

(1981) 04 MAD CK 0040
In the Madras High Court

K. Gurumurthy, authorised representative of certain workers	APPELLANT
Vs	
Simpson and Co. and Others	RESPONDENT

Date of Decision : 09-04-1981

Acts Referred:

Industrial Disputes Act, 1947 — Section 25M(2), 25O

Citation : (1982) 1 MLJ 394

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—As all these writ appeals and the writ petitions raise a common question, they are dealt with together. However, it is unnecessary to set out the facts in all the cases as the facts are substantially the same and it is sufficient to refer to the facts in the first case, vis., W.A. No. 44 of 1977.

2. Messrs. Simpson & Co., Ltd., Madras, filed an application on 19th May, 1976, u/s 25-M(2) of the Industrial Disputes Act, 1947, as amended, hereinafter referred to as the Act, to the Joint Commissioner of Labour, Madras, seeking permission to continue the lay-off of 139 out of 432 workmen employed in the establishment with effect from 5th March, 1976, for the reasons set out in item 21 of the Annexure to the application. The reasons set out in the said Annexure were : (1) non-availability of essential raw materials to run the operations in the carriage department and the Light Engineering Section; (2) acute power shortage; (3) no possibility of procuring orders due to non-availability of raw materials; and (4) the company lost its market for the products manufactured in those departments necessitating the closure of the sales departments and there was no possibility of procuring orders in the foreseeable future and there is no possibility of revival of the operations in those departments pending final retrenchment of the workmen in those departments in accordance with the provisions of law.

3. Copies of the said application were also served on the concerned workmen. In a letter, dated 5th July, 1976, signed by 52 workmen, they represented that the lay-off of workmen by the management was not justified nor was there any

justification for continuance of the same. The worker's Union also objected to the grant of permission to continue the lay-off of workmen as prayed for by the management.

4. The Joint Commissioner of Labour heard the representations of the management and the workmen represented by the Union on 16th July, 1976. It was submitted by the management that the application filed on 19th May, 1976, should have been disposed of before 19th July, 1976, that having regard to the fact that no order has been passed on the application, the deeming provision contained in Section 25-M(4) had come into operation and that since the rules under the Act had been published and the authority was actually constituted only on 22nd March, 1976, the application filed on 19th May, 1976, should be taken to be in time as provided in Section 24-M (2). The workmen, apart from opposing the application for lay-off on merits contended that the application was belated and that the deeming provision contained in Section 25-M (4) will not come into operation.

5. The Joint Commissioner of Labour held that the lay-off application filed by the management has not been made to the specified authority within a period of 15 days from the date of the commencement of the Amending Act of 1976, as required u/s 25-M (2), and cannot, therefore, be entertained and that in view of that finding the question) of justification or otherwise for the continuation of the lay-off at the commencement of the Amending Act does not arise for determination. He also held that the deeming provision contained in Section 25-M (4) does not arise as the lay-off application itself has been held to be out of time. In this view the Joint Commissioner of Labour ultimately dismissed the application as not maintainable without going into the merits of the application by his order, dated 30th July, 1976.

6. Against the said order Messrs, Simpson and Co., Ltd., filed W.Ps. Nos. 3686 and 3687 of 1976, before this Court for the issue of a writ of certiorari to quash the said order and for a writ of mandamus directing the Joint Commissioner of Labour to dispose of the lay-off application, dated 19th May, 1976, on merits. The main ground urged by them was that the rules themselves were officially published only on 5th May, 1976 and, therefore, any lay-off application could be filed only from that date and the lay-off application having been filed by the management on 19th May, 1976, it was well within time, and that in view of the lay-off application not having been disposed of within two months the deeming provision in Section 25-M(4) will stand attracted.

7. The writ petition was resisted by the Joint Commissioner of Labour as also the Unions of workmen. Their defence was that the amending Act had come into force on 5th March, 1976, that the authority to whom the application must be made has been notified on 22nd March, 1976, and therefore, they should have in any event, filed an application within 15 days from 22nd March, 1976 though not from 5th March, 1976.

8. After considering the rival contentions, Mohan, J., held that the lay-off application filed by the management was in time, that though amending Act of 1976 came into force on 5th March, 1976, the Act should be deemed to have come into force on 5th May, 1976, when the rules were published setting out the manner of application and the authority to receive the application u/s 25-M and that as the lay-off application had not been disposed of within two months, the management will be entitled to the benefit of the deeming provision in Section 25-N (2). Aggrieved by the judgment of Mohan, J., the workmen have filed W.A. Nos. 44 of 1977 and 10 of 1977 wherein they have questioned the view taken by Mohan, J., in the writ petitions.

9. In these two writ appeals, the respondents have questioned the constitutional validity of Section 25-M. Hence, these writ appeals have been posted along with the writ petitions wherein the constitutional validity of Section 25-M has been raised apart from other contentions. Thus the main question to be decided in all these cases is whether Section 25-M is constitutionally invalid. The learned Counsel for the respondents in the writ appeals and the petitioners in the writ petitions rely on the decision of the Supreme Court in; *Excel Wear v. Union of India* (1978) 2 L.L.J. 527 : 1978 Lab. I.C. 1537 holding that Section 25-O is constitutionally invalid for violation of Article 19(1)(g) of the Constitution and the decision of a Division Bench of this Court in *K.V. Rajendran v. Deputy Commissioner of Labour* (1980) 2 L.L.J. 275 : 94 L.W. 583, holding Section 25-N of the Act as unconstitutional and submit that the reasons given in those decisions for invalidating Sections 25-O and 25-N of the Act will squarely apply here and for the same reasons Section 25-M also should be declared unconstitutional. The learned Counsel for the contesting respondents in the writ petitions would, however, rely on a decision of a Division Bench of the Andhra Pradesh High Court in *General Industrial Society Ltd. v. Commissioner of Labour* (1980) 1 An. W.R. 92, holding Section 25-M to be constitutionally valid.

10. Before considering the question as to whether the reasons given by the Supreme Court in *Excel Wear v. Union of India* (1978) 2 L.L.J. 527 : 1978 Lab. I.C. 1537, for invalidating Section 25-O and of this Court in *K.V. Rafendran v. Deputy Commissioner of Labour* (1980) 2 L.L.J. 275 : 94 L.W. 583, for invalidating Section 25-N are sufficient to invalidate Section 25-M as well, it is necessary to refer to the provisions in Section 25-M of the Act and compare the same with Sections 25-O and 25-N. A Division Bench of Andhra Pradesh High Court in *General Industrial Society Ltd. v. Commissioner of Labour* (1980) 1 A. W.R. 92, after such comparison has pointed out the difference between sections 25-M and 25-O, which was the subject-matter of the decision before the Supreme Court and had held, that because of that difference the reasons given by the Supreme Court for invalidating Section 25-O will not apply to invalidate Section 25-M.

11. Section 25-M(1) provides that no workman in an industrial establishment to which Chapter V-A applies shall be laid-off by his employer except with the

previous permission of such authority as may be specified by the appropriate Government by notification in the official gazette, unless such lay-off is due to shortage of power or to natural calamity. Section 25-N(1) provides that no such workman who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until certain conditions are satisfied and until a notice in the prescribed manner is served on the appropriate Government or such authority as may be prescribed by the appropriate Government by notification in the official gazette, and the permission of such Government or authority is obtained under Sub-section (2). Section 25-O is to the effect that no employer shall close down such an undertaking of an industrial establishment without prior permission being obtained from an authority specified by the appropriate Government. Section 25-Q provides that any employer who contravenes the provisions of Section 25-M or 25-N is punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees or with both. Section 25-R provides that any employer who closes down, an undertaking without complying with the provisions of Section 25-O (1) shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees or with both. Sub-sections (2) and (3) of Section 25-R provide that an employer who contravenes Sub-sections (2) and (3) of Section 25-O shall be punishable with imprisonment for a term extending to one year or one month respectively. These sections occur in Chapter V-B of the Act which was introduced by the amending Act of 1976 and which applies to industrial establishments in which not less than 300 workmen are employed on an average per working day for the preceding 12 months as per Section 25-K. There is no dispute that the industrial establishments before us do come within "Chapter V-R. According to Section 25-M, an employer must obtain the prior permission of such authority as may be specified by the appropriate Government by notification in the official gazette, for laying off workmen before the workmen are laid-off, and if the permission sought for is not refused within a period of two months, the permission applied for shall be deemed to have been granted on the expiration of the said period of two months. According to Section: 25-N an employer governed by Chapter V-R, has to give three months notice in writing indicatine the reasons for retrenchment or payment of three months wages in lieu of such notice before retrenching a workman and also issue a notice in the prescribed manner on the appropriate Government" or such authority as may be specified by the appropriate Government by notification in the official eazette and obtain the permission of such Government or authority for retrenchment to which the notice relates. As per Section 25-O an employer who intends to close down an undertaking of an industrial establishment to which Chapter V-B applies shall give a notice of the intended closure in the prescribed manner to the appropriate Government stating clearly the reasons for the intended closure of the undertaking and obtain the permission of such Government or authority for closing down the undertaking. The constitutional validity of Section 25-O was challenged before the Supreme Court in *Excel Wear v. Union of India* (1978) Lab.

I.C. 1537 : (1978) 2 I.L.J. 527, and the said section was held to be unconstitutional. The reasons for invalidating Section 23-O given by the Supreme Court are these--

Intrinsically no provision of Chapter V-R suggests that the object of carrying on the production can be achieved by the refusal to grant permission although in the objects and reasons of the amending Act, such an object seems to be there, although remotely. It is highly unreasonable to achieve the object by compelling the employer not to close down in public interest for maintaining production. Although Chapter V-B deals with certain comparatively bigger undertakings, it does not make the law reasonable, though the classification of undertakings for purposes of the provisions of chapter V-B can be taken to be a reasonable classification for saving the law for violation of Article 14, it certainly does not make the restriction reasonable within the meaning of Article 19(6). The reasonableness has to be tested both from the procedural and substantive aspects of the law. In case of bona fide closures though the reasons given by the employers are correct, adequate and sufficient, yet, the permission to close down can be refused on the ground of public interest because the interest of labour for the time being is bound to suffer as it makes a worker unemployed, but it is not reasonable to give them protection by compelling the employer to manage the undertaking even when they do not find it safe and practicable to manage the affairs, that they cannot be compelled to go on incurring losses year after year. There is already a built-in safeguard in Section 25-FFF to prevent a mala fide closure and the requirement as to permission before closure which may be refused by the appropriate Government even if the grounds set out in Section 25-FFF are established will amount to an unreasonable restriction. The law may provide to deter the reckless, unfair, unjust or mala fide closures but cannot prevent the employer from closing down as it is essentially an interference with his fundamental right to carry on the business. Section 25-O does not provide any guidelines for the exercise of the power to grant or refuse permission. The appropriate Government may whimsically and capriciously refuse the permission to close down even if a case has been made out for closure. The section does not compel the appropriate Government to give reasons for the refusal. Any order passed by the authority is not subject to any scrutiny by any higher authority or Tribunal in appeal or in revision.

Section 25-N was challenged as constitutionally invalid before this Court in K. V. Rajen-dran v. Deputy Commissioner of Labour (1980) 2 L.L.J. 275 : 94 L.W. 583 , for the same reasons as had been given by the Supreme Court in the above case for invalidating Section 25-O. After considering the question as to whether the reasons given by the Supreme Court for striking down Section 25-O will apply for striking down Section 25-N, a Division Bench of this Court to which one of us was a party, took the view that Section 25-N, suffers from the same arbitrariness and unreasonableness as pointed out by the Supreme Court with reference to Section 25-O, that Section 25-N or any other provision does not provide the guidelines as to how the application for permission by an employer

for retrenchment has to be disposed of and on what grounds the permission can be refused, that it does not provide for any appeal or revision even against the arbitrary orders of refusal, that the provision is unreasonable in that the employer is forced to continue the employment of personnel who are found to be surplus for his requirements and thus incur unnecessary expenditure in connection with his undertaking, leading ultimately to curtailment of his profits, that there are already sufficient safeguards in the matter of retrenchment of workmen by the employer under Sections 25-F, 25-G and 25-H and notwithstanding the said safeguards, to compel an employer to seek permission u/s 25-N will be an unreasonable restriction violating Article 19(1)(f) and (g) of the Constitution. Similarly, it is now contended before us that the reasons given by the Supreme Court for striking down Section 25-O will also squarely apply here for invalidating Section 25-M. According to the petitioners in the writ petitions, Section 25-M also suffers from the same defects as had been pointed out by the Supreme Court in connection with Section 25-O and of this "Court in connection with Section 25-N. It is said that Section 25-M also does not provide any guidelines for the grant or refusal of permission and the authority may refuse the permission to lay-off workmen even if a case has been made out for such permission. Any order passed by the authority is also not made subject to scrutiny by any higher authority or tribunal in appeal or in revision. It is seen that even before the introduction of Section 25-M, the Act provides for sufficient safeguards in the matter of laying off of the workmen. Section 2 (kkk) defines "lay-off" as meaning 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 break-down of machinery or for any other reason to give employment to a workman whose name is on the muster roll of his industrial establishment and who has not been retrenched.

12. Section 25-C confers certain rights on the workmen who have been laid-off to get compensation. It provides that whenever, a workman whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid-off whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent, of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off. It also provides that if during the period of twelve months, a workman is so laid-off for more than forty-five days, no such compensation shall be payable in respect of any period of lay-off after the expiry of the first forty-five days if there is an agreement to that effect between the workman and the employer. Section 25-D compels the employer to maintain a muster roll for the purpose of this Chapter. Section 25-E provides that no compensation shall be paid to a workman who has been laid-off : (1) if he refuses to accept any alternative employment in the same establishment from which he has been laid-off, or in any other establishment belonging to the same

employer situate in the same town or village or situate within a radius of five miles from the establishment to which he belongs; (2) if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day; and (3) if such laying off is due to a strike or slowing down of production on the part of workmen in another part of the establishment. Thus the definition of "lay-off" in Section 2 (kkk) ensures that lay-off can be resorted to only on account of shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery and if the lay-off is resorted to by the employer he is liable to pay compensation as contemplated by Section 25-C. Section 25-M (1) compels the employer to obtain prior permission of such authority as may be specified by the appropriate Government unless such lay-off is due to shortage of power or to natural calamity. Sub-section (2) of the said section contemplates permission being obtained to continue the lay-off in case the layoff was in force when Section 25-M had been introduced, within a period of 15 days from such commencement. Sub-section (3) directs the authority to whom the application has been made to make such enquiry as he thinks fit, and to grant or refuse the permission applied for reasons to be recorded in writing. Under Sub-section (4) if the permission sought for is not granted within the expiry of two months from the date on which the application is made, the permission applied for shall be deemed to have been granted on the expiry of the said period of two months. Thus the two differences between Section 25-M on the one hand and Sections 25-O and 25-N on the other, are: (f) the authority to whom the application for permission is made, has to record the reasons in writing either for the grant or for refusal of the permission; and (ii) if the application is not disposed of within two months the permission should be deemed to have been granted. The question is whether the said two features alone are sufficient for upholding Section 25-M to be a reasonable restriction.

13. It has been held in *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*,¹ that the requirements as to recording reasons in the order is not a sufficient safeguard as it is hardly effective, for, there is no higher authority prescribed in the order who could examine the propriety of the reasons and revise or review the decision of the authority and that the reasons to be recorded are only for his personal and subjective satisfaction and not for furnishing any remedy for the aggrieved person. It cannot, therefore, be taken that a mere provision requiring reasons to be recorded in writing, is a sufficient safeguard against arbitrary refusal, unless there are guidelines from which it is possible to find out whether the reasons given for the refusal are proper and germane, and unless a right of appeal is given to a higher authority against the orders passed by the authority concerned. Similarly, the deeming provision in Section 25-M (4) is not also a sufficient safeguard against arbitrary exercise of power to grant or refuse permission. That provision is intended to avoid delay in the disposal of the application for permission and to see that such applications are disposed of within a period of two months. Therefore the deeming provision

in Section 25-M(4) cannot be taken to govern the mode or manner of exercise of the power to grant permission. Thus the two main defects pointed out by the Supreme Court in *Excel Wear v. Union of India* 1978 Lab. I.C. 1537 : (1978) 2 L.L.J. 527, i.e. (1) No guidelines are available from the statute; and (2) that there is no provision for scrutiny of the order passed by the authority by any higher authority or tribunal in appeal or in revision, are present even in Section 25-M. As a matter of fact, in *K.V. Rajendran v. Deputy Commissioner of Labour*, while distinguishing the Andhra Pradesh case in *General Industrial Society Ltd. v. Commissioner of Labour* (1980) 1 A.W.R. 92, this Court has observed-

Before that Court, the decision of the Supreme Court above referred to was relied on by the employer, but the Court held that Section 25-M is not in pari materia with Section 25-O, which was the subject-matter before the Supreme Court, that there are two points of difference between the two Sections 25-O and 25-M, that Section 25-M requires reasons to be recorded in writing, that it provides that permission shall be deemed to have been granted on the expiry of the period of two months and that the two points of difference are substantial, and, therefore, the decision of the Supreme Court cannot be invoked to invalidate Section 25-M. With respect, we are not inclined to agree with the reasoning given by the Bench of the Andhra Pradesh High Court in the said decision. Firstly, a mere provision requiring reasons to be given cannot be taken to be a sufficient safeguard against arbitrary refusal unless guidelines are set out. Unless guidelines are, there, it is not possible to find out whether the reasons given for refusal are proper and germane. Even in a case where the employer makes out a good case for retrenchment, it is possible for the appropriate authority to refuse to grant permission by giving some reasons. There is no provision in the Act to question such whimsical orders by filing appeals or revisions. In the Andhra Pradesh case, the Court has also taken the view that there are sufficient guidelines in Section 2(kkk) of the Act which says when there can be a valid lay-off. With respect, we are not inclined to agree. As we have already said, even in a case where the employer had made out a case for a valid lay-off as provided in Section 2(kkk), the authority may refuse the permission and there is no way of challenging that refusal under the Act.

Though the decision of the Andhra Pradesh High Court is in favour of the respondents, this Court has specifically disagreed with the said view, in the decision in *K.V. Rajendran v. Deputy Commissioner of Labour* (1980) 2 L.L.J. 275 : 94 L.W. 583. After holding that Section 25-N is constitutionally invalid for the reasons given by the Supreme Court for invalidating Section 25-O, the Bench has stated that the defects pointed out by the Supreme Court in Section 25-O are present even in Sections 25-N and 25-M. Having regard to the earlier judgment of a Division Bench of this Court in *K. V. Rajendran v. Deputy Commissioner of Labour* (1980) 2 L.L.J. 275 : 94 L.W. 583, with which we entirely agree, we hold that Section 25-M is also constitutionally invalid for violation of Article 19(1)(f) and (g).

14. In view of our finding that Section 25-M is constitutionally invalid for the reasons pointed out by the Supreme Court for invalidating Section 25-0, it is unnecessary to go into the validity or otherwise of the orders passed by the authorities and which have been impugned in some of these cases.

15. In the result, the writ appeals filed by the workmen against the judgment of Mohan, J., are dismissed and the writ petitions filed by the employers are allowed. There will, however, be no orders as to costs.

16. It is represented by the learned Counsel for the respondent in W.A. No. 44 of 1977, that in pursuance of the orders of this Court, a certain amount was paid to the workmen and now that the writ appeals have been dismissed the amount should be directed to be adjusted towards the future entitlements of the workman. In view of the said representation, the amount said to have been paid to the workmen by the employer can be adjusted towards future entitlements of the workman.

17. The contesting respondents seek leave of this Court for filing an appeal to the Supreme Court against the judgment just now pronounced. Since we have followed the judgment of the Supreme Court in *Excel Wear v. Union of India* (1978) 2 L.L.J. 527 : 1978 Lab. I.C., we do not think that the case involves a substantial question of law of general importance which needs to be decided by the Supreme Court. Hence the request for leave is rejected.