
(2002) 09 OHC CK 0058
In the Orissa High Court
Case No : O.J.C. No. 2189 of 2002

OCL India Limited and Another	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 11-09-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 25N(4)

Citation : (2002) 2 OLR 581

Hon'ble Judges : R.K. Patra, J; Pradip Mohanty, J

Bench : Division Bench

Advocate : G. Rath, A.K. Parija, S.P. Sarangi and Ors, for the Appellant; Devasis Das, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—The order dated January 30, 2002 (Annexure-5) passed by the Labour Commissioner, Orissa under Sub-section (3) of Section 25N of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") refusing permission for retrenchment of 270 workmen in the Industrial establishment of the Orissa Cement Limited (petitioner No. 1) is the subject matter of challenge in this writ petition.

2. Briefly stated the case of the petitioners is that petitioner No. 1 OCL India Limited is an existing company under the Companies Act, 1956. It has its registered office at Rajgangpur in the district of Sundargarh and is engaged in the business of manufacture and sale of cement and refractory products. Petitioner No. 2 is one of the shareholders of petitioner No. 1. The refractory establishment of petitioner No. 1 was established in 1956 and was one of the largest of its kind in Asia. Following recession in the steel industry in the world, the Refractory unit became unviable. As a result, there was huge accumulation of finished and semi-finished goods. The unit started suffering loss year after year. Although adequate steps were taken to revamp the ailing unit, it did not yield any desired result. Finding no other way, petitioner No. 1 made an application

under Clause (b) of Sub-section (1) of Section 25N of the Act on October 27, 2001 to the Labour Commissioner, Orissa seeking permission to retrench 270 workmen out of 860 workmen employed in the Refractory unit on the grounds, mentioned in the application. The said application was received by the Labour Commissioner, Orissa. on November 1, 2001. The Labour Commissioner on receipt of the application issued notice on November 21, 2001 (Annexure-2) to all concerned to appear before him on the dates mentioned in the notice for hearing. The validity of the said notice came to be challenged by Utkal Shramik Sangha, a recognised trade union operating in the industry of the petitioner No. 1 in a writ petition (OJC No. 16459 of 2001). This Court while issuing the Rule on December 11, 2001, directed that any decision taken in the meantime by the Labour Commissioner shall be subject to the result of the writ petition. The Labour Commissioner as per his notice heard the matter on December 16, 2001, December 19, 2001 and December 21, 2001 and passed the following order on December 29, 2001 (Annexure-3).

"..... In view of the order of the Hon"ble High Court dated October 11, 2001 in Misc. Case No. 16382/2001 arising out of OJC No. 16459/2001, my final order, after completion of hearing pursuant to my notice No. 22578 dated November 21, 2001 is hereby reserved till vacation of the aforesaid interim order of the Hon"ble High Court or modification thereof, as the case may be".

The petitioner No. 1 appeared in the aforesaid writ petition and filed counter affidavit contending inter alia that the writ petition has become infructuous in view of Sub-section (4) of Section 25-N of the Act which lays down that if the concerned authority fails to communicate its order granting or refusing to grant permission to retrench within a period of 60 days from the date of making the application, the permission applied for shall be deemed to have been granted on the expiry of the period of 60 days. This Court dismissed the above writ petition on January 24, 2002 as not pressed. The petitioner No. 1 apprehending that it would face law and order situation in effecting retrenchment of the concerned workmen, filed a writ petition in this Court (OJC No. 1069 of 2002) praying for a direction to the local administration to ensure its protection and to maintain law and order in and around the factory premises. On January 28, 2002 this Court disposed of the said writ petition observing that if the petitioners would approach the local administration incharge of the law and order, it would duly consider the same and afford police protection if the situation so demanded. While the matter stood thus, the Labour Commissioner made the impugned order dated January 30, 2002, (Annexure-5) refusing permission to the petitioner No. 1 to retrench its 270 workmen. According to the petitioners, the Labour Commissioner having failed to communicate his order on the application seeking permission to effect retrenchment within a period of 60 days of its receipt, the permission for retrenchment of 270 workmen shall be deemed to have been granted as envisaged under Sub-section (4) of Section 25-N of the Act and, therefore, the impugned order dated January 30, 2002 having been made after the period of 60 days, the same is unsustainable in the eye of law.

13. Counter affidavit has been filed on behalf of the Labour Commissioner admitting the facts that the application made by the petitioner under Clause (b) of Sub-section (1) of Section 25N was received on November 1, 2001 and as required under Sub-section (4) of Section 25-N, order was to be passed within the period of 60 days, i. e., on or before December 30, 2001.

The stand of the Labour Commissioner is that as the writ petition (OJC No. 16459 of 2001) filed by Utkal Shramik Sangha was pending consideration in this Court and there was an order That any direction taken by him would be subject to its result, he considered that it would be appropriate for him to pass final order after its disposal. He, however, passed an order on December 29, 2001 in the file copy of which is at Annexure-A/2. The entire order is extracted hereunder:

"Whereas the Executive Director, Refractory Works of O.C.L. India Ltd., Rajgangpur, District Sundargarh served a notice seeking permission of the undersigned for effecting retrenchment of 270 workmen in his Industrial establishment with effect from March 1, 2002 for the reasons set out in his/their notice dated the October 27, 2001 received by the undersigned on November 1, 2001.

And whereas the undersigned made such inquiry as was considered necessary;

Now therefore in pursuance of Sub-section (2) of Section 25-N of the Industrial Disputes Act, 1947 (14 of 1947) the undersigned passes the following orders pertaining to the permission, for retrenchment of the workmen, applied or;

"In view of the order of the Hon"ble High Court dated December 11, 2001 in Misc. Case No. 16382/2001 arising out of OJC No. 16459 of 2001, my final order, after completion of hearing pursuant to my notice No. 22578 dated November 21, 2001 is hereby reserved till vacation of the aforesaid interim order of the Hon"ble High Court or modification thereof, as the case may be."

The Labour Commissioner in his counter affidavit contended that there was no other alternative for him than to await the final outcome of the writ petition and he passed the impugned order only after its final disposal.

4. On our direction, the learned Additional Government Advocate produced the relevant records from the Labour Commissioner. On its perusal, we find that as a matter of fact he had passed an order on December 29, 2001 in the file as per Annexure-A/2 but the same was not communicated. It is only after disposal of OJC No. "16459of2001 he passed the final order on January 30, 2002.

5. The question that arises for consideration is whether the order dated December 29, 2001 made by the Labour Commissioner in his file which was not communicated to any one can be regarded as an order passed by him under Sub-section (3) of Section 25-N. At this stage, it would be appropriate to have a glance at Section 25-N which deals with the conditions precedent to retrenchment of a workman. The said provision (Section 25-N) prohibits an

employer from retrenching a workman who has been in continuous service for one year or more in an industrial establishment which employs 100 or more workmen until the conditions precedent to retrenchment indicated therein have been complied with. Clause (b) of Sub-section (1) of Section 25-N with which we are concerned enjoins on an employer to make an application to the specified authority to obtain its prior permission to retrench a workman. Sub-section (2) of Section 25-N provides that such application for permission should be in the prescribed manner clearly stating the reasons for the proposed retrenchment. Under Sub-section (3) of Section 25-N, the specified authority is vested with power to grant or refuse permission to the employer to retrench a workman. Sub-section (4) of Section 25-N lays down that if the specified authority fails to communicate its order granting or refusing to grant permission to retrench a workman within a period of 60 days from the date on which such application was made, permission applied for shall be deemed to have been granted on the expiry of the period of 60 days.

6. There is no dispute that the application of the management dated October 27, 2001 seeking permission to retrench 270 workmen was received by the Labour Commissioner on November 1, 2001. In view of Sub-section (4) of Section 25-N, the Labour Commissioner was required to communicate his order within a period of 60 days, i. e. by December 30, 2001. Although he passed an order in the file on December 29, 2001, he did not communicate the same to any one. He ultimately communicated the order on January 30, 2002 which is beyond the period of 60 days.

7. It is relevant to extract Sub-section (4) of Section 25-N which is as under:

"(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."

A bare perusal of the above provision would clearly show that if the specified authority (in this case the Labour Commissioner) does not communicate the order granting or refusing to grant permission to the employer within the period of 60 days from the date of said application permission applied for shall be deemed to have been granted on the expiry of the said period of 60 days. It embodies a legal fiction. In other words, it has created a fiction of "grant of permission" on the failure of the specified authority to communicate its order within a period of 60 days from the date of making the application by the employer.

8. It is a rule of interpretation well settled that in construing the scope of a legal fiction It would be proper and even necessary to assume all those facts on which alone the fiction can operate. In this context, we may here recall the oft-quoted

observations of LORD ASQUITH in *East End Dwelling Co. Ltd. v. Finsbury Borough Council* 1952 AC 109 (at page 132):

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which if the putative state of affairs had in fact existed must inevitably have flowed from or accompanied it..... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

The Supreme Court in *State of Bombay v. Pandurang Vinayak Chephalkar* AIR 1952 SC 244, while approving the above passage of LORD ASQUITH held:

"When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be restored to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion."

The above quoted celebrated passage of LORD ASQUITH has been followed by the Supreme Court in a number of cases (to with *American Home Products Corporation Vs. Mac Laboratories Pvt. Ltd. and Another*, and *Gurupad Khandappa Magdum Vs. Hirabai Khandappa Magdum and Others*,

9. True it is that the Labour Commissioner with deference to this Court did not communicate the order made by him in the file on December 29, 2001. Although there was no direction by this Court prohibiting him to pass any order under Sub-section (3) of Section 25-N, in his wisdom he considered it appropriate to await final result of the writ petition (OJC No. 16459 of 2001) but the legal fiction embodied in Sub-section (4) of Section 25-N has to operate itself. As already noticed, admittedly the Labour Commissioner did not communicate his order granting or refusing to grant permission to the employer's application seeking permission to retrench 270 workmen within the period of 60 days from the date on which the said application was received, i. e. by December 30, 2001. This being the factual position, as an inevitable corollary it follows that the Labour Commissioner granted permission to the employer for retrenchment of 270 workmen mentioned in its application. For the reasons aforesaid, the impugned order dated January 30, 2002 (Annexure-5) communicated by the Labour Commissioner beyond the statutory period of 60 days cannot be sustained in law and the same is hereby quashed.

10. Before parting with the case, we may put it on record that the petitioners have filed an affidavit on August 28, 2002 stating, inter alia, that out of the 270 workmen covered by the retrenchment application, five of them have retired from service on attainment of the age of superannuation. Besides the above 5 workmen, 175 more workmen, as detailed in the affidavit, have opted for voluntary retirement under the Voluntary Retirement Scheme introduced and

kept open by the Management. There are thus only 90 workmen still in the service of the petitioner-company from out of the list of 270 workmen covered by the retrenchment application. Detailed chart has been enclosed, to the affidavit indicating the payments which those 90 workmen would receive if they opt for voluntary retirement under the Voluntary Retirement scheme as on September 1, 2002 vis-a-vis statutory compensation that would be payable to them upon retrenchment under the Act. We have mentioned the above facts because Shri G. Rath, learned senior counsel for the petitioner, submitted that the concerned workmen are not at all prejudicially affected following their retrenchment.

11. In the result, the writ petition is allowed. No costs.

Pradip Mohanty, J.

12. I agree.