

(2004) 04 OHC CK 0015

In the Orissa High Court

Case No : Original Jurisdiction Case No. 6806 of 1995

Surendra Nath Biswal and Others

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 02-04-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 25O(6), 33C, 33C(2), 33C(4)

Citation : (2004) 98 CLT 52 : (2004) 102 FLR 415 : (2004) 1 OLR 647

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : Satyabadi Mishra, B.K. Sahoo and K.C. Sahoo, for the Appellant; J.K. Tripathy, B.P. Tripathy, S.N. Mishra, P.K. Chand, A. Mohanty and D. Satpathy for O.P. No. 2, for the Respondent

Judgement

A.S. Naidu, J.—24 workmen had approached the Labour Court by filing an application u/s 33-C(2) of the Industrial Disputes Act (hereinafter referred to as "the Act") praying for computation of their wages for the period from 31.7.1984 to 31.10.1985. The said petition was registered as I.D. Misp. Case No. 225 of 1985. All the workmen were working in the Textile Division of the Orissa Textile and Steel Ltd., Nayabazar, Cuttack.

2. Bereft of unnecessary details, the short facts leading to raising the dispute under the Act is that while the Textile Unit of Opposite Party No. 2 was running smoothly, the authorities of the Company on 12.3.1984, it is alleged, submitted an application to the Government of Orissa to grant permission to close down the said Unit. It is alleged that the Assistant Labour Commissioner, who was acting as the appropriate authority of the Government, after conducting due enquiry and verification of the records and after giving opportunity to both the employees and the employer by order dated 17.4.1984 refused to grant permission to close down the unit. The said order was passed in exercise of the power conferred upon the authority u/s 25-O of the Act.

After receiving the order, opposite party No. 2 - Management without challenging

the legality or authority of the order once again submitted a second application to the Government on 19.4.1984 seeking permission to close down the Textile Unit with effect from 21.7.1984. The Government in the Labour and Employment Department treated the second application of the Management- opposite party No. 2 as a Review application and in exercise of the power u/s 25-O(5) of the Act after conducting due enquiry by order dated 18.7.1984 refused permission for the intending closure. The said order was published in the Orissa Gazette dated 18.7.1984 vide Annexure 2. It is pertinent to mention here that the said order of the Government refusing permission for closure, though duly served on the Management, was not challenged.

3. In the scenario aforesaid, the petitioners- workmen those services were neither terminated nor retrenched and who were deemed to be continuing in service in consonance with Section 25-O(6) of the Act finding no other alternative approached the labour Court by filing a petition u/s 33-C(2) of the Act for computation of their wages as stated earlier.

4. On receiving notice, the Management- opposite party No. 2 appeared and filed a petition questioning the maintainability of the said case. The same having been rejected the order was challenged before this Court in OJC No. 4278 of 1989. The writ application was disposed of on 22.12.1989 with a direction to the Labour Court to decide the question of maintainability as preliminary issue. It was decided in favour of the workmen. The Labour Court held that the petition was maintainable. The said order was again challenged before this Court in OJC No. 1808 of 1991 which was dismissed on 12.4.1994.

5. In the show cause, opposite party- Management took the plea that the earlier application filed by them was rejected on technical ground and as such, the second application was maintainable. It is also submitted that the order refusing to accord permission passed by the authority u/s 25-O(5) of the Act was unjust, illegal and cannot be sustained.

6. The Labour Court, it is submitted, without appreciating the legal position as to whether the workmen were entitled to wages if the Government refused to accord permission to the closure of the Unit, disallowed the petition filed by the petitioners by order dated 13th December, 1994. The said order is impugned before this Court in the present writ application.

Section 25-O(6) of the Act reads as follows :

"(6) Where no application for permission under Sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down."

7. Thus, law is well settled that if permission for closure of an undertaking has been refused by the Government, the workmen shall be entitled to all the

benefits under any law for the time being in force as if the undertaking had not been closed down. Admittedly, in the present case, by notification dated 18.7.1984, the Government in exercise of the powers conferred upon it u/s 25-O(6) of the Act refused to grant permission for the intended closure of the Textile Unit of the Orissa Textile and Steel Ltd., Nayabazar, Cuttack and as such in consonance with the provision of Section 25-O(6), the petitioners, who were admittedly the workmen, are entitled to the benefits. The Court below lost sight of the fact that the order refusing to grant permission was passed by the State Government as long back as on 18.7.1984 and the same was notified in the Orissa Gazette on 18.7.1984. It is not disputed from the Bar that the said order has not been challenged as yet.

8. Section 33-C of the Act vests a power upon the Labour Court to determine the disputes regarding the right of the workman to receive the amount claimed by him, that power did not extend so far as to determine industrial disputes. The scope of the Labour Court under this Section can be catalogued as follows :

"(1) If the claim of a workman involves an adjudication of disputes, which falls within the definition of an industrial dispute as given in the Act, then that dispute cannot be resolved u/s 33-C(2).

(2) If a claim in the nature of an execution application relating to an industrial award or settlement is made then Section 33-C(2) is available.

(3) Even other claims of workmen not arising out of awards or settlements can be made the subject matter of claim u/s 33-C.

(4) If such claims are disputed, the dispute can be resolved and the claims quantified by the Labour Court, unless the disputes raised amount to industrial disputes.

(5) If there is a subsisting relationship of master and servant or employer and employee, then the Labour Court has jurisdiction u/s 33-C(2) to determine the scope of the contract for quantifying the claim made.

(6) If the relationship of master and servant etc. has been terminated, then the Labour Court cannot determine the validity of the termination for the purposes of determining a money claim.

(7) If a workman makes a claim for additional wages (beyond his contract) or relating to the conditions of his work, then it is a matter beyond the Labour Court's power u/s 33-C(2) because the claim falls within the scope of an industrial dispute."

9. On reading of the impugned order, it clearly reveals that the Labour Court has not kept in mind the admitted fact that the order refusing to grant permission for closure of the Unit passed by the competent authority in exercise of the powers conferred upon him u/s 25-O(f) of the Act (Annexure-2) has not been varied or set aside. The Court below has also not kept in mind the mandatory provision of

Section 25-O(6) of the Act. Thus, the order, according to me, suffers from the vice of non-consideration of material facts and law. I have, therefore, no hesitation to quash the impugned order dated 13.12.1994 passed in I.D. Misc. Case No. 225 of 1985 and remand the matter to the Labour Court for disposal of the said case de novo keeping in mind the observations made above.

10. The writ application is disposed of. No costs.