

(1967) 01 MAD CK 0024
In the Madras High Court

M. Chinnappan

APPELLANT

Vs

The Management of Kaleeswarar Mills Ltd. and Another

RESPONDENT

Date of Decision : 12-01-1967

Acts Referred:

Citation : (1968) 1 MLJ 23

Hon'ble Judges : P. S. Kailasam, J

Bench : Division Bench

Judgement

P. S. Kailasam, J.—This petition is filed for quashing the order of the Presiding Officer, Labour Court, Coimbatore dated 17th December,

1965, holding that the inability of the Management of Kaleeswarar Mills Limited, Coimbatore to give work to the petitioner and the other workers

from 13th August, 1958 to 31st October, 1959 would not amount to lay-off.

2. The Kaleeswarar Mills, Coimbatore was closed on 8th December, 1958, and was reopened on 12th November, 1959. It is the contention of

the petitioner that there was no closure but only a lay-off during the period in question. The Kaleeswarar Mills, Coimbatore was running at a loss.

The balance-sheet, M-5, for the year ending with 31st December, 1957, showed a loss of Rs. 6,43,765, and the balance-sheet M-6, for the year

ending 31st December, 1958, showed a loss of Rs. 15,21,768. The total loss for the years 1957 and 1958 amounted to Rs. 22,75,743. The

auditor, who went into the affairs of the Mills submitted a report, M-32, on 19th May, 1958. In the reports the auditor pointed out that the

proposal to work the factory adopting the lay-off was not advisable, as there would be an additional loss of Rs. 3,47,356. The report pointed out

that any decision to keep on the muster all the workmen found therein would,

only increase the burden of compensation of gratuity payable to them if and when their services were terminated. It was suggested that the only course open to the authorities of the company was the immediate closure of the factory for saving their losses. The management considered the auditor's report on 30th July, 1958 and resolved taking into consideration the nine reasons set out in the resolution to have the factory closed for the present on and from 1st August, 1958. It also further resolved that the Board of Directors would review the situation from time to time and if thought fit would reopen the factory as and when the situation improved. It was further resolved to intimate the Council of Administrators appointed by the High Court in O.P. No. 113 of 1957 about the closure so as to enable them to take steps if thought fit to avert the impending closure or reopen the undertaking as early as practicable. In pursuance of this resolution a notice, M-4, was put on the notice board of the Kaleeswarar Mills on the same date. It declared that the Directors had resolved to close down the factory "for the present" and accordingly the factory would remain closed from 13th August, 1958 and that the Directors would review the situation from time to time and if thought fit reopen the factory if and when the situation improved. The workers of the Mills protested against the closure of the Mills and by their notice, M-10, dated 13th August, 1958 contended that the closure of the Mills was illegal and demanded the immediate reopening of the Mills.

3. It was contended by the learned Advocate-General on behalf of the petitioners that on the facts there could have been no closure of the Mills but only a lay-off. It was submitted that there was no termination of the employer-servant relationship and that the petitioner and others continued to be in the muster rolls of the Mills after the date of the alleged closure. The resolution M-3, and the notice M-4, were strongly relied upon in support of the contention that there was only a lay-off and not closure. It was submitted that the resolution itself made it clear that the factory would remain closed for the present and that the Board of Directors would review the situation from time to time and if thought fit reopen the factory as and when the situation improved. The notice, M-4, also stated that it was resolved to close down the factory for the present and that the factory would remain closed and the Directors would review the situation from

time to time and if thought fit reopen the factory if and when the situation improved. On a reading of M-3, and M-4, it was submitted that the intention of the Management was not to close the mills either permanently or temporarily but to stop the business for the time being, which would not amount to closure. On the facts this contention cannot be upheld, for it is clear from the auditor's report that the affairs of the company were gone into in detail by the auditor, and it was pointed out to the Management that a lay-off would not be the remedy as it would involve the company in further loss of about Rs. 3,50,000 and that the only course to adopt was the immediate closure of the Mills for the purpose of saving their losses. The company considered this report and accepted the recommendation of the auditor and directed the closure of the Mills. In directing the closure, the company mentioned that the factory was to be closed down for the time being and that the Management would review the situation from time to time and if thought fit reopen the factory if and when the situation improved. From the mere fact that the Directors mentioned that the factory would be closed for the time being it cannot be said that there was no closure permanently or temporarily for the time being. I am satisfied on a reading of the material documents that what the company intended was to close the business, at the same time hoping that matters would improve to facilitate the reopening of the Mills.

4. The right of the Management to close the business subject to the payment of the prescribed compensation to the workers cannot be questioned.

A person cannot be compelled to carry on the business, A Bench of this Court in *Indian Metal and Metallurgical Corporation v. Industrial*

Tribunal, Madras (1952) 1 M.L.J. 481, held that the Industrial Tribunal while having jurisdiction to adjudicate on the question whether a particular

lock-out was justified or not could not decide the question whether an employer could close down this business temporarily for an indefinite period

or permanently.

5. The term "lay-off" has been defined in Section 2(kkk) of the Act 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 breakdown of machinery, or for any other reason to give

employment to a workman whose name is borne on muster rolls of his industrial

establishment and who has not been retrenched. The words "for any other reason" have to be construed ejusdem generis with the reasons mentioned specifically in the section. That is, it should be construed to mean a reason which is allied or analogous to reasons already specified in the definition vide *Management of Kairbetta Estate, Kotagiri Vs. Rajamanickam and Others*, . The term "lock-out" is defined in Section 2(e) as meaning the closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him. The word "closure" has not been defined under the Act. But the distinction between "closure" and "lay-off" is clearly discernible. While lay-off is the failure, refusal, or inability of an employer due to reasons beyond his control to give employment to a workman whose name is borne on the muster rolls, closure is closing of the business permanently or temporarily for an indefinite period by the management. Closure is different from lock-out. While in the case of closure the employer does not merely close down the place of business but the business itself indicating a final and irrevocable termination of the business itself, lock-out is the closure of the place of business and not the closure of the business itself for the purpose of compelling the employees to accept the proposals of the employer. The question, whether a particular case would be closure or lay-off would depend on the facts of the case. As pointed out already in this case the Management acting on the report of the auditor that the proposal to lay-off was not the proper one and that the Mills must be closed, directed the closure of the Mills. The mere fact that they hoped that the Mills might be reopened would not negative their intention to close the Mills on the date when they resolved to close down the Mills and notified the closure.

6. The learned Advocate-General relied on the fact that no notice as to termination of the service of the employees was given. The giving of a notice is not a condition precedent for closing of the business. In the case of retrenchment the validity of the retrenchment itself would depend on the workmen having been given a month's notice indicating the reasons for retrenchment, the paying of the retrenchment compensation as prescribed and the giving of the notice to the appropriate Government in the prescribed manner. The fulfilment of the above conditions are

conditions precedent for effecting a retrenchment. In the case of closure u/s 25(FFF) the workmen are entitled to notice and compensation when

the undertaking is closed as if the workmen had been retrenched. But the effectiveness of the closure does not depend upon the payment of

compensation and service of notice or payment of wages in lieu of notice. The Supreme Court in *Hatisingh Mfg. Co. Ltd. and Another Vs. Union*

of India (UOI) and Others, , has summed up the position thus:

By Sections 25(F) a prohibition against retrenchment until the condition prescribed by that section are fulfilled is imposed; by Section 25(FFF)(1),

termination of employment on closure of the undertaking without payment of compensation and without either serving notice or paying wages in lieu

of notice, is not prohibited. Payment of compensation and payment of wages for the period of notice are not therefore conditions precedent to

closure.

7. That the mills intended to close down was notified on 13th August, 1958 by affixing M-4 to the notice board, is not disputed by the petitioners.

Whether notice was given and compensation was paid or not would not make the closure any the less effective. The contention that because no

notice of termination of the service and no compensation was paid, the closure is not valid has therefore to be rejected.

8. Reference was made to the judgment of the Supreme Court in G.A. No. 1005 of 1963 by the petitioner in support of the contention that before

the undertaking could be closed down the Management should have taken irrevocable decision to close the mills permanently. It has been pointed

out already that a Bench of this Court in *Indian Metal and Metallurgical Corporation v. The Industrial Tribunal, Madras* (1952) 1 M.L.J. 481, has

held that the Management has got a right to close down an undertaking permanently or temporarily for an indefinite period. In G.A. No. 1005 of

1963 though the mill was closed and the notice of termination of service was served on the workmen, after the new Management took over, the

mill was reopened. It was contended that there was no closure. The Supreme Court negatived the contention and held that the Management

intended to close down the mills, though they were subsequently reopened. The Supreme Court observed:

In these circumstances if it came to the conclusion that the best course for it was

to close the mills until they could be reopened on a safe and profitable basis, it cannot be said that its action was not bona fide.

9. The closure of the mills until there could be a reopening on a safe and profitable basis has therefore been upheld by the Supreme Court. The closure can be as well for a temporary period. There can be no doubt that the Management intended to close the mills for the time being with the hope that matters would improve and they would be in a position to reopen the mills. Though the closure was intended for the time being, it is nonetheless closure which the Management is entitled to.

10. On a consideration of the entire facts I have no hesitation in accepting the finding; of the Labour Court that there was a closure. The contentions raised on behalf of the petitioners are rejected and this petition is dismissed with costs.

11. Counsel's fees Rs. 250.