
(2002) 05 OHC CK 0020
In the Orissa High Court
Case No : O.J.C. No. 15063 of 2001

Ferro Alloys Corporation Ltd.

APPELLANT

Vs

Labour Commissioner and Others

RESPONDENT

Date of Decision : 01-05-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 25M(4)

Citation : (2002) 94 FLR 798 : (2002) 3 LLJ 551 : (2002) 2 OLR 40

Hon'ble Judges : R.K. Patra, J; Pradip Mohanty, J

Bench : Division Bench

Advocate : S.B. Nanda, D.P. Nanda, S.K. Mishra, U.N. Nayak, P.K. Mohapatra and M.K. Pati, Sashikantra Mishra, for the Appellant; Patnaik and Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—In this writ petition, the management seeks quashing of the order dated November 16, 2001 (Annexure-2) of the Labour Commissioner, Orissa, rejecting its application in which it sought permission to lay off 384 workmen in its establishment with effect from November 5, 2001.

2. We have heard Shri D.P. Nanda for the management-petitioner, Shri Patnaik, learned Additional Standing Counsel, for the Labour Commissioner and Shri Sashikanta Mishra for the intervenor- workmen.

3. The case of the petitioner is that it is a registered company and has set up a Charge Chrome Plant at Randia, Bhadrak, which is a power intensive industry and is 100% export oriented. For various chronic sickness followed by host of economic and other unavoidable factors, it has made reference to the BIFR in November, 1998 u/s 15 of the Sick Industrial Companies (Special Provisions) Act, 1985. On account of depressed conditions prevalent in the overseas and also in the domestic market coupled with high power tariff, over capacity and low import duties, the industry was badly affected. To add to its miseries, the North Eastern

Electric Supply Company Limited (NESCO) suddenly increased the electricity tariff resulting in non-viability of the industry. As the petitioner was unable to pay the electricity charges to NESCO, it has disconnected power supply to the plant since March, 2001. The captive power source has also become disabled by over pressure for which reason the petitioner had to stop production activities since November 5, 2001. As such, it has laid off with effect from November 5, 2001 workmen numbering 384 out of the total 438 workmen employed in its establishment due to shortage of power. The petitioner simultaneously applied for permission to the Labour Commissioner, Orissa under Sub-sections (1) and (3) of Section 25-M of the Industrial Disputes Act, 1947 for continuing lay off of the aforesaid 384 workmen. The application is dated November 5, 2001 at Annexure-1 which was received by the Labour Commissioner on November 8, 2001. The Labour Commissioner, however, without giving an opportunity of being heard to the petitioner illegally rejected the application by the impugned order.

4. There is no dispute at the Bar that previous permission of the specified authority to lay off a workman whose name is borne in the muster rolls of the industrial establishment is not necessary if such lay off is due to shortage of power or natural calamity. In this connection we may profitably refer to the judgment of the Supreme Court in *Papnasam Labour Union Vs. Madura Coats Ltd. and Another*, In paragraph-19 of the judgment, the Court observed as follows at pp. 947 & 948 of LLJ:

".....It is evident that the legislature has taken care in exempting the need for prior permission for lay off in Section 25-M if such lay off is necessitated on account of power failure or natural calamities because such reasons being grave, sudden and explicit, no further scrutiny is called for. There may be various other contingencies justifying immediate action of lay off but then the legislature in its wisdom has thought it desirable in the greater public interest that decision to lay off should not be taken by the employer on its own assessment with immediate effect but the employer must seek approval from the concerned authority which is reasonably expected to be alive to the problems associated with the concerned industry and other relevant factors, so that on scrutiny of the reasons pleaded for permitting lay off, such authority may arrive at a just and proper decision in the matter of according or refusing permission to lay off"

It may be noted here that in the case at hand, lay off is made on the ground of shortage of power.

5. By referring to Sub-section (4) of Section 25-M, Shri Nanda contended that the impugned order of the Labour Commissioner is vulnerable because without giving it an opportunity of being heard, he could not have rejected the petitioner's application. We find sufficient force in the above contention, Sub-section (4) of Section 25-M provides that when an application for permission to lay off is made, the specified authority after giving a reasonable opportunity of being heard to the employer, workmen concerned and the persons interested in such lay-off, may grant or refuse to grant such permission. Admittedly, neither

the petitioner nor the workmen concerned nor persons interested in lay off was/ were heard. There is thus clear violation of the principle of natural justice envisaged in the aforesaid provision.

6. For the reason aforesaid, the impugned order cannot be supported in law which is hereby quashed. The matter is remitted to the Labour Commissioner for reconsideration according to law. Counsel for the petitioner and the workmen agree that their representatives would appear before the Labour Commissioner on May 20, 2002 to receive further direction from him.

7. Counsel for the intervenor-workmen submitted that the workmen have not been paid their lay off compensation which fact is disputed by Shri Nanda. Without expressing any opinion on this claim, we give liberty to the workmen to apply to the Labour Commissioner for necessary relief.

8. The writ petition is accordingly allowed.

Pradip Mohanty, J.

I agree.