

Rameshwar Dass and Others

Vs

State of Haryana and Others

Special Leave Petition (Civil) No. 12019 of 1984

(O. Chinnappa Reddy, S. Natarajan JJ)

13.02.1987

ORDER

CHINNAPPA REDDY, J. –

1. On April 3, 1984, the management of the Hissar Textile Mills, Hissar gave notice of its intention to close down the mill to the Government of Haryana under Section 25-FFA of the Industrial Disputes Act. The mill was closed down with effect from June 3, 1984. Over 3000 workmen were affected as a result of the closure of the mill. The workmen filed a writ petition in the High Court of Punjab and Haryana which was dismissed in limine. The present petition for special leave to appeal has been filed under Article 136 of the Constitution. We issued notice not only to the management of the mills, but also to the Central Government and State Government in order to spare no effort to re-start the mill. Our efforts at persuasion having failed, we heard the special leave petition on merits. Two points were raised by the learned counsel for the petitioners. The first was that a direction should be issued to the Central Government to take appropriate action under Section 18-AA(b) of the Industries (Development and Regulation) Act. The second was that the management should be directed to pay retrenchment compensation under the main clause of Section 25-FFF(1) of the Industrial Disputes Act instead of under proviso as it had done.

2. In regard to the first submission of Shri Ramamurti, there does not appear to be any question of issuing a direction to take over the management of the undertaking under Section 18-AA(b) of the Industries (Development and Regulation) Act at this stage, as it now transpires that since 1984 most of the machinery of the mill has been sold away by the management and there is now little left of the undertaking, the management of which can be taken over by the government.

3. In regard to the second submission of Shri Ramamurti, here again we find it difficult give any relief to the workmen in this proceeding. Section 25-FFF(1) provides that 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 be entitled to notice and compensation in accordance with the provisions of Section 25-F as if the workmen had been retrenched. There is however a proviso which says 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 workmen under Section 25-F(b) shall not exceed his average pay for three months. There is an explanation which provides that an undertaking shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer, if it is closed down by reason of financial difficulties (including financial losses) or accumulation of undisposed stocks, or the expiry of the period of the lease or licence granted or, in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in which such operations are carried on.

According to Shri Ramamurti, the explanation to Section 25-FFF(1) provides that even such stringent situations as expiry of the period of the lease or licence or exhaustion of minerals in a mine or acute financial difficulties are not to be deemed as unavoidable circumstances beyond the control of the employer and this gives a clue that the clause "unavoidable circumstances beyond the control of the employer" has to receive a very strict construction so as to exclude all circumstances which can be foreseen or contemplated in the circumstances of a given case. He submits that industrial unrest leading to demands and refusals, strikes and lock outs cannot be considered to be circumstances which are 'unavoidable circumstances beyond the control of the employer'. Mr. Ramamurti's submission would be right if the circumstances consisted of the usual industrial unrest as described by him. But in the present case, according to the management, in the course of the seven years, there has been continuous industrial strife marked by the strikes and lock outs and marred invariably by acts of violence. It was also said that whenever any dispute was referred to an Industrial Tribunal, the workmen would refuse to cooperate and would not appear before the Industrial Tribunal. According to the management, there was a continuous state of lawlessness prevailing in that undertaking over the last several years resulting in the undertaking suffering heavy losses since 1977. According to the management, "these operational losses, besides the adverse market conditions, have been primarily due to problematic labour situation and intransigent attitude of the workmen coupled with frequent disruption of work for long durations resulting in low efficiency, low plant utilization, low productivity and deterioration in quality". If as alleged by the management, there was complete lawlessness prevailing in the undertaking over a course of years, we are unable to say that the circumstances were not "unavoidable circumstances beyond the control of the employer." That is a question which cannot be decided in this proceeding and which can only be decided in a properly raised industrial dispute. We are, therefore, unable to give any relief to the petitioners in this proceeding. The special leave petition is accordingly dismissed.

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