
(1957) 04 PAT CK 0005
In the Patna High Court
Case No : Misc. Judl. Case No. 255 of 1956

Sree Behariji Mills Ltd.	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 18-04-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Industrial Disputes Act, 1947 — Section 10, 25F, 25I

Citation : AIR 1957 Patna 488 : (1957) 5 BLJR 384

Hon'ble Judges : Ramaswami, C.J.; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : A.B.N. Sinha and N.L. Untwalia, for the Appellant; Govt. Pleader, Shrideo Misra, R. Roy and T.K. Das, for the Respondent

Final Decision : Allowed

Judgement

1. This is an application made on behalf of the petitioner, Sree Behariji Mills Ltd., for grant of a writ under Article 226 of the Constitution for calling up and quashing the certificate proceeding started against the petitioner in case No. 102 M. C. of 1955/56 pending in the Court of the Certificate Officer of Patna.

2. The petitioner is a Company incorporated under the Indian Companies Act and owns and runs Flour, Oil, Rice and Dal Mills in Mahalla Bharatpur Simri of Patna City. Opposite parties 5 to 12 were employed by the petitioner in the working of the Mills, but on account of old age and ill-health they became unfit for work.

The case of the petitioner is that a notice was given to opposite parties 5 to 12 saying that they would retire with effect from the 1st. March 1955, on payment of one month's salary in lieu of notice and gratuity according to the terms of settlement arrived at between the management and the workmen's Union. Opposite party No. 4 is Patna City Mazdoor Union and its case is that the retirement of opposite parties 5 to 12 was unauthorised and it was really a case of retrenchment and u/s 25F of the Industrial Disputes Act the workmen were entitled to compensation.

It appears that there was an enquiry by the Assistant Labour Commissioner in the matter and no settlement could be arrived at between the parties. It is alleged On behalf of the petitioner that on the 18th January 1956, the Secretary to the Government of Bihar, Labour Department, filed a certificate of public demand for a sum of Rs. 7,242 and odd against the petitioner before the Certificate Officer of Patna. The legal validity of this certificate proceeding was challenged by the petitioner on the ground that the certificate proceeding was ultra vires and without jurisdiction.

3. Cause has been shown in this case on behalf of Patna City Mazdoor Union, opposite party No. 4, and also on behalf of opposite parties 5 to 12, the workmen concerned, in the dispute. Cause has also been shown by learned Government Pleader on behalf of opposite parties 1 to 3.

4. The main question presented for determination in this case is whether the certificate proceeding taken against the petitioner is ultra vires and beyond the jurisdiction of the State Government. On behalf of the petitioner reference is made to Section 25I of the Industrial Disputes Act (Act XIV of 1947) as it stood before the amendment made by amending Act XXXVI of 1956. Section 25I as it stood before the amendment is in the following terms:

"Any money due from an employer under the provisions of this Chapter, whether by way of compensation or by way of wages, may without prejudice to any other mode of recovery, be recovered in the same manner as an arrear of land revenue or as a public demand by the appropriate Government on an application made to it by the person entitled to the money."

In this connection learned counsel on behalf of the petitioner also referred to Section 25F which runs thus:

""No workman employed in any industry 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 one month's 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 notice:

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government."

It is contended on behalf of the petitioner that the State Government has no authority to make investigation into the dispute between the workmen and the employer or to determine whether it is a case of retrenchment or of retirement

or to determine the quantum of compensation payable u/s 25F of the Act. It is argued that Section 25I only applies to a case where the liability is admitted by the employer and not to a case where there is a dispute that retrenchment compensation is not payable u/s 25F of the Act.

The contention put forward on behalf of opposite parties 5 to 12, on the other hand, is that upon a proper interpretation of Section 25I of the Act there is an implied power granted to the Government to make investigation of the dispute between the parties & to ascertain whether there was liability on the part of the employer to pay compensation and also the quantum of compensation which was payable. In our opinion the contention put forward on behalf of opposite parties 5 to 12 is not correct. In our opinion the language of Section 25I must be interpreted to mean that there is pre-determined or ascertained liability and on the basis of this pre-determined or ascertained liability the State Government has a right to initiate proceedings for recovery of the amount in the same manner as an arrear of land revenue or as a public demand.

In other words, the right of the Government to order recovery springs into existence only when there is an ascertainment of the liability of the employer by a competent authority. It is true that there is no machinery provided in the Act for the adjudication of the matter of compensation u/s 25F in the event of a dispute. There is an obvious lacuna in the Act. But it is not the function of a Court of law to go on a voyage of discovery and refill up the obvious omission or lacuna made by the Legislature. It is a well-recognised principle that a Court has power only to interpret and not to add to or amend the law.

It was argued on behalf of opposite parties 5 to 13 that if such an interpretation of Section 25F was adopted the purpose of Section 25I would be rendered nugatory. The argument is not quite correct because the workman is not wholly without remedy, for he can bring the matter before an ordinary civil Court because the statutory right created by Section 25F is a civil right within the meaning of S. 9, Civil Procedure Code. It is also possible, in the case of such a dispute between the employer and the workman, to bring the matter to the notice of the Government and to pray for a reference of the dispute to a tribunal under S. 10 of the Industrial Disputes Act.

It is, therefore, clear that the workman is not wholly without remedy, though recourse to the civil Court would entail hardship upon the workman. The matter has been, however, clarified as a result of the amendment made by Act XXXVI of 1956. The newly-inserted Section 33C(1) expressly grants power to the appropriate Government to, make an enquiry about the legal liability of the employer to pay compensation under any provisions of Ch. V-A.

After the Government is so satisfied it is empowered to issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue. Section 33C(1) of the Act as amended by Act XXXVI of 1956 is in the following terms:

"Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Ch. V-A, the workman may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue."

But we are concerned in the present case with the law as it stood before the amendment made by Act XXXVI of 1956. As we have already said, the language of Section 25I does not warrant the interpretation that the State Government has the power to make an enquiry into the liability to pay compensation u/s 25F if there was a dispute between the employer and the workman whether there was retrenchment or not. This view is borne out by a decision of the Madras High Court in *C.B.R. Ratnam & Co. v. Ekambaram* 19571 Mad LJ 175 (A).

5. For these reasons we hold that the State Government has no authority to issue a certificate for recovery of a sum of Rs. 7,242 and odd against the petitioner in Certificate Case No. 102 M. C. of 1955/56. We, therefore, direct that a writ in the nature of certiorari should be issued to quash the order of the State Government dated the 18th January 1956, issuing a certificate of public demand and all the proceedings of the Certificate Officer taken there after in Certificate Case No. 102 M. C. of 1955-56. We accordingly allow this application. There will be no order for costs.