

(1957) 08 BOM CK 0022

In the Bombay High Court

Case No : Special Civil Application No. 131 of 1957

The Berar Oil Industries

APPELLANT

Vs

N.H. Majumdar

RESPONDENT

Date of Decision : 01-08-1957

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 25F

Citation : (1957) 59 BOMLR 1189

Hon'ble Judges : Mudholkar, J;Badkas, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mudholkar, J.—This is a petition under Articles 226 and 227 of the Constitution for. quashing the order of the State Industrial Court, Nagpur, declaring that the termination of the services of the employees in the oil mill section, whose services were terminated by the petitioner in pursuance of its notice dated June 23, 19;56, on the ground of want of oilseed, was an illegal change, and further declaring that the imposition of a condition on the employees by the petitioner to the effect that the services of those employees who may be re-employed after stocks are available would be terminated after the completion of the work of crushing the available seed as stated in the notice dated July 24, 1956, was also an illegal change.

2. The relevant facts are briefly these: The petitioner carries on business at Akola and, among other things, is engaged mainly in the manufacture of vegetable ghee and allied products. There are several sections in its undertaking at Akola one of which is engaged in crushing and extracting oil from seed. This section, is known as the oil mill section. There were about 45 persons engaged in this section. By the notice; dated June 23, 1956, they were informed that on account of shortage of raw material and because of certain important trade reasons the oil milt section will be closed with effect from June 25 1956. The notice further

stated that the management will try to find alternative employments for the permanent employees but that the services of the temporary employees would stand terminated with effect from June 25, 1956. It further stated that this notice will be regarded as 30 days notice as required by law and that such of the employees, as are entitled for compensation under the law will be given that compensation. By a subsequent notice dated July 24, 1956 the employees in the oil mill section were informed that in view of the arrival of fresh raw materials the working of the mill would be continued only for such short period as may be necessary for crushing the existing stocks of raw material it further stated that an option was given to the workers on the temporary roll whose services had already been terminated to continue to work in the oil mill section of the factory during this short period and further that they would be permitted to return to work subject to the condition that their services would stand terminated on the completion of the crushing work without any further notice being given to them. The permanent employees were informed that.

the working of the arrangements as proposed in the notice referred to above will be undertaken, after the work of crushing seed was finished.

Presumably, by this it was meant that these persons would be provided with alternative employments as far as possible.

3. It is common ground that the oil mill section was closed on June 23, 1956, and was re-opened on July 25, 1956. On August 10, 1956, respondent No. 2, which is a recognized Union of the employees in the National Berar Oil Industries, made an application to the State Industrial Court u/s 41 of the Central Provinces and Berar Industrial Disputes Settlement Act, alleging, among other things, that the petitioner had effected an illegal change by reducing the number of the employees in the industry and asked for a declaration to that effect. The Union asked for a further declaration in that application to the effect that the proposed terms in the notice of July 24, 1956, also operated so as to effect an illegal change with regard to the terms of employment and that, therefore, this change be declared as illegal.

4. The application of the Union was opposed by the petitioner, firstly, on the ground that the State Industrial Court had no jurisdiction to entertain the application which fell within the jurisdiction of the District Industrial Court, Akola, and, secondly, on the ground that there was no illegal change whatsoever and that what had taken place was a closure. The State Industrial Court held that it had jurisdiction to entertain the application, that what had taken place was not a closure but retrenchment and that this retrenchment was an illegal change. It further held that the terms set out in the notice dated July 24, 1956, also purported to effect an illegal change, and thus granted the application of respondent No. 2 to this extent.

5. On behalf of the petitioner the contention as to the lack of jurisdiction in the State Industrial Court was reiterated. It was urged that under Rule 37(g) of the

Rules framed under the C.P. and Berar Industrial Disputes Settlement Act read along with Rule 36(d) of those rules, it, was the District Industrial Court alone which had jurisdiction to entertain the application and that the jurisdiction of the State Industrial Court was barred. Now, Section 41 of the Act, under which the application for declaration was made by respondent No. 2, reads thus:

The State Industrial Court or a District Industrial Court shall, on a reference made by the State Government, and may, on an application by any employer or employee concerned or by a representative of the employees concerned or by the Labour Officer, decide whether any strike or lock-out or any change of which notice has been given or which has taken place is illegal.

Taking this section by itself it would appear that the State Industrial Court and a District Industrial Court have a co-ordinate jurisdiction in the matter of considering whether a strike, or a lock-out or any change is illegal or not. This provision, however, has to be read with the provisions of Sections 22(1) and 23(1) of the Act. Section 22(1) provides that

the State Government may constitute a State Industrial Court for determining industrial disputes and for dealing with such other industrial matters under the provisions of this Act as may be prescribed.

Section 23(1) likewise provides that the State Government.

may constitute a District Industrial Court for any local area to determine industrial disputes and to deal with such other industrial matters under the provisions of this Act as may be prescribed.

The words we have italicised in each of these provisions would clearly show that the matters had to be prescribed somewhere, either in the Act or in the Rules. There is no provision in the Act prescribing the matters and so we have to go to the Rules which the State Government is empowered to make u/s 61(2)(a) of the Act. Under this provision the State Government may make rules regarding "all matters which are to be prescribed or for which rules are to be made under this Act." Therefore, it was competent to the State Government to frame rules stating the matters which were to be made cognizable by the State Industrial Court and which were to be made cognizable by the District Industrial Court. Rules 36 and 37 purport to have been made in pursuance of the aforesaid power. "We may point out that there is no provision in the Act which empowers the State Government to make rules limiting the right of a person specified in Section 41 from making an application thereunder to a particular Court or differentiate between such persons in the matter of resort to a forum. The relevant portion of Rule 36 is as follows: "The District Industrial Court within the local area for which it is constituted shall have jurisdiction to hear and adjudicate upon-

(a) any industrial dispute arising within the District Industrial Court's jurisdiction and not being a dispute of general application affecting the industry as a whole,

which may be referred by the Labour Commissioner or the Labour Officer to such Court;

(b) ...

(c) ...

(d) the legality or illegality of any strike or lockout or of any change of which notice has been given or which has taken place upon an application by any employer or employee concerned or by the Labour Officer u/s 41 provided the question concerns an industry exclusively within the local area of the Court's jurisdiction.

The relevant portion of Rule 37 reads thus:

The State Industrial Court shall have jurisdiction in the following matters:...

(g) to decide about illegality of a strike or lockout or of any change about which an application or a reference is made u/s 41 and which is not within the cognizance of a District Industrial Court.

6. It is contended on behalf of the petitioner that an application of the kind made here by the Union lay before the District Industrial Court, Akola, either under Sub-rule (a) or Sub-rule (d) of Rule 36 which we have quoted above. Sub-rule (a) cannot be invoked in a case of this kind because it relates to a dispute which has been referred to a District Industrial Court by the Labour Commissioner or the Labour Officer. Such is not the case here. As regards Sub-rule (d), no doubt, it does comprise a matter of the kind which is in dispute in the present case, but an application u/s 41 invoking the jurisdiction of the District Industrial Court for adjudicating upon the matter can be made only by an employer or employee concerned or by the Labour Officer. The present application was, as already stated, made by the Union of the employees of the National Berar Oil Industries, Akola. Under this Sub-rule, therefore, a "Union could not have made an application to the District Industrial Court.

7. On behalf of the Union it is stated that the only tribunal before which it could make such an application was the State Industrial Court which had been given the power to entertain such an application by Sub-rule (g) of Rule 37 of the rules quoted above. In our opinion, the present application would fall under this provision and could be made before the State Industrial Court.

8. It is, however, contended by Shri Sheode, who appears for the petitioner, that Sub-rule (d) of Rule 36 in so far as it contravenes Section 41 of the Act is bad and that we should so read the Sub-rule as to make it consistent with the provisions of Section 41. In other words, what he wants us to do is to regard this Sub-rule as ultra vires. Of course, Shri Sheode says that he does not want that to be done. But it is difficult to see how we can give effect to this argument without having to consider the validity of the rule. His argument is that the right of a party to make an application is conferred by Section 41. He points out that there

are four categories of persons who are entitled u/s 41 to make an application to the appropriate authority and they are: (1) an employer, (2) an employee, (3) the Labour Officer and (4) a representative of the employees concerned. All these categories are treated equally by Section 41 and there is nothing in Sections 22(1) and 23(i) of the Act which empowers the State Government to differentiate amongst persons belonging to those categories. He contends that rules can be made u/s 61(2)(a) of the Act only for carrying out the provisions of the Act and must, therefore, not derogate from any provision of the Act such as Section 41. "There is, according to him, nothing in the Act which permits differentiation amongst these categories or persons and justifies debarring of certain categories from making an application with regard to a particular matter before the State Industrial Court or a District Industrial Court. We may point out that no ground has been taken in the petition to the effect that any of the rules framed by the State Government is inconsistent with any of the provisions of the Act. As already stated, if we have to give effect to this argument, we will have to consider the vires of the rules. This cannot be done in the absence of a specific ground in this regard and also in the absence of a notice to the State Government which has framed the rules. Apart from that, even if the argument is accepted, it would mean that Sub-rule (d) of Rule 36 is bad. If that is so, then the whole of it would go. If that Sub-rule goes away, there would be no restrictions on the powers of the State Industrial Court to entertain an application of the kind it had before it. For, even according to the petitioner, an application like the present could be made before the District Industrial Court only under Sub-rule (d) of Rule 36. Under Sub-rule (g) of Rule 37, cognizance of an application in which the illegality of a strike, or a lock-out or of any change is challenged is barred by the State Industrial Court only where such an application falls within the cognizance of a District Industrial Court as provided by Rule 36. If the relevant provisions, i.e. Sub-rule (d) of Rule 36, under which such an application would fall, is struck down as bad or ultra vires, then clearly there remains no bar to the jurisdiction of the State Industrial Court to entertain an application of this kind.

9. The next argument is that this was really a case of closure of business and as such the provisions of the Industrial Disputes Settlement Act were not attracted at all. In our opinion there is no substance in the contention that what took place was merely a closure. No doubt according to the Union it was only a lay-off, i.e. temporary reduction in the strength of employees, but according to the learned Judge of the State Industrial Court this was a case of retrenchment. The Supreme Court has held in *P.S. Mills Ltd. v. P.S. Mills Mazdoor Union* (1957) S.C.J. 38 that where one of the units of a company is closed, what happens is retrenchment and not a closure of the business. Retrenchment as defined in Section 2(oo) and as used in Section 25F of the Industrial Disputes Act, (Act XIV of 1947), which is a Central Legislation, has as observed by their Lordships of the Supreme Court in *Hariprasad Shivshankar Shukla Vs. A.D. Divikar*, no wider meaning than the ordinary, accepted connotation of the word: it Means the

discharge of surplus labour or staff by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on a real and a bona fide closure of business or where the services of all workmen have been terminated by the employer on the business or undertaking being taken over by another employer. Their Lordships have also observed the fit there is in no case any retrenchment unless there is discharge of surplus In hour or staff in continuing or running industry.

10. Now, as already stated, the Berar. Oil Industries is one single undertaking and it manufactures vegetable ghee and allied products. Crushing of oil seed and extracting oil is one of its activities. Whether the oil so extracted is used exclusively for the manufacture of vegetable ghee and other Products or it is also marketed separately is not clear. Whether it is so or not, it seems to us that extraction of oil is merely a part of the business of the undertaking. In that sense, the oil mill could only be regarded as a section of the entire undertaking, i.e. the Berar Oil Industries. Closure of such a section would not mean a closure of the business in its entirety but would be merely the reduction of surplus staff engaged in one section of the undertaking. We would also point out that even according to Shri Harkare, the Secretary of the Berar Oil Industries:

There were 33 permanent employees in the Oil Mill section and about 10 to 12 temporary workers. Though we had closed the Oil Mill section we continued the services of all the 33 employees.

As already stated, the petitioner in the notice dated June 23, 1956, had stated that it would find alternative employments to those of the permanent workers in the oil mill section whose services had been terminated. The management treated the entire undertaking as a single entity and while reducing the strength of the employees in one of the sections promised to absorb them in other sections of the undertaking as far as possible. In these circumstances we must hold, according to the decision of the Supreme Court, that there was no closure of business as such but only a reduction in the number of the employees in the undertaking. Where such is the case, what are the rights of the employees so retrenched ?

11. Now in this regard we have a provision in Chap. V-A of Act XIV of 1947 already referred to. Under this provision it is open to the employer to terminate the services of its employees after following the proper procedure and after paying compensation to the employees so retrenched. It has been held by the State Industrial Court that the provisions of this Chapter have not been complied with by the petitioner. No objection is taken in the grounds before us to the finding of the State Industrial Court in this regard. Suffice it to say that the State Industrial Court found that the payment of compensation to the employees retrenched and the service of notice on the State Government regarding the action taken have not been established in this case. The conditions laid down in the Central Act have thus not been fulfilled by the petitioner. In these

circumstances, the action, taken by it could properly be regarded as an Illegal change and the matter could thus be brought up before the State Industrial Court.

12. For these reasons we dismiss the petition with costs.