
(1978) 04 CAL CK 0059
In the Calcutta High Court

Electrosteel Castings Ltd.

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 28-04-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 25F, 25K, 25L, 25M, 25N

Citation : (1978) 2 LLJ 521

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Judgement

Sabyasachi Mukharji, J.—This is an application under Article 226 of the Constitution challenging an order dated the 16th November, 1977, passed by the Special Officer and Ex-officio Deputy Secretary, Labour Department, Government of West Bengal.

2. In order to appreciate the challenge it would be necessary to advert to certain facts. The petitioner No. 1 is a company and carries on business, inter alia, in the manufacture and sale of cast iron spun pipes, steel castings and grinding media and for its said business the said petitioner owns and operates two factories which are known as Spun Pipe Works and Steel Foundry Works at Barrackpore Trunk Road, 24-Parganas, West Bengal. The company employs 287 workmen in Spun Pipe Works and 442 workmen in the Steel Foundry Works, The company also employs 39 and 77 non-workmen start respectively in the said two factories. The cast iron spun pipes manufactured by the petitioner-company are used for water supply and sewerage schemes. All water supply and sewerage schemes are undertaken by various public health engineering authorities of either the State Governments or the Central Government and as such the Government bodies are the only buyers of the cast iron spun pipes manufactured in the country. It is slated that there were originally altogether 8 manufactures of cast Iron spun pipes in the country having a total installed capacity of about 5 lakh tons per annum. Out of these eight manufacturing units, Indian Iron & Steel Company at Kulti and Indian Iron & Steel Company Station, Ujjain which have

been taken over by the Central Government since 1976, have an installed capacity of 2,16,000 tons. In addition the IISCO-Stantion have been further granted licence for expansion to the tune of another 60,000 tons, which expansion is reported to have been almost completed, according to the petitioner. Since early 1976, according to the petitioner, the spun pipe industry as a whole has been under the grip of acute recession in demand due to severe curtailment of Government expenditure for the purchase of C.I. spun pipes and the availability of cheaper products like asbestos cement pipes, PVC pipes, HDPE pipes, prestressed concrete pipes and ACC pipes. Moreover it appears that the former Minister of Steel & Mines had written a letter to the Chief Minister of all the States requesting them to direct their respective Chief Engineers of all the Engineering Departments to buy C.I. spun pipes manufactured by IISCO-Stantion, Ujjain and IISCO, Kulti. Similar instructions were also issued by the Union Ministry of Defence and Bureau of Public Enterprises, Ministry of Finance, Government of India. The State and the Central Government being the only purchasers of the said cast iron spun pipes, the inevitable result of the said instructions has been denial of market availability for catering the manufactured goods by non-Central Government undertakings. In the result, four out of six non-Central Government manufacturing units, namely, Sakti Pipes Ltd., Madras, Andhra Foundry, Hyderabad, Gaday Iron & Steel Co. Ltd., Mysore had been forced to close down their factories. It is the case of the petitioner No. 1, further that as a result of the sharp decline in demand, the work in the said Spun Pipe Works of the company had been adversely affected. In the premises, a large number of employees of the said petitioner have become surplus and the said petitioner accordingly applied to the State Government for permission to retrench 214 workmen in Electrosteel Castings Ltd. The petitioner-company had sought permission to retrench 136 workmen from the Spun Pipe Division and 78 workmen from the Steel Foundry Division. This application made u/s 25N of the Industrial Disputes Act, 1947. The State Government by the order dated 16th November, 1977 has refused the permission sought for. In the said order the State Government has observed that all the unions functioning in the industry had been consulted and according to them the petitioner-company was a highly profitable concern and whatever difficulties were there these had been created due to the wrong policy of the management who were not interested in securing order and who wanted to make the industry more capital intensive and were trying to reduce the number of workmen. In the premises the order, inter alia, further observed as follows :

After going through the papers placed before me and the submissions of all concerned, I feel that there is some force in the statement of the management that requirement of Spun pipes from this concern has considerably reduced due to the directive of the Union Ministry of Steel and Mine urging the State Governments to make their purchase from Public Sector Undertakings. It is also found that this matter has been taken up by the concern and the association to which it belongs, with the Government of India and the State Government. They

have written to the Prime Minister. Union Minister of Steel and Mines, Chief Minister, Commerce & Industries Minister of this State and other Ministers. It is also noticed that the Commerce & Industries Minister of this State has taken up the issue with the Union Ministry of Steel & Mines. The Chief Minister has also assured them that he would look into the problem. Therefore, at this stage, there is no reason to be completely pessimistic about the outcome of the discussion. The attention of the State Government is being invited again to the need for taking up the matter with the Government of India.

Assuming that the State Government will pay adequate attention to the problem, it is felt that it is not immediately necessary to retrench the large number of workmen in the manner suggested. This is because it is found this concern is a highly profitable organisation which has paid heavy dividends in the preceding years and has built up huge reserves. Its current assets are more than three times its current liabilities and, therefore, the concern can certainly wait for some time to watch further developments. Moreover, it has also reduced a large number of casual and badli workers and, therefore, considerably lessened expenditure on wages. It is also possible for the company to make diversification in certain directions and new production lines. The concern is in a position to do so due to its financial stability. It is well-known that this has some constraints and is a time-consuming process but in the case of this particular concern, it may be possible to overcome the constraints and carry on for some time till it is in a position to make the required diversification. Regarding the Steel Foundry Division, the concern should be able to meet the challenge of the new units that are coming up because it is in a position to reduce prices and still remain viable.

Accordingly, while I am drawing the attention of the State Government to the requirements for taking up the issue regarding orders for spun pipes with the Government of India, I feel that there is no reason for permitting the retrenchment of the large number of workmen, as prayed for by the management. The permission prayed is accordingly refused under provisions of Section 25N(2), Industrial Disputes Act, 1947.

3. The said order has been challenged in this application under Article 226 of the Constitution mainly on the ground that the State Government has no authority to refuse permission on the grounds it has purported to do.

4. Relevant portions of Section 25N, which is in Chapter VB of the Industrial Disputes Act, 1947 and which came into effect on and from 5th March, 1976, read as follows : ...

25N. Conditions precedent to retrenchment of workmen--

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

(a) the workman has been given three months' notice in writing indicating the

reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of notice :

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for termination of service ;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service of any part thereof in excess of six months ; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the official Gazette, and the permission of such Government or authority is obtained under Sub-section (2).

(2) On receipt of a notice under Clause (c) of Sub-section (1) the appropriate Government or authority may, after making such enquiry as such Government or authority thinks fit, grant or refuse, for reasons to be recorded in writing, the permission for the retrenchment to which the notice relates.

5. It has to be borne in mind that Chapter VB was introduced by Act XXXII of 1976 bringing into the operation of the Industrial Disputes Act, 1947, Section 25L, 25K, 25M, 25O, 25P, 25Q, 25R, and 25S all together. These are special provisions relating to lay-off, retrenchment and closure in certain circumstances. In the circumstances, specified in the relevant sections, before laying off workmen or before retrenching or before closing the establishment, permission of the appropriate Government has been made a condition precedent by the said relevant sections. On behalf of the petitioner, counsel submitted, that in the matter of retrenchment the management had discretion and so long it acted bona fide and not in any manner which could be termed to be unfair labour practice, or with the object of victimisation of labour, decision of the management to retrench any particular employee bona fide taken in discharge of its managerial function could not be questioned or set at naught by refusal to grant permission by the State Government. Counsel urged that the State Government u/s 25N had no power in considering an application for permission to go beyond the existing industrial law on the point of retrenchment and that existing industrial law, according to counsel, was that by and large decision regarding retrenchment bona fide taken was within the domain of managerial decision and discretion and could not be interfered with either by the Tribunal under the industrial adjudication or by the State Government in exercise of the power u/s 25N of the Act.

6. Counsel for the petitioner drew my attention to the decision in the case of The New Maneck Chowk Spinning and Weaving Co. Ltd., Ahmedabad and Others Vs. The Textile Labour Association, Ahmedabad, . There at page 870 of the report after referring to several authorities the Supreme Court observed that there was no doubt that it was open to an industrial Court in an appropriate case to impose new obligations on the parties before it or modify contracts in the interest of

industrial peace or to give awards which might have the effect of extending the existing agreement or making a new one. This, however, did not mean that an industrial Court could do anything and everything when dealing with an industrial dispute. The power was conditioned by the subject-matter with which an industrial Court was dealing and also by the existing industrial law and it would not be open to it while dealing with a particular matter before it to overlook the industrial law relating to that matter as laid down by the Legislature or by the Supreme Court. Counsel submitted that if it was not open for the Tribunal to ignore the industrial law as such it was far more obligatory for the Government in discharging its function u/s 25N not to ignore the industrial law as laid down by the Legislature or as enunciated by the Supreme Court. Reliance was also placed on a decision in the case of *Workmen of S.T. Estate v. S.T. Estate* AIR 1976 S.C. 420. There the Supreme Court observed at page 424 of the report that the true legal position in respect of industrial law as to retrenchment was not in doubt. Section 25F of the Industrial Disputes Act, 1947 prescribed the conditions precedent to a valid retrenchment of industrial employees. It provided that no workmen employed in any industry who had been in continuous service for not less than one year under an employer should be retrenched by that employer until one month's notice had been served on him as prescribed. The Supreme Court, further, observed at page 424 of the report as follows ;

In dealing with the question of retrenchment in the light of the relevant provisions to which we have just referred, it is, however, necessary to bear in mind that management can retrench its employees only for proper reasons.

It is undoubtedly true that it is for management to decide the strength of its labour force, for the number of workmen required to carry out efficiently the work involved in the industrial undertakings of any employer must always be left to be determined by the management in its discretion, and so, occasions may arise when the number of employees may exceed the reasonable and legitimate needs of the undertaking. In such a case, if any. workman become surplus, it would be open to the management to retrench them. Workmen may become surplus on the ground of rationalisation or on the ground of economy reasonably and bona fide adopted by the management, or of other industrial or trade reasons. In all these cases, the management would be justified in effecting retrenchment in its labour force. Thus, though the right of the management to effect retrenchment cannot normally be questioned, when a dispute arises before an Industrial Court in regard to the validity of any retrenchment, it would be necessary for industrial adjudication to consider whether the impugned retrenchment was justified for proper reasons. It would not be open to the management either capriciously or without any reason at all to say that it proposes to reduce its labour force for no rhyme or reason. This position cannot be seriously disputed.

7. In the case of *Parry and Co. Ltd. Vs. P.C. Pal and Others*, , the Supreme Court reviewed several decisions and observed that the management could retrench its

employees only for proper reasons, which meant that it must not be actuated by any motive of victimisation or any unfair practice and that it was for the management to decide the strength of its labour force. The decision as to the number of workmen required to carry out efficiently the work in its industrial undertaking must always be left to the determination of the management in its discretion. If the number of employees exceeded the reasonable and legitimate needs of the undertaking, it was open to the management to retrench them and the workmen might become surplus on the ground of rationalisation or economy reasonably or bona fide adopted by the management or on the ground of other industrial or trade reasons, and the right to effect retrenchment could not normally be challenged. But when there was dispute about the validity of retrenchment, the impugned retrenchment must be shown as justified on proper reasons, that is to say, it was not capricious or without rhyme or reason.

8. Counsel for the petitioner submitted that it was for the employer to decide whom it should keep and what staff it should maintain and so long as it made the decision bona fide and for good reasons Government had no power to interfere with such decision. I have set out Sub-section (2) of Section 25N of the Act which enjoins the appropriate Government to make an enquiry when an application as contemplated under Clause (c) of Sub-section (1) of 25N is made. It, further, enjoins the appropriate Government to grant or to refuse to grant permission and to record in writing the reasons. What should be the reasons for granting or not granting the permission is not expressly provided in Sub-section (2) of Section 25N of the Act. But the order must be for reasons and the reasons must have objective nexus with the objects and scheme of the Act. The objects and scheme of the Industrial Disputes Act, 1947, as often noticed in several decisions, are to facilitate industrial harmony by helping the conciliation and avoiding industry disputes. Anything which helps conciliation, facilitates and furthers industrial adjudication and thereby restores industrial harmony would be within the objects and the purpose of the Industrial Disputes Act, 1947. Therefore, the reasons for grant or non-grant of permission under Sub-section (2) of Section 25N of the Act must be relevant and germane to the said objects. If for the reasons which are relevant or germane to the objects of the Act, the authorities concerned have fairly and bona fide arrived at a decision, then in my opinion, such a decision cannot be interfered with by this Court even though this Court may be inclined to take a different decision on the facts. Reading the impugned order in that light, it appears that the State Government has taken into consideration that fact that a large number of people are involved as such, who are proposed to be retrenched by the concern which is not running at a loss, as such. It is true that the particular articles with the production of which these workmen are concerned have become establishment or not profit yielding because of the shortage of market, as noted hereinbefore. But the State Government has taken into consideration the fact that the shrinkage in the market demand may not be permanent and there was possibility if not possibility of revival. The State Government has also taken into consideration that there

might be the possibility of diversification and there was no statement that no diversification was possible and large dividends had been paid in the preceding years and there was huge built up reserves of this concern. Therefore, in this light, the State Government has viewed that the petitioner concerned was capable of waiting either to see if the market demand for the products would revive or to examine whether diversification was possible. If on these considerations and in view of the impact of the retrenchment on clamour for industrial disputes at large the State Government has sought to refuse permission now it is not possible to say that such refusal has been on collateral grounds, grounds not germane to the section. Counsel for the petitioner contended that such an in-road to the managerial discretion could not have been intended by the Legislature. As to the power of Section 25N he has contended that the managerial discretion was still within its compass comprehending the decision as to how many labour would be employed by the industry provided that decisions was taken bona fide and not for victimisation or for unfair labour practice. It is true that primarily to whom to employ and to whom not to employ is within the managerial discretion. But that managerial discretion has since the inception of the Industrial Disputes Act, 1947 been largely fettered on the ground of industrial harmony and powers have been given to the authorities mentioned under the Industrial Disputes Act, 1947 to question and to control the managerial discretions in many fields. The fact that before retrenchment the industry has to obtain the permission of the Government by itself a fetter on the managerial discretion and it is apparent that Section 25N is not a section independent of itself and it comes along with a bunch of sections where special provisions have been made relating to the lay off, retrenchment and closure in certain establishments. It appears that in the scheme of things such lay off, retrenchment and closure have repercussions in the industrial climate of the country and in the industrial unrest in the country. Therefore, such closure, retrenchment and lay-off must be controlled by the State with the object of ensuring that there did not lead to industrial discord at the same time preserving the obligations of the labour and the prerogatives of the management. If in preserving the claims of workmen that they are not to be retrenched or not to be laid-off or closure and the rights of the management to exercise its prerogatives, the State Government attempts to strike a balance between the industry and the labour, in my opinion, such attempt could not be considered to be an in-road on the managerial discretion, as counsel for the petitioner sought to urge. If that is the position then in my opinion the impugned order cannot be challenged either as collateral or based on reasons not relevant to the section. If the order is based on reasons relevant to the section then I am not concerned with the propriety of the decision provided the decision was arrived at not in an arbitrary manner or in a perverse manner. The impugned order, in my opinion cannot be said either perverse or passed in any arbitrary manner. In that view of the matter the challenge to the order, in my opinion, cannot be sustained.

9. The application, therefore, fails and is accordingly dismissed. The Rule Nisi is

discharged. Interim order, if any, is vacated. There will, however, be no order as to costs.