

(2000) 12 KAR CK 0037

In the Karnataka High Court

Case No : W.A. No's. 3598 and 4196 C/W 3884 of 1999

Systems Manufacturing Ltd.

APPELLANT

Vs

Systems Employees' Association

RESPONDENT

Date of Decision : 14-12-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 25 FFA, 25 H

Citation : (2001) 2 LLJ 112

Hon'ble Judges : Manjula Chellur, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : R.N. Narasimhamurthy and S.N. Murthy, for the Appellant; K. Subba Rao and J. Srinivasan, for the Respondent

Judgement

G.C. Bharuka, J.—Both the workmen and the management have preferred these two writ appeals against the common order passed by the learned single Judge in two writ petitions filed independently by them against the award of the Industrial Tribunal, Bangalore, in I.D. No. 27/1990 (Annexure-A).

FACTS

2. In the year 1971, Systems Manufacturing Limited had established a factory in Peenya Industrial Area, Bangalore, for manufacture of material handling equipment. For various reasons, reasonableness or legality whereof need not be gone into for the present, the workmen of the said factory went on strike from January 23, 1984. According to the Management the workmen also indulged in various acts of indiscipline during the strike like obstruction of entry into and exit out of the factory premises, prevention of despatches of factory goods, etc.

3. According to the Management, all possible efforts were made to persuade the workmen to resume work but it was all in vain. Ultimately, the Management closed down the factory with effect from May 2, 1984 and consequently terminated the services of all the workmen after giving notice in terms of Section 25-FFA of the Industrial Disputes Act, 1947 (in short the "Act") and offering

closure compensation to them.

4. Subsequent to the above legal steps taken by the Management, the contesting parties sat across the table in order to work out a mutual agreement in order to avoid any future litigation with regard to their relationship, rights and obligations. Ultimately, they arrived at a settlement, which was recorded in writing on September 8, 1984 and signed by all the 52 workmen working on the date of closure of the factory and representative of the management. Copy of the Memorandum of Settlement has been filed as Annexure A.

5. The Memorandum of Settlement, after setting out the brief narration of the facts, which had led to the closure of the factory, the circumstances and the purpose of arriving at the Settlement, has spelt out the terms thereof. The material terms of the present purposes are reproduced hereunder. These are,--

TERMS OF SETTLEMENT

(i) It is agreed that the 52 workmen whose names are shown in Annexure to this Settlement by virtue of their not resigning voluntarily will be paid their legal compensation like 15 days' pay for every completed year of service along with all other dues like leave wages, earned wages, overtime wages, notice pay, bonus, gratuity etc. if eligible as per law in this regard.

(ii) It is further agreed that in addition to the abovementioned legal compensation, an amount equivalent to one month's wages for every year of completed service will be paid as exgratia payment in full and final settlement of all the claims of the Union and workmen, including the claim for re-employment, if and, when, the unit is re-opened in any manner.

(iii) The Union and workmen have agreed to receive the amounts mentioned in Clauses (i) and (ii) above, in full and final settlement of all their claims including reinstatement, closure compensations, earned wages, leave wages, bonus, gratuity, overtime payment, service compensation, notice pay, etc. and they will have no other claim whatsoever against the management.

(ix) It is further understood that by receiving the compensation as well as the exgratia amounts mentioned in Clauses (i) and (ii) above, the employer-employee relations will cease and workmen will have no claim for re-employment or for any compensation against this company.

(x) Consequent to this Settlement, the, management will be free to shift any machinery from the present place to any other premises or to start any manufacturing activities temporarily till the present premises is handed to the buyer who has already finalised the deal.

6. It is not in dispute that the workmen, who are before us, were party to the Settlement and had received their statutory compensation as well as the exgratia payments as per the Settlement at Annexure "A". Therefore, from the date of entering into the Settlement and as per term (ix) thereof, the relationship of

employer and employee became severed and both became entitled to choose their future courses independent of any right or obligation, contractual or statutory, operating over or against each other. It is nobody's case that the Settlement at Annexure "A" was entered into because of any coercion, undue influence, fraud or misrepresentation. The parties do not dispute that they had agreed to the terms of the Memorandum of Settlement out of their free will in order to defuse the hardships felt by both the parties and considering the considerations contained therein to be the best in their interest. It is also not their case that entering of such a contract was opposed to any law.

7. Therefore, Memorandum of Settlement at Annexure "A" answers to the definition of statutory settlement as defined u/s 2(p) of the Act, which has a binding effect in terms of Section 18 of the Act which declares that:

18. Person on whom settlements and awards are binding. - (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

8. Notwithstanding the above facts and the statutory provisions, at the instance of the workmen, the State Government by its order No. SWL 176 LDD 90, dated June 25, 1990, referred a dispute to the Industrial Tribunal for adjudication of the following questions:

"(a) Are the workmen of Systems Manufacturing Limited, No. 1A Peenya Industrial Estate Area, II Phase, Bangalore, justified in claiming that the closure declared by the said management with effect from April 24, 1984 was not bona fide since establishment has started functioning again.

(b) If so, are they justified in claiming reinstatement of the following workmen with back wages, continuity of service and all consequential benefits."

9. The parties appeared before the Tribunal, filed their Statement and adduced evidence both oral and documentary. Subsequently, on hearing them, the Tribunal passed its impugned award dated February 19, 1998 (Annexure "L") by holding that-

"The reference is partly allowed, holding that the closure declared by the II party Management with effect from April 24, 1984 (deemed to be dated May 2, 1984) is not bona fide since the establishment has started functioning again and the 1st party workmen are entitled for full wages and all other consequential benefits with effect from May 2, 1984 to March 31, 1991. In the circumstances of the case, I pass no order as to costs."

10. As noticed above, being dissatisfied with the said award, both the workmen and the management preferred independent writ petitions. But the learned single Judge dismissed both the writ petitions by the impugned order concurring with the award of the Industrial Tribunal.

11. We have heard Sri. R.N. Narasimha Murthy and Mr. K. Subba Rao, learned Senior Advocates, appearing for the management and the workmen respectively.

12. According to Sri. R.N. Narasimha Murthy, learned senior counsel, appearing for the management, once the parties had entered into a binding Settlement, then their relationship as of employer and employee stood severed and, therefore, even if it is accepted that the work in the factory of the management had in fact been recommenced, still the workmen are not entitled in law to claim any statutory right for reappointment and that too with back wages. His further submission was that since in the present case, the factum of closure of the factory on May 2, 1984 being not in dispute, recommencement of trading activities, which according to him was only to clear the backlog of orders cannot make closure short of bona fide or non est in the eye of law. In support of his contentions, he has referred to various pronouncements of the Apex Court which will be referred to hereinafter.

13. On the other hand, Mr. Subba Rao, learned senior counsel, appearing for the workmen, while supporting the findings of the Industrial Tribunal, has raised a grievance that both the Tribunal as well as the learned single Judge have failed to appreciate that once the closure is found to be lacking in bona fide, the workmen are entitled to reinstatement with full back wages with continuity of service, and not only full wages from May 2, 1984 (date of closure) till March 31, 1991, date on which the factory premises was leased out to a third party. He has also relied on several citations in support of his case to which we will be attending while weighing the rival contentions and drawing our conclusions.

14. Before proceeding to examine the submissions made at the Bar, it may be worth to notice at the very threshold that the first point of reference clearly contains a mistake apparent on the face of the record regarding the date of closure. The reference speaks of date of closure as April 24, 1984 but both the Memorandum of Settlement at Annexure "A" as also as found by the Tribunal, the date of closure is admittedly May 2, 1984. As of fact and as is borne out from the records of the case, April 24, 1984 is the date on which the management had declared lock-out and not closure. Admittedly, workmen were deemed to be in service from April 24, 1984 to May 2, 1984 (lock-out period) and they had been paid their due wages for this period.

15. The other aspect which is immensely material for present case is that the execution and legality of the Memorandum of Settlement dated September 8, 1994 (Annexure "A") was never called in question. But still both the Tribunal as also the learned single Judge have held that Clause (ii) of the Settlement is contrary to Section 25-F of the Act since this clause forfeits the right of reemployment of the workmen.

16. In the above backdrop, now we proceed to examine the terms of reference, which were referred to the Tribunal for adjudication since it was not competent on the part of the Tribunal to traverse beyond the same, which is a well

established legal principle in view of the judgments of the Supreme Court in the cases of Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others, and Pottery Mazdoor Panchayat Vs. Perfect Pottery Co. Ltd. and Another, .

17. In the latter case, it has been held in Pottery Mazdoor Panchayat Vs. Perfect Pottery Co. Ltd. and Another, :

"11. The very terms of the references show that the point of dispute between the parties was not the fact of the closure of its business by the respondent but the propriety and justification of the respondent's decision to close down the business. That is why the references were expressed to say whether the proposed closure of the business was proper and justified. In other words, by the references the Tribunals were not called upon by the Government to adjudicate upon the question as to whether there was in fact a closure of business or whether under the pretence of closing the business the workers were locked out by the management. The references being limited to the narrow question, as to whether the closure was proper and justified, the Tribunal by the very terms of the references had no jurisdiction to go behind the fact of closure and inquire into the question whether the business was in fact closed down by the management."

18. In the present case, as already stated above, the question referred to the Tribunal was as to whether the closure declared by the management w.e.f. April 24, 1984 (in fact it was May 2, 1984) was bona fide or not, since the management had started the factory again.

19. From the reference so made by the Government it was clear that the dispute did not pertain to the factum of closure, which in fact as effected on May 2, 1984 as already discussed above, but it pertained to as to whether in view of alleged subsequent restarting of the factory, the closure can be held to be lacking in bona fide. Therefore, the two questions, which were required to be examined by the Tribunal were as to (i) whether the management had in fact re-started the manufacturing of goods in its factory at Peenya Industrial Estate, Bangalore, at any point of time subsequent to its closure on May 2, 1984 and (ii) if in fact it was so re-started, whether it can have any legal effect on the closure of the factory effected earlier i. e. whether it can be declared for legal purposes that the closure had never taken place, thereby entitling the retrenched workmen to claim benefit of back wages, continuity of service and all consequential benefits.

20. So far as the factum of closure of the factory on May 2, 1984 is concerned, though the Tribunal was incompetent to enter into the correctness thereof, but still this stood duly established from the documentary and oral evidence brought on record. In Paragraph 15 of the award, the Tribunal has noticed that it is also to be noted that in view of the circumstances beyond control of the management, the II party has closed its unit on May 2, 1984 as contended by the II party. It is not in dispute that the closure is with effect from May 2, 1984. Even the witness (M.W. 1) has admitted in his cross-examination that factory

was closed on May 2, 1984. Apart from the above, in the Settlement between the parties arrived at on September 8, 1984, which was exhibited as Ex.M. 1 before the Tribunal and filed as Annexure "A" to the writ petition, It was very clearly stated that:

"Whereas, the workmen have gone on strike with effect from January 23, 1984 to press their demand pertaining to unit of Engineering Systems Private Limited situated at Hosur, and

Whereas the representatives of management and Union have had discussions on various occasions to call off the strike and could not come to any settlement and thereof the strike continued and the management declared closure of the unit situated at Peenya, Bangalore, on May 2, 1984, on the grounds of continuous labour unrest, indisciplined behaviour and serious problems created by the workmen because of their strike and the consequential economic reason etc."

21. Admittedly, the above Settlement has been signed not only by the contesting workmen but also by the legal advisor to the workers Union and its Secretary. A bare reading of the above Memorandum of Settlement also clearly spells out that the factory was certainly closed on May 2, 1984 and had at least remained so till September 8, 1984 date on which Settlement (Annexure "A") was entered into. Despite this unassailable documentary evidence, the Tribunal in Paragraph 19 of its award has concluded that the manufacturing activities in the factory at Bangalore was continuing from 1984 to March 31, 1991 which is a clear error apparent on the face of the record.

22. The Tribunal has recorded the above finding not only by exceeding its jurisdiction but in so doing it has also committed grave error of record. It appears that this mistake has been committed by the Tribunal because of intermixing of facts pertaining to the activities of the two factories of the Company one at Hosur and another at Peenya Industrial Estate, Bangalore. The Tribunal ought to have borne in mind that the dispute referred to it pertained to the factory of the management at Bangalore and not Hosur. In any view of the matter, one has to proceed on the factual premise that the factory at Peenya Industrial Estate, Bangalore, had in fact been closed on May 2, 1984 after due observance of statutory requirements.

23. In the context of first question referred to the Tribunal by the Government, the next aspect to be addressed is as to whether after the factory was closed, the management was debarred from reopening the same with the change of circumstances and if so permitted, whether the reopening can lead to the legal presumption that closure of the factory at earlier point of time was mala fide and thus non est in the eye of law.

24. For examining the above question, we would like to refer to some of the judgments of the Supreme Court which have delved into this legal aspect.

25. In the case of Isha Steel Treatment, Bombay Vs. Association of Engineering

Workers, Bombay and Another, , it has been held at p. 432 of LLJ:

"8. It is not necessary that in order to effect closure of business the management should close down all the branches of its business, In Management of Hindustan Steel Ltd. Vs. The Workmen and Others, this Court has held that the word "undertaking" used in Section 25-FFF seems to have been used in its ordinary sense connoting thereby any work, enterprise, project or business undertaking. It is not intended to cover the entire industry or business of the employer. Even the closure or stoppage of a part of the business or activities of the employer would seem in law to be covered by the said provision. In deciding the above case this Court relied upon its earlier decision in Workmen of the Indian Leaf Tobacco Development Co., Ltd., Guntur Vs. The Management of Indian Leaf Tobacco Development Co. Ltd., Guntur, . In that case the Court observed that a genuine closure of depots or branches, even though it did not amount to closure of the business could not be interfered with by an Industrial Tribunal. It further held that the closure was stoppage of part of the activity or business of the management and such stoppage is an act of management which is entirely in the discretion of the management. The Court further observed that no Industrial Tribunal could interfere with the discretion exercised in such a matter."

26. In the case of Kalinga Tubes Ltd. Vs. Their Workmen, , the Apex Court has held at p. 563 of LLJ:

"The discussion of the above decisions yields the result that the entire set of circumstances and facts have to be taken into account while endeavouring to find out if in fact, there has been a closure and the Tribunal or the Court is not confined to any particular fact or set of facts or circumstances. In one case the Management may decide to close down an undertaking because of financial or purely business reasons. In another case it may decide in favour of closure when faced with a situation in which it is considered either dangerous or hazardous from the point of view of the safety of the Administrative staff or members of the Management or even the employees themselves to carry on the business. The essence of the matter, therefore, is the factum of closure by whatever reasons motivated."

27. In the case of General Labour Union (Red Flag) Bombay Vs. B.V. Chavan and Others, , the Supreme Court had addressed itself to the question as to whether revival of industrial activities subsequent to its closure can have a bearing on the factum of closure. In Paragraph 11 of the judgment, it has been held at p. 84 of LLJ:

"11. While examining the employer as imposed a lockout or has closed the Industrial establishment, it is not necessary to approach the matter from this angle that the closure has to be irrevocable, final and permanent and that lock-out is necessarily temporary or for a period. The employer may close down industrial activity bona fide on such eventualities as suffering continuous loss, no possibility of revival of business or inability for various other reasons to continue

the industrial activity. There may be a closure for any of these reasons though these reasons are not exhaustive but are merely illustrative. To say that the closure must always be permanent and irrevocable is to ignore the causes which may have necessitated closure. Change of circumstances may encourage an employer to revive the industrial activity which was really intended to be closed. Therefore, the true test is that when it is claimed that the employer has resorted to closure of industrial activity, the Industrial Court in order to determine whether the employer is guilty of unfair labour practice must ascertain on evidence produced before it whether the closure was a device or pretence to terminate services of workmen or whether it is bona fide and for reasons beyond the control of the employer. The duration of the closure may be a significant fact to determine the intention and bona fides of the employer at the time of closure but is not decisive of the matter. To accept the view taken by the Industrial Court would lead to a startling result in that if an employer who has resorted to closure, bona fide wants to reopen, revive and restart the industrial activity he cannot do so on the pain that the closure would be adjudged as a device or pretence. Therefore, the correct approach ought to be that when it is claimed that the employer is not guilty of imposing a lockout but has closed the industrial activity, the Industrial Court before which the action of the employer is questioned must keeping in view all the relevant circumstances at the time of closure decide and determine whether the closure was a bona fide one or was a device or a pretence to determine the services of the workmen. Answer to this question would permit the Industrial Court to come to the conclusion one way or the other."

28. From the law so enunciated by the Supreme Court in the above judgments, it is no more permissible for anybody to hold that because of the change of circumstances found by the management to be favourable, if the industrial activities are revived, the closure declared earlier for good and bona fide reasons, has to be held as mala fide and as such non est in the eye of law.

29. Keeping in view the above legal principles at the forefront, even if the facts stated in the reference made to the Tribunal are accepted on its face value, the only permissible answer could have been that the closure per se was not mala fide and as such, on this ground, no relief was admissible to the workmen.

30. Now, coming to the factual finding recorded by the Tribunal regarding re-starting of the manufacturing unit, it is better to quote the finding itself as arrived at in Para 19 of the award, which is to the following effect:

"I am of the considered opinion that the manufacturing activities in the 2nd party management at Bangalore and Hosur was proceeding from 1984 to March 31, 1991.

31. It is difficult to understand the purport of the above finding of the Tribunal. The reference made to it had not required the Tribunal to say anything about manufacturing activities of the Hosur Unit. But, for one or the other reason, it

has tried to mix up the activities of the Bangalore Unit and Hosur Unit. It has avoided to answer in specific terms as to whether after closure, any manufacturing activity was commenced at the Bangalore Unit. As of fact, in the impugned award, the Tribunal could not refer to any evidence which could reasonably suggest that after closure of Bangalore Unit, any manufacturing activities had at all been carried on there. As per Para 18 of the evidence of one G. Ganesh, WW-3, he appears to have supplied certain machinery's parts to the management company in the year 1989. It is not clear as to whether those parts were required for Hosur Unit or the Bangalore Unit. Even if it were required for Bangalore Unit, that by itself cannot form a basis for concluding that Bangalore Unit was engaged in manufacturing activity right from the date of closure till March 31, 1991, the date on which the premises was leased to third party.

32. Further, even if it be presumed that subsequent to closure, the management had recommenced its manufacturing activities by employing new persons, in the facts and circumstances of the present case, the workmen herein could not have claimed benefit u/s 25-H of the Act. It is for the reason that as per the settlement entered into by them (Ex. M1/Annexure "A" dated September 8, 1994), they had specifically agreed that even if the manufacturing unit is reopened, they will have no claim for re-employment and for foregoing their claim for re-employment, they had accepted exgratia payments up to their satisfaction.

33. The Tribunal and the learned single Judge have held that despite the Settlement at; Annexure "A" in view of Section 25-H of the Act, the workmen had a right for re-employment. In order to understand the implication of the said reasoning, it will be proper to quote Section 25-H of the Act which reads thus:

"25-H. Re-employment of retrenched workmen.- Where any workmen are retrenched, and the employer proposes to take into his employ any persons he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons."

34. The scope and ambit of Section 25-H of the Act has been examined by the Supreme Court in the case of Central Bank of India Vs. S. Satyam and others, and held at p. 827 of LLJ:

"11. Chapter V-A providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25-F applies but for all cases of retrenchment and, therefore, there is no reason to restrict application of Section 25H therein only to one category of retrenched workmen. We are, therefore, unable to accept the contention of Shri Pai that a restricted meaning should be given to the word "retrenchment" in Section 25-H. This contention is, therefore, rejected."

35. A bare reading of Section 25H of the Act clearly shows that this section has been engrafted for the benefit of retrenched workmen who, if so desired, will

have a right of re-employment in case the management intends to employ any other person for its purpose. This section though cast a statutory obligation on the employer to offer re-employment to a retrenched workman but it does not bind the workman to necessarily avail the right of re-employment conferred on him. It lies within his volition to either exercise the right of re-employment or waive the same. Waiver can be for various reasons and considerations. Such a waiver even pursuant to agreement with the employer cannot be said to be void as offending any public policy or statutory provision.

36. Coming to the facts of the present case, admittedly, the workmen had entered into industrial settlement waiving their rights of seeking re-employment for a valuable consideration. In law, this settlement could not have been avoided by the parties to it, including workmen, since as per Section 18 of the Act it is binding on them. Neither the Tribunal nor this Court could have held that the terms of the settlement touching upon this aspect were void and null. We are of the considered opinion that in view of the settlement between the parties to which they were statutorily bound, even if it be presumed that the manufacturing unit at Bangalore had been restarted, still the present workmen could not have claimed any right of re-employment in terms of Section 25-H of the Act. Accordingly, it has to be held that the Tribunal has seriously erred in passing the award in their favour.

37. For the aforesaid reasons, we quash the impugned award dated February 19, 1998 passed by the Industrial Tribunal, Bangalore, and set aside the order dated November 27, 1998 passed by the learned single Judge in W.P. 20014/1998 C/W. W.P. 22092/1998.

38. Accordingly, the Writ Appeal Nos. 3598 & 4196/1999 filed by the management are allowed and Writ Appeal filed by the workmen in W.A. 3884/1999 is dismissed. The parties to bear their own costs.