it has been observed by the Supreme Court that the theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and

to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all sundry occasions. Whether in fact prejudice has been caused has to be considered on the facts and circumstances of each case. In that case a copy of the report of the enquiry office was not supplied to the employee. The Supreme Court observed that where even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all consequential benefits. It amounts to rewarding the dishonest and guilty and thus to stretching the concept of natural justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

Highhanded and unauthorised acts do not call for opportunity of hearing which is both tedious and time consuming. Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and others, . Again in State Bank of Patiala and others Vs. S.K. Sharma, it has been observed that there may be situations where interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.

In the present case it is an admitted fact that the petitioner had not taken any permission of the State Government either for "lay-off" or for "closure". It is apparent that the closure was illegal. The learned counsel for the petitioner could not point out any provision in the Act or in any other law under which the workers could be deprived of their wages simply because the Receiver had been appointed. There was no fault of the workers. Therefore, the petitioner could not come forward with any legitimate defence to deprive the workers of their salary. The situation was such in which the notice or hearing to the petitioner could be dispensed with. There is no prejudice to the petitioner and the impugned order cannot be set aside on the mere technical plea of absence of notice, when the workers were starving. The Deputy Labour Commissioner acted in the interest of the workers in passing the impugned order. There was paramount need for prompt action. It would not be proper exercise of writ jurisdiction to set such order at naught.

The petition is dismissed. The petitioner may seek a post- decisional hearing before the respondent No. 1 if advised to do so. The respondent No. 1 will afford such hearing to the petitioner and modify the impugned order, if it is necessary in the interest of justice.