

(2022) 11 BOM CK 0012
In the Bombay High Court
Case No : Writ Petition No.2344 Of 2022 (F)

United Mine Workers Union	Vs	APPELLANT
Sesa Resources Limited And Others		RESPONDENT

Date of Decision : 02-11-2022

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 76A, 76 A(1)
Industrial Disputes Act, 1947 — Section 25N, 25N(1)(c), 25N(2), 25O(2)

Citation : (2022) 11 BOM CK 0012

Hon'ble Judges : Valmiki SA Menezes, J

Bench : Single Bench

Advocate : Shivraj Gaonkar, M. Bandodkar, P. Bandodkar, Pravin Faldessai

Final Decision : Disposed Of

Judgement

Valmiki Sa Menezes, J

1. Heard Mr. Shivraj Gaonkar for the Petitioner, Mr. M. Bandodkar appearing with Mr. P. Bandodkar for Respondent No.1 and Mr. Pravin Faldessai for Respondent Nos. 2 and 3.

2. Respondents waive service.

3. Rule. Rule made returnable forthwith. By consent of the parties, petition is finally disposed of.

4. After hearing this petition for some time, I am of the opinion that the impugned order dated 01.09.2022 is neither reasoned nor does it make any reference, specifically to any of the material that was placed by both the parties on record. The order also does not apply the provisions of Section 25-N of the Industrial Disputes Act, 1947 to the various facts and the material before the authority.

5. The Hon'ble Supreme Court in the case of Workmen of Meenakshi Mills Ltd. and Others vs. Meenakshi Mills Ltd. And Another (1992) 3 SCC 336, whilst

considering the parameters of the provision of Section 25-N of the said Act, and the consideration that the authority concerned would be required to look into, whilst deciding an application made under the said provision, has stated thus:-

"29. With regard to the nature of the power which is exercised by the appropriate Government or authority while granting or refusing permission for retrenchment under sub-section (2) of Section 25-N of the Act, the learned counsel for the employers have urged that the appropriate Government or authority while exercising this power acts purely in an administrative capacity. Laying emphasis on the words "after making such enquiry as such Government or the authority thinks fit" in sub-section (2), the learned counsel for the workmen have, on the other hand, urged that while considering the matter of grant or refusal of permission for retrenchment the appropriate Government or authority is required to exercise its power in a quasi-judicial manner, i.e., it must pass the order after affording an opportunity to both the parties, (the employer and the workmen), to make their submissions. We find merit in this contention urged on behalf of the workmen. In sub-section (2) of section 25-N, Parliament has used terminology which is different from that used in sub-section (2) of Section 25-O. In sub-section (2) of Section 25-O, Parliament had used the expression "the appropriate Government may, if it is satisfied that the reasons for intended closure of the undertaking are not adequate or sufficient or such closure is prejudicial to the public interest" which implied that the order refusing to grant permission to close down the undertaking was to be passed on a subjective satisfaction of the appropriate Government about the adequacy or the sufficiency of the reasons for the intended closure or the closure being prejudicial to the public interest. In sub-section (2) of section 25-N, the words used were "the appropriate Government or authority may, after making such enquiry as such Government or authority thinks fit, grant or refuse, for reasons to be recorded in writing" which indicates that the appropriate Government or authority, before passing an order granting or refusing permission for retrenchment, is required to make an enquiry though the precise nature of the enquiry that is to be made is left in the discretion of the appropriate Government or authority and further that the order that is passed by the appropriate Government or authority must be a speaking order containing reasons. The requirement to make an enquiry postulates an enquiry into the correctness of the facts stated by the employer in the notice served under clause (c) of sub-section (1) of Section 25-N for retrenchment of the workmen and other relevant facts and circumstances including the employer's bona fides in making such retrenchment and such an enquiry involving ascertainment of relevant facts will necessarily require affording an opportunity to the parties viz. the employer and the workmen, who have an interest in the matter, to make their submissions. In this context, reference may be made to Rule 76-A of the Industrial Disputes (Central) Rules, 1957 framed by the Central Government under the Act. Sub-rule (1) requires that the notice required to be given under clause (c) of sub-section (1) of section 25-N shall be served in Form P-A. Sub-rule (3) requires that the copy of the said notice or the application shall be

served by the employer on the workmen concerned and a proof to that effect shall be submitted by the employer along with the notice or, as the case may be, the application. Sub-rule (4) lays down that the employer concerned shall furnish to the Central Government or the authority to whom the notice for retrenchment has been given or the application for permission for retrenchment has been made, such further information as the Central Government or, as the case may be, the authority considers necessary for arriving at a decision on the notice or, as the case may be, the application, as and when called for by such authority. From P-A prescribes the various particulars in respect of which information has to be furnished by the employer in the notice served under clause (c) of sub-section (1) of Section 25-N. The said matters, inter alia, cover nature of the duties of the workmen proposed to be retrenched, the units/sections/shops where they are working (Item No. 3); items of manufacture and scheduled industry/industries under which they fall (Item No. 4); details relating to installed capacity, licensed capacity and the utilised capacity (Item No. 5); annual production, itemwise for preceding three years and production figures month-wise for the preceding twelve months (Item No. 6); work in progress itemwise and valuwewise (Item No. 7); any arrangement regarding off-loading or sub-contracting of products or any components thereof (Item No. 8); position of the order book - itemwise and valuwewise for a period of six months and one year next following, and for the period after the expiry of the said one year (Item No. 9); number of working days in a week with number of shifts per day and strength of workmen per each shift (Item No. 10); balance sheet, profit and loss account and audit reports for the last three years (Item no. 11); financial position of the company (Item No. 12); names of the interconnected companies or companies under the same management (Item No. 13); the total number of workmen (categorywise), and the number of employees other than workmen as defined in the Act employed in the undertaking and percentage of wages of workmen to the total costs of production (Item No. 14); administrative, general and selling cost in absolute terms per year for the last three years and percentage thereof to the total costs (Item No.15); details of retrenchment resorted to in the last three years, including dates of retrenchment, the number of workmen involved in each case, and the reasons therefor (Item No. 16); anticipated savings due to the proposed retrenchment (Item No. 19); any proposal for effecting savings on account of reduction in managerial remuneration, sales promotion cost and general administration expenses (Item No. 20); position of stocks on the last day of each of the month in the preceding twelve months (Item No. 21); annual sales figures for the last three years and monthwise sales figures - for the preceding twelve months both itemwise and valuwewise (Item No. 22); and reasons for the proposed retrenchment (Item No. 23).

30. It would thus appear that the employer is required to furnish detailed information in respect of the working of the industrial undertaking so as to enable the appropriate Government or authority to make up its mind whether to grant or refuse permission for retrenchment. Before passing such order, the

appropriate Government or authority will have to ascertain whether the said information furnished by the employer is correct and the proposed action involving retrenchment of workmen is necessary and if so, to what extent and for that purpose it would be necessary for the appropriate Government or authority to make an enquiry after affording an opportunity to the employer as well as the workmen to represent their case and make a speaking order containing reasons. This necessarily envisages exercise of functions which are not purely administrative in character and are quasi-judicial in nature. The words "as such Government or authority thinks fit" do not mean that the Government or authority may dispense with the enquiry at its discretion. These words only mean that the Government or authority has the discretion about the nature of enquiry which it may make. In our opinion, therefore, while exercising its powers under sub-section (2) of Section 25-N in the matter of granting or refusing permission for retrenchment, the appropriate Government or the authority does not exercise powers which are purely administrative but exercises powers which are quasi-judicial in nature."

6. On going through the record, it appears that the authority has not given due effect to the pronouncement of the Supreme Court to the subject matter at hand and to the correct application of the provisions of Section 25-N of the Industrial Disputes Act, 1947.

7. The learned Counsel, on instructions taken from their respective parties, who are present in Court, have fairly accepted that for the reasons stated above, the impugned order dated 01.09.2022 passed by Respondent No.3 is required to be set aside and the matter be heard and disposed of after considering all the material on record and applying the ratio as laid down by the Hon'ble Supreme Court in the case law quoted above.

While it is true that the review application filed by the Petitioner was disposed of by order dated 21.10.2022, the same would have no effect in view of the fact that the impugned order dated 01.09.2022, by consent of the parties, is now set aside and the matter is remanded back to the authority for being heard afresh. Considering the above position, the impugned order dated 01.09.2022 is hereby quashed and set aside; the Respondent No.3 Authority shall issue notice to the parties for a fresh hearing at the earliest and it shall dispose of the Application in Form-PA dated 04.07.2022 and its Annexures filed under Rule 76 A(1) of the Industrial Disputes (Central) Rules, 1957 and give a fresh hearing in the matter; after considering all the material before it and applying observations of the Hon'ble Supreme Court quoted from paragraphs 29 and 30 of the Judgment rendered in Workmen of Meenakshi Mills Ltd. (supra), shall dispose of the application on or before 31.11.2022.

8. Parties to act on authenticated copy of the order.

9. All contentions of the parties are left open and the Authority to decide the matter afresh uninfluenced by any of the observations made herein or the order

earlier passed on 28.09.2022 and the review order dated 21.10.2022, which has now been set aside.