

Poonvasi and ors. Vs. Crown Silk Weaving Industries and ors.

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Court : Mumbai

Decided On : Jan-17-1994

Reported in : 1994(1)MhLj847

Judge : B.P. Saraf, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 25A, 25F, 25J, 25-O, 25-O(1), 25-(7), 25FF, 25FFA, 25FFF and 25FFF(1)

Appeal No. : Writ Petition No. 879 of 1990

Appellant : Poonvasi and ors.

Respondent : Crown Silk Weaving Industries and ors.

Advocate for Pet/Ap. : Mr. N. M. Ganguli

Judgement :

Dr. B.P. Saraf, J.

1. The writ petition has been filed by the twelve workmen whose services came to an end as a result of closure of the establishment of the respondent No. 1, Crown Silk Weaving Industries. The petitioners and some other workmen had filed an application before the Labour Court challenging the closure of their services and claiming reinstatement in service with full back wages and continuity of service. The Labour Court held the discontinuance of service of the petitioners as illegal

and directed the employer to pay each of the twelve workmen token back wages at the rate of Rs. 200/- per month from 15 January, 1980 till the date of order of the Labour Court i.e., 17 April, 1985. It also directed the employer to give the said workmen continuity in service from 15 January 1980 till the date of the above order for the purpose of computing all benefits arising under the service rules like gratuity, retrenchment compensation, leave wages etc. The employer was also directed to pay each of the workman one month's notice wages at the rate of wages drawn by them before 15th January, 1980 and all other claims like retrenchment compensation, gratuity, leave wages etc., by treating them to have continued in service till the date of its order. The employers appealed to the Industrial Court, Maharashtra, Bombay, which by its order dated 7 March, 1989 held that the closure of the establishment on 15 January, 1980 was genuine. The Industrial Court observed that the provision of Section 25-O were not applicable as the number of workmen employed by the employer was less than 100. It however found that no notice as contemplated by Section 25-FFF(1) was given to the workmen. It was further held that the Labour Court was not justified in awarding back wages at the rate of Rs. 200 per month and directing continuity of service for the purpose of gratuity etc. The Industrial Court therefore set aside the direction of the Labour Court to pay back wages at the rate of Rs. 200 per month from 15 January 1980 to 17 April 1985 to each of the workmen so also the order to give continuity of service to the workmen during the above period. The employer was directed to pay two months notice wages at the rate of wages last drawn by each of the workmen before 15 January 1980 and also closure compensation and other legal dues as per Section 25-FFF(1) of the Industrial Disputes Act. The workmen have challenged the above order of the Industrial Court dated 7 March, 1989 by filing the present writ petition.

2. Mr. N. M. Ganguli, learned counsel for the petitioners, submits that the Industrial Court was not justified in passing the impugned order and setting aside the direction of the Labour Court to pay to each of the workmen (petitioners herein) back wages at the rate of Rs. 200 per month. The submission of Mr. Ganguli is that to close an undertaking, the employer is required to comply with the requirements of Section 25-FFA of the Industrial Disputes Act and in the event of failure to do so, the entire action of closure would be void and non-est and the

automatic consequence would be that the workmen would be deemed to be in the employment of the employer till there is a valid closure in accordance with law by complying with the requirements of Section 25-FFA of the Industrial Disputes Act. In the instant case, there is no dispute that sixty days' notice contemplated under Section 25-FFA of the intention to close down the undertaking had not been given by the employer before closing down the undertaking on 15 January 1980. Therefore, the question that arises for consideration is whether the closure of an undertaking without issuing sixty days notice required by Section 25-FFA would be illegal from its very inception. The real controversy, in other words, is in regard to the consequences of non-compliance with the requirements of Section 25-FFA.

3. Learned counsel for the respondent-employer submits that the dispute being one under the Bombay Industrial Relations Act, it has to be examined in the light of the provisions of the said Act and not the Industrial Disputes Act. He further submits that both the Courts below committed a manifest error in coming to a conclusion that the ownership of the five undertakings mentioned in the order was common because all of them belonged to the members of the same family and were housed in the same building and run mainly by the members of the same family and except in some cases where they were run by certain other partners. The counsel submits that the Courts below committed an error of law in arriving at the above finding by wrongly putting the onus of the employer to produce the partnership deeds, etc. of the different undertakings to show that they were different undertakings. Counsel also submits that Section 25-FFA does not lay down any condition precedent for closure and hence any breach thereof cannot render such closure non-est.

4. I have carefully considered the rival submissions. The material facts of the case are brief and mostly uncontroverted. Admittedly on 15 January, 1980, respondent No. 1 closed down the undertaking in which the petitioners were employed along with three other undertakings in which it has substantial interest. Only one of the undertakings was not closed. It was contended by the respondent No. 1 that all these undertakings were owned by different partnership firms and were different establishments. No partnership deeds were however produced by the respondent No. 1. The Labour Court observed that the employer failed to show that those five

undertakings were different and recorded a finding that there was integrity of business of those five undertakings and they constituted one establishment. The Industrial Court also confirmed the above finding of the Labour Court and held that ownership of the five undertakings was common. It may be observed that no counter has been filed in this case by the respondent-employer challenging any of the concurrent factual findings arrived at by both the Courts below. The finding regarding integrity of business being primarily and essentially a finding of fact, it is for him, who wants to challenge it, to do so by specifically pointing out the factual inaccuracies which have resulted in a wrong finding. The employer has not done so. The learned counsel for the respondent submitted that the Labour Court and the Industrial Court should have issued notices to the different firms before arriving at the above finding. This contention has also been raised for the first time in course of reply to the arguments of the petitioners and not even by a counter to the writ petition. In such a situation, it is difficult to entertain this submission. There is no doubt that the respondent No. 1 in this case is having substantial interest in all four undertakings. Respondent No. 1 was all throughout represented in the proceedings before the Labour Court as well as the Industrial Court. It could have represented other firms and objected to all of them being treated as one establishment or in the alternative, prayed to the Court to issue notices to those firms or undertakings. Nothing of the sort appears to have been done at any stage in course of proceedings before the Courts below. Under the circumstances, I do not think it fit and proper to entertain such a technical objection at this juncture without any factual foundation to support the same.

5. I also do not find any force in the objection to the reliance placed by the Courts below on the provisions of the Industrial Disputes Act in deciding a case under Section 78 of the Bombay Industrial Relations Act. Because, what is challenged in the instant case is the closure of an undertaking and reliance is placed on Chapter V-A of the Industrial Disputes Act comprising of Section 25-A to 25-FFA and 25-FFF and 25-O. Section 25-J, which is a part of the same Chapter V-A, specifically provides :

'25-J. Effect to laws inconsistent with this Chapter - (1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith

contained in any other law including standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (XX of 1946) :

Provided that where under the provisions of any other Act or rules, orders or notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matter under this Act.

(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as the law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter'.

This section is a clear answer to the objection of the learned counsel for the employer. It is evident that Chapter V-A of the Industrial Disputes Act has an overriding effect over all other enactments on the subject referred to therein. That being so, a dispute regarding closure of an undertaking before a Labour Court under Section 78 of the BIR Act has to be decided with reference to the relevant provisions of Chapter V-A, particularly Sections 25-FFA, 25-FFF and 25-O. The Sections which have a direct bearing on closure of an undertaking are Sections 25-FFA, 25-FFF and 25-O. It may, however, be pertinent to mention that Section 25-O was inserted in the Act by the Maharashtra Act No. 3 of 1982 with effect from 27 February 1981. The uncontroverted position is that it has no application to the dispute in the present case because the closure of the undertaking took place on 15 January, 1980, much before the said section came into operation. It will, however, be helpful in interpreting Section 25-FFA and 25-FFF. Sections 25-FFA and 25-FFF, so far as relevant in the following terms :

'25-FFA. 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 be come effective, a notice, in the prescribed manner, on the appropriate Government 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 other construction work or project.

(2) Notwithstanding anything contained in Sub-section (1), the appropriate Government may, if it is satisfied 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'.

'25-FFF. Compensation to workmen in case of closing down of undertakings :-

(1) Where an undertaking is closed down 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 shall, subject to the provisions of Sub-section (2) be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the workman had been retrenched :

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of Section 25-F shall not exceed his average pay for three months.

x x x x x x '.

From a reading of the two above sections, it is clear that an employer who intends to close down an undertaking is required by Section 25-FFA to serve a notice in the prescribed manner on the appropriate Government stating the reasons for the intended closure of the undertaking at least sixty days before the date on which the intended closure is to become effective. Under Sub-section (2) of the said section, the appropriate Government has the power to exempt any undertaking for a specific period from the requirement of Sub-section (1). Section 25-FFF deals with compensation to workman in case of closing down of an undertaking. This however comes into operation only after the undertaking has been closed down. The controversy is in regard to the consequences of the failure of the employer to give the notice of his intention to close down an undertaking to the appropriate Government as contemplated under Section 25-FF. What has to be decided is whether such notice is a condition precedent or it is a procedural requirement and whether failure to comply with the same would render the closure itself illegal or non-est or it would merely make the employer liable for some other consequences.

6. On a careful consideration of the object and scheme of the two sections, it appears that notice under Section 25-FFA is not a condition precedent for closure of an undertaking and non-compliance therewith cannot have the effect of rendering the closure illegal and non-est from its very commencement. This interpretation gets support from the language of Section 25-F which lays down the conditions precedent for retrenchment of a workman. This section, as it stood at the material time, is in the following terms :

'25-F. Conditions precedent to retrenchment of workmen. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -

(a) the workman has been given one months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of notice :

Provided that no such notice shall be necessary, if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months, and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette'.

Section 25-O of the Act, which was inserted with effect from 27 October, 1981, also supports the above interpretation. This section imposes an obligation on an employer who intends to close down an undertaking of an industrial establishment to apply to the appropriate Government for permission at least 90 days before the date on which the intended closure is to become effective. A copy of such notice is also required to be served simultaneously on the representatives of the workmen. Sub-section (7) of Section 25-O specifies the consequences of the refusal of the Government to grant permission for closure. It provides that in such an event, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under the law for the time being in force as if no notice had been given to him. As indicated above, this section came into being subsequent to the closure of the undertaking in question in the instant case and as such is not available to the workmen in the present writ petition. This section however gives an indication in regard to the legal position prior to its incorporation. Prior to insertion of Section 25-O, the only requirement for closure was contained in Section 25-FFA which does not require an employer to apply for permission of the appropriate Government to close down its undertaking. What is required in that case is only to give sixty days notice to the appropriate Government of the employers' intention to close down an undertaking. No consequence of failure to give such a notice has been set out in Section 25-FFA as has been done in Sub-section (7) of Section 25-O of the Act. This distinction in the scheme of these two sections viz., Section 25-FFA and Section 25-O which has been made applicable to the State of Maharashtra by the State of

Maharashtra Act No. 3 of 1982, is perceptible and material. The requirement of making an application to the appropriate Government 90 days before closing down any undertaking contained in Section 25-O which is applicable in Maharashtra since 27 October, 1981 is a condition precedent to the closure and non-compliance therewith is visited with the consequence contained in Sub-section (7) thereof, i.e., the closure shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits as if no notice had been given to them. Unlike Section 25-O, the requirements of Section 25-FFA are not mandatory. The power of the employer to close down an undertaking is not subject to prior permission of the appropriate Government. It simply requires the employer to give 60 days notice of the intended closure to the appropriate Government stating the reasons for the same. Failure to do so would not render the closure illegal from its inception. It may render the employer liable to pay wages of 60 days to the workmen. Reference may be made, in this connection, to the decision of the Supreme Court in *A. S. Production Agencies v. Industrial Tribunal, Haryana*, : (1979)ILLJ1SC wherein on comparison of the language employed in Section 25-F and Section 25-FFF(1) of the Industrial Disputes Act, it has been held (at 178) as under :

'A comparison of the language employed in S. 25-F and S. 25-FFF(1) would bring about in bold relief the difference between the phraseology employed by the Legislature and its impact on the resultant rights of the workmen. Under Section 25-F a workman employed in an industrial undertaking cannot be retrenched by the employer until the payment is made as provided in Clauses (a) and (b). Section 25-FFF(1) provides that the workman shall be entitled to notice and compensation in accordance with the provision of Section 25-F if the undertaking is closed for any reason, as if the workman has been retrenched'.

It is thus clear that mere contravention of Section 25-FFA by the employer would not render the closure of an undertaking illegal or void and will not entitle the workman to an order of reinstatement. The workmen in such a case may be entitled to wages for sixty days in lieu of notice. Non-compliance with the requirement of this section therefore cannot be equated with non-fulfillment of a condition precedent to the passing of an order.

7. The decision of the Supreme Court in *S. G. Chemicals and Dyes Trading Employees Union v. S. G. Chemicals and Dyes Trading Ltd.* 1986 1 CLR 360 on which reliance was placed by the learned counsel for the petitioner has no application to the present case, because in that case Section 25-O was applicable and in that view of the matter it was held that where no application for permission under Sub-section (1) of Section 25-O is made, the closure of the undertaking is deemed to be illegal from the date of closure and the workmen are entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down :.

8. Learned counsel for the petitioner also relied on a decision of the Gujarat High Court in *Miscellaneous Mazdoor Sabha v. State of Gujarat* 1992 2 CLR 754 wherein it was held that the termination effected without following the procedure under Section 25-FFA and Section 25-FFF was inoperative, ineffective and invalid in law and the concerned workmen would be entitled to be reinstated with continuity of service and all consequential monetary benefits till the company chooses to follow proper procedure under Section 25-FFA and Section 25-FFF in future and legally snap employee-employer relations with the workmen. I have carefully considered the above decision. In my opinion, the above observations have been made therein in the peculiar facts and circumstances of that case and are not of general application. In that case, the Gujarat High Court found that the services of the entire working force of 74 workmen were terminated and they were asked not to come from the next day. Under the said circumstances, it was held that his type of wholesome termination, which in substance amounted to closure of the undertaking for all of them, clearly violated Sections 25-FFA and 25-FFF. In any event, I find it difficult to accept it as a broad proposition of law of general application that failure to comply with the requirements of Sections 25-FFA and 25-FFF would render the closure inoperative, ineffective and invalid in law.

9. I am, therefore, of the clear opinion that breach of requirements of Section 25-FFA does not render the order of closure of an undertaking illegal. It will only render the employer liable for failure to serve the notice to pay to the workman wages for a period of sixty days. The workman in such a case will not be entitle to get an order of reinstatement and/or back wages. In the instant case it has been

categorically held by the industrial Court that the respondents had not led any evidence to show that it was a sham closure and each of the workman admitted that there was a closure of business.

10. In view of the legal position discussed above, I am of the clear opinion that the Industrial Court was justified in modifying and substituting the order of the Labour Court dated 17 April, 1985 in so far as it related to payment of back wages at the rate of Rs. 200 per month from 15 January, 1980 to 17 April, 1985 and continuity of service from the date of closure till the date of the order. The Industrial Court acted correctly and in accordance with law in directing the respondent-employer to pay two months' wages at the rate of wages last drawn by each of the workmen before 15 January, 1980 and also to pay closure compensation and other legal dues as per Section 25-FFF(1) of the Industrial Disputes Act.

11. In view of the above discussion, I do not find any merit in this writ petition. The same is, therefore, dismissed. Rule is discharged. There shall be no order as to costs. Certified copy expedited.