

E. I. D. Parry (India) Ltd. and Others

Vs

State of Tamil Nadu and Others

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State of Tamil Nadu and Others

Workmen Rep. by Parry Employees

Vs

Management of E. I. D. Parry Ltd.

Writ Petitions Nos. 8698-99 of 1983 with Civil Appeals Nos. 1495-96 of 1984

(V. D. Tulzapukar, Ranganath Misra, V. Khalid JJ)

26.02.1985

JUDGMENT

RANGANATH MISRA, J. -

1. The Nellikuppam Sugar Factory, one of the factories run by E. I. D. Parry (India) Ltd., was founded in 1845 and has been manufacturing sugar, candy and other sugar based products. The crushing capacity of the sugar factory was 2200 tons of cane per day up to 1969. In February that year the Company decided to increase the said capacity to 2800 tons and that capacity was further increased to 4000 tons a day in 1977. Disputes arose as to the labour strength in the sugar unit and two associate manufactories - being a distillery and a CO<sub>2</sub> unit - as also the cane offices (hereinafter referred to as 'Factory'), and by an award dated December 23, 1977, such strength was determined at 1700 regular workmen and 100 casual labourers. In January 1978, there was a bipartite settlement accepting the figures given in the Award and that settlement remained operative till almost the end of 1981. In December that year, the Union raised a charter of demands mainly focused upon wages. As there were certain vacancies within the approved strength, the Union also asked for filling up the same. The management thereupon wanted a review of the strength fixed in the settlement of 1978 and negotiations were carried on for quiet some time with a view to resolving the dispute - the management asking for a scaling down of the strength on the ground that it was not economically viable to continue with that strength of the labour force, as fixed earlier, and the workmen insisting upon the implementation of the agreed strength. When the bipartite negotiations did not yield any useful result, the Company ultimately issued a notice on June 7, 1983, for a close down of the factory with effect from August 8, 1983, on the ground of continued loss arising out of and connected with the excess labour strength and high rate of wages as compared to the rates payable in

sugar industry under the scales fixed by the Sugar Wage Board. On July 4, 1983, the State Government of Tamil Nadu directed reference of the two disputes under Section 10(1) (d) read with Section 12(5) of the Industrial Disputes Act, 1947 ('Act' for short), to the Tribunal for adjudication. On August 1, 1983, the State Government again made another reference relating to the justification of closure. On that very day an order was made by the State Government under Section 10-B of the Act as amended in the State of Tamil Nadu prohibiting the closure of and strike in the factory pending adjudication of the dispute referred to the Tribunal.

2. The three questions which thus came to be referred to the Tribunal were the following :

1. Whether the action of the management in not filling up the existing vacancies as per the 18(1) settlement dated January 30, 1978 and insisting on reduction of labour strength in view of the changed circumstances on the plea that the 18(1) settlement provides for such a review, is justified, and to give appropriate directions;

2. Whether the insistence by the management on reduction of the existing labour strength as a pre-condition for discussing the charter of demands consisting of 30 items given by the workers on November 16, 1981 is justified, and to give appropriate directions ?; and

3. Whether the proposal to close down the manufacturing activities of the Sugar Factory of E. I. D. Parry (India) Ltd., Nellikuppam, including the Distillery and the CO<sub>2</sub> Units and the Regional Cane Offices of the Factory functioning at the following addresses with effect from August 8, 1983, as mentioned in the notice of closure dated June 7, 1983 issued by the management under Section 25-FFA of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) is justified, if not to give appropriate directions.

3. The writ petitions were filed by the Company impugning the validity of Section 10-B of the Act as amended in the State of Tamil Nadu as also the Government Order prohibiting the closing down of the factory. This Court by order dated August 10, 1983, directed after hearing the parties that there would be a stay of the operation of the Government Order prohibiting closure subject to certain directions. Those directions authorised the factory to continue to operate with a reduced staff/labour force of 925 workmen and so far as the excess strength of 950 was concerned, the closure was permitted to take effect from midnight of August 8/9, 1983 on the basis of "last come, first go". This Court also directed that the wages of the workmen who would continue in employment would not stand reduced to the level of the Sugar Board's Awards as amended from time to time and accepted by other sugar factories in the State. The Court directed the Tribunal to determine within a period not exceeding three months the strength of the workmen required to operate the factory taking into consideration all relevant factors including strength of workmen in neighbouring sugar factories with similar capacity operating in the State of Tamil Nadu.

4. The Tribunal heard parties and by its Award dated December 22, 1983, came to hold :

The proposal to close down the manufacturing activities of the sugar factory of E. I. D. Parry (India) Ltd., Nellikuppam, including the distillery and the CO<sub>2</sub> units and the 4 Regional Cane offices of the factory with effect from August 8, 1983, as mentioned in the notice of closure dated June 7, 1983, issued by the Management under Section 25-FFA of the Industrial Disputes Act, 1947, is justified.

It answered the direction of this Court by fixing the strength of workmen, including staff, at 925 and held that with that number the factory and the connected units could operate. Therefore, the Tribunal found :

I am constrained to hold that there is no need to close the sugar factory and other units in the interests of the workmen and large number of cane growers who have raised sugarcane cultivation which is said to be ripe for crushing.

The Tribunal answered the other questions in favour of the management while examining the issue relating to justifiability of closure. Thereupon the Award has been challenged in this Court by the union of the workmen as also the staff union in C. A. 1495 of 1984 so far as the Tribunal came to hold that the decision to close down the factory was justified and the reduction of the labour strength and in answering the other questions against them and C. A. 1496 of 1984 has been filed by the management challenging the conclusion that the factory should operate with a labour strength of 925. SLP (Civil) No. 3482 of 1984 has been filed by the union challenging the Award so far as it relates to reduction in the strength of the labour. Both the writ petitions as also both the appeals and the special leave petition were clubbed together for hearing and a joint hearing has been given.

5. In course of hearing we were impressed by the fact that the factory was almost a century and a half old and appeared to be the most ancient as also the premier industry of the area. In view of the fact that the factory required a sizeable quantity of sugarcane for its business, people in the locality had been growing sugarcane and the Tribunal had found that a lot of sugarcane was standing in the fields. Closure of the factory was not only going to affect adversely the workmen but also the producers of sugarcane and was, therefore, likely to bring about unemployment to a sizeable population in the locality. Though the Tribunal came to hold that the closure notice was valid and justified, it also recorded a finding pursuant to the direction of this Court dated August 10, 1983, that with a viable unit of 925 workers, including staff, the factory could run. We found that if the factory was not closing down and was to operate, apart from providing a ready market for the sugarcane growers, provision of employment of at least 925 people would be made. In course of hearing we had, therefore, suggested to learned counsel for the parties that every effort should be made to keep the factory going and scope for employing as many of the displaced workmen as possible should be explored. With a view to providing adequate opportunity for the said purpose the hearing of the matter was adjourned on more than one occasion. We were satisfied that learned counsel appearing for the parties appreciated our approach to the matter and took considerable pains to evolve an acceptable formula which would alleviate the hardship of workmen to the maximum extent possible and ultimately left the matter to us for final disposal. Keeping in view the submissions and facts placed after exploring the possibilities of settlement, we direct disposal of all the aforesaid cases on terms indicated below.

6. The Award of the Special Tribunal, Madras, dated December 22, 1983, in Industrial Dispute Case No. 1 of 1983, is hereby confirmed. All the writ petitions, appeals and special leave petition are dismissed subject to further directions as detailed below which shall be implemented without in any way affecting the confirmation of the Award as directed above :

(a) The Company shall within 15 days from the date of this order and at any rate not later than March 15, 1985, take into employment 384 workmen on its labour rolls and the above 384 workmen shall be appointed in categories which vacancies have already arisen (including vacancies against which 64 persons belonging to the labour category have been appointed on temporary basis) and the categories in which

vacancies will arise in future years. The aforesaid number of persons to be given employment shall include 76 employees (64 workmen and 12 members of the staff) already appointed on temporary basis during the first half of 1984;

(b) The Company shall within 15 days from now, after filling in the vacancies out of 183 posts so as to make up the strength of 183 as fixed by the Tribunal, recruit 30 more persons on the staff rolls against categories in which vacancies are anticipated.

Out of the above workmen (labour and staff), those who cannot be appointed against vacancies in categories in accordance with the strength fixed as per the Award shall be borne on the rolls of the additional workmen pool to be set up by the management;

(c) Workmen shall be appointed as stated above on the basis of last go, first come in the categories in which retirements are to take place and if requisite number of persons to be fitted into such categories are not available from amongst the excess workmen, appointments shall be made in the lower/other categories in which workmen are available provided that the above procedure shall not apply to the 76 employees (64 labour and 12 staff) already appointed by the Company on temporary basis during the first half of 1984 and who are to be confirmed in employment now;

(d) Vacancies arising in different categories in accordance with the strength determined by the Special Industrial Tribunal as a result of retirements or for any other reason shall be filled in from amongst workmen borne on the additional workmen pool except in the case of the posts which may require statutory or specified qualifications for which persons with such a qualification are not available in the additional workmen pool. Such recruitment in the excepted cases would, however, be over and above the number in the additional workmen pool;

(e) Any vacancy that may arise in the additional workmen pool shall not be filled up and be abolished and the strength of the additional workmen pool shall progressively be reduced until all such workmen are absorbed in the regular vacancies arising in terms of the Award or cease to be in service of the Company for any reason; the additional workmen pool shall in this process come to an end and cease to exist;

(f) Workmen borne on the additional workmen pool shall be allocated such jobs as are available from time to time at any location in Nellikuppam and this may include jobs of multiple skills or jobs of intermittent nature to ensure mobility of utilisation;

(g) There shall be no reduction in the wages of workmen who have been continued in employment in terms of the order dated August 10, 1983, of this Court but the operation of paragraph 3 of that order will have to cease effect on and from January 1, 1984, and their emoluments will be in accordance with the operative settlement as if paragraph 3 of the order had never been there.

In order to facilitate future recruitment on the Sugar Wage Board pattern of wages, in respect of future recruits all the existing workmen shall be placed in the Sugar Wage Board pattern of wages (pay, dearness allowance and other allowances) with effect from March 1, 1985. The Company is directed to treat the excess amount over and above the Sugar Wage Board pattern of wages as applicable to other workmen in other sugar factories in Tamil Nadu as "personal allowance"

admissible to such workmen and this "personal allowance" shall continue to be paid to the workmen until their retirement, cession or superannuation from service for any reason.

"Personal allowance" shall be treated as regular pay for the purposes of all other service benefits as existing and shall include increments and allowances admissible under operative settlements;

(h) The 384 workmen on labour rolls and the 30 workmen on staff rolls as mentioned in paras (a) and (b) above shall be offered employment within 15 days from the date of this order and their wages shall also be as per the provision made in the clauses above with effect from the date of this order and their wages shall also be as per the provision made in the clauses above with effect from the date of their joining service;

(i) The Company shall be entitled to make future fresh employment (employment not covered by this order) at Sugar Wage Board pattern of pay and allowances as may be applicable from time to time to workmen in sugar industry in the State of Tamil Nadu;

(j) If and when the Company requires employment of casual labour, preference shall be given, as far as practicable, to the persons who were borne on the casual labour rolls of the Company up to August 1983.

(k) The Company shall create a fund within three months hence by contributing a sum of rupees five lacs to form the nucleus for the purpose of providing opportunities to the displaced workmen (being the residue after 384 workmen and 30 staff are taken into employment) for their rehabilitation. The Labour Commissioner of Tamil Nadu, the District Magistrate of South Arcot, the General Manager of the Factory and a representative of the union of the workmen and another of the staff union with the Labour Commissioner as the Chairman shall be members of the Committee to explore schemes of rehabilitation and shall work out the details of the schemes. In the event of necessity to have directions in the matter of implementation of schemes, parties shall be entitled to approach the High Court of Madras. The contribution by the Company shall be treated as an interest free loan to the Rehabilitation Fund.

7. All parties shall bear their respective costs.

8. Before we part with the matter, we record our appreciation of the co-operation shown by counsel for all the parties in the matter of keeping the Factory going.

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