M/s. Avon Services Production Agencies (P) Ltd

Vs

Industrial Tribunal, Haryana and Others

Civil Appeal No. 634 of 1975

(V. R. Krishna Iyer, D. A. DesaiJJ)

06.10.1978

JUDGMENT

Desai, J. -

1.Socio-economic justice, the corner-stone of industrial jurisprudence to be achieved by the process of give and take, concessions and adjustments of conflicting claims would hardly advances if the industrial dispute involved in this appeal by special leave brought by the appellant M/s. Avon Services (Production Agencies) Pvt. Ltd. canvassing some technical legal nicety rendering the two employees jobless for more than seven years is encouraged. A brief recital of few facts touching upon the controversy would reveal the arena of dispute. The appellant is a private Limited Company incorporated under the Companies Act, 1956, and is engaged in the business of manufacturing Fire Fighters Foam Compound. It has set up two factories, one at Bombay and other at Ballabhgarh. The industrial dispute which is the subject-matter of appeal relates to Ballabhgarh factory. According to the appellant this factory, when commissioned in 1962, was divided into two sections, now styled as two separate undertakings : (i) manufacturing section; and (ii) packing material making section. The manufacturing section comprised two sub-sections, viz., the chemical section, i.e. Foam Compound manufacturing section, and boiler section. The packing material section was again composed of two sub-sections, one manufacturing containers, and the other painting of the containers. Respondents 3 and 4 according to the appellant were employed in the painting section. Around 1964 the appellant decided to buy containers from the market and consequently closed down its packing material making section but continued the painting sub-section. On July 13, 1971 the appellant purported to serve a notice on respondents 3 and 4 and one Mr. Ramni intimating them that the management has decided to close the painting section effective from July 13, 1971 due to unavoidable circumstances and hence the services of the three workmen would no longer be required and, therefore, they are retrenched. Even though it is alleged that notice was served upon the three workmen, the Tribunal found that the notice never reached respondents 3 and 4. By the notice the workmen concerned were also informed that they should collect their dues under Section 25FFF of the Industrial Disputes Act, 1947, from the office of the Company. Since July 13, 1971 respondents 3 and 4 have been denied employment by the appellant. A Trade Union of the employees of the appellant affiliated to Bharatiya Mazdoor Sangh served a notice of demand, Annexure P-1 dated July 16, 1971 inter alia calling upon the appellant to reinstate respondents 3 and 4 and the third workman and also to pay them full back wages. On February 19, 1972 as per Annexure P-2, the Secretary to the Government of Haryana, Labour and Employment Department, intimated to the President of the Union that from amongst the demands contained in Annexure P-1, Demands 2 to 9 have been referred to Industrial Tribunal for adjudication. In respect of demand 1 relating to the reinstatement of the three workmen in the painting section, the reference was refused on the ground that there was no work for painting in the factory where these two workmen were working. This refusal to refer the demand concerning

respondents 3 and 4 has been the subject-matter of a very serious submission on behalf of the Company that the reference subsequently made by the Government was invalid. To proceed further with the narrative, subsequently the Government of Haryana by its Order dated November 23, 1972 referred the following dispute to the Industrial Tribunal for adjudication :

Whether the retrenchment of Sarvashri Mohammed Yamin and Mohammad Yasin was justified and in order ? If not, to what relief they are entitled ?

2. The Tribunal registered the reference at No. 81/72 and proceeded to adjudicate upon the dispute. Three issues were raised before the tribunal and it is necessary to set down the three issues here in order to point out that one of the contentions raised at the hearing of this appeal was never put forth before the Tribunal. The issues framed by the Tribunal are :

> 1. Whether the present reference is bad in law for the reasons given in para 1 of the preliminary objection in the written statement ? (On management).
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> 2. Whether the statement of claim filed on behalf of the workmen is not in order ? (On management).
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> 3. Whether the retrenchment of Sarvashri Mohammed Yamin and Mohammad Yasin was justified and in order ? If not, to what relief they are entitled ?

3. The management, in support of its contention covered by issue No. 1, urged before the Tribunal that once the Government declined to make a reference in respect of termination of service of respondents 3 and 4, the Government was not competent to refer the dispute for adjudication at a later date. The Tribunal negatived the contention observing that there is abundant authority in support of the proposition that the Government having once declined to make a reference, is not rendered incompetent from making a reference of the same dispute at a later date. Issue 2 was also answered against the appellant but as that contention was not raised before us, we need not go into the details of it. On issue 3, the Tribunal held that respondents 3 and 4 were retrenched and case should squarely fall under Section 25F of the Industrial Dispute Act, 1947 (for short 'the Act') and as the appellant employer has not complied with the pre-condition laid down in Section 25F(a) and (b) of the Act, to wit, serving of one month's notice or wages in lieu of such notice and payment of retrenchment compensation, the retrenchment was invalid. The Tribunal was further of the opinion that as both the workmen have been in service for 15 years or so, they could have been conveniently absorbed in some other department and, therefore, the retrenchment was unjustified. The Tribunal accordingly directed reinstatement of respondents 3 and 4 with full back wages.

4. The appellant moved the High Court of Punjab & Haryana for a writ of certiorari but the writ petition was dismissed in limine.

5. Mr. O. P. Malhotra, learned Counsel for the appellant canvassed two contentions before us. He submitted that the Government having declined to make a reference under Section 10(1) of the Act in respect of termination of service of respondents 3 and 4 as per its order dated February 19, 1972, Annexure P-2, the Government was not competent or had no power or authority to make a reference in respect of the same dispute unless the Government must have come up with some fresh or additional material which, when the validity of the reference was challenged, must be disclosed or it must appear on the face of the reference itself. Alternatively it was contended that after having declined to make a reference in respect of termination of service of respondents 3 and 4, the

Government was not competent to make a reference of an entirely different dispute touching the question of reinstatement of respondents 3 and 4 which was a materially different dispute, from the one raised by the Union as per its character of demands Annexure P-1 dated July 16, 1971 because the demand as is now referred to the Tribunal was never raised before the management and, therefore, no such demand existed which the Government could have referred to the Tribunal under Section 10(1) of the Act. The second contention was that the termination of service of respondents 3 and 4 was consequent upon the closure of painting undertaking which was a separate and independent undertaking of the appellant and the case would, therefore, be governed by Section 25FFF and not by Section 25F as held by the Tribunal and even if wages in lieu of notice and retrenchment compensation were not paid at the time of retrenchment the termination would not be invalid because the conditions for payment of wages in lieu of notice and retrenchment compensation are not conditions precedent when termination of service is brought about on account of closure of the undertaking.

6. Section 10(1) of the Act confers power on the appropriate Government to refer at any time any industrial dispute which exists or is apprehended to the authorities mentioned in the section for adjudication. The opinion which the appropriate Government is required to form before referring the dispute to the appropriate authority is about the existence of a dispute or even if the dispute has not arisen, it is apprehended as imminent and requires resolution in the interest of industrial peace and harmony. Section 10(1) confers a discretionary power and this discretionary power can be exercised on being satisfied that an industrial dispute exists or is apprehended. There must be some material before the Government on the basis of which it forms an opinion that an industrial dispute exists or is apprehended. The power conferred on the appropriate Government is an administrative power and the action of the Government in making the reference is an administrative act. The formation of an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. Thus, the jurisdictional facts on which the appropriate Government may act are the formation of an opinion that an industrial dispute exists or is apprehended which undoubtedly is a subjective one, the next step of making reference is an administrative act. The adequacy or sufficiency of the material on which the opinion was formed is beyond the pale of judicial scrutiny. If the action of the Government in making the reference is impugned by a party it would be open to such a party to show that what was referred was not an industrial dispute and that the Tribunal had no jurisdiction to make the Award but if the dispute was an industrial dispute, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no subsequent material before Government on which it could have come to an affirmative conclusion on those matters (see State of Madras v. C. P. Sarathy (1953 SCR 334 : AIR 1953 SC 53 : (1953) 1 LLJ 174 : (1952-53) 4 FJR 431).

7. The contention, however, is that once the appropriate Government applies its mind to the question of referring an industrial dispute to the appropriate authority and declines to make a reference, it cannot subsequently change its mind and make the reference of the dispute unless there is some fresh or additional material before it. It was said that, once an industrial dispute is raised and the Government declines to make a reference, the opposite party is entitled to act on the supposition that the dispute in question was not worth referring and such a dispute would no more be in existence between the employee and the concerned employer and that the Government cannot spring a surprise by subsequently unilaterally making the reference without any fresh or additional material being brought to its notice. Section 10(1) enables the appropriate Government to make reference of

an industrial dispute which exists of or is apprehended at any time to one of the authorities mentioned in the section. How and in what manner or through what machinery the Government is apprised of the dispute is hardly relevant. Section 12 casts a duty upon the Conciliation Officer to hold conciliation proceedings in respect of the industrial dispute that exists or is apprehended. It is mandatory for the Conciliation Officer to so hold the conciliation proceedings where dispute relates to a public utility service and a strike notice has been served under Section 22. The conciliation officer must try to promote a settlement between the parties and either he succeeds in bringing the parties to a settlement or fails in his attempt, he must submit a report to the appropriate Government, but this procedure for promoting settlement cannot come in the way of the appropriate Government making a reference even before such a report is received. The only requirement for taking action under Section 10(1) is that there must be some material before the Government which will enable the appropriate Government to form an opinion that an industrial dispute exists or is apprehended. This is an administrative function of the Government as the expression is understood in contradistinction to judicial or quasi-judicial function. Merely because the Government rejects a request for a reference or declines to make a reference, it cannot be said that the industrial dispute has ceased to exist, nor could it be said to be a review of any judicial or quasi-judicial order or determination. The industrial dispute may nonetheless continue to remain in existence and if at a subsequent stage the appropriate Government is satisfied that in the interest of industrial peace and for promoting industrial harmony it is desirable to make a reference, the appropriate Government does not lack power to do so under Section 10(1), nor is it precluded from making the reference on the only ground that on an earlier occasion it had declined to make the reference. The expression "at any time" in Section 10(1) will clearly negative the contention that once the Government declines to make a reference the power to make a reference under Section 10(1) in respect of the same dispute gets exhausted. Such a construction would denude a very vital power conferred on the Government in the interest of industrial peace and harmony and it need not be whittled down by interpretative process. In Western India Match Co. Ltd. v. Workers Union ((1970) 3 SCR 370 : (1970) 1 SCC 225, 231), an identical contention was raised in respect of a reference made under Section 4(k) of the U.P. Industrial Disputes Act which is in pari materia with Section 10(1) of the Act. Negativing this contention this Court observed as under (SCC p. 231, para 9) :

In the light of the nature of the function of the Government and the object for which the power is conferred on it, it would be difficult to hold that once the Government has refused to refer, it cannot change its mind on a reconsideration of the matter either because new facts have come to light or because it had misunderstood the existing facts or for any other relevant consideration and decide to make the reference. But where it reconsiders its earlier decision it can make the reference only if the dispute is an industrial one and either exists at that stage or is apprehended and the reference it makes must be with regard to that and no other industrial dispute.

8. It follows that the Government does not lack the power to make the reference in respect of the same industrial dispute which it once declined to refer. But it was urged that the ratio of the decision would show that the Government must have some fresh material made available to it subsequent to its refusal to make a reference, for the formation of a fresh opinion, for making the reference. It is not absolutely necessary that there ought to be some fresh material before the Government for consideration of its earlier decision. The Government may reconsider its decision on account of some new facts brought to its notice or for any other relevant consideration and such other relevant consideration may include the threat to industrial peace by the continued existence of the industrial dispute without any attempt at resolving it and that a reference would at least bring the parties to the talking table. A refusal of the appropriate Government to make a reference is not indicative of an exercise of power under Section 10(1), the exercise of the power would be a positive act of making

a reference. Therefore, when the Government declines to make a reference the source of power is neither dried up nor exhausted. It only indicates that the Government for the time being refused to exercise the power but that does not denude the power. The power to make the reference remains intact and can be exercised if the material and relevant considerations for exercise of power are available; they being the continued existence of the dispute and the wisdom of referring it, in the larger interest of industrial peace and harmony. Refusal to make the reference does not tantamount to saying that the dispute, if it at all existed, stands resolved. On the contrary the refusal to make a reference not compelling the parties to come to a talking table or before a quasi-judicial Tribunal would further accentuate the feelings and a threat to direct action may become imminent and the Government may as well reconsider the decision and make the reference. It is, therefore, not possible to accept the submission that if the Government had on an earlier occasion declined to make a reference unless it be shown that there was some fresh or additional material before the Government the second reference would be incompetent. It has not been shown that the dispute had ceased to exist and the very existence of the dispute enables the Government to exercise the power under Section 10(1) and it has been rightly exercised. The view which we are taking is in accord with the decision of this Court in Binny Ltd. v. Their Workmen ((1972) 3 SCR 518 : (1972) 3 SCC 806) wherein it was found that the Government had declined to make a reference of the dispute on two previous occasions on the basis of which it was contended that the reference was invalid. The contention was negatived observing that the mere fact that on two previous occasions the Government had taken the view that no reference was called for does not entitle the Court to conclude that there could be no cause for a reference at a later date.

9. Alternatively it was contended that even if the appropriate Government has power to make a reference after having once declined to make the reference, it can only refer that industrial dispute which it had once declined to refer and no other dispute and that in this case the Government has referred an entirely different dispute than the one raised by the Union and that in respect of the referred dispute the demand having not been made from the employer there was no such dispute in existence and, therefore, the reference was invalid. The contention in the form in which it is now canvassed was not raised before the Industrial Tribunal and even before the High Court. However, as we find no substance in the contention we would not reject it on the technical ground that it was not raised before the Industrial Tribunal or the High Court.

10. The Avon Employees Union by its notice of demand Annexure P-1 dated July 16, 1971 requested the appellant company to consider the demands set out in the notice. The relevant demand for the purpose of present discussions is demand 1 which reads as under :

That our three companions (?) Mohamad Yamin and Mohamad Yasin who had been working in the above-mentioned factory for the last 15/15 years and 8 years, their termination of service and denying their gate-passes are illegal and against the principle of justice, therefore, they be reinstated to their jobs and by giving back the full wages from the date of their termination, injustice be ended.

11. The demand as hereinabove set out appears to be a translation of a demand originally served in Hindi. The substance of the matter is that the Union complained about the termination of service of the two named workmen who are respondents 3 and 4 and one other whose services were terminated by the appellant and which termination was styled as illegal and the crucial industrial dispute was to reinstate them with full back wages and continuity of service. There were seven other demands with which we are not concerned. The appropriate Government while making the reference Annexure P-2, informed the Union that the demands 2 to 9 have been referred to Industrial Tribunal and in respect of demand 1, the Government, while declining to make the reference, stated its reasons as

under :

> There is no work for painting in the factory where these two workmen were working.

12. Subsequently the appropriate Government by its order ID/FD/72/40688, dated November 23, 1972, referred the following dispute to the Industrial Tribunal for adjudication :

> Whether the retrenchment of Sarvashri Mohammad Yamin and Mohamad Yasin was justified and in order ? If not, to what relief they are entitled ?

13. The submission is that the Union espoused the cause of the aforementioned two workmen, respondents 3 and 4 complaining that the termination of their services is illegal and for reinstatement, and that demand made by the Union was not referred to the Industrial Tribunal by the Government and subsequent to the decision of the Government respondents 3 and 4 did not make any demand from the employer nor did they raise an industrial dispute with regard to termination of their services and, therefore, the Government could not have referred an entirely different demand in respect of respondents 3 and 4 and the reference is invalid. A mere comparison of the demand raised by the Union and the demand subsequently referred to the Industrial Tribunal would clearly negative the contention. The dispute arose from the termination of services of respondents 3 and 4 and one other workman. Retrenchment comprehends termination of service. Termination of service may be brought about by dismissal, discharge, removal from service or even retrenchment apart from resignation of or voluntary retirement. Retrenchment is defined in Section 2(oo) of the Act to mean termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include termination in the manner stated therein. The definition clearly indicates that retrenchment is a mode of termination of service. The Union complained about the termination of service of respondents 3 and 4 and demanded reinstatement with full back wages and the Government referred the dispute about termination of service brought about by way of retrenchment and for consequential relief for adjudication of the Industrial Tribunal. Therefore, there is no substance in the contention that the original demand was some one other than the one which is now referred to the Industrial Tribunal. The Union had espoused the cause of two specified workmen and one other and the reference is with regard to the termination of service by retrenchment in respect of the same two workmen. The language or the format in which the demand is couched is hardly decisive of the matter. The substance of the matter is as to what was the grievance of the workmen complained of by them or espoused by the Union and what the Industrial Tribunal is called upon to adjudicate. Viewed from this angle, the demand referred to the Industrial Tribunal for adjudication is the same which was espoused and raised by the Union. Reference was made in this connection to the Sindhu Resettlement Corporation Ltd. v. The Industrial Tribunal of Gujarat ((1968) 1 SCR 515 : AIR 1968 SC 529 : (1968) 1 LLJ 834 : 33 FJR 332). The appellant-employer in that case contended that the demand raised before the employer was about retrenchment compensation and not about reinstatement of the retrenched workmen and, therefore, the Government was not competent to make a reference as if the demand was one for reinstatement. The demand which was referred to the Tribunal was whether Shri R. S. Ambwaney should be reinstated in the service of Sindhu Resettlement Corporation Ltd. and he should be paid his wages from February 21, 1958 ? After examining the evidence this Court held that the retrenched workmen in their claim put forward before the management of the employer requested for payment of retrenchment compensation and did not raise any dispute for reinstatement. In this background this Court held that the only reference which the Government could have made had to be related to the payment of retrenchment compensation which was the only subject-matter of dispute between the appellant and the

respondents and, therefore, the reference to the extent of adjudication for reinstatement was held to be incompetent. The decision turns purely on the facts of the case. In the case before us the Union complained about illegal termination of service and demanded reinstatement with back wages. The Government subsequently made a reference about the validity of the retrenchment and the relief to which the workmen would be entitled. It is thus crystal clear that there was a demand about reinstatement, complaining about the illegality of termination of service and the same has been referred to the Tribunal. Therefore, it is not possible to accept the contention that, on this account the reference is incompetent. In this view of the matter it is not necessary to examine the contention raised on behalf of the respondents that the decision in Sindhu Resettlement Corporation Ltd. ((1968) 1 SCR 515 : AIR 1968 SC 529 : (1968) 1 LLJ 834 : 33 FJR 332) ignores or omits to take note of the expression "difference" used in the definition of industrial dispute in Section 2(k) as also the power of the Government not only to refer a dispute which exists but one which is apprehended in the sense which is imminent or is likely to arise in near future and which in order to arrest in advance threatened or likely disturbance to industrial peace and harmony and a threat to production has to be referred to the Industrial Tribunal for adjudication.

14. The last contention is that the Tribunal was in error in holding that respondents 3 and 4 were retrenched from service and, their case would be governed by Section 25F while in fact the services of respondents 3 and 4 were terminated on account of closure of the painting undertaking of the appellant-company and, therefore, the case would be governed by Section 25FFF and failure to pay compensation and notice charges simultaneously with termination of service being not a pre-requisite, the termination would neither be illegal nor invalid.

15. Section 25F prescribes conditions precedent to retrenchment of workmen. The conditions precedent are (a) giving of one month's notice in writing to the workmen sought to be retrenched indicating the reasons for retrenchment and the retrenchment can be brought about on the expiry of the notice period or on payment of wages in lieu of such notice for the period of notice; (b) payment of retrenchment compensation as per the formula prescribed therein. No notice to the workman would be necessary if the retrenchment is under an agreement which specifies a date for the termination of service. Section 25FFF prescribes liability of an employer to pay compensation to workmen in case of closing down of undertaking. The relevant portion of Section 25FFF reads as under :

25FFF. (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 25F, 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 25F, shall not exceed his average pay for three months.

16. A comparison of the language employed in Section 25F and Section 25FFF(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 25F 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 25FFF(1) provides that the workman shall be entitled to notice and

compensation in accordance with the provisions of Section 25F if the undertaking is closed for any reason, as if the workman has been retrenched. Taking note of this difference in language, this Court in State of Bombay v. The Hospital Mazdoor Sabha ((1960) 2 SCR 866, 871 : AIR 1960 SC 610 : (1960) 1 LLJ 251 : 17 FJR 423), held that the failure to comply with the provision prescribing conditions precedent for valid retrenchment in Section 25F renders the order of retrenchment invalid and inoperative. Expounding this position, Constitution Bench of this Court in Hatisingh Mfg. Co. Ltd. v. Union of India ((1960) 3 SCR 528 : AIR 1960 SC 923 : (1960) 2 LLJ 1 : 18 FJR 181), held that the Legislature has not sought to place closure of an undertaking on the same footing as retrenchment under Section 25F. By Section 25F a prohibition against retrenchment until the conditions prescribed by that section are fulfilled, is imposed; by Section 25FFF(1) termination of employment on closure of the undertaking without payment of compensation and without either serving notice or paying wages in lieu of notice is not prohibited. Payment of compensation and payment of wages for the period of notice are not, therefore, conditions precedent to closure.

17. Is this then a case of retrenchment or closure ? What constitutes retrenchment is no more res integra. In State Bank of India v. N. Sundara Money ((1976) 3 SCR 160, 165 : (1976) 1 SCC 822, 826-27 : 1976 SCC (L&S) 132), one of us, Krishna Iyer, J., examined the definition of the expression "retrenchment" under Section 2(oo) to ascertain the elements which constitute retrenchment. It was observed as under : (SCC pp. 826-827, para 9)

A break-down of Section 2(oo) unmistakably expands the semantics of retrenchment. 'Termination ... for any reason whatsoever' are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is - has the employee's service been terminated ? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of Section 25F and Section 2(oo). Without speculating on possibilities, we may agree that 'retrenchment' is no longer terra incognita but area covered by an expensive definition. It means 'to end, conclude, cease'.

18. As against this, reference was made to Management of Hindustan Steel Ltd. v. The Workmen ((1973) 3 SCR 303 : (1973) 3 SCC 564 : 1973 SCC (L&S) 195), wherein the management contended that it is a case of closure and the workmen contended that the termination was on account of retrenchment. The entire decision turns on the facts of the case. Hindustan Steel Ltd. had set up what was described as Ranchi Housing Project and this Project was completed in 1966. After completion of the residuary work, the services of certain employees were terminated. This termination was questioned alleging that it was a case of retrenchment and as the condition precedent was not complied with, the retrenchment was invalid. The employer contended that it is a case of closure and payment of compensation was not a condition precedent and did not invalidate the termination of service. This Court held that the word "undertaking" as used in Section 25FFF appears to have been used in its ordinary sense connoting thereby any work, enterprise, project or business undertaking. It is not intended to cover the entire industry or business of the employer. Even closure or stoppage of a part of the business or activities of the employer would seem in law to be covered by this sub-section. The question has to be decided on the facts of each case. Examining the facts of the case, this Court came to the conclusion that it was a case of closure.

19. In the present case the appellant attempted to serve notice dated July 13, 1971 on respondents 3

and 4 and one Mr. Ramni. In this notice it was stated that the management has decided to close the painting section with effect from Tuesday, July 13, 1971 due to unavoidable circumstances and the services of the workmen mentioned in the notice would no longer be required and hence they are retrenched. The workmen were informed that they should collect their dues under Section 25FFF from the office of the Company.

20. The tenor of the notice clearly indicates that workmen were rendered surplus and they were retrenched. It is thus on the admission of appellant a case of retrenchment.

21. It was, however, urged that notice refers to Section 25FFF and therefore employer intended it to be a notice of termination of service consequent upon closure of painting undertaking. Now, even if a closure of an undertaking as contemplated by Section 25FFF need not necessarily comprehend a closure of the entire undertaking and a closure of a distinct and separate unit of the undertaking would also be covered by Section 25FFF, the question is - whether painting sub-section was itself an undertaking ?

22. The expression 'undertaking' is not defined in the Act. It also finds its place in the definition of the expression 'industry' in Section 2(j). While ascertaining the amplitude of the expression 'undertaking' in the definition of the expression 'industry', noscitur a sociis cannon of construction was invoked and a restricted meaning was assigned to it in Bangalore Water Supply and Sewerage Board v. A. Rajappa ((1978) 3 SCR 207, 227 : (1978) 2 SCC 213 : 1978 SCC (L&S) 215). While thus reading down the expression, in the context of Section 25FFF it must mean a separate and distinct business or commercial or trading or industrial activity. It cannot comprehend an infinitesimally small part of a manufacturing process.

23. The Tribunal found that the alleged retrenchment notice was not served upon the workmen and that finding was not controverted by pointing out some evidence which may point to the contrary. The notice expressly states that the workmen are retrenched though it simultaneously states that the action is taken under Section 25FFF. But if the Company had a container making section which was closed way back in 1964 and yet these three workmen who used to paint the containers were retained, it cannot be said that painting section was a recognized sub-section eligible for being styled as a part of the undertaking. If such mini-classification is permitted it would enable the employer to flout Section 25F with impunity. These workmen appear not to have been employed initially as painters. They were doing some other work from which they were brought to painting section. They could have as well been absorbed in some other work which they were capable of doing as observed by the Tribunal. If painting was no more undertaken as one of the separate jobs, the workmen would become surplus and they could be retrenched after paying compensation as required by Section 25F. To style a job of a particular worker doing a specific work in the process of manufacture as in itself an undertaking is to give meaning to the expression 'undertaking' which it hardly connotes. An employer may stop a certain work which was part of an undertaking but which could not be classified as an independent undertaking, the stoppage of work in this context would not amount to closure of the undertaking. The three workmen were doing work of painting the containers. No records were shown that there was a separate establishment, that it was a separate sub-section or that it had some separate supervisory arrangement. In fact, once the container-making section was closed down, the three painters became part and parcel of the manufacturing process and if the painting work was not available for them they could have been assigned some other work and even if they had to be retrenched as surplus, the case would squarely fall in Section 25F and not be covered by Section 25FFF, on a specious plea of closure of an undertaking. The Tribunal in our opinion was right in holding that this was a case of retrenchment and as conditions precedent were

not complied with, the retrenchment was invalid and the relief of reinstatement with full back wages was amply deserved.

24. Accordingly this appeal fails and is dismissed with costs quantified at Rs. 2,000.

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