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Ram Dayal vs M/S Kiran Engineering and Suppliers and Anr

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Court : Delhi

Decided On : Feb-28-2026

Judge : Hon'Ble Ms. Justice Renu Bhatnagar

Appeal No. : W.P.(C)/7711/2017

Appellant : Ram Dayal

Respondent : M/S Kiran Engineering and Suppliers and Anr

Advocate for Def. : Mr. A.K. Jain, Mrs. Santosh Jain, Mr. R.M. Tiwari

Advocate for Pet/Ap. : Ms. Ritu Jain, Ms. Sreedhi Nair

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 28.11.2025

Pronounced on: 28.02.2026

+ W.P.(C) 7711/2017 & CM APPL. 25495/2023 RAM DAYAL .....Petitioner Through: Ms. Ritu Jain & Ms. Sreedhi Nair, Advs.

versus

M/S KIRAN ENGINEERING AND SUPPLIERS AND ANR .....Respondents Through: Mr. A.K. Jain, Mrs. Santosh Jain & Mr. R.M. Tiwari, Advs.

CORAM:

HON'BLE MS. JUSTICE RENU BHATNAGAR

JUDGMENT

1. The present writ petition has been filed under Article 226 of the

Constitution of India assailing the Award dated 03.09.2013 (hereinafter referred to as impugned award) passed by learned Presiding Officer, Court No. IX, Karkardooma Courts, Delhi (hereinafter referred to as Labour Court) in Industrial Dispute being ID No. 140/2012, whereby, the reference of the petitioner workman was dismissed.

2. The facts necessary for deciding the controversy involved in the W.P.(C) 7711/2017 Page 1 of 21

present writ petition is in narrow compass. It is stated that Sh. Ram Dayal (hereinafter referred to as the petitioner workman) had been working with the respondent No. 1 management (hereinafter referred to as the respondent management) at B-68/3, Wazirpur Industrial Area, Delhi-110052, as an operator/fitter since 02.07.1990. It is stated that the workman was made to work for both the managements as both the managements were running in the same building. It is stated that the respondent management, in the year 2011-12, allegedly closed their establishment/undertaking from the aforesaid premises and shifted their address to Sikandrabad, Uttar Pradesh.

3. It is the case of the petitioner that the services of the petitioner

were terminated w.e.f. 05.09.2011 and he was not given any terminal benefits such as retrenchment compensation, prior notice or gratuity, etc. As a result thereof, the petitioner and other co-workmen protested against the said closure of management and subsequently, preferred an industrial dispute under the Industrial Disputes Act, 1947 (hereinafter referred to as ID Act) for adjudication of their claims.

4. The appropriate government referred the industrial dispute being ID No. 140/2012 to the learned Labour Court. The learned Labour Court framed issues surrounding the dispute to the following effect:

(i) whether there is any employee-employer relationship W.P.(C) 7711/2017 Page 2 of 21 between the workman and the management no.2?

(ii) whether the workman has absented from the duties of his own with the management no.1 and failed to resume the duties w.e.f. 05.09.2011? OPM

(iii) in terms of reference? OP parties

(iv) relief.

5. The learned Labour Court decided issue No. 2 in favour of

workman holding that as the management has shifted, it is not a case of abandonment. On issue Nos. 1, 3 and 4, the learned Labour Court answered the same in favour of the management holding therein that it was merely a case of shifting of the establishment and not its closure.

6. Being aggrieved thereof, the present writ petition has been filed

seeking setting aside of the said impugned award in respect of issues

no.1, 3 and 4 and seeking a relief holding that the respondent management has been closed and further, grant the petitioner retrenchment compensation in terms of Section 25FFF of the ID Act.

7. Learned counsel appearing on behalf of the petitioner workman

submitted to the effect that the finding of the learned Labour Court that the present dispute was not a case of closure of respondent management and was merely shifting of the establishment, is W.P.(C) 7711/2017 Page 3 of 21 erroneous, arbitrary and contrary to the settled position of law and is thus, liable to be set aside.

8. It is submitted that the learned Labour Court erred in dismissing

> the reference filed by the workman by holding that since, he was asked to resume his services at the shifted premises at Sikandrabad, therefore, it does not amount to termination of his services. It is submitted that no workman can be forced to join at the shifted premises and in the present case, the workman was asked to join at the shifted premises with a view to avoid making payment of terminal benefits like closure compensation, notice pay as per Section 25FFF of ID Act which tantamount to illegal termination of his services.

9. Learned counsel for the petitioner also submitted that the

learned Labour Court failed to appreciate the fact that closing down the undertaking at one place and shifting the machinery and industry to a different state/premises amounts to closure of the undertaking and thus, the respondent management were bound to follow the procedure under Section 25FFF of the ID Act.

10. It is further submitted that the learned Labour Court failed to

adhere to the law laid down by the Honble Supreme Court passed in the case of Workmen of the Straw Board Manufacturing Company Limited v. M/s. Straw Board Manufacturing Company Limited 1974 AIR 1132, wherein it was held that in case the learned Labour Court W.P.(C) 7711/2017 Page 4 of 21

arrives at a finding that the establishment has been closed down, then it is bound to proceed to determine the amount of compensation, notice pay and benefits under Section 25FFF of the ID Act. It is contested that in the present case, the learned Labour Court, having arrived at the finding that the management had been shifted to a different place in a different state, failed to apply the law laid down by the Honble Court in Workmen of the Straw Board Manufacturing Company Limited, (Supra).

11. It is further submitted that the present issue is a clear case of

closure of the management from one place and therefore, the respondent management failed to comply with the provision of Section 25FFF in giving retrenchment compensation and other benefits to the petitioner.

12. It is also submitted that the respondent management failed to

lead any evidence or take a plea before the learned Labour Court to show that other workmen joined the premises of respondent management at Sikandrabad. It is stated that the respondents opportunity to lead evidence was thus, closed on 16.08.2013.

13. It is submitted by the learned counsel for the petitioner that

there were no provisions under the conditions of service of the workmen to transfer the petitioner and his co-workmen at a shifted place. It is stated that the respondent failed to produce any letter of W.P.(C) 7711/2017 Page 5 of 21 appointment or any other document on record which empowered them to transfer the services of the petitioner from one place to another.

14. Learned counsel for the petitioner, therefore, contended that the

respondent management deliberately took shelter under the defence of transfer of the undertaking with a view to avoid the payment of statutory benefits of retrenchment compensation, notice pay and gratuity to the petitioner and other co-workers.

15. It is also argued that the learned Labour Court erred in its

finding on the aspect that there was no employer-employee relationship between the petitioner workman and respondent No.2 management. It is submitted that the learned Labour Court failed to consider the fact that both the firms were being run by the same family and were doing the same business from the same location, hence, both the firms ought to have been jointly and severally liable to pay the dues of the petitioner workman.

16. In view of the foregoing submissions, the learned counsel for

the petitioner thus, seeks intervention of this Court in setting aside the impugned award dated 03.09.2013 qua its finding that that the present case is of simple shifting of unit from one place to another and as such, the workmen were not illegally terminated.

17. Per Contra, learned counsel appearing for the respondent W.P.(C) 7711/2017 Page 6 of 21

management submitted that the learned Labour Court rightly held to the effect that the management shifted its unit from Delhi to Sikandrabad and it is the petitioner who failed to join his duty at the Sikandrabad premises. He therefore submits that the services of the petitioner were never terminated and thus, no question of compliance under Section 25FFF of the ID Act arises in favour of the petitioner workman.

18. It is submitted that even on merits, the award passed by the

learned Labour Court is in accordance with the settled position of law and it is indeed the petitioner workman who has failed to establish that his services were illegally terminated by the respondent management. He submitted that transfer letters dated 21.09.2011 and 07.10.2011 were duly issued by the management to all its workmen, despite which, the

petitioner herein, failed to join his duty at the Sikandrabad premises. It is stated that all other 80 workmen had joined at the transferred place except 6 workmen, who had raised industrial dispute which are pending before this Court.

19. It is further submitted that the petitioner also filed a suit for

permanent injunction before the learned District Court, Rohini, Delhi, seeking a direction to stop the shifting process of the respondent management, however, even there, the petitioner was unable to obtain a relief of stay on the operation. W.P.(C) 7711/2017 Page 7 of 21

20. It is stated that management has a right to transfer a workman.

If the entire unit of management had shifted to Sikandarabad, all the workmen should have joined the place of shifting after being asked to do so but this workman, instead of joining, had filed cases for settlement of his Provident Funds, Gratuity etc., showing his intention not to continue at the transferred place. It is stated that the cross- examination of the workman clearly indicates this fact.

21. It is submitted that the petitioner even had an option to give his

resignation and settle his accounts with the respondent management if he was unable to join at the shifted premises, however, the petitioner has, with a malafide intent, raised a false claim of illegal termination of his services along with allegations of closure of a unit.

22. In view of the aforementioned, the learned counsel appearing for the respondent management No.1 submitted that the present petition is liable to be dismissed being devoid of any merits.

23. Heard the learned counsel for petitioner and the learned counsel for the respondent No. 1 and perused the material placed on record.

24. The case of the petitioner pertains to his employment with the

respondent management where he was working since the year 1989 as a machine operator. The first and foremost objection raised by the petitioner against the impugned Award is that when the respondent W.P.(C) 7711/2017 Page 8 of 21

> management closed their establishment from Wazirabad, Delhi premises and shifted to Sikandrabad address, the respondent intentionally terminated the services of the petitioner w.e.f. 05.09.2011 as he was not allowed to enter the premises of the management at Delhi. The petitioner further alleges that he was not given any retrenchment compensation, nor was he issued any prior notice and as such, his termination is in violation of Section 25FFF of the ID Act. It is his claim that no workman can be forced to transfer from one establishment to another and the present case is a clear case of closure of a branch, which fact, has been rejected by the learned Labour Court.

25. In rival submissions, the case of the management is that the

> services of the petitioner workman were never terminated as the management merely decided to shift its branch from Wazirabad, Delhi to Sikandrabad address and it was rather the petitioner workman who failed to resume his duties at the transferred place despite being given written directions vide letters dated 21.09.2011 and 07.10.2011. It is therefore, the plea of the respondent management that the provisions of Section 25FFF of the ID Act does not apply in the instant case as the management merely shifted its unit from Delhi to Sikandrabad and as such, the learned Labour Court has rightly arrived at its findings.

26. Before deliberating upon the objections raised by the petitioner, W.P.(C) 7711/2017 Page 9 of 21

> it is relevant to note the relevant law on this point. The petitioner has claimed that the shifting of the premises of the management amounts to closure of their business resulting in illegal termination of the workman in

violation of provisions of Section 25FFF of the ID Act. Section 25FFF provides that in case of close down of an undertaking, 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, is entitled to notice and compensation in accordance with Section 25-F of the ID Act.

27. The petitioner is aggrieved by the findings of learned Labour

Court which held that the case of the management does not amount to closure of an undertaking but amounts to only shifting and as such 25FFF of the ID Act is not applicable.

28. What amounts to closure has been dealt with in the case of

Biddle Sawyer Ltd., Mumbai v. Chemical Employees Union, 2007 SCC OnLine Bom 339 passed by the High Court of Bombay wherein, after going through the entire law relating to closure, it was held that closure means permanent closing down of the business/undertaking/industry and not merely a place of business. The relevant portion of the said judgment reads as under:

40. Having considered extensively all the judgments placed before us by the learned Senior Counsel, the law relating to closure W.P.(C) 7711/2017 Page 10 of 21

seems to be a well settled one. Closure is the closing down permanently of the source of employment of the workmen, i.e. the place where the employment is actively generated. It thus follows that closing down of a place of business would not amount to closure as that would be over simplification which would lead to various negative ramifications as they have been extensively dealt with in the earlier part of the judgment in various quotations from various judgments. It must be recalled that the object of labour legislation is a social welfare legislation. It is an umbrella

of protection provided to workmen to shield them from the employer exploiting their vulnerable position. But it cannot be said that merely because a place of manufacture has been closed down and restarted at another place or transferred to another employer that the undertaking has been closed down. The business itself is still alive, the source of employment is still present and there is no valid closure in law.

41. A conspectus of all the above judgments

makes it clear that closure would really mean permanent closure of the place of employment or a part thereof and the same could never mean only place of employment. One has to read the above definition of section 2(cc) of Industrial Disputes Act in a comprehensive manner and not in a disjointed manner. A place of employment means a place which generates employment or where business is carried on, and the same should not be construed in a superficial manner to indicate only a building or factory. The above interpretation has been consistently adopted by the Hon'ble Supreme Court and our High Court, as can be seen from the following:

(a) The Hon'ble Supreme Court in the

case of Tatanagar Foundary Co. Ltd. v. Their Workmen, 1970 (I) LLJ 348, in paragraph No. 3 has observed as under:- . It was pointed out in that case that in the case of a closure, the employer does not merely close down the place of business but he closes the business itself finally and irrevocably. A lockout on the other hand indicates the closure of the place of business and not closure of the business itself. In the present case the totality of facts and circumstances would lead to the

conclusion that the undertaking at

Jamshedpur was closed down completely and was a final and irrevocable termination of the business itself.

(b) Our High Court in the case

> of Innovations Garment Limited v. S.K. Singe, (2002) II CLR 902 has observed in paragraph No. 8 as follows:- The petitioners were directed to discontinue or stop the manufacturing activities under the law by the competent authority. It is, therefore, not possible for me to accept the contention of Ms. Gopal that the decision of the petitioners to stop or to discontinue the manufacturing activities suffer from lack of bona fides or an act of victimisation or it was a mala fide decision to resort to closure in the guise of shifting. The bona fides of the petitioner can further be tested in the light of their restarting the factory at Mumbai after making alternative arrangement from 1st September, 1998. The petitioners had

> sufficient land and infrastructure at Massourie and their decision to shift their activities to Massourie cannot be questioned as unjustified or mala fide. I do not find any fault with the decision of the petitioners to shift to Massourie their manufacturing unit from Mumbai. It is, therefore, not possible for me to accept the findings of the industrial Court that stopping of manufacturing activity at Mumbai and shifting to Massourie amounted to closure as defined under the provisions of the Industrial Disputes Act. Since there was no closure of the manufacturing activities at Mumbai and it was decided to relocate or shift the factory at Massourie, it cannot be said that it was a closure of the factory or company at Mumbai. In my opinion, therefore, section 25-O of the Industrial Act is not attracted. (Emphasis Supplied)

29. This Court also deems it appropriate to refer to the judgment of

the Calcutta High Court passed in the case of Birla Corporation Ltd. (Unit Soorah Jute Mill) Sramik Union v. Birla Corporation Ltd., 2008 SCC OnLine Cal 649, whereby, a stark difference between closure and shifting has been laid down as follows: 41. Another argument has also been advanced on behalf of the appellants that the shifting of the concerned jute mill amounts to closure and hence, forms an industrial dispute. The aforesaid argument, in our opinion, is without substance since closure is associated with loss of employment whereas shifting W.P.(C) 7711/2017 Page 13 of 21 results in no loss of employment. It is not closing down of the place of employment but shifting of the place of employment. The word closure has conceptually a definite connotation in industrial law and is necessarily associated with the concept of loss of employment. Furthermore, the impugned

order of reference does not mention that

shifting in the instant case means closure of the jute mill. (Emphasis Supplied)

30. In deliberating the aforementioned issue, the learned Labour

> Court has taken into consideration the admissions of the petitioner workman in his cross-examination and rightly came to the finding that there was no malafide intention on the part of the management to terminate the services of the workman and that the issue relates to merely shifting of a unit from one place to another and not a case of closure. The relevant portion of the cross examination of the workman is also reproduced hereinbelow:
>
> ..It is correct that the managements have shifted their units at H-4, UPSIDC, Industrial Area, Sikandarabad, District Bulandshahar, U.P. It is correct that we have filed a suit for permanent injunction in the court of Vacation Judge, North West District, Rohini, Delhi from shifting the machines from Delhi to Sikandarabad, U.P. It is correct that no stay was granted to us in that suit. It is correct that I alongwith other workers sat on Dharna outside the factory gate of the management at Wazirpur, Delhi. It is correct that a suit for permanent injunction was filed by the

management against the workmen and union for stay before Ld. Civil Judge, Rohini, Delhi. It is correct that an interim order was passed by Ld. Civil Judge, Rohini, Delhi against us. It is correct that thereafter the Dharna/protest had come to an end. It is correct that we were protesting that until and unless the managements settles our accounts for the services rendered at Delhi, we shall not join at the transferred place. It is correct that the managements had told that they are ready to allow us to join duties at Sikandarabad on the same terms and conditions as were applicable at Delhi at the time of our transfer. It is correct that the managements time and again had asked us to join our duties at Sikandarabad vide written directions vide letters dt. 21.09.11 and 7.10.11. It is correct that I had not joined duties alongwith other co-workers till date at Sikandarabad despite repeated directions of the managements.

It is correct that the managements are still ready to allow me duties at Sikandarabad. Vol. There is some danger involved for joining my duties at Sikandarabad. The danger is with respect to any incident/accident during transit period while going from Delhi to Sikandarabad and coming back from Sikandarabad to Delhi. I do not know if some of the workers have even joined the management at Sikandarabad. I do not know if the management has given in writing in the court that it is ready to take me back on duty at Sikandarabad. My AR has told me with respect to the contents of written statement as filed by the management. Vol. I did not exactly recollect as to what was told to me by my AR. It is correct that the management has told me in the presence of labour inspector that the

 management is ready to keep me on duty at Sikandarabad. It is correct that the management has not given me any letter in writing regarding termination of my services.

31. The above cross-examination of the petitioner workman

indicates that it is an admitted case of the petitioner that the management had shifted its unit to Sikandrabad, Uttar Pradesh, and time and again, asked the workman to join his duties there vide letters dated 21.09.2011 and 07.10.2011 and that despite receiving the said letters, the workman had not joined at Sikandrabad location, giving one flimsy ground of not joining there. He has also admitted that the respondent management was always willing to take him back on duty and had not given any letter terminating his services.

32. In view of the evidence that had come on record, the learned

Labour Court has rightly recorded its findings that it was not a case a closure of management but rather a case of shifting of its business from one place to another and that there is no pleading of the workman that the workers were shifted to Sikandrabad unit when the same was not operational and some malafide was put against the workman or the management had shifted its unit due to some malafide to teach a lesson to the workman.

33. As already admitted by the petitioner workman, it is an undisputed fact that the respondent management offered its employees W.P.(C) 7711/2017 Page 16 of 21

to join their duties at the transferred location at Sikandrabad unit on the same terms and conditions as were applicable to them in the Wazirabad, Delhi premises. Applying the aforesaid principle of law

held in Birla Corporation Ltd. (Unit Soorah Jute Mill) Sramik

Union (Supra), this Court is of the considered opinion that since the workmen were extended the employment conditions at the transferred location by the respondent management, there was no loss of employment to them nor any service condition had been changed, and

as such, the establishment was only shifted to a different place. In view of the same, the compliance of Section 25FFF of the ID Act is not attracted in the present scenario.

34. Furthermore, since it has been held in a catena of judgments

that an employer has an inherent right to choose his place of employment, the respondent management made a managerial decision to shift its establishment from Wazirabad, Delhi to Sikandrabad after duly issuing transfer letters dated 21.09.2011 and 07.10.2011 to its workmen, and the same does not constitutes as closure. This Court deems it relevant to rely on the judgment passed by Calcutta High Court in Shalimar Paints Ltd. v. Third Industrial Tribunal of West Bengal, 1970 SCC OnLine Cal 17, in which case, the management had shifted its business from 6, Lyons Range, Calcutta to Goabaria, Howrah and sales division to 13, Gamac Street, Calcutta, whereafter the workmen started claiming compensation for the amount spent in

travelling to the transferred place. The same was denied by the management on the ground that there had been no alteration in the conditions of the service of any employee, to which the workmen raised an industrial dispute, which was allowed by the Industrial Tribunal. Against the said order, the management had moved to the Calcutta High Cout, whereby it was inter-alia held as follows:

17. It, therefore, follows that just as an employee cannot make a claim for an extra allowance when he shifts his residence to a more distant place from his office there can be no claim for compensation when the employer shifts his business or undertaking from one place to another. The employer, in my view, has an inherent right to choose his place of business. The fact that some of the employees may have to incur

additional expenses by way of travelling as a result of such shifting of employer's business or undertaking, does not entitle the employee to make a claim for extra benefit or compensation. In any event such a claim cannot be made on the ground that there has been a transfer of employees. The expression transfer, in my opinion, connotes that an employer has more than one place of business and the employee is called upon to work in a different place of business from the one in which he worked previously.

35. The reliance placed by the learned counsel for the petitioner on Workmen of the Straw Board Manufacturing Company Limited, (Supra) is also of no aid to the petitioner as the issue in the aforesaid

judgment clearly pertains to the closure of one of the units of an

establishment and not the complete closure which is not the case herein. Considering the difference between the terms closure and shifting, as already illustrated by the Calcutta High Court in Birla Corporation Ltd. (Unit Soorah Jute Mill) Sramik Union (Supra) and by the High Court of Bombay in Biddle Sawyer Ltd., Mumbai (Supra) this Court finds that since the petitioner workman was at liberty to resume his duties at the transferred location at Sikandrabad, there was no loss of employment to the petitioner. Further, keeping in view the fact that there was no illegal termination of his services and in view of all the facts and circumstances, this Court is of the considered opinion that asking the workman to join duty at the transferred location cannot be held as closure of an establishment, rather, the present issue pertains to shifting of a unit from one place to another.

36. Another contention raised by the learned counsel for the

petitioner is that the learned Labour Court erroneously held that the petitioner workman had failed to prove an employer-employee relationship with the respondent No.2 management. As per the stand of respondent No. 1 and respondent No. 2 before the learned Labour Court and even before this Court, there is no employer-employee relationship between the workman and the respondent No. 2. It is stated that both the managements are different entities as one is a partnership firm and the other is a private limited company. They cannot be co-related even if the partners or directors are of the same

W.P.(C) 7711/2017 Page 19 of 21 family. It is stated that the petitioner workman is an employee of the respondent No. 1 management.

37. The onus to prove the relationship is squarely upon the

petitioner. As indicated from the record, there is no specific pleading as to under which management the workman was working and from whom he was claiming his legal facilities. As per his evidence, he joined the management of M/s Kiran Engineering and Suppliers, i.e., the respondent No. 1 management. He has also deposed that his name was entered in the attendance register of the respondent management No. 1 and the said management was making payment of earned wages after getting his signatures on the vouchers, and that he was covered under the provisions of the Employees State Insurance Act of 1948 as well as under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 by the respondent No. 1. He further admits to have filed the documents pertaining to respondent No. 1 only.

38. In view of his own deposition, it is clear that he was an

employee of respondent No. 1 and not of respondent No. 2. The allegations in his claim are ostensibly vague. As respondent No. 1 management has admitted the workman to be its employee and in the

absence of any specific pleading and evidence qua respondent No. 2, the learned Labour Court has rightly proceeded on the premise that the petitioner workman was an employee of respondent No. 1. This Court

W.P.(C) 7711/2017 Page 20 of 21 finds no infirmity in the findings of the learned Labour Court in this regard also.

39. No other arguments are advanced before this Court.

40. In view of the aforesaid discussion on facts and law, this Court finds no merit in the present writ petition. There is no perversity or illegality in the Order passed by the learned Labour Court warranting any interference.

41. Accordingly, the present petition stands dismissed being devoid of any merit. All pending application(s), if any, also stand disposed of. RENU BHATNAGAR, J FEBRUARY 28,2026 p/sm W.P.(C) 7711/2017 Page 21 of 21

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