
(1978) 11 GUJ CK 0008
In the Gujarat High Court

Visu Casement Pvt. Ltd.

APPELLANT

Vs

Engineering Mazdoor Sangh

RESPONDENT

Date of Decision : 16-11-1978

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25FFF, 25FFF

Citation : (1979) 1 GLR 561

Hon'ble Judges : B.J. Divan, C.J;S.B. Majmudar, J

Bench : Division Bench

Judgement

B.J. Divan, C.J.—The petitioner in this petition is Visu Casement Private Ltd. and it is running an engineering establishment of a small size. This engineering establishment was started in 1968-69 and in the beginning, it employed about forty workmen. It manufacturing steel windows, doors, pneumatic tools, grills, etc. In this establishment, there was a window manufacturing section in which only window frames were manufactured. The petitioner was in heavy financial strain for some time on account of slackness in business and the normal flow of financial requirements. It is the case of the petitioner that because of financial difficulties, it retrenched seven workmen from the window section in November 1975. Again, in July 1956, the balance of the workmen in the window section were laid off in accordance with the provisions of law. On August 14, 1976, the petitioner company issued a closure notice mentioning that it proposed to close down the window section, and on September 14, 1976, the window section was actually closed down. Between the laying off of workmen in July 1976 and the closure on September 14, 1976, eleven workmen from the window section had resigned from service and services of the remaining eight workmen were terminated on closure. Thereafter, by a Reference dated September 8, 1976, made by the Assistant Commissioner of Labour, the following dispute was referred for adjudication to the Tribunal: "M/s Visu Casements Private Limited, Vadodara, has given one month's notice, dated 14th August 1976 for the closure of window section from 14th September, 1976. This notice should be withdrawn." The Industrial Tribunal by its award dated April 25, 1976, held that the action of

the company in issuing the notice dated August 1976, whereby it proposed to close the window section with effect from September 14, 1976 rendering all those workmen working in the window section J3bless with effect from that date, was absolutely illegal and improper as it violated the mandatory provisions of Section 25F of the Industrial Disputes Act. It further directed that the said notice dated August 14, 1976 be unconditionally withdrawn by the company and it should be taken as if the said notice had not been issued on August 14, 1976. The Tribunal further held that the effect of the declaration and the direction would be that the workmen whose services were terminated with effect from September 14, 1976 in the window section of the company would be deemed to have continued in the service of the company and therefore would also be entitled to their usual wages in the same manner and at the same rates which they were receiving at the time their services were terminated on the basis of the notice. This award of the Tribunal has been challenged in the present Special Civil Application.

2. In view of the settled legal position, it is obvious that we can exercise our certiorari jurisdiction only if there is an error apparent on the face of the award, and that should be an error of law. In the instant case, it was urged before the Tribunal that the provisions of Section 25FFF would apply and therefore there was no question of any retrenchment compensation having to be paid u/s 25F. But, the Tribunal observed in its award:

It is an admitted position that the entire factory is not closed and it is nowhere the case of the company that the entire factory has been closed, or has remained closed for any period. Only one section of that factory has been closed for the reasons disclosed through the written statement (Ex. 6) by the company. If that is so, this case will not be covered by the provisions of Section 25FFF of the Act, because those provisions contemplate the closing down of an undertaking which would mean the entire closing down of an undertaking. In the instant case, the undertaking is the Visu Casements Private Limited, and not only its window section. As such, in the instant case, it cannot be said that the undertaking, viz. Visu Casements Private Limited, has been closed down.

With great respect to the learned Tribunal, this portion of the award is contrary to the position u/s 25FFF. In order to appreciate the contention, we will refer briefly to Section 25F and Section 25FFF. u/s 25F:

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

Provided that no such notice shall be necessary, if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the official Gazette.

It is thus obvious that the notice or wages in lieu of notice and payment of retrenchment compensation calculated in the manner set out in Clause (b) of Section 25F are conditions-precedent for retrenchment of workmen and it is obvious that if those conditions-precedent are not fulfilled, the workman cannot be said to be legally retrenched and the workman concerned would be deemed to continue in service of the employer. u/s 25FFF:

(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of Sub-section (2), be entitled to notice and compensation in accordance with the provisions of Section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under Clause (b) of Section 25F shall not exceed his average pay for three months.

Under the Explanation, the meaning of the words "closed down on account of unavoidable circumstances" has been statutorily explained, but it is not necessary for the purpose of this judgment to go into that statutory explanation. It is clear, after the decision of the Supreme Court in *Hatisingh Mfg. Co. Ltd. and Another Vs. Union of India (UOI) and Others*, that "by the plain intendment of Section 25 FFF(1), the right to notice and compensation for termination of employment flows from closure of the undertaking; the Clause does not seem to make closure effective upon payment of compensation and upon service of notice or payment of wages in lieu of notice. An employer proposing to close his undertaking may serve notice of termination of employment and if he fails to do so, he becomes liable to pay wages for the period of notice. On closure of an undertaking, the workmen are undoubtedly entitled to notice and compensation in accordance with Section 25F as if they had been retrenched, i.e. the workmen are entitled besides compensation to a month's notice or wages in lieu of such notice, but by the use of the words "as if the workman had been retrenched" the legislature has not sought to place closure of an undertaking on the same footing as retrenchment u/s 25F. By Section 25F, a prohibition against retrenchment until the conditions prescribed by that section are fulfilled is imposed; by Section 25FFF(1), termination of employment on closure of the undertaking without payment of compensation and without either serving notice or paying wages in lieu of notice, is, not prohibited. Payment of compensation and payment of

wages for the period of notice are not therefore conditions precedent to closure." So far as the closure of a portion of an undertaking or a part of an industrial establishment is concerned, there is the decision of the Supreme Court in *Workmen of the Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd.*,

The most important aspect in this particular case relating to closure, in our opinion, is whether one unit has such componental relation that closing of one must lead to the closing of the other or the one cannot reasonably exist without the other. Functional integrality will assume an added significance in a case of closure of a branch or unit. That the R. Mill is capable of functioning in isolation is of very material import in the case of closure. There is bound to be a shift of emphasis in application of various tests from one case to another. In other words, whether independent functioning of the R. Mill can at all be said to be affected by the closing of the Section Mill.

It was pointed out by the Supreme Court in *Straw Board Manufacturing Co.*'s case, "the workmen cannot question motivation of the closure once closure has taken place in fact. The matter may be different if under the guise of closure the establishment is being carried on in some shape or form or at a different place and the closure is only a ruse or pretence. Once the Court comes to the conclusion that there is closure of an undertaking, the motive of the employer ordinarily ceases to be relevant. No employer can be compelled to carry on his business if he chooses to close it in truth and reality for reasons of his own." It was further pointed out by the Supreme Court, "There is nothing wrong for an employer who has decided to close the establishment to follow the steps of closure by stages. It may be in the nature of a business to take recourse to such a mode which cannot ordinarily and per se be considered as unfair or illegitimate. Therefore, the termination of services of the first batch of workmen on account of closure is not unjustified."

In spite of this indication given in the judgment of the Supreme Court about even a portion or a unit of a larger establishment being closed down, the Tribunal in the instant case proceeded on the footing that what Section 25FFF contemplates is the closing down of the entire undertaking or the industrial establishment of this petitioner company. The question of functional integrality was never considered by the Tribunal and the Tribunal has not applied its mind to this aspect of the case at all.

4. In a recent decision of the Supreme Court in *Messrs Avon Services (Production Agencies) Pvt. Ltd v. Industrial Tribunal, Haryana, Faridabad* being Civil Appeal No. 634 (NL) of 1975, decided on 6th October 1978, the test to be applied u/s 25FFF has been mentioned by the Supreme Court. In *Avon Services* case, the employer concerned was engaged in the business of manufacturing Fire Fighter Foam Compound. It had set up two factories, one at Bombay and the other at Baghabhgarh. The industrial dispute which was the subject matter of appeal before the Supreme Court related to Ballabhgarh factory. According to the

employer, the factory at BaHabhgarh, when commissioned in 1962, was divided into two sections, namely, manufacturing section and packing material making section. The manufacturing section comprised two sub-sections, namely, chemical section, that is, the foam compound manufacturing section, and the boiler section. The packing material section was again composed of two sub-sections, one manufacturing containers and the other for painting the containers. The workmen, who were respondents 3 and 4 before the Supreme Court, were employed in the painting section and the question was whether, for the purposes of Section 25FFF, the painting section which was a sub-section of the packing material manufacturing section could be said to be an undertaking. The Supreme Court posed the question:

Now, even if a closure of an undertaking as contemplated by Section 25FFF need not necessarily comprehend a closure of the entire undertaking and closure of a distinct and separate unit of the undertaking would also be covered by Section 25FFF the question is - whether painting sub-section was itself an undertaking?

The expression "undertaking" is not defined in the Act. It also finds its place in the definition of the expression "industry" in Section 2(j). While ascertaining the amplitude of the expression "undertaking" in (the definition of the expression "industry", *noscitur a sociis* canon of construction was invoked and a restricted meaning was assigned to it in *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, While thus reading down the expression, in the context of Section 25FFF it must mean a separate and distinct business or commercial or trading or industrial activity. It cannot comprehend an infinitesimally small part of a manufacturing process.

...To style the job of a particular worker doing a specific work in the process of manufacture as is itself an undertaking is to give meaning to the expression "undertaking" which it hardly connotes. An employer may stop a certain work which was part of an undertaking but which could not be classified as an independent undertaking, the stoppage of work in this context would not amount to closure of the undertaking.

5. Therefore, according to the test laid down by the Supreme Court to decide whether the word "undertaking" occurring in Section 25FFF, for the purpose of closure of an undertaking the word does not necessarily mean entire undertaking, if there is a separate industrial activity which can be classified as such or, to use the language of the *Straw Board Manufacturing Co.*'s case, if there is a functional integrality to the particular unit of an undertaking, then such separate and restricted industrial activity or functional integrality would render that particular unit of a larger undertaking an undertaking for the purposes of Section 25FFF. It is in the light of this test which has been laid down by the Supreme Court in *Avon Services*" case that the question will have to be decided.

6. Mr. J.V. Desai, learned advocate for the respondent Engineering Mazdoor Sangh, representative of the workmen of the employer before us, contends that

the burden was on the employer to lead evidence before the Tribunal to show that the window section of the industrial establishment of the petitioner company was a separate and distinct unit as to amount to an undertaking within the meaning of Section 25FFF. We are unable to accept this contention of Mr. Desai. It is true that after the amendment to the Statement of Claim by paragraph 7-A, the union was contending before the Industrial Tribunal that the closure of the window section was in fact and substance a retrenchment but when the question of Section 25FFF arose as to whether in the instant case the question was of closure or retrenchment, the Tribunal while deciding the question of closure unfortunately took a wrong view by stating that the entire establishment must be closed and if the entire establishment is not closed down, the benefit of Section 25FFF cannot be given to the employer. That conclusion in view of the line of decisions which we have pointed out hereinabove, is not correct. Under these circumstances, in our opinion, the award of the Tribunal, based as it was on a wrong view of the law, must be quashed and set aside. The matter will now go back to the Tribunal for deciding the matter in accordance with law and particularly in the light of the two legal positions, namely, whether the window section was a separate and distinct industrial activity of the petitioner before us or had a functional integrality of its own; and secondly, even if that issue is decided against the employer, whether the closure of the window section was one of the stages of the closure of the entire establishment stage by stage, as is mentioned in *Straw Board Manufacturing Company's* case. If any other tests for closure of an undertaking within the meaning of Section 25FFF are pointed out, it would be open to the Tribunal to examine those tests in the alternative these two issues also. We may point out that so far as Section 25J is concerned, unless the question of Section 25FFF is first decided in the light of tests which have been pointed out above, the question of any conflict between Model Standing Order 10(2), being one of the rules under the Bombay Industrial Employment (Standing Orders) Rules, 1959 and the provisions of Section 25F cannot arise. If the case falls u/s 25FFF, then undoubtedly the procedure laid down in Standing Order Rule 10(2) will have to be applied. The Special Civil Application is, therefore, allowed and the rule is made absolute.

7. The matter will now go back before the Industrial Tribunal for disposing of the matter in accordance with law and in accordance with what has been observed hereinabove. Both parties will be at liberty to lead evidence on the issues which will now be before the Tribunal. There will be no order as to costs; in view of the fact that the matter is pretty old, the Tribunal is requested to dispose of the matter as expeditiously as possible and preferably within two months from the date of receipt of the order. Rule absolute accordingly.