
(1996) 02 DEL CK 0044

In the Delhi High Court

Case No : Letters Patent Appeal No. 4 of 1996

Clifton Electronics

APPELLANT

Vs

Lt. Governor

RESPONDENT

Date of Decision : 15-02-1996

Acts Referred:

Citation : (1996) 2 AD 580 : (1996) 36 DRJ 462 : (1996) 2 LLJ 1110

Hon'ble Judges : M. Jagannadha Rao, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : A.K. Singla, P. Bhushan and C.M. Rao, for the Appellant;

Judgement

M. Jagannadha Rao, J.

(1) Delay is condoned.

(2) This is a Letters Patent Appeal against the Judgment of the learned Single Judge in Civil Writ Petition No. 4992 of 1994 dated 14.2.1995. The matter raises a point u/s 25(O) of the Industrial Disputes Act, 1947.

(3) The appellant is the management and was the writ petitioner before the learned Single Judge. The management closed the factory with effect from 31.3.1993. A notice was, however, issued by the Recovery Officer for recovery of wages of Rs. 1,12,700 for 44 employees for the months of April and May 1993 u/s 25(O), that is to say, for the 2 months immediately after 31.3.1993. The notice proposed to recover the arrears of wages as arrears of land revenue. A writ petition, C.W. 4034/93 was filed by the management questioning the said notice. In that writ petition, counter was filed by the respondents. An interim order was passed by the Court on 24.11.1993 directing the management to deposit Rs. 1,12,700. Ultimately, a Division Bench of this Court disposed of the same on 20.5.1994 holding that the letter dated 24.6.1993 of the management (Ex R-1 filed along with the counter in that writ petition) be treated as an application by the management seeking permission to close the establishment u/s 25(O).

(4) After the earlier writ petition was so disposed of, the Commissioner-cum-Secretary (Labour) N.C.T. passed an order on 18.7.1994, permitting the management to close down the factory w.e.f. 18.7.1994.

(5) On the basis of the said order of the Commissioner-cum-Secretary (Labour), N.C.T, the Unions (Respondents 5,6 in the present writ petition) asked the management to pay the wages of the workmen w.e.f. June 1993 to 30.6.1994,i.e. for the period subsequent to the period covered by the earlier demand notice. The Labour Officer, South Zone, issued a show cause notice on 1.11.1994 to the appellant-management requesting them to furnish information in a week as to whether any payment had been made to the workmen as per statement attached.

(6) On receipt of the said show cause notice, appellant sent a reply that no payment was due to the workmen inasmuch as the factory closed w.e.f. 31.3.1993 and that the workmen ceased to be employees from that date.

(7) The Labour Commissioner, South Zone, after considering the Explanation of the management held in his proceedings dated 25.11.1994 addressed to the Collector that various amounts, as stated therein, were due from the management to the workmen till 30.6.1994 as follows:-

(I) Rs. 1,00,722 in respect of 39 workmen for June, July,1993; (ii) Rs. 42,028 in respect of 9 workmen for April, May, June, July,1993; and (iii) Rs. 7,29,784 in respect of 48 workmen from August, 1993 to June, 1994 in all Rs. 8,72,534.

(8) On the basis of the said proceeding, the Assistant Collector issued a demand for Rs. 8,72,534. Aggrieved by this demand, management has filed the present writ petition C.W. 4992/94.

(9) In the writ petition, the management contended that the application by the Unions (respondents 5,6) filed before the Labour Officer u/s 33(0(1) was not maintainable inasmuch as there was, according to the management, no adjudication by any Labour Court in respect of the said right. It was contended that Section 33(0 (1) is in the nature of a provision for execution and hence there must be prior adjudication of the right to wages from June,1993 to June, 1994. On the other hand, the workmen contended that the closure of the factory unilaterally by the management on 31.3.1993 was to be ignored and the factory was to be deemed as closed only from 18.7.1994 in view of Section 25(O) and that .therefore, this was the decision of the Commissioner dated 25.11.1994 and the amount was, therefore, to be treated as computed by the statute itself and no adjudication was needed. It was contended that in such situations Section 33(C) (1) was attracted. It was also pointed out that Section 25(O) comes under Chapter V B and Section 33(0(1) covered Chapter V B and no adjudication by any Labour Court was necessary.

(10) The learned Single Judge held that, in view of the decision of the Division Bench in the earlier writ petition filed by the management,

"IT is clear that the closure was permitted from the date of the order dated July 18,1994 and not from March 31,1993. Thus the date of the closure of the factory has to be taken as July 18,1994. The consequence of the factory being permitted to be closed with effect from July 18,1994 would be that the petitioners would be liable to pay wages to the workmen from the period March 31,1993 to July 18,1994. This result follows from sub-clause (6) of Section 25(O) of the Act ..."

(11) The learned Judge also rejected a plea based on "no work, no pay" holding that the workmen did not voluntarily stop doing work. They could not work because the management unilaterally closed the factory on 31.3.1993.

(12) On the question of validity of the order of the Commissioner-cum-Chief Secretary and the consequential orders of the Labour Officer and then of the Assistant Collector for the arrears of wages from June,1993 to June,1994, learned Judge observed that, so far as the anterior period i.e. April and May,1993 was concerned (i.e. the two months immediately after the unilateral closure on 31.3.1993), the management had paid the said amount as directed by the Division Bench in the earlier writ petition. Further, when the earlier writ petition was finally disposed of by the Bench directing that the appellant's letter dated 26.4.1993 was to be treated as an application for permission for closure u/s 25(O) and when the Commissioner- cum- Secretary had in fact given his permission for closure only on 18.7.1994, it was not open to the management to raise an issue that a separate adjudication was to be made before an order could be passed u/s 33(1) of the Act.

(13) The learned Single Judge observed: "Having accepted the decision of the Division Bench, now it is too late for the petitioners to contend that the workmen were not entitled to wages after March 31,1993. I see no real controversy between the parties with regard to the payment of wages ... This submission of the learned counsel belies in the face of the provisions of Section 25(O) of the Act,... the closure would be illegal and the workmen would be entitled to all benefits as if the unit or the undertaking had not been closed."

(14) He finally placed reliance on the fact that Chapter V B was brought within the purview of Section 33(C)(1) of the Act. He observed :- "Since the wages of the workmen are due under Chapter V B, the recourse thereof u/s 33(1) cannot be faulted ..."

(15) In the result the writ petition was dismissed except in relation to such of the workmen with whom there was a settlement in the interregnum.

(16) In this appeal, we have heard the learned counsel for the appellant at the stage of mission. The learned counsel for the respondents 5 & 6 was also present.

(17) In our view, the Commissioner-cum-Secretary passed his order dated 18.7.1994 consequent to the directions of this Court in the earlier writ petition dated 20.5.1994. Having thus obtained an order from this Court in the earlier writ petition it is, in our opinion, not permissible for the management to question

the order passed thereupon by the Commissioner-cum- Secretary. It is not open to them to contend that the employees were 44/39 on the date of the application by the management and that Chapter V B of the Act and Section 25-O were not applicable. The appellants are clearly estopped from raising such an issue at this stage.

(18) A reading of sub-clause (6) of Section 25(O) would show where there is an application for permission under Sub-section (1) is to be made within the period specified therein or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(19) In our view, the first part of sub-clause (6) of Section 25(O) is clearly attracted. It deals with a situation where there is closure but no application is made by the management within the time prescribed in sub-clause (1) of Section 25(O) for such closure. Sub-clause (1) of Section 25(O) prescribes a period of 90 days before the intended date of closure. In the present case, the closure was on 31.3.1993 and the application was dated 26.4.1993. It was, therefore, not sent 90 days before the date of closure. Hence, under the first part of sub-clause (6) of Section 25(O), the closure is, by statutory fiction, deemed illegal. No adjudication by a Labour Court is, therefore, necessary to hold the closure to be illegal. Further, the sub-clause says, the workmen "shall" be entitled to all the benefits under any laws for the time being in force as if the undertaking had not been closed down. This part of the sub-clause confers a right to the benefits. Benefits obviously include wages. There was no evidence or contention that workmen were, during 31.3.1993 "TO and 18.7.1994, otherwise gainfully employed, even assuming that such a contention is permissible under sub clause (6) of Section 25(O). If that be so, we do not think that there was any need for adjudication of the right to wages. What merely remained was the quantification of the amount for which Section 33(C)(1) was entirely applicable.

(20) In fact, none of these reasons are necessary because Section 33(C)(1) itself says that for purposes of Chapter V B (which chapter includes Section 25(O), Section 33(C)(1) could be straightaway invoked. Admittedly, the words "Chapter V B" were added in sub clause (1) of Section 33(C) by the Amending Act 32/76. The facts of the present case relate to 1993-94 and hence Chapter V B matters come within Section 33(C)(1). The learned Judge rightly referred to Chapter V B and Section 33(C)(1) in the Judgment under appeal. The objection later raised that the workmen were 44/39 and that Chapter V B was not attracted cannot, as already stated, be permitted to be raised by the management inasmuch as the management had obtained the order from the Division Bench that its application, though filed, (though filed beyond the prescribed period) could be disposed of by the Commissioner-cum-Secretary.

(21) In the result, the appeal fails and is dismissed in limine.