

(1995) 02 DEL CK 0005

In the Delhi High Court

Case No : Civil Writ Petition No. 4992 of 1994

Clifton Electroniks and Another

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 14-02-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 25

Citation : (1995) 59 DLT 378 : (1995) 32 DRJ 750 : (1996) 74 FLR 1947 :
(1995) 2 LLJ 894

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : A.K. Singhia and P. Bhushan, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) This is a writ petition by the first petitioner, an industrial establishment and the second petitioner. Managing partner of the first petitioner, questioning the recovery notice dated November 1, 1994 issued by third respondent. Labour Officer, and recovery certificate dated November 25, 1994 issued by the same authority (Annexure-F). The facts in brief are as under:-

(2) The petitioners decided to close its factory unit with effect from March 31, 1993. It is also alleged that on January 1, 1993 the petitioners made an application to the appropriate government, viz., Delhi Administration for seeking permission to close the unit u/s 25(O) of the Industrial Disputes Act, 1947 (for short "Act") but inspire of it Under Secretary-cum-Labour Commissioner, National Capital Territory of Delhi Region issued a letter (recovery certificate) dated July 26, 1993 requiring the District Collection Officer (Collector) Tis Hazari to recover a sum of Rs.1,12,700.00 from the petitioners in respect of wages of 44 employees for the months of April and May, 1993 u/s 25(O) of the Act. This amount was required to be recovered as arrears of land revenue u/s 33(C)(1) of the Act. The communication in so far as it is relevant reads as follows:-

"I have been directed to say that M/s. Clifton Elektroniks, 6, Community Centre, East of Kailash, New Delhi is required to pay Rs. 1,12,700.00 (One lac twelve thousand and seven hundred) to 44 employees" u/s 25(O) sub section 6 under Id Act,1947 as regards salary for the month of April & May'93. The above said amount is to be recovered as land revenue tax u/s 33(C)(1) of Id Act, 1947."

(3) The petitioners feeling aggrieved of the recovery certificate filed a writ petition, being Cwp 4034/93, in this Court. This writ petition came to be decided on May 20,1994. The order is a short one and reads as under:- "20.5.94 Present: Mr.C.M..Lal for the petitioners. Mr.Jagdish Vats for respondents 1 to 7. Mr. N.D. Pancholi for respondent No.5. Cw 4034 & CMs 6410/93 & Cm 149/94 The pleadings are complete. Rule D.B. By interim order dated 24th November, 1993 the petitioners was directed to deposit an amount of Rs.1,12,700.00 with the Labour Commissioner and consistently with, the orders dated 9.2.1994 and 5.4.1994 the amount has been disbursed to the workers. Along with the counter affidavit, letter dated 26.4.1993 annexure R-I has been filed. On 24.32.1993 the learned counsel for the petitioners proposed this letter being treated as an application for permission for closing the establishment u/s 25(O) of the Industrial Disputes Act, 1947. After hearing the learned counsel for the respondents, it is directed that the letter dated 26.4.1993 Annexure R-1 shall be treated by the Labour Commissioner as an application u/s 25(O) of the Industrial Disputes Act, 1947 and disposed off within the statutory limit of time calculated from today. The counsel for the petitioners states that the letter annexure R-I was accompanied by an application in the prescribed performa, without entering into the controversy raised as to whether letter annexure R- 1 was accompanied by an application or not, we direct the petitioners to file a copy of the said application within a week before the Labour Commissioner. The petition stands disposed of. sd/- R.C..Lahoti-Judge sd/- C.M..Nayar--Judge" 26.5.1994

(4) It is apparent from the aforesaid order, when read in the light of the recovery certificate, that the petitioners were directed to deposit an amount of Rs.1,12,700.00 with the Labour Commissioner as wages of the workmen for the period April and May, 1993. According to the order the amount was disbursed to the workers. But the learned counsel for the petitioners points out that the wages have not so far been disbursed by the Labour Commissioner though the amount stands deposited by his clients. Another feature of the order which requires to be highlighted is that the letter of the petitioners dated April 26,1993, which was annexure-R-1 to that petition, was required to be treated as an application u/s 25(O) of the Act seeking permission to close the unit and the Labour Commissioner was directed to dispose of the same within the statutory period of time, to be calculated from May 20,1994, the date when the order was passed in that petition.

(5) Pursuant to the direction of the Division Bench dated May 20,1994, the Commissioner-cum-Secretary (Labour), National Capital Territory of Delhi considered the application of the petitioners dated April 26, 1993 and permitted

the closure of the factory of the petitioners with immediate effect by its order dated July 15,1994. The effect of this order was that the factory of the petitioners was treated to have been closed from July 15,1994. On this basis respondent Nos.5 and 6, which are the Unions representing the workmen, asked the petitioners for payment of wages of the workmen with effect from June, 1993 to 30th June, 1994. The Labour Officer on November 1,1994 also wrote to the petitioners requiring them to furnish information within one week from the receipt of the letter whether payment to the workmen had been made as per statement attached with the letter. On receipt of this communication from the Labour Officer, Delhi the second petitioner by his letter dated November 19,1994 stated that no payment to the workmen was due as the factory of the petitioners stood closed with effect from March 31,1993 and workmen from that date had ceased to be employees of the first petitioner. It was urged that the relationship of master and servant was snapped on that date. It was also averred that out of forty four workmen, in regard to whom recovery certificate was issued at an earlier occasion by Delhi Administration, five workmen settled their claims and disputes with the management. After receipt of the Explanation of the second petitioner, the Labour Officer, South Zone by its letter dated November 25,1994 to the District Sangrah Officer (Collector), Tis Hazari, Delhi certified that the payments of salaries of the workmen as per following details was due to them and the same required to be recovered from the petitioners:-

"Rs.1,00,722.00 in respect of 39 workmen for the period June and July, 1993, Rs.420028.00 in respect of 9 workmen for the months April/May, June and July, 1993 and Rs.7,29,784.00 in respect of 48 workmen for the period August, 1993 to June, 1994 is payable by M/s. Clifton Electronics, 6, Community Centre, East of Kailash, New Delhi."

(6) Thereafter the Assistant Collector by its communication at page 34 of the writ record demanded a sum of Rs. 8,72,534.00 from the petitioners on account of wages of 48 workmen from the petitioners. It was also stated that this amount was recoverable as arrears of land revenue. The petitioners being aggrieved of the letters of the Labour Department dated November 1,1994 and November 24,1994 have come up in this writ petition challenging the recovery.

(7) Learned counsel for the petitioners submitted that the recovery was illegal and against the provisions of the Industrial Disputes Act inasmuch as Section 33(C)(1) of the Act could not be resorted to as the proceedings under the said Section are in the nature of execution proceedings. Learned counsel has further submitted that the recovery is not being made as a result of any settlement or an award under the provisions of the Industrial Disputes Act. He canvassed that the petitioners dispute the amount which is sought to be recovered as arrears of land revenue from them on the ground that the factory of the petitioners stood closed on March 31,1993 and, Therefore, the workmen from that date ceased to be the employees of the petitioners.

(8) Learned counsel for the respondents on the other hand has submitted that

the factory of the petitioners was permitted to be closed with effect from July 18,1994 and according to Section 25(O) of the Act, the workmen would be entitled to wages up to that period.

(9) I have considered the submissions of the learned counsel for the parties. The short question is whether the petitioners can claim that the factory stood closed with effect from March 31,1993. The Division Bench by its order dated May 20,1994 in writ petition No.4034 of 1993, directed that the letter dated April 26,1993 annexure-R-1 to that petition, was to be treated as an application for permission to close the unit u/s 25(O) of the Act and was required to be disposed of within the statutory period to be computed with effect from May 20,1994. Pursuant to this decision the appropriate authority, Secretary-cum-Commissioner, National Capital Territory of Delhi considered the application of the petitioners dated April 26,1993 and by its order dated July 18,1994 permitted the petitioners to close their factory u/s 25(O) of the Act with effect from the date of that order. Therefore 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 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, which reads as under:-

"WHERE no application for permission under sub-section (1) is 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."

(10) Thus, the workmen would be entitled to all the benefits till the undertaking was closed in accordance with sub clause 6 of Section 25(O) of the Act. Therefore, by deeming fiction the petitioners would be deemed to have continued its factory till July 18,1994 and closure, if any, on March 31, 1993 would be illegal and they would be liable for payment of the wages of the workmen up to that time. Learned counsel for the petitioners confronted with this position submitted that the petitioners are only liable to pay wages to the workmen if they were entitled under the law. He urged that since the workmen did not perform any work at the factory they were not entitled to wages on the principle of no work no pay. In my view, the submission of the learned counsel is devoid of force as in the circumstances of the case the workmen if at all did not perform any work it was because of the petitioners not taking work from them. It is not the case of the petitioners that they did not work of their own volition. The principle of no work no pay applies where a workman stops work at his own sweet will. It is noteworthy that pursuant to the orders of the Division Bench the petitioners deposited wages of the workmen for two months, viz. April and May, 1993. Therefore, even after the alleged closure of the factory on March 31,1993,

the petitioners deposited the wages of the workmen for April and May, 1993 and did not challenge the decision of the Division Bench. 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. It is not the case of the petitioners that services of the workmen had been terminated on or before March 31,1993. Even if the services had been terminated the petitioners would have been liable to pay retrenchment compensation. It is not a case of the petitioners that any retrenchment compensation was paid to the workmen. Case of the petitioners is that because of the factory having been closed on March 31, 1993, the employment of the workmen came to an end. This submission of the learned counsel flies in the face of the provisions of Section 25(O) of the Act as till the unit or the undertaking is closed in accordance therewith, 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. In this view of the matter, I am of the confirmed opinion that the workmen are entitled to the wages as the same are due to them u/s 25(O) of Chapter Vb of the Act. Since the wages of the workmen are due under Chapter Vb, the recovery thereof u/s 33(C)(1) cannot be faulted as legally the unit closed only with effect from July 18,1994 and not from March 31, 1993,therefore during the interregnum the workmen were entitled to their wages. In the circumstances no further interpretation of the provisions of Section 33(C)(1) of the Act is required.

(11) Learned counsel for the petitioners submitted that five workmen had settled their dispute with the petitioners. If that is so, the remaining workmen in any case are required to be paid their wages for the aforesaid period. In case of the five workmen, the Labour Commissioner will determine whether there was any settlement as asserted by the learned counsel for the petitioners. In case there was a settlement the impugned recovery certificate will be" modified accordingly. In the meanwhile, however, the petitioners will pay the wages of the remaining workmen excluding the wages of the five workmen with whom the settlement has been allegedly arrived at.

(12) With these observations, the writ petition is disposed of.