
(2012) 09 AHC CK 0255

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 4319 of 1996

N.K. Kejriwal and Another

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 04-09-2012

Acts Referred:

Constitution of India, 1950 — Article 254, 254(2)
Criminal Procedure Code, 1973 (CrPC) — Section 482
Industrial Disputes Act, 1947 — Section 25J, 25M, 25M(1), 25O

Citation : (2013) 1 ACR 451 : (2012) 11 ADJ 613 : (2013) 2 ALJ 329 : (2013) 136 FLR 352 : (2013) LabIC 1582

Hon'ble Judges : Ramesh Sinha, J

Bench : Single Bench

Advocate : Tarun Agrawal, Ravi Kant and Ms. Sulakshna Rathore, for the Appellant; A.K. Saxena and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Ramesh Sinha, J.—Heard Sri Tarun Agarwal, learned counsel for the applicant, Sri A.K. Saxena, learned counsel for the complainant and learned A.G.A. for the State.

By means of the application u/s 482 Cr.P.C., the applicant has prayed for quashing of Complaint Case No. 4896 of 1996 filed on 23.8.1996 in the Court of Chief Judicial Magistrate u/s 25Q of the Industrial Disputes Act 1947 (Central) for prosecution of the applicant u/s 25M of the Industrial Disputes Act (Central) read with Rule 75-B (1) (2) (3) of the Rules of 1957.

Brief facts of the case are that the applicant No. 1 is Occupier of M/s Elite (India) Limited which is a public Limited Company, duly incorporated under the Indian Companies Act, 1956. The applicant No. 2, at the relevant point of time, was Factory Manager/General Manager of the Unit No. 2 of the applicant No. 1, situated at C-54, Phase II, NOIDA, District Ghaziabad.

2. The factory in question was engaged in the manufacturing of HDPE/PP Woven Sacks Bags which are used in filling cement and other commodities. The management due to some insubordination and indiscipline amongst the workmen, was constrained to declare lock out. The workmen did not reform themselves and continued to work in irresponsible and indisciplined manner on account of which the production staggered considerably and the workmen indulged themselves in mass absenteeism without any lawful cause. Beside the aforesaid facts, the Wind Mular Tape Line and Cole site plants also developed a snag which could not be detected thus, causing loss in production. Despite various requests and invitations for talks, the workmen did not mend themselves. Therefore, the management had no option but to declare "lay off" of workmen with effect from 23rd May, 1996. A notice in this behalf was also pasted on the Notice Board of the factory and a copy of the aforesaid notice was also transmitted to the Assistant Labour Commissioner, NOIDA, Ghaziabad. The management in view of Section 6-K of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as "the State Act") resorted to "lay off" of workmen. It is noteworthy to mention here that Section 6-K of the State Act does not required any approval prior or subsequent, of any authority including the State Government.

3. The Assistant Labour Commissioner Ghaziabad issued a notice on 6.7.1996 calling upon the applicant as to why the applicants be not prosecuted for having violated the provisions of Section 25Q of the Central Industrial Disputes Act, 1947 (hereinafter referred to "the Central Act") read with Rules 75 (B) (1) (2) and (3) of the 1957 Rules. The applicants gave a reply to the aforesaid notice dated 6.7.1996 contending that the aforesaid notice is illegal and without jurisdiction, inasmuch as, the provisions of Section 25M of the Central Act are not applicable, hence there was absolutely no question of violation of Section 25Q of the Central Act. The applicants further pointed out to the concerned authority that the matter in question is squarely covered by the provisions of Section 6 K of the State Act which does not, at all required obtaining prior or subsequent approval of the State Government. Thus the lay off resorted to by the applicants was absolutely legal.

4. The Assistant Labour Commissioner did not paid any heed to the reply of the applicant and filed a complaint on 23.8.1996 u/s 25Q of the Central Act seeking prosecution of the applicants, hence the present application u/s 482 Cr.P.C. praying for quashing the complaint case filed before the Chief Judicial Magistrate, Ghaziabad, who took cognizance of the offence against the applicants and appears to have summon them for their prosecution u/s 25M read with Rule 75 B(1) (2) (3) of the 1957 Rules.

5. It has been contended by the learned counsel for the applicant that the sole basis of the complaint is that the applicants have not obtained prior permission/ approval by the competent authority as required u/s 25M of the Central Act read with Section 25M read with Rule 75 B(1) (2) (3) of the 1957 Rules. Learned

counsel for the applicants further urged that Section 6K of the State Act given unfettered power to the management of the company of which the applicants were the office bearers to the employer to resort lay off subject to the conditions mentioned therein and significantly enough, it does not require any approval, prior or subsequent, of any authority including the State Government. He further submits that 25 M of the Central Act also provides lay off. Sub-section (1) of it expressly states that an employer to seek prior approval before resorting to lay off. He further submits that the provisions of Section 25M of the Central Act is in conflict with Section 6K of the State Act and in view of the conflict, it is the State which will prevail as in the case of the applicant. The State Act is applicable and the Central Act has to be given away to the State Act.

6. It is argued that so far as the Act (U.P. Industrial Disputes Act, 1947) is concerned, it has received the assent of the President. Therefore, in accordance with Article 254 of the Constitution of India, the provisions of the Act will prevail in this State, notwithstanding, anything contained to the contrary of the Industrial Disputes Act, 1947 (Central).

7. The counsel for the applicant points out that in this behalf, Section 6-R of the Act is also significant. It also gives overriding authority to Sections 6-J to Section 6Q of the Act, notwithstanding anything inconsistent therewith contained in any other law. Thus, it is clear that the Legislature took immaculate care in attaching primacy, or, ascendancy to the provisions of the Act, and, more particularly, provisions of 6-J to Section 6-Q of the Act. That being so, conclusion is inescapable that the provisions of Section 6-K would hold sway. The provisions contained in other enactments, including the Industrial Disputes Act, 1947 (Central) will not be applicable, so far as, this State is concerned.

8. It is further stated that Section 25-M of the Industrial Disputes Act, 1947 (Central) also provides "lay off". Sub-section (1) of it expressly obliges an employer to seek prior approval before resorting to "lay off". Thus even otherwise, in view of clear head on collusion or conflict with Section 6-K of the Act and Section 25-M of the Industrial Disputes Act (Central), it is the State Act, which will prevail. The Central Act has to give way to the State Act.

9. He further pointed out that the workmen without any demur, have collected their entire dues which they are entitled to in accordance with the provisions of Section 6K as well as Clause 14 of the Standing Order. Significantly enough, not a single workman has come forward to lodge any complaint against the applicants. However, the State Government out of sheer over-zeal, has come forward to champion the cause of the workman and filed the present complaint which is not maintainable in the eyes of law. Learned counsel has filed documentary evidence by means of a supplementary affidavit to show that all the employees have been paid their dues full and final settlement which they have received. In support of his contention, he has placed reliance on a judgment of the Apex Court in the case of Engineering Kamgar Union Vs. Electro Steels Castings Ltd. and Another, and invited the attention of the Court towards

para-40 of the said judgment to show the "effect of non-obstante clause" which is quoted hereinbelow:

The contention of Mr. Banerji to the effect that Section 25-J of the Central Act has been incorporated by reference in Section 25-S cannot be accepted. Section 25-S does not introduce a non-obstante clause as regards Chapter V-A. Furthermore, Section 25-J is not a part of Chapter V-B. By reason of Section 25-S, the provisions of Chapter V-A were made applicable only in relation to certain establishments referred to in Chapter V-B. Parliament has deliberately used the words "so far as may be" which would also indicate that provisions of Chapter V-A were to apply to the industrial establishments mentioned in Chapter V-B. The non-obstante clause contained in Section 25-J does not apply to the entire Chapter V-B. Applicability of Chapter V-A in relation to the industrial establishments covered by Chapter V-B in terms of Section 25-J vis-a-vis Section 25-S is permissible but the contention cannot be taken any further so as to make Section 25-O of the Central Act prevail over the State Act by taking recourse to the non-obstante clause. Non-obstante clause contained in Section 25-J is, thus, required to be kept confined to Chapter V-A only and in that view of the matter we have no hesitation in holding that Chapter V-B does not have an overriding effect over the State Act.

10. Learned counsel has further placed reliance on a judgment of the Apex Court in the case of Ashok Kumar Jain and Others Vs. State of Bihar and Others, , wherein certain controversies as above involved in the present case were quashed by the Apex Court and had upheld the judgment of the High Court for quashing the proceedings against the Company in exercise of power u/s 482 Cr.P.C. for securing the ends of justice and has drawn the attention of the Court towards para-4 of the said judgment.

11. Learned A.G.A. on the other hand has vehemently opposed the prayer of quashing the complained filed by the applicant and has submitted that the prosecution of the applicants is in accordance with law. Having considered the submissions advanced by learned counsel for the parties and from a perusal of Section 6 K of the State, it is necessary to quote Section 6-K which is reproduced hereunder:

6-K. Right of workmen laid off for compensation.--

(1) Whenever a workman (other than a substitute or a casual workman) whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid off, he shall be paid by the employer for all days during which he is so laid off except for such weekly holidays as may intervene, compensation which shall be equal to fifty percent of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid off;

Provided that the compensation payable to a workman during any period of twelve months shall not be for more than forty five days.

(2) Notwithstanding anything contained in the proviso to sub-section (1), if during any period of twelve months, a workman is laid off for more than forty five days, whether continuously or intermittently, and the lay off after the expiry of the first forty five days comprises continuous period of one week between him and the employer, be paid for all the days comprised in every such subsequent period of lay off for one week or more compensation at the rate specified in sub-section (1).

Provided that it shall be lawful for the employer in any case falling within this sub-section to retrench the workmen in accordance with the provisions contained in Section 6N at any time after the expiry of the first forty five days of lay off and when he does so, any compensation paid to the workman for having been laid off during the preceding twelve months may be set off against the compensation payable for retrenchment.

Explanation.--"Substitute workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment, but shall cease to be regarded as such for the purposes of this Section, if he has completed one year of continuous service in the establishment.

Further Section 25-M of the Central Act which also provides for lay off is quoted hereinbelow:

Section 25M(1) in The Industrial Disputes Act, 1947

(1) No workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment to which this Chapter applies shall be laid-off by his employer except 1[with the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereinafter in this section referred to as the specified authority), obtained on an application made in this behalf, unless such lay-off is due to shortage of power or to natural calamity, and in the case of a mine, such lay-off is due also to fire, flood, excess of inflammable gas or explosion].

From a perusal of two provisions of the State Act as well as Central Act, it is apparent that they are inconsistent to each other regarding lay off of the workmen. The contention of learned counsel for the applicant appears to be correct that in the case of the applicants Section 6K of the State Act being applicable and the applicants had absolute powers to resort to lay off the workmen subject to certain conditions mentioned therein and the applicants in pursuance of which had resorted to such power and lay off the workmen after paying their dues which were received by them and none of the workmen have complained against the applicants for their services being terminated against the provisions of law. Learned A.G.A. could not refute the fact that the workmen have already received full and final settlement as has been stated by the applicant in the present application as well as documentary proof with the

supplementary affidavit. Admittedly, the factory in question has already been closed down some time in May, 1996. The submission of learned counsel for the applicant that the State Act would prevail over the Central Act which was applicable in the present case and no prior or subsequent approval of any authority including the State Government is required find force and the same is also justified in the light of the judgment of the Apex Court in the case of Engineering Kamgar Union v. Electro Steels Castings Ltd. and another (supra), in which it was held that as enshrined in Article 254(2) State law has been assented to by President conflicting with an earlier conditional Central Legislation held would prevail over the latter. The U.P. Act was brought into force subsequent to and prior to such assent held in consequential. That U.P. Act 26 of 1983 brought into force w.e.f. 3.8.1983 whereas Central Act 46 of 1982 came into force w.e.f. 21.8.1984. It was further held by the Court that non-obstante clause in a statute cannot override the provisions of the Constitution. Hence the proceedings against the applicant are liable to be quashed in the aforesaid complaint case, hence they are accordingly quashed.

The application stands allowed.