
(2009) 11 BOM CK 0178
In the Bombay High Court
Case No : Writ Petition No. 25 of 2009

Workmen

APPELLANT

Vs

M/s Haider Kassim Khan, Mines owners, Curchorem, Goa

RESPONDENT

Date of Decision : 11-11-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 25FFF(a)

Citation : (2009) 11 BOM CK 0178

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : Valmiki Menezes, for the Appellant; Gourish B. Kamat, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Savant, J.—This petition takes exception to the award of the Industrial Tribunal, Goa dated 21.07.2008. By the said award, the Industrial Tribunal held that the justification for the closure of the business in fact and truly effected does not give rise to an industrial dispute. The petitioner herein represents the mine workers who were working with the respondent herein at his mines at Vangi Bhendi Advan, Sulkarne, Quepem, Goa. The petitioner raised a charter of demands which was in conciliation and the parties were before the Conciliation Officer. The said demands were raised on 19.10.1991. While the said conciliation proceedings were pending, it is the case of the petitioner that the respondent herein illegally closed the mine and terminated the service of the workmen. In view of the subsequent development of closure, the petitioner raised a fresh charter of demands as regards the legality of closure and termination. The said dispute was referred by the appropriate Government to the Industrial Tribunal, Goa for adjudication on 30.12.1992. The terms of reference were as follows:

(1) Whether the action of the management of Messrs. Haidar Kassim Khan Mine Owner at vangi Bhendi Advan, Sulkarne, Quepem, Goa is justified in closing his mine on 17.01.92 situated t Sulkarne, Goa and terminating the services of

employees w.e.f. 21.01.1992 on receipt of charter of demands by union ? If not, what benefits the workmen are entitled under the Charter of Demands ?

2. The said terms of reference came to be registered as Ref. It/7/93 and the Industrial Tribunal framed issues and also additional issues. The parties thereafter led their respective evidence and the Industrial Tribunal by the Impugned Award came to the conclusion that the said reference which involves the issue as regard the justification for the closure does not give rise to a dispute. The Tribunal mainly relied upon the judgment of the Apex Court reported in AIR 1979 SC 1356 in the matter of Pottery Mazdoor Panchayat v. Perfect Pottery Co. as also the judgment of the Apex Court reported in AIR 1968 Lab. I.C. Court 1229 in the matter of M/s Indian Hume Pipe Co. Ltd. v. Their Workmen held that once it is established that the industry had in fact been closed, the Tribunal could not go into the justification whether it is real or sham.

3. On behalf of the petitioner, it is sought to be contended that the Tribunal has erred in proceeding on the basis that the reference before it was only relating to the justification for the closure as in the instant case, the later part of the terms of reference discloses that the termination of the services of the workmen represented by the petitioner was connected to the first issue and since it was the case of the petitioner, which was borne by the antecedent facts prior to the reference, that the closure was effected to victimise the workmen represented by the petitioner or the Tribunal has erred in arriving at a conclusion that there no industrial dispute involved.

4. On the other hand, it is submitted by the learned counsel appearing on behalf of the respondent relying upon the judgment of the Apex Court in the case of M/s Indian Hume Pipe Co. Ltd. (supra) that once the Tribunal finds that an employer has closed its factory as a matter of fact, it is not concerned to go into the question as to the motive which guided him and to come to a conclusion that on account of the previous history of the dispute between the employer and the employees the closure was not justified.

5. In the instant case, it is an admitted position that the petitioner did not dispute the factum of closure and therefore, in the light of the terms of the reference as also in view of the pronouncement of the Apex Court judgment (supra) the view taken by the Tribunal in the said impugned award cannot be faulted with. It would also be pertinent to note that the notice for discontinuance of the mines was displayed on the notice board on 19.01.1992 and the notice dated 17.01.1992 was also served on the workmen and their legal dues were also paid on 19.01.1992. The Tribunal has recorded a finding that notices were served on the workmen and the legal dues were also paid to them. The Tribunal therefore, has held that there has been no violation of Section 25FFF(a) of the Industrial Dispute Act. Having considered the impugned award of the Industrial Tribunal, in my view, there is no illegality or infirmity in the same for this Court to interfere in writ its jurisdiction. The writ petition is accordingly dismissed.