

(1993) 08 GUJ CK 0028

In the Gujarat High Court

Case No : Special Civil Application No. 6795 of 1993

Central Pulp Mills Ltd., Surat

APPELLANT

Vs

Central Pulp Mills Employees Union and Another

RESPONDENT

Date of Decision : 25-08-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 25M, 25M(4)

Citation : (1993) 2 GLR 1688 : (1994) 1 LLJ 1096

Hon'ble Judges : R.A. Mehta, J;B.J. Shethna, J

Bench : Division Bench

Judgement

Shethna, J.—The Central Pulp Mills Ltd., the petitioner, has filed this petition under Arts. 226 and 227 of the Constitution of India

challenging the impugned award passed on 7-7-1993 by the Industrial Tribunal, Surat in Reference (IT) Nos. 6 and 7 of 1993, which is Annexure

D"" to this petition.

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4. Mr. V. B. Patel, learned Counsel for the petitioner-Company submitted that the Specified Authority though rightly accepted the case of the

Company of break down of the machinery u/s 25M(4) and under Model Standing Order No. 18 (1), committed an error in granting lay-off upto

8-9-1993 instead of 31-12-1993 as prayed for. He submitted that it was not open to the Specified Authority to reduce the period of lay-off once

the Company established its case for lay-off. Mr. Patel further submitted that having agreed with the finding of the Specified Authority regarding the

case of break down of machinery, it was not open to the Tribunal to come to a different conclusion and hold that the case of the Company is not

such which can fall under Order No. 18 (1) and reject the Reference of the Company and accept the Reference of the Union. He, therefore,

submitted that the order passed by the Tribunal be set aside and also part of the order passed by the Specified Authority restricting the lay-off upto

8-9-1993 instead of 31-12-1993 be also set aside and the petitioner may be granted permission to lay-off upto 31-12-1993. Mr. Patel submitted

that the Specific Authority has considered interests of workmen while granting permission for lay-off and found that it is in the interest of the

workmen to grant lay-off and accordingly granted it. Mr. Patel submitted that through mistake the Specified Authority used words "public interest"

instead of "interest of workmen". Mr. Patel also submit that the Specified Authority and he Tribunal both have accepted the case of the Company

of the break down of the machinery and, therefore, it is not open to this Court to go beyond the concurrent finding arrived at by them in this

petition which is filed under Art. 227 of the Constitution of India by the Company and come to a different conclusion. As against that Mr.

Brahmbhatt, learned Advocate for the Union, submitted that there is no concurrent finding arrived at by the Specified Authority and the Tribunal

regarding the break down of the machinery. He submitted that the Tribunal clearly held that the case of the break down of the machinery of the

Company does not fall under Order No. 18 (1). He further submitted that this Court can come to a different conclusion that the case of the break

down of the machinery of the Company has failed to prove its case of break down of the machinery on the facts of this case. Mr. Brahmbhatt

submitted that the Specified Authority has wrongly considered the public interest instead of interest of workmen. He submitted that even assuming

that it was the mistake on the part of the Specified Authority to state public interest instead of "interest of workmen", then also it was not in the

interest of workmen to grant lay-off and, therefore, the decision of the Specified Authority was not in accordance with law. He further submitted

that the jurisdiction of this Court under Art. 227 of the Constitution is very narrow and limited and when no error of law apparent on the record is

committed by the Tribunal in its order, this Court should not interfere with the order passed by the Tribunal. He also submitted that in any case, the

Specified Authority has granted permission to lay-off only upto 8-9-1993 and hardly 14 days have remained from today and the matter has

practically become infructuous and the discussion on any of the points would be purely academic. Therefore, also this Court should not entertain

this petition and grant any relief, which is prayed for the petitioner.

5. The Specified Authority granted permission to lay-off only upto 8-9-1993. From today only 14 days have remained between. Therefore, by

and large this petition has become almost infructuous and it would survive only for its academic discussion. Therefore, without going into any other

submissions raised by Mr. Patel, we would have straight away dismissed this petition only on this ground. But, Mr. Patel seriously pressed his

contentions and the petition and, therefore, we are deciding this petition on merits also. According to us there is no substance or merit in any of the

aforesaid contentions raised by Mr. Patel and, therefore, on merits also this petition is required to be dismissed.

6. There is no substance in the submission made by Mr. Patel that the Specified Authority and the Tribunal have concurrently found that the

Company has proved its case of break down of the machinery. Because the Tribunal has specifically come to the conclusion that the case of the

break down of the machinery of the Company does not fall under Model Standing Order No. 18 (1). It is true that the Specified Authority came to

the conclusion that in a wider sense it can be said to be a case of break down of the machinery as the functioning of the machinery No. 1 was not

regular and it was running intermittently with reduced capacity. But there should have been strict interpretation of the Statute by the Specified

Authority. It could not have been liberally construed in a wider sense or any wider meaning could have been given by the Specified Authority. The

mere fact that the machinery No. 1 was functioning and running intermittently with reduced capacity clearly falsifies the case of the Company of the

break down of the machinery. For break down of the machinery, there should be a total break down of the machine. If the machine is in workable

condition with reduced capacity, then it would never be said to be break down of the machinery. Therefore, in our opinion, the Specified Authority

committed an error in coming to the conclusion that the Company has proved its case of break down of the machinery u/s 25M(4) of the Act and

under Model Standing Order 18 (1).

It is true that the Tribunal in its judgment loosely stated that it agree with the

aforesaid finding arrived at by the Specified Authority, but ultimately it has specifically held that the Company has failed to prove its case under Model Standing Order 18 (1). Thus, there is no concurrent finding of fact arrived at by the Specified Authority has not at all considered the real reasons which were assigned by the Company for lay-off. The main reason for lay-off was not the break down of the machinery, but it was due to its poor financial condition and the inability of the Company to stand in the competitive market with other Companies, which have come up later on in the market at other places. It is clearly reflected from the reasons assigned for lay-off by the Company that in order to economise expenditure in every possible area, the proposed lay-off was found necessary. Therefore, in no circumstances, permission as prayed for could be granted to the Company.

7. The next submission of Mr. Patel that the Specified Authority granted permission after considering the interest of the workmen and the Tribunal has not considered that aspect and, therefore, the order of Tribunal is bad and liable to be set aside, is devoid of any merit. Mr. Patel in support of his submission relied upon the judgment of the Supreme Court in the case of Workmen of Meenakshi Mills Ltd. v. Meenakshi Mills Ltd. & Anr. reported in 1992 I CLR 1010 and the judgment of this Court in the case of Suhrid Geigy Ltd. Vs. Chemical Mazdoor Sabha, . It is to be noted that though the Specified Authority accepted the submission of the Union regarding interest of the workman as logical, still it granted permission in the name of public interest. Public interest and the interest of the workmen are altogether different. u/s 25M(4) of the Act, interest of the workman had to be kept in mind and not the public interest. However, Mr. Patel tried to explain that by slip of pen, it has been stated by the Specified Authority that it is in the public interest of the workmen. Though we fully agree with the judgment of the Supreme Court in the case of Workmen of Meenakshi Mills Ltd. (supra) and the judgment of this Court in the case of Suhrid Geigy Ltd. (supra), the same have no relevance in the facts of present case. In our opinion, it can never be said that to grant permission to lay-off was in the interest of the workmen, particularly when out of 1124 workmen, 449 workmen were to be given lay-off, who have readily agreed to let go 40% of their dues towards arrears of salary, etc., and

thereby suffered a loss of more than Rupees 2 crores. If the workmen were told by the new management at the time of taking over in July 1992

that after couple of months the Company will apply for seeking permission to grant lay-off, then the workmen would have never agreed to let go

their 40% dues. With open eyes the new management took over the management of the Company by investing Rs. 135.50 crores for the project,

out of which Rs. 60.1 crores is reserved for capital expenditure. As per Item No. 16, the anticipated savings due to the proposed lay-off would

approximately come to Rs. 36 lacs from 15-4-1992 to 31-12-1993, which means Rs. 4.20 lacs P.M. for 449 workmen. Now hardly about 4

months remains and at the rate of Rs. 4.20 lacs per month it would come to Rs. 16.80 lacs, i.e. for 449 workmen, which means that about Rs.

960/- P.M. each workmen, which would come to hardly Rs. 30/- to Rs. 35/- per day to each workman. If the permission to lay off is to be

refused, then according to the Company, the workmen would be paid that amount without taking any work from them. Even assuming that the

Company is required to pay Rs. 16.80 lacs to its workmen for a period of 4 months without taking any work from them, then also the Company

is not obliging its workmen. Though the total figure of Rs. 16.80 lacs looks high amount, but if it is considered in the light of the fact that the

workmen have sacrificed about Rs. 2 crores by allowing to let go dues, that amount of Rs. 16.80 lacs looks negligible. Rs. 30/- to Rs. 35/- per

day per workman is nothing to the Company but everything to a poor workman, who will be maintaining his entire family out of that meagre

amount in these hard days. Therefore, in our opinion, it can never be said that to grant permission to lay-off to the Company was in the interest of

the workman. Relying upon para 48 of the Supreme Court judgment in the case of Workmen of Meenakshi Mills Ltd.; (supra) Mr. Patel submitted

that after the machines are fully repaired or over-hauled, it would be in their interest and it is going to give more production. But, ultimately who is

going to be benefited ? The Company and not the workmen, as they will only get their fixed salary from the Company. Therefore, considering the

overall circumstances of the case, we are of the opinion that it would not be in the interest of workmen to grant permission to lay-off to the

petitioner-Company.

8. Before parting with the judgment, we may point out that Mr. Brahmabhatt, learned Advocate for the Union, has relied upon the judgment of this Court in the case of *Suhrid Geigy Ltd's* (supra) and submitted that the Tribunal has rightly refused the permission to the Company on the ground that its case does not fall under Order No. 18 (1). This order of the Tribunal does not suffer from any infirmity and in any case it cannot be said that the Tribunal has no jurisdiction nor it has exceeded its jurisdiction. Therefore, this Court should not interfere with the order passed by the Tribunal in a petition, which is filed under Art. 227 of the Constitution. We are in full agreement with the observations made by this Court in *Suhrid Geigy Ltd's* case that, "power of Lay-off is not a common law right but based upon contract and Standing Orders would apply. Consideration of Standing Order cannot be said to be totally foreign to Reference". The power if any has to be culled out from either the contract between the parties or on the applicability of the relevant Standing Orders. Whenever a question regarding legality of lay-off crops up, implicit in the question is reference to the power of the concerned employer to lay-off the workmen and a quest for such power necessarily leads to the inquiry about the applicability of relevant Standing Orders, which are the repository of such power. If the management can fall back on the Standing Orders to support that power, rhyme or reason or any justification for the Company to urge that the workmen should not be permitted to fall back on these very Standing Order to show that any exercise of the alleged power was in the breach of the Standing Orders. Hence, even on this ground also it cannot be said that the consideration of the Standing Orders was totally foreign to the Reference.

9. Mr. Brahmabhatt has also drawn our attention to the statements of objects and reasons for enacting Section 25M in the Industrial Disputes Act by the Industrial Disputes (Amendment) Act, 1976 (No. 32 of 1976). From the statement of objects it clearly appears that initially Industrial Disputes Act, 1947 had no provisions for preventing lay-off and retrenchment. Though the Act provided for 60 days notice by the employer prior to closing down an establishment employing 50 or more persons, it did not provide for any prior scrutiny of the reasons for such closure. The employers had the unfettered right to close down an establishment, subject to the provision of 60 days' notice only. It was found that there were

many cases of large scale lay-offs, particularly by large companies and undertakings. Cases of large scale retrenchment as well as closures have also been reported time and again. These actions on the part of the management resulted in all-round demoralising effect on the workmen. In order to prevent hardship to the employees and to maintain higher tempo of production and productivity. It became necessary to put some reasonable restrictions on the employer's right to lay-off, retrenchment and closure and the said need was also felt by different State Governments and accordingly Section 25M came to be inserted in "the I. D. Act".

10. Keeping in mind the objects and reasons in introducing Section 25M in the Act, we are of the opinion that the case of the company does not fall in the first category, which has been set out by this Court in *Suhrud Geigy's* case. Therefore, it cannot be said that the Tribunal has committed any error while rejecting the Reference of the Company and accepting the Reference of the Union, which calls for the interference by the hands of this Court under Art. 227 of the Constitution of India.

11. In view of the above discussion, we do not find any substance of merit in any of the aforesaid submissions made by the learned Counsel Mr. Patel and accordingly we dismiss this petition. Rule discharged with no order as to costs. Interim relief stands vacated.