Prakash Cotton Mills Pvt. Ltd.

Vs

Rashtriya Mills Mazdoor Sangh

Civil Appeal No. 768 (Nl) of 1973

(V. B. Eradi, M. M. Dutt JJ)

01.08.1986

JUDGMENT

M. M. DUTT, J. –

1. This appeal by special leave has been preferred by the appellant, Prakash Cotton Mills Pvt. Ltd., against the order dated September 27, 1972 of the Industrial Court, Maharashtra, Bombay directing payment of compensation by the appellant to its employees and to some badli workmen for the period from March 24, 1964 to June 10, 1964 (both days inclusive) during which the mill of the appellant had been closed down under circumstances beyond control of the appellant.

2. The appellant is a company engaged in the business of manufacture of cotton textile goods and comes within the purview of the provisions of the Bombay Industrial Relations Act, 1946, (hereinafter referred to as the 'Act'). It is not disputed that the mill of the appellant is recognised as an undertaking under Section 11 of the Act. The respondent, the Rashtriya Mill Mazdoor Sangh, is the approved, registered and representative union under Section 14 of the Act, representing the employees in the cotton textile industry within the limits of Greater Bombay.

3. It appears that on account of the alleged failure of the appellant to pay the Central Excise duty, certain detention orders were passed by the Assistant Collector of Central Excise detaining the goods of the appellant like cotton fabrics, cotton yarn and cotton bales lying in the premises of the appellant's mill. As a result of the said detention orders, the goods which were essential for the manufacturing process in the appellant's mill were detained and, consequently, there was a disruption in the functioning of the appellant's mill compelling the appellant to stop the working of the mill. It is not necessary for us to state in detail the proceedings that were taken by the appellant against the said detention orders, but suffice it to say that the detention orders were withdrawn and the appellant started the working of the mill after June 10, 1964.

4. The respondent-Sangh demanded that the employees who were affected by the said closure from March 29, 1964 to June 10, 1964 should be paid their wages for the entire period. As the said demand was not accepted by the appellant, the respondent filed and application before the First Labour Court, Bombay, under Section 79 read with Section 78 of the Act and prayed for the payment of full closure compensation to the employees affected during the aforesaid period.

5. The application of the respondent was opposed by the appellant. It was concerned on behalf of the appellant that as the closure was due to certain circumstances beyond the control of the appellant, the appellant was not liable to pay any compensation for such closure. The Labour Court, after hearing the parties, by its order dated February 19, 1968 held that the appellant was liable to

pay closure compensation to the employees affected at the rate of 50 per cent of the total basic wages and dearness allowance on the ground that such closure amounted to lay-off within the meaning of Section (2)(kkk) of the Industrial Disputes Act, 1947, and that compensation at the same rate as prescribed by Section 25-C of the Industrial Disputes Act, namely 50 per cent of the total wages would be payable to the employees affected by the said closure.

6. The appellant preferred an appeal against the said order of the Labour Court to the Industrial Court, Maharashtra. The Industrial Court set aside the order of the Labour Court and remanded the matter to that court for a fresh enquiry and finding on the question of liability and extent of compensation for the period of closure. After remand, the Labour Court again held that the appellant was liable to pay closure compensation to the employees affected by the closure of the mill from March 24, 1964 to June 10, 1964 at the rate of 50 per cent of the basic wages and dearness allowance. The appellant again preferred an appeal to the Industrial Court, Maharashtra, contending, inter alia, that it was not liable to pay any compensation on account of closure that took place under circumstances beyond the control of the appellant and that, in any event, the appellant was not liable to pay compensation to the badli workmen.

7. The Industrial Court by the impugned order dated September 27, 1972 partly allowed the appeal and directed the appellant to pay closure compensation to the employees affected by the closure for the said period from March 24, 1964 to June 10, 1964 at the rate of 50 per cent of their basic wages and dearness allowance and further directed that where the employees had been sick and enjoyed sickness benefits for all the days or had been on privilege leave or enjoyed leave with wages for all the days or secured alternative employment for any period during the closure, such employees would not be entitled to any closure compensation for such days, but in respect of such days half of the wages payable to badli workmen in lieu of the said three categories of workmen would be paid to the badli workmen equitably.

8. Being aggrieved by the said order of the Industrial Court, the present appeal has been filed by the appellant by special leave.

9. Mr. G. B. Pan, learned counsel appearing on behalf of the appellant, submits in the first instance that as the appellant had closed down the mill in accordance with the provisions of Standing Orders 16 and 17, it is not liable to pay any compensation. Standing Orders 16 and 17 provide as follows :

> "16. The company may, at any time or times, in the event of a fire, catastrophe, breakdown of machinery or stoppage of the power supply, epidemic, civil commotion or other cause, beyond the control of the company, stop any machine or machines or department or departments, wholly or partially for any period or periods, without notice and without compensation in lieu of notice.
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> In the event of a stoppage of any machine or department under this order during working hours, the operatives affected shall be notified by notices put upon notice boards in the department concerned and at the time keeper's office, as soon as practicable, when work will be resumed and whether they are to remain or leave the mill. The period of detention in the mill shall not ordinarily exceed on hour after the commencement of the stoppage. If the period of detention does not exceed one hour, operatives so detained shall not be paid for the period of detention. If the period of detention in the mill exceeds one hour, operatives so detained shall be entitled to receive wages for the whole of the time during which they are detained in the mill as

> a result of the stoppage. In the case of pick-works, the average daily earnings for the previous month shall be taken to be the daily wages.
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> 17. Any operative laid-off under Order 16 shall not be considered as demised from service, but as temporarily unemployed, and shall not be entitled to wages during such unemployment except to the extent mentioned in Order 16. Whenever practicable a reasonable notice shall be given of resumption of normal work and all operatives laid-off under Order 16, who present themselves for work, when the normal working is resumed, shall have prior right of reinstatement.

10. Relying upon the provision of Standing Order 16, it is urged by the learned counsel for the appellant that as the said standing order does not make any provision for payment of compensation on account of closure of the mill, when such closure was due to circumstances beyond the control of the company, the Industrial Court was wrong in directing payment of compensation to the employees of the appellant for the period in question including payment to the badli workmen.

11. The question whether compensation should be paid to the badli workmen will be considered by us later in this judgment. We are, however, unable to accept the contention of the appellant that as the closure had been made in accordance with the provisions of the Standing Orders 16 and 17 due to circumstances beyond the control of the appellant, the appellant is not liable to pay any compensation to its employees for the period of closure. Nor are we in a position to accept the contention of the counsel for the appellant that the application of the respondent-Sangh before the First Labour Court was not maintainable as the closure was made under the provisions of the Standing Orders 16 and 17. In this connection, we may refer to the provision of sub-section (4) of Section 42 of the Act which provides as follows :

> 42(4). Any employee or a representative union desiring a change in respect of :
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> (i) any order passed by the employed under standing orders, or
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> (ii) any industrial matter arising out of the application or interpretation of standing orders, or
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> (iii) an industrial matter specified in Schedule III, except item (5) thereof shall make an application to the Labour Court and as respects change desired in any industrial matter specified in item (5) of Schedule III, to the Industrial Court :
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> Provided that no such application shall lie unless the employee of a representative union has in the prescribed manner approached the employer with a request for the change and no agreement has been arrived at in respect of the change within the prescribed period.

12. Item no. 7 of Schedule III, refereed to in sub-section (4), relates to "Payment of compensation for closures". Further, clause (a)(ii) of Section 78(1) of the Act provides that a Labour Court shall have power to decide any change made by an employer or desired by an employee in respect of an industrial matter specified in Schedule III, except item (5) thereof, and matters arising out of such change. In view of the provision of sub-section (4) of Section 42 read with the provision of Section 78(1)(a)(iii), it is manifestly clear that an employee is entitled to challenge the refusal by the company to pay compensation for the closure and claim such compensation before the Labour Court whether or not such closure was due to circumstances beyond the control of the Company, as

enumerated in Standing Order 16.

13. Such a contention, if accepted, will make the provision of Section 42(4) and that of Section 78(1)(a)(iii) of the Act nugatory. The respondent-Sangh, therefore, in our opinion, was entitled to make the application before the Labour Court claiming compensation for the period of closure even though such closure was made in accordance with the provisions of the Standing Orders 16 and 17.

14. There is no substance in the contention of the appellant that as the closure had to be made under certain compelling circumstances, the appellant was not liable to pay compensation to any of its employees. The Standing Order 16 provides that such closure can be made without notice and no compensation would be required to be paid in lieu of notice. It is clear from Standing Order 16 that it does not contemplate that when there has been a closure on account of some unavoidable circumstances, no compensation is required to be paid to the employees. Under the circumstances, there is no substance in the contention of the appellant that as the closure had been made in accordance with Standing Orders 16 and 17, it is not liable to pay any compensation. The contention is, accordingly, overruled. We, therefore, uphold the order of the Industrial Court directing payment as compensation to the employees of the appellant for the above period of closure.

15. The next question that remains to be considered is whether the Industrial Court is justified in directing payment of compensation to some of the badli workmen. It is not in dispute that badli workmen get work only in the absence, temporary or otherwise, of regular employees, and that they do not have any guaranteed right of employment. Their names are not borne on the muster rolls of the establishment concerned. Indeed, a badli workman has no right to claim employment in place of an absentee employee. In any particular case, if there be some jobs to be performed and the employee concerned is absent, the company may take in a badli workman for the purpose. Badli workmen are really casual employees without any right to be employed. It has been rightly submitted by the learned counsel for the appellant that the badli employees could not be said to have been deprived of any work to which they had no right and, consequently, they are not entitled to any compensation for the closure. Indeed, the Industrial Court has itself observed that to allow the claim of badli workmen would be tantamount to penalising the appellant. In spite of the said observation, the Industrial Court directed payment of compensation to the badli workmen in place of certain categories of regular employees. We fail to understand how the Industrial Court can direct payment of compensation to the badli workmen when, admittedly, such badli workmen, as noticed already, have no right to be employed. It may be that the company may not have to pay closure compensation to the three categories of employees, as mentioned by the Industrial Court, but that does not mean that the company has to pay compensation to the badli workmen in place of these categories of employees. In this connection, we may refer to Section 25-C of the Industrial Disputes Act, 1947 which excludes a badli workman or a casual workman from the benefit of compensation in the case of lay-off.

16. In the circumstances, although we uphold the order of the Industrial Court for payment of compensation to the regular employees of the appellant at the rate fixed by it, we are unable to subscribe to the view that the compensation which would have been payable to the three categories of employees, should be paid to the badli workmen. In other words, we hold that badli workmen have no right to claim compensation on account of closure.

17. Mr. Naunit Lal, learned counsel appearing on behalf of the respondent-Sangh, has placed reliance upon the fact that in Rashtriya Mill Mazdoor Sangh v. Apollo Mills Ltd. ((1960) 3 SCR 231 : AIR 1960 SC 819 : (1960) 2 Lab LJ 263) this Court awarded compensation to badli workmen.

Accordingly, it is submitted by him that it is implied that this Court must have taken the view that badli workmen are also entitled to compensation on account of closure under Standing Orders 16 and 17. We are unable to accept the contention. The question whether the badli workmen are entitled to compensation or not, was not raised in Apollo Mills case ((1960) 3 SCR 231 : AIR 1960 SC 819 : (1960) 2 Lab LJ 263). Indeed, in that case, it has been observed by this Court that the case of badli workmen does not appear to have separately raised and, accordingly, there is no reason not to ward them compensation. Thus it appears that nothing was decided by this Court but, as nobody challenged the right of the badli workmen to get compensation, this Court directed payment of compensation to them. We have, however, come to the conclusion that the badli workmen are not entitled to any compensation on account of closure under Standing Orders 16 and 17.

18. In the circumstances, the order of the Industrial Court insofar as it directs payment of compensation to the badli workmen is set aside and, except that, the rest of the order of the Industrial Court is affirmed.

19. The appeal is allowed in part to the extent indicated above. In view of the facts and circumstances of the case, there will, however, be no order for costs.

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