
(2011) 05 MP CK 0083

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 6535 of 2009

M/s. NHK Spring India Limited

APPELLANT

Vs

NHK Sharamik Sangh

RESPONDENT

Date of Decision : 20-05-2011

Acts Referred:

Constitution of India, 1950 — Article 227

Industrial Disputes Act, 1947 — Section 10, 25FFA, 25FFF, 25O

Citation : (2011) 130 FLR 768 : (2011) 3 MPHT 356

Hon'ble Judges : Shantanu Kemkar, J; S.K. Seth, J

Bench : Division Bench

Advocate : G.M. Chaphekar and Mr. G.S. Patwardhan, for the Appellant; S.P. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Seth, J.—In this writ petition under Article 227 of the Constitution of India, petitioner is assailing the award pronounced by the Industrial Tribunal on 23rd July, 2009 answering the reference against the petitioner. Relevant facts leading to reference are as under:--

2. Petitioner is a registered Company having head office at Manesar in Haryana. It had set up a factory at Malanpur in District Bhind, Madhya Pradesh to manufacture stabilizer-Bar. Subsequently, another factory was started at Manesar, Haryana by deploying part of machinery and employees from Malanpur. It is not in dispute that petitioner gave a notice dated 10-7-2008 u/s 25FFA of the Industrial Disputes Act, 1947 (hereinafter called "the Act" for short) stating reasons for closure of the Malanpur factory and after expiry of period of notice-paid the compensation as per Section 25FFF of the Act. The amount of compensation was worked out "as if the workman had been retrenched". The action of the Company was based on the premise that the factory at Malanpur employed less than 100 workmen on an average per working day for the preceding 12 months.

3. This action of the Company led to unrest and disturbed the industrial peace and when statutory measure provided under the Act failed to restore harmony, the following reference was made to the Tribunal u/s 10 of the Act:--

4. The case of the first party Union is that it is a registered Union working for the welfare of the employees (workmen) at Malanpur. Further two factories, one at Malanpur and the other at Manesar and the Head Office which was controlling these two factories were employing 306 persons during the period of 12 months preceding the date of closure of the factory at Malanpur. There were 87 permanent employees, 20 staff members and 88 contract labour at Malanpur. Thus, the total number of employees in the factory at Malanpur was 195. The factory at Manesar had employed 40 persons as permanent employees, 10 staff members and 20 contract labours. Thus, there were 70 employees at Manesar. The Head Office had 21 permanent employees and 20 staff members. The total number of employees in the Head Office was 41. The plea of the first party Union was that these two factories and the Head Office constituted one "industrial establishment" and since there were more than 100 workmen employed on an average per working day during the preceding 12 months, it was necessary to obtain prior permission of the State Government as per Section 25O of the Act for effecting closure of the factory at Malanpur. It is stated that there was "functional integrality" of the three units. The employees of one factory were transferable to the other. The corporate profile of the Company demonstrated that all the three units constitute one industrial establishment. Some of the machinery of the factory at Malanpur was shifted to Manesar plant. Thirty five employees were transferred from Malanpur to Manesar before the closure. The Head Office was looking after marketing, quality control, accounts, HRD and other activities of both the factories. The product of Malanpur factory was being transported to Manesar. It was unloaded and repacked there. It was then supplied to the customers. The bills were raised at Manesar Head Office and the customers were making payments at Manesar. The funds for the expenses at Malanpur were being made available from the Head Office at Manesar. The same management was looking after the two factories. The conditions of service of the workmen of these two factories were identical. The Union has claimed that 52 employees were are its members, are entitled to be reinstated in service with full back wages.

5. The case of the second party-employer was that the two factories at Manesar and Malanpur were separate industrial establishments. The Head Office was also an independent unit. There was no functional integrality between these three establishments. The factory at Malanpur had become financially and logistically unviable and, therefore, the Management took the decision to close it. The number of workmen in this factory was less than 100 and, therefore, there was no need to comply with the provision in Section 25O of the Act. The provision which as applicable was Section 25FFA of the Act and the requirements of that Section had been complied with. New machines were purchased in the year 2007 from various companies for setting up a plant at Manesar for manufacturing

stabilizer bars and some of the machines were shifted from Malanpur to Manesar. Thirty five persons working at Malanpur were absorbed in the factory at Manesar. There was no scope for absorbing other employees. No promise was made to the Union that 52 employees who have been paid compensation would also be absorbed in the factory at Manesar. The contract labour and staff members are not workmen and, therefore, their numbers cannot be included for the purpose of arriving at the magic figure of 100. It was also contended that the Industrial Tribunal committed a jurisdictional error by travelling beyond the scope of term of reference and in support of this reliance was placed on the decision of the Supreme Court in the matter of Pottery Mazdoor Panchayat Vs. Perfect Pottery Co. Ltd. and Another,

6. After having heard rival submissions and perusal, of material available on record, in our considered opinion there is no force and substance in this petition.

7. When an entrepreneur-- whether an individual proprietor or a partnership firm or an incorporated Company-- is engaged in several activities each of which comes within the definition of industry in the Industrial Disputes Act, the question often arises whether these several activities together form one industrial establishment or are distinct separate industrial units. There are several decisions of the Supreme Court which lay down the tests to determine whether one establishment is part of another. These tests are only guidelines and cannot be applied as universal thumb rule. Each case has to be tested in its factual back ground before arriving at a finding. The Industrial Tribunal, after noticing various statutory provisions in the backdrop of detailed discussion of evidence adduced before it, found the following in favour of the respondent :--

(a) NHL Spring India Limited, a Public Limited Company is owner of both the factories at Manesar and Malanpur;

(b) the share-holders are common;

(c) Director and Senior Officers managing and controlling both factories are common;

(d) there is unity of ownership, management and control;

(e) employees of the factory were transferable to the other;

(f) thirty five employees were transferred from Malanpur to Manesar on setting up of Stabilizer liar Plant at Manesar;

(g) Officers (staff members) were also being transferred from one factory to the other;

(h) capital, funds and finances were being provided to both the factories by one owner;

(i) there was mixing up of capital, staff, and management;

(j) terms and conditions of settlement were being arrived at Manesar and these

were being recorded separately;

(k) negotiations of demands of the employees were being made at Manesar;

(l) historically most of the employees working in Jamna Auto Industries Limited were absorbed in Jamna NHK Allevard Suspension Components Limited and then in "NHK Spring India Limited";

(m) terms and conditions of service of the workmen of both the factories were almost identical with some minor variations;

(n) transfer and promotion policy of the employees of both the factories were common;

(o) as per corporate profile of the Company the products of both the factories have been shown as products of one Company;

(p) the Head Office at Manesar was controlling both the factories and both were dependent on the Head Office;

(q) stabilizer bars which were being manufactured at Malanpur are being manufactured at Manesar in the new plant;

(r) many of the machines of Malanpur have been shifted to Manesar;

(s) planning, production, target, quality control, marketing, testing, sales, purchase and storage are being done at Head Office in respect of both the factories;

(t) Malanpur factory depended for many of these things at the Head Office; and

(u) stabilizer bars sent from Malanpur to Manesar were being further tested and processed by the employees at Manesar.

8. Industrial Tribunal, which is the final fact finding authority, examined the case in hand on the anvil of guidelines given in various decisions and, recorded a finding that the factories at Malanpur and Manesar and the Head Office constituted one "industrial establishment" and these three units employed more than 100 workmen. After careful scrutiny of the record, we are of the considered view that the findings recorded by the Tribunal are based upon proper appreciation of evidence and could not be termed as perverse. There was unity of ownership. Workmen were transferable from one unit to another. Production quality control and marketing and sales of the end product were controlled by the Head Office. Payments for supply of stabilizer bars were being received at Manesar. There was one balance sheet showing the performance of both the factories. Tribunal also found that before closure of the plant at Malanpur, a new plant for manufacturing was set up at Manesar and thirty five employees (workmen) from Malanpur were transferred to Manesar Plant. The Tribunal, in our opinion, rightly held "ownership, supervision, control, transferability of workmen from one unit to another, dependence of the factory at Malanpur for finishing and testing of stabilizer bars at Manesar before supply to customers,

payments of bill at Manesar, provision of funds and finances by the owner" tilt in favour of the claim of the respondent that the three units constituted one "industrial establishment" rather than the circumstances finding favour with the petitioner.

9. In view of the foregoing discussion, Tribunal was justified in holding that the provisions of Section 25O of the Act was applicable and non-compliance thereof, would render closure of the Malanpur unit illegal, and the affected workmen were entitled for all benefits under the law. The finding of fact is that three units, Malanpur, Manesar and Head Office predominantly constituted one industrial establishment as "one integral whole". Compliance of provisions of Section 25ITA of the Act, in the facts and circumstances of case, was not found sufficient. Consequently, Tribunal answered the reference in favour of workmen covered by the reference and directed their reinstatement in service in Manesar plant with full back wages from the date of illegal closure of the Malanpur Plant. We don't find any illegality or jurisdictional error in the said finding of facts in exercise of supervisory jurisdiction conferred by Article 227 of the Constitution of India. We find no force in the submission that Tribunal travelled beyond the scope of the term of reference. Facts of the present case are distinguishable from the facts of the Prefect Potteries case (*supra*). It is well settled that the jurisdiction of Tribunal is not confined strictly to matter referred but also include adjudication of matters incidental thereto. In the present case, the answer to the reference and relief was dependent upon the question of employment of 100 or more workmen in the Malanpur Unit/Plant. We are justified in taking this view of the matter in light of the decision of the Supreme Court in case of Workmen of the Calcutta Port Commission Vs. Employers in relation to the Calcutta Port Commission, reported in 1970 20 FLR 277 (SC).,

10. Thus, we find no infirmity with award. Consequently, the writ petition is dismissed with costs of Rs. 10,000/-. Ordered accordingly.