

(1997) 11 PAT CK 0012

In the Patna High Court

Hind Shippers (Private), Ltd. and Another	APPELLANT
Vs	
Central Government Industrial Tribunal	RESPONDENT

Date of Decision : 02-11-1997

Acts Referred:

Constitution of India, 1950 — Article 19, 226, 227
Industrial Disputes Act, 1947 — Section 10, 18, 25F, 25FFF, 33C

Citation : (1968) 1 LLJ 365

Hon'ble Judges : B.P. Sinha, J;A.B.N. Sinha, J

Bench : Division Bench

Judgement

A.B.N. Sinha, J.—In these two applications under Articles 226 and 227 of the Constitution of India, Hind Shippers (Private), Ltd., the petitioners in Civil Writ Jurisdiction Case No. 221 of 1966 and Jogta Coal Company, Ltd. [wrongly mentioned as Jogta Coal Company (Private), Ltd., in the application], the petitioners in Civil Writ Jurisdiction Case No. 226 of 1966, have obtained a rule nisi calling upon the respondents to show cause why the award dated 24 January 1966, made by the presiding officer, Central Government Industrial Tribunal, Dhanbad. be not quashed. In Civil Writ Jurisdiction Case No. 221 of 1966 cause has been shown by opposite party, respondent 2 (c), namely, Mines Mazdoor Union, Dhanbad on behalf of the workmen and the general secretary of the said union has filed an affidavit in support of the show cause. In Civil Writ Jurisdiction Case No. 226 of 1966 cause has been shown by opposite party-respondent 2, the workmen of Jogta Colliery represented by the Colliery Mazdoor Sangh, Dhanbad, and the secretary of the said sangh, has filled an affidavit In support of the show-cause.

2. The Government of India, Ministry of Labour and Employment, by their order, dated 9 December 1963, referred for adjudication u/s 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), the alleged industrial dispute existing between the employers in relation to the Jogta Colliery of Jogta Coal Company, Ltd., and their workmen in respect of the matters specified in the schedule attached to the said order of reference, which schedule reads as under:

Whether the closure of the Jogta Colliery by Jogta Coal Company, Ltd., with effect from 4 August 1963, was on account of unavoidable circumstances beyond the control of the employers ? If not, to what relief are the workmen entitled ?

The Tribunal has held that the closure of the Jogta Colliery was not on account of unavoidable circumstances beyond the control of the employers as alleged by them and, therefore, the proviso to Section 25FFF of the Act did not apply to the instant case, but Section 25F of the Act applied and as such the concerned workmen were entitled to fall retrenchment compensation u/s 25F of the Act from both Hind Shippers (Private), Ltd., the petitioners in Civil Writ Jurisdiction case No. 221 of 1966 and Jogta Coal Company, Ltd., the petitioners in Civil Writ Jurisdiction Case No. 228 of 1966. It has further observed that the primary liability for payment was of Hind Shippers (Private), Ltd., because they were lessees in possession and managing control of the colliery at the material time, viz., at the time when the colliery was closed.

3. As common questions of law and facts arise in both these applications and they are both directed against the same award, they have been heard together and this Judgment will govern both of them.

4. Learned Advocate-General Sri Lalnarain Sinha, who appeared for the petitioners in Civil Writ Jurisdiction Case No. 221 of 1966 and Sri Ranen Roy, learned counsel who appeared for the petitioners in Civil Writ Jurisdiction Case No. 226 of 1963, have together challenged the award on various grounds. The grounds raised can be summarized as under:

(a) The reference u/s 10(1)(d) of the Act itself was beyond the competence of the Central Government and as such the resulting award was wholly without Jurisdiction.

(b) On the facts of this case, it may have been open to the workmen concerned to avail themselves of the remedy provided by Sub-section (2) of Section 33C of the Act and get the issue as to the quantum of money that legally fell due to them decided by the labour court, Dhanbad, which has been already specified in that behalf by the appropriate Government, and it did not matter that the quantum claimed by the concerned workmen was either not accepted or was disputed by the management, but in no case it was open to either the appropriate Government or to the workman to avail of the other provisions of the Act in regard to a cause of action or a question which has arisen after the closure of the industry.

(c) The Tribunal has exceeded its Jurisdiction in deciding the question as to who, namely, whether the Hind Shippers (Private), Ltd., or the Jogta Coal Company, Ltd., was liable to pay the compensation as determined by it, as any such, determination was outside the terms of the reference itself. Even if the determination of the question as to who was liable can be described as a matter incidental to the terms of the reference and as such was within the competence of the Tribunal, the Tribunal has erred in law in holding that both were liable and

the farther observation that Hind Shippers (Private), Ltd., were primarily liable. Buffered from a further infirmity that Hind Shippers (Private), Ltd., were neither parties to the reference nor had been impleaded as such under the provisions of Section 18 of the Act at any time during the pendency of the reference by the Tribunal, and any determination of their liability either jointly or primarily was bad in law on the face of it.

(d) In Civil Writ Jurisdiction Case No. 221 of 1966, It was strenuously contended that the Tribunal has misnnder-Btood and misconceived the true meaning and import of the expression " by reason merely of financial difficulties including financial losses" as occurring in the explanation to Sub-section (1) of Section 25FFF of the Act and it seems to have equated financial losses or financial reasons with financial difficulties, and in so far as it has done so, its award was vitiated by an error of law apparent on the face of the record. Elaborating this ground farther it was urged that the Tribunal has failed to appreciate the distinction between economic reason affecting property and business and financial difficulties affecting the person or persona who worked the business or managed the property. According to the submission, the Tribunal has also lost sight of the foot that before coming to the conclusion that the explanation to Sub-section (1) of Section 25FFF was attracted, it was necessary to come to a finding that the closure was by reason merely of financial difficulties, i.e., if financial difficulties were accompanied with other reasons, the explanation on its terms was excluded. It was further urged that if it was permissible to construe financial difficulties as economic reasons affecting the property, the provision could be attacked as unconstitutional and as infringing the fundamental rights enshrined in Articles 19(1)(f) and 19(1)(g) of the Constitution. Therefore, every attempt should be made to construe the explanation in a manner so as to make it consistent with the Constitution. It was also urged that even if it can be said that financial losses was equivalent to financial difficulties within the meaning of the explanation, it was incumbent on the Tribunal to proceed further and find out whether the financial losses in question were due to avoidable or unavoidable reasons.

5. On behalf of the respondents each of the grounds enumerated above was sought to be countered as not tenable and unsound. In regard to grounds (a) and (ft), it was contended that as a determination of the questions arising from those grounds requires an investigation of facts, and as the petitioners had not urged these grounds before the Tribunal, it was not open to them to urge those grounds at this stags. On merits as well it was contended that grounds (a) and (6) were not sustainable. In regard to ground (e) it was vaguely suggested that as Hind Shippers (Private), Ltd., were at the material time managing the colliery and as they had admittedly made payments Cowards compensation after the closure, the Tribunal was fully Justified In holding that Hind Shippers (Private), Ltd., were primarily liable. Is regard to the contention that Hind Shipper (Private), Ltd., were not parties to the refer once nor had been added subsequently under the provisions of Section 13 of the Act, it was urged that it

appeared from the reference itself that the employers in relation to Jogta colliery were or at least must be deemed to be parties to the reference and as at the relevant time, admittedly, Hind Shippers were running the colliery, they were included within the comprehensive expression "the employers in relation to Jogta Colliery." In any event, Hind Shippers (Private), Ltd., it was urged, were very much before the Tribunal, as right from the beginning when written statements were called for and filed, it was Hind Shippers (Private), Ltd., who were conducting the proceeding, may be technically, on behalf of Jogta Coal Company, Ltd. With reference to the last ground, it was conceded that the Tribunal has not proceeded to examine whether the financial losses as shown in the accounts of the company were due to avoidable or unavoidable reasons. But the award read as a whole clearly implied that the closure was on account of recurring losses incurred by the management during the last five or six years preceding the closure, the losses" being a heavy burden on the management which they could not any longer bear. Understood in that sense, the argument proceeded that in substance the finding was that the closure was on account of financial difficulties and as such the award holding that compensation as calculated in accordance with the provisions of Section 35F of the Act was a good award and the Tribunal was justified in holding that the closure was within the meaning of explanation to Sub-section (1) of Section 25FFF of the Act. It may, however, be pointed out that on behalf of the respondents no attempt whatsoever was made to show that there was any finding in the award which went to suggest, even indirectly, that the closure was merely on account of financial reasons of financial difficulties as required by the explanation to Sub-section (1) of Section 25FFF.

6. I have given rather elaborately the contentions of the respective parties because on the view which I am inclined to take of points (a) and (f), which are really linked with one another, I do not think that it is necessary to decide the other contentions raised on behalf of the petitioners. The closure as a fact has never been in dispute. Indeed the reference proceeds on the assumption that there has been a closure already. The right to compensation as a result of closure may be a statutory right but it is manifest that the right arises and accrues to the workmen because of the closure. In the case of *Pipraich Sugar Mills, Ltd. v. Pipraich Sugar Mills Mazdoor Union* 957 I LLJ 235 the Supreme Court, while dealing with Section 3 of the Uttar Pradesh Industrial Disputes Act, which according to their lordships inter alia required that there should be an industrial dispute before there can be a reference, held that the object of all labour legislation was, firstly, to ensure fair terms to the workmen, and secondly, to prevent dispute between employers and employees and that both these objects can have their fulfillment only in an existing and not in a dead industry. Therefore, the industrial dispute to which the provisions of the Act applied was only one which arises out of an existing industry and not to a case where the business had been closed and it was either admitted or found that the closure was real and a bona fide one. Their lordships pointed out that any dispute arising

with reference to an industry which was dead or closed, fell outside the purview of the Industrial Disputes Act and as such the provisions of this Act cannot be availed of at all. Subsequently, in the case of Tea Districts Labour Association, Calcutta v. Ex-employees of Tea Districts Labour Association and Anr. 1960 I LLJ 80 where it was contended that because the closure of the undertaking was mala fide, it must be held that the undertaking was in existence in the eye of law, it was pointed out that from the fact that the closure of the undertaking was mala fide, it did not at all follow that the closure was a fiction and was an unreal one. Their lordships made it dear that if the undertaking had been in fact closed even though the closure was not bona fide, the consequences would be that the employer was liable to pay higher compensation u/s 25FFF of the Act. The mere fact that the closure was not bona fide did not mean that the undertaking should be deemed to continue. These two decisions have been consistently followed by the various High Courts. So far as this Court is concerned. it will suffice to mention one of those cases. In the case of Tin Plate Company of India (Pt.) Ltd. Vs. Abdul Sattar and Others, it was held that where the business had been closed, any dispute arising with reference thereto will fall outside the ambit and purview of the Industrial Disputes Act. It was pointed out that after the closure of the business there was no Industry in existence and accordingly a notification made subsequent to the closure, as in the instant case, by the appropriate Government u/s 10 of the Act was illegal and must be quashed. These decisions, in my opinion, conclude the matter in favour of the petitioners. The reference has been made in regard to compensation payable as a result of the closure and is based on a notification after the closure. It follows, applying the principle laid down in the decisions referred to above, that the reference itself was beyond the competence of the Central Government. The resultant award must, therefore, be held as void and the contentions raised on behalf of the respondents must fall. The fact that the claim of the workmen concerned to a certain quantum of compensation was disputed by the management may have given rise to a dispute, but such a dispute, in my opinion, is precisely a matter which has to be investigated by the specified labour court under the provisions of Sub-section (2) of Section 330 of the Act and it does not lie in the competence of the appropriate Government to forge an additional remedy in such cases by making a reference under any of the Sub-clauses of Section 10 of the Act.

7. It follows from the discussion above that the notification of the Central Government Industrial Tribunal, Dhanbad, was without Jurisdiction and the resultant award was, therefore, wholly void. These applications, therefore, succeed and a writ in the nature of certiorari must issue quashing the impugned award. In both these applications the rule is made absolute. in the circumstances of the case, there will be no order for costs in any of these applications.

B.P. Sinha. J.

8. I agree.