
(2005) 09 AP CK 0047

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 8762 and 19126 of 2005

Voltas Limited, Hyderabad Unit

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 09-09-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 25M, 25M(7), 25N, 25N(6), 25O

Citation : (2005) 6 ALD 157 : (2006) 1 ALT 179

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : M.S. Ramachandra Rao, for the Appellant; Government Pleader, for Labour for Respondent Nos. 1 and 2, A.K. Jayaprakash Rao, in WP No. 8762 of 2005, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—These two writ petitions are filed by M/s Voltas Limited, Sanathnagar, Hyderabad, claiming two separate reliefs, under different provisions of the Industrial Disputes Act, 1947 (for short "the Act").

2. The petitioner is a Public Limited Company, incorporated under the provisions of the Indian Companies Act, with its registered office at Mumbai. It had manufacturing units and sale network, across the country. The petitioner undertakes manufacture of Air Conditioners, Refrigerators, Coolers, and the other related engineering equipment. One of its manufacturing units is located at Sanathnagar, Hyderabad. In the recent past, it has taken over the Refrigeration Division of Hyderabad Allwyn Ltd., a State-owned public sector undertaking.

3. Citing the problems that devolved upon the petitioner, on account of take over of M/s. Hyderabad Allwyn Ltd. and loss of business, due to heavy competition from other agencies, operating the same field, the petitioner proposed to retrench 450 employees working at its factory at Hyderabad, and to lay off 404 workmen between 1-7-2005 and 30-11-2005. For this purpose, the petitioner

submitted an application u/s 25-N of the Act before the Commissioner of Labour, the 2nd respondent, seeking permission to retrench 450 surplus workmen. He took up the matter and issued notices to the various unions of workmen of the petitioner. Through order dated 12-4-2005, he refused to accord permission to the petitioner for retrenchment. W.P. No. 8762 of 2005 is filed, challenging the same. During the pendency of the writ petition, petitioner submitted an application dated 28-4-2005 to the Government of A.P., represented by its Principal Secretary, Labour, Employment, Training and Factories Department, the 1st respondent, with a request to refer the matter to the Industrial Tribunal, Hyderabad, under Sub-section (6) of Section 29 of the Act. Through its order dated 27-8-2005, the Government refused to accede to the request of the petitioner.

4. Petitioner filed application u/s 25M of the Act, to the Commissioner, seeking permission to lay off, 404 workmen between 1-7-2005 and 30-11-2005. Through order dated 18-8-2005, the Commissioner rejected the application, by stating various reasons. Thereupon, the petitioner submitted an application before the Government under Sub-section (7) of Section 25-M of the Act, with a request to refer the matter to the Industrial Tribunal for adjudication. No orders have been passed thereon. W.P. No. 19126 of 2005 is filed challenging the inaction of the respondents in referring the matter to the Industrial Tribunal for adjudication.

5. Sri M.S. Ramachandra Rao, learned Counsel for the petitioner submits that once the Commissioner of Labour had rejected the applications, for retrenchment and lay off, respectively, the petitioner had a right to seek adjudication of the matter before the Industrial Tribunal, and that there was no justification on the part of the Government in refusing to accede to that request. He contends that, reference of the matter to the Industrial Tribunal, be it, under Sub-section (7) of Section 25-M, or Sub-section (6) of Section 25-N, is a matter of course, and there exists hardly any discretion with the Government, in this regard. Placing reliance upon the judgment of the Supreme Court in Orissa Textile and Steel Ltd. Vs. State of Orissa and Others, , learned Counsel submits that there was no justification on the part of the 1st respondent in not making a reference.

6. Sri N. Ashok Kumar, learned Government Pleader for Labour, on the other hand, submits that the very fact that the Government is conferred with the power to make a reference under the relevant provisions discloses that the Parliament conferred on the State Government, the power and duty, to make proper assessment of the entire issue, and to take appropriate decision, to ensure industrial peace.

7. Sri A.K. Jayaprakash Rao, learned Counsel appearing for some of the Labour Trade Unions, submits that the Commissioner had furnished valid reasons, in denying the permission, either for retrenchment or for lay off, and having regard to the nature of the matter, the Industrial Tribunal cannot be expected to go into such sensitive matters. He contends that no relief can be granted to the petitioners.

8. The Act contains several provisions, regulating the functioning of the industries. The discretion of the managements, in the matter of retrenching the employees or declaring lay off; is substantially controlled by the provisions of the Act. Chapter V-B contains special provisions, in relation to the establishments, where, number of workmen employed in an industrial establishment is more than 100. It is not in dispute that Chapter V-B of the Act applies to the petitioner. Section 25-N prescribes the procedure to be followed before the workmen, in any industrial establishment, covered by Chapter V-B, are retrenched. An application seeking such permission is required to be made to the authority prescribed by the appropriate Government, i.e., the 2nd respondent in the present context. Such authority is conferred with the power to hear the objections from the unions of workmen, take the relevant aspects into account, and to pass appropriate orders, granting or rejecting such permission. Almost to the same effect are the provisions of Section 25-M, in relation to lay off.

9. The applications filed by the petitioner under those provisions came to be rejected. The next step in this regard is to seek reference of the matter to an Industrial Tribunal. The relevant sub-section in both the provisions are verbatim, the same. The appropriate Government is conferred with the power to refer the matter to the Industrial Tribunal, whenever orders are passed, granting or refusing the permission, be it, for retrenchment or lay off. Sub-section (6) of Section 25-N, which is similar to Sub-section (7) of Section 25-M, reads as under:

"Section 25-N(6) : The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under subsection (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication.

Provided that, where a reference has been made to a Tribunal under this subsection, it shall pass an award within a period of thirty days from the date of such reference.

10. As regards the application made u/s 25-M(6), the Government passed an order of rejection. No orders, as yet, have been passed on the application filed under Sub-section (7) of Section 25-M. At the first blush, a perusal of the provision extracted above, leaves an impression that the appropriate Government is vested with the discretion, in the matter of referring the matter to the Tribunal. Whatever may be the scope and extent of such discretion in granting or refusing permission, to retrench or lay off, the same cannot be sad about, the discretion, to refer the matter to the Tribunal. While in the case of the former, it entails in substantial loss or prejudice to the workman or industrial establishment, the latter would result in nothing, but an occasion for the parties to seek adjudication by a Court. Viewed from this angle, making application to the appropriate Government for reference to the Industrial Tribunal, has to be treated as nothing, but a course of channelising it, instead of permitting the concerned parties to approach the Industrial Tribunal, directly. While the

discretion for granting or refusing permission, to retrench or lay off, can be said to be almost unbridled, except that its exercise is objective, hardly there exists any alternative, for the Government to refer the matter to the Industrial Tribunal for adjudication, whenever such an application is made.

11. Section 25-O, prescribes the procedure to be followed before an industrial undertaking is closed. It is only after the appropriate Government accords permission, that a closure can be resorted to. Subsection (5) thereof is similar to Sub-section (6) of Section 25-N, extracted above. It also provides for reference to the Industrial Tribunal in similar terms. Whenever the permission to close an industrial undertaking is granted or refused. The Supreme Court interpreted this provision in its judgment in Orissa Textile and Steel Ltd., (supra). After undertaking an extensive discussion, the Supreme Court held as under :

"A proper reading of Sub-section (5) of the amended Section 25-O shows that in the context in which it is used, the word "may" necessarily means "shall". Thus the appropriate Government "shall" review the order if an application in that behalf is made by the employer or the workmen. Similarly, if so required by the employer or the workman, it shall refer the matter to a Tribunal for adjudication."

12. Therefore, in the matter of dealing with the applications, seeking reference to the Industrial Tribunal under the relevant provision of Chapter-V-B, the Government has no option but, to accede to the request. In that view of the matter, the action of the Government, in refusing to refer the matters to the Industrial Tribunal cannot be sustained. But for the fact that there is no provision under the Act, which enables the aggrieved party to approach the Industrial Tribunal, this Court would certainly have permitted the petitioner to make its claim, before the Tribunal, in view of the judgment of the Supreme Court. Inasmuch as the reference is required to be made under the relevant provisions, the Government needs to be directed to accord such permission, without any further delay, since the lay off, is sought for a specific period and substantial part of it had already expired.

13. For the foregoing reasons, the writ petitions are allowed, and the Government of A.P., the 1st respondent, is directed to refer the matter to Industrial Tribunal, Hyderabad, consequent upon:

(a) the orders dated 12-4-2005, passed by the 2nd respondent, in the application filed by the petitioner u/s 25-N of the Act, and

(b) the orders dated 18-8-2005, passed by the 2nd respondent, in relation to application filed u/s 25-M of the Act, within one week from the date of receipt of a copy of this order.

14. There shall be no order as to costs.