

(1969) 03 MAD CK 0057
In the Madras High Court

Radio and Electricals Ltd.

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 31-03-1969

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25FF, 25FFF, 9A

Citation : (1970) 2 LLJ 206

Hon'ble Judges : Alagiriswami, J

Bench : Single Bench

Judgement

Alagiriswami, J.—The first writ petition is by the management and the second by the workers to quash the award of the Industrial Tribunal, Madras, The petitioner company had two sections doing two types of work. One was concerned with radio and electricals and the other section was called the mechanical section. On April 30, 1965, they sent a notice, found at page 23 of the typed papers, as follows:

To

All Retrenched Workers,

We regret to state that due to the continuous losses, it is proposed to economise expenditure and avoid further losses of the company. We have, therefore, decided to restrict our activities by closing down the tank section, comprising of tanks making, tanks testing, tanks cleaning, switches assembly, core clamp fabrication and mechanical accessories.

You are therefore informed that in pursuance of the above decision, your services will be terminated with effect from May 1, 1965. In addition to your normal wages up to date you will be paid a month's pay in lieu of notice and compensation as required under Clause (c) of Section 25F of the Industrial Disputes Act, 1947. You will please call at the factory on date and time noted below and receive your dues as above.

For Radio & Electricals Ltd. (Sd.)?. Secretary.

On the same day they published another notice, found at page 25 of the typed papers, as follows:

Notice

The results of our company as a manufacturing concern has not been satisfactory, in spite of our best efforts. We have not paid any dividends to the shareholders as we have not made any profits during the last 4 years. There is a persistent demand from the shareholders that the working results of the company should be bettered.

Under the normal circumstances, we should have closed down the entire company, but we considered that it would be a national loss. So, as an alternative, we propose to restrict our activities by closing down the section, which is contributing to good portion of the loss, without which the rest of the activities can be carried on, as is the common practice. We have, therefore, decided to close down the entire mechanical section comprising tanks making, tanks testing, tanks cleaning, switches assembly, core clamp fabrication and mechanical accessories, with effect from May 1, 1965.

It is hoped that this will be giving the company the last and only chance to survive and recover from the losses.

For Radio & Electricals Ltd., (Sd.)?. Secretary.

Forty-eight workers were involved in this and 28 of them have received whatever was due to them and have not raised any disputes. The dispute that was referred to the Industrial Tribunal and has been decided by it refers to the other 20 workers.

2. The award is set out at pages 10 to 14 of the Fort St. George Gazette dated November 16, 1966. The points for determination were set out as follows:

(1) Whether the retrenchment of the 48 workers is justifiable, as contended by the management?

(2) Whether the retrenchment effected for rationalisation is in violation of Section 9A of the Industrial Disputes Act, as contended by the workmen?

(3) Whether the retrenchment is invalid on the ground that the retrenchment compensation was not paid at the time of retrenchment, as contemplated by Clause (b) of Section 25F of the Industrial Disputes Act?

(4) Whether notices contemplated by Clause (c) of Section 25F and Rule 61(b) of the Industrial Disputes Rules were sent to the State Government, and if not, whether the retrenchment is invalid on that score?

(5) Whether it is invalid on the ground of non-exhibition of the seniority list in the notice board and non-despatch of the same to the union, as contemplated by

Rule 62 of the industrial Disputes Rules?

(6) Whether it is invalid on the ground that the principle "last come, first go" was not observed?

(7) To what relief are the parties entitled?

3. All the points were found in favour of the management except point 3. The reasoning of the Industrial Tribunal as regards that point is found at paragraphs 12 to 14 of the order, In the result, the tribunal held that the retrenchment, though justifiable, is not valid, because of non-compliance with the mandatory condition prescribed u/s 25F of the Industrial Disputes Act, and the management was directed to pay each of the remaining 20 workers, whose names were mentioned in the earlier part of the order, half of the basic wages from the date of the retrenchment till the date of order, in addition to the retrenchment compensation, wages in lieu of notice and other dues already offered by the management. It is to quash this order that the management have filed their writ petition. The workers have filed their writ petition-because, according to them, the Industrial Tribunal should have ordered reinstatement rather than retrenchment compensation.

4. On behalf of the management it is contended that, having found all the other points in their favour, the tribunal went wrong in holding that this was a case of retrenchment, whereas it was a case of closing down of a session of the activities of the company, and, therefore, Section 25FFF applies rather than Section 25F. On the other hand, on behalf of the workmen, it is urged that this is not a case of closing down, that there cannot be a partial close down and that, therefore, it should be held to be a retrenchment and not as a closing down. Reliance is also placed in support of this contention on the notice found at page 23 of the typed papers to which I have already referred. But except for the fact that in the top of the notice reference is made to retrenched workers, throughout the notice at page 23 as well as at page 25 of the typed papers reference is clearly to a closing down alone. The mere fact that a reference is made to retrenchment of workers in one part of the notice, I am afraid, cannot be relied upon to urge that what the management contemplated was itself a retrenchment rather than a closing down. I am not satisfied that the decision of a Bench of this Court in *Desikachari v. Associated Publishers, Madras (P.) Ltd.* 1961 I.L.J. 771 applies to the case. There, it was not a question of the closing down of an undertaking. It related to the question whether a particular worker had retired or had been retrenched. In dealing with that question, the Bench pointed out that in their letter the management had mentioned about retrenchment compensation, and if they wanted to contend that what had happened was retirement rather than retrenchment, they should have at least let in evidence to show that somebody else had been appointed in the place of the worker, whose claims were under consideration, and thus established that it was a case of retirement, Therefore, that decision cannot apply to the facts of this case. Nor do I think that the decision of the Supreme Court in *Madho Ram & Sons v. Their Workmen* 1964

I.L.J. 366 can apply to the facts of this case. In that case, the question for consideration was whether a part of an undertaking could be transferred u/s 25FF. It was held that it could not be. The transfer of a portion of an undertaking does not stand on the same footing as the closure of a portion of the undertaking. This Court (sic) in the decision in *Hotel Ambassador v. Its Workmen* 1963 I.L.J. 87 had held that the closure of a part of the undertaking was permissible. The Supreme Court in its latest decision in *Workmen of the Indian Leaf Tobacco Development Co., Ltd., Guntur Vs. The Management of Indian Leaf Tobacco Development Co. Ltd., Guntur*, had held that the closure of eight depots by a company, even if it is held not to amount to a closure of the business of the company, cannot be interfered with by an Industrial Tribunal, if, in fact, that closure was genuine and real, and that the closure may be treated as stoppage of a part of the activity or business of the company. Therefore, it may be said that the decision of this Court (sic) in *Hotel Ambassador v. Its Workmen* 1963 I.L.J. 87 has been approved by the Supreme Court itself.

5. As regards the difference between Section 25F and Section 25FFF, the Supreme Court in its decision in *Hathising Manufacturing Co. Ltd. v. Union of India* 1960 I.L.J. 1 has observed as follows:

There is between the text of Section 25F and Section 25FFF(1) a significant difference in phraseology. Whereas by Section 25F. the constitutional validity whereof does not fall to be determined in these petitions certain conditions precedent to retrenchment of workmen are prescribed, Section 25FFF(1) merely imposes liability to give notice and to pay compensation on closure of an undertaking which results in termination of employment of the workmen. u/s 25F, no workman employed in an industrial undertaking can be retrenched by the employer until (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period has expired or the workman has been paid salary in lieu of such notice, (b) the workman has been paid retrenchment compensation equivalent to 15 days' average salary for every completed year of service and (c) notice in the prescribed manner is served on the appropriate Government.

Section 25FFF(1), however, enacts that the workmen shall be entitled to notice and compensation in accordance with the provision of Section 25F if the undertaking is closed for any reason, as if the workmen had been retrenched. By the plain intendment of Section 25FFF(1), the right to notice and compensation for termination of employment flows from closure of the undertaking: the claim does not seek to make closure effective upon payment of compensation and upon service of notice or payment of wages in lieu of notice. An employer proposing to close his undertaking may serve notice of termination of employment, and if he fails to do so, he becomes liable to pay wages for the period of notice. On closure of an undertaking, the workmen are undoubtedly entitled to notice and compensation in accordance with Section 25F as if they had been retrenched, i.e., the workmen are entitled, besides compensation, to a

month's notice or wages in lieu of such notice but by the use of the words "as if the workman had been retrenched" the legislature has not sought to place closure of an undertaking on the same footing as retrenchment u/s 25F, By Section 25F, a prohibition against retrenchment until the conditions prescribed by that section are fulfilled is, imposed by Section 25FFF(1), termination of employment on closure of the undertaking without payment of compensation and without either serving notice or paying wages in lieu of notice, is not prohibited. Payment of compensation and payment of wages for the period of notice are not, therefore, conditions precedent to closure.

6. I am of opinion therefore that this is a case of permissible closure of part of the business of the petitioner company and consequently retrenchment compensation is payable u/s 25FFF and not u/s 25F, and such being the case, the payment of the benefits due to the workers is not a condition precedent and therefore the payment by the management in this case on 2nd of May is not a contravention of the provisions of Section 25FFF. I do not think there is any substance in the argument on behalf of the workers that as the notice in page 23 of the typed papers itself refers to Section 25F(c), this should be deemed to be a case of retrenchment compensation. It should be noticed that even Section 25FFF refers to compensation as payable u/s 25F. Therefore, the reference to Section 25F(c) in the notice issued by the management would not by itself show that what is in question here is a retrenchment and not a closing down.

7. In the result, I hold that the order of the Industrial Tribunal suffers from an error apparent on the face of the record in that it has treated this case as one falling u/s 25F instead of treating it as one falling u/s 25FFF. Writ Petition No. 2782 of 1966 is, therefore, allowed and the order of the Industrial Tribunal is quashed. As a consequence, Writ Petition No. 377 of 1967 is dismissed. There will be no order as to costs.