

(1979) 01 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 2845 of 1977 E

Kuttancherry Antony

APPELLANT

Vs

Kumaran and Others

RESPONDENT

Date of Decision : 11-01-1979

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25FFF, 25FFF(1), 33C(2)

Citation : (1979) 01 KL CK 0002

Hon'ble Judges : Kochu Thommen, J

Bench : Single Bench

Advocate : C.T. Peter, V.M. Kurien, K.K. Gangadharan and E.M. Sadrul Anam, for the Appellant; M. Ramachandran and K.R.B. Kaimal, for the Respondent

Final Decision : Dismissed

Judgement

Kochu Thommen, J.—The Petitioner ran a grocery shop. He closed it down for the reason that he was a tuberculosis patient confined to a sanatorium. Dispute arose as to the amount of compensation payable to his workmen in terms of Section 25FFF of the Industrial Disputes Act, 1947. According to the Petitioner, the closure of the Business was on account of unavoidable circumstances beyond his control and the proviso to Sub-section (1) of Section 25FFF applied, which meant that the workmen would get much less compensation than what they would otherwise get in case the main part of that sub-section applied. The workmen on the other hand contended that this was not a case coming within the scope of the proviso and they were therefore entitled to full compensation. The question was finally brought before the Labour Court by the workmen in terms of Section 33-C(2) of the Industrial Disputes Act. The Labour Court held that the disease of the employer, however serious, was not a matter coming within the proviso.

2. The question for decision is whether the business of the Petitioner was closed down on account of unavoidable circumstances beyond his control, so as to attract the proviso. The legislative intent is clear from Section 25FFF as to the

compensation payable to workmen in case of closing down of undertakings. If an undertaking is closed down for whatever reason, every workman coming within the meaning of Sub-section (1) of that section is deemed to have been retrenched and he is entitled to notice and compensation in accordance with the provisions of Section 25F. Where however retrenchment has become necessary on account of unavoidable circumstances beyond the control of the employer, it is specifically stated in the proviso to that sub-section that the compensation payable to the workman under Clause (b) of Section 25F. shall not exceed his average pay for three months. However, the explanation to the proviso contains certain specified cases which are excluded from the ambit of the proviso, thereby bringing them within the main part of the sub-section.

3. The language of the proviso has to be strictly construed so that the operation of the main part of the sub-section is not restricted beyond the legislative intent. It seems to me that the legislative intent is to limit the scope of the expression "unavoidable circumstances" to such cases where the closure was for reasons connected with the business. Circumstances, however unavoidable and uncontrollable, may not attract the proviso unless they are relevant and related to the functioning of the undertaking. If the closure of the undertaking was on account of unavoidable circumstances beyond the control of an employer, but those circumstances are not connected with the functioning of the undertaking, although they are personal to him, such closure cannot be regarded as coming within the ambit of the proviso. An employer who is suffering from a serious disease such as tuberculosis is naturally not in a position to run his business. The cause of his personal difficulty was something which was beyond his control to prevent. Nevertheless, his disease is not a reason connected with the running of the business, but it is only personal to him. Closure of the undertaking in such circumstances shall not deny the workmen their full compensation.

4. Counsel for the Petitioner, relying upon the decision of the Calcutta High Court in *Bhattacharyya Rubber Works Private Ltd. Vs. Bhattacharjee Rubber Works Workers' Union and Others*, contended that even personal difficulties would be sufficient reason to attract the proviso. That was a case where the management found it impossible to carry on the business on account of lawlessness, gherao, blood-shed and the like. The court held that in such circumstances it was impossible for the management to carry on the business and that they were justified in closing it down. Those circumstances provided a sufficient reason for the management to invoke the proviso. This principle was affirmed by the Supreme Court in *Kalinga Tubes Ltd. Vs. Their Workmen*, although in that case it was held that the proviso did not apply as, unlike in the Calcutta case, no violence was resorted to by the striking workmen. In *Avtar Singh Anand Vs. E. Krishna and Others*, the Delhi High Court held that an inter se dispute between partners of a business firm was not a matter connected with the business, but it was something personal to the partners.

5. The applicability of the proviso to Sub-section (1) of Section 25FFF depends

upon the facts of each case. The proviso applies only if the "unavoidable circumstances beyond the control of the employer" are related to and arise from the functioning of the undertaking. In my view the Labour Court has, on the basis of relevant facts, rightly held that the Petitioner is not entitled to the benefit of the proviso and that the workmen are entitled to full compensation.

The Original Petition is dismissed. The parties will bear their respective costs.