
(1992) 06 KL CK 0058
In the High Court Of Kerala
Case No : O.P. No. 6864 of 1992

Muslim Printing and Pvt. Co. Ltd.

APPELLANT

Vs

Secretary to Government

RESPONDENT

Date of Decision : 18-06-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25F, 25N, 25N(2)

Citation : (1994) 3 LLJ 860

Hon'ble Judges : K.A. Nayar, J

Bench : Single Bench

Advocate : B.S. Krishnan and P.R. Raman, for the Appellant; C.K. Abdul Rahim, for the Respondent

Final Decision : Allowed

Judgement

K.A. Nayar, J.—Industrial jurisprudence in India can rightly be styled as bread and butter jurisprudence, for the management bringing in capital, the workmen investing their flesh and blood and the industry struggling for survival, in the competitive market, all draw sustenance from the industrial adjudication and quick decision.

2. This original petition is for a writ of certiorari to quash Ext.P3 order and also for a writ of mandamus directing the first respondent to reconsider the issue and pass appropriate orders granting permission sought for in Ext.P2 application, taking into consideration the entire facts and circumstances of the case. The petitioner is a private limited company owning a Malayalam daily called "Chandrika". It publishes a weekly also. The employment strength of the petitioner company at present is 170 including eight employees not coming under the Industrial Disputes Act. The Company, it is stated, is running at a loss for several years and accumulated loss as on date comes to Rs. 34,11,382/- as against the paid up capital of Rs. 24,60,300/-. The Company has explored the possibilities of minimising the loss so as to avert the closure of the establishment

by rationalising the working system introducing Desk Top Composing System (for short "DTP"). Such system has been adopted by other institutions engaged in printing and publishing newspapers. If such a system is adopted, it is found that 55 workers in the composing section will have no work to do and they have become surplus. In order to minimise the loss and to prevent avoidable hardship, the petitioner thought of selecting qualified persons from the existing workmen found redundant. There were 55 workers, according to the petitioner, redundant in the establishment on introduction of DTP system and in that way a large majority of the workmen who would otherwise have become redundant to the needs of the establishment were absorbed. After making such adjustment, the management found at least 20 persons including five trainees will have to be retrenched. Since the establishment is employing more than 100 workmen, the petitioner has to comply with Section 25N of the Industrial Disputes Act. Section 25N among others, requires the petitioner to obtain prior permission of the appropriate Government or specified authority and for this purpose the petitioner has to make an application in the prescribed manner giving reason for the proposed retrenchment. The relevant portion of the Act is extracted hereunder:

"25-N. Conditions precedent to retrenchment of workmen-

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

(a) the workman has been given three months" notice in writing indicating the reasons for retrenchment and the period of notice has expired , or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under Sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under Sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where an application for permission has been made under Sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section

(6) be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under Sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

XXX XXX XXX

(9) Where permission for retrenchment has been granted under Sub-section (3) or where permission for retrenchment is deemed to be granted under Sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months".

In compliance with the section read with Rule 76A, the petitioner made application, Ext. P2. Since three months, notice has to be given to the 20 workmen concerned, the petitioner gave notice to all the 20 workmen proposed to be retrenched. Ext. P1 is a specimen copy. The application was considered and both the petitioner and the workmen were heard. Thereafter, the appropriate authority, viz. the first respondent passed Ext.P3 order granting permission to retrench the five trainee Compositors taken in 1989. The petitioner was directed to absorb the remaining 15 persons in other sections or offer attractive voluntary retirement scheme Ext.P3 is the said order, which is challenged in this original petition.

2. On a perusal of Ext.P3 it is seen that the first respondent has not adverted to relevant facts. He only noted that major establishments like Malayalam Manorama. Mathrubhoomi, Kerala Kaumudi and Desabhimani have avoided the retrenchment and further the Management has not come forward with any attractive voluntary scheme. The first respondent-Secretary also referred to a

tentative decision taken in IRC meeting held on 3.8.1988 to come to his conclusion. Section 25N of the Act comes under the special provision relating to lay off, retrenchment and closure in certain establishments and that will apply to all the industrial establishment in which not less than 100 workmen were employed on an average per working day for the preceding 12 months. (Originally, the special provision was applicable where not less than 300 workmen were employed, but with effect from 21.8.1984 the number 300 was replaced by 100). Industrial Disputes Act is a legislation to bring about peace and harmony between labour and management providing provisions for investigation and settlement of industrial disputes. Section 25F of the Act refers to retrenchment and condition precedent to retrenchment of workman. That section says that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched until the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid, in lieu of such notice, wages for the period of the notice and further the workman has been paid at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay or any part thereof in excess of six months and notice in the prescribed manner is served on the appropriate Government. That is the condition precedent provided for retrenchment of persons by any industrial establishment employing less than 100 workmen. If such a workman is retrenched, the workman has remedy by raising a dispute and getting it referred and adjudicated before the Industrial Tribunal. But in cases where not less than 100 workmen were employed, the legislature thought that it is safer in the interest of the workmen and the establishment to get a quasi-judicial consideration of the reasons before permitting retrenchment. Therefore, Section 25N was introduced in the Act. It provides, for prior permission of the appropriate Government or the specified authority and the workman to be given three months' notice in writing indicating the reasons for retrenchment or payment of wages in lieu of such notice to the workmen. An application to be filed before the Government should contain the reasons for the retrenchment and copy of the application should also be served simultaneously on the workmen concerned in the prescribed manner. The application must be in the proper form containing prescribed particulars. Rule 76-A of the Industrial Disputes Rules is the provision relating to notice of and application for permission for retrenchment which is extracted hereunder:

76-A. Notice of, and application for permission for retrenchment:-(1) Notice under Clause (c) of Sub-section (1) of Section 25N for retrenchment shall be served in Form PA and served on the Government or such authority as may be specified by the Government under the said clause either personally or by registered post with acknowledgement due and where the notice is served by registered post, the date on which the same was delivered to the Government or the authority shall be deemed to be the date of service of the notice for the purposes of Sub-section (3) of the said section.

(2) Application for permission for retrenchment under Sub-section (4) Section 25N shall be made in Form PB (with attested copy of the notice given by the employer under Clause (A) of Section 25F appended thereto) and delivered to the Government or to such authority as may be specified by the Government either personally or by registered post with acknowledgement due and where the application is sent by registered post the date on which the same was delivered to the Government or the authority shall be deemed to be the date on which the application was made for the purposes of Sub-section (5) of the said section.

(3) The notice or as the case may be, the application shall be served or made in triplicate and sufficient number of copies of the application shall be submitted along with the notice, or as the case may be, the application.

(4) The employer concerned shall furnish to the Government or the authority to whom the notice for retrenchment has been given or the application for permission for retrenchment has been made, under Clause (c) or Sub-section (1) or, as the case may be, Sub-section (4) of the said Section 25N such further information as the Government, or as the case may be, the authority considers necessary for arriving at a decision on the notice, or as the case may be, the application, as and when called for by such authority so as to enable the Government or the authority to communicate its permission or refusal to grant permission within the period specified in Sub-section (3) or, as the case may be, Sub-section (5) of the said Section 25N.

The form of application prescribed is Form P.A. There is an annexure to Form P.A. by which the employer is required to give the detailed particulars. Items (1) to (24) detail the requirements. It requires the employer to give details relating to installed capacity, licensed capacity and the utilised capacity, annual production-item-wise-for the preceding three years, production figures -monthwise-for the preceding twelve months, number of working days in a week with number of shifts, balance sheet, profit and loss account and audit reports for the last three years, financial position of the company and names of the inter-connected companies or companies under the same management, total number of workmen and the number of employees other than workmen as defined in the Industrial Disputes Act, 1947 (14 of 1947) employed in the undertaking, percentage of wages of workmen to the total cost of production, administrative, general and selling cost in absolute terms per year for the last three years and percentage thereof to the total cost, details of retrenchment resorted to in the last three years including dates of retrenchment, the number of workmen involved in each case and the reasons therefor, seniority lists maintained in respect of the categories of workmen proposed to be retrenched and the details and the position of the workmen affected indicating their strength of service including broken periods of service, anticipated savings due to the proposed retrenchment, any proposal for effecting savings on account of reduction in managerial remuneration, sales promotion costs and general administration expenses, annual sales figures for the last three years and month-wise sales figures for the

preceding twelve months both item-wise and value-wise, reasons for the proposed retrenchment, etc. The petitioner has given in Ext.P2 application details of all these particulars. In Ext.P2 it is stated that to avoid financial loss, the petitioner decided not to fill retirement vacancies in the managerial post and not to give benefits such as bonus, leave surrender wages etc. to the managerial persons. Sales promotion cost and general administration expenses etc. have been considerably reduced. It also states the reasons for the retrenchment. The particulars of the specific attempts made to avoid retrenchment was also furnished. The management wanted to provide employment to as many employees as possible in the D.T.P. section and, therefore, qualified persons have been selected from its workmen. If permission is not granted for retrenching the employees, the management will have to go on paying wages to them without providing any work. It is stated that this will result in escalation of the financial loss leading to closure of the establishment itself. These statements are furnished so that the first respondent can come to a considered decision. The consideration that has to be bestowed while disposing of an application like this has been referred to by the Supreme Court in the decision reported in *Workmen of Meenakshi Mills Ltd. and Others Vs. Meenakshi Mills Ltd. and Another*, Even though it was a decision declaring the validity of Section 25N, Supreme Court had to consider in that context the considerations to be given to an application for permission to retrench. The Supreme Court has indicated that the authority has to consider the facts mentioned in the application to make up his mind. It has to ascertain whether the Facts mentioned are correct, whether the retrenchment is necessary and if necessary, to what extent and for this purpose it has to make an enquiry in a quasi-judicial manner. It has to consider the claim of the management to retrench, whether it is bona fide, whether the claim is fixed too high and whether the application in its entirety should be granted or to a limited extent. It has to make an objective consideration after giving an opportunity to all the interested parties, and must give a speaking order keeping in mind the provisions of the Act and the object to be achieved, viz. settlement of the industrial dispute. It also has to see that the decision should not retard the wheels of production. The object of previous permission is to prevent avoidable hardship bearing in mind interest not only of the workman to be retrenched but of the whole work force so that it may maintain a higher tempo for production. The requirement of giving reason in writing adverting to the relevant facts mentioned in the application is emphasised by the Supreme Court so as to avoid arbitrariness. The Supreme Court decision no doubt was not available when the first respondent had to consider the application of the petitioner. Ext. P3 is not a considered order. Relevant facts have not been adverted to. Ext. P3 order is quasi-judicial order and if the authority has not adverted to relevant facts, it can be characterised unreasonable and vitiated by *Wednesbury* unreasonableness. The relevant facts also have not been adverted to in this case as required by law. The tentative decision taken on the IRC meeting was referred to and on that ground the permission was refused.

The practice in Malaya la Manorama, Mathrubnoomi, Kerala Kaumudi and Desh-abhimani have not been brought to the notice of the petitioner. It is not known whether they also applied for retrenchment and the same was denied or refused. At the time of argument counsel for the respondent submitted that the petitioner has a subsidiary company in which the workmen to be retrenched could be absorbed. But there is no pleadings to that effect. Ext. P3 in so far it denies permission to 15 persons to be retrenched will have to be quashed. I do so. The permission given for retrenching five trainees will stand. Hence, I quash Ext.P3 to the limited extent.

3. u/s 25N(6) the appropriate Government or the specified authority may either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under Sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication. The Supreme Court decision aforementioned says that the reference can be at the instance of the employer as well as the employee. Counsel for the petitioner submitted that this Court has ample jurisdiction to grant permission for retrenchment. It is submitted that what the first respondent can do, this Court also sitting under Article 226 can do. That may be true in extreme cases where the entire facts have been brought before this Court. But in this case all the facts have not been brought to notice of this Court and it may not be safe to grant permission at this stage as the petitioner has remedy by way of review u/s 25N(6) of the Industrial Disputes Act itself and for reference, thereafter, which are adequate alternate remedy available under the statute. The requirement of previous permission is under the Industrial Disputes Act and the remedy provided under that Act will have to be availed of. Therefore, the request for granting permission by this Court is refused. The effect is that the matter will have to be reconsidered again. Of course, there is a provision u/s 25N(6) for the management and the workmen to make application for review. But the Supreme Court has laid down that the decision taken by the appropriate Government or prescribed authority as the case may be u/s 25N is subject to judicial review and the petitioner approached this Court for that relief. Hence, I need not refer petitioner to the statutory remedy by way of review.

4. "Retrenchment" means termination by the employer of the service of a workman for any reason whatsoever otherwise than as punishment inflicted by way of disciplinary action. It is specifically provided that retrenchment shall not include voluntary retirement of the workman or retirement of a workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf. After the amendment effected to the definition of "retrenchment" in the Industrial Disputes Act with effect from 18.8.1984 termination of the service of a workman as a result of the non-renewal of the contract of employment between the employer and the workman on its expiry or of such contract being terminated under a stipulation in this behalf contained therein or termination of the service of a workman on the ground of continued ill-health also would not be considered

retrenchment. A narrow meaning was ascribed to the word retrenchment originally, but now it is laid down by the Supreme Court that retrenchment will mean termination of service of a workman for any reason whatsoever except those expressly included in the section. All the decisions have been reviewed by the recent decision of the Supreme Court reported in *Ess Dee Carpet Enterprises Vs. Union of India (UOI) and Others*, and held that the definition of "retrenchment" in Section 2(oo) of the Industrial Disputes Act means termination by the employer of the service of a workman for any reason whatsoever otherwise than as a punishment by way of disciplinary action and those expressly excluded by the definition. The narrow interpretation of the word to mean termination by the employer of the service of a workman of surplus labour has been rejected in the said decision. The condition precedent for the retrenchment of a workman where Section 25F is attracted is that the workman ought to have been given one month's notice in writing indicating the reason for retrenchment and the period of notice ought to have been expired or the workman be paid in lieu of such notice wages for the period of notice. He should also be paid, at the time of retrenchment, compensation equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months and notice in the prescribed manner must be served on the appropriate Government or such authority as may be specified by the appropriate Government. But special provision made in Chapter V-B of the Industrial Disputes Act is in respect of industrial "establishments not being seasonal establishment in which not less than 100 workmen were employed. Section 25N requires as stated above the employer to give three months" notice in writing indicating the reasons for retrenchment and the period of notice to be expired or the workmen to be paid in lieu of such notice, wages for the period of notice. It further requires the employer to get permission from the appropriate Government or the specified authority. An application for permission shall be made by the employer in the prescribed manner stating clearly the reason for the intended retrenchment. Copy of the application has to be served simultaneously on the workman concerned in the prescribed manner. The appropriate Government or specified authority will have to make enquiry as he thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, will pass appropriate order. The authority is required to have regard to the genuineness and adequacy of the reasons stated by the employer, the interest of the workman and all other relevant factors. He has to pass a considered order, recording reasons in writing, granting or refusing the permission. In *Parry and Co. Ltd. Vs. P.C. Pal and Others*, the Supreme Court observed:

"14. It is well established that it is within the managerial discretion of an employer to organise and arrange his business in the manner he considers best. So long as that is done bona fide it is not competent to a Tribunal to question its propriety. If a scheme for such reorganization results in surplus age of employees

no employer is expected to carry the burden of such economic dead-weight and retrenchment has to be accepted as inevitable, however unfortunate it is".

Both Sections 25F and 25N are provisions to soften the hardship resulting from an employee being thrown out from employment. It is found that the policy of retrenchment was not actuated by any motive or victimisation or unfair labour practice and, therefore, was bona fide, any consideration as to its reasonableness or propriety will be extraneous, for it is for the employer to decide whether a particular policy in running his business will be profitable, economic or convenient. Of course, the management can retrench a workman only for proper reasons. As held by the Supreme Court in *Workmen of Subong Tea Estate Vs. The Outgoing Management of Subong Tea Estate and Another*, it is for the management to decide the strength of its labour force, for the number of workmen required to carry out efficiently the work involved in an industry undertaking must always be left to be determined by the management in its discretion. Occasion may arise when the number of employees may very much exceed the reasonable and legitimate needs of the undertaking. Workmen may become surplus on the ground of rationalisation or on the ground of economy bona fide adopted by the management or for other industrial or trade reasons. Therefore, management has to decide on effecting retrenchment. When a retrenchment is done in an establishment employing less than 100 workmen, the action of the management may become the subject-matter of an industrial dispute in which case, it would be necessary for an industrial adjudication to consider whether the retrenchment is justified and is for proper reasons. That means, it would not be open to the management either capriciously or without any reason to throw out its workmen without any rhyme or reason. The important change which has been brought about by Section 25N of the Act is that in the case of retrenchment where Section 25N is attracted, an enquiry has to be made after service of notice of retrenchment and before the retrenchment comes into effect, by the appropriate Government or specified authority. The Supreme Court held in *Workmen of Meenakshi Mills v. Meenakshi Mills* referred to above that the requirement to make an enquiry postulates an enquiry into the correctness of the facts stated by the employer in the notice served under Clause (c) of Sub-section (1) of Section 25N for retrenchment of the workmen and other relevant facts and circumstances including the employer's bona fide in making such a retrenchment. Such an enquiry involving ascertainment of relevant facts will necessarily require affording an opportunity to the parties, viz. the employer and the workmen. The Government or the specified authority is required to pass a speaking order. Reasons have to be recorded in writing before passing an order granting or refusing permission for retrenchment. After adverting to the detailed information required to be furnished by the employer to the appropriate Government or authority to make up his mind, the Supreme Court observed:

"...Before passing such order, the appropriate Government or authority will have to ascertain whether the said information furnished by the employer is correct and the proposed action involving retrenchment of workmen is necessary and if

so, to what extent and for that purpose it would be necessary for the appropriate Government or authority to make an enquiry after affording an opportunity to the employer as well as the workmen to represent their case and make a speaking order containing reasons".

The Supreme Court further held that if the authority feels that the demand of the management is pitched too high and that the facts and circumstances revealed from the enquiry shows that the industrial establishment can be efficiently run after retrenching a few, it would be permissible for the appropriate Government or authority to grant permission for the retrenchment of only some of the workmen and refuse permission for the rest of the workmen. Existence of proper reason for retrenchment is the prime requirement. The appropriate Government or authority is required to act judicially while granting or refusing permission to retrench workmen u/s 25N(2) though the authority will not be equated to a Tribunal. That means, there should be an objective consideration of the relevant facts after affording an opportunity to the parties having interest in the matter. The requirement of objective consideration will warrant the conclusion that the authority will have to be prepared to show that the conditions for granting or refusing permission is fulfilled in a way which satisfies the Court. The action of the authority will have to be tested with objective legal standard of reasonableness. That means, the authority must direct himself properly in law, he must call his own attention to the matters which he is bound to consider, he must exclude from his consideration matters which are irrelevant to what he has to consider. In short, he must call his attention to the Wednesbury principle laid down in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*, 1948 (1) KB 223. The basic object of the provisions of the Industrial Disputes Act, I repeat, is to ensure industrial peace and settlement of industrial disputes. In a competing world of market economy, production and cost of production also have to be borne in mind. The object of Section 25N is to prevent avoidable hardship of unemployment and to maintain higher tempo of production and productivity. These are the factors to be borne in mind by the appropriate Government or authority while exercising its power. The decision of the authority should be duty conscious and not power-charged. If the motive behind the proposed retrenchment is victimisation, then permission should undoubtedly be refused. Of course, while considering the matter, the interest of all the workers employed in the establishment including not only the workmen who are proposed to be retrenched, but also the workers who are to be retained will have to be considered. In order to maintain and keep the establishment going, it may be necessary that the dead wood by way of surplus labour eating into the economy of the establishment will have to be removed. All these will have to be taken into account by the Officer.

5. At the same time, there was a doubt whether Article 226 of the Constitution of India will be applicable against an order passed u/s 25N of the Act granting or refusing permission. The matter is now no more in doubt. The Supreme Court in *Workmen of Meenakshi Mills v. Meenakshi Mills* 1992 I CLR 1010 SC held that :

"The remedy of judicial review under Article 226, is in our view, an adequate protection against arbitrary action in the matter of exercise of power by the appropriate Government or authority under Sub-section (2) of Section 25N of the Act".

The Supreme Court now in the aforesaid decision also held that it would be permissible for the workmen aggrieved by the retrenchment effected in pursuance of an order granting permission for such retrenchment to raise an industrial dispute regarding the justifiability and it would be permissible for the Government to refer such a dispute. It further held that an employer proposing retrenchment of workmen who feels aggrieved by an order refusing permission for retrenchment under Sub-section(2) of Section 25N can also move for reference of such a dispute relating to "proposed retrenchment" for adjudication u/s 10 of the Act. Supreme Court held that:

"....The employer who feels aggrieved by an order refusing permission for retrenchment thus stands on the same footing as the workmen feeling aggrieved by an order granting permission for retrenchment under Sub-section (2) of Section 25N inasmuch as it is permissible for both to raise an industrial dispute which may be referred for adjudication by the appropriate Government and it cannot be said that, as compared to the workmen, the employer suffers from a disadvantage in the matter of raising an industrial dispute and having it referred for adjudication".

In view of the above, I asked counsel appearing for the petitioner as well as the respondents whether a reference regarding the justifiability of the proposed retrenchment for adjudication is not a better solution so that I may ascertain the views of the GoVernment on that matter as well. But counsel on both sides submitted that if this Court feels the order is vitiated in any manner and liable to be quashed, the matter may be remanded to the authority for fresh consideration as there are additional facts to be placed before the authority for consideration.

6. For the reasons stated above I quash Ext. P3 to the extent indicated above and direct the first respondent to reconsider the application of the petitioner afresh. Before passing final order, I direct the first respondent to give an opportunity to be heard to the employer, the workmen concerned and other persons interested in such retrenchment, viz. the union representing the entire workers and other workmen in the establishment.

The Original Petition is allowed as above.