
(1998) 08 SC CK 0002

In the Supreme Court Of India

Case No : I.A. No's. 130, 160, 201, 202 and 203 in T.A. No. 22 in Writ Petition (C) No. 4677 of 1985 with C.P. No. 532 of 1997

Mehta M.C.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-08-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 25B, 25F

Citation : (1999) AIRSCW 4891 : (1999) 1 LLJ 612 : (2000) 7 SCALE 367 : (1999) 6 SCALE 341 : (1998) 4 SCALE 18

Hon'ble Judges : S. Saghir Ahmad, J;M. Jagannadha Rao, J

Bench : Division Bench

Advocate : Indira Jaising, D.K. Agarwal, S.B. Sanyal, Kapil Sibbal, Dipankar Gupta, Dushyant Dave, Neeru Vaid, A. Shenoy, S. Ghosh and S.R. Bhatt, for the Appellant;

Final Decision : Dismissed

Judgement

M. Jagannadha Rao, J.—The dispute in this batch of I.As. is between the Workmen and Management of M/s. Birla Textiles (Prop. Textile Ltd., Calcutta). Common questions arise in all these I .As.

2. The I.A.202 of 1992 (in T.A.22 in W.P.4677 of 1985) has been filed on behalf of 2800 workers of M/s. Birla Textiles (Proprietor Textiles Ltd., Calcutta) (the "Industry") who claim to have worked for various periods ranging from 5 to 30 years and whose services are in jeopardy upon the closure of the industry at Delhi, consequent, to orders of this Court. The relief sought for in this I.A. are (1) payment of full back wages with effect from December 1, 19% along with 18% interest, (ii) to treat the workmen as in continuous employment from December 1, 1996, (iii) to direct the industry to deem that the workmen have exercised option to shift in accordance with order of this Hon'ble Court, (iv) to direct the industry to give 1 year's wages as shifting bonus, (v) to direct the industry to ask the workmen to report at the selection sites after the factory is

fully setup and: commenced production, with basic amenities for the workers and the families.

3. The following are the facts: By an order dated July 8, 1996 in *M.C. Mehta v. Union of India*, AIR 1996 SC 2231 , this Court directed closure of 168 industries including the industry in question. Various directions were given including the grant of incentives and benefits to industries desiring to relocate and also for payment of various amounts to the workmen. We are mainly concerned with directions 9(a) to (f) issued in the above case which read as follows:

"(9) The workmen employed in the above-mentioned 168 industries shall be entitled to the rights and benefits as indicated hereunder:

(a) The workmen shall have continuity of employment at the new town and place where the industry is shifted. The terms and conditions of their employment shall not be altered to their detriment;

(b) The period between the closure of the industry in Delhi and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of service;

(c) All those workmen who agree to shift with the industry shall be given one year's wages as "shifting bonus to help them settle at the new location;

(d) The workmen employed in the industry which fail to relocate and the workmen who are not willing to shift along with the relocated industries, shall be deemed to have been retrenched with effect from November 30, 1996 provided they have been in continuous service (as defined in Section 25B of the Industrial Disputes Act, 1947) for not less than one year in the industries concerned before the said date. They shall be paid compensation in terms of Section 25F(b) of the Industrial Disputes Act, 1947. These workmen shall also be paid, in addition, one year's wages as additional compensation;

(e) The "shifting bonus" and the compensation payable to the workmen in terms of this judgment shall be paid by the management before December 31, 1996.

(f) The gratuity amount payable to any workmen shall be paid in addition."

4. Initially, the industry was not prepared to relocate elsewhere and, therefore, it informed this Court that it would retrench the employees and pay whatever was payable to the workmen under the above Order. But pursuant to the suggestions of this Court, the industry reconsidered the matter and this Court in its order dated December 4, 1996 in *M.C. Mehta Vs. UOI*, (1997) 11 SCC 327 , observed that the learned Counsel for the industries had accepted the Court's suggestion to have a "fresh look into the matter. In the same order dated December 4, 1996, this Court modified the direction 9(d) relating to payment of back wages as "six years' wages" instead of one year's wages in case the industry decided to close down. That would mean that in the event of non-relocation, the workmen would have to be paid 6 years' wages and not merely 1 year's wages.

5. Subsequently, in supersession of an earlier notice dated November 28, 1996, the industry published a fresh 'notice' on its Notice Board that it had reconsidered the matter as per the orders of this Court dated December 4, 1996 and decided to relocate the industry in Baddi, District Solan (H.P.) and that the workmen who were willing to be relocated at the new site 'Baddi' should inform the management in writing by December 25, 1996. If they reported, they would be entitled to continuity, their terms and conditions would not be altered, the period between the closure of the unit at Delhi and its re-start at Baddi would be treated as active employment and they would be paid full wages with continuity of service. Further, all those workmen agreeing to shift would get 1 year's wages as 'shifting bonus' to help them to settle at Baddi. Those who were not willing to shift would be deemed to have been retrenched with effect from November 30, 1996, provided they were in continuous service (as defined in Section 25B of the Industrial Disputes Act, 1947) for not less than one year in this unit before the said date. They would be paid compensation in terms of Section 25F(b) of the Industrial Disputes Act and in addition, one year's wages as additional compensation. It was further notified that the shifting bonus to the workmen who agreed to shift and the compensation for those unwilling to shift to 'Baddi' would be paid before December 31, 1996, as per directions of this Court.

6. On December 23, 1996, eight unions of workmen of this industry sent a reply stating that the industry had violated the order of this Court as it was relocating in the State of Himachal Pradesh rather than in the National Capital Territory of Delhi as envisaged in the order dated July 8, 1996 and that, therefore, it was not proper for the industry to ask the employees to shift to the State of Himachal Pradesh. But ignoring this reply the industry published a notice on December 30, 1996 reiterating its plan to relocate in the State of Himachal Pradesh.

7. At that stage, this Court was approached by the industries for modification of the order dated July 8, 1996 and for permitting relocation outside N.C.T.(Delhi). On that, this Court passed an order on December 31, 1996 permitting relocation in Haryana, Punjab, Himachal Pradesh, Rajasthan and Uttar Pradesh and said that if they were so relocated, the industries would be treated on par with those industries relocating in N.C.T.(Delhi). This order was to be treated as a clarification of the order dated July 8, 1996.

8. There was some controversy that when this order was passed in Chambers on December 31, 1996, all parties were not present. But the Counsel for the industries disputed this contention. Be that as it may, it is not necessary to go into this dispute-particularly, when some later applications filed by the workmen for recalling this order dated July 8, 1996 did not fructify.

9. Therefore, i.e. after December 31, 1996, the industry put up a fresh notice on January 4, 1997 stating that:

"As per the directions of the Hon'ble Supreme Court, those workmen who are willing to shift would be entitled to receive salary/wages for December, 1996 and

for subsequent months, the workmen should intimate to the management by January 7, 1997 their willingness to shift to Baddi, upon which the salary/wages for December, 1996 will be disbursed to them on January 9 and 10, 1997."

On the same day January 4, 1997, a further notice was put up on the Notice Board that though the industry took steps for payment on December 29, 30, 31, 1996 no workmen had come to collect the cheques. Hence, it was requested that the workmen might come and collect the cheques.

10. In reply thereto, seven unions through a Joint Action Committee issued a notice on January 6, 1997 to the industry stating that the workmen were willing to move to the State of Himachal Pradesh. The said notice read as follows:

"That all the workmen and employees of Birla Textiles Mills hereby give their willingness for relocation/shifting without prejudice to their rights subject to the outcome of the review and other proceedings being pursued by our Lawyers before this Hon'ble Supreme Court of India, against the order dated December 31, 1996 passed by the Hon'ble Supreme Court of India."

11. It is the main contention for the industry (respondents) through its Senior Counsel Mr. Kapil Sibal and Mr. Dipankar Gupta that the option exercised by the workmen in the above letter agreeing to shift to Baddi was not an unconditional one but was conditional inasmuch as it stated that they were exercising the option subject to the result of certain applications filed by mem in this Court i.e. for recall of the order dated December 31, 1996. According to respondents, such a conditional option was not within the scope of the order of this Court dated July 8, 1996. Further, the Counsel contended that there was no proof that the individual workmen of these unions were parties to this reply. In fact, the status or authority of the Joint Action Committee was not clear, according to them.

12. In the belief that the conditional offer was bad and the Joint Action Committee had no locus standi to send the reply dated January 6, 1997, the industry published a further notice on January 8, 1997 requesting "each workman" to give his willingness within one week to shift in terms of the following proforma, to be addressed to the industry:

"Dear Sirs,

I am willing to shift to Baddi, Distt. Solan (H.P.) when the Delhi Unit of Birla Textiles is being relocated."

13. On May 19, 1997, the Labour Commissioner, N.C.T.(Delhi) directed the industry to pay the various amounts payable to the employees. The industry put up a further notice on May 20, 1997 that in view of the reply of the unions dated January 6, 1997 agreeing to shift to Baddi, the industry had put up a notice on January 8, 1997 requesting the individual workmen to respond in a week. None of the workmen responded. The industry then said that it was deeming the employees as retrenched with effect from November 30, 1996. This was stated in the further notice dated May 20, 1997 and it reads as follows:

"We have been legally advised that those workmen who have not expressed in writing their willingness to shift within the stipulated time as per the above referred two notices, be deemed to have been retrenched with effect from November 30, 1996, as per the order of the Hon'ble Supreme Court dated July 8, 1996....."

14. However, the industry wanted to give one more opportunity and issued another notice on May 20, 1997 that those who were willing to shift were to report at Baddi on or before June 7, 1997. The said notice dated May 20, 1997 stated as follows:

"Such workmen who now give their consent to shift are requested to report at Baddi immediately, in any case, not later than June 7, 1997....."

15. The Labour Commissioner gave a notice to the industry on May 28, 1997 to conform to the directions of this Hon'ble Court regarding payment of shifting bonus etc. On March 30, 1998, on account of the delay in the matter, this Court directed 3 months' wages to be paid.

16. On the basis of the above facts, learned Senior Counsel for the appellants Ms. Indira Jaisingh, Mr. D.K. Agarwal and others submitted for the workmen that the industry had violated the orders of this Court, and that there was no question of asking individual workmen to give their options in a proforma. According to Counsel, the attitude of the industry revealed that it was bent on retrenching the workmen and taking local employees from the H.P. State on lesser wages inasmuch as, if the workmen of the industry were to be continued in employment, they would have to be paid the same wages as were being paid while at Delhi while the minimum wages payable in H.P. to the locals were much lower.

17. Mr. S.B. Sanyal, learned Senior Counsel for the workmen contended that as per the order of this Court dated July 8, 1996, there was no question of the industry seeking the option of the employees. Such an obligation to exercise option would arise only after the new industry started functioning at H.P. According to Counsel, this Court, in its order dated July 8, 1996 guaranteed continuity up to the date of restart of the industry at the new location and hence the option asked for by the industry was uncalled for and contrary to orders of this Court.

18. Counsel for petitioners-workmen in I.A.No. 201/1997 referred to a letter written by one of the workmen Mr. Ramakant who stated in his letter dated June 23, 1997 that all the workmen were willing to rejoin at Baddi. According to learned Counsel, this letter of the workmen superseded the offer dated January 6, 1997 made by the employees and that this letter contained an unconditional option to move to the State of Himachal Pradesh. According to learned Counsel, after this, the industry could not have treated the applicants as unwilling to join at Baddi. Mr. Ranjit Kumar and other Counsel also made like submissions on behalf of the workmen.

19. On the other hand, Mr. Kajil Sibal, learned Senior Counsel for the industry, submitted that the workmen were not entitled to give a conditional option as contained in their letter dated January 6, 1997, that the workmen, having filed review petitions etc. in this Court for recalling the order dated December 31, 1996, were indeed even on January 6, 1997-not willing to go to Solan, H.P. and that the letter dated January 6, 1997 was not a valid option, and hence the industry rightly deemed the employees as retrenched with effect from November 30, 1996. Several opportunities were given by the industry even later to these workmen to come and join at Baddi. As the Joint Action Committee was not a recognised entity, option had to be called from individual workmen. According to him, out of the total number of 2522 workmen as on November 30, 1992, those who opted to shift to Baddi, Solan within the time specified were only 7 workmen, that 595 workmen did not accept the payment and 10 cheques were lying with the workmen or with the postal authorities. In regard to the payment of 3 months' salary as directed by this Court on March 30, 1998, it was stated that 1938 workmen were eligible to receive the said amount, that 1891 persons took it and cheques of 47 workmen were lying with the industry.

20. In reply to the contention of the learned Senior Counsel for the workmen that the workmen had time to join at the new location till the industry was ready for being 'restarted', the learned Senior Counsel Mr. Kapil Sibal and Mr. Dipankar Gupta contended that that would not be a proper interpretation of the order dated July 8, 1996 because under para 9(e) of the said order the 'shifting bonus' and the compensation were payable before December 31, 1996 and hence this Court intended that the workmen should join before December 31, 1996. They pointed out that even so, the industry extended the time by issuing several public notices. As the workmen did not opt to go to Baddi before December 31, 1996 or by the extended dates as per para 9(d) of the order of this Court dated July 8, 1996, they were rightly deemed to have been retrenched by November 30, 1996 and local people of Himachal Pradesh have already been employed.

21. Learned Senior Counsel, Mr. Kapil Sibal also referred to the conduct of the workmen which according to him disentitled the workmen to any relief. He submitted that before and after January 6, 1997 (the date of notice of the various unions that they were willing to shift to Baddi, subject to the orders in pending applications), the workmen were totally unwilling to go to Baddi. They were repeatedly making attempts by filing review petitions to see that December 31, 1996 order permitting relocation outside N.C.T. of Delhi, H.P. Rajasthan, Haryana, was recalled. Mr. Kapil Sibal referred to the Review Petition No. 39/97 filed by the workmen seeking review of the order dated December 31, 1996 permitting the industries to shift to H.P. Rajasthan, Haryana and Punjab outside the N.C.T.(Delhi). According to the plea of the workmen, the Court was to deem industries which were not relocating in N.C.T.(Delhi) as "closed" in view of the orders dated July 8, 1996 and December 4, 1996. Counsel submitted that the workmen were interested more in getting the 6 years' salary as compensation by treating the industries as closed and as if they were not relocating. Reference

was also made to IA 52/1997 filed by the Government of N.C.T. (Delhi) for review of the order dated December 31, 1996. IA 144 was also similar. These IAs were dismissed by this Court on March 16, 1998 and on other dates. Learned Counsel pointed out that even in the body of the affidavits filed in IA Nos. 201, 202 and 203, where several other reliefs were asked for, the workers urged that the industries be located in N.C.T.(Delhi). Though some ancillary reliefs were prayed for in these IAs, the entire tenor of the affidavits according to Mr. Sibal, was that the order dated December 31, 1996 should be recalled. Counsel stated that the workmen had, in fact, physically prevented the industry from removing its articles from Delhi to H.P. even as late as on May 20, 1997. Mr. Dipankar Gupta, Learned Senior Counsel appearing for the respondents also made similar submissions. He also submitted that Baddi was a well developed place with a large number of industries and Banks etc. and all normal facilities were available there if the workmen really desired to shift. According to both Counsels, out of 7 unions only 2 unions had filed these IAs while the other unions remained silent. They also submitted that the workmen ought to have helped the industry during relocation and for that purpose, they should have shifted to Baddi even before the industry re-started functioning at that place.

22. The party-in-person who appeared in CP 532 wanted that he be paid the 6 years' wages on the basis that the industry was closing and not shifting. In other words, he was not willing to go to Baddi. The Counsel for respondents Mr. Kapil Sibal stated that a letter with cheque which was sent to him got returned. But if the industry was relocating and he was not shifting, he would get only 1 year's wages plus compensation u/s 25F(b) as per the order dated July 8, 1996. The industry was agreeable to pay him 1 year's wages in addition to Section 25F(b) compensation.

23. The points for consideration are:

(i) Whether the management was right in its submissions that the workmen, though given opportunity in various letters to give their option for reporting at Baddi, failed to exercise option and must be deemed to have been retrenched on November 30, 1996 in terms of the order dated July 8, 1990 and December 30, 1996 of this Court?

(ii) Whether the workmen were right in contending that the management had no right to seek options from the workmen even before the industry was relocated and started functioning at Baddi?

24. These two points reflect the rival contentions and can be disposed of together.

25. In our opinion, the true answer to the contentions can be found in the order dated July 8, 1996 read with the order dated December 31, 1996. We have already extracted the various clauses in para 9 of the order of this Court dated July 8, 1996. We shall briefly refer to them again. Sub-clause (a) emphatically says that-

"The workmen shall have continuity of employment at the new town and place where the industry is shifted. The terms and conditions of their employment shall not be altered to their detriment."

Sub-clause (b) is important and it says that-

"The period between the closure of the industry in Delhi and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of service."

The words "continuity" and "restart" used in Sub-clauses (a) and (b) of para 9 bring about the main intendment of the order. It is clear, from a plain reading of these clauses that the workmen were to be treated as if they were in service till the time industry restarted at the relocated place and till such time, their services were to be treated as continuous. If that be so, there was no question of the employer asking them for an option to agree to shift and fix an earlier time-limit than the date of starting of the industry at Baddi.

26. Learned Senior Counsel for respondents Mr. Kapil Sibal and Mr. Dipankar Gupta argued that that could not be the true meaning of Clauses (a) and (b). The crucial clause according to them was Clause (e) which stated that -

'the shifting bonus' and the compensation payable to workmen in terms of this judgment shall be paid by the management before December 31, 1996."

The 'shifting bonus' was referred to in Sub-clause (c) and the payment of compensation was referred to in Clause (d) and these amounts had to be paid by December 31, 1996, as stated in Clause (e). According to learned Counsel, the option to join at Baddi must have, therefore, been exercised before December 31, 1996. They rely on Clause (d) which reads as follows".

"The workmen employed in the industries which fail to relocate and the workmen who are not willing to shift along with the relocated industries, shall be deemed to have been retrenched with effect from November 30, 1996.... and be paid..... one year's wages as additional compensation."

of course by order dated December 4, 1996 in case the industry did not relocate, they had to pay 6 years' wages and not merely wages for one year]

On the basis of Clause (c), (d) and (e), the learned Senior Counsel for the respondents argue that if the workmen did not exercise option by December 31, 1996, they were to be deemed as retrenched by November 30, 1996.

27. In our opinion, the contention of the learned Senior Counsel for the respondents, is based upon a misconception of the true import of this Court's order dated July 8, 1996, As already stated, the two Clauses (a) and (b) are crucial and deal with continuity of service of the workmen on the same terms and conditions and the payment of full wages till the "restart" at the new place and these conditions cannot be altered to their detriment. The employees are to be deemed to be in active employment right from the date of "closure" of the

industry of Delhi till its "restart" at the place of relocation and they had to be paid their full wages with continuity of service for the said period. There was, therefore, no question or the industry compelling the workmen to exercise any option before the date of such restart informing the industry that they were prepared to rejoin at the place where the industry was proposed to be started. The industry could not be said to be restarted unless and until it had got the plant installed and obtained all necessary permissions for its being commissioned at the new place. Till such time, the workmen were to be deemed to be in service with continuity. In our view, the said continuum could not be broken by the industry by unilaterally asking the workmen to exercise an option to join. Such an option on the part of the workmen was nowhere contemplated by the order of this Court dated July 8, 1996. The industry was nowhere given any right to seek such an option.

28. This Court gave an option for the workmen for 'not joining' and not 'for joining' at the relocated place. Till the time of 'restart' of the industry at the relocated place, it was open to the workmen to say that they would not rejoin. The only consequence is that if they exercised such an option on any date after the date of closure and before restart, they would still be deemed to have been retrenched with effect from November 30, 1996 and not with effect from the date on" which they exercised their option not to rejoin. In other words, if they opt not to rejoin, they would not be entitled to wages from the date of closure till the date they exercised their option not to rejoin-inasmuch as any such refusal to rejoin at Baddi, communicated to the industry before the date of restart would result in their being deemed to have been retrenched from November 30, 1996.

29. The industry in our opinion, proceeded on a total misconception or the order of this Court dated July 8, 1996 and adopted a procedure which ran quite contrary to scheme which was envisaged by this Court for the benefit of the workmen.

30. The fact that during the period before the industry was relocated, the workmen approached this Court for recall of the order dated December 31, 1996 which order permitted relocation of the industry outside N.C.T.(Delhi) could not, in our opinion, be deemed to amount to an option not to rejoin at the proposed place of relocation. In fact the letter dated January 6, 1997 of the workmen could not be treated as a conditional option to rejoin because they were not obligated to give any option to rejoin but they could have, if they so chose, opted not to rejoin. The letter dated January 6, 1997 could not be treated as a letter exercising option not to rejoin at the place of relocation. This is because it specifically contained an offer to rejoin. The fact that the workmen subjected their intention to rejoin to orders of this Court did not convert an intention to join into an intention not to join at the relocated place. Further, the right of any party to seek review of orders of this Court is a right which is lawfully exercised and cannot be treated as a breach of the order of this Court dated July 8, 1996.

31. For the aforesaid reasons, we reject the contention of the respondents. We

accordingly direct the industry to allow all the workmen-except those who exercised or would exercise an option not to rejoin-to rejoin at Baddi. In order to avoid any scope for future disunities, we direct all those who are willing to rejoin at Baddi, to report there at Baddi on January 14, 1999 and January 15, 1999 alongwith their identity cards or other evidence to identify them and sign or put their thumb-mark in a register in the joint presence of the Dy. Labour Commissioner having jurisdiction over Baddi, District Solan, Himachal Pradesh and the Dy. Labour Commissioner of N.C.T.(Delhi). These officers shall countersign in the register certifying that the particular workmen had reported at Baddi. All such workmen who rejoin shall be entitled to the benefits of the orders of this Court dated July 8, 1996 and subsequent orders, in respect of continuity, back wages from date of closure till date of such rejoining, in addition to one year's wages towards shifting bonus. The said amount shall be paid by the respondent industry to each of these workmen, within one week of the rejoining at Baddi. In respect of such of the workmen who do not so report by January 15, 1999 as aforesaid or who otherwise give it in writing to the aforesaid authority that they are not willing to rejoin, they shall be deemed to have been retrenched with effect from November 30, 1996 and shall be entitled only to one year's wages and also to Section 25F(b) compensation as per the order of this Court dated July 8, 1996. The said amount shall be disbursed to these employees within one week from January 15, 1999 by the respondent industry.

32. The applications of the workmen of the industry working at Delhi are accordingly allowed and disposed of in the manner stated above.

33. As the petitioner in the contempt case (party-in-person) is not willing to join at Baddi the industry will pay him 1 years salary plus Section 25F(b) compensation within 15 days from today, if not already paid. The contempt case is disposed of accordingly.