
(2008) 07 OHC CK 0091
In the Orissa High Court
Case No : OJC No. 5602 of 2000

Forest Organisation Proprietors- Orient Paper and Industries Ltd. and Another APPELLANT

Vs

Labour Commissioner and Specified Authority under the Industrial Disputes Act and Others RESPONDENT

Date of Decision : 25-07-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25M(1)
Orissa Shops and Commercial Establishments Act, 1956 — Section 14(4)

Citation : (2008) CLT 708 Supp

Hon'ble Judges : B.P. Ray, J;A.S. Naidu, J

Bench : Division Bench

Advocate : K.K. Jena and A.K. Biswal, for the Appellant; P.R. Barik, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The Forest Organisation, Proprietors- Orient Paper and Industries Limited and another, have approached this Court with a prayer to quash the order dated 16-5-2000 (Annexure-2) passed by the Labour Commissioner, Orissa (opposite party No. 1) refusing permission to them for laying off sixty-seven workmen out of total ninety-five, employed in their aforesaid establishment, with a further prayer to allow the application dated 27-3-2000 (Annexure-1) and to grant the consequential reliefs.

2. The Orient Paper and Industries Limited (hereinafter referred to as "the company) owns two paper mills, one at Brajarajnagar in Orissa, and another at Amlai in the State of Madhya Pradesh besides having other factories at different places. The paper mill at Brajarajnagar was set up way back in the year 1936 for manufacturing paper and paper-boards. For the purpose of procuring raw materials like bamboo for its use, the State of Orissa had granted forest areas on long-term lease in favour of the company. Petitioner No. 1 Forest Organisation

was created in the year 1938 at Sambalpur which was an establishment distinctly separate from other units of the company. It was registered as a commercial establishment under the Orissa Shops and Commercial Establishments Act, 1956. In the year 1988 the State Government decided to nationalize bamboo trade. Consequently the State Government terminated the long-term lease granted in favour of the company with effect from 1-10-1988. Operation of the lease-hold bamboo forests allotted in favour of the Petitioner stood nationalized and transferred to the Orissa Forest Development Corporation in the year 1993. With a view to increase production of bamboo in forest areas and to get higher royalty the State Government appointed paper mills as labour contractors and decided to entrust them with working of bamboo forest areas. From the year 1993-94 the Orient Paper Mills and other paper mills established in the State were appointed as raw-material procurers, such as extracting bamboo from their allotted Forest Divisions.

3. After nationalization of bamboo forest, Petitioner No. 1 was engaged in procurement and transport of raw-materials from different places in the State. Due to certain difficulties, it is averred in the Writ application, production activity of the Orient Paper Mills, Brajarajnagar Unit was suspended from 27-12-1998. For such eventuality, no work was available for the employees of Petitioner No. 1. Consequently an application was filed under Sub-section (1) of Section 25M of the Industrial Disputes Act by Petitioner No. 2 before the Labour Commissioner-cum-Specified Authority praying for granting permission to lay-off sixty-seven workmen out of total ninety-five employed in the establishment with effect from the date of granting such permission. The reasons assigned for seeking such permission were that the Orient Paper Mills at Brajarajnagar was not having any production activity since 27th December, 1998 for various reasons culminating in non-availability of work for the employees and it had become impossible to continue to pay the salary and wages of the employees without any work and procurement activity. The Labour Commissioner after hearing the management and the union of Petitioner No. 1 rejected the application holding that the proposed lay-off for an indefinite period was not the answer that granting such permission was beyond his authority; and that the reasons for lay-off as enumerated in the application did not come within the definition clause of "lay-off" and accordingly did not merit any consideration. The said order is assailed in this Writ application.

4. According to learned Counsel for the Petitioners, the reasons assigned by the Labour Commissioner were not justified, and unless permission is granted, the Petitioner-company shall be subjected to unsurmountable hardship.

5. The word lay-off has been defined in Section 2(kkk) of the Industrial Disputes Act, 1947 as follows:

Lay-off" (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery

(or natural calamity or for any other connected reason) to give employment to a workman whose name is borne on the muster-rolls of his industrial establishment and has not been retrenched.

Section 25-M of the Act stipulates that no workman other than a "Badli" workman or casual workman, whose name is borne in the muster-roll of the establishment to whom chapter VII applies shall be laid-off by his employer except with prior permission of the appropriate Government or such authority as may be specified by Government by Notification in the Official Gazette unless of course such lay-off is due to shortage of power or natural calamity and in the case of a mine such a lay-off is due to fire, flood, excess of inflammable gas or explosion.

6. In the case at hand, admittedly Petitioner No. 1-company sought permission to lay-off sixty-seven workmen out of total ninetyfive only on the ground of non-availability of work in the Forest Organisation. Perusal of the order Annexure-2 reveals that one of the reasons for not granting permission for lay-off is that the Petitioner was registered under the Orissa Shops and Commercial Establishments Act which provides only for termination of service of a workman u/s 14(4-a) and there is no provision for lay-off. The Labour Commissioner further held that permission to lay-off was normally granted for a period of temporary stoppage of work due to sufficient reasons as laid down in the definition clause of "lay-off, and only when there were chances of resumption of work within a reasonable time. A workman could not be laid-off for an indefinite period. The Labour Commissioner also observed that the application filed revealed that there was no plan for engagement of any workman even after lay-off period, i.e. one year. Non-procurement of rawmaterials, according to him, was not a valid ground for lay-off nor was financial stringency a ground included in the definition clause of lay-off.

7. In course of hearing, however, it was submitted that the Petitioner-company has been closed down in the meanwhile. Thus the prayer for permission to lay-off some of the employees has virtually become redundant and academic in nature. Considering the factual matrix this Court finds no reason to interfere with the order Annexure-2 challenged in this Writ application and dismisses the writ application.

B.P. Ray, J.

8. I agree.