
(2002) 02 DEL CK 0094

In the Delhi High Court

Case No : Civil Writ Petition No. 275 of 2001

Sree Kumar R.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 26-02-2002

Acts Referred:

Citation : (2002) 5 AD 690 : (2002) 97 DLT 347 : (2003) 97 FLR 709 : (2003) 1 SLJ 200

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Rajiv Dutta and Sachin Das, for the Appellant; Tamali Wad and J. Buther, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—Rule.

2. With the consent of learned counsel for the parties the matter is taken up for final disposal.

3. The petitioner are officers and employees working in different capacities at different centres of Hindustan Vegetable Oils Corporation Limited - respondent No. 2. The performance of respondent No. 2 apparently started suffering from 1991 onwards and in 1996 the case of respondent No. 2 was referred to Disinvestment Commission. The Disinvestment Commission submitted its report and the case of respondent No. 2 corporation was also referred to Board For Industrial And Financial Reconstruction (for short the BIFR) u/s 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short the said SICA) in December, 1999. The BIFR declared respondent No. 2 corporation as a sick industrial company in terms of the provision of Section 3(1)(o) of the said Act. The petitioner and other officers of the respondent No. 2 corporation also moved the BIFR to be imp leaded as party and sought directions for revival of respondent No. 2. Certain directions were passed by the BIFR.

4. The petitioner is aggrieved by the order dated 6.11.2000 issued by the Government of India introducing a Voluntary Separation Scheme (VSS) for the employees of respondent No. 2. The scheme was kept open for a period of 3 months and it was envisaged in the said order that the employees who failed to apply under the scheme would be eligible only for retrenchment under the provisions of the Industrial Disputes Act, 1947. A representation was made by the petitioners for keeping in abeyance the said scheme till the BIFR considers the issue or in the alternative pay wages/compensation in terms of the directions of the Supreme Court relating to the Subzi Mandi unit of respondent No. 2.

5. The petitioner has ultimately filed the present petition seeking the following relief:-

"a) issue a writ of mandamus or any other appropriate writ order or direction directing the respondent to extend the proposed Voluntary Separation Scheme dated 6.11.2000 vide Notification No.F. 5-3/99 HVOC till the final decision is taken by the BIFR for the purposes of revival/rehabilitation of HVOC; and b) issue a writ of mandamus or any other appropriate writ order or direction directing the Respondent authorities to formulate a "Golden Hand Shake" Scheme based on the package as ordered by the Hon"ble Supreme Court in T.A.No. 30 in Writ Petition No. 4677/1985 dated 31.12.96 on the revised wages/salaries"

6. Mr. Rajiv Dutta, learned senior counsel appearing for the petitioner has contended that the basis of the scheme of voluntary separation as also the short period within which the application was sought from the employees is arbitrary and illegal. The said scheme was sought to be implemented under the threat of closure. The learned senior counsel contends that the benefits to be extended to the employees cannot be decided in isolation and that the employees would be entitled for their dues and claims w.e.f. 1.4.97. Thus the contention is that the revision of the pay scale having been given to the other public sector enterprises w.e.f. 1.1.97 should also be made applicable to respondent No. 2 corporation. Mr. Dutta, learned senior counsel, has contended that even the Disinvestment Commission took note of the substantial assets of respondent No. 2 and observed as under:-

"The estimate value of the other freehold real estates owned by HVOCL Units (as per valuation performed by Central Bureau of Direct Taxes (CBDT) in November, 1996) is quite substantial. Hence, the net inflow to Government by closing down all the units by liquidating their assets and selling the breakfast foods unit after settling all the claims and retirement benefits would still be high."

7. Learned senior counsel while contending that the purport of the scheme is in fact to scuttle the proceedings before the BIFR referred to the note to para 6.1.1 of the voluntary retirement scheme of Hindustan Organic Chemicals Limited to the following effect:-

"i) Salary for the purpose of calculation of compensation in respect of officers

shall be notionally on revised pay scales of officers, as approved by the Board of Directors/Government.

ii)....

iii)...

iv) Arrears of salary/wage revision, shall however, become payable only when company generates adequate surplus through improved productivity "and profitability to the satisfaction of Administrative Ministry."

8. The aforesaid Sub-clause 4 is also being reproduced because it has relevance when the matter in question will be considered.

9. The learned senior counsel has also referred to certain proceedings before the BIFR of 1.2.2001 to contend that even BIFR was of the view that VSS extended to the company was an indication to the staff that the company was to be closed down in due course and was a sort of a threat that in case the employees did not accept the VSS they would be paid retrenchment dues. The BIFR observed that the Government could not unilaterally decide this matter.

10. Ms. Tamali Wad, learned counsel for respondent No. 1, on the other hand, has contended that the prayers made in the writ petition have to be seen and no directions can be issued in favor of the petitioner on the existing prayers. Learned counsel has further contended that it is for the first time in rejoinder that a reference has been made to different schemes of voluntary separation retirement of other public sector companies though this was not the case set out in the petition. Learned counsel has referred to (iv) para of the Note referred above to contend that if the two clauses of the Note are read together it would be apparent that the arrears of salary/wages would become payable in that case only when the company generates adequate surplus. The learned counsel also referred to the office memorandum dated 14.1.99 issued by the Ministry of Industries in respect of policy for the 6th round of wages negotiation in public sector enterprises where in para 2 it is stated that as regards sick units registered under the BIFR until BIFR approves revival plans in which provision have been made for additional expenditure on account of pay revision, no pay revision would be allowed to the employees of such enterprises.

11. I have heard learned counsel for the parties at length.

12. In my considered view the illustration of terms of voluntary retirement scheme of other public sector enterprises would not be directly relevant to the case of respondent No. 2. Each company will have its own financial calculations and a scheme has to be devised keeping in mind the financial position of that company. There may be situations where in one particular scheme additional emoluments are paid but they may be deferred depending on the amounts generated as in the case mentioned above. These are matters of weighing the economic condition of a particular company and no uniform pattern can be made in respect of the same.

13. In the earlier order dated 16.1.2002 it was already noted that present writ petition is really related to two reliefs. In so far as the second relief is concerned the same is based on a package as was directed by the Hon''ble Supreme Court in is 30 in Writ Petition No. 4677/85 dated 31.12.96. The said package was in the peculiar facts of that case as units were directed to be shifted from the existing places being polluting units. The package was applicable not only to the unit of respondent No. 2 but also to all such polluting units. The said direction can by no means be made applicable to the issue of general viability of respondent No. 2 unit nor can that form the basis for the grant of any voluntary separation scheme or otherwise.

14. The first relief claimed in the writ petition is for extension of time for voluntary separation scheme. Admittedly, the petitioner and other employees applied under the said scheme, have been considered under the said scheme and have availed of the benefits of the said scheme. It may, however, be noted that the said scheme was availed of without prejudice to the rights and contentions of the petitioner in terms of the order dated 12.1.2001.

15. The contention of learned senior counsel for the petitioner that the benefit of 1997 wages should be given to the petitioners cannot be sustained as admittedly that is not in the package offered under the VSS scheme. Not only this respondent No. 2 is before the BIFR and in terms of the office memorandum dated 14.1.99 the revision of wages was subject to the provisions to be made for additional expenditure on account of such pay revision where companies like respondent No. 2 were before the BIFR.

16. It may also be noted that during the pendency of the present writ petition the proceedings before the BIFR have been concluded and have culminated in an order dated 7.12.2000.

17. It may be in the end noted that these are matters of economic consideration working out packages taking the overall health of the company in consideration. The Constitution Bench of the Supreme Court had the occasion recently to consider the case of Disinvestment in the case of BALCO Employees Union (Regd.) Vs. Union of India and Others, . The relevancy of the said judgment is to the extent as to what is the scope of enquiry by the courts in the matters relating to economics and functioning of the companies. While dealing with the rights of the employees the Supreme court observed as under:-

"47. process of disinvestment is a policy decision involving complex economic factors. The Courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so vocative of constitutional or legal limits on power or so abhorrent to reason, that the Courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bonafide and within limits

of authority. There is no case made out by the petitioner that the decision to disinvest in BALCO is in any way capricious, arbitrary, illegal or uninformed. Even though the workers may have interest in the manner in which the Company is conducting its business, inasmuch as its policy decision may have an impact on the workers' rights, nevertheless it is an incidence of service for an employee to accept a decision of the employer which has been honestly taken and which is not contrary to law. Even a government servant, having the protection of not only Articles 14 and 16 of the Constitution but also of Article 311, has no absolute right to remain in service. For example, apart from cases of disciplinary action, the service of government servants can be terminated if posts are abolished. If such employee cannot make a grievance based on part III of the Constitution or Article 311 then it cannot stand to reason that like the petitioners, non-government employees working in a company which by reason of judicial pronouncement may be regarded as a State for the purpose of Part III of the Constitution, can claim a superior or a better right than a government servant and impugn its change of status. In taking of a policy decision in economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects into consideration including welfare of the labour before taking any policy decision that, by itself, will not entitle the employees to demand a right of hearing or consultation prior to the taking of the decision.

48. Merely because the workman may have protection of Articles 14 and 16 of the Constitution, by regarding BALCO as a State, it does not mean that the erstwhile sole shareholder viz., Government had to give the workers prior notice of hearing before deciding to disinvest. There is no principle of natural justice which requires prior notice and hearing to persons who are generally affected as a class by a economic policy decision of the Government. If the abolition of a post pursuant to a policy decision does not attract the provisions of Article 311 of the Constitution as held in *State of Haryana v. Shri Des Raj Sangar and Anr.*, (1976) 2 SSC 844, on the same parity of reasoning, the policy of disinvestment cannot be faulted if as a result thereof the employees lose their rights or protection under Articles 14 and 16 of the Constitution. In other words, the existence of rights of protection under Articles 14 and 16 of the Constitution cannot possibly have the effect of vetoing the Government's right to disinvest. Nor can the employees claim a right of continuous consultation at different stages of the disinvestment process. If the disinvestment process is gone through without contravening any law, then the normal consequences as a result of disinvestment must follow."

18. It is thus apparent from a reading of the aforesaid judgment that the Supreme Court has held that employment of the employees with a public sector enterprise is an incidence of the service of the employee and the employee would thus be bound by the decision taken honestly which is not contrary to law. It is further held that there is no right in the employees to demand hearing or consultation prior to the taking of the decision.

19. The petitioner is thus not entitled to any of the reliefs claimed in the petition. In view of the aforesaid facts and circumstances I am of the considered view that no case is made out for interference under Article 226 of the Constitution of India.

20. Dismissed.