

(2016) 09 OHC CK 0055
In the Orissa High Court
Case No : O.J.C. No.3466 of 1995

Sri Swapan Kumar Pathak

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 13-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25-FFF
Orissa Industrial Disputes Rules, 1959 — Section 82

Citation : (2016) 151 FLR 709 : (2016) 4 LLJ 210

Hon'ble Judges : Kumari Sanju Panda and Shri Sujit Narayan Prasad, JJ.

Bench : Division Bench

Advocate : M/s. S. Mishra, B.K. Sahoo, K.C. Sahoo and S.K. Mohapatra, Advocates, for the Petitioner; M/s. K.N. Jena, A. Jena, R. Rath, B.D. Tikayat and D.K. Mohapatra, Advocates, for the Opposite Parties No. 3

Final Decision : Disposed Off

Judgement

S.N. Prasad, J.—This writ petition is against the award dated 8.11.1994 passed in Industrial Dispute Case No.63 of 1992 whereby and where

under the workman has been held to be entitled to closure compensation under section 25-FFF of the Industrial Disputes Act, 1947.

2. The award has been challenged by the workman on the ground that the Labour Court has not taken into consideration the facts before holding

closure of the Undertaking legal without giving a finding in this regard as to whether closure is in consonance with the statutory provision or not.

According to the workman since the closure itself is not proper hence the order of payment of closure compensation is illegal. It has been

submitted that he has raised specific issue in this regard but the same has not been answered rather no finding has been given by the Labour Court

in this regard. It has been submitted that since sister concern of the establishment is in existence as such it cannot be said that the Undertaking has been closed rather the workman can be adjusted in the sister concern, this matter has been raised before the Labour Court but it has not been answered.

3. The management has been represented by learned counsel who while defending the award has submitted that the Undertaking has been closed

w.e.f. 5.1.1991 and due to closure the Undertaking as required under the statute has been given notice, hence it cannot be said that the closure is

contrary to the statutory provision. It has been submitted that since closure is in consonance with the statute, hence the Labour Court has rightly

passed the award directing to make payment of closure compensation which suffers from no infirmity.

4. After having heard learned counsel for the parties, we find that when service of the workman has been dispensed with, he has raised a dispute

against his termination and on failure of conciliation, Reference has been made to the effect-

Whether the termination of services of Sri Swapan Kumar Pathak, Supervisor by the management of Atlas Engineering Works Pvt. Ltd.,

Mancheswar Industrial Estate, Bhubaneswar with effect from 7.1.1991 is legal and/or justified? If not, to what relief is he entitled?

5. The Labour Court has passed the award which is not challenged on the pretext that the management Undertaking has since been closed, hence

the workman is entitled for closure compensation in view of the provisions as contained in Section 25-FFF of the I.D.Act and accordingly the

Labour Court has passed the award keeping that fact into consideration by directing to pay closure compensation in pursuance to the provisions as

contained in Section 25-FFF of the I.D. Act.

6. Before answering the issue raised it would be relevant to go through the provisions of Section 25-FFF of the Industrial Disputes Act,1947

which contains a provision to pay compensation to workman in case of closing down of Undertaking, object of Section 25-FFF are to

(a) provide for involuntary unemployment in case of closure of an undertaking;

(b) to create a sense of security in a worker to a reasonable extent that in case he sticks to his work he will not be thrown out when his

employment is terminated either when the industry continues to run or when it is closed down for any reason including one due to transfer of

business to a new employer or due to its closure on the ground of expediency; and

(c) to raise the position and status of labour and to standardise its rights in relation to industry.

The provisions stipulates that it is as much a fundamental right of an employer to close down his business as to carry on the business but before

doing that procedure as provided under section 25FFF is to be complied with by giving closure compensation.

Procedure of closure has been provided under section 25(O) of the Industrial Disputes Act, 1947 which has been inserted w.e.f. 21.8.1984 by

way of Act 46 of 1982. This provision confers power upon an employer who intends to close down an undertaking of an industrial establishment,

but prior permission at least ninety days before the date on which the intended closure is required from the appropriate Government, stating clearly

the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of

the workmen in the prescribed manner. This Act enacted w.e.f. 21.8.1984 but the State of Orissa has formulated a rule in exercise of power

conferred by Section 38 of the Industrial Disputes Act in the name of Orissa Industrial Disputes Rules, 1959, for the purpose Section 25(O) is

made applicable with respect to the provision as contained in Chapter V-B and taking into consideration the fact that what would be the procedure

for closure a specific provision has been made under Rule 82-A having incorporated on 14.4.1976 which contained a provision of notice of

permission for closure in an industrial dispute to which Chapter-V-B of the Act does not apply if an employer intends to close down Undertaking,

he shall give notice of such closure in Form U to the State Government, the Labour Commissioner, Local Conciliation Officer and Director of

Employment, Orissa by registered post.

Thus, before closure certain procedure has to be followed as discussed above. In the light of this statutory provision, now it is to be seen as to

whether the award passed by the Tribunal in closure of the unit is in consonance with the statutory provisions or not?

7. We have, after going through the award and the deposition, found that the workman has taken specific plea that the closure itself is not in consonance with the statutory provision and as such it cannot be said that the Undertaking has been closed and the closure of Undertaking itself is bad, so there cannot be application of Section 25-FFF but without answering the issue of closure of undertaking as to whether it is legal or justified, the Labour Court has answered the reference by treating the industry as closed undertaking and passed the award of closure compensation. We have not found that the Labour Court has whispered about this issue which has been raised by the workman and without having discussed the provision of section 82 of the Orissa Industrial Disputes Rules, 1959 has declared the unit as closed and thereafter closure compensation has been directed to be paid.

Thus, there is perverse and error apparent on the fact of the record. We are of the conscious of the fact that the finding given by the Tribunal or the Labour Court while adjudicating the issue writ Court should not act as an appellate court in exercise of power conferred under Article 226 of the Constitution of India but simultaneously it is also to be seen by the High Court if anything is perverse or if there is error apparent on the face of the record, in order to rectify the same writ court has got power to judicially review the order by issuing writ of certiorari, in this regard reference needs to be made of the judgment rendered by Hon'ble Apex Court in the case of Syed Yakoob v. K.S. Radhakrishnan and others, AIR 1964 SC 477 wherein in paragraph 7 their Lordships have been pleaded to hold as follows:-

7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the

order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

The proposition laid down by the Hon'ble Apex Court in the case of Syed Yakoob (supra) still holds good since the same has been considered by Hon'ble Apex Court recently in the case of M/s. Pepsico India Holding Pvt. Ltd. v. Krishna Kant Pandey, (2015) 4 SCC 270 wherein their Lordships while discussing the scope of Article 226 of the Constitution of India in the matter of showing interference with the finding of the Tribunal has been pleased to hold after placing reliance upon the judgment rendered in the case of Chandavarkar Sita Ratna Rao v. Ashalata S. Guram, (1986) 4 SCC 447 as follows:

17. In case of finding of facts, the court should not interfere in exercise of its

jurisdiction under Article 227 of the Constitution. Reference may be made to the observations of this Court in *Bathutmal Raichand Oswal v. Laxmibai R. Tarta* where this Court observed that the High Court could not in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. The High Court was not competent to correct errors of facts by examining the evidence and re-appreciating. Speaking for the Court, Bhagwati, J. as the learned Chief Justice then was, observed at p. 1301 of the report as follows: (SCC p. 864, para 7)

The special civil application preferred by the appellant was admittedly an application under Article 227 and it is, therefore, material only to consider the scope and ambit of the jurisdiction of the High Court under that article. Did the High Court have jurisdiction in an application under Article 227 to disturb the findings of fact reached by the District Court? It is well settled by the decision of this Court in *Waryam Singh v.*

Amarnath that the ... power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in *Dalmia Jain Airways v. Sukumar*

Mukherjee to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors.

This statement of law was quoted with approval in the subsequent decision of this Court in *Nagendra Nath Bose v. Commr. of Hills Division* and it was pointed out by Sinha, J., as he then was, speaking on behalf of the court in that case:

It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the power under Article 226 of the Constitution. Under Article 226 the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority.

8. The proposition laid down by the Hon'ble Apex Court in this regard as referred to above, it is evident that the writ court should interfere with the finding of the Labour Court or the Tribunal if the finding is perverse or if there is error apparent on the face of record and as we have discussed

herein above that there is perverse and error apparent on the face of the record, we, in exercise of powers under Article 226 of the Constitution of

India, thought it proper to set aside the award impugned in this writ petition. Since the workman has raised legal question regarding validity of

closure of the Undertaking, hence the matter needs adjudication afresh and for that purpose the matter is remitted before the Labour Court,

Bhubaneswar for its fresh adjudication by providing opportunity to the parties to lead evidence.

9. In terms thereof, the writ petition stands disposed of.