

(1957) 04 P&H CK 0012
In the Punjab And Haryana At Chandigarh

Jai Bharat Woollen and Silk Mills

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 24-04-1957

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 12, 25F, 3

Citation : (1957) 2 LLJ 464

Hon'ble Judges : Bishan Narain, J

Bench : Single Bench

Judgement

Bishan Narain, J.—Jai Bharat Woollen and Silk Mills of Amritsar is a partnership concern and carries on the business of manufacturing woollen and silk textiles as its name indicates, On 27 April 1956 the firm gave a notice to all its workers in the following terms:

The management regrets that due to financial difficulties, other trade reasons and differences between the partners and consequent decision to dissolve the firm, it has been decided to permanently close down its entire factory and business with effect from the close of the first shift on 31 May 1956, from which date the services of all the workers will stand terminated.

The firm, however, decided to stop working of the mills with effect from about 1-30 a.m. of 28 April 1956. Naturally the workers complained to the labour inspector on the same day complaining of this closure of the mills and also, of the notice dated 27 April 1956. The labour inspector sent a copy of this complaint to the firm on 1 May 1956. The Textile Labour Association sent its demands to the firm on behalf of its workmen making certain claims. Thereupon conciliation proceedings were started and ultimately on 13 June 1956 the parties agreed u/s 12(3) of the Industrial Disputes Act, 1947, to get their disputes reduced into five issues to be decided by the industrial tribunal. These issues read:

(a) Whether any bonus for year 1955-56 is due to the workers? If so, what

should be the quantum of such bonus and with what conditions, if any?

(b) Whether the workers are entitled to full wages during the notice period irrespective of the fact whether they have been laid off? If so, what is the amount due to each one of them?

(c) Are the workmen entitled to retrenchment relief u/s 25F of the Industrial Disputes Act due to closure of the factory on 31 May 1956? If so, what is the quantum of such relief?

(d) Are the workers entitled to any other compensation and the amount in lieu of the leave with wages under the Factories Act?

(e) Was the dismissal of Piara Lal, warper, legal and justified? If so, to what compensation is he entitled?

Accordingly on 1 September 1956 these very disputes were referred to the industrial tribunal by the Governor of the Punjab u/s 10(1)(c) of the Industrial Disputes Act. The validity of this reference is challenged by the firm under Article 226 of the Constitution in the present petition on the ground that the factory had ceased to work in the early hours of 28 April 1956 and all these disputes had arisen thereafter and therefore the agreement u/s 12(3) and also the reference are invalid. This petition is contested on behalf of the State.

2. Both parties rely on the decision of the Supreme Court in *Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union*, and the learned Counsel of each side urges that the judgment supports his contention. It is therefore necessary to discuss this judgment at some length. Their lordships of the Supreme Court in this judgment held as a matter of law that

The view therefore expressed in *Indian Metal and Metallurgical Corporation v. Industrial Tribunal, Madras 1952 II L.L.J. 364*, and *K.N. Padmanabha Ayyar Vs. State of Madras and Others*, that the industrial dispute to which the provisions of the Act apply is only one which arises out of an existing industry is clearly correct. Therefore, where the business has been closed and it is either admitted or found that the closure is real and bona fide, any dispute arising with reference thereto would, as held in *K.N. Padmanabha Ayyar Vs. State of Madras and Others*, fall outside the purview of the Industrial Disputes Act. And that will a fortiori be so, if a dispute arises if one such can be conceived after the closure on the business between the quondam employer and employees.

Their lordships construing Section 3 of the Act further held that

That section only requires, apart from other conditions, with which we are not concerned, that there should be an industrial dispute before there can be a reference and we have held that it would be an industrial dispute if it arises out of an existing industry. If that condition is satisfied, the competence of the State for taking action under that section is complete, and the fact that the industry has since been closed can have no effect on it.

The test for determining¹ the power to refer the dispute is laid down by their lordships of the Supreme Court in these words-

We think that, on a true construction of Section 3, the power of the State to make a reference under that section must be determined with reference not to the date on which it is made but to the date on which the right which is the subject-matter of the dispute arises, and that the machinery provided under the Act would be available for working out the rights which had accrued prior to the dissolution of the business.

3. On the basis of these principles the learned Counsel for the petitioners urges that the work in the present case ceased on 28 April 1956, on which date the business ceased to be in existence and that all the disputes in the present case arose thereafter.

4. On the other hand the learned Advocate-General has urged that if the rules laid down by the Supreme Court are applied then the business did not cease to exist till 31 May 1956, and admittedly all disputes had arisen prior to this date and for this purpose he had relied on the decision and facts given by the Supreme Court in applying the rules laid down by their lordships as reproduced above. The facts in that case were these. With permission of the Government sugar mills situated in Pipraich in Gorakhpur district were sold to a Madras firm in October 1950, and under the agreement the machinery had to be dismantled and transported to Madras. As the crushing season was on, the vendors took the mills on lease till the conclusion of the crushing season which in fact ended at the end of January 1951. The workers learning of this transaction made endeavours to persuade the Government, though unsuccessfully, to withdraw the permission to sell the mills. They thereupon decided to go on strike from 12 January 1951. Naturally negotiations began between the parties and on 3 January 1951 the employers offered 25 per cent of the profits from the sale to the workers provided they did not go on strike. After this arrangement the strike was called off. As machinery had to be dismantled for transport to Madras, the workers were asked to help the management in doing so. The workers, however, refused. The employers on 28 February 1951 gave a notice that those workers who did not co-operate in dismantling the machinery will be discharged with effect from 1 March 1951 and on 14 March 1951 they gave notice that the machinery had to be delivered on 15 March 1951 to the vendees and that the workers will be paid up to 16 March 1951 only. This latter date was, however, at the request of the workers, extended to 21 March 1951 on which date they were fully discharged. The workers on 19 April 1951 claimed the bonus of 25 per cent under the January 1951 agreement, but this claim was repudiated by the employers. This dispute was referred to the industrial tribunal on 16 November 1951. On these facts their lordships of the Supreme Court came to the conclusion that the business was closed on 21 March 1951, i.e., the date on which the workers were actually discharged.

5. It is obvious that on this reasoning the business in the present case closed on

31 May 1956, after the close of the first shift as intimated to the workers in the notice dated 27 April 1956. It is true that the mills did not work after 28 April 1956, but that is of no significance. In the *Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union*, the mills had actually been dismantled before 15 March 1951 and yet their lordships came to the conclusion that the business was not closed till 21 March 1951, i.e., the date on which the workers were actually discharged. In the present case the workers were effectively discharged only on 31 May 1956. It was argued on behalf of the employers that the notice up to that date was given u/s 25F and that in fact the business was closed on 28 April 1956. There is no reference to Section 25F in the notice. In any case, whatever the reason, the workers were not discharged before the expiry of the notice. No notice of discharge was ever given for any date prior to 31 May 1956. It must therefore be held that the business was closed on 31 May 1956. Obviously all the disputes referred to the tribunal relate to a date prior to that date. All the rights claimed by the worker in this case arose and had accrued on a date prior to 31 May 1956. It is obvious that these disputes cannot be said to have arisen after the closure of the business between the quondam employer and employees. Under the notice the workmen remained in employment till after the first shift on 31 May 1956. It is also manifest from the fact that the conciliation proceedings started between the parties after 28 April 1956. It is therefore clear that the reference of these disputes for adjudication by the industrial tribunal cannot be held to be invalid on these grounds.

No other point was argued before me. The result is that this petition fails and is dismissed with costs.