

(1962) 08 KAR CK 0030
In the Karnataka High Court
Case No : Writ Petition No. 1045 of 1960

Industrial and General Engineering Company	APPELLANT
Vs	
Their Workmen and Another	RESPONDENT

Date of Decision : 09-08-1962

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 25 F, 25 FFF, 25 FFF (1)

Citation : (1964) 2 LLJ 438

Hon'ble Judges : B.M. Kalagate, J;A.R. Somnath Ayyar, J

Bench : Division Bench

Advocate : V.L. Narasimhamurthi, for the Appellant; A. Nagesha Rao, for the Respondent

Judgement

Somnath Ayyar, J.—The petitioner before us who is the proprietor of an undertaking called the Industrial and General Engineering Company in Bangalore, was a manufacturer of articles known as bobbins and thimbles. He used to receive orders for these articles from various sources including the State. In this undertaking, there were two sections : one known as the bobbins section, and the other known as the workshop.

2. Sometime about June 1958 the petitioner decided to close down the bobbins section having discovered that the continuance of that section would be uneconomical and on 2 June 1958 he announced by a notice that that section was closed down with effect from that date.

3. About a dozen workmen who were working in the workshop section commenced, according to the petitioner, a strike on 4 June 1958 for the purpose of procuring the reinstatement of the employees who had been discharged from the bobbins section. On that date, after the workers of the workshop commenced that strike, a notice was served on them by the petitioner which reads :

"The workmen in machine shop, foundry and smithy, have stopped work without reason. They are hereby warned that if they do not resume work forthwith, they

will become liable to disciplinary action."

4. It is not disputed that the machine shop, foundry and smithy referred to in this notice are all different units of the workshop section. This notice was marked as Ex. M. 1.

5. The petitioner's case was that when the workmen in this workshop refused to enter upon their duty even on 5 June 1958 he closed down that section of the undertaking also after making an announcement to that effect in Ex. M. 2 on that date.

6. It appears from the evidence given by the Assistant Commissioner of Labour that for some days even thereafter, the employees in the workshop engaged themselves in what may be described as a sit-down strike.

7. At the instance of the employees of the petitioner's undertaking, two references were made under S. 10 of the Industrial Disputes Act to the labour court. The first related to the industrial dispute arising out of the closure of the bobbins section. The second related to the closure of the workshop. The award made by the labour court in the former reference was that the closure of the bobbins section was a bona fide closure necessitated by adverse business circumstances and that award made by the labour court to that effect has become conclusive, no one having challenged its correctness or validity so far. But, in the second reference relating to the closure of the workshop, the award made by the labour court was that the workmen working in that section should be paid their wages for the year between 4 June 1958 and 28 February 1959 in addition to compensation payable under S. 25FFF of the Industrial Disputes Act. It is this award which the petitioner challenges in this writ petition.

8. In Para. 32 of its award, the labour court stated that the workshop, which was closed down on 5 June 1958, was maintained only for the purpose of preparing the tools necessary for the bobbins section. It pointed out that in the situation in which the petitioner was placed on 5 June 1958, it was very natural for him to close down the workshop for want of work. It is to be gathered from the award made by the labour court that when the bobbins section was closed down on 2 June 1958, and the workshop was similarly closed down on 5 June 1958, the petitioner had no work to be done in any of those two sections except the manufacture of a certain number of thimbles which had to be supplied against an existing order of an undertaking called the Mysore Government Porcelain Factory.

9. That before the undertaking was closed in that way on two different dates, the petitioner had met with adverse business conditions having no orders on hand, besides having incurred heavy losses during the period of nearly eight years during which he was conducting the business was also what was found by the labour court. In Para. 32 of the award, this is what is stated :

"Further it has come on record that there was no possibility to secure any farther orders, because the workers have themselves said that there was no order to be

executed by the workshop on the completion of the order put forth by the porcelain factory. Having these facts in view in respect of the stock on hand and the order to be executed in future. I am of the opinion that the management was reasonable in anticipating that there would be no farther order for manufacturing the thimbles for the reason that the bobbins section had been closed and the workshop functioned only to prepare the spare parts or repairs to the machines of the bobbins section. So the management decided that the workshop too should be closed. I have already said that the closure of the bobbins section was justified and when the workshop was maintained only for preparing the tools for manufacturing the bobbins, it was but natural to close the workshop also for want of work."

10. In Para. 33 of the award, the labour court proceeded to make an analysis; of the financial condition of the petitioner's undertaking and pointed out that during a period of eight years during which the petitioner was carrying on his business in that undertaking, he had made a profit of Rs. 7,025.79 against a total loss of Rs. 27,391.13. That there was a resulting loss of Rs. 20,365.51 besides the interest on the capital advanced by the petitioner for the undertaking, was the farther fact found by the labour court. It was next pointed out that the only sum of money drawn by the petitioner, towards his own remuneration for the work of supervision done by him in the undertaking was a sum of Rs. 300 during all those years. Having said all this, the labour court proceeded to observe :

"The auditor Sri K. V. Krishnamurthi Rao has also prepared a statement providing for these prior charges and working on that line a total loss from an investor's point of view has been shown as Rs. 48,753.73. These charges are for the interest on the capital account and the remuneration should be allowed in order to know the available surplus profit. The management has taken a sum of Rs. 300 as remuneration for his service rendered to the industry. On this documentary evidence which is not rebutted by the union. I have to consider whether the management was proper in acting upon its previous decision on the subsequent date by closing the workshop also when it was found on the material evidence that there was no any farther order to be expected and apart from that there was a heavy loss. It was the business shrewdness to close such concern. I, therefore, adjudicate the issue 1 and (1)(a) accordingly."

11. One would have expected the labour court, after having said all this, to come to the conclusion that the closure of the workshop on 5 June 1958 was one made in the bona fide exercise of the power of an employer to close down his business in the circumstances in which the petitioner found himself. But, very strangely, what the labour court stated immediately after it stated what has been extracted above reads :

"The management was not justified in declaring a lockout on 5 June 1958."

12. I have found great difficulty in understanding how the labour court was able to reach the conclusion that there was a lockout by the management and that

the petitioner was not justified in declaring each lookout. It is well-settled that a lookout is essentially a suspension of the employees' services, the employer being responsible for such suspension by bringing the matter to issue in consequence of a labour controversy. That is the correct concept of a lookout contained in the Industrial Disputes Act in S. 2(i) which defines a lookout as a closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him. Unless, therefore, it was possible for the labour court to think in this case that there was the closing of his place of employment by the petitioner or the suspension of work or refusal by him to continue to employ his workmen, it was impossible for it to come to the further conclusion that there was a lookout.

13. The labour court states in Para. 31 of its award that this was not a case in which there was any suspension of work. Indeed on 5 June 1958, the petitioner, by means of the notice, Ex. M. 2, announced that the workshop section was also closed down although the reason given by him in Ex. M. 2 was that he was obliged to close down that section on account of the refractory and recalcitrant attitude of the workmen in not returning to their work though they were called upon to do so by notice, Ex. M. 1, which was issued to the workmen on the previous day. The labour court was also of the view that on 4 June 1958 the workmen in the workshop section refused to work. There is no evidence and the labour court did not find that they were willing to return to work on 5 June 1958, and, on the contrary, the evidence given by the Assistant Commissioner was that what the workmen did on 5 June 1958 was to squat on the premises refusing to work. That they did so even after 5 June 1958, to the evidence which was given by the Assistant Commissioner which was read out to us in this court although that evidence was not noticed by the labour court. But, what is of importance is that the notice, Ex. M. 2, which was published by the petitioner on 5 June 1958, announced that the closure was for an indefinite period. Even the workmen did not dispute before the labour court that there was a closure of the workshop section on and from 5 June 1958, their contention before the labour court being only to the effect that the closure was for the time being and not permanent.

14. If those are the undisputed facts, namely, that the workshop was a unit of the undertaking which was merely preparing the spare parts or making repairs to the machines of the bobbins section as found by the labour court. That the workshop was maintained only for preparing the tools for manufacturing the bobbins, and, as further found by the labour court, it was natural for the petitioner to close down the workshop once he closed the bobbins section and if it also appears from the finding of the labour court that on and from 2 June 1958, the only work which had to be done in the undertaking of the petitioner was the completion of the manufacture of the thimbles which had to be supplied to the only one solitary customer which, the petitioner had, namely, the Government Porcelain Factory, and the petitioner had by then sustained a loss of a large sum of Rs. 20,365.51 excluding from consideration the loss sustained in the form of interest which he lost on the capital which he advanced, and if, as

the labour court itself found, any person who had any business acumen would not but close the concern in that difficult situation in which the petitioner found himself, and, on the top of all these, the persons employed in the workshop refused to work in that section having staged a strike for the purpose of procuring the reinstatement for the workers in the bobbins section who, according to the labour court, had been properly and lawfully discharged, thus making it impossible for the petitioner to complete the manufacture of the thimbles which had to be supplied to the Porcelain Factory by the continuance in employment of the intransigent workers of the workshop, can it be said that there was a lookout declared by the petitioner and that there was not a closure of the workshop section by him in the bona fide exercise of the power to close down his business if he found it impossible to continue it with any advantage to himself on account of the various adverse circumstances which, even according to the labour court, had been completely established ? In my opinion, once the labour court came to the conclusion that it was natural and proper for the petitioner to close down the workshop after he had closed down the bobbins section and after he had derived no benefit to himself during the long period of eight years during which he experimented upon himself and upon his financial resources, it was impossible for it to reach the extraordinary conclusion which it reached that although there was a pre-eminently proper closure of the workshop of the petitioner, what he did amounted to an illegal lockout.

15. Sri Nagesha Rao, appearing on behalf of the employees of the workshop, has very fairly told us that if we come to the conclusion that there was a bona fide closure of the undertaking by the petitioner such as would be regarded as one fully notified by the circumstance in which the petitioner was placed, it would be impossible for those employees to sustain the extremely incompetent finding recorded by the labour court that there was a lockout. It was the realization and the awareness of this difficulty which was responsible for Sri Nagesha Rao making a submission before us somewhat at variance with what had been decided by the labour court that there was not a case in which it was possible for the labour court to come to the conclusion that there was any closure of the petitioners business in the bona fide exercise of the power of the employer to do so. He has drawn our attention to Para. 28 of the award of the labour court in which there was a finding recorded by it that the closure of the workshop section was "colorable and not bona fide."

16. It is, as pointed out by their lordships of the Supreme Court in *Tea Districts Labour Association, Calcutta Vs. Ex-employees of Tea Districts Labour Association and Another*, an incontrovertible proposition that a closure of a business. If it is bona fide and not a mere pretense, is well within the power of an employer making it impossible for an employee to characterize such closure as a lockout. That, in my opinion, is the effect of what their lordships of the Supreme Court decided in explanation of their previous pronouncement in *Banaras Ice Factory Limited Vs. Its Workmen*, .

17. But Sri Nagesha Rao contended before us that what the petitioner did in this case was not to close down his workshop for any reason which may be regarded as bona fide but that what he did was to declare a lookout in reprisal, when the employees staged a strike on the previous day. Although at one stage Sri Nagesha Rao made an endeavor to contend that the employees were willing to return to work on 5 June 1958. It is clear that this submission made by him is not only contrary to the finding recorded by the labour court but is entirely insupportable. The effect of the finding of the labour court when properly understood is absolutely clear to the effect that both on 4 June 1958 and on 5 June 1958 the employees refused to work and that the situation continued to be the same when under Ex. M. 2 the announcement was made by the petitioner that the workshop was closed down.

18. It was further urged that the closure of the workshop was a mere pretence since, according to Sri Nagesha Rao, the bobbins section had nothing to do with the workshop section and even the workshop section was, according to Sri Nagesha Rao, continuing to work under the supervision of the petitioner until the end of February 1959. Sri Nagesha Rao at one stage contended that the thimbles which had to be supplied to the porcelain factory had to be manufactured in the workshop and that the workshop was the only place where those things could be manufactured and when the bobbins section was closed, so long as there remained the order of the porcelain factory for the supply of thimbles, there was work which had to be done in the workshop through the employees making it impossible for the petitioner to close his business in the workshop.

19. Here again, Sri Nagesha Rao is confronted with the difficulty that the finding of the labour court on this question of fact is that the workshop was maintained by the petitioner only as a subsidiary unit for the manufacture of spare parts and tools required by the bobbins section. It may be that whatever steps had to be taken for, the completion of the manufacture of the thimbles which had to be supplied to the porcelain factory could be taken in the workshop. But it is absolutely clear, according to the finding of the labour court, that the completion of the manufacture of those thimbles was the only purpose for which the petitioner intended to continue to run the workshop section.

20. It is undisputed that after the closure of the workshop by reason of the precipitation of the situation by the employees themselves whose refusal to return to work in the workshop section until their fellow-workers in the bobbins section were reinstated has now turned out to be entirely unreasonable by reason of the award made with reference to the bobbins section, the manufacture of the thimbles which had to be supplied to the porcelain factory was entrusted by the petitioner to a contractor and that, that contractor manufactured them by about the end of February 1959. Sri Nagesha Rao had to admit that after the completion of the manufacture of those thimbles by the contractor by the end of February 1959, the petitioner has not engaged himself in any business activity of his undertaking.

21. It was, however, argued that the entrustment of the manufacture of the thimbles to the contractor was itself evidence of the fact that the undertaking was not closed as stated by the petitioner and that the closure announced in Ex. M. 2 was a mere pretence. If we can come to the conclusion that there was no real closure and that what was done by the petitioner was no more than a mere pretence for a closure, it is clear that we cannot do anything to disturb the award made by the labour court. But the finding of the labour court, as can be seen from the award, is unmistakable. It was of the view that there was a real closure of the workshop section and the reasons why there was such closure were all enumerated by the labour court in Paras 21, 32 and 33 of its award. Indeed, even the employees did not dispute before the labour court, as can be seen from what is stated in Para. 31 of the award. That there was a closure. The limited question urged before the labour court by them being that the closure was a mere temporary closure.

22. In my opinion, the argument that there was no closure of the undertaking and that the announcement was a mere pretence for a closure cannot succeed. I do not consider that the employees can derive any sustenance from the fact that the thimbles required by the porcelain factory were manufactured by a contractor engaged for that purpose by the petitioner for their submission to the contrary. No one can suggest, in my opinion, that if the petitioner, after he closed down his undertaking, entrusted the manufacture of the thimbles to a contractor for the purpose of discharging his obligations under a contract into which he had entered with the porcelain factory, what he did amounted to continuing his business in his old undertaking which he announced had been closed down. All that the petitioner must be regarded to have done by the entrustment of that work to a contractor was to place an order with that contractor for the manufacture of those thimbles so that he can supply those thimbles to the porcelain factory after the contractor supplied him those thimbles. That this is the correct way of understanding the arrangement entered into between the petitioner and the contractor is clear from the fact, as found by the labour court, that the promises of the petitioner's factory were leased to the contractor and even the labour court was not willing to think that the fact that the petitioner supervised the work in that factory or that he paid the wages to the employees in that factory could alter the position in any way. In my opinion, the finding of the labour court that there was a closure of the workshop section from 5 June 1958, and that such closure became inevitable in the difficult situation in which the petitioner was placed, aggravated as it was by the refusal on the part of the employees to return to their work notwithstanding the demand that they should, under Ex. M. 1, is not what we can disturb although Sri Nagesha Rao in effect asked us to do so.

23. If that finding has to remain, then, it follows that, as the labour court should have found, the reasons for the closure being basically good reasons, the closure was no other than a bona fide closure. If the closure was a bona fide closure within the competence of the employer, what logically follows is that it was

impossible for the labour court to have recorded a finding that there was any lockout by him.

24. Sri Nagesha Rao, however, contended that there was no reference in the notice, EX. M. 2, to any other reason than the recalcitrant attitude of the employees to return to work as the provocation for the closure.

25. We do not consider that to be a very material circumstance on the basis of which we can disturb the finding of the labour court that the more serious reasons which motivated the closure of the undertaking were those discussed in Para. 31. 32 and 33 of its own order. It is true that the labour court by a process of stretching and straining thought that the closure of the undertaking on 5 June 1958 was not a bona fide closure although the subsequent continuance of the closure was not only proper but pre-eminently justified. It in this approach which the labour court made to the decision of the question which was responsible for its landing itself in an entirely unsustainable and incongruous conclusion that there was a lockout by the petitioner.

26. Nor do I find any substance in the argument advanced before us by Sri Nagesha Rao that the omission on the part of the petitioner to issue a notice under S. 25F of the Industrial Dispute; Act or to make a payment of the wages in lieu of such notice can have any materiality. If the notice prescribed by S. 25F was not issued and the wages referred to in it were not paid, the employees would of course have the right to claim those wages. But, if a closure to a good closure, non-compliance with the provisions of S. 25F cannot, in my opinion, make it bad.

27. In the view that I take, the finding of the labour court that there was a lockout on 5 June 1958 cannot be sustained, and, it is accordingly quashed.

28. What follows would be that the direction for the payment of wages for the period between 5 June 1958 and 28 February 1959 cannot also be sustained since that direction would be one which was not within the competence of the labour court. That direction also has to be and is quashed.

29. It should be pointed out that there is a further direction in the award that the employees should be paid compensation under S. 25FFF of the Industrial Disputes Act. It is extremely regrettable that the tribunal did not quantify the compensation payable by the employer which it was its clear duty to do, but that does not mean that we should vacate that direction. Sri Narasimhamurthi has pointed out to us and his submission to borne out by the admission made by the employees in the proceedings before the labour court - that after the closure of the business on 5 June 1958 the petitioner offered to pay to the employees the compensation to which they were entitled under the provisions of S. 25FFF. Sri Narasimhamurthi has told us that the petitioner even now is willing to pay that compensation. The only question is whether the compensation so payable by the petitioner is that specified in Sub-section (1) of that section or what is specified in the proviso appearing under it. Sri Narayanamurthi's submission is that the

undertaking was closed down in this case "on account of unavoidable circumstances" within the meaning of that expression occurring in that proviso, whereas Sri Nagesha Rao has equally strenuously urged that it is not so. The stress of the argument before us by Sri Nagesha Rao is that since even according to the finding of the labour court, the undertaking was closed down by reason of financial difficulties, the closure was one which fell within the explanation to Sub-section (1) of S. 25FFF and not within the proviso to it.

30. It is true that, that explanation on which Sri Nagesha Rao depends states that an undertaking closed down by reason merely of financial difficulties (including financial losses) or accumulation of undisposed of stocks is not one closed down on account of unavoidable circumstances. But it seems to me that Sri Nagesha Rao is on slippery ground when he depends upon the explanation or when he wishes to take his case outside the orbit of Sub-section (1) of this section. The explanation is attracted only in cases in which the closure is attributable merely to financial difficulties or the accumulation of undisposed of stocks. This was not a case in which the labour court came to the conclusion that the closure was attributable merely to financial difficulties or accumulation of undisposed of stocks. On the contrary, many reasons were assigned by the labour court in support of its conclusion that there was a closure which can be regarded only as a closure on account of unavoidable circumstance, such as the closure of the bobbins erection which became inevitable on account of the steep rise in the cost of the raw materials, the insistence on imported beech and birch by the customers, increase in the cost of electricity, fall in the price of the products manufactured by the undertaking, increase in the production costs and almost total disappearance of orders and business. Even the closure of the workshop section was, as Para. 32 of the award reveals, not attributable merely to financial difficulties or accumulation of undisposed of stocks.

31. That the explanation to S. 25FFF(1) does not govern a case in which the closure is caused not merely by financial difficulties or accumulation of undisposed of stocks but also what was forced by other external circumstances was what was pointed out by their lordships of the Supreme Court in *Hatisingh Mfg. Co. Ltd. and Another Vs. Union of India (UOI) and Others*, of which their lordships observed :

"Where an undertaking is closed down on account of persistent losses due to no fault of the employer or due to accumulation of stocks having regard to persistent unfavourable market conditions, the closure may normally be regarded as due to unavoidable circumstances beyond the control of the employer. By the explanation, the Jurisdiction of the tribunal which may be called upon to ascertain whether, in a given case, the closure was on account of circumstances beyond the control of the employer and whether on that account the employer was entitled to the benefit of the proviso may be restricted. But it is not provided that in no case of financial difficulty or accumulation of stocks coupled with other circumstances, the closure is to be regarded as due to unavoidable

circumstances beyond the control of the employer. It is only where the closure is "merely" on account of financial difficulties or accumulation of undisposed of stocks that the closure is not to be deemed due to circumstances beyond the control of the employer."

32. This exposition of the law by their lordships of the Supreme Court makes it clear that even in Cases in which the only causes which impelled the closure of the business were financial difficulties and accumulation of undisposed of stocks, it may be possible to bring the closure within the proviso and to take it out of the explanation. A fortiori the case would be one which would fall within the proviso rather than the explanation if, in addition to financial difficulties and accumulation of undisposed of stocks, there are other reasons which brought about the closure of the business such as those specified in Paras. 32 and 33 of the award of the labour court. In my opinion, this case is one which undoubtedly falls within the proviso to S. 25FFF(1) and not within the explanation to that subsection.

33. In modification of the direction of the labour court we should, therefore, make a direction that the employees of the workshop section shall be paid the lower compensation specified in the proviso to S. 25FFF(1) which the petitioner, as submitted to us by his learned advocate, Sri Narasimhamurthi, is even now willing to pay, and it is ordered accordingly.

34. The result is that, except for the modification which is made in regard to the compensation payable under the proviso to S. 25FFF(1), the award of the labour court is in other respects quashed.

35. In the circumstances, there will be no order as to costs.

Kalagate, J.

36. I agree.