
(2002) 07 PAT CK 0008

In the Patna High Court

Case No : Criminal Miscellaneous No. 5702 of 1986

Dr. S. Chakravarty and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 10-07-2002

Acts Referred:

Citation : (2002) 07 PAT CK 0008

Final Decision : Dismissed

Judgement

S.N. Jha and P.N. Yadav, JJ.—These two cases have been listed for hearing on remand by the Supreme Court. Before we refer to the remand order we may mention what the cases are about.

2. Criminal Misc. No. 5702 of 1986 has been filed on behalf of five Petitioners claiming to be the Directors of Ashoka Cement Limited, a subsidiary of Rohtas Industries Limited, having its factory premises at Dalmia Nagar in the district of Rohtas, for quashing the order of the Judicial Magistrate, 1st Class, Sasaram taking cognizance against them in Official Complaint Case No. 12 of 1985. The Petitioners are alleged to have closed the factory in violation of the provisions of Section 250 of the Industrial Disputes Act (in short, "the Act") and thereby committed offence punishable u/s 25R of the Act with imprisonment extending to six months, or with fine extending to Rs. five thousand, or both. A Division Bench of this Court by judgment and order dated 17.10.1996 held that two of the Petitioners had moved this Court earlier in Criminal Misc. No. 2928 of 1986 challenging the very same order of the Magistrate which was dismissed and, therefore, it was not open to the Petitioners to re-agitate the same point, and accordingly dismissed the application.

3. It appears that during the pendency of the Criminal Misc. No. 2928 of 1986, some of the Petitioners filed Cr.W.J.C. No. 202 of 1986 challenging the constitutional validity of Section 250 of the Act. The writ petition came up for hearing along with Cr. Misc. No. 5702 of 1986. The Division Bench noticed that the constitutional validity of Section 250 of the Act has already been upheld by a

Division Bench in the case of Hindalco Industries Limited v. Union of India 1996 (2) PUR 520, and accordingly held that the issue involved is covered by the said decision and thus dismissed the writ petition too, by a common judgment dated 17.10.96, referred to above. The Petitioners approached the Supreme Court in SLP (Cr.) Nos. 1302 and 1303 of 1997 challenging dismissal of the two cases. An interim order of stay was passed by the Supreme Court on 21.4.1997. It appears that constitutional validity of Section 250 of the Act had come for scrutiny in different High Courts and there was divergence of opinion on the point. The matter accordingly was referred to the Constitution Bench. By judgment dated 17.1.2002 the Constitution Bench upheld the constitutional validity of Section 250 distinguishing the earlier decision in Excel Wear and Others Vs. Union of India (UOI) and Others, The judgment has since been reported in Orissa Textile and Steel Ltd. Vs. State of Orissa and Others, Having upheld the vires, the cases were remitted to the Division Bench for decision in individual cases, S.L.R (Cr.) Nos. 1302 and 1303 of 1997, which were renumbered as Criminal Appeal Nos. 76 and 77 of 2002, were finally disposed of in the same terms as Civil Appeal No. 3455 of 1990 on behalf of Rashtriya Jay Shree Tyres Karamchari Union and Anr. on 5.2.2002. It may be mentioned here that appeal had arisen from a judgment of Allahabad High Court holding Section 6-W of the UP. Industrial Disputes Act, containing identical provisions as Section 250 in the Central Act, to be invalid. In view of the abovesaid decision of the Constitution Bench in Orissa Textile and Steel Ltd. (supra), the judgment of Allahabad High Court being not in accordance with the decision, had to be set aside. However, it appears that an argument was also made at the time of hearing of appeal, before the Division Bench, that certain subsequent events had taken place when the proceedings were pending before the Supreme Court. While remitting the case to the High Court the Supreme Court observed that it is open to the parties to bring the subsequent events to the notice of the High Court for appropriate directions. The Supreme Court noted that Allahabad High Court did not go into the Petitioners' case on merit as decided by the Industrial Tribunal. The appeals of the Petitioners herein Cr. Appeal Nos. 76-77 of 2002) were disposed of in the following terms.

Following the decision in C.A. No. 3455/1990 and for the reasons stated therein these appeals are allowed in the same terms as set forth therein.

These cases have accordingly been listed for hearing before this Bench, on remand.

4. We observed in course of hearing that though Special Leave Petitions/Appeals of these Petitioners were disposed of in the same terms as Civil Appeal No. 1455 of 1990 the fact of the matter is that the decision of Allahabad High Court giving rise to the SLP by Raahtriya J.S. Tyres Karamchari Union has a contrary decision. Whereas the Allahabad High Court had held the provisions of Section 6-W of the U.P. Industrial Disputes Act to be invalid, this Court had upheld constitutional validity of Section 250 of the Central Act in the case of Hindalco Industries Limited (supra), following which the writ petition of the Petitioners i.e. Cr.W.J.C.

No. 202 of 1986 had been discussed. Sri Tara Kant Jha, learned Counsel for the Petitioners, submitted that though the case of Rashtriya J.S. Tyres Karamchari Union in terms of which the Special Leave Petitions of these Petitioners were allowed, arose in a different situation, the fact remains that they were allowed in the same terms. It was pointed out that in these cases also the certain events had taken place during the pendency of the SLP before the Supreme Court which have a bearing on the prosecution of the Petitioners. He however, fairly stated that the so far issue of constitutional validity of Section 250 of the Act is concerned, the same is covered by the above decision of the Supreme Court in Orissa Textile and Steel Ltd. Vs. State of Orissa and Others, He thus confined his submissions to the validity of the prosecution of the Petitioners which is the subject matter of Criminal Misc. No. 5702 of 1986.

5. In one sense there is little to argue in challenge to the prosecution of the Petitioners since two of the Petitioners had approached this Court and raised precisely the same contentions which Sri Tara Kant Jha attempted to raise in course of hearing, which were rejected by a reasoned order of this Court in Cr. Misc. No. 5928 of 1986. The only ground on which a fresh application on behalf of those Petitioners, joined by three others, was entertained was challenge to the constitutional validity of Section 250 of the Act, the violation of which gave rise to the complaint and the Petitioners' prosecution. The constitutional validity of Section 250 having been upheld by the Supreme Court, the ground is no more available to the Petitioners; indeed, as mentioned above, the issues involved were not pressed as being covered by the decision in M/s Orissa Textile and Steel Limited.

6. In fairness to the Petitioners, however, the submission of Sri Tara Kant Jha as to invalidity of the prosecution of the Petitioners may be noticed as under. Shri Jha submitted that the prosecution has been launched for closure of the factory premises allegedly in violation of Section 250 of the Act as amended by Act 46 of 1982 even though the Petitioners had served notice of closure in terms of Section 25FFA of the Act declaring their intent on to close the factory. Section 25FFA of the Act provides that "an employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking." Such a notice having been given on 7.7.1984 the management was fully entitled to close the factory on expiry of the stipulated period. It was pointed out that at the time when the notice was given the old provisions of Section 250 of the Act were in force which did not provide for prior permission of the appropriate Government in the matter of closure of the undertaking. This requirement arose by virtue of the amended provisions coming into force with effect from 21.8.1984. It was submitted that in terms of the provisions of un-amended Section 250 of the Act, on failure of the State Government to communicate any order on the notice, the permission applied for was to be deemed to have been granted on expiry of stipulated period of sixty days, and as

in the instant case the State Government being the appropriate Government did not communicate its order on the request notice, it must be held that deemed permission had been granted and, therefore, the Petitioners could not be prosecuted for the alleged violation of Section 250 of the Act.

7. From a perusal of the judgment of this Court in Criminal Misc. No. 2928 of 1986 it appears that similar argument was advanced on behalf of the Petitioners in that case too but rejected by this Court. There being inter party judgment at least so far as two Petitioners are concerned, and dispute being the same, we do not think it is possible to take a different view particularly when the Supreme Court has not set aside the judgment of this Court. Besides whatever has been said by this Court in Criminal Misc. No. 2928 of 1986 we would like to add that the provisions of the amended Section 250 of the Act admittedly came into force on 21.8.1984 and, therefore, as on the date of closure i.e. on 9.9.1984 there being no permission of the State Government within the meaning of Section 250 of the Act, the closure must be held to be in violation of Section 250 of the Act punishable u/s 25R of the Act.

8. Sri Tara Kant Jha, however, submitted that the decision of the management to close the undertaking stands vindicated by subsequent events and considering that the offence was committed 16 years ago and the undertaking has gone in liquidation, it would be in the ends of justice to put an end to the Petitioners' prosecution. Sri Jha submitted that at the instance of the workers of Rohtas Industries Limited the Supreme Court made endeavours to rehabilitate the Undertaking, h Writ Petition (Civil) No. 5222 of 1985. The said petition remained pending for ten years in the Supreme Court during which the Court issued a number of directions from time to time. Though as would appear from the order passed in the above said case on 28.10.1987, different Units of the Undertaking of Rohtas Industries Limited could be revived for some time, finally the rehabilitation of the industry was given up and the matter was sent back to this Court being considered in the pending winding up petition (Company Petition No. 3 of 1984). He pointed out that thereafter this Court passed a winding up order. The decision of the management to close the factory thus stands vindicated. It was sub-committed that if the Supreme Court despite its best efforts and intention could not succeed in reviving the industry, it becomes clear that in the prevailing situation at the relevant time, it was not possible to run the factory. The decision to close the establishment thus being a bona fide decision, it would be unjust to prosecute the Petitioners for having violated the provisions of Section 250 of the Act, which is a technical offence and there being no mens rea involved, the proceeding should finally closed.

9. We find substance in the submission of Sri Tara Kant Jha. As a matter of fact Shri Jha brought to our notice an order of the Supreme Court, dated 8.12.94, in the case of Ashok Kumar Jain and Ors. (Criminal Appeal Nos. 192-197 of 1985) who were being prosecuted for violation of Section 25M of the Industrial Disputes Act. The Appellants of that appeal i.e. Ashok Kumar Jain and others, as stated,

also happen to be the Ex-Directors of Rohtas Industries Limited. Sri Jha submitted that the provisions of Sections 250 and 25M are sister provisions; while Section 250 refers to closure of the Undertaking as a whole, Section 25M refers to lay-off of the workmen. He pointed out that even though the constitutional validity of Section 25M of the Act was upheld by the Supreme Court, in the facts and circumstances, the Court held that the prosecution of the Appellants for violation of Section 25M of the Act would not be in the ends of justice.

10. It appears that the above said Criminal appeals had arisen from an order of this Court by which direction was issued to the Magistrate to hold enquiry u/s 202 of the Code of Criminal Procedure to find out whether the Appellants or any one of them could be held to be employer so that they could be summoned to stand trial for the aforesaid offence. The Supreme Court noted the submissions advanced on behalf of the Petitioners including one with respect to the bonafide of the management of the Company in resorting to lay-off, that such an action had to be taken to save the Company from winding up. The situation was so grave that the management felt the need of immediate lay off without waiting for permission as contemplated u/s 25M of the Act. The Court found "enough force" in the contentions and observed that in the "special facts of the case and in the altered scenario the enquiry as directed by the Court need not be made and the criminal cases instituted against the Appellants need not be pursued any further". The Court observed that such course of action will not only be within the scope and ambit of Section 482 of the Code of Criminal Procedure but in the facts and circumstances of the case will also secure the ends of justice.

11. The submissions made in the case of Ashok Kumar Jain, in somewhat similar context, and observations of the Supreme Court, in our opinion, can be applied with full measure to the facts of the instant case. Even though the constitutional validity of Section 25M of the Industrial Disputes Act had been upheld by the Supreme Court in Civil Appeal No. 507 of 1982, a fact noted by the Court in the order, and to that extent the contention on behalf of the Petitioners that Section 25M being ultra vires no. prosecution on account of its violation was maintainable stood rejected, the Supreme Court nonetheless quashed the prosecution. The closure of the factory having subsequently stood vindicated, the decision of the management of the Company to close the Undertaking must be held to be bona fide. Besides, admittedly, the Company has gone in liquidation and it could not be in the ends of justice to continue the prosecution of the Petitioners. It is not likely to serve any useful purpose. In the peculiar facts and circumstances, therefore, we are inclined to quash the prosecution of these Petitioners in Official Complaint Case Nos. 11 of 1985 and 12 of 1985 pending before the Judicial Magistrate, Rohtas at Sasaram.

12. In the result Cr.W.J.C. No. 202 of 1986 is dismissed. Criminal Misc. No. 5702 of 1986 is allowed. The proceedings against the Petitioners in Official Complaint Case Nos. 11 and 12 of 1985 are, hereby quashed.