
(1970) 08 PAT CK 0003
In the Patna High Court

L.M. Thapar and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 06-08-1970

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 25F, 31, 32

Citation : (1970) 2 LLJ 611

Hon'ble Judges : P.K. Banerjee, J

Bench : Single Bench

Judgement

P.K. Banerjee, J.—Petitioner No. 1 happens to be the managing director, Barakar Engineering and Foundry Works Ltd., Dhanbad. Petitioner No. 2, C.L. Narenha, appears to be also connected with the said Foundry Works and Petitioner No. 3, S.M. Sud, is acting works manager of Barakar Engineering and Foundry Works Ltd. The petitioners are being prosecuted u/s 31(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), for the alleged violation of Section 31(1)(a) of the Act. On the allegation that during the pendency of the conciliation proceedings before the Conciliation Officer (Labour Officer), Dhanbad, the petitioner retrenched 276 workers.

2. Shri G.N. Sahay, Labour and Conciliation Officer, Dhanbad, filed a petition of complaint alleging therein that the works manager of Barakar Engineering and Foundry Works Ltd. was requested by him through his letter No. 5438 dated the 14th August, 1967 and letter No. 5492 dated the 16th August, 1967, that he would hold conciliation proceeding on the 24th of August, 1967. The Conciliation Officer, accordingly, had requested the management to maintain the status quo till the conclusion of the conciliation. It was further alleged that the management attended the conciliation proceeding fixed on the 24th August, 1967, but deliberately retrenched 276 workers during the pendency of the conciliation proceeding and a total of 238 workers were retrenched with effect from 24th August, 1967, and another 38 workers were retrenched from 6th August, 1967 and this act of retrenchment, according to the complainant, amounted to flouting

of the provision of Section 33(1)(a) of the Industrial Disputes Act. Cognizance was taken by the Sub-divisional Magistrate, Dhanbad, who transferred the case to the court of Shri A.K. Prasad, Munsif-Magistrate, Dhanbad, holding first class power for trial.

3. A preliminary objection was taken before the trial court that the present prosecution was not maintainable inasmuch as, by the said retrenchment the management had not effected any change in the conditions of the service of 276 workers during the pendency of the conciliation proceed rig and the workers were retrenched after fulfilling all the conditions laid down for valid retrenchment. The contention of the petitioners was that there is no provision in the Act or rules framed thereunder prohibiting retrenchment during the pendency of the conciliation proceeding and therefore retrenchment effected did not amount to any offence and the petition of complaint was misconceived and not bona fide.

4. The preliminary objection was heard by the learned Munsif-Magistrate who by his order dated 19th May, 1969, while accepting the contention of the petitioners that the retrenchment did not definitely amount to dismissal of the workmen or alteration in their service condition so as to bring it under the mischief of Section 33 of the Industrial Disputes Act, took the view that the spirit of the section itself had to be looked into inasmuch as, in his opinion, the intention of the Legislature for enacting Section 33 of the Act was to safeguard the workmen from possible victimisation and the statutory provision could not be allowed to be flouted by the management by taking recourse to retrenchment pending conciliation proceeding.

5. Mr. Ranen Roy, appearing for the petitioners, while taking me through Section 33 of the Act submitted that the court below acted illegally and without jurisdiction in putting a new meaning to the section aforesaid and his contention has been that the word "retrenchment" as defined in Section 2(oo) of the Act has been used in a wide sense and there is nothing in the Act which fetters the rights of the employer in exercising its right to retrenchment as provided in Section 25F of the Act. Learned Counsel urged that it was for the management to decide the strength of its labour force and it is entirely in the discretion of the management to decide the number of workmen required to carry out efficiently the work involved in the industrial undertaking and it is always open to the management to retrench such workmen as in the opinion of the management becomes surplus and in view of this specific provision laid down in Section 33(c)(1) and 33(c)(2) of the Act a prosecution of the kind under consideration cannot be justified. Further submission of learned counsel has been that if the retrenched workmen or their union had any grievance against the management the proper form was to raise an industrial dispute and agitate the matter before the proper authorities prescribed by the Act itself and the Munsif-Magistrate has no power under the Industrial Disputes Act to look into the validity or otherwise of the retrenchment by the management and specific power has been given to Industrial Tribunal on a

reference made u/s 10 of the Act. There is adequate substance in this submission.

6. Section 31(1) of the Act provides that an employer who contravenes the provision of Section 33 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both. Sub-section (2) of this section says that whoever contravenes any of the provisions of this Act or any rule made thereunder shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to one hundred rupees. Section 34(1) of the Act provides that no court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence save on complaint made by or under authority of the appropriate Government. Shri D.N. Sahay, Labour Officer, Dhanbad, accordingly, by Government Notification dated the 23rd March, 1968, was authorised by Government to lodge a complaint against the petitioners for alleged violation of the provision of Section 33(1)(a) of the Industrial Disputes Act and in pursuance of this authority Shri Sahay filed a written complaint before the Sub-divisional Magistrate, Dhanbad, and on the basis of this written complaint cognizance of the offence u/s 33(1)(a) of the Industrial Disputes Act was taken by the Sub-divisional Magistrate on 16th April, 1968, and the case was transferred to the Munsif-Magistrate of the place for disposal. The offence alleged in the written complaint was a "breach of Section 33(1)(a) of the Act in respect of a change in the condition of service of 276 workers during the pendency of the conciliation proceedings.

7. Section 2(oo) reads thus:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman;

(b) retirement of the workman on reaching the age of superannuation if the contract of the employment between the employer and the workman concerned contains a stipulation in that behalf;

(c) termination of the service of a workman on the ground of continued ill-health.

8. The conditions precedent to retrenchment of workmen provided by Section 25F of the Act are as follows:

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

Provided that no such notice shall be necessary if the retrenchment is under an

agreement which specifies a date for the termination of service;

(b) the workman has been paid at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

9. In the instant case, as has been noticed above, no grievance has been ventilated by any one of the retrenched 276 workmen and complaint for the prosecution of the petitioners has been filed by the Labour Officer before whom the conciliation proceeding was pending between the management and the workers at the time and, according to the complainant Labour Officer, an offence of breach of Section 33(1)(a) of the Act in respect of change of condition of service of 276 workers during the pendency of conciliation proceeding was committed. It will therefore be useful to refer in this connection to the relevant portion of Section 33 of the Act as under:

(1) During the pendency of any conciliation proceeding before a Conciliation Officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute save with the express permission in writing of the authority before which the proceeding is pending.

10. In *Hariprasad S. Sukla v. A.D. Divelkar* (1956) 11 F.J.R. 317, the Supreme Court observed that-

"retrenchment" as defined in Section 2(oo) and as used in Section 25F has no wider meaning than the ordinary, accepted connotation of the word; it means the discharge of surplus labour or staff by the employer for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action?.

11. In the case of *Silver Cloud Estate v. Labour Court Coimbatore* (1960) 18 F.J.R. 405, it was held that in the definition of the term "retrenchment" in Section 2(oo) there is no element of misconduct involved and that the retrenchment effected bona fide for reasons other than punishment cannot come within the meaning of Section 33(2)(b) and that there will not be any necessity for obtaining sanction of the court while an industrial dispute is pending. In this case pending adjudication of an industrial dispute before the Labour Court, the

management of a plantation estate effected retrenchment of certain workers. The bona fides of the action of the management was not challenged by the concerned workmen. The concerned workmen accepted the retrenchment compensation. The retrenchment also did not affect prejudicially or adversely the remaining workmen. The management applied u/s 32 of the Industrial Disputes Act for getting the approval of the Labour Court for their action but the Labour Court refused the approval. The writ petition against the order of the Labour Court was allowed by the High Court of Madras and the order of the Labour Court was quashed.

12. Having regard therefore to the meaning of the word "retrenchment" provided by Section 2(oo) of the Act, I see adequate force in the submission of Mr. Ranen Roy that there is nothing in the Act that fetters the right of the employer in exercising its right to retrench and it is for the management to decide the strength of its labour force, for the number of workmen required to carry out efficiently the work involved in the industrial undertaking of any employer has to be determined by the management in its discretion and when there is an occasion when the number of employees has exceeded the reasonable and legitimate requirement of the undertaking, and if some workmen become surplus it is up to the management to retrench them on the terms and conditions as provided by Section 25F of the Act. The complaint was filed for the alleged contravention of Section 33(1)(a) of the Act, evidently on the assumption that the effect of the retrenchment of 276 workmen amounted to an alteration in the conditions of service applicable to these workmen before the commencement of the proceeding by the Labour Officer. This was, in my opinion, a wrong assumption. A retrenchment cannot ordinarily amount to an alteration in the conditions of service. The expression "conditions of service" really implies the actual continuance of the relationship of the employer and employee and once the service of a particular employee is terminated there is no question of alterations in the conditions of service. It is not necessary to discuss Section 33(1)(b) as it has no application in the present case; retrenchment is not discharge or dismissal within the meaning of this Sub-section. That being so, on a plain reading of the language of Section 33(1)(a) it cannot be reasonably held that the employers by their act of retrenchment of 276 works contravened the provision of Section 33(1)(a) as could justify the filing of a petition of complaint and consequent taking of cognizance on that basis u/s 34 of the Act. The trial court could see this difficulty and wrote to say:

Admittedly the word retrenchment does not find mention in Section 33 of the Act. The word retrenchment has been defined in Section 2(oo) of the Act as the termination by the employer of the service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action. It thus definitely does not amount to dismissal of workman or any alteration in their service condition so as to bring it under the purview of Section 33 of the Act. When in fact retrenchment is bona fide it will not come under the purview of any of the modes of doing away with the services of workman as

given in Section 33 of the Act. But at the same time the spirit of the section must be considered.

13. The Court below was in my opinion wrong in entering into this aspect of the matter which is clearly beyond the jurisdiction of the criminal courts. Section 33A of the Act provides as follows:

Where an employer contravenes the provisions of Section 33 during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal, any employee aggrieved by such contravention, may make a complaint in writing in the prescribed manner to such Labour Court, Tribunal, or National Tribunal and on receipt of such complaint that Labour Court, Tribunal or National Tribunal shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit its award to the appropriate Government and the provision of this Act shall apply accordingly.

As was pointed out by their Lordships of the Supreme Court, in the case of the Automobile Products of India Ltd. v. Rukmaji Bala (1955) 7 F.J.R. 716, the scope and ambit of the jurisdiction conferred on the authority named in Section 33A of the 1947 Act and Section 21 of the 1950 Act is wider than that conferred on the criminal court by Section 31 of the 1947 Act and Section 29 of the 1950 Act. The criminal court under the last two mentioned sections is only concerned with the yea or nay whether there has been a contravention of the respective provisions of the sections mentioned therein but the authority exercising jurisdiction u/s 33A of the 1947 Act and Section 23 of the 1950 Act is to adjudicate upon or decide the complaint as if it were a dispute referred to or pending before it in the first case as if it were an appeal pending before it in the second case. The authority is, therefore, enjoined to go into the merits of the act complained of u/s 33A of the 1947 Act and Section 23 of the 1950 Act. In this sense the jurisdiction of the authority named in these two sections is certainly wider than that of the criminal court exercising jurisdiction under the penal sections referred to above. In the written complaint the Labour Officer of course reported that the management deliberately retrenched 27ft workers. In other words, the Labour Officer doubted the bona fides in the act of the petitioners in effecting retrenchment of those workmen. An enquiry into the bona fides in such cases will be beyond the jurisdiction of the criminal court as it has no power under the Industrial Disputes Act to look into the validity or otherwise of the retrenchment by the management and specific power for the purpose has been given to the Industrial Tribunal if a reference is made u/s 10 of the Act. If the termination of service was a colourable exercise of the power or as a result of victimisation or unfair labour practice it was for the Industrial Tribunal which would have the jurisdiction to intervene and set aside such termination. Such tribunal can always go behind the order to find out the reasons which led to the order of retrenchment and then consider for itself whether termination was a colourable exercise of power or otherwise and the Industrial Tribunal would only have the

jurisdiction to intervene in such cases and set aside such termination. In this view of the matter, therefore, it must be held that prima facie no case of contravention of the provision of Section 33(1)(a) of the Act was made out against the petitioner on account of the retrenchment of 276 workmen and for the purpose of such retrenchment no approval of the Labour Officer before whom the dispute was pending was necessary.

14. In my opinion it will be an abuse of the process of the court to allow the continuance of the prosecution against the petitioners on the facts stated in the written complaint of the Labour Officer. The order of the learned Munsif Magistrate dated 19th May, 1969, rejecting the preliminary objection raised on behalf of the accused-petitioners is set aside and the entire proceeding is quashed.