Tatanagar Foundry Company

Vs

Their Workmen

Civil Appeal No. 315 of 1961

(P. B. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo JJ)

09.03.1962

JUDGMENT

GAJENDRAGADKAR, J. -

This appeal by special leave is directed against the order passed by the Industrial Tribunal, Patna, directing the appellant, the Tatanagar Foundry Co., to pay to the respondents, its workmen, 75% of the consolidated wages as compensation for having laid them off for a period of 45 days commencing from December 15, 1959. It is common ground that the appellant laid off the respondents for the said period. The appellant's case was that it had paid the respondents the statuary compensation for the said lay-off as prescribed by s. 25C of the Industrial Disputes Act (No. 14 of 1947) (hereinafter called the Act). The respondents, however, contended that the lay-off was not justified and so the statutory compensation paid by the appellant did not satisfy the ends of justice. It was this dispute between the parties which was referred for adjudication by the Government of Bihar to the Industrial Tribunal on February 9, 1960. On this reference, the Tribunal has held "that the lay-off could not be held to be altogether justified." That is why it has awarded compensation to the respondents in excess of the amount statutorily fixed in that behalf. The appellant contends that the award thus made by the Tribunal is contrary to law.

Before dealing with the merits of the contentions raised by the appellant, it would be necessary to state some relevant facts which led to the lay-off. The appellant is a Public Limited Company and has its factory in Jamshedpur. It manufactures cast iron sleepers, pipes, general engineering casting and non-ferrous castings in the said factory. The raw materials mainly required for the manufacture of sleepers are pig-iron, coke, limestone and moulding sand. The Railway Board is the only buyer of sleepers and the sleepers are, therefore, manufactured only on receipt of orders upon tenders from the said Board, and not otherwise. The normal procedure for procuring raw material was that after an order was received from the Railway Board, the appellant submitted its requirement of pig iron to the Iron & Steel Controller of the Government of India who allocates the quantity for the said commodity to the various manufactures, such as Tata Iron & Steel Co. Ltd. and Indian Iron & Steel Co. Ltd. Formerly, supply of pig iron used to come from the said two concerns to the appellant and the appellant used to pay cash to Tata Iron & Steel Co. Ltd. for the pig iron supplied by it and by a Letter of credit to the Indian Iron & Steel Co. Ltd. on which the said Company used to supply the raw material made by it. In 1959, both the companies stopped supply of pig iron in spite of the order issued in that behalf by the Controller, and they wrote to the appellant suggesting that the appellant should request the Controller to cancel his order and place the same with some other suppliers. Correspondence followed between the said companies and the appellant and finally in November, 1959, the appellant was informed by the said companies that they could not supply its requirements of raw material.

In June, 1959, the Bhilai Steel Works made their first shipment of pig iron addressed to the appellant. In August, 1959, the said Works despatched some wagons of pig iron to the appellant, but out of 20 wagons of the consignment, 14 were lost completely, and the rest misdelivered and were subsequently found somewhere in Gomoh and some in Tatanagar and they never reached the appellant in time.

In May, 1959, the appellant arranged for Letter of Credit for a sum of Rs. 1,00,000/- for the Bhilai Steel Works. In August, there was a supply of 440 tons and in September, followed a supply of 36 wagons containing pig iron to the extent of 20 to 21 tons each roughly. In all, this latter supply came to about 760 tons. In the two subsequent months, no supply was received from Bhilai. The Letter of Credit which the appellant had opened for Bhilai Steel Works was revolving, with the result that as soon as one transaction was completed, the said letter was ready for the subsequent transaction. The effect of this revolving letter was that the value of credit of Rs. 1,00,000/- continued to be outstanding all the time. In spite of this revolving letter, the Bhilai Steel Works failed to supply pig iron in the two months October and November. The appellant reminded the Works that no supply of pig iron was received from them and yet no advice of any despatch of pig iron was received from the Works after July 27, 1959. Even the 20 wagons which had been sent in August and September did not arrive at the factory. These wagons, it was later learnt, had been delivered to K. P. Docks and some other destinations.

In regard to the supply of pig iron from Rourkela, the appellant arranged for finance on cash basis. In fact, between August and December a total advance of Rs. 1,75,000/- was made to the Rourkela Steel Works. A supply of pig iron worth about Rs. 1,64,000/- was received by the appellant, but the balance of Rs. 11,000/- was still outstanding. In addition to the cash advances, the appellant also opened a Letter of Credit for Rs. 1,00,000/- in November, 1959, for financing the purchase of steel from the said Works.

As early as 1959, TISCO informed the appellant that it regretted that it would not be possible for it to supply the requirements of the company regularly, while in regard to the supply from IISCO, the position was still worse.

The appellant kept its employees and the Assistant Labour Commissioner fully informed of these unfortunate developments from time to time. Both the Assistant Labour Commissioner and Mr. John, President of the respondents' Union, did what they could by moving the Government to assist the appellant in securing the raw material. Even so, when the situation did not show any signs of improvement and the appellant found that no raw material was available with which its foundry could carry on the manufacture of sleepers, it issued a notice on December 15, 1959 and laid off the workers of the Sleeper Factory. This lay-off continued until September 11, 1960 and from September 12, 1960, the appellant closed the sleeper Foundry department and issued notice of retrenchment. Subsequently, retrenchment compensation was duly paid to the workmen who had been retrenched. That, it short, is the background of the lay-off, the validity of which formed the subject-matter of the present reference.

It appears that before the Tribunal it was urged by the respondents that the appellant had deliberately brought about a situation which led to the lay-off in order to divert the relevant orders for sleepers to its Belur factory. The argument was that at Belur, the appellant gets its work done at cheaper cost with the help of contract labour. Now, if this contention had been established, then it would clearly have been a case of malafides on the part of the appellant and a claim for additional compensation may have been justified. But the Tribunal has rejected this contention and has held

that no evidence had been adduced to prove such a malafide intention on the part of the appellant.

It was also urged by the respondents that even in the absence of pig iron, the manufacture of sleepers could have been carried on by utilising a substitute, and in support of this case, four witnesses were examined by the respondents. The Tribunal has rejected this case also. It has found that the evidence given by the four witnesses was unreliable and unsatisfactory and the statement made by the General Manager in cross-examination on this point was sufficient to show that in the absence of pig iron, castings with scrap iron and tin could not have been made. In fact, the General Manager categorically stated that the appellant had not casted any sleeper without pig iron at any time. Thus, the alternative plea raised by the respondents to suggest that it the appellant had so desired, it could have avoided to lay-off its workmen, has also been rejected by the Tribunal.

The Tribunal, however, was inclined to take the view that if the management had been more foresighted, it could have avoided the unfortunate position which it had to face at the relevant time and because the Tribunal thought that the situation which faced the appellant at the relevant time was partly due to its negligence, it reached the final conclusion that the lay-off was not altogether justified. The Tribunal's view appears to be that if reasonable care had been exercised by the appellant, the situation could have been avoided. It is this part of its finding that is seriously disputed before us by the appellant.

Under s. 2(kkk), "lay-off" means, inter alia, the failure, or inability of an employer on account of shortage of raw materials to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched. As we have already seen, there is no doubt that raw materials were not available to the appellant at the relevant time and so the lay-off which is the subject-matter of the present dispute satisfies the test prescribed by the definition. Section 25C provides for the right of workmen laid-off for compensation and it is common ground that compensation, equal to 50% of the total of the basic wages and dearness allowance, as therein prescribed has been paid by the appellant to the respondents. The issue referred to the Tribunal was whether the action of the management in laying off the workmen was justified. If not, to what relief were the respondents entitled ? In other words, the reference shows that it was only if the Tribunal came to the conclusion that the lay-off was not justified that the question of considering what additional compensation should be paid to the respondents could arise. If the lay-off justified and it satisfies the requirements of the definition under s. 2(kkk), the only relief to which the workmen laid off are entitled is the statutory relief prescribed by s. 25C. There is no doubt or dispute about this position.

It is also not in dispute that if the lay-off is malafide in the sense that the employer has deliberately and maliciously brought about a situation where lay off became necessary, then it would not be a lay-off which is justified under s. 2(kkk) and the relief provided to the laid-off workmen under s. 25C would not be the only relief to which they are entitled. Malafides of the employer in declaring a lay-off really mean that no lay-off, as contemplated by the definition, has in law taken place and so, a finding as to malafides of the employer in declaring a lay-off naturally takes the lay-off out of the definition of s. 2(kkk) and as such s. 25C cannot be held to be applicable to it so as to confine the workmen's right to the compensation therein prescribed. If the lay-off has been declared in order to victimise the workmen or for some other ulterior purpose, the position would be the same. It would not be a lay-off as contemplated by s. 2(kkk).

But when dealing with a lay-off like the one with which we are concerned in the present appeal it would not be open to the Tribunal to enquire whether the appellant could have avoided the lay-off if

he had been more diligent, more careful or more far-sighted. That is a matter relating to the management of the undertaking and unless malafides are alleged or proved, it would be difficult to assume that the Industrial Tribunal has jurisdiction to sit in judgment over the acts of management of the employer and investigate whether a more prudent management could have avoided the situation which led to lay-off. The danger involved in permitting such jurisdiction to the Tribunal is illustrated by the present award itself. The Tribunal has found that the appellant was in financial difficulties at the relevant time; it has found that the appellant was not actuated by any malafide intention, it has come to the conclusion that the lay-off was not the result of any ulterior motive, and yet it has finally come to the conclusion that if the affairs of the appellant had been better managed and more foresight had been shown by the appellant prior to the time when the crisis was reached, pig iron could have been secured and lay-off could have been avoided. Apart from the fact that this conclusion does not appear to be borne out by any evidence on record, it seems to us that the Tribunal exceeded its jurisdiction in trying to decide whether better management could have avoided the crisis. The appellant is, no doubt, expected to manage its affairs prudently, but it would, we think, not be reasonable or fair to hold that if the employer is faced with a situation under which for lack of raw materials he has to lay-off his workmen, it is necessary that he must submit to an enquiry by the Industrial Tribunal about the prudence of the management and the fore-thought displayed by it in anticipating and avoiding the difficulties. That is why we think in embarking upon an enquiry as to whether the appellant had shown sufficient foresight in managing its affairs, the Tribunal has exceeded its jurisdiction. Besides, as we have just indicated, its finding on the question of negligence is not supported by any evidence on record nor by probabilities in the case. In that connection, it is significant that subsequently the section in question has been closed and the retrenched workmen have been paid retrenchment compensation due to them.

The result is, the appeal succeeds and the order passed by the Tribunal for the payment of compensation of 75% of the consolidated wages is set aside. There would be no order as to costs.

Appeal allowed.

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