
(1995) 08 MP CK 0055

In the Madhya Pradesh High Court

Case No : Writ Petition No. 804 of 1995 (J)

M/s. Nimar Textiles Ltd.

APPELLANT

Vs

L.K. Pandey, Deputy Labour Commissioner

RESPONDENT

Date of Decision : 31-08-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(1)

Citation : (1996) 2 MPJR 76

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : S. Paul, for the Appellant; R.N. Shukla, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.

By this petition, the petitioner/ employer has challenged the order passed by the Respondent No. 1 u/s 33-C (1) of the Industrial Dispute Act, 1947 (for short the "ID Act") whereby a direction was made to the petitioner to make the payment of wages for the month of May to July 1994 amounting to Rs. 28,52, 866.80/- to the employees employed in the factory of the petitioner and for that a revenue recovery Certificate was issued to the Collector to recover the said amount from the petitioner.

Facts giving rise to this petition are thus :

The petitioner is a textile industry, which is engaged in manufacture and sale of Cotton Yarn, wherein, about 800 employees are employed. As like other textile units, the petitioner is also passing through a critical financial phase, hence, could not make the payment of electric bills in the year 1988-89. The petitioner avers that an understanding was arrived at between the petitioner and the Madhya Pradesh Electricity Board (MPEB), for payment of the outstanding energy bills in instalments. Petitioner also avers that MPEB assured that if principle amount of outstanding energy bills is made as per understanding the surcharge

shall be waived. As per understanding, the petitioner made the payment of the principle amount of all the outstanding bills, but, MPEB did not waive the surcharge, not only this on the amount of surcharge additional amount of surcharge was levied, which the petitioner could not pay, hence, MPEB disconnected the power supply in the month of March, 1994, as a consequence of that, the entire operation of the factory came to a grinding (sic). In the circumstances, the employees employed in the factory could not be provided any work, hence, were laid off as the permission of the appropriate Government or specified authority as required u/s 25-N of the ID Act was not necessary, an the lay-off was due to shortage of power.

The respondent No. 4 the representative Union made an application u/s 33-C of the ID Act before the appropriate Government for the recovery of the money due towards the wages of the employees. The Dy. Labour Commissioner, issued a notice of the application to the petitioner and its Directors to show-cause why the amount of Rs. 47,55,775/- due towards the payment of wages of the employees for the month of March, 1994 to July 1994 be not recovered. The petitioner submitted its reply vide Annexure - P/2 dated 24.11.94 stating all the circumstances, and submitted that as the employees were laid off due to shortage of power for which the permission as required by section 25-M of chapter V-B of the ID Act was not necessary. However, the petitioner is making all efforts of restart its industrial establishment to which Government Agencies including the Labour Department had also assured to use their good offices to convince MPEB and to finalize the dispute, but, so far nothing has been done, therefore, the coercive process issued for the recovery of the amount be not taken against the petitioner Company and its Directors. The respondent No. 1 being, not satisfied with the reply to the show-cause notice and as permission for lay-off u/s 25-N of the ID Act was necessary issued the revenue recovery certificate for the amount of Rs, 28,52,866.80 and sent the memo to the Collector, Khandwa vide Annexure -P/6 to realize the said amount for the payment of the arrears of wages to 544 employees as per list annexed.

The petitioner served a notice (Annexure -P 7) dated 28.2.1995 on respondent No. I wherein it is stated that the employees have already approached the Legal Authority under the payment of Wages Act for issuance of a direction or order for payment of their delayed or denied wages and that the petitioner's industry is a textile industry employing more than 100 employees on which the provisions of M. P. Industrial Relations Act, 1960 (for short the "MPIR Act") apply, the order u/ s 33-C (1) of the ID Act is without jurisdiction, hence, it be recalled, but, neither the order was recalled, nor the petitioner was heard, hence, this petition.

Shri S. Paul, learned counsel for the petitioner contended that the provisions of MPIR Act are applicable on the petitioners' industrial establishment, the remedy of the employees, if any, was under the provision of MPIR Act. It is submitted that, though, the textile industry has been omitted vide notification dated 10.1.1992 issued by the State Government from the applicability of the

provisions of MPIR Act, but, that notification has been stayed by order dated 31.1.1992 of this Court, Bench at Gwalior in M. P. 219/1992. Other similar petitions namely M. P. 430/82 and 431/92 are pending also at the main seat challenging the validity of notification in which, in view of the order passed in M. P. 219/92, no order of stay is passed. Therefore, till the stay order passed, is vacated or petitions are decided the textile industry of the petitioner continues to be governed by the MPIR Act. On merits, it is submitted that the petitioner's ease of lay-off falls within the exception contained in section 25-N as it is due to shortage of power, therefore, the permission for lay-off is required u/s 25-N of the ID Act was not necessary, nor the employees so laid off are entitled to even 50% of the total basic pay/wages and dearness allowance in accordance with section 25-C as compensation as lay-off continued for more than 45 days during the period of 12 months. Besides, out of total number of employees 167 employees are Badli employees, who are not entitled to any lay-off compensation u/s 25-C of the ID Act. In the circumstances, the order of respondent No. 1 to pay full wages for 29 days of each month to tire employees mentioned in the list annexed, when the right and entitlement of the employees to get lay-off compensation is disputed, the amount cannot be recovered without determination of the right and entitlement by the Labour Court or the Industrial Tribunal on a reference made under sections 10 and 12 of the ID Act or by the Labour Court or the Industrial Court as the case may be under the provisions of MPIR Act. To support the contentions, learned counsel cited *The Workmen of Firestone Tyre and Rubber Co. of India (P) Ltd. Vs. The Firestone Tyre and Rubber Co., and Ashok Kumar Jain & ors. v. State of Bihar and ors.* 1995 S. C. C. 516.

Shri M. L. Choubey, Government Advocate and Shri R.N. Shukla, counsel for representative Union supported the order of recovery and contended that vide notification dated 10.1.1992 the textile industry has been omitted from the specified schedule of industries u/s 1 (3) of the MPIR Act on which the provisions of MPIR Act apply, as such the provisions of the ID Act fully apply, hence, the amount due was rightly ordered to be recovered u/s 33-C (1) of the ID Act. Admittedly, no prior permission was obtained from the appropriate Government before laying off the employees/workmen. Cut-off of the electric supply due to the non-payment of electric bills cannot be said to be a cause falling within the expression shortage of power. Therefore, the lay-off was per se illegal, hence, under sub-section (8) of section 25-N of the ID Act the employees were entitled to full wages of the month and as such the respondent No. 1 rightly issued the revenue recovery certificate to realize the amount of arrears of wages of 545 employees who were made jobless for no fault of theirs.

Shri R. N. Shukla further submitted that even if the provisions of the MPIR Act still continuous to apply on the petitioner's industry, the provisions of the Chapters V- A, V-B and V-C of the Act and other provisions with respect of lay off, retrenchment compensation, special provisions relating to lay-off retrenchment and closure and unfair labour practice contained in ID Act apply in

view of the saving provisions contained in section 110 of the MPIR Act, to any industry to which MPIR Act applies. Hence the recovery cannot be said to be illegal or without jurisdiction, reliance was placed on (Papnasam Labour Union v. Madurs Conts Ltd. & anr. 1991 (1) S. C. C. 501.

After hearing counsel, I am of the opinion that this matter should go back for decision afresh. If the lay off is for the circumstances as enumerated in section 2 (kkk), the workmen so laid off are entitled to get the compensation to be calculated in accordance with section 25-C. However, if the lay-off is not for the reasons enumerated in section 2 (kkk), or the lay off is mala fide for the sense that the employer had deliberately and maliciously brought about a situation to lay off the workmen, it would not be lay-off justified u/s 2 (kkk) and, the relief provided to laid off workmen u/s 25-C would not be only relief to which they are entitled as it would mean as no lay-off really had taken place, hence, such workmen would be entitled to full wages on such finding recovered by Tribunal.

Relating to certain industrial establishment employing more than 100 workmen, special provisions have been made relating to lay-off, retrenchment and closure in Chapter V-B of the ID Act of which section 25-N deals with lay-off, which prohibits lay-off without prior permission of the appropriate Government or the specified authority. The constitutional validity of section 25-N has been upheld by the Supreme Court in case of Papnasam Labour Union (supra) following the decision by applying the reasoning for upholding the validity of section 25-N of the Chapter V-B relating to condition precedent to retrenchment of workmen, is Workmen of Meenakshi Mills Ltd. and Others Vs. Meenakshi Mills Ltd. and Another, . Therefore, there is no matter of doubt that if an employer wants to effect lay-off for the circumstances enumerated in section 2 (kkk), an employer has to seek permission u/s 25-N of such authority as may be specified by the appropriate Government unless such lay-off is due to shortage of power or natural calamity. For seeking such a permission section 25-N prescribes complete procedure. There may be various contingencies justifying an immediate action of lay-off but then the legislature in its wisdom has thought it desirable in the greater public interest that decision to lay-off should not be taken by the employer on its own assessment with immediate effect but the employer must seek approval from the authority concerned which is reasonably expected to be alive to the problems associated with the industry concerned and other relevant factors, so that on security of the reason pleaded for permitting lay-off, such authority may arrive at a just and proper decision in the matter of according or refusing permission to lay-off. Such authority is under an obligation to dispose of the application to seek permission for a lay-off expeditiously, and in any event, within a period not exceeding two months from the date of seeking permission. It may not be unlikely that in some cases an employer may suffer unmerited hardship up to a period of two months within which his application for lay-off is required to be disposed of by the authority concerned but having undertaken a productive venture by establishing an industrial unit employing a larger labour force, such employer has to face such consequence on some occasions and may

have to suffer some hardship for sometime but not exceeding two months within which his case for lay-off is required to be considered by the authority concerned otherwise it will be deemed that permission has been accorded. In the greater public interest for maintaining industrial peace and harmony and to prevent unemployment without just cause, the restriction imposed under sub-section (2) of section 25-N cannot be said to be arbitrary, unreasonable or far in excess of the need for which such restriction has been sought to be imposed. It is only in the case of shortage of power or natural calamity and in the case of mine because such reasons being grave, sudden and explicit, the Legislature has exempted the need for prior permission for lay-off.

If the case of an industrial establishment does not fall within the aforesaid two exceptions and if the application is not made for permission, or on the application if made, the permission is refused under sub-section (3) of section 25-N, sub-section (8) of section 25-N lays down that such lay-off shall be deemed to be illegal from the date on which the workmen had been laid off and the workmen shall be entitled to all the benefits under any law for the time being in force as if they had not been laid off.

Admittedly, no permission has been sought by the petitioner for effecting lay-off as the petitioner contends that his case is of one of the exceptions contained in section 25-N (1) and for that much reliance has been placed on the decision of the Supreme Court in case of *Ashok Kumar Jain (supra)* which related to the prosecution of the Chairman, Managing Director and other senior officials of Rohtas Industries Limited for effecting lay-off without seeking prior permission of the specified authority wherein the prayer for quashment of the prosecution was made because the company became sick beyond revival and all attempts to revive had failed as electricity was disconnected for non-payment of electric bills for the period 1977-80 and 1980-81 which stood at Rs. 72,61,010,70.00. In that situation the Management (sic) sought to save the Company from being permanently sick, on the plea of section 25-N being ultra vires, in view of the decision of the Supreme Court in case of *Excel Wear and Others Vs. Union of India (UOI) and Others*. The Supreme Court observed that the Constitutional validity of section 25-N has been upheld in *Papnasam Labour Union case (supra)*, but, looking to the facts of the case that the Management could not pay the huge electric bills because the industry became sick beyond revival and all attempts to revive have failed, the Management because of the grave situation felt the need of immediate lay-off without awaiting for permission as contemplated u/s 25-M. On taking cognizance of the offence u/s 25-M read with section 25 of the I. D. Act, the accused persons made a prayer for quashment of the complaint, which was quashed by the Supreme Court, in peculiar circumstances and facts of the case. But, the case is of no assistance to the petitioner as it has not dealt with the question that for non-payment of huge electricity bills if the power is cut off, in that case, an employer can effect lay-off without seeking permission as required u/s 25-N. In the circumstances, the decision can also not be binding as precedent as it is well settled that the doctrine of precedent applies to principles

of law laid down by Courts and not to findings arrived at in a particular case.

However, the grievance of the petitioner in the case is that before issuing revenue recovery certificate on the application of the respondent/Union filed u/s 33-C (1) of the ID Act the petitioner was not heard nor any decision was taken on the objections raised by the petitioner relating to seeking of permission u/s 25-N, maintainability of the proceedings u/s 33-C (1) of the ID Act, right and entitlement of workmen to get lay-off compensation and the payment of the same to the workmen, availability of remedy under MPIR Act, as section 110 of the MPIR Act has not saved the applicability of the provisions contained in chapter VII of the ID Act which deals with the miscellaneous provisions contained in sections 32 to 40 of the ID Act. In the circumstances and the peculiar facts of the case without expressing any opinion on the question whether permission u/s 25-N was necessary before effecting lay-off or not, it would be appropriate to direct the respondent no. 1 to decide the objections raised by the petitioner in accordance with law within a period of two weeks from the date of appearance of the parties which is fixed as 18.9. 1995, of which no notice shall be issued to the parties as they have been noticed here.

In case the respondent No. 1 comes to the conclusion that the application u/s 33-C (1) is not maintainable in view of the applicability of the provisions of the MPIR Act, the dispute for claiming full wages for the period for which revenue recovery certificate was issued shall be referred by the State Government for adjudication of the Labour Court or industrial Court as the case may be under the provisions of MPIR Act for (he determination of right and entitlement and on that, the Court to whom the dispute is so referred shall decide the dispute within a period of one month. Meanwhile, as the workmen have not been paid any lay-off compensation even in accordance with section 25-C nor have been retrenched, the respondent no. 1 shall see that the amount of Rs. 51 lacs deposited by the petitioner in compliance of the order of this Court be disbursed to the workmen which shall be adjusted in the amount which may ultimately be found due. A copy of this order be sent post haste to the respondent No. 1 - Dy. Labour Commissioner, Indore. Petitioner also to file copy of this order before the Dy. Labour Commissioner on or before the date of appearance. If the petitioner fails to appear, the respondents shall be free to proceed with the case in accordance with law in the absence of the petitioner.

In the result, the petition is allowed in the manner aforesaid with no order as to costs.