

(2004) 02 CAL CK 0010
In the Calcutta High Court
Case No : M.A.T. No. 002 of 2004

Rubber Board

APPELLANT

Vs

General Secretary, Saithankari Plantation Workers" Union and
Others

RESPONDENT

Date of Decision : 23-02-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 25N, 25N(3), 25N(6)

Citation : (2004) 2 CHN 315 : (2004) 3 LLJ 442

Hon'ble Judges : P.K. Biswas, J;N.A. Chowdhury, J

Bench : Division Bench

Advocate : Joseph Kodainthra and Md. Tabraiz, for the Appellant;Upendra Roy and R.S. Saroop, for the Respondent Nos. 2-4, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Biswas, J.—This appeal is directed against the judgment and order passed by the Single Bench of this Court dated 16th January, 2004, whereby, the learned Single Judge of this Court was pleased to dismiss the writ application being No. 046 of 2003.

2. The short facts leading to the filing of this appeal are as under :

The petitioner/appellant filed a writ application challenging an order dated 20.12.2002 passed by the Andaman & Nicobar Administration which was signed by one Shri P.K. Minz, Assistant Secretary (Labour). By the said order the Development Officer, Rubber Board, was informed that the permission for retrenchment of its 52 permanent workers and 6 casual labourers were not granted by the competent authority. It has also been alleged by the petitioner/appellant that the order has been passed without hearing the petitioner and without taking note of the relevant facts and as such, the order impugned is patently illegal and violative of the principal of natural justice, since the statutory requirements of Section 25N of the Industrial Disputes Act have not also been

complied with before passing the order making the same patently illegal and erroneous.

3. It has also been alleged in the writ petition itself that the Rubber Board being a statutory body constituted under the Rubber Act, 1947, the Board is directly functioning under the Ministry of Commerce and Industries, Government of India, and the main functions of the Board are defined in the Rubber Act, 1947 which contains amongst the others to promote by such measures, as it thinks fit, the development of Rubber Industry and for the above purpose for imparting training to the farmers and workers of Andaman in various aspects of cultivation, exploitation, processing and marketing of rubber, the Rubber Board has established a Rubber Research-cum-Development Station of Saithankhari, which was later renamed as Nucleus Rubber Estate and Training Centre (NRETC). It has also been alleged that the aforementioned Centre was started as an experimental station and the same has been functioning as such since the year 1965 and over the period of time on account of various restrictions including expansion of the rubber cultivation in the Island, the above purposes of imparting training to the farmers lost its relevance and viability and as such the petitioner came to the firm conclusion that running a commercial plantation and that too in just 200 hectares is apart from being unviable, not a function of the Rubber Board. Therefore, on overall consideration of the matter and upon in depth study into the viability and future and also taking into account the present requirements, the petitioner came to the conclusion that 52 permanent workers and 6 casual workers are surplus at NRETC.

4. Accordingly, the petitioner decided to retrench 52 permanent workers and 6 casual workers and the aforesaid workers were given due notice as required u/s 25N of the Industrial Disputes Act and the petitioner also applied to the Lt. Governor for prior permission u/s 25N, but subsequently, without following the required procedure they received the impugned order from the Assistant Secretary (Labour), Andaman & Nicobar Administration, whereby any whereunder it was communicated to them that the permission as sought for has not been granted to them and as such they were forced to come up with the aforesaid writ application which was eventually disposed of by the learned Single Judge of this Court on 16th January, 2004.

5. Being aggrieved by and dissatisfied with the aforesaid judgment and order, the petitioner/appellant has preferred this appeal alleging mainly that the learned Single Judge has failed to appreciate the fact that the statutory obligation and formalities stipulated u/s 25N(3) of the Industrial Disputes Act were not complied with before passing the impugned order refusing permission for retrenchment. It was also alleged that the learned Single Judge was also misguided between enquiry contemplated u/s 25N(3) of the Industrial Disputes Act and the hearing and the learned Single Judge has also failed to advert to the issues arising on merits with regard to sustainability of the impugned order refusing retrenchment of the aforesaid workers. It was also alleged that the learned Single Judge failed

to appreciate that even the enquiry conducted by the Labour Commissioner would not satisfy the requirements of Section 25N(3) and even otherwise it is assumed without admitting the same that the same amounts to enquiry contemplated u/s 25N(3), but in fact, no hearing was offered by the specific authority before issuing the impugned order refusing the permission to retrench and as such according to the appellant the impugned order suffers from error apparent and as such it is not at all sustainable, hence this appeal.

6. The learned Counsel appearing for the appellant has made strenuous argument with reference to Section 25N(3) of the ID Act, 1947 (hereinafter referred to "Act of 1947") that on receipt of the application for permission under Sub-section (1) of Section 25N of Act of 1947 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 retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interest of the workmen and all other relevant factors, by order, for reasons to be recorded in writing grant or refuse to grant such permission and in such event a copy of such order should be communicated to the employer and the workmen,

7. With reference to the above, it has been contended by the learned Counsel appearing for the appellant that in the instant case nothing could be shown from the side of the respondents that the appropriate Government or the specified authority, duly appointed by the notification for conducting any enquiry or hearing has conducted any enquiry and gave an opportunity of being heard to the concerned persons including the management of the Rubber Board (hereinafter called as "the Board") in accordance with law and as such the communication of the order dated 10th December, 2000 to the Board itself was per se illegal.

8. It has also been contended on behalf of the appellant that although the learned Counsel appearing for the respondents was given an opportunity to produce the record to show that such hearing was given, but, they were unable to produce such record and at the time of hearing of the writ application the learned Counsel appearing for the respondents-workmen came out with the submission that hearing was given and minutes of the hearing was annexed with the affidavit-in-opposition, but in the absence of production of the documents by the concerned respondent no reliance could have been placed on such documents to come to the conclusion that the persons on behalf of the management were heard and questions were asked and their answers were taken and the opinion of the workers were also taken and thereafter opinion was expressed that there was no reason to retrench the workers as the management was not able to give fruitful reply to the questions asked. It was also contended on behalf of the appellant that in the absence of the production of the original document, the learned Single Judge was not at all justifiable to place his reliance on the minutes which were annexed with the affidavit-in-opposition filed by one

B. Chandrachudan who happens to be a trade union leader and the President of the respondent Worker's Union.

9. In connection with the hearing of the appeal, however, the copies of the original minutes were produced before the Appellate Bench without raising any objection whatsoever from the side of the appellant and from the aforesaid documents it came to be seen that ultimate decision for refusing to accord permission was taken by the respondent No. 2 after complying with the formalities of the official rules of business. The learned Single Judge, however, has opted for accepting the minutes annexed in the affidavit-in-opposition filed on behalf of the respondent-workmen represented by B. Chandrachudan taking into consideration of the fact that in the affidavit-in-reply it was not raised from the side of the petitioner/appellant that the document in question was a forced document and the genuineness of the same has not also been denied and ultimately the learned Single Judge was pleased to come to the conclusion that the hearing was given in terms of provisions u/s 25N(3) of the said Act of 1947.

10. Here also, upon hearing the parties before us and upon perusal of the minutes which were produced before this Appellate Bench together with other materials available on, record, we also find that, in the instant matter regarding grant of permission for retrenchment of workers, proper enquiry was made and after giving opportunity of hearing in terms of provisions u/s 25N(3) of the Act of 1947 final decision was ultimately taken by the Lt. Governor to refuse to accord such permission for retrenchment.

11. In that view of the fact, we cannot accept the contention raised by the appellant that no enquiry was held and opportunity of being heard was not given to the petitioner/appellant before taking a final decision in the matter of retrenchment of the workers as prayed for by them.

12. It has also been claimed from the side of the appellant that hearing has to be given by the Lt. Governor himself or by his any authorized officer duly authorised in this behalf. But as per the rules of business of the Government such hearing as required under the law, is. hardly taken by the Lt. Governor himself and following the rules of business of the office itself the hearing in the concerned matter was given by the Labour Commissioner and ultimately the final decision for refusing permission for retrenchment of the workers was taken by the Lt. Governor himself. In such premises, we are also inclined to accept that the enquiry and hearing, as contemplated in Sub-section (3) of Section 25N have been made, in the instant matter in accordance with law.

13. So, being in agreement with the findings of the learned Single Judge, we also hold that in the given situation there is no reason for interference with the order impugned issued by the administration.

14. The learned Counsel appearing for the appellant, drawing our attention to a decision reported in Parry and Co. Ltd. Vs. P.C. Pal and Others, , Judge of the Second Industrial Tribunal, Calcutta and Ors., has forcefully contended before us

that in the aforesaid decision it has been held by the Apex Court that--

"if a scheme of reorganization has been adopted by an employer for reasons of economy or convenience and it has been introduced in all the areas of its business, the fact that its implementation would lead to the discharge of some of the employees would have no material bearing on the question as to whether the scheme was adopted by employer bona fide or not. In the circumstances, an Industrial Tribunal considering the issue relating to retrenchment, should not attach any importance to the consequences of reorganization. The resulting discharge and retrenchment would have to be considered as an inevitable, though unfortunate, consequence of such a scheme."

15. Again placing reliance upon the observation of the Apex Court in the aforesaid decision to the effect that "the management can retrench its employees only for proper reasons, which means that it must not be actuated by any motive of victimisation or any unfair labour practice. It is for the management to decide the strength of its labour force. If the number of employees exceeded the reasonable and legitimate needs of the undertaking it is open to the management to retrench them. Workmen may become surplus on the ground of rationalisation or economy reasonably or bona fide adopted by the management or on the ground of other industrial or trade reasons, and the right to effect retrenchment cannot normally be challenged but when there is a dispute about the validity of retrenchment the impugned retrenchment must be shown as justified on proper reasons, i.e., that it was not capricious or without rhyme or reason", it has been contended by the learned Counsel appearing for the appellant that the learned Single Judge has not at all touched the merit of the matter in disposing the issue itself and in the matter of retrenchment, the management had the absolute authority to take a final decision depending on the situation which suits best to the institution itself and in such premises, taking any other contrary view is not permissible under the law and therefore by not accepting the same the learned Single Judge has committed a grave error and as such the impugned judgment suffers from inherent illegality and the learned Single Judge was not justified in rejecting the writ application of the petitioner/appellant.

16. In opposing the aforesaid prayer it has been contended on behalf of the respondents that though management reserves certain rights to retrench its employees for proper reasons, but in any event, it must not be actuated by any motive or victimization and here in this particular case, from the report of the enquiry, it was clearly revealed that the concerned authority upon conducting proper enquiry and after giving an opportunity of being heard, came to the conclusion that there was no reason for granting permission for retrenchment, and in consequence thereof, such permission was refused and being authorized under the law the concerned authority obviously retains that right either to refuse or to grant such permission, depending upon the merits of the claim and no exception, therefore, could be taken against such decision.

17. We have given our anxious consideration with regard to submissions made by the respective parties and we have also gone through the decision of the Apex Court reported in AIR 1970 (supra) with meticulous care.

18. True, it is that the learned Single Judge has not gone into that aspect of the matter in deciding the aforesaid issue whether or not management can retrench its employees only for proper reasons, but impliedly accepted the position that it is the concerned authority who is vested with such ultimate power in connection with the present matter.

19. Now here, in this appeal having considered the rival submissions of the parties and having due regard to the laws applicable, in the present case and applying the ratio of the aforesaid decision of the Apex Court, we can safely conclude that although the management possesses such right for retrenchment of its employees depending on the situation, yet, it has to be done in compliance with the procedure of the Industrial Disputes Act and in doing so the provisions of Section 25N have to be followed and here, in this particular case, the concerned authority, after conducting proper enquiry and after giving and opportunity to the management and the other concerned persons of being heard, has taken a decision not to allow retrenchment of the workers as prayed for by the petitioner i.e. the management of the Board, We, therefore, find no illegality in the concerned matter in taking such decision and as such there is no necessity for interference by us in this appeal.

20. But before we conclude, we may put it on record that in terms of provisions of Section 25N(6) of Act of 1947 there is a provision for review with regard to the order for granting or refusing to grant permission under Sub-section (3) of Section 25N. The petitioner/appellant however has not availed of that opportunity but straightaway they have come up before this appellate forum with this appeal but we like to put it on record that if the appellant/petitioner is so advised, they may take appropriate steps for filing a review before the concerned authority and if such application, praying for review in terms of subsection (6) of Section 25N of the Act of 1947 is preferred, the concerned authority is directed to dispose of the same in accordance with law.

21. In the premises, as aforesaid, and upon consideration of the entire materials and having heard the learned Counsels appearing for the parties, we are of the clear opinion that there is no scope for interference with the judgment and order passed by the learned Single Judge. Accordingly, we hold that there is no merit in the appeal and as such it should be dismissed.

22. Consequently, the appeal be and the same is hereby dismissed on contest but without any cost, in the circumstances of the case. The judgment and order passed by the learned Single Judge is hereby affirmed.

N.A. Chowdhury, J.

23. I agree.