
(2002) 01 MP CK 0082
In the Madhya Pradesh High Court
Case No : M.P. No. 3430 of 1989

Hindustan Antibiotics Ltd.	Vs	APPELLANT
Hindustan Antibiotic Workers Union and Others		RESPONDENT

Date of Decision : 03-01-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(cc), 25(F)

Citation : (2002) 2 MPLJ 242

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : R.K. Gupta, for the Appellant; S.R. Tamrakar, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

The petitioner/Hindustan Antibiotics Ltd. is a company registered and governed under the provisions of Companies Act, 1956. The head office of the Company is situated at Pimpri, Pune. It is carrying on the business of manufacturing antibiotics and other life saving medicines and is having its sales office at various places throughout India. The shares of the petitioner Company are in the name of the President, Union of India. The financial activities of the petitioner Company are being controlled by the Central Government through its Ministry of Industries.

The respondent No. 1 is a Trade Union organised for the casual employees working at Jabalpur. Orders from the customers were received by the Jabalpur Office and they were in turn sent to the Head Office at Bhopal within the State of Madhya Pradesh. The petitioner submits that the Sale Depot at Jabalpur was not profitable for the Company and the same was closed for bona fide reasons. Closure notice Annexure-B was served on respondent No. 1 on 6-1-1986.

It is not disputed that the business of branch was governed by the provision of Industrial Disputes Act, 1947. The closure was made as per section 2(cc) of the Industrial Disputes Act. According to the petitioner closure means permanent

closing down of place of employment or part thereof. Section 25(2) provides for payment of closure compensation at the rate as prescribed u/s 25(F) of the Industrial Disputes Act.

The petitioner's case is that the closure was ordered and retrenchment compensation was paid to the employees. Aggrieved by the action of petitioner, workers Union/respondent No. 1 raised dispute, which was referred by the Ministry of Labour, State of M. P. to the Labour Court, Jabalpur for adjudication. The question referred was, whether the retrenchment of Shri Shiv Prasad Nair, Muralidhar Nair, Surinder Nath Ojha, K. Anilendran, H. P. Tiwari, Virendra Kumar Dubey, Ku. M. K. Vilasini, Ku. Meena D. Vachhani is valid and proper? If not, then what relief should be granted and what instructions should be given to the employer in this regard. Both the parties filed their statements before the Labour Court. The case set up by respondent No. 1/Union is that the management started victimising the employees for taking part in the trade Union activities. On 9th Nov. 1985 Union raised various demands including one of regularisation of employees and secondly, reinstatement of four employees with immediate effect. Collector was also approached in the matter. The management instead of redressing the grievance, started harassing the workers. The management with mala fide intention issued a closure notice on 2-1-1986. The closure notice is a colourable device and the management did not want to regularise the services of the workers. In spite of the fact that there were vacancies in the Jabalpur Branch. The management had called workman for interview for regularisation on various posts. On 21-2-1985 interviews were held. The recommendations were made to the concerned officers of the Jabalpur Branch for regularising the workers. The employees were in continuous service. They had worked for more than 240 days. The management did not follow the procedure laid down in the Industrial Disputes Act. No notice was given as per provision of section 25(o) of the Industrial Disputes Act, as applicable to the State of Madhya Pradesh. The provision requires notice of the closure to a representative of workers. Jabalpur is a centrally located place, the reasons shown for closure were incorrect. The management for the convenience of its officers shifted the Jabalpur branch to Indore. The management could not have retrenched the employees as those employees should have been shifted along with office and given employment at the Indore. The workmen had consented to work at Indore Office. On merits management contended that Hindustan Antibiotics Ltd. is a registered company and controlled by Central Government. The office at Jabalpur was not economically viable in view of which decision to close its branch at Jabalpur was taken. The workmen were paid retrenchment/closure compensation u/s 25(F) of the Industrial Disputes Act. The workers have accepted the compensation. Workers were given notice of closure of Branch. The branch was closed from 6-1-1986 and the notice was given on 2-1-1986. The closure was for bona fide reasons. The case file shall be produced in the Hon'ble Court at the appropriate stage. The Jabalpur branch was managing its own affairs independently. The branch was not having more than 50 employees and was carrying on sale and

marketing activities. The action taken by them is proper and calls for no interference.

The Labour Court vide award dated 6-2-1989 has held that the Ministry of Labour, State of M. P. was the appropriate authority to refer the matter and not the Central Government. Labour Court also came to the conclusion that it was the case of shifting of office from Jabalpur to Indore. The employees ought to have been shifted to the Indore Office. Thus retrenchment was held to be illegal. Alternatively it was found that even if it is considered to be the case of closure the provision of sections 25-K, 25-L and 25-O were not complied with prior to retrenchment.

The interim matter as to compliance of section 17-B of Industrial Disputes Act, during the pendency of the present writ petition travelled to Hon'ble Supreme Court. The Supreme Court in Civil Appeal No. 4963/1990, which was filed by the Hindustan Antibiotics Workers Union, directed the management to pay a lump sum amount of Rs. 15,000/- to each of the workmen, in lieu of compliance of section 17-B of the Industrial Disputes Act and this Court was directed to decide the Writ Petition within a period of three months of the receipt of this Order. After the receipt of order dated 20th Sept. 1994, the matter was listed time and again, but was adjourned on the joint prayer of parties number of times. Thereafter it has been heard and concluded today and is being decided finally.

Learned counsel for petitioner Shri R. K. Gupta, strenuously submits that the Labour Court has exceeded jurisdiction, while entering into the dispute as to closure. He contend that reference was confined to the validity of retrenchment. Thus, it was not permissible to go into the question of shifting/closure by the Labour Court. Learned counsel further submits that it is a case where appropriate Government in the case of closure is Central Government which could have made reference. The shares are also held by the Government of India and controlled by the Central Government, through its Ministry of Industry. Further it has been submitted that even if it is held to be a case of shifting of business from Jabalpur to Indore, the workmen on being asked refused to go to Indore, thus there was no option for management except retrenchment. He further submitted that during the pendency of Writ Petition before the matter went to the Supreme Court as to compliance of section 17-B of the Industrial Disputes Act, the management had offered employment to the workmen, at various places like Manipur, Lucknow, Bangalore, Madras, Bhopal the workmen were asked to reach on August 2, 1989, which offer was not accepted. Thus, the workmen are not entitled to reinstatement and for back wages.

Learned counsel for respondent No. 1 Shri Sanjay Tamrakar, submits that it is a case of shifting and not that of closure. The workers insisted for regularisation on the vacant posts, interview, was conducted in Feb. 1988 in spite of conducting interview workers were not regularised on the posts against which they were working for last several years. Business of the branch was shifted to Indore. It was not closure of branch but shifting of the business. Learned counsel further

submits that since it was a case of shifting, no retrenchment was permissible and workmen should have been transferred to the new place at Indore where the business was shifted and available. He further contends that asking the workers to go to Manipur, Bangalore, Madras and Lucknow was nothing but was a devise to get rid of the workers and was an eye wash simply resorted to avoid compliance of section 17-B of the Industrial Disputes Act as per order passed by Labour Court which directed reinstatement, such offers were not accepted by the Hon"ble Supreme Court in Civil Appeal No. 4963/1990, which was filed by the workers Union, wherein Supreme Court directed payment of Rs. 15,000/- to each of the workers pending the Writ Petition and petition was directed to be decided finally within three months. Thus offer to join at far flung places like Manipur, Madras, Bangalore cannot be treated as valid in view of Supreme Court direction. Moreover, he submits that the workers must be acquainted with the local languages and could not be asked to go to Manipur or other places when they could not interact or work at all. He further submits that the finding of Labour Court as to shifting of business place is just and proper. The letter D-5 has properly been considered by the Lower Court and there is no illegality or jurisdictional error committed by the Labour Court. Thus the Writ Petition deserves to be dismissed.

The first question for consideration is which is the appropriate Government in the instant case. The question has been considered by the Hon"ble Supreme Court in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., . The appropriate Government is defined u/s 2(1) (a) of the Industrial Disputes Act. The Supreme Court has made a distinction between the Company which are established under the Companies Act and the activities which are undertaken by the Central Government. A plain reading of the unamended definition shows that the Central Government will be the appropriate Government if the establishment in question answers the description given in sub-clauses (i) and (iii) and in relation to any other establishment, the Government of State, in which the establishment in question is situated, will be the appropriate Government. It may be seen that sub-clause (i) has two limbs. The first limb takes in an establishment pertaining to any industry carried on by or under the authority of Central Government and the second limb deals with such controlled industries as may be specified in that behalf by the Central Government. The Supreme Court has observed that the fact of being an instrumentality of a Central/State Government or being "State" within the meaning of Article 12 of the Constitution cannot be determinative of the question as to whether an industry carried on by a company/corporation or an instrumentality of the Government is by or under the authority of Central Government for the purpose of or within the meaning of the definition of "appropriate Government."

The Supreme Court further held in para 38 that:

Take the case of a State Government corporation/company/undertaking setup

and owned by the State Government which is an instrumentality or agency of the State Government and is engaged in carrying on an industry, can it be assumed that the industry is carried on under the authority of the Central Government, and in relation to any industrial dispute concerning the industry, can it be said that the appropriate Government is the Central Government? We think the answer must be in the negative. In the above example, if, as a fact, any industry is carried on by the State Government undertaking under the authority of the Central Government, then in relation to any industrial dispute concerning that industry the appropriate Government will be the Central Government. This is so not because it is an agency or instrumentality of the Central Government but because the industry is carried on by the State Government company/corporation/undertaking under the authority of the Central Government. In our view, the same reasoning applies to a Central Government undertaking as well. Further, the definition of "establishment" in the CLRA Act takes in its fold purely private undertakings which cannot be brought within the meaning of Article 12 of the Constitution. In such a case, how is "appropriate Government" determined for the purposes of the CLRA Act or the Industrial Disputes Act? In our view, the test which is determinative is: whether the industry carried on by the establishment in question is under the authority of the Central Government. Obviously, there cannot be one test for one part of the definition of "establishment" and another test for another part. Thus, it is clear that the criterion is whether an undertaking/instrumentality of the Government is carrying on an industry under the authority of the Central Government and not whether the undertaking is an instrumentality or agency of the Government for purposes of Article 12 of the Constitution, be it of the Central Government or the State Government.

In para 125 the Supreme Court has held:-

(1)(a) Before 28-1-1986, the determination of the question whether the Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, or the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government.

It is not disputed in the instant case that the Company is a registered Company under the Companies Act. Simply by the fact that the shares are owned by the Central Government it does not become appropriate Government, the activity is such which can be carried on otherwise also. Thus, the establishment in question was situated in the State of Madhya Pradesh, thus the appropriate Government is

the State of Madhya Pradesh.

Coming to the second and the foremost submission of the learned counsel for petitioner that the Labour Court has exceeded the term of scope of reference by entering into the question of closure/shifting only question referred for its adjudication was about validity of retrenchment. The genesis of retrenchment in the instant case is based on the factum of closure which resulted in the retrenchment. The workmen alleged that it was a case of shifting of place of business, thus retrenchment was not permissible. The management contended that retrenchment became necessary owing to closure of branch office. Thus, it was the basic central issue hovering around retrenchment whether it was the case of closure or shifting of branch office. The basic reason behind the retrenchment was pleaded and was definitely required to be gone into by the Labour Court while considering the validity/propriety of the retrenchment.

Learned counsel for petitioner has relied upon the decision of Supreme Court in *Pottery Mazdoor Panchayat vs. Perfect Pottery Co. Ltd. and another*, AIR 1979 SC 1356, wherein it was held that the jurisdiction of the tribunal in industrial disputes is limited to the points specifically referred for its adjudication and to matters incidental thereto.

In the instant case it was central issue whether the retrenchment was permissible in the case of shifting. In *Pottery Mazdoor Panchayat* (supra) the point referred for adjudication was the fact of closure of its business by the employers and the references were limited to the narrow question as to whether the closure was proper and justified. It was held that the tribunal had no jurisdiction to go behind the fact of closure and inquire into the question whether the business was in fact closed down by the management. The reference was limited to the narrow question as to whether the closure was justified or proper. In the instant case, the reason for retrenchment was squarely in question and both parties adduced evidence on it.

In *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, a question "Whether the strike of the workers and the consequent lockout by the employer was justified or not", was referred for adjudication. The employer contended from the beginning that there was no lockout but only closure of the business. Order of reference, in the circumstances, was construed to refer to the real dispute between the parties, viz., as to whether there was lockout or closure of business, bona fide and genuine. The Apex Court therefore discussed distinction between closure and lockout. It held that in the case of closure, the employer does not merely close down the place of business, but he closes the business itself; and so, the closure indicates the final and irrevocable termination of the business itself Lockout on the other hand, indicates the closure of the place of business and not the closure of business itself. The Supreme Court held that in the said case, in view of the serious dispute between the workmen and the employer regarding the question as to whether the transfer of business by the employer amounted to a closure of

business, bona fide and genuine, or to lockout, the refusal by the High Court to decide such disputed question of fact on affidavits in a writ of prohibition preferred by the employer to prohibit the industrial tribunal from proceeding with the adjudication, could not be held erroneous in law. Thus, in my opinion the tribunal has not exceeded and travelled beyond the terms of reference.

The primary submission of the learned counsel for petitioner be now adverted. His submission is that it was a case of closure and not that of shifting and the provision of section 25-K, 25-L and 25-O are not applicable for the reason that more than 100 workmen were not employed at Jabalpur branch, but as a matter of fact only 10 workmen were employed. Thus, the provision of section 25-O is not applicable. The concept of closure was considered by the Supreme Court in *Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union*, where the business has been closed down, the Supreme Court held that closure is legal or bona fide, any dispute arising with reference would fall outside the purview of the Industrial Disputes Act.

In *Tatanagar Foundry Co. Ltd. Vs. Their Workmen*, , the Supreme Court held:-

As regards the financial position, the tribunal took the view that on the whole the financial condition of the Company in 1966 has not worsened to such an extent as to reasonably constitute a good ground for closing the business altogether. It might have been a ground for reorganizing the company or rationalizing it by retrenchment or otherwise but it could not be a ground for winding up the business altogether. In our opinion, the finding of the tribunal on this point is defective in law. It is now established that in the case of a closure the employer does not merely close down the place of business but he closes the business finally and irrevocably. The closure has to be genuine and bona fide in the sense that it should be a closure in fact and not a mere pretence of closure. (See the decision of this Court in *Tea Districts Labour Association, Calcutta Vs. Ex-employees of Tea Districts Labour Association and Another*, The motive behind the closure is immaterial and what is to be seen is whether it is an effective one. (See the decision of this Court in *The Andhra Prabha Ltd. and Others Vs. Secretary, Madras Union of Journalists and Others*, and *Kalinga Tubes Ltd. Vs. Their Workmen*, .

Learned counsel for petitioner has also placed reliance on the decision of *General Labour Union (Red Flag) Bombay Vs. B.V. Chavan and Others*, , wherein it was held that:-

Therefore, the true test is that when it is claimed that the employer has resorted to closure of industrial activity, the industrial Court in order to determine whether the employer is guilty of unfair labour practice must ascertain on evidence produced before it whether the closure was device or pretence to terminate services of workmen or whether it is bona fide and for reasons beyond the control of the employer. The duration of the closure may be a significant fact to determine the intention and bona fides of the employer at the time of closure but

is not decisive of the matter. To accept the view taken by the Industrial Court would lead to a startling result in that if an employer who has resorted to closure, bona fide want to reopen, revive and restart the industrial activity he cannot do so on the pain that the closure would be adjudged a device or pretence.

In *Fertilizer Corporation of India vs. Hindustan Fertilizer Corporation Ltd.* and another 1992 Lab IC 991 a Division Bench of this Court considered shifting of marketing division to another State. The employees were transferred to the adjoining areas of other State. This Court held that action does not amount to closure. In *Hindustan Lever Employee's Union vs. State of Maharashtra* and another 1994 Lab IC 1847. it was held that when shifting was done owing to environmental hazards the employees were transferred to other departments. There was no closure within meaning of section 2(cc) of Industrial Disputes Act.

Thus, it has to be appreciated in the facts of the instant case that, whether there is any closure of business and whether it is an effective one, or whether it is a case of shifting.

In the instant case, the finding which has been arrived at by the Labour Court that, it is a case of shifting and not that of closure is based on sound reasons and does not suffer from any infirmity. In the cross examination of various workmen case set up by management was that in fact they have applied for shifting of Branch Office. Surender Nath, workers witness was cross examined on that line. J. P. Lajras a witness of management was working as marketing manager stated that the decision to close down the Jabalpur office, there was proposal to shift the employees working at Jabalpur to Indore. However, the workers insisted that they were ready to go if they were regularised. Ex. D-5 was the letter cited by the witness for that purpose. He further stated that the work was taken from the private contractors at Indore. Srinivasan another witness of management admitted that they were having several Depots and one workman can be transferred from one Depot to another. It was in fact shifting of place of business.

Thus, in the instant case, the finding that it was a case of shifting of business from Jabalpur to Indore. Thus, the retrenchment was improper cannot be interfered with. In *Kamalalaya Stores, Karmachari Samity vs. M/s Kamalalaya Stores (P) Ltd. and others*, 1977 Lab IC 110 (Cal) closure was held to be the finding of fact or mixed question of law and fact and the said finding unless perverse or illegal cannot be interfered with in writ jurisdiction.

In *S.G. Chemicals and Dyes Trading Employees' Union Vs. S.G. Chemicals and Dyes Trading Limited and Another*, , the Supreme Court held that, when there are several units of one establishment the total number of workmen employed has to be taken into consideration and provision of section 25-K or 25-O should have been complied with. Section 25-O applies to the closure of an undertaking of an industrial establishment and not to the closure of an industrial establishment. The word "undertaking" wherever it occurs in the Industrial Disputes Act, unless

a specific meaning is given to that term by that particular provision, is to be understood in its ordinary meaning and sense. There is no requirement in Industrial Disputes Act that an undertaking of an Industrial establishment should also be an industrial establishment. If an undertaking in its ordinary meaning and sense is a part of an industrial establishment so that both taken together constitute one establishment, section 25-O would apply to the closure of the undertaking provided the condition- laid down in section 25-K is fulfilled. Their Lordships also considered the different processes set out in the definition of "manufacturing process" in section 2(k)(i) of the Factories Act must be with a view to the use, sale transport, delivery or disposal of the article or substances manufactured.

Thus, in *S. G. Chemicals (supra)* takes care of the submission made by the counsel for petitioner that it was the case of closure and compliance of section 25-O was not necessary. It is not in dispute that in various offices of Petitioner more than 100 workmen are employed. Thus, the provision of section 25-O in case of closure would apply, with full rigour. On fact Labour Court has rightly found that it was not a case of closure, hence it is not necessary to go into the 2nd part of submission of learned counsel for petitioner. However, even if his submission is to be accepted of closure the provision of section 25-O should have been complied, with the permission of the appropriate State Government was not obtained in the instant case. Thus, closure itself would be bad in law.

Coming to the question of grant of back wages. In the instant case there was an offer given to the employees to go to Manipur, Lucknow, Bangalore, Madras and Bhopal. Only two employees were offered to go to Bhopal. Ms. Meena D. Vachhani and Ms. M. K. Vilasini were offered posting at Bhopal. Two workers were asked to go to Manipur, one to Lucknow, one each to Madras, Ahmedabad and Bangalore. In case of workmen who were asked to go to Manipur, Ahmedabad, Lucknow, Madras and Bangalore, it could be said that no genuine offer was made. Back wages as awarded by the Labour Court calls for no interference.

The removal was made in the year 1986 and taking into all the consideration in view Ms. Meena D. Vachhani and Ms. M. K. Vilasini should have joined at Bhopal where they were offered employment. It was a case of shifting the office to Indore and the workers were required to be shifted and when an offer was made to two of employees to go to Bhopal the same should have been accepted. The Supreme Court has awarded Rs. 15,000/-, as a interim measure in the year 1994 both of them are held entitled to full back wages till an offer was made to go to Bhopal in August, 1989 and Rs. 15,000/- as awarded by the Supreme Court and with regard to the employees by asking petty workers to go to Manipur, Bangalore and Lucknow when the work was available in the State of Madhya Pradesh, they were sought to be victimised. It was no valid offer in the eye of law. They are directed to be taken back in service along with back wages in accordance with the directions issued by the Labour Court within the State of M.

P. at Indore or other near possible place of business.

This Writ Petition is without merit and, is dismissed, subject to back wages to be paid as mentioned above. Cost on parties. Security amount, if any, be refunded to the petitioner after due verification.