

(1993) 07 CAL CK 0026
In the Calcutta High Court
Case No : Circuit Rule No. 33/91

Executive Engineer, Electricity Dept., Rural Division	APPELLANT
Vs	
Shri Chandraiah and 273 Workmen (represented by Bijili Kamgar Union)	RESPONDENT

Date of Decision : 26-07-1993

Acts Referred:

Constitution of India, 1950 — Article 227
Factories Act, 1948 — Section 2
Industrial Disputes Act, 1947 — Section 25L, 25N

Citation : (1994) 2 LLJ 964

Hon'ble Judges : Susanta Chatterjee, J; Nisith Batabyal, J

Bench : Division Bench

Advocate : A.S. Ray and B. Shivasaroop, for the Appellant; A.K. Ray, for the Respondent

Final Decision : Dismissed

Judgement

Susanta Chatterjee, J.—The present application under Article 227 of the Constitution of India at the instance of the applicant challenges the Award dated May 31, 1991 of the Industrial Tribunal, Port Blair pursuant to the reference dated April 25, 1990 u/s 12(5) of the Industrial Disputes Act, 1947, since made by the Lt. Governor (Administrator). Andaman and Nicobar Islands for adjudication of the dispute;

"Whether the action of the Executive Engineer, Electricity Department, Rural Division, Rangat in retrenching 273 workmen with effect from April 1, 1989 is legal and justified, and if not, to what relief, are the concerned workmen entitled?"

2. The Presiding Officer considered three issues:

(1) Is the reference maintainable?

(2) Were the workmen retrenched as stated by the first party? If so, was the

retrenchment with effect from April 1, 1989 legal and justified?

(3) To what relief, if any, are the first party workmen entitled?

3. Assigning the reasons the Presiding Officer has held that the retrenchment of the workmen with effect from April 1, 1989 is to be declared illegal, unjustified and void. He has held, inter alia, that the workmen numbering 273 cannot be treated to be disengaged from April 1, 1989. There has been a direction for publication of the Award in the Official Gazette.

4. Being aggrieved the present application has been filed with an application u/s 5 of the Limitation Act for condonation of delay. The Affidavit is sworn on November 20, 1991. A rule was issued on November 22, 1991. The matter appeared before different Benches of the Circuit Court and time to time the part-heard matter has appeared before this Bench and the matter is disposed accordingly.

5. The grievance of the applicant is that 273 respondents were daily rated mazdoors and they were all appointed on different dates and engaged for different work in connection with the execution and implementation of Rural Electrification work in the area including Rangal, Bakultala, Yerratta, Kadamtala, Baratang under the jurisdiction of the Executive Engineer (Rural, Electricity Department, Middle Andaman vide Orders No. 18 dated January 4, 1989, No. 25 dated January 5, 1989, No. 26 dated January 5, 1989, No. 27 dated January 5, 1989, No. 28 dated January 5, 1989, No. 29 dated January 5, 1989, No. 112 dated February 1, 1989, No. 121 dated February 2, 1989, No. 126 dated February 3, 1989, No. 173 dated February 21, 1989 of the Executive Engineer (R), Electricity Department, Middle Andaman. A dispute against the alleged retrenchment was raised and Andaman and Nicobar Administration made the reference for effective adjudication by notification No. F75-73/88-H&R dated April 25, 1990. After filing of all statements, and giving full opportunity to both sides, the impugned order was made.

6. Mr. A.S. Ray, the learned Advocate appearing for the applicant, has argued before us that the impugned Award cannot be sustained in view of the fact that the learned Tribunal has held, inter alia that the conditions precedent to the retrenchment of the workmen in the Electricity Department at Middle Andaman are to be made in accordance with S.25-N of the Industrial Disputes Act. Chapter-VB of Industrial Disputes Act shall apply to an industrial establishment and u/s 25N, no workman who has been in continuous service for not less than one year in an industrial establishment shall be 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 the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette has been

obtained on an application made in this behalf.

7. According to Mr. Ray, the Tribunal has committed a grave error in view of the fact that the Electricity Department, Rural Division, Rangat is not an industrial establishment within the scope of Section 25L of the Industrial Disputes Act. He has drawn the attention of the Court that Chapter VB of the Industrial Disputes Act provides special provision relating to lay-off, retrenchment and closure in certain establishments- Section 25K provides that the provisions of this Chapter shall apply to an Industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 100 workmen were employed on an average per working day for the preceding twelve months. The word "one hundred" has been substituted for "three hundred" with effect from January 20, 1984 by Act 46 of 1982. Section 25L indicates that for the purpose of this Chapter,-

(a) "industrial establishment" means-

(i) a factory as defined in Clause (m) of Section 2 of the Factories Act, 1948;

(ii) a mine as defined in Clause (j) of Sub-section (1) of Section 2 of the Mines Act, 1952; or

(iii) a plantation as defined in Clause (f) of Section 2 of the Plantations Labour Act, 1951;

8. Mr. Ray appearing for the applicant has laid much emphasis upon Chapter VB of the Industrial Disputes Act and upon Section 25L. He has contended that Section 25L is not at all applicable in respect of the facts of the present case and the applicant is not an industrial establishment within the scope of Section 25L of the Act and consequently the necessary compliance of S.25N of the Industrial Disputes Act does not arise. The entire approach of the tribunal is erroneous and perverse. In support of this contention he has relied upon a decision reported in *Excel Wear and Others Vs. Union of India (UOI) and Others*, The question as to the validity of Section 25O and Section 25R of the Industrial Disputes Act (14 of 1947) was considered. It was found that Section 25O of the said Act as a whole and Section 25R so far as it relates to the awarding of punishment for infraction of the provisions of Section 25-O were constitutionally bad and invalid for violation of Article 19(1)(g) of the Constitution. Intrinsically no provision of Chapter VB suggests that the object of carrying on the production can be achieved by the refusal to grant permission although in the Objects and Reasons of the Amending Act such an object seems to be there, although remotely, and secondly, it is highly unreasonable to achieve the object by compelling the employer not to close down in public interest for maintaining the production. Mr. Ray has also referred to a decision reported in *K.V. Rajendran Vs. Dy. Commissioner of Labour, Madurai and Others*, It was observed that Section 25N suffers from arbitrariness and unreasonableness. Section 25N or any other provision of the Act does not provide the guidelines as to how the applications for permission by an employer for retrenchment have to be disposed of and on what

grounds the permission could be refused. It was found that there was an unreasonable restriction which was violative of Article 19(1)(f) and (g) of the Constitution. The case reported in 1978 Labour and Industrial (SC) Cases page 1537 was followed,

9. Mr. Ray has raised this only point that since Chapter VB is not applicable, and/or since the applicant establishment cannot be roped in, in view of the "establishment" contemplated u/s 25L of the Act, there cannot be any applicability of Section 25N as found by the tribunal and in consequence thereof, the impugned Award may be set aside.

10. Mr. A.K. Ray, appearing for the workmen in support of the Award has submitted that the impugned Award is justified. Section 25L indicates, inter-alia, that an "industrial establishment" means a factory as defined in Clause (m) of Section 2 of the Factories Act. He has drawn the attention of the Court to Clauses (k) and (m) of Section 2 of the Factories Act, 1948 and undisputedly the applicant is an industrial establishment and this fact was never disputed and the applicant cannot be allowed to argue such a point and there is no infirmity in the impugned Award. He had also argued that there is neither compliance of Section 25F nor of Section 25N of the Industrial Disputes Act and the contentions of the applicant are all fallacious.

11. With great anxiety we have patiently heard the learned lawyers appearing for the respective parties and considered the matter diligently upon perusal of all the materials on record. The scope of revision or the power of superintendence as envisaged under Article 227 of the Constitution of India is very much limited indeed. Even by stretching the power of writ jurisdiction under Article 226 of the Constitution of India it is found by the Supreme Court that the writ Court is not sitting in appeal but it has to consider the decision making process as found in State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, In view of the circumstances as would appear from the record, we condone the delay, if any, in filing the present application, and this case is considered on merit.

12. However, in the instant case, the only point argued before us is as to whether Chapter VB of the Industrial Disputes Act is attracted in the instant case or not. Having gone through Section 25K and Section 25L of the Industrial Disputes Act, we find that "industrial establishment" has been meant "factory" as defined in Clause (m) of Section 2 of the Factories Act, 1948. Section 2(m) of the Factories Act provides inter-alia:-

"factory" means, any premises including the precincts thereof-

(i) wherein ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) wherein twenty or more workers are working, or were working on any day of

the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid or power, or is ordinarily so carried on.-

but does not include a mine....."

13. We have considered the expression "manufacturing process" as defined in Section 2(k) of the Factories Act. It means any process for -

(i) making, altering, repairing, ornamenting, finishing, parking, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal;

(ii) pumping oil, water, sewage or any other substance; or

(iii) generating, transforming or transmitting power; or

(iv) composing types for priming, printing by letter press, lithography, photogravure or other similar process or book binding or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage.

14. In view of the facts of the case we find that the Electricity Department has engaged the workmen for the manufacturing purpose as generating, transforming or transmitting power being acknowledged as manufacturing process and in view of Section 2(k) and Section 2(m) of the Factories Act, the Electricity Department is an industrial establishment and Chapter VB of the Industrial Disputes Act and Section 25L thereof ropes in the applicant establishment. Mr. Ray in his usual fairness has conceded that if Section 25L is applicable to the facts of the present case and that there has been no compliance of Section 25N and the applicant will have no case accordingly. We find further that the ratio of the decisions reported in *Excel Wear v. Union of India and Ors.* (supra) is not at all applicable inasmuch as there is no consideration of Chapter VB or Section 25L and 25N of the Industrial Disputes Act. The consideration of Section 25O and Section 25R are not relevant so far as the facts of the present case are concerned. It is also found that the Madras High Court considered the case of *K. V. Rajendran v. Deputy Commissioner of Labour Madurai and Ors.* (supra) on March 20, 1980. The consideration of Section 25N at that point of time is not relevant also since the present Section 25N of the Industrial Disputes Act has been substituted under Act 49 of 1984 with effect from August 18, 1984. No argument has been advanced as to the vires of Section 25L and or Section 25N of the Industrial Disputes Act. The short point as to the applicability of Section 25L and Section 25N of the Industrial Disputes Act has been considered by this Court and it is found that the applicant establishment can well be roped in u/s 25L under Chapter VB of the Industrial Disputes Act and the impugned Award made by the Industrial Tribunal does not suffer from any infirmity, necessitating any interference by this Court. For the foregoing reasons we do not find any

merit to interfere with the impugned Award and the application under Article 227 of the Constitution of India thus fails and the same is dismissed accordingly. All interim orders are vacated. There will be no order as to costs. This judgment will not, however, prevent the Employer concerned to pass any fresh order of retrenchment strictly in accordance with law.

N.K. Batabyal, J.

I agree.

The present case was heard and concluded on January 25, 1993 and reserved for judgment today. While the judgment was being delivered in the open Court, Mr A.S. Ray appearing for the appellant submitted that steps were taken to settle the dispute outside the Court and there was a sitting between the Lt. Governor and Shri Chandrachudan and Shri Jagannathan on January 22, 1993. There is a minute of the said meeting. No minute of the said meeting was, however, produced before this Court on January 25, 1993 and no whisper was made either by the learned Advocate for the appellant or the learned Advocate for the respondent that an offer has been made as if 273 employees would be given offer of employment within a reasonable time and the employees concerned would have to waive the right of back wages. Mr. A.K. Ray appearing for the respondent workmen submitted that no clear statement has been made and the minutes of January 22, 1993 before the Lt. Governor is not acceptable to them. Since we have delivered the judgment, we are not inclined to take into notice of any such development as held on January 22, 1993. We make it clear that this judgment delivered by us today will not prevent the parties to consider the offer as made on January 22, 1993 and also made today before this Court within a period of 30 days. We, however, stay the operation of the judgment for a period of 60 days.

16. Let plain copy of this order be given to the learned Advocate for both the parties on usual undertakings that they will apply for certified copy within a period of seven days.

17. Let this later portion be recorded in the order sheet.