
(1989) 04 RAJ CK 0031
In the Rajasthan High Court
Case No : .C.W.P. No. 1296 of 1983

Rajasthan Small Industries Employees' Union	APPELLANT
Vs	
State of Rajasthan and Others	RESPONDENT

Date of Decision : 11-04-1989

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25FFF

Citation : (1993) 3 LLJ 361 : (1989) 2 RLW 252 : (1989) 2 WLN 682

Hon'ble Judges : S.S. Bayas, J;D.L. Mehta, J

Bench : Division Bench

Advocate : M.R. Calla, for the Appellant; C.N. Sharma, for R2 and Kamala Jain, for R1, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Byas, J.—In this petition under Article 226 of the Constitution, the petitioner which is an Employees' Union challenges the validity and correctness of the notice Annexure-2, dated June 28, 1983, issued by respondent No. 3, viz. the Managing Director, Rajasthan Small-Scale Industrial Corporation Limited. By the impugned notice Annexure-2, the Management of the Corporation decided to close down its one unit, namely, Furniture Making Centre, Jaipur, w.e.f. July 1, 1983.

2. Material facts stated in short are that the Rajasthan Small-Scale Industries Corporation Ltd., Jaipur is an industry organising and managing many industrial establishments employing nearly 3,000 workmen. One of the establishments was that of Furniture Making Centre at Jaipur. Relations between the workmen employed in Furniture Making Centre and the ment did not remain cordial on account of the submission of a charter of demands (Annexure-4A) on 28.8.1980 by the petitioner-Union. In order to victimise the workmen of the Furniture Making Centre, ment decided to close down this unit and issued notice Annexure-2 on 28.6.1983. It is alleged that the said notice was malicious and motivated to victimise the workmen. It amounts to unfair labour practice. On one

hand the Corporation was closing one of its units, namely, the Furniture Making Centre and on the other hand, it was making devices to give employment to 1,000 persons. The closure of the Furniture Making Centre will result in the termination of the services of 31 workmen mentioned in Annexure- 1. The closure is bad and illegal. It amounts to retrenchment of the workmen employed in the Furniture Making Centre. This retrenchment is not valid because the provisions of Section 25F and Section 25N of the Industrial Disputes Act, 1947 (for brevity "the Act") have not been complied with. The closure is also bad because the provisions of Section 25FFF have not been complied with. No compensation of any sort under the Act has been paid or offered to the workmen. The relief claimed is that notice Annexure-2 be quashed and the retrenchment of the workmen made in consequence of it be set aside.

3. The petition was opposed tooth and nail by the ment of the Corporation. It was contended that it is not a case of retrenchment but is of clear closure. The Furniture Making Centre was closed on account of the heavy losses in that unit. The provisions of Section 25N of the Act are not applicable because only 31 persons are employed in the Furniture Making Centre. Compensation payable to each individual workmen of Furniture Making Centre in accordance with the provisions of Sections 25F and 25FFF by means of bank drafts was tendered to each of them but the concerned workmen refused to accept the bank drafts and the notice.

4. It was also stated that Section 25F does not apply and it is not a case of retrenchment. Provisions of Section 25FFF are applicable only after an undertaking is closed down. Despite that, compensation as stated above was offered to the workmen before the closure. The Corporation is still ready and willing to pay the compensation to the workmen. The affidavit of Siya Ram Gupta, Secretary of the Corporation, was filed along with the statement showing the amounts offered together with the particulars of the bank drafts. It was contended that in a case of closure, notice for closure is immaterial. What is required is whether there is a closure or not. The workmen are not entitled to any relief.

5. We have heard Mr. M.R. Calla, learned counsel for the petitioner, Mr. C.N. Sharma for the Corporation and the learned Additional Government Advocate Mrs. Kamla Jain.

6. The first question which arises for consideration is whether the provisions of Section 25F and Section 25N of the Act are attracted? Section 25F occurs in Chapter V-A and Section 25N occurs in Chapter V-B of the Act, Both these Sections lay down the conditions precedent to retrenchment of workmen. Section 25F applies to any industry whereas Section 25N applies only to the specified industrial establishments mentioned in Sections 25K and 25L of the Act. One thing is, however, common in them and that is that they apply only when the termination of the service of the workmen amounts to retrenchment. If the workmen were thrown out of employment not on account of retrenchment but on

any other ground, the provisions of Section 25F or 25N have no applicability.

7. The clinching issue before us is whether the services of the workmen which were terminated by notice Annexure-2, dated 28.6.1983, amounts to retrenchment. The contention of Mr. Calla is that every termination of the service of a workman for any reason whatsoever, unless it falls within the excepted categories amounts to retrenchment. The termination of the services of the workmen in the instant case was not on account of any punishment inflicted by the disciplinary action nor on account of the reasons mentioned in Sub-clauses (a) to (c) of Section 2(oo) of the Act. The termination is thus not within the excepted categories and it, therefore, amounts to retrenchment. The contention is no doubt attractive at the first sight but is hollow in substance.

8. In order to appreciate the contention of Mr. Calla it would be useful to read the definition of "retrenchment" given in Section 2(oo) of the Act. It runs as under:-

"2(oo): "Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf, or (bb) termination of the service of the workman as a result of the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or (c) termination of the service of a workman on the ground of continued ill-health."

9. Mr. Calla argues that the words "for any reason whatsoever" have a material significance. As such even if the termination of the workmen in the instant case was on account of the closure of the industrial unit, it amounts to retrenchment. It was on the other hand vehemently contended by Mr. Sharma that the definition of retrenchment given in the Act is no doubt very wide, but even then it does not include the termination of service of the workmen on account of the closure of an undertaking. We find considerable force in the submission of Mr. Sharma.

10. The "retrenchment" as the word implies and the definition suggests is made to discharge the surplusage in a running or continuing business. If the business or undertaking or unit is no more functioning, the discharge of the workmen does not amount to retrenchment. The retrenchment can only be made in a running or continuing undertaking.

11. In *Barsi Railway Co. Ltd. v. Joglekar and Ors.* 1957 (I) LLJ 243 their Lordships observed:-

"Retrenchment as defined in Section 2(oo) and as used in Section 25F has no

wider meaning than the ordinary, accepted connotation of the word. It means the discharge of surplus labour or staff by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on a real and bona fide closure of business..... On our interpretation, in no case is there any retrenchment, unless there is discharge of surplus labour or staff in a continuing or running industry."

12. The defence taken by the employer is that the Furniture Making Centre was closed on account of heavy losses incurred in the undertaking. If the services of the workmen have been terminated on account of the closure it will then not amount to retrenchment as contended.

13. The contention of Mr. Calla, however, is that the respondent-Corporation is a very large industry. All the wings or undertakings or units of the Corporation have not been closed and as such the closure of the Furniture Making Centre even if the closure is taken to be there is bad and does not amount to real closure. We are again not impressed by the contention,

14. Sections 25FFA and 25FFF of the Act speak about the closing down of an industry. Sections 25FFA and 25FFF deal with the procedure of closure and the compensation to be paid to the workmen on account of the closure. In both these sections, the word used is "undertaking" and not industry. The definition of industry as given in Section 2(j) of the Act inter alia includes an undertaking. It is thus evident from these provisions that undertaking is a narrower concept than industry. To put the entire matter in simple words, industry is a whole of which an undertaking is a part. An industry may consist of many units and undertakings. Sections 25FFA and 25FF have used the word undertaking and not industry. By not using the word "industry" in these two sections, it can be easily inferred that the closure of an undertaking is perfectly legal and it is not at all necessary that the industry as a whole should be closed down.

Partial closure is perfectly legal.

14. In *Hotel Ambassador v. Its Workmen and Ors.* 1963 (7) F.L.R. 140 an employer closed one of its departments for effecting economy. It was contended that there cannot be a partial closure of an industry. The contention was repelled by their Lordships and it was observed :-

"Once it is conceded that there was an occasion for effecting economy, the conclusion is inescapable that the conduct of the employer in closing the department and dividing its work amongst its other employees cannot be reasonably characterised as improper, or as amounting to an unfair labour practice."

15. The same view was reiterated in *Management of Hindustan Steel Ltd. Vs. The Workmen and Others*, it was observed in para 10:-

"The words undertaking as used in Section 25FFF seems to us to have been used

in its ordinary sense connoting thereby any work, enterprise, project or business undertaking. It is not intended to cover the entire industry or business of the employer as was suggested on behalf of the respondents. Even closure or stoppage of a part of the business or activities of the employer would seem in law to be covered by this sub-section."

16. In *Workmen of I.L.T.D. Co. v. I.L.T.D. Co.*, Guntur 1970 (I) LLJ 343 the Company closed down some of its branches and depots. It was argued that since the entire Company was not closed, the closure of some branches or depots does not amount to closure. The contention was rejected and it was held that the closure of a part of a business is an act of management and is perfectly permissible.

17. The position is thus well-settled by the pronouncements of the Apex Court that closure of distinct venture though a part of business complex is perfectly legal and permissible. It is not necessary that the entire business of the Company should be closed down. The management is free to close down a part of the business. The closure of such a part of the business is not bad. It is legal and permissible. Of course, the closure should be a genuine and real. It should not be a policy adopted for carrying on the same business in a different manner. The contention of Mr. Calla, therefore, holds no ground.

18. Mr. Calla, however, contended that it is only the Furniture Making Centre which has been closed down by notice Annexure-2, dated 28.6.1983, This closure is motivated because the Union of Workmen of the Furniture Making Centre raised demands before the management in August, 1980 vide Annexures-4 and 4-A. The management instead of meeting the demands came with notice Annexure-2 for closure of the Furniture Making Centre. Taking this background into consideration, it was argued that the closure is motivated. It is not real and genuine. The contention is bizarre and ineffective. What is to be seen in a case of closure is that the closure should be genuine and real. There should be a closure in fact. If the closure is genuine and real the motive with which and the background in which it is made are wholly irrelevant. In *Indian Hume Pipe Co. v. Their Workmen* 1969 (II) LLJ 242 (S.C.) the closure was assailed on the ground that it was motivated. Their Lordships rejected the contention and observed:-

"Once the Tribunal finds that an employer has closed its factory as a matter of fact it is not concerned to go into the question as to the motive which guided him and to come to a conclusion that because of the previous history of the dispute between the employer and the employees the closure was not justified. Such a closure cannot give rise to an industrial dispute."

The same view was reiterated in the case of *Workmen of Indian Leaf Tobacco Development Company* (supra).

19. Now in the instant case, it has not been suggested or averred by the petitioner that the work of Furniture Making is being carried out by the

respondent-Corporation in a different manner after closing down the Furniture Making Centre, We persistently asked Mr. Calla to show any such instance and he expressed his total inability.

20. Mr. Calla, however, invited our attention to Annexure-8 by which the Corporation invited tenders for Furniture Making Centre on 28.6.1983. It was argued that the management was inviting tenders for Furniture Making Centre on one hand and was issuing notice Annexure-2 on the other hand on the same (sic) about the closure of the Furniture Making Centre. The explanation furnished by the respondents is that the advertisement Annexure-8 was sent for publication in the newspaper much earlier. It was, however, got published on 28.6.1983. It was by sheer coincidence that Annexure-8 came to be published in the newspaper when notice Annexure-2 was issued on 28.6.1983. The advertisement Annexure-8 was withdrawn by the Corporation by another advertisement published in the Rajasthan Patrika in its issue, dated 7.3.1983. The explanation is not without force. It is not the case of the petitioner that some activities took place in pursuance to the advertisement Annexure-8 inviting tenders. We are, therefore, unable to read anything in Annexure-8 to make the closure unreal or a mere device to terminate the services of the workmen. Here we find a case of factual closure. The closure was real and genuine. It was not sham or a ploy to get rid of the workmen.

21. We may add a few words about retrenchment and closure at this stage. The results arising out of retrenchment and closure for the workmen are the same. In a case of retrenchment, the employer gets rid of the economic dead weight of surplus labour while in the case of a closure, the employer gets rid of unprofitable or loss giving undertaking. However, in both the cases, the result is the same for the labour. In either case, the workmen are thrown out of employment for no fault of theirs.

22. There is a vital difference between the procedures for the payment of compensation in a case of retrenchment and that of closure. u/s 25F of the Act, the workmen employed in an undertaking cannot be retrenched until the payment is made as mandated therein. But payment of compensation and wages for the period of notice are not conditions precedent to closure. Of course, the payment of compensation is to be made in accordance with the provisions of Section 25FFF of the Act. But this payment may be made after the closure. The closure is not bad because the payment mentioned in Section 25FFF has not been made before the closure. Reference in this connection be made to the Supreme Court decisions, viz. Hatisingh Mfg. Co. Ltd. and Another Vs. Union of India (UOI) and Others, and Avon Services (Production) Agencies Ltd. v. Industrial Tribunal, Haryana 1979 (II) LLJ 1 (S.C.).

23. Apart from that, the workmen were offered the amount of compensation and one month's wages in lieu of notice as shown in the statement filed by the management on 29.8.1984 in this Court along with affidavit of Siya Ram Garg, the then Secretary of the respondent-Corporation. This fact has not been denied

by the petitioner.

24. The last submission of Mr. Calla is that the absorption of the workmen of the Furniture Making Centre should be made and they should be re-employed by the respondent-Corporation. He brought two decisions of the Apex Court to our notice, viz. Inder Pal Yadav and Others Vs. Union of India (UOI) and Others, and Special Works and Research center through Sanjit Roy and Others Vs. State of Rajasthan,

25. The facts have not been stated in the case of G. Govind. Whether it was a case of bona fide closure or not is not discernible. The case of Inder Pal related to retrenchment. The railway administration had framed scheme for the absorption of the temporary workmen. It was in the light of that scheme that directions were issued for the absorption of the workmen. Here that is not the position. Both these decisions, therefore, do not come to the rescue of the petitioner.

26. We may now sum-up our conclusions:-

1. It is a case of closure and not of retrenchment.
2. The closure was genuine, bona fide and real. It was a closure in fact. It was not a ploy or devise to get rid of the workmen of the Furniture Making Centre. The closure was effected on account of financial losses. It was not motivated.
3. Closure may be of the entire undertaking or partial. Here is a case of partial closure.
4. The law does not cast a duty on the employer to make the payment of compensation, etc., u/s 25FFF of the Act before the closure, and
5. The amount of compensation together with wages in lieu of one month's notice was offered to the concerned workmen through bank drafts which they declined to accept.

27. For the reasons aforesaid, we find no force in this writ petition and dismiss the same.

No order as to costs.