
(1977) 05 CAL CK 0030
In the Calcutta High Court

Walford Transport Ltd.

APPELLANT

Vs

State of W. Bengal and Others

RESPONDENT

Date of Decision : 17-05-1977

Acts Referred:

Constitution of India, 1950 — Article 19

Industrial Disputes Act, 1947 — Section 10, 25F, 25FFA, 30, 30A

Citation : 81 CWN 939 : (1978) 2 LLJ 110

Hon'ble Judges : M.N. Roy, J

Bench : Single Bench

Judgement

M.N. Roy, J.—In this rule, an order made by the 5th Industrial Tribunal, West Bengal, respondent No. 2, on a preliminary point being raised by the petitioner-company, against a reference u/s 10(1) of the Industrial Disputes Act, 1947 (thereinafter referred to as the said Act), has been impeached.

2. The petitioner Walford Transport Limited (hereinafter referred to as the said company), is a public limited company within the meaning of the Indian Companies Act and is a dealer and distributor of motor vehicles, having branches in West Bengal and other States. For such business, the said company maintains more than one workshop, one of which is located at 21/1, Darga Road, P.O. Beniapukur, Calcutta (hereinafter referred to as the said workshop). It has been contended by the said company that the said workshop had 2 wings, one for repair of used motor vehicles of outside customers known as paying section, and the other for servicing of scooters, It has been contended by the said company that there are 2 registered trade unions, one under the name and style of Automobiles Sales Staff Association of West Bengal (Respondent No. 3) and the other under the name and style of Walford Transport Workers' Association.

3. The said company has alleged that for some time the said workshop was running at a loss and as such, the said company by a notice dated April 17th, 1972, informed all concerned about the said facts and also requested that unless the employees concerned would work hard to make the said workshop viable,

they would have no way out but to close down the said workshop. Admittedly, a copy of the said notice was sent to the appropriate Labour Commissioner. It has further been alleged that as the position did not improve, the said company again issued another notice on September 4th, 1972 and by that, they informed all concerned, that to avoid a complete closure of the said workshop, a drastic cut in the establishment was indispensable and 2 courses were open, viz., (1) retrenchment of staff on payment of statutory compensation and (2) voluntary retrenchment of those employees who were aged 50 on April 1st, 1972. By the said notice, the employees concerned were requested to elect their choice and to exercise necessary option. The employees, according to the said company, did not accept the said voluntary retirement scheme and as such the loss which was being sustained by the said company continued and as a result thereof, they decided to retrench workmen in the said workshop following the principle of last come first go, and on that basis another notice dated November/December 6th, 1972 was issued. This was also without any effect and as no solution could be evoked for the purpose of avoiding the circumstances as mentioned hereinbefore, the said company in terms of Section 25FFA of the said Act, which is to the following effect:

Section 25FFA : Sixty days " notice to be given of intention to close down any undertaking-(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking ;

Provided that nothing in this section shall apply to-

(a) an undertaking in which-

(i) less than fifty workmen are employed, or

(ii) less than fifty workmen were employed on an average per working day in the preceding twelve months.

(b) An undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

(2) Notwithstanding anything contained in Sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of Sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

Sent the required notice of 60 days under registered post to the Labour Commissioner. The said notice was dated December 11th, 1972 and was intended to close down a part of the said company's paying section of the said workshop. A copy of the said notice was also sent to the said respondent No. 3 union and the notice in question was admittedly received by the Labour

Department on December 14th, 1972.

4. In their petition, the said company has further alleged that after the notice, as aforesaid, about 90% of the employees of the said workshop retired on accepting the voluntary retirement scheme or the statutory benefits and since February 6th, 1973, 21 employees, of whom some were supervisory staff, led by the respondent No. 3 started holding demonstrations, with vituperative slogans against the management and more particularly against the manager of the said company. That apart, it has been alleged that these employees were guilty of creating other types of disturbances as mentioned in paragraph 9 of the petition. It appears that as a result of such action on the part of the such employees, a suit being Title Suit No. 217 of 1973 was filed in the City Civil Court at Calcutta against the employees concerned and the office bearers of the respondent No. 3, for permanent injunction restraining them from interfering with the activities of the said company and creating any disturbance so far the existing employees of the said company are concerned. An order was also asked for against the employees concerned and the respondent No. 3 from coming within 100 yards of the said company's two premises at 71 and 117, Park Street, Calcutta excepting during office hours. It appears that the interim order, some particulars whereof have been mentioned hereinbefore, was issued by the learned Judge of the 4th Bench of the City Civil Court at Calcutta in a modified form, viz., instead of 100 yards, the employees concerned and the office bearers of the said respondent No. 3 were restrained from coming within 50 yards of the footpath by the side of the 2 premises as mentioned hereinbefore on Park Street. Against the said order, admittedly an appeal has been preferred by the respondent No. 3 and the same is still pending. It has further been alleged by the said company that for the purpose of fulfilling their statutory obligations arising out of the closure in question, they had sent cheques by registered post for the due amount including of statutory compensation to all the discharged employees of the said workshop. It has also been alleged, that out of 21 employees concerned, 14 have accepted such payments without any objection and out of the remaining 7, 4, have accepted the payments with objection. It has also been stated that of the balance 3, 2 of the employees belong to supervisory staff and one is employed as a clerk.

5. In the meantime, the respondent No. 3 purported to raise an industrial dispute over the issue of the closure in question and on such, the said company was asked by an Officer of the Labour Department on March 7th, 1973 to be present in a joint conference at the chamber of the Additional Labour Commissioner. The said company has stated that they duly informed the authorities concerned their inability to be present, as after the service of the statutory notice for closure on the Government as enjoined in law, and after the expiry of 60 days from the date of service of the notice on the Government, there was no scope for such joint conference. Again on March 29th, 1973, the said company was served with another notice from the Labour Directorate of the Government of West Bengal for a separate discussion over the said matter, but a reply similar to the one above

was also sent.

6. On such failure of the said company to attend to the discussions as mentioned hereinbefore, the appropriate authorities by order No. 4937-IR/IR/101-266/71 (pt) dated July 12th, 1973, made a reference u/s 10 of the said Act to the 5th Industrial Tribunal, West Bengal for adjudication of the following issue :

Whether the closure of the Darga Road Workshop of the Company is real, what relief are the workmen entitled to ?

The said reference was made between Messrs, Walford Transport Limited of 71, Park Street, Calcutta-16 and their workmen (clerical) represented by Automobiles Sales Staff Association of West Bengal, 7-D.S.R. Das Road, Calcutta-26. On such reference, the parties to the dispute filed their respective written statements. It has been contended by the union concerned (respondent No. 3) that the said company mooted a scheme of voluntary retirement in the name of reorganisation of the said workshop and as the scheme was not acceptable to the workmen, the said company as a retaliatory measure and to pressurise the workmen, effected a lock-out from February 13th 1973 to June 14th, 1973. They have further stated that the said company resumed its work with effect from June 25th, 1973 and the 21 workmen concerned, were refused work and 6 were shown out of employment. It was also contended by the respondent No. 3 that there was never a closure of the said workshop and the plea of the said company about the said closure was unreal, motivated, mala fide and a mere pretence. The said company on the other hand reiterated their case as mentioned hereinbefore, and contended that because of the recurring heavy loss over years, it became impossible for the management to run the said workshop and with a view to save the situation, a scheme of voluntary retirement of workmen aged 50 years or more was formulated. Since there was no response to such scheme, they under the circumstances had no alternative but to serve a notice of closure dated December 11th, 1973 which was subsequently rectified by another notice of December 12th, 1972 and pursuant to such notice, the paying section of the said workshop, was closed on and from February 13th, 1973. They contended the closure to be real and genuine and was necessitated by the circumstances beyond their control and due to the attitude of a section of the workmen.

7. Before the respondent-Tribunal, the said company raised a preliminary objection as to the validity and maintainability of the order of reference contending that since the Government did not take any steps like conciliation proceedings or reference to the Tribunal within 60 days from the date of receipt of the said company's notice u/s 25FFA of the said Act, it should be deemed that the Government had accepted the fact that the closure of the said workshop was real and in any event the Government should have at least been deemed to have waived its lawful rights to have the matter agitated over and or to refer the same to the respondent-Tribunal. On such facts, it was submitted that when the Government had not acted on the basis of the notice, which was duly received by

them and that too within 60 days, it should be presumed that they were satisfied about the bona fides of the closure and furthermore, if they are allowed to interfere with the fact of closure after their inaction as aforesaid, that would make the provisions of Section 25FFA of the said Act nugatory and meaningless. It was also submitted by the said company that when admittedly the respondent No. 3 raised the dispute over the matter of closure of the said workshop by its letter dated February 6th, 1973 first to the Government and not to them the dispute as raised and as referred to for adjudication, was not an industrial dispute and it was also contended that when admittedly there were 200 workmen in the said workshop and the respondent No. 3 espoused the cause of 21 employees only, of whom 5 belong to the supervisory capacity drawing more than Rs. 500 per month, viz., who were not workmen and whose cases cannot be a matter for industrial adjudication, the respondent No. 3 had lost its representative capacity or character and as such, was not authorised to espouse the cause of the fractional minority of the workmen and thus to unsettle a satisfactorily settled dispute.

8. The respondent-Tribunal, by its order dated December 17th, 1974, after hearing both the parties, as mentioned hereinbefore, rejected the preliminary objection as raised. It has been held by the respondent-Tribunal that on consideration of the provisions of Section 25FFA and Section 10 of the said Act, that the outer limit of 60 days as prescribed or mentioned in Section 25FFA, would not circumvent or put a restraint on the power of the appropriate Government to make a reference u/s 10 of the said Act. On consideration of the evidence on record, it has further been found by the respondent-Tribunal that the respondent No. 3 in the instant case, was authorised to espouse the cause of the concerned employees and the dispute was raised and referred duly and properly. That apart, it has also been found by the respondent-Tribunal on evidence that the respondent No. 3 had representative character and capacity.

9. Mr. Dasgupta appearing in support of the Rule, first placed reliance on the provisions of Section 25FFA and also to those of Section 10 of the said Act. He submitted that when Section 25FFA has fixed an outer limit of 60 days for the grant of sanction or quoting a refusal of the action of closure as taken by the company, and the appropriate authority has not refused to accord the necessary sanction, it should be presumed that they were satisfied about the bona fide of the action of closure as proposed to be taken and as such the subsequent reference or exercise of power to refer the dispute as in the instant case, u/s 10 of the said Act, was improper and unauthorised because the effect of such act, being taken after the expiry of the statutory time u/s 25FFA, would be that those provisions of Section 25FFA would become nugatory and redundant. He further submitted that the effect of such action of the Government in not prohibiting the intended closure, would be that they were satisfied about the bona fides of the same and as such the closure was genuine and so also the reference was incompetent. He also submitted that the entire business of the said company not being closed and only a branch of a section having admittedly been closed, the

reference was incompetent. Apart from this Mr. Dasgupta contended that since a majority of the workmen concerned have accepted the fact of closure, the espousing of the cause for a small fraction of the employees by the respondent No. 3 was inappropriate for making a reference and the more so when the said union had not had the representative capacity so far the majority of the employees were concerned. Those contentions of Mr. Dasgupta were of course denied on facts by the respondent No. 3 on filing a affidavit-in-opposition and appearing through Mr. Haider.

10. So far the representative capacity of the union or their authority to espouse the cause of the employees are concerned and whether the appropriate authority under the said Act had exercised their jurisdiction in accordance with the law or with authority, have been decided on evidence by the respondent-Tribunal. Those findings of the said Tribunal have of course been sought to be impeached on further facts by the said company. I am afraid that at this stage and the more so when the subsequent facts were not before the respondent-Tribunal, this Court, in exercise of its writ jurisdiction, would not be entitled to investigate into such facts. The respondent-Tribunal was satisfied on available evidence about the representative character of the respondent No, 3 and the bona fides of the making of reference and such findings, I am not inclined to interfere with, as there is no perversity in such findings and that too on the evidence as led.

11. The question, therefore, is what would be the effect of the Government's inaction in not either granting or refusing necessary permission on receipt of the statutory notice u/s 25FFA on their part to make a reference u/s 10 of the said Act subsequently.

12. The said Section 25FFA was inserted by Act 72 of 1972. The closure of industrial undertakings naturally entails loss of production and employment of large number of workmen. This problem became acute in this State and consequently a President's Act, viz., Industrial Disputes (West Bengal) Amendment Act, 1971 was enacted on August 28th, 1971 providing that an employer who intended to close down an undertaking should serve at least 60 days notice on the State Government stating clearly the reasons for the intended closure of the undertaking. Since the problem of closure was or is not peculiar to this State alone but was found in varying degrees in other States as well, the Central Government considered it desirable to promote Central legislation on the subject. The matter was, therefore, referred to the Union Labour Conference which generally endorsed the proposal for Central legislation after considering all the questions in its meeting on October 22nd, 23rd of 1971.

13. The provisions of the said section require an employer, who intends to close down an undertaking to serve a notice on the appropriate Government in the prescribed manner, stating clearly the reasons for the intended closure of the undertaking. The requirement of stating reasons has been engrafted with a view to enable the appropriate Government to note as to what actually is the reason or motive for which the employer intends to close down the undertaking and

then to find out ways and means, if possible, to avert such action. If the Government, from the reasons finds that the closure is due to trade exigencies, it may try to help the employer through its various agencies to overcome the difficulties and continue the undertaking. But if the Government come to the conclusion that the closure in question is on account of bad and uncompromising industrial relation between the employer and employees, it may use its good offices by promoting harmony to bring out amity between the parties and failing that the Government may also use coercive pressure on the parties to come to* some workable terms and thus to avoid the catastrophe of closure. The notice in question is required to be served on the appropriate Government at least 60 days before the date on which the intended closure is to become effective. In short, the Government must have 60 clear days notice before the date on which the closure is to become effective, so that it may have sufficient time to examine the motive, implications and the consequences of the proposed closure and, if possible, to try to avert it.

14. The said section does not purport to take away the right of an employer to carry on his business as guaranteed by Article 19(1)(g) of the Constitution, as it does not seek to prohibit the closure. The section only requires that before the closure, the intending employer should intimate the appropriate Government by means of a notice, at least 60 days before the day on which the closure is to take effect, stating the reasons for the closure of the undertaking. The failure of the employer to comply with this requirement entails stringent penalty of imprisonment upto a term of 6 months or fine upto 5,000 rupees or both. But the question arose whether the failure of the employer to comply with those requirements would make the closure illegal or non est. The answer appears to be in the negative because from the language of the section, no prohibition of the closure is discernible. If law does not prohibit closure, the closure thus does not become illegal. The provisions in Section 25FFA is somewhat analogous to provision in Section 25F, which also require the employer to serve a notice in the prescribed manner on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette, before retrenching any workmen employed in any industry carried on by him. The breach of such provision also entails a penalty of imprisonment for a term exceeding upto 6 months or fine extending upto 1,000 rupees or both u/s 31(1) of the said Act, In the case of *Bombay Union of Journalist v. State of Bombay* 1964-I L.L.J. 351, the Supreme Court has held that the clause of Section 25F is not a condition precedent to valid retrenchment though its breach no doubt would be a serious matter. On a parity of reason, though the breach of the requirements of Section 25FFA(1) would be a serious matter entailing the penalty u/s 30(A), it would not, however, make the act of closure illegal or non est. u/s 10 of the said Act there is no express or implied restriction on the Government to make or refuse to make a reference within 60 days. The outer limit as prescribed in Section 25FFA, thus in my opinion would not create any restrictions or abridge the power of the State Government to make a reference in a matter like this and

on the question whether the closure was bona fide or real. The service of the required notice u/s 25FFA is only required for the protection of the employer from prosecution u/s 30A of the said Act or on non-service of such notice. It should be remembered that the giving of notice of closure u/s 25FFA does not prove the fact of closure and even if the said notice is given, the appropriate Government under the said Act would have retained its jurisdiction to find out or to try to have the fact of closure or bona fide thereof by a reference to an appropriate authority under the said Act, established. Admittedly, the said company was not a public utility concern and as such the reference in the instant case would also have been made even without conciliation proceeding and that too in terms of the requirements of Section 10(1) of the said Act.

15. Mr. Dasgupta in support of his contentions that because of the inaction of the Government in the instant case, the closure should have been deemed to have been bona fide, submitted that in terms of the determination of the Supreme Court in the case of Kalinga Tubes Limited v. Their Workmen AIR 1960 S.C. 90, the reference in the instant case should not have been made. In the instant case only a reference has been made, for the purpose of finding out whether the closure was bona fide or not and no final determination has been made in that aspect. Whether the closure was bona fide or not, would be a question of fact, to be decided on evidence and as such at this stage, the said determination of the Supreme Court, is not required to be considered by me. As the relevant fact was not available either before the respondent Tribunal and before this Court, so I am of the view that the said determination is not required to be considered now. In support of his submissions that since a branch of the said workshop of the said company has been sought to be closed down, Mr. Das Gupta submitted that in terms of the determination of the Supreme Court in the case of the Workmen of the Indian Leaf Tobacco Development Co., Ltd., Guntur Vs. The Management of Indian Leaf Tobacco Development Co. Ltd., Guntur, , the order of reference should be deemed to be incompetent. The view I have expressed in support of the case reported in AIR 1970 S.C. , apply to this case also and as such at this stage, I am not required to make any determination on that point. Mr. Das Gupta then relied on the case of Workers and Staff Association Soap Factory v. State of Mysore and Ors. AIR 1971 Mysore 22, in support of his submissions that when a majority of the section of the employees concerned have accepted the position, so the dispute at the instance of a fractional minority section of the employees, would not be enough or would not entitled the Government to make a reference u/s 10. This case also, in view of my observation as above, is not required to be decided or has got any application at this stage. I am not required to make any determination unless the appropriate evidence in the proceeding is available. Thereafter, reliance was placed by Mr. Dasgupta on the case of State of Punjab Vs. The Gandhara Transport Company (P) Ltd. and Others, , on the question of representative capacity of the respondent No. 3 in the instant case, their power to espouse the cause of the employees concerned and submitted that on the determination as made by the Supreme Court, in the instant case, the reference

was also incompetent. This is also a question which will have to be decided by the respondent-Tribunal on relevant and necessary evidence and as such at this stage, I am not required to make any determination on the basis of the observations as made by the Supreme Court.

16. In view of the above, the argument advanced by Mr. Dasgupta fail, so also the application and the Rule is thus discharged. There will be no order for costs.

17. I make it clear that save as aforesaid, I have not gone into the merits of other contentions as raised by the said company and this will not preclude or prohibit the respondent-Tribunal from entertaining such points which have not been decided or adjudicated by me.

18. The respondents Nos. 1 and 2 have not filed any return to the Rule, which was made ready on 4th September, 1975, but Mr. Sengupta produced the records. Be that as it may, since the reference is one of 1973, it would be highly appreciated if the respondent Tribunal takes appropriate step to have the adjudication completed at an early date.

19. Stay operation of the order as prayed for is refused.