
(2005) 02 MAD CK 0075

In the Madras High Court

Case No : Writ Petition No. 6120 of 2003

Krishnagiri, Pochampalli Vatta Engineering and General
Workers Sangam

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 09-02-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 02 MAD CK 0075

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : C.K. Chandrasekaran, for Row and Reddy, for the Appellant; M.G.H. Varadarajan, A.G.P. for R1 and R2, G. Venkataraman, for Aiyar and Dolia for R3 and V. Suthakar, for R4-R25, for the Respondent

Judgement

D. Murugesan, J.—The petitioner is Krishnagiri, Pochampalli Vatta Engineering and General Workers Sangam. The Sangam questions the

impugned order made in G.O.(D) No. 162 Labour and Employment (C) Department dated 3.2.2003.

2. I have heard Mr. C.K. Chandrasekaran, learned counsel for the petitioner, Mr. M.G.H. Varadarajan, learned Additional Government Pleader

for the first and second respondents, Mr. G. Venkataraman, learned counsel for the third respondent and Mr. V. Suthakar, learned counsel for the

respondents 4 to 25.

3. The issue relates to the retrenchment of 86 workers of Sunflower Oil Complex, Pochampalli, Dharmapuri District, an unit of Tamil Nadu Agro

Industries Development Corporation Limited, Chennai. As I am inclined to dispose of this writ petition in terms of sub-section (6) of Section 25N

of the Industrial Disputes Act by relegating the parties to adjudicate the entire issue before the Industrial Tribunal, I do not propose to discuss and

render any finding as to the merits of the case, except narrating the facts leading to the filing of the writ petition.

4. The Managing Director of Tamil Nadu Agro Industries Development Corporation Limited (hereinafter referred to as "the Corporation") made

an application dated 2.12.2002 to the Principal Secretary to Government, Labour Department, Government of Tamil Nadu seeking permission

under sub-section (2) of Section 25N of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") to retrench the 86 workers in

question. By the impugned order that application was allowed and the permission had been granted. A perusal of the impugned order shows that

for arriving at the conclusion for grant of permission the Principal Secretary to Labour and Employment Department has relied upon G.O. Ms. No.

339, Agriculture (AE.II) Department dated 28.11.2001, G.O. Ms. No. 357, Agriculture (AE.II) Department dated 28.10.2002 as well G.O.(D)

No. 163, Labour and Employment (A1) Department dated 26.2.2002.

5. In the Government Order dated 28.11.2001, the Government, while taking a policy decision to close all the operations of the Corporation,

ordered to draw up a package for rehabilitation of the workers of Sunflower Oil Extraction Plant, Pochampalli in Dharmapuri District. In the

Government Order dated 28.10.2002, as the rehabilitation measure did not prove positive, the Government decided to privatise the Sunflower Oil

Complex at Pochampalli, to retrench the staff attached to Sunflower Oil Complex and to pay retrenchment compensation to staff on similar pattern

as adopted for the other employees retrenched by the Corporation. It appears that based upon the above Government Orders the Corporation

resolved in its 229th meeting of the Board of Directors held on 14.11.2002 to retrench all the employees of Sunflower Oil Complex by 10.3.2003.

Pursuant to the resolution, an application was made. This application shall be considered by the Labour and Employment Department of the

Government in terms of Section 25N of the Act. The procedures contemplated for submission of the application are as follows:-

25-N.(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons

for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication.

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

6. A reading of the above shows that the application for permission shall be made in the prescribed format. Once such an application is made, the authority is empowered to consider the particulars furnished in the application after making such enquiry and after giving a reasonable opportunity of being heard to the employer, workmen concerned and the persons interested in such retrenchment. The decision should be with regard to the genuineness and adequacy of the reasons stated by the employer. Therefore, it is clear that the authority has to conduct an enquiry and take a decision as to either granting or refusing permission only on the basis of the particulars furnished in the application, as the authority is exercising its quasi- judicial power. Any material relied upon in the order either granting or

refusing permission other than the particulars furnished in the application will adversely affect the parties concerned to such orders. Such consideration with reference to the particulars furnished in the application would be mandatory as the order of the Government would be final and binding on all the parties concerned, of course, subject to the provisions of sub-section (6) of Section 25N of the Act. A perusal of the application dated 2.12.2002 does not indicate any reference either to the G.O. Ms. No. 339 Agriculture (AE.II) Department dated 28.11.2001 or to the G.O. Ms. No. 357, Agriculture (AE.II) Department dated 28.10.2002. In fact, in the column provided for furnishing the reasons for seeking permission, the applicant had stated as follows:-

The TNAI was started in 1966 to promote and establish industries for growth of agriculture and to be a major catalyst in mechanization of Agriculture to improve efficiency of agricultural operations and thereby contribute to higher productivity. Due to industrial recession and stiff competition in the market, the Corporation has incurred losses for the years since 1977. The Corporation has no funds of its own to finance its operations and has to run the business with borrowings from Commercial Bank/ State Government incurring interest charges which added to the financial burden. In addition, the revised pay structure of corporation employees on par with Government servants has added to staff costs. Further the S.O.C. was not able to utilise its full capacity for want of raw materials in time and dispose its finished products. The import of raw sunflower oil at very low rates with marginal customs duty has created a situation where the Corporation cannot compete with others. While the financial expenditure went up year after year, the earnings were not commensurate. This has led to accumulated losses of Rs. 3547.00 lakhs as on 31.3.2002.

A perusal of the above does not indicate any reference to the above Government Orders. In the circumstances, I am unable to understand as to how the authority which is performing the quasi-judicial function could rest its order on the above two Government Orders which were not either placed by the employer or by the employees in question. On this ground alone the impugned order cannot be sustained.

7. However, as already referred, whether the Corporation is justified in seeking

permission for retrenchment on the basis of the above Government

Orders should be decided in terms of sub-section (6) of Section 25N of the Act, I leave the entire issue open. Though under sub-section (6) of

Section 25N the petitioner has got an effective remedy of making an application for review before the authority which has passed the order, on the

facts and circumstances of this case, the authority while exercising its quasi-judicial power has already relied upon certain Government Orders

which were not placed before it in the manner required under the provisions of Section 25N of the Act. Hence, it would not be proper to relegate

the petitioner to approach the same authority. The learned counsel for the petitioner relied upon a judgment of this Court in ""General Secretary,

Kovai Mavatta Poriyal Pothu Thozhilalar Sangam (AITUC), Coimbatore v. State Of Tamil Nadu Rep. by Its Secretary, Labour and

Employment Dept., Chennai and Anr. 2002 (2) LLN 1159"" to support his contention that for a free and fair consideration of the entire issue this

Court could direct the matter to be referred to the Industrial Tribunal so as to avoid further loss of time. The said judgment has also been affirmed

by a Division Bench in W.A. No. 1594 of 2002 on 4.6.2002.

8. In the case on hand, the impugned order had been passed on the basis of the above Government Orders which were not placed before the

authority either by the employer or by the employees. My attention is also drawn to the letter dated 26.12.2002 issued by the Under Secretary to

Government in Labour and Employment Department in regard to the proposed hearing and in the said letter also the G.O. Ms. No. 357 dated

28.10.2002 has been referred to even when there was no reliance placed by the employer in the application. In the circumstances, in my

considered view, for a fair, independent and proper consideration of the entire issue, the matter should be referred to the Tribunal. As I have not

expressed any opinion as to the merits the impugned order is not assailed, but the matter is directed to be referred to the Tribunal for adjudication

on its own merits. Both the petitioner Sangam and the third respondent Corporation are entitled to place all the materials in support of their

respective case before the Tribunal for its consideration.

9. Mr. G. Venkataraman, learned counsel for the Corporation also submitted that as against 86 workers, 66 workers had already accepted the

retrenchment compensation and are not interested in further litigation. In view of my finding, I am not going into the said question also and leave the same to be raised before the Tribunal.

10. With the above direction, the writ petition is disposed of. No costs.