Association of Engineering Workers Vs. Iron and Metal Traders Pvt. Ltd. and ors.

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Court : Mumbai

Decided On : Jun-20-1995

Reported in : (1998)IIILLJ436Bom

Judge : N.D. Vyas, J.

Acts : Industrial Disputes Act, 1947 - Sections 10, 12, 12(5), 25N and 25-O

Appeal No. : Writ Petition No. 920 of 1993

Appellant : Association of Engineering Workers

Respondent : iron and Metal Traders Pvt. Ltd. and ors.

Advocate for Def. : Mr. S. M. Dixit

Judgement :

N.D. Vyas, J.

1. By the present petition, the petitioner which is a Trade Union, registered under the Trade Unions Act, has challenged the validity of the orders dated 26th March 1992 and 10th February 1993 passed by the Assistant Labour Commissioner refusing to intervene. It is the petitioner's case in the petition that the 1st respondent is a private company within the meaning of the Companies Act and

was at the relevant time in the business of manufacturing pneumatic valves and other allied products and had its factory a Mazgaon and had its crushing, pulverising and grinding Departments at the Factory situate at Thane, that the said Thane factory was an integral part of Mazgaon establishment and that there were functional and financial integrality between the two factories under the common management. It is further alleged in the petition that the 1st Respondent was a well established company and a subsidiary of Bombay Metals and Alloys Mfg. Co. Ltd., and that the workmen of the 1st Respondent joined the petitioner Union for effective representation and in or about 1984 became its member; that in or about May 1989 the management of the 1st Respondent managed to secure resignation of 10 workmen then employed in the Thane factory which brought halt to the manufacturing activities in the Thane factory; that in or about August 1991, the management of the 1st Respondent gave a notice under Section 25FFA of the Industrial Disputes Act (hereinafter referred to as 'the said Act') of the intention to close down its Thane Division and simultaneously an application was made under Section 25O of the Said Act seeking permission of the State Government to close down the said Thane Division of the 1st Respondent; that the State Government by its order dated 10th October 1991 erroneously and without application of mind granted such permission to close down the industrial establishment at Thane and that the State Government directed the three workmen then working as Watchmen in the establishment would be entitled to compensation under law, as their services stood terminated consequent upon closure and on the principle of 'last come, first go' and that the petitioner sought review of this order under sub-section (5) of Section 25O of the said Act, that however, the same was rejected by the State Government; that the termination of services of the watchmen was illegal, arbitrary and in colourable exercise of the management's powers and, therefore, the petitioner by a letter dated 20th November 1991 raised an industrial dispute demanding reinstatement and that since the 1st Respondent did not concede the said demand, the petitioner sought the intervention of the State Government in respect of the said industrial dispute and submitted the justification statement by its letter dated 7th December 1991, that by its letter dated 26th March 1992, the 2nd Respondent informed the petitioner that he did not propose to intervene in the dispute as the Government had already granted the permission to close down the

establishment vide its order dated 10th October 1991 and 16th November 1991 and, therefore, the question of reinstatement did not arise. Being aggrieved by the said orders, the petitioner has in the present petition challenged the said orders dated 26th March 1992 and 10th February 1993.

2. It was the submission of Mr. Ganguli, the learned counsel appearing for the petitioner that the impugned decision of Respondent Nos. 2 and 3 was contrary to law, material on record, justice, equity and good conscience and an error apparent on the face of the record inasmuch as Respondent Nos. 1 and 3 exceeded the jurisdiction vested in them while passing the said order which was a decision under Sections 10 and 12 of the said Act and that such a decision could have been taken only where the State Government or the Deputy Commissioner of Labour who was delegated with the power of the State Government. It was net submitted that Respondent Nos. 2 and 3 failed to appreciate that there was a dispute between the 1st Respondent and the petitioner relating to the reinstatement of the two workmen and, therefore, the 2nd Respondent was bound to hold the conciliation proceedings under Section 12 of the said Act in respect of the said dispute and by failing to do the 2nd Respondent failed to exercise the jurisdiction vested in him under the said Act. It was thirdly submitted that Respondent Nos. 2 and 3 failed to appreciate that while functioning under Section 12 of the said Act in the event of failure of the conciliation, the Conciliation Officer was bound to submit a failure report to the Government under subsection (1) of Section 12 of the said Act and that on consideration of such report, it was the duty of the State Government to refer the said dispute under sub-section (5) of Section 12.

3. On the other hand Mr. Cama, the learned counsel appearing for the 1st Respondent and Mr. S. M. Dixit, appearing for Respondent Nos. 2 and 3 submitted that at the time when the order dated 26th March 1992 was passed, the petitioner-Union was present and had participated in the proceedings. The so-called retrenchment was not a retrenchment as normally understood and that the phraseology used in the impugned order describing the termination on the basis of 'last come, first go' was not a happy one as the termination of services of the watchmen was as a result of closure of the establishment which was permitted by

the Government. In view of such closure, which order was not challenged by the petitioner, the termination had to follow and had become final. Thus there was no question of any industrial dispute arising after the closure of the establishment. It was further submitted that the application made by the petitioner dated 20th November 1991, which was immediately after the order dated 10th October 1991 sanctioning closure, inter alia stated that the workman concerned were retrenched with immediate effect i.e., 1st November 1991 because the Government of Maharashtra had accorded permission for closure of the Thane Division of the 1st Respondent Company. Thus it was the submission that even the petitioner admitted the position that the termination were as a result of the closure sanctioned by the State Government. It was further submitted that even the application dated 7/17th December 1991 spoke of termination being the result of the permission given by the State Government to close down the Thane Unit of the 1st Respondent Company under Section 25O of the said Act. In these circumstances, it was the submission of Mr. Cama and Mr. Dixit that the petitioner cannot now turn round and say that these workers were retrenched ignoring the fact that the termination was the direct result of the closure of the establishment as sanctioned by the State Government. Replying to the submission that the application was made for reference under Section 10 and Section 12 of the said Act, it was submitted that the application dated 7/17th December 1991 and the last paragraph thereof requested the Deputy Commissioner of Labour to intervene by admitting the case in conciliation for reinstatement with continuity of service with payment of full wages from 1st November 1991. It is thus clear, according to the submission made on behalf of the Respondents that the application was not for any reference under Section 10 nor the question of any reference under Section 12 could arise at that stage unless the authorities concerned had entered upon the conciliation and had failed and had submitted failure report to the State Government.

4. The question, therefore, arises for consideration is as to whether there can be industrial dispute after the establishment is permitted to be closed under the provisions of the said Act. Mr. Ganguli, the learned counsel appearing for the petitioner relied on an unreported decision of this Court dated 5th March 1988 in Appeal No. 932 in the matter of India Cork Mills Ltd. and their workmen wherein it

was inter alia held that granting of permission under Section 25-N did not preclude either the Industrial establishment or the workers from raising a dispute relating to such retrenchment and having its adjudicated upon. It may be stated here that only the excerpted portion of the said judgment was referred to and that the entire judgment was not produced. It was submitted that therefore, the Industrial Tribunal under IIIrd schedule, Item 10 thereof of the said Act had jurisdiction. However, Mr. Cama, the learned counsel appearing on behalf of the 1st Respondent relied on the decision of the Supreme Court in the matter of Indian Hume Pipe Co. v. Their Workmen reported in : (1969)ILLJ242SC wherein it was inter-alia held that where the business has been closed and it is either admitted or found that the closure is real and bona fide, any dispute arising with reference thereto would, fall outside the purview of the Industrial Dispute Act and that will a fortiorari be so, if a dispute arises after the closure of the business between the quondam employer and employee. It was the submission of Mr. Cama that in the present case the application for closure of the establishment was made by the 1st Respondent and that application was granted. The petitioner-Union was heard at the time of granting of permission. The petitioner had not challenged the said permission and in fact the termination of service took place as a result of the said closure. In view of the fact that the establishment itself had been closed down, there cannot possibly be any industrial dispute which could be adjudicated under the Industrial Dispute Act.

5. I see considerable merit in the submissions made on behalf of the 1st respondent. There cannot be any dispute that an application was made for the closure and that the said application had been granted. It is not as if the petitioner has come before this Court challenging the said order of closure. It is true that at the end of the said order while dealing with the termination of service of the watchmen the phraseology akin to that used for retrenchment has been used. Although the termination on account of closure is termed as 'retrenchment' but in the eye of law such termination at the time of closure is not similar to the retrenchment which took place when the Company continues in business and does away with its employees. Just because the phraseology used is not a proper phraseology, it cannot be said that principle of 'last come, first go' had to be complied with and, therefore, the workman concerned are required to be

reinstated and on the basis of the seniority others should have gone as contended by Mr. Ganguli on behalf of the petitioners. Even the application made and even prior thereto when a dispute is raised, the petitioner has in no uncertain terms maintained that the dispute was in respect of the termination of services as a result of closure which was sanctioned by the State Government on 10th October 1991. The application again is for conciliation. It is not as if that whenever an application is made for conciliation, an officer concerned has to either entertain the conciliation and on the same succeeding or on failure submit a failure report. Here in the given case, in my view, the Respondent was within his rights at the threshold to reject to intervene the dispute on the ground that in view of the closure of the establishment under the order dated 10th October 1991, there was no question of any reinstatement. The order happened to be passed on the application of the petitioner which sought to go behind the order of closure and the dispute which was received was in respect of watchmen and what was asked was reinstatement. I do not see any error in the said order. In my view, it is not mandatory that the officer concerned, has to intervene in the dispute which is referred to either by hearing the parties intervened in the matter or on failure thereof to refer it to the State Government.

6. Much was sought to be made of the fact that the order happened to be passed by the 2nd respondent who had no authority to do so. It was sought to be argued by Mr. Ganguli on behalf of the petitioner that the 2nd Respondent did not have a power to pass such an order as the same had to be passed by an officer delegated by the State Government to exercise such powers. The fallacy of the argument lies in the fact that the petitioner has stated before me that the basis of their application was for reference under the Industrial Disputes Act. Since the application is very clear that it is only for conciliation there is no question of reference involved in the matter.

7. In view of the above, I do not find any substance in the writ petition and the same is required to be and is dismissed. Looking to the facts and circumstances of the case, there shall however, be no order as to costs.

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