

(2009) 02 KAR CK 0081
In the Karnataka High Court
Case No : Writ Appeal No. 433 of 2006

MSK Mills

APPELLANT

Vs

MSK Mills Naukarara Sabha and Another

RESPONDENT

Date of Decision : 26-02-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 25 M (2), 33 C (2)

Citation : (2010) 3 KarLJ 151

Hon'ble Judges : V.G. Sabhahit, J;A.S. Pachhapure, J

Bench : Division Bench

Advocate : Anandarama K., for Sundaraswamy and Ramdas, for the Appellant;
Ameet Kumar Deshpande, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—This appeal is by the petitioner in W.P. No. 29983 of 2000 being aggrieved by the order dated 8-2-2006 wherein the learned Single Judge has declined to interfere with the order passed by the Labour Court, Gulbarga, dated 31-8-1998 and dismissed the writ petition.

2. The appellant herein filed Writ Petition No. 29983 of 2000 seeking for quashing of the order passed by the Labour Court, Gulbarga, dated 31-8-1998 in Application No. 17 of 1994 as per Annexure-A to the writ petition contending that the said order was illegal and erroneous. An application was filed by the respondent herein u/s 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") seeking for recovery of 50% of the wages which had not been paid by the appellant herein as per the Annexure to the application in respect of the workmen employed by the appellant herein and only 50% of the wages has been paid for the lay-off period and since the lay-off was illegal as it was without prior permission from the appropriate Government the workmen were entitled to 100% wages in view of the provisions of Section 25-M(2) of the Act. The said application was opposed by the appellant herein by filing objections contending that the workmen-first party are not entitled to seek any money or

any benefit from the respondent-employer, the appellant herein has incurred a loss to the tune of Rs. 45,01,52,766.39 and the respondent was not able to get the raw material and due to shortage of power supply since the production activities of the mill had been affected materially, the KEB had disconnected the electric connection to the appellant for which the respondent-mill has suffered a set back. Due to shortage of raw material and shortage of power lay-off has become inevitable and this aspect was discussed with all the unions by the appellant herein and therefore the applicants are not entitled to any amount and the amount which is due to be paid during the period of lay-off has been paid and the application is not maintainable.

3. The Labour Court on consideration of the application and the objections raised by the appellant herein by order dated 31-8-1998 held that the employer of the appellant herein has not disputed the correctness of the contents of Annexure-A to the application but the plea which has been put forth is that the applicants are not entitled to the relief as the lay-off is justified and the contention that the mill had incurred huge loss and therefore the appellant is unable to pay the amount cannot be accepted and the said plea cannot be a ground to deny the claim of the workmen under the statutory provisions relating to lay-off. Further though the plea regarding shortage of raw material is raised, the evidence of W.W. 1 clearly reveal that the raw material were available in the open market and the said plea was not at all disputed and the plea that the management was forced with a power cut could not be accepted in the absence of any intimation or notice as issued by the KEB and the material on record would clearly show that power supply would be cut-off if electricity dues have not been paid. Overruling all these contentions raised by the employer the application was allowed and the applicant was directed to pay the amount to each worker as shown against his name in the Annexure to the petition. It was further directed that copies of the order be sent to the Government u/s 33-C(2) of the Act. Being aggrieved by the said order passed by the Labour Court dated 31-8-1998 the writ petition was filed contending that the validity of lay-off as to whether it is legal or illegal cannot be gone into in an application filed u/s 33-C(2) of the Act and the prior permission for lay-off was not necessary as lay-off was due to shortage of power and the objections raised before the labour Court was reiterated.

4. The petition was resisted by the respondent justifying the order passed by the Labour Court. The learned Single Judge of this Court after hearing the learned Counsel for the petitioner, the learned Counsel for the respondent 1 and the learned Government Advocate for respondent 2 held that the main contention of the writ petitioner as argued before the learned Single Judge was it was necessary to take permission for lay-off as there was shortage of power and lay-off was justified. The learned Single Judge on consideration of the said contention, having perused and scrutinised the material on record held that there was disconnection of electric supply to the writ petitioner-mill for non-payment of electricity charges and the question of shortage of power does not arise as the disconnection of the electricity supply is due to conduct of the appellant and the

question of load shedding would not arise. The learned Single Judge further held that the application pertain to the period from August 1994 to October 1994 and the wages had been paid for the earlier period of lay-off prior to August 1994 and also observed that even though the mill was ground to halt completely idle wages has been paid by Central Government from September 1992 onwards and therefore the order impugned in the writ petition was justified and does not call for interference by this Court in its writ jurisdiction and accordingly dismissed the writ petition. Being aggrieved by the order of the learned Single Judge dismissing the writ petition by order dated 8-2-2006 the writ petitioner has preferred this appeal.

5. We have heard the learned Counsel for the appellant and the learned Counsel for respondent 1. Respondent 2 has been deleted by order dated 30-5-2007 in view of the memo filed by the learned Counsel for the appellant for deletion of respondent 2.

6. Learned Counsel for the appellant vehemently submitted that the learned Single Judge has not considered the contentions raised before him though argued by the learned Counsel for the appellant and the contention regarding scope of enquiry in application u/s 33-C(2) of the Act has not been considered by the learned Single Judge though argued, and since lay-off was due to shortage of power prior permission u/s 25-M of the Act was not necessary and therefore lay-off was justified and could not be illegal u/s 25-M(2) of the Act and 50% of wages had already been paid and no further amount was required to be paid as lay-off was justified. Learned Counsel further submitted that in view of the contents of the provisions of Section 33-C(2) disputed question of fact about entitlement of the applicants to the amount claimed in the application cannot be gone into in the said application and such disputed question of fact can be gone into only in reference u/s 10 of the Act. In support of his contention, he has relied upon the decision of the Hon"ble Supreme Court in the case of Municipal Corporation of Delhi Vs. Ganesh Razak and Another, ; State of Uttar Pradesh and Another Vs. Brijpal Singh, as also in the decision of the Hon"ble Supreme Court in Balbir Singh and Another Vs. State of Punjab, wherein the Hon"ble Supreme Court has laid down the scope of enquiry in an application filed u/s 33-C(2) of the Act. Learned Counsel further submitted that the workmen were given opportunity to work in other department and the question of lay-off pertaining to the said workmen does not arise and the order passed by the Labour Court was liable to be set aside in view of the explanation u/s 25-M of the Act and that the order of the Labour Court was contrary to the provisions of Section 25-M of the Act and the provisions of Sick Industrial Companies (Special Provisions) Act, 1985.

The learned Counsel also submitted that the appellant-mill is closed on 6-5-2002 and all benefits payable to the workmen under the Voluntary Retirement Scheme has been given and the appellant-mill is closed and the learned Single Judge was not justified in dismissing the writ petition as the order passed by the Labour

Court was unsustainable and liable to be set aside for the contentions raised by him before this Court.

7. In response, learned Counsel for respondent 1 submitted that what was claimed in the application filed u/s 33-C(2) of the Act before the Labour Court was 50% which has not been paid as lay-off was without prior permission of the appropriate Government and the appellant does not dispute that the lay-off was illegal and it was liable to pay the amount as stated in the Annexure to the application and what was contended by the appellant was lay-off was justified and therefore 50% of the wages had already been paid and no further amount was required to be paid. No adjudication was required to be done by the Labour Court in the application filed by the respondent in view of the defence taken by the appellant herein and entitlement of the applicants for the amount as per the annexure to the application u/s 25-M of the Act could not be disputed and could be gone into only in application u/s 33-C(2) of the Act. In support of his contention he has relied upon a decision of the Hon''ble Supreme Court in The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., .

8. We have given careful consideration to, the contentions of the learned Counsel for the parties in the light of the principles laid down in the decisions relied upon by the learned Counsel for the parties and scrutinised the material on record.

9. It is clear from the principles laid down by the Hon''ble Supreme Court and the decisions relied upon by the learned Counsel for the parties that the application for recovery of the amount which the workmen are entitled to under the Act is maintainable. However, the said application is in the nature of an execution proceedings and the Labour Court cannot go beyond the decree or the award passed by the Competent Authority and entitlement under the Act. However, interpretation of the award and entitlement of the workmen for the amount on the application, for limited purpose of considering the application can be done in an application filed u/s 33-C(2) of the Act. In the present case, the application that was filed by the respondent herein before the Labour Court was an application for recovery of the amount of compensation which had not been paid by the appellant herein for the period from August 1994 to October 1994 on the ground that only 50% of the wages had been paid and the applicants/workmen as per the Annexure to the application were entitled to 100% wages, as it was without prior permission of the appropriate Government and the objection that the application was to the effect that lay-off was justified as no prior permission by appropriate Government was necessary and lay-off was due to shortage of power and lay-off due to shortage of power is excluded from the category of prior permission and therefore prior permission for lay-off was not necessary and 50% of wages have already been paid and therefore the only disputed question for deciding the application before the Labour Court was as to whether the lay-off was justified as contended by the appellant herein. Having regard to the material on record, the Labour Court has held that since electric supply to the appellant-mill was disconnected for non-payment of electricity charges, the question of

pleading shortage of power would not arise. The learned Single Judge has also observed that disconnection of supply of electricity was due to the non-payment of electricity charges and therefore shortage of power cannot be pleaded as a ground for lay-off.

10. Insofar as obtaining of prior permission required u/s 25-M of the Act, the appellant does not dispute lay-off was illegal if the same was not without prior permission of the appropriate Government. It was liable to pay the amount as claimed in the Annexure to the application and therefore it cannot be said that the enquiry held by the Labour Court was beyond the scope of enquiry in an application u/s 33-C(2) of the Act. This contention was not argued before the learned Single Judge as is clear from the order passed by the learned Single Judge, wherein, it is clearly stated that the main contention raised before the learned Single Judge was that lay-off was legal and prior permission was not necessary as lay-off was due to shortage of power. The contention of the learned Counsel for the appellant that the said ground though argued before the learned Single Judge was not considered cannot be accepted as no affidavit is filed to aver that the said contention was raised before the learned Single Judge and the same was not considered by him. However, even on merits of the said contention we have held that there is no merit in the contention of the learned Counsel for the appellant that the order passed by the Labour Court for enquiry was on application that was beyond scope of Section 33-C(2) of the Act. There is also no merit in the contention of the learned Counsel for the appellant that the lay-off was justified and no prior permission of the appropriate Government was necessary as the lay-off was due to shortage of power. The material on record would clearly show that supply of electricity to the appellant-mill was disconnected for non-payment of electricity charges and therefore the question of shortage of power would not arise at all and there is a concurrent finding on the said question of law by the Labour Court and the learned Single Judge that there was disconnection of electricity supply for non-payment of bills by the appellant-mill and disconnection of electricity supply has been admitted. Under the circumstances, the contention that lay-off was due to shortage of power cannot be said to be accepted and has been rightly rejected by the Labour Court and the learned Single Judge. When once it is held that lay-off was not due to shortage of power, lay-off without prior permission of the appropriate Government would be illegal in view of the provisions of Section 25-M(2) of the Act and therefore the applicants would be entitled for the amount to which they have claimed as per the Annexure to the application accordingly we hold that there is no merit in the said contention that prior permission was not necessary as lay-off was due to shortage of power.

11. The other contentions raised before us regarding alternative employment offered to the employees as also the provisions of Section 22 of the SIC Act and that the appellant-mill is closed after settling the amount payable to the employees retired under the VRS scheme cannot be a ground for rejecting the entitlement of the respondents in the application filed before the Labour Court.

This contention have not been argued before the learned Single Judge and is being argued for the first time before this Court. It is submitted that the said contention though argued has not been considered by him and in the absence of any affidavit filed in that behalf it is not possible to accept the said contention. There is no merit also in those contentions also as the said contention cannot be the defence to the application filed by the respondent before the Labour Court. Accordingly, we hold that the order passed by the learned Single Judge declining to interfere with the order passed by the Labour Court dated 31-8-1998 allowing the application filed by the appellant u/s 33-C(2) of the Act and dismissing the writ petition is justified. Impugned order does not suffer from any error or illegality and we do not find any reason to differ from the view taken by the learned Single Judge. Accordingly, the appeal is devoid of merits and we pass the following order.

The writ appeal is dismissed.