
(1979) 03 BOM CK 0026

In the Bombay High Court

Case No : Special Civil Application No. 394 of 1974

Kulkarni Foundaries Ltd.

APPELLANT

Vs

M.G. Chitale

RESPONDENT

Date of Decision : 17-03-1979

Acts Referred:

Industrial Disputes Act, 1947 — Section 25C, 25F, 25J

Citation : (1980) 82 BOMLR 306

Hon'ble Judges : Pendse, J;Naik, J

Bench : Division Bench

Judgement

Naik, J.—By this petition the petitioners seek for a writ of certiorari for quashing the award dated December 3, 1973, passed by the Industrial Tribunal in Reference (IT) Nos. 211 and 281 of 1972.

2. The facts giving rise to this petition are not in dispute. The petitioner is having a foundry at Poona. Three hundred workmen were employed in that factory. It appears that in the wake of acute recession in the year 19.71 after giving layoff notices the workmen were laid-off between November 1971 to July 1972. They were in fact paid fifty per cent. of their wages as per the provisions of Section 25C of the Industrial Disputes Act, 1947. Subsequently the petitioners were required to retrench ten persons out of which they took back one with the result nine workmen stood finally retrenched.

3. The lay-off was challenged as being mala fide in all industrial dispute which was raised by the union. The conciliation having failed a reference was made and that was Reference (IT) No. 211 of 1972. In respect of the nine retrenched workmen while purporting to act under the second proviso to Section 25C, the petitioners set-off the lay-off compensation while paying the retrenchment compensation u/s 25F of the Act. An industrial dispute was raised in respect of that act also and the conciliation having failed a second reference being Reference (IT) No. 281 of 1972 was made.

4. Both references were consolidated and in the statements of claims which were filed on behalf of the workmen it was contended that the lay-off was mala fide and in respect of the second reference it was pointed out that the petitioners were not entitled to set-off the lay-off compensation payable u/s 25F.

5. It appears that in support of their contention that because of recession and for want of orders they were required to lay-off their workers for reasons beyond their control, the petitioners annexed a statement to their written statement. That statement was challenged on behalf of the union. But inspite of an opportunity being given by the tribunal to call for the records of the petitioners to rebut the petitioner's contention that opportunity was not availed of on behalf of the union. The tribunal, therefore, rightly held that the figures relating to castings orders furnished by the employers in the annexure to the written statement are correct and it further accepted that there was a steep fall in the orders which were being received by the petitioners from their customers. However by relying on Standing Order No. 20 and the admitted fact that no notice of seven days as per the said Standing Order was given, the tribunal directed the petitioners to pay ten per cent. of wages including dearness allowance for the period of lay-off inspite of its finding that the mala fides were not at all established in respect of the lay-off.

6. With regard to the second reference, the tribunal rejected the contention of the petitioners by pointing out that the second proviso to Section 25C on which the petitioners were relying was attracted only to crises covered by first proviso to that section and inasmuch as it was nobody's case that there was any agreement as provided in the first proviso to Section 25C, the second proviso was not at all attracted, and, therefore, the claim of the workmen in respect of that set-off also was awarded.

7. It is the propriety of the said awards which is challenged by the petitioners.

8. We had not the advantage of hearing anybody for the respondents.

9. Mr. Sawant the learned advocate for the petitioners assailed the first part of the award granting ten per cent. of the wages including dearness allowance for alleged violation of Standing Order No. 20. Mr. Sawant submitted that the learned member of the tribunal in fact having held that there was no mala fides in respect of the lay-off, exceeded his jurisdiction in proceeding to consider the fact of non-compliance of Standing Order No. 20. He also submitted that having regard to the overriding provisions of Section 25J of the Act, the learned member of the tribunal was not justified in pressing into service the violation of Standing Order No. 20 in favour of the workmen. We find that there is considerable force in these submissions of Mr. Sawant.

10. When one looks to the reference, the reference is as to whether the lay-off given by Kulkarni Foundries Limited; Poona to ninety workers mentioned in the annexure from November 1971 to April 1972 is mala fide and, if so, to what other relief besides statutory compensation would the workmen be entitled to?

Having regard to the scope of this reference and the clear finding recorded by the learned member of the tribunal in paras. 4 and 5 of his award that the lay-off was not at all actuated by any mala fides, one should have expected the learned member to reject the reference. What is more, as observed by the learned member himself even in the statements of claim which were filed by the petitioners, there was no reference of violation of Standing Order No. 20. It however appears that it was only at a late stage that the learned member was inclined to accede to the request of the petitioners to plead the violation of Standing Order No. 20 in a bid to find whether there were mala fides. Even then the learned member recorded an emphatic finding in para. 5 of his award that after considering all the aspects he was of the definite view that the employees had failed to establish mala fides in respect of the lay-off in question in these two references. It would thus appear that so far as the claim of the employees goes, there is a clear finding that there was no mala fides on facts or even for violation of the Standing Order No. 20, a new case which was tried to be made out at the hearing.

11. However, curiously enough in para. 6 of his award the learned member of the tribunal, went on to observe that it would be fair to award to the laid-off employees ten per cent. of the wages including dearness allowance for the period of lay-off that violates Standing Order No. . 20. But in doing so the learned member clearly overlooked not only the scope of the reference but also the provisions of Section 25J of the Act which provide, inter alia, that the provisions of chap. VA shall have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing Orders) Act, 1946. Having regard to this provision, it would appear that there was no scope for invoking the provisions of Standing Order No. 20 inasmuch as the provisions for compensation for lay-off are to be found in chap. VA, of the Act.

12. In the view we are taking we are supported by the decision of the Supreme Court in the case of R.B. Bansilal Abirchand Mills Co. Ltd. Vs. The Labour Court, Nagpur and Others, In para, 26 the Supreme Court has observed that the High Court rightly turned down) the contention in view of Section 25J of "the Act under which the provisions of chap. VA are to have effect notwithstanding anything inconsistent therewith contained in any other law including Standing Orders made under the Industrial Employment (Standing Orders) Act, 1946.

13. Judged from any point of -view therefore, so far as the award in the first reference is concerned, it has got to be set aside.

14. With regard to the second part of the award viz. in Reference (IT) No. 281 of 1972 arising out of the rejection of the petitioners' contention that they were entitled to set-off the amount of compensation for lay-off as against the amount of compensation payable for retrenchment u/s 25F, Mr. Sawant, after having drawn our attention to the provisions of Section 25C submitted that the tribunal was not right in the view it has taken. Mr. Sawant further submitted that the

second proviso is not necessarily attracted only to the cases covered by the first proviso. We find no force in the submission of Mr. Sawant.

15. It is not necessary to set out the main provisions of Section 25C. The first and the second provisos which have got to be considered in this context only need be set out here for ready reference. They are to this effect :

25C. ...

Provided that if during any 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 the 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:

Provided further that it shall be lawful for the employer in any case falling within the foregoing proviso to retrench the workman in accordance with the provisions contained in Section 25F at any time after the expiry of the first forty-five days of the lay off and when he does so, any compensation paid to the workman for having been laid off during the preceding twelve months may be set off against the compensation payable for retrenchment.

16. As we just pointed out, what is submitted by Mr. Sawant is that the second proviso is an independent proviso and it has no reference to the first proviso. To accept Mr. Sawant's submission would be to re-write the second proviso by dealing the important provisions therein to the effect, "in any case falling within the foregoing proviso". Now it is this provision which makes it abundantly clear that the right given to the employer to set-off the compensation paid for lay-off against the amount of compensation payable for retrenchment u/s 25F is available only in a case falling within the first proviso which is the foregoing proviso in the context of the section. In other words it is only in respect of cases covered by the first proviso that the second proviso could be pressed into service by the employers which is by no means an independent proviso. That being the clear interpretation which does not admit of any difficulty we find that there is no force in the submission of Mr. Sawant.

17. In this connection also we may refer to the decision in the case of Junkundar Colliery v. Sahdeo Thakur [1974] LabIC 417, where the Division Bench of the Patna High Court has taken the view that proviso two is attracted when a case is covered by proviso one of Section 25C and the workman is retrenched in accordance with Section 25F. It is further observed that where there is no agreement between the workman and the employer not to pay lay-off compensation beyond the period of forty-five days or where the retrenchment is not in accordance with Section 25F, the case is not covered by proviso two and adjustment cannot be allowed.

18. It would thus appear that no exception could be taken to the view of the learned member of the tribunal so far as his interpretation of the proviso to Section 25C in respect of the second reference is concerned.

19. In the result, the petition is partly allowed; inasmuch as the award in respect of payment of lay-off compensation at ten per cent. for alleged violation of Standing Order No. 20 is quashed and the rule to that extent is made absolute. The award refusing to permit the employers to set-off the compensation for layoff against the compensation for retrenchment is confirmed and the petition in that respect is dismissed and the rule to that extent is discharged. There shall be no order as to costs.