

(1958) 07 BOM CK 0006

In the Bombay High Court

Case No : Special Civil Application No. 35 of 1958

Central India Spinning, Weaving and Manufacturing Co. Ltd.	APPELLANT
Vs	
State Industrial Court at Nagpur and Another	RESPONDENT

Date of Decision : 08-07-1958

Acts Referred:

Central Provinces and Berar Industrial Disputes Settlement Act, 1947 — Section 2, 25C, 25E, 25F, 25J
Constitution of India, 1950 — Article 226, 227
Industrial Disputes (Amendment) Act, 1953 — Section 25

Citation : AIR 1959 Bom 225 : (1958) 60 BOMLR 1440 : (1959) ILR (Bom) 527 : (1959) 1 LLJ 468

Hon'ble Judges : Mudholkar, J;Kotwal, J

Bench : Division Bench

Advocate : K.M. Joshi, for the Appellant; S.W. Dhabe, for the Respondent

Judgement

Mudholkar, J.—This is a petition under Articles 226 and 227 of the Constitution for the issue of a writ of certiorari quashing and setting aside the order passed by the State Industrial Court, Nagpur, in the matter arising under the C.P. and Berar Industrial Disputes Settlement Act, 1947.

2. The relevant facts are as follows: The petitioner is known as the Empress Mills Nagpur. These mills are five in number and are known and styled as Empress Mills No. 1, Empress Mills No. 2 Empress Mills No. 3, Empress Mills No. 4 and Empress Mills No. 5. The respondent No. 2 is a recognised Union for the local area of Nagpur in respect of Textile Industry at Nagpur.

3. On 7-1-1956 the petitioner i.e., the Empress Mills, served a notice of change on the respondent No. 2. After discussion over the matter, an agreement was reached between the petitioner and the respondent No. 2 on 17-1-1956 and it was agreed between the parties that Empress Mills No. 1 should be demolished and persons who used to work there should be transferred to third shifts of Empress Mills Nos. 3, 4 and 5 which shifts were agreed to be started for the

purpose of absorbing workers from Empress Mills No. 1. According to the petitioner, the non-recognised Unions resented this agreement and started agitation against the Empress Mills as a result of which several unauthorised strikes took place. Due to these strikes, normal working of the mills was completely dislocated with the result that the petitioner was compelled to close down the Mills on and from 11-2-1956. They declared the closure of the Mills till such time when sufficient number of workers expressed their willingness to resume work normally and peacefully and carry on the work in accordance with the provisions of the agreement arrived at between the petitioner and the respondent No. 2.

4. Eventually, the Mills reopened on 23-4-1956. According to the petitioner, despite the re-opening of the Mills strikes and absenteeism continued in all the Mills and more particularly in the third shifts. In fact, according to the petitioner, the third shifts did not work at all till 6-6-1956. Though the third shifts started working after that date, the attendance was very small till August, 1956. The petitioner therefore entered into correspondence with the respondent No. 2 on this matter and brought to the notice of the respondent No. 2 the state of affairs obtaining in the Mills. The letters addressed by the petitioner to the respondent No. 2 are of 27-6-1956 and 7-7-1956. The petitioner pointed out to the respondent No. 2, among other thing, that doffers and refused to work as siders and tenters even though they were sufficiently acquainted with these jobs and that this refusal on their part had completely dislocated the working in the third shifts. The petitioner's contention is that the respondent No. 2 instead of rendering full assistance and adequate co-operation to the petitioner in restoring the normal working of its units filed an application before the respondent No. 1, the State Industrial Court on 4-7-1956 u/s 41 of the C.P. and Berar Industrial Disputes Settlement Act, 1947, alleging that even though the workers presented themselves for work they were not given work, that this amounted to an unlawful lay-off and was in contravention of the provisions of the Standing Order No. 20. According to the respondent No. 2 the Standing Orders stood amended by virtue of the provisions of Chapter VA of the Industrial Disputes Act, 1947, which provided for payment of compensation to the workers who were laid off. The respondent No. 2 also contended that the lay-off was not bona fide and was not for nay trade or good reason and that therefore it could not be effected without notice of change. Upon these grounds the respondent No. 2 sought a declaration to the effect that the lay-off was an illegal change.

5. The petitioner in their reply to the application of the respondent No. 2 raised the following contentions:

(i) That the State Industrial Court had no jurisdiction to entertain the application and that the only Tribunal which could entertain it was the District Industrial Court.

(ii) That owing to continuity and interdependence of processes, whenever certain departments or sections were stopped or remained idle due to absenteeism

amongst workers, workers of the subsequent or preceding processes could not be offered employment and had to be laid-off and that it was permissible to lay them off under Standing Orders.

(iii) That Standing Order 20, which related to stoppage for trade reasons such as shortage of orders etc., had no application or bearing in the present case.

(iv) That Standing Order 20 did not stand amended by virtue of the provisions of Section 25-C of the Industrial Disputes (Amendment) Act, 1953.

(v) That the lay-off was not in contravention of the Standing Orders or the provisions of the State or Central Act and that no notice of change was necessary before such lay-off was effected. Upon these allegations, the respondent No. 1 framed the following issues:

"1. Does Section 25-C of the Act 43 of 1953, overrides Standing Order 20 and are the employees who are laid-off under Standing Order No. 20 entitled to compensation? Are provisions of Act 43 of 1953 regarding lay-off not applicable to the cases of lay-off of employees in the non-applicant Mills?

2. Were employees Raoji, Punjaram, Motiram and Tulsiram laid off as alleged?

3. (a) Did the lay-off of these employees by the non-applicant Mills violate Standing Orders or any provisions of the Madhya Pradesh Industrial Disputes Settlement Act or the Industrial Disputes Act (No. XIV of 1947)?

(b) Is the employer bound to give notice u/s 31 before laying off an employee?

(c) Was the lay-off not bona fide?

(d) Did the laying off of the employees amount to an illegal change?

4. Was absenteeism among the workers the cause of lay-off of the employees? If so was the lay-off justified? Are the non-applicant Mills not liable to pay compensation for lay-off.?"

6. After recording evidence and hearing the parties the State Industrial Court held that in respect of the employees Doma Punjaram, Tulsiram Arjun and Chandrabhan Raoji, the petitioner had effected an illegal change in treating their lay-off period as period of unemployment under Standing Order 19, read with Standing Order 21 because before laying them off the petitioner did not pay them compensation as they were required to do u/s 25C of the Industrial Disputes Act. The State Industrial Court further held that the case was not governed by Standing Order 20, but was governed by Standing Orders 19 and 21 and that though the respondent No. 2 had based its case on the breach of Standing Order 20 only the defect in the pleading could not be allowed to stand in the way of the workers to get a relief. Being aggrieved by the order of the State Industrial Court the petitioner "The Empress Mills" has come up before us.

7. On the first question raised on behalf of the petitioner which is to the effect that the application lay not before the State Industrial Court but before the

District Industrial Court, it is sufficient for us to refer to the decision of this Court in Berar Oil Industries. Akola v. N.H. Majumdar, 1957 Nag LJ 518, where it has been held that an application for declaring a change as illegal u/s 41 of the C.P. and Berar Industrial Disputes Settlement Act, can be made to the District Industrial Court only by the employer, employees or the Labour Officer and not by the Union of employees. It has further been held that the power to entertain an application u/s 41 made by the Union is given only to the State Industrial Court. In view of this decision, we hold that the State Industrial Court was competent to entertain the application.

8. The next point urged on the petitioner's behalf by Shri K.M. Joshi, who appears for it was that before any worker could be entitled to claim compensation under Chapter V-A of the Industrial Disputes Act, 1947, it will have to be established that he had been laid off in the sense in which that expression is defined in Section 2(kkk) of the Act. In support of this contention the learned Counsel has relied upon the decision of this Court in Mervin Albert Veiya Vs. C.P. Fernandes and Another, . In that case the learned Chief Justice who delivered the judgment of the Court observed:

"The definition of lay off which is given in Section 2(kkk) makes it clear that it must result from the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break down of machinery or for any other reason to give employment to a workman whose name is borne on the muster rolls of the Industrial establishment and who has not been retrenched."

Then after referring to Section 25C the learned Chief Justice observed:

"Therefore, this section would not apply provided the conditions of lay-off mentioned in the definition exist and the lay-off is in accordance with the conditions and the definition contained in the Act."

The expression "lay-off" is defined thus in Section 2(kkk) of the Act:

""lay-off" (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery or for any other reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched."

9. Now, according to Shri Joshi a workman could be deemed to have been laid off within the meaning of this expression only if there is a "failure refusal or inability" on the part of the employer to allow him to work because of any of the causes set out in Clause (kkk) of Section 2. In the instant case, Shri Joshi points out that the "failure, refusal or inability" of the petitioner to employ the workman was not due to any of the causes specified in Clause (kkk) and that therefore the provisions of Section 25C or of the Chapter V-A were not attracted.

10. Shri Dhabe, who appears for the respondent No. 2, contended that the words "or for any other reasons" which occur in the definition are very wide and it will be clear from the use of these words that the Legislature intended to give a very wide meaning to the expression "lay-off." He further contended that we must bear in mind the fact that the Industrial Disputes Act is a piece of social legislation and therefore it would be the duty of the Court to give as extended a meaning as possible to the word "lay-off" so as to comprise in it every case which results in an unemployment of workers. He has relied on the decisions in Mahadeo Dhondu Jadhav Vs. Labour Appellate Tribunal of India at Bombay, and Prakash Cotton Mill (Private) Ltd. v. State of Bombay, 1957 2 Lab LJ 490 (Bom) in support of this proposition.

11. In the first case the learned Chief Justice who delivered the judgment of the Court observed:

"We have had occasion to say it before and we will say it again that we are always most reluctant to put any interpretation upon labour legislation which is likely to prejudice the rights or welfare of labour. We are fully conscious of the fact that our legislature has put labour legislation on the statute book primarily for the purpose of redressing the balance between employers and employees and that we should not, unless we are compelled to do so by the clear language used by the Legislature, put any construction upon any provision of labour legislation which will in any way prejudicially affect their rights."

In the next case relied on by Shri Dhabe we have again the judgment delivered by the learned Chief Justice who has observed:

"We must not forget that we are no longer living in the age of "laissez-faire" and the relations between employer and employees are no longer solely governed by the principles of contract. Contractual rights and liabilities are now subject to the principles of industrial law and also the principles of social justice. It is true that social justice is an imponderable and Mr. Bhatt asked us not to introduce the principles of social justice in construing legislation, which comes for interpretation before us. In our opinion, no labour legislation, no social legislation, no economic legislation, can be considered by a Court without applying the principles of social justice in interpreting the provisions of these laws. Social justice is an objective which is embodied and enshrined in our Constitution. It is true that it may be difficult to define social justice. In the opinion of Mr. Justice Holmes it is an inarticulate major premise which is personal and individual to every Court and every Judge. How a Court or a Judge approaches a particular problem is influenced and coloured by his outlook on life and society. But however a judge or a Court may approach a particular problem, it cannot ignore the fact that all our legislation is aimed at bringing about social justice, and, therefore, it would indeed be starting for anyone to suggest that the Court should shut its eyes to social justice and consider and interpret a law as if our country had not pledged itself to bringing about social justice. Therefore, it is a truism to say that the present tendency of our labour and industrial legislation

is to impose more and more burdens upon the employers. These burdens are imposed in the interests of the employees, because they have been under-dogs for decades and centuries....."

We may however refer to the decision of the Supreme Court in *Muir Mills Co. Ltd. Vs. Suti Mills Mazdoor Union*, Kanpur, in which their Lordships have made the following observations:

"The considerations of social justice imported by the Labour Appellate Tribunal in arriving at the decision in favour of the respondent were not only irrelevant but untenable. Social justice is a very vague and indeterminate expression and no clear-cut definition can be laid down which will cover all the situations. Mr. Issacs, the learned counsel for the respondent, attempted to give a definition in the following terms.... and he stated that there were three parties concerned here viz., the employers, the labour and the State itself and the conception of social justice had to be worked out in the context. Without embarking upon a discussion as to the exact connotation of the expression "social justice" we may only observe that the concept of social justice does not emanate from the fanciful notions of any particular adjudicator but must be founded on a more solid foundation."

Their Lordships then referred to a certain formula evolved by the Full Bench of the Labour Appellate Tribunal and the proceeded to observe:

"This formula was reiterated in *Textile Mills M.P. v. Their Workmen*, (1952) 2 Lab LJ 625 (Bom) and *Famous Cine Laboratory v. Their workmen* (1953) 1 Lab LJ 466 , and in the latter case it deprecated the idea of adjudicators importing considerations of social justice which were not comprised in that formula:--

"And what is social justice? Social justice is not the fancy of any individual adjudicator; if it were so then ideas of social justice might vary from adjudicator to adjudicator over all parts of India. In our Full Bench decision see *Mills Owners Association, Bombay v. Rashtriya Mill Mazdoor Sangh, Bombay* 1950 2 Lab LJ 1247, we carefully considered the question of social justice in relation to bonus, and there we equated the rights and liabilities of employers and workmen with a view to achieving a just formula for the computation of bonus. That Full Bench decision stands, and this tribunal and all other tribunals are bound by it."

As we understand this decision of their Lordships, the conception of social justice ought not to be imported while interpreting the provisions of the Industrial Disputes Act or other similar Acts. Therefore, the only thing which we have to bear in mind in understanding the true import of the definition is the set of principles which have been accepted by the Judges in the past for interpreting statutes.

12. Here, Shri Dhabe asked us to give the widest possible meaning to the words "or for nay other reason". Surely, it could not have been the intention of the Legislature to bring within the definition every circumstance possible which has

resulted in an unemployment of workers as for instance a strike. Even Shri Dhabe admits that an unemployment resulting from a strike would not be comprised in the definition. The reason given by him for this is that strikes are dealt with expressly by the provisions of Section 25E(iii) of the Industrial Disputes Act, 1947. In our opinion, the key to understand the import of the definition is to be found in the words "the failure, refusal or inability of an employer" which occur in Clause (kkk) of Section 2. These words make one thing clear and that is that the unemployment has to be on account of a cause which is independent of any action or inaction on the part of the workmen themselves. However wide the definition contained in a statute may be taken to be it will have to be limited or restricted for the purpose of carrying into effect the provisions of the statute in which such definition occurs. In this connection we may quote the following observations of Lord Herschell in *Cox v. Hakes* (1890) 15 A.C. 506 .

"It cannot, I think, be denied that, for the purpose of construing any enactment, it is right to look, not only at the provision immediately under construction, but at any others found in connection with it which may throw light upon it, and afford an indication that general words employed in it were not intended to be applied without some limitation."

We may also refer to a canon laid down by the Privy Council in *Blackwood v. R.* 1882 8 A.C. 82, at p.94.

"One of the safest guides to the construction of sweeping general words which it is difficult to apply in their full literal sense is to examine other words of like import in the same instrument, and to see what limitations must be imposed on them. If it is found that a number of such expressions have to be subjected to limitations or qualifications, and that such limitations or qualifications are of the same nature, that forms a strong argument for subjecting the expression in dispute to a like limitation or qualification."

The consequences of a lay-off are dealt in Chapter V-A of the Act and it is clear from the provisions of that Chapter that compensation for a lay-off is payable only in those circumstances where the laying-off is occasioned by a cause which is beyond the control from this that if, in point of fact, the lay-off here was occasioned because of strikes or go-slow tactics or absenteeism of workers in other sections of the Mills on which the particular section in which some workers were laid off was dependent then their laying off cannot be deemed to fall within the definition contained in Section 2(kkk) of the Act.

13. Apart from that we are of the view that even if the expression "lay-off" were to be interpreted for on behalf of the respondent no. 2, the action taken against the workers here being permissible under Standing Order 19 there is no room for the contention that the petitioner has brought about an illegal change because no previous notice of the action was given by the petitioner to the appropriate parties. Standing Order 19(1) reads thus:

"The Manager may, at any time or times, in the event of a fire, catastrophe, break-down of machinery, stoppage of the power supply, epidemic civil commotion shortage of raw materials or process, short attendance of operatives or other causes, whether of a like nature or not, beyond the control of the Manager, stop any machine or machines or department or departments wholly or partially or the whole or part of the establishment, for any period or periods without notice and without compensation in lieu of notice."

Standing Order 21 provides:

"Any operative laid-off under Order 19 or Order 20 shall not be considered as dismissed from service, but as temporarily unemployed, and shall not be entitled to wages during such unemployment except to the extent mentioned in Order 19."

14. Now, it is contended by Shri Dhabe that if the word "lay-off" is given the wide meaning contended for by him then a lay-off of this kind is not permissible without the payment of compensation. He says that the Standing Orders must now be deemed to be amended by Chapter V-A of the Act because of the provisions of Section 25J of the Act and therefore without complying with the provisions of Chapter V-A no lay-off could be effected. In fact, we have recently held that Standing Orders in so far as they relate to a lay-off or retrenchment, are subject to the provisions of Chapter V-A. But it does not follow from our decision that compliance with the provisions of Chapter V-A is a condition precedent to the laying-off of a workman. The case before us was one of retrenchment and we held that no retrenchment could be effected without complying with the provisions of Chapter V-A. That was because Section 25F specifically provides that before retrenching workmen certain conditions are to be satisfied. All that follows from our decision in that case and from the provisions of Chapter V-A is that workmen who have been laid off would be entitled to recover compensation according to the provisions of the Act. No doubt, the Standing Orders have to be read along with the provisions of Chapter V-A but it does not follow in the case of a lay-off that compensation must be actually paid before a workman is laid off. The Standing Orders read with Chapter V-A now create a right in favour of the workman who has been laid off to claim compensation. They do not create a right in his favour of being paid compensation before he is laid off. He can work out his right independently and so also the employer can exercise his right of laying off independently of paying compensation. The mere failure on the part of an employer to pay compensation would not amount to the contravention of the Standing Order for the simple reason that neither the Standing Orders nor the Act make the payment of compensation a condition precedent to the lay-off. Upon this view, it would follow that no illegal change was effected by the petitioner.

15. Incidentally we may mention that it was contended for the petitioner that this case fell under Clause (iii) of Section 25F and that therefore the workmen are not entitled to compensation. Under this clause, if a lay-off is due to a strike

or slowing down of production on the part of workmen in another part of the establishment the workmen affected thereby are not entitled to the lay-off compensation. Here, it was alleged by the petitioner that there were actual strikes in other departments. Now, this fact is mentioned by the State Industrial Court in one part of its order but in another part of its order the State Industrial Court has said that there is no allegation by the petitioner that there was a strike. The result is that there is no finding on the point. In the absence of the finding we would have ordinarily remitted the case to the State Industrial Court for examining the question but upon the view we take on the other part of the case we think it unnecessary to remit the matter on this point.

16. We may also advert to the point raised by the respondent No. 2 that the lay-off here is not in contravention of Standing Orders inasmuch as it is not occasioned by a cause referred to in Standing Order No. 20. It is true that the lay-off in this case is not for a trade reason or for any other reason which is referred in Standing Order 20. But the petitioner justifies the lay-off not under Standing Order 20 but under Standing Order 19(1) which, among other things, permits a lay-off of workmen due to shortage of "process". It is not disputed that here there was a shortage of process because of short attendance in the third shifts of the sections producing yarn, which dislocated the working of these shifts. Shri Dhabe however contended that the petitioner was bound to show also that the requisite quantity of yarn was not available at all in the Nagpur market. In our opinion, the Standing Order does not contemplate purchase of "process" from other Mills. Moreover, the respondent No. 2 has never alleged that the petitioner purchases yarn or process for production of cloth in its Mills. In the circumstances, therefore, we cannot accept Shri Dhabe's argument on the point.

17. Shri Dhabe wants us to mention that he had addressed an argument before us on the basis of Section 51 of the C.P. and Berar Industrial Disputes Settlement Act, 1947. That argument was that the petitioner, the Empress Mills, by failing to pay compensation as provided by the Standing Order read along with Chapter V-A have effected an illegal change without giving notice thereof. We have dealt with this matter in an earlier paragraph and stated that though Chapter V-A entitles a person laid off to compensation neither Chapter V-A nor the Standing Orders make the payment of compensation a condition precedent to a lay-off. The omission of the petitioner to pay compensation to any of the workmen who have been properly laid-off does not result in an illegal change.

18. Upon this view, we allow the petition and quash the order of the State Industrial Court. There will be no order as to costs.

19. Petition allowed.