
(2009) 06 JH CK 0028
In the Jharkhand High Court

Peak Electronics Pvt. Limited, Shri P.D. Khanna, Manager and
Shri Jyoti Kumar Saha, Director Peak Electronics Pvt. Limited

APPELLANT

Vs

The State of Bihar (now Jharkhand) and Assistant Labour
Commissioner

RESPONDENT

Date of Decision : 23-06-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25C, 25M, 25N, 25Q

Citation : (2009) 123 FLR 731 : (2010) 2 LLJ 227

Hon'ble Judges : R.R. Prasad, J; Amareshwar Sahay, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—The question which has been raised by the petitioners and which falls for consideration in this case, is as to whether the penal provisions of Section 25-Q of the Industrial Disputes Act, 1947 which provides penalty for lay off and retrenchment of a workman by an employer made in contravention of Section 25-M or Section 25-N would be made applicable to an employer of an industry which is run and managed by private individual or private Management like the petitioners.

2. Originally the prayer of the petitioners was to declare the provisions of Section 25-M and 25-N of the Industrial Disputes Act to be ultravires to the Constitution of India. For that reason, it was referred to the Division Bench but at the time of arguments, Mr. Jai Prakash, learned Senior counsel submitted that the petitioners are now not challenging the vires of the aforesaid two provisions of the Act but they are confining their prayer to quash the criminal prosecution against them being invalid in law.

Therefore, now petitioners are challenging the order taking cognizance dated 13.02.1990 passed by Sri B.K. Lal, Judicial Magistrate, Ist Class, Giridih in T.R. No. 1012/1990 whereby, cognizance of the offence punishable u/s 25-Q of the Industrial Disputes Act, 1947 has been taken against the petitioners.

3. The facts in short are that a complaint petition was filed by the opposite party No. 2 - Assistant Labour Commissioner, Giridih against the petitioners before the Chief Judicial Magistrate, Giridih alleging therein that factory of the petitioners where 151 workmen were employed was registered under the Factories Act. On 20.09.1989, the Management had made an application seeking permission as required u/s 25-N of the Industrial Disputes Act, to retrench all its workmen. The Labour Commissioner after an enquiry rejected the application and sent information to the Management vide Memo No. 1428 dated 16.11.1989. In spite of that, the Employer by stopping the functioning of the Industry, deprived all the workmen from their job w.e.f. 04.12.1989 which was contravention of Section 25M/25N punishable u/s 25Q of the Industrial Disputes Act. A copy of the Complaint petition has been annexed as Annexure-1 to the petitioner.

4. On the basis of the allegations made in the complaint petition, cognizance of the offence u/s 25-Q of the Industrial Disputes Act, 1947 was taken against the petitioners on 13.02.1990 by the Judicial Magistrate, Giridih which has been challenged in the present application.

5. The case of the petitioners is that M/s. Peak Electronics Pvt. Limited was a Joint Stock Company (now closed) having its registered office at Calcutta (now Kolkata) and works at Giridih and the same was registered with the Small Scale Industries and carried on business in Mica Processing and Fabrication. Since the Company was in utter financial distress because of shortage of works orders and it reached to a critical stage where existence of the Company was at a stake and ultimately when the financial condition of the factory reached to such a bad shape that it was no longer possible to run the factory at Giridih and therefore, in order to explore the ways for survival, an application was made before the State u/s 25-N of the Industrial Disputes Act, 1947 on 20th September, 1989 seeking permission to retrench 112 workmen but the Labour Commissioner rejected the prayer and refused to grant permission for retrenchment of 112 workmen.

6. Mr. Jai Prakash, learned Sr. Counsel appearing on behalf of the petitioner submitted that Section 25-Q of the Industrial Disputes Act provides penalty to an employer, who in contravention of Sections 25-M and 25-N of the Act retrenches and/or lay-off any workman without previous permission of the competent authority. According to the learned Senior Counsel, the word "Employer" as defined u/s 2(g) of the Industrial Disputes Act means an employer in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government or by or on behalf of a local authority, whereas the petitioner is an "industry", run totally by a private management and not by or under the authority of any Department of the Central Government or the State Government or a local authority. The penal provisions of Section 25-Q of the Industrial Disputes Act is applicable only to those industries which is run by the Central or State Government or by a local authority but not to an "industry" run by the private management like the petitioner. According to the learned Counsel, the word "employer" used in Section 25-Q of the Industrial

Disputes Act has to be read with the definition of "Employer" envisaged in Section 2(g) of the Industrial Disputes Act which speaks about an employer in relation to an industry carried on by or under the authority of the Central Government or State Government or local authority.

7. Mr. Jai Prakash, learned Sr. Counsel further submitted that the present case would be governed by the provisions of the Bihar/Jharkhand Shops and Establishments Act and not by the Industrial Disputes Act.

In support of his submissions, Mr. Jai Prakash relied on a decision of the Supreme Court in the case of Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, .

8. On the other hand, Ms. Anita Sinha, learned APP, in reply submitted that the application filed by the petitioners u/s 25-N of the Industrial Disputes Act, 1947 was rejected by the learned Commissioner on 16.11.1989 on the ground that nobody appeared on the date fixed for hearing before him i.e. on 07.11.1989. A copy of the aforesaid order dated 16.11.1989 has been annexed as Annexure-1 to the counter affidavit. It is stated that since the prayer of the petitioners seeking permission u/s 25-N of the Industrial Disputes Act was rejected and that order has now become final and as such, the petitioners are not entitled for any relief whatsoever.

9. By filing a reply to the counter affidavit, it has been stated on behalf of the petitioners that the request of the petitioners to close the establishment was also subsequently rejected on 12.02.1990. It is also stated that the petitioners submitted an application u/s 25-N, seeking permission to retrench 112 workmen on 20.09.1989 and in terms of Section 25-N(a), such application was to be disposed of within a period of 60 days after giving a reasonable opportunity of hearing, but the petitioners were informed only on 06.11.1989 that the date was fixed on 07.01.1989 for hearing at Patna. Only one day's time was left to the petitioners and as such they requested for grant of adjournment but the Labour Commissioner refused to grant any adjournment and heard the matter on 07.11.1989 in absence of the petitioners and rejected the application u/s 25-N of the Industrial Disputes Act. It is stated that the petitioners were denied the reasonable opportunity of hearing and the order was passed in violation of the principles of natural justice. Consequently, the order dated 16.11.1989 passed by the Labour Commissioner is null and void.

10. In order to appreciate the rival stand taken by the parties, let us examine the relevant provisions of the Act;

The penal provision of Section 25-Q of the Industrial Disputes Act reads as under:

25-Q. Penalty for lay-off and retrenchment without previous permission.

Any employer who contravenes the provisions of Section 25-M or of Section 25-N shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

The provisions of law which is alleged to have been contravened i.e. Section 25-M reads as follows:

25-M Prohibition of lay-off. -

(1) No workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment at which the Chapter applies shall be laid-off by his employer except with 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), 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.

(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 lay-off and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where the workmen (other than badli workmen or casual workmen) of an industrial establishment, being a mine, have been laid-off under Sub-section (1) for reasons of fire, flood or excess of inflammable gas or explosion, the employer, in relation to such establishment, shall, within a period of thirty days from the date of commencement of such lay-off, apply, in the prescribed manner, to the appropriate Government or the specified authority for permission to continue the lay-off.

(4) Where an application for permission under Sub-section (1) or Sub-section (3) 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 lay-off, may, having regard to the genuineness and adequacy of the reasons for such lay-off, 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.

(5) Where an application for permission under Sub-section (1) or Sub-section (3) has been made 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.

(6) An order of an appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of Sub-section (7), be final and binding on all the parties concerned and shall remain in force for one

year from the date of such order.

(7) 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 (4) 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.

(8) Where no application for permission under Sub-section (1) is made, or where no application for permission under subsection (3) is made within the period specified therein, or where the permission for any lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which the workmen had been laid-off and the workmen shall be entitled to all the benefits under any law for the time being in force as if they had been not laid-off.

(9) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of Sub-section (1), or, as the case may be, Sub-section (3) shall not apply in relation to such establishment for such period as may be specified in the order.

(10) The provisions of Section 25-C (other than the second proviso thereto) shall apply to cases of lay-off referred to in this section.

Whereas, Section 25-N reads as follows:

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 (hereinafter 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 working concerned and the person 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.

(7) where no application for permission under Sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of Sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.

(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 or continuous service or any part thereof in excess of six months.

11. From bare perusal of Section 25-M of the Industrial Disputes Act, quoted above, it is apparent that the said provision applies in a case of lay-off whereas the present case does not relate to lay-off but it is a case of retrenchment. It further appears that the petitioners also made an application u/s 25-N of the Industrial Disputes Act seeking permission to retrench of 112 workmen, therefore, we are concerned with Section 25-N of the Industrial Disputes Act in the present case.

Section 25-N of the Industrial Disputes Act, 1947 envisages that before retrenching a workman, the employer has to make an application to the State for permission under Sub Section (1) and Sub Section (3) of Section 25-N. On receipt of the application for permission made under Sub Section (1) of Section 25-N, the competent authority has to make an inquiry and then after giving reasonable opportunity of hearing to the employer, the workman concerned and the person interested has to pass a reasoned order within a period of 60 days from the date of submitting the petition either refusing or granting such permission. Sub Section (4) envisages that where an application for permission has been made under Sub Section (1) and the specified authority does not communicate the order granting or refusing to grant permission to the employer within 60 days from the date on which such application is made, the permission applied for shall be deemed to have been granted on expiration of said period of 60 days.

12. Section 2(g) of the Industrial Disputes Act, 1947 defines "Employer" which reads as follows:

2(g) "employer" means

(i) in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority

whereas, the term "Industry" has been defined u/s 2(j) which reads as follows:

2(j) "industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft or industrial occupation or avocation of workmen.

13. It is not the case of the petitioners that their establishment does not come within the definition of "Industry" as envisages u/s 2(j) of the Industrial Disputes

Act, 1947. It is only submitted on behalf of the petitioner that the word "Employer" used in Section 25-Q has been defined u/s 2(g) of the Industrial Disputes Act, 1947 which speaks about the "Employer" of an industry run by or under the authority of the State Government or the Central Government or under any authority and therefore, the petitioners who are the employers of a private industry run by private management, are not covered under the definition of an "employer" defined in Section 2(g) of the Industrial Disputes Act.

From a plain reading of the word "Industry" as defined u/s 2(j) quoted hereinabove, it appears that no distinction at all has been made between a private industry or an industry run by or under the authority of the Central Government or the State Government or a local authority. Therefore, the word "employer" mentioned in Section 25-Q of the Industrial Disputes Act would mean an employer of an industry either run by private individual or management or run by a Central Government or State Government or by local authority.

14. In the case of Heavy Engineering Mazdoor Union Vs. State of Bihar and Others, , the Supreme Court was dealing with the case of M/s. Heavy Engineering Corporation Ltd. and was posed with a question as to whether M/s. Heavy Engineering Corporation Ltd. came within the definition of the word "Employer" or not? The Supreme Court, after noticing the fact that the entire share capital of the Heavy Engineering Corporation was with the Central Government and are held by the President and certain officers of the Central Government and therefore, it was a Government Company and the M/s. Heavy Engineering Corporation Ltd. came under the purview of Section 2(g) of the Industrial Disputes Act within the meaning of the word "Employer".

This case of the Supreme Court is of no help to the petitioner in this case since in the present case, facts are quite different and the petitioner's industry is admittedly an "Industry" which is run by a private management.

15. In the case of Paradip Port Trust, Paradip Vs. Their Workmen, , the Supreme Court, in paragraph - 12 of its Judgment held that the definition of the "Employer" u/s 2(g), is purposive and not an exhaustive definition and it shows that an industrial disputes can be raised in relation to an industry carried on even by the Government and by the local authorities. It need not be added that industry is also carried on by the private owners, private Companies and the partnerships. Employees and the workmen will, therefore, be drawn from numerous sources.

16. Therefore, in view of the decision of the Supreme Court, it is clear that the "Employer" of an industry run by a private individual or management, would also be governed by Section 2(g) of the Industrial Disputes Act. The contention of the petitioners that their industries does not come within the purview of the definition of the word "Employer" as envisaged in Section 2(g) of the Industrial Disputes Act, cannot be accepted and hence is rejected.

In view of the discussions and findings above, it is held that the employer of an

industry which is run by private individual or management, can also be prosecuted and punished u/s 25-Q of the Industrial Disputes Act in case he contravenes the provisions of Section 25-M/25-N of the Industrial Disputes Act.

17. In the present case, admittedly the application was made by the petitioner u/s 25-N of the Industrial Disputes Act, 1947 on 20.09.1989 whereas, by Order dated 16.11.1989 the prayer of the petitioner for permission u/s 25-N was rejected. From perusal of the order dated 16.11.1989 which has been annexed as Annexure-A, it appears that the date of hearing in the said matter was fixed at Patna on 07.11.1989 but on that date, nobody appeared on behalf of the petitioners and the permission sought for was rejected on the ground that (i) neither the management appeared nor produced any cogent reason in writing justifying such retrenchment of workmen; (ii) the application of the Management did not contain the required details and therefore, it was not clear as to whether the retrenchment of the workmen was to be made on the basis of "first come last go".

18. The submission of the petitioners that the order of the Labour Commissioner dated 16.11.1989 was passed without giving them reasonable opportunity of hearing cannot be accepted at this stage since the petitioners did not challenge the said order dated 16.11.1989 passed by the Labour Commissioner before any appropriate forum and when the said order has now become final, then at this stage, the petitioners cannot be allowed to challenge the same on the ground that it was passed in contravention of the provisions of Section 25-N of the Industrial Disputes Act, 1947.

19. It is also relevant to mention here that the vires of Section 25-Q of the Industrial Disputes Act, 1947 was also challenged and it has already been held to be constitutionally valid by a Division Bench of the Ranchi Bench of the Patna High Court in the case of Hindalco Industries Ltd. v. The Union of India and Ors. reported in 1996(2) PLJR 520.

20. No other points have been urged before us, as such, in view of the discussions and findings above, we find no merit in this application. Accordingly, the same is hereby dismissed.