

(1999) 04 MP CK 0018
In the Madhya Pradesh High Court
Case No : L.P.A. No. 250 of 1997

Orissa and Allied Industries Ltd.	Vs	APPELLANT
State of M.P. and Others		RESPONDENT

Date of Decision : 15-04-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25L, 25N, 25N(4)
Madhya Pradesh Industrial Disputes Rules, 1957 — Rule 76A, 76A(3)

Citation : (2000) ILR (MP) 980 : (1999) 2 J LJ 328 : (2000) 1 LLJ 358 : (2000) 1 MPLJ 26

Hon'ble Judges : P.N.S. Chauhan, J; Dipak Misra, J

Bench : Division Bench

Advocate : R.K. Gupta, for the Appellant; Arvind Shrivastava, for the Respondent

Final Decision : Dismissed

Judgement

Misra, J.

Correctness of the order passed in W.P. No. 2329/1995 passed by a learned single Judge of this Court allowing the prayer of the petitioner therein, is called in question by the respondent- appellant invoking the jurisdiction of this Court under Clause 10 of the Letters. Patent.

The facts as have been unfolded are that the respondent No. 3, the present appellant applied for permission to retrench 40 workmen with effect from July 15, 1995 by its application dated April 3, 1995 which was received in the office of the Labour Commissioner on April 28, 1995. The aforesaid application was processed and on May 12, 1995 it was found that the present appellant, respondent No. 3, in the writ petition, had not filed along with the application three copies, which were required under Rule 76-A (3) of the Industrial Disputes (Central) Rules (hereinafter referred to as "the Central Rules"). Thereafter, a note dated May. 12, 1995 was put up in which it was suggested that a date for hearing be fixed and a direction to give the copy of the application be issued. In the said note it was also stated that as the application was dated April 3, 1995, it

had to be disposed of within 60 days. However, later on it was pointed out that as the application of the Company was received on April 29, 1995 60 days would expire on June 29, 1995. Accordingly, the Labour Commissioner fixed, the date of hearing to June 15, 1995. Objections were filed by both the parties and the matter was adjourned to July 1, 1995. Eventually by order dated July 1, 1995 the Labour Commissioner disallowed the application preferred by the applicant therein for grant of permission to effect retrenchment of 40 workmen. The aforesaid order of rejection was assailed in W.P. No. 882/1995 before the Indore Bench of this Court. It was contended before this Court that the Labour Commissioner did not consider the factum of deemed grant of permission as contemplated u/s 25N(4) of the Industrial Disputes Act. This Court by order dated July 5, 1995 remanded the matter to the Labour Commissioner to consider the aforesaid question. On remand the Labour Commissioner held that the application filed by the applicant therein for grant of permission of retrenchment was deemed to have been granted as no order was passed within the time stipulated as provided u/s 25N(4) of the Act. Feeling aggrieved by the said order the Union, namely, the Cement Mazdoor Union, preferred W.P. No. 2329/1995 under Article 226 of the Constitution of India before this Court.

Before the learned Single Judge it was contended that u/s 25N(1)(a) of the Act certain categories of workmen have been given three months notice in writing indicating reasons for retrenchment and the period of notice expires or the workmen had been paid wages for the period of notice. Apart from this, a valid retrenchment requires prior permission of the appropriate Government or a State Authority as may be specified. It was raised before the learned Single Judge that the finding of the deemed grant of permission was not justified inasmuch as the matter was adjourned from June 15, 1995 to July 1, 1995 in presence of the representative of the Management. The learned Single Judge did not decide the said issue as he was of the opinion that the application filed by the employer before the specified authority was not in order as the employer had not complied with the requirement of service of notice of application on the workmen concerned and had not filed an application in triplicate. It was held by the learned Single Judge that the application was not in order because there has been non-compliance with the provisions of Section 25N as also Rule 76-A of the Central Rules; being of this view the learned Single Judge quashed the order dated July 11, 1995 passed by the Labour Commissioner and remitted the matter for reconsideration in accordance with law. The said order is the cause of grievance of the present employer- appellant.

Assailing the impugned order it is contended by Mr. R.K. Gupta, learned counsel for the appellant that there was no pleading by the respondent-Union in the petition that no notice in terms of Section 25N(2) of the Industrial Disputes Act was served and in absence of such pleading the finding recorded by the learned Single Judge is vulnerable. It is his further submission that the learned Single Judge has committed an error by placing reliance on Rule 76-A of the Central Rules inasmuch as the said rules are not applicable to the present case, as the

Central Government is not the appropriate Government with regard to industrial establishment of the appellant. The learned counsel has also canvassed that the deeming provision enjoined under Sub-section 4 of Section 25N of the Act has to be given strict meaning and the same having not been analysed/applied in proper perspective to the fact of the present case, the order passed by the learned Single Judge is susceptible in law.

Mr. Arvind Shrivastava, learned counsel for the respondent No. 3 in his turn, has contended that the learned Single Judge has decided the matter placing reliance on Section 25N(2) of the Act and the same having been based on proper appreciation of facts in issue, the impugned order does not require any kind of interference. He has fairly submitted that the reliance on Rule 76-A of the Central Rules by the learned Single Judge is not correct as the rules framed by the State are applicable. It is argued by Mr. Shrivastava that even if the reasoning of the learned Single Judge on the applicability of the Rules is held to be erroneous then also the conclusion which is based on non-compliance of the provisions as contemplated u/s 25N(1)(a) of the Act as well as the State Rules would hold good and would not make the impugned order vulnerable.

The rival submissions raised at the Bar require careful consideration. We may note in the very beginning that whether the proceeding commenced from April 28, 1995 or thereafter, has not been decided by the learned Single Judge and we also do not propose to delve into that issue. The submission of the counsel for the appellant that mere adjournment of the matter would not arrest the period is left open, as we are going to decide the controversy on a different ground. On a perusal of the order we find that the learned Single Judge has referred to Section 25N(2) of the Act. The said provision reads as under :-

"(1) xxx xxx xxx (a) xxx xxx xxx (b) xxx xxx xxx

(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.

The learned Single Judge has referred Rule 76-A of the Central Rules. Mr. Gupta has contended that the said Rule does not hold the field and hence, is not applicable to the case at hand. Mr. Shrivastava has fairly conceded that the State Rules are applicable. Though the learned counsel for the parties have conceded on this score, we have bestowed our anxious consideration on this issue. In this connection, we may refer to Section 25L of the Act which reads as under:-

"25-L. Definitions - For the purposes of this chapter -

(a) "industrial establishment" means -

(i) a factory as defined in Clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948):

(ii) a mine as defined in Clause (j) of Sub-section (1) of Section 2 of the Mines Act, 1952 (33 of 1952): or

(iii) a plantation as defined in Clause (f) of Section 2 of the Plantation Labour Act, 1951 (69 of 1951):

(b) notwithstanding anything contained in Sub-clause (ii) of Clause (a) of Section 2

(i) in relation to any company in which not less than fifty one per cent of the paid up share capital is held by the Central Government, or

(ii) in relation to any Corporation not being Corporation referred to in Sub-clause (i) of Clause (a) of Section 2 established by or under any law made by Parliament, the Central Government shall be the appropriate Government"

Submission of Mr. Gupta is that a conjoint reading of this provision along with Section 2 of the Act would make it clear that the appropriate Government is the State Government as far as the present petitioner is concerned and the rules which ought to be made applicable are the M.P. Industrial Disputes Rules. We may profitably quote Section 2 of the Act. It reads as under: -

"2. xxxxx xxxxx xxxxx (a) "appropriate Government" means - (i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning (a Dock Labour Board established u/s 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Financial Corporation of India established u/s 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948), or the Employees' State Insurance Corporation established u/s 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted u/s 3A of the Coal Mines Provident Funds and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted u/s 5A and Section 5B respectively, of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or the "Indian Airlines" and "Air India" Corporations established u/s 3 of Air Corporation Act, 1953 (27 of 1953), or the Life Insurance Corporation of India established u/s 3 of the Life Insurance Corporation Act, 1956 (31 of 1956) or the Oil and Natural Gas Commission established u/s 3 of the Oil and Natural Gas Commission Act, 1959 (43 of 1959), or the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation Act, 1962 (58 of 1962), or the Unit Trust of India established u/s 3 of the Unit Trust of India Act, 1963 (52 of 1963) or the Food Corporation of India established u/s 3, or a Board of Management established for two or more contiguous States u/s 16 of the Food Corporations Act, 1964 (37 of 1964), or the International Airports Authority of India constituted u/s 3 of the International Airports Authority of India Act, 1971 (43 of 1971), or a Regional Rural Bank established u/s 3 of the Regional Rural

Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited, or (the National Housing Bank established u/s 3 of the National Housing Bank Act, 1987), or the Banking Service Commission established u/s 3 of the Banking Service Commission Act, 1975, or a banking or an insurance company, a mine, an oil field, a Cantonment Board, or a major port, the Central Government: and

(ii) in relation to any other industrial dispute, the State Government."

Section 38 of the Act deals with conferment of powers on the appropriate Government to make the rules. On a fair reading of Sections 2 and 25L of the Act, it is crystal clear that the appropriate Government is the State Government, Sub-rule (2) of M.P. Industrial Disputes Rules, 1957 reads as under :-

"(2) They shall extend to the whole of Madhya Pradesh in relation to all such industrial disputes as are not governed by the Industrial Disputes (Central) Rules, 1956."

Apart from the concession given by the learned counsel for the parties, on a fair reading of the aforesaid provisions, we are opinion that Rule 76-A of the Central Rules does not apply. We notice that the learned single Judge has referred to the Central Rules and has opined that the application filed by the employer for retrenchment was not in triplicate and there was nothing on record to show that the application for grant of permission for retrenchment was served on the workmen concerned. The learned single Judge has referred to Rule 76-A(2) of the Central Rules to arrive at such conclusion. It is commented by Mr. Gupta, learned counsel for the petitioner that the said rule is not applicable. Reliance on the said rule by the learned single Judge is not correct. At this juncture, we may refer to the Rule 76-A of the State Rules. It reads thus:

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

(2) Application for permission for retrenchment under Sub-section (4) of Section 25N shall be made in Form P-B (with attested copy of the notice given by the employer under Clause (a) of Section 25F appended thereof) and delivered to the State Government or to such authority as may be specified by that Government either personally or by registered post acknowledgment due and where the application is sent by registered post the date on which the same was delivered to the State 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 for service on the workman concerned shall be submitted along with the notice or as the case may be, the application.

(4) The employer concerned shall furnish to the State 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) of Sub-section (1), or as the case may be, Sub-section (4) of the said Section 25N, such further information as the State 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, 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 State 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."

We notice from Rule 76-A(3) of the State Rules that the application has to be served or made in triplicate and sufficient number of copies of the application for service on the workmen concerned have to be submitted along with the notice as the case may be. We may hasten to add the proof which is there in the Central Rules is absent in the State Rules but the State Rules also require that the application has to be served or made in triplicate. The learned single Judge on verification of the record has arrived at the conclusion that the application filed by the employer for retrenchment was not in triplicate. Hence, even if the Central Rules are not applicable, we find that there has been, non-compliance of Sub-rule (3) of Rule, "76-A of the State Rules. Mr. Shrivastava, learned counsel for the respondent has also drawn our attention to Section 25N(1)(a) of the Act. The said provision reads as under :-

"25-N xxxx xxxx xxxx (1) xxxx xxxx xxxx (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 notices."

The learned single Judge in Paragraph 11 of his order has held that even if it is assumed that the employer had served three months notice as contemplated u/s 25N(1)(a) of the Act the same does not fulfil the requirement of a valid application for retrenchment before the specified authority. The learned single Judge has recorded a finding that the employer did not comply with the requirement of service of notice of the application on the workmen concerned of filing of an application in triplicate. On a reading of Sub-rule (3) of Rule 76-A of the M.P. Industrial Disputes Rules, 1957, we are inclined to concur with the view taken by the learned single Judge. Though we have not agreed with the view taken by the learned single Judge that Rule 76-A of the Central Rules are applicable, we eventually concur with the ultimate result. In any view of the matter the eventual conclusion reached at by the learned single Judge does not

warrant interference. The learned single Judge has rightly held that the period shall commence only when it is found that the application is in order. His conclusion that the application has not been filed in order is impeccable and there is no impasse to concur with the said view. Hence, we are of the considered opinion that the order does not warrant interference in exercise of power of intra Court appeal.

Resuhantly, we find no substance in the appeal and the same is accordingly dismissed. However, in the peculiar facts and circumstances of the case, there shall be no order as to costs.