Pottery Mazdoor Panchayat vs The Perfect Pottery Co. Ltd. & Anr on 19 October, 1978

Equivalent citations: 1979 AIR 1356, 1979 SCC (3) 762, AIR 1979 SUPREME COURT 1356, 1979 (3) SCC 762, 1979 LAB. I. C. 827, 1970 LAB IC 827, 1978 UJ(SC) 930, (1979) 1 SCWR 195, (1979) 1 LAB LN 336, 55 FJR 511, 1979 (11) LAWYER 55, (1979) 2 SCR 126 (SC), 1979 38 FACLR 38, (1978) 38 FACLR 38, 1979 SCC (L&S) 340

Author: Y.V. Chandrachud

Bench: Y.V. Chandrachud, P.S. Kailasam, A.D. Koshal

PETITIONER:
POTTERY MAZDOOR PANCHAYAT

Vs.

RESPONDENT:
THE PERFECT POTTERY CO. LTD. & ANR.

DATE OF JUDGMENT19/10/1978

BENCH:
CHANDRACHUD, Y.V. ((CJ)
BENCH:
CHANDRACHUD, Y.V. ((CJ)
KAILASAM, P.S.
KOSHAL, A.D.

CITATION:
1979 AIR 1356 1979 SCC (3) 762

ACT:
Industrial Disputes Act 1947, Section 10(1)(d) and Madhya Pradesh Industrial Relations Act 1960. Section 51-Tribunals whether have jurisdiction to go behind the terms of reference.

HEADNOTE:
The respondent was engaged in the manufacture of stoneware pipes and other refractory material at its factory. It had taken lease of reference. The respondent issued a notice of closure of the factory and mines, on account of financial difficulties. The factory was governed

by the Madhya Pradesh Industrial Relations Act, 1960 and the Mines were governed by the Industrial Disputes Act, 1947.

A dispute having been raised by the workmen, the case relating to the factory was referred under section 51 of the State Act to an Industrial Court, while the dispute relating to the Mines was referred under section 10(1) (d) of the Central Act to the Central Government Industrial Tribunal cum-Labour Court.

The main question referred under the State Act was whether the proposed closure was proper and justified, while the reference under the Central Act was whether the employers were justified in closing down the mines.

The Industrial Court held that it had no jurisdiction either to inquire into the propriety of the closure or to consider whether there was or was not a real closure, while the Central Government Industrial Tribunal held that though it had no jurisdiction to inquire whether the management's decision to close down the business was proper and justified, it was entitled to consider whether, in fact, the business was closed.

In writ petitions filed by both sides, the High Court came to the conclusion that the jurisdiction of the Tribunal in industrial disputes is limited to the points specifically referred for its adjudication and to matters incidental thereto and that the Tribunal cannot go beyond the terms of reference made of. it.

Dismissing the appeals,

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HELD: 1. The references being limited to the narrow question whether the closure was proper and justified, the Tribiunals by the very terms of the references, had no jurisdiction to go behind the fact of closure and inquire into the question whether the business was in fact closed down by the management. [130 E]

2. The terms of the references show that the point of dispute between there parties was not the fact of the closure of business but the propriety and justification of the respondents decision to close down the business. The Tribunals.

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(Chandrachud, C. J.)

were not called upon to adjudicate upon the question as to whether under the pretence of closing the business the workers were locked out by the management. [130 C-D]

3. The history of the dispute indicated that the dispute between the parties related not to the question as to whether the business, in fact, was closed by the management but whether there was any justification or propriety on the part of the management in deciding to close down the business. There is a clear and unequivocal admission on the part of the workers before the Tribunals that the business was in fact closed by the respondent. [130F, 131D]

4. The concept of 'closure' as envisaged in section 2(8) of the State Act is perhaps wider than what is commonly understood by that expression but that cannot assist the appellant to contend that under the terms of the references, the Tribunals were entitled to enter into the question as to the fact OF the closure. If ever it was the case of the appellant that there was in fact no closure and there was really an illegal lock-out, the reference would have been asked for and made not under section Sl under which it was made, but under section 82. 1132B. D]

5. The propriety of or justification for the closure of a business in fact and truly effected, cannot raise an industrial dispute as contemplated by the State and Central Acts. [132 F]

The Management of Express Newspapers Ltd. v. Workers and Staff Employed under it and Others [1963] 3 S.C.R. 540, 548 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 293-295 of 1971.

From the Judgment and Order dated 30-4-1970 of the Madhya Pradesh High Court in M.P. No. 333/68 and 48 and 27 of 1969.

Gulab Gupta and Vineet Kumar for the Appellant. V. M. Tarkunde, D. N. Misra and O.C.Mathur for the Respondent.

The Judgmnent of the Court was delivered by CHANDRACHUD, C. J. The respondent, M/s. Perfect Pottery Co. Ltd., was engaged in the manufacture of stoneware pipes and other refractory material at its factory known as Perfect Pottery Works, where it employed about 900 workmen. For the purposes of its factory, respondent had taken a lease of Poly Pather Clay Mines, wherein about 81 workmen were employed. On April 24, 1967 respondent issued a notice of closure of the factory and the Mines stating, that the management. had decided to close down the business on account of financial difficulties and other reasons.

Consequent upon the notice of closure, the appellant herein, the Pottery Mazdoor Panchayat, applied for initiation of conciliation pro ceedings to the Deputy Labour Commissioner, Madhya Pradesh and to the Regional Labour Commissioner (C), Jabalpur. The reason for initiation of two different conciliation proceedings was that Perfect Pottery Works was an industry to which the Madhya Pradesh Industrial Relations Act, 1960, applied, whereas Poly Pather Clay Mines was an industry governed by the Industrial Disputes Act, 1947. We will refer to these two Acts as 'the State Act' and 'me Central Act' respectively Conciliation proceedings having failed, the Madhya Pradesh State Government, on June 26, 1967, referred an industrial dispute to the arbitration of the Industrial Court under section 51 of the State Act. The main questions referred to the Industrial Court were:

Whether the proposed closure by the management of the Perfect Pottery Co. Ltd., Jabalpur, of their pottery factory at Jabalpur, with effect from July 1, 1967, is proper and justified, and To what retrenchment compensation are the employees entitled, if it is decided that 'the proposed closure is proper and justified ?

The reference was evidently made in order, in the first instance, to avert the closure of the factory. The Industrial Court was there fore also asked to consider whether any interim relief should be granted by restraining the management from closing down the factory until the reference was finally adjudicated upon. The Industrial Court by an interim Award dated June 30, 1967, having declined to issue a prohibitory injunction, the appellant filed Writ Petition No. 337 of 67 in the Madhya Pradesh High Court. That Petition became infructuous after the closure of the factory and was not pressed.

On July 1, 1967 the respondent purported to close down the business. We say "purported", because whether the business was, truly and in fact, closed or not is a matter on which the parties have joined issue. The case of the appellant is that respondent had closed the place of business and not the business itself. After the closure, or shall we say the 'alleged closure', the Central Government on September 16, 1967, made a reference under section 10(1)(d) of the Central Act to the Central Government Industrial Tribunal-cum Labour Court, Jabalpur, on the following question:

Whether the employers in relation to the Poly Pather Clay Mines of Perfect Pottery Co. Ltd., Jabalpur, were justified in closing down the said mine and retrenching the (Chandrachud, C. J.) following 81 workers with effect from July 1, 1967. If not, to what relief are the workmen entitled ? In the two references, one before the Industrial Court and the other before the Central Government Industrial Tribunal-cum-Labour Court, 'the respondent contended that the respective Tribunals had no jurisdiction to consider the question as regards the propriety or justification of the management's decision to close down the business on the other question, the respondent did not dispute its liability to pay retrenchment compensation to the workmen but it contended that neither of the two Tribunals had jurisdiction to go into that question.

The appellant's case before the Tribunals was that the so-called closure of the business was merely a camouflage and was in substance and essence, a lock out. In support of this contention the appellant pleaded that the respondent was making large profits in its business, that no economic or financial reasons could have impelled it to close down its business and the true reason of the supposed closure was to victimize the workers for their Trade Union activities and to defeat the rights which flowed out of the Award given by the Industrial Court, Madhya Pradesh, on March 16, 1966, under which the workers were entitled to receive enhanced dearness allowance The two Tribunals came to contrary conclusion on the principal question

as to whether they had jurisdiction to inquire into the propriety of or justification for the closure. The Central Government Industrial Tribunal-cum- Labour Court held by its award dated July 3, 1968 that it had no jurisdiction to inquire whether the decision of the management to close down the business was proper and justified but that it was entitled to consider whether, in fact, the business was closed. On the other hand, the Industrial Court, by its award dated p November 15, 1968 held that it had no jurisdiction either to inquire into the propriety of the closure or, because of the terms of reference, to consider whether there was or was not a real closure.

As against these decisions, three Writ Petitions were filed in the High Court of Madhya Pradesh, one by the appellant and two by the respondent which were disposed of by the High Court by a common judgment dated April 30, 1970. Dismissing the Writ Petition filed by the appellant and allowing the Writ Petitions filed by the respondent, it has granted to the appellant a certificate to file an appeal to this Court under Article 133(1) (a) of the Constitution.

Two questions were argued before the High Court: Firstly, whether the tribunals had jurisdiction to question the propriety or justification of the closure and secondly, whether they had jurisdiction to go into the question of retrenchment compensation. The High Court has held on the first question that the jurisdiction of the Tribunal in industrial disputes is limited to the points specifically referred for its adjudication and to matters incidental thereto and that the Tribunal cannot go beyond the terms of the reference made to it. on the second question the High Court has accepted the respondent's contention that the question of retrenchment compensation has to be decided under section 33C(2) of the Central Act.

Having heard a closely thought out argument made by Mr. Gupta on behalf of the appellant, we are of the opinion that the High Court is right in its view on the first question. The very terms of the references show that the point of dispute between the parties was not the fact of the closure of its business by the respondent but the propriety and justification of the respondent's decision to close down the business. That is why the references were expressed to say whether the proposed closure of the business was proper and justified. In other words, by the references, the Tribunals were not called upon by the Government to adjudicate upon the question as to whether there was in fact a closure of business or whether under the pretence of closing the business the workers were locked out by the management. The references being limited to the narrow question as to whether the closure was proper and justified, the Tribunals by the very terms of the references, had no jurisdiction to go behind the fact of closure and inquire into the question whether the business was in fact closed down by the management.

It is not necessary to rely exclusively on the terms of references for coming to this conclusion. The history of the dispute and the various documents on record of the references themselves indicate that the dispute between the parties related not to the

question as to whether the business, in fact, was closed by the management but whether there was any justification or propriety on the part of the management in deciding to close down the business. On June 22,1967, the General Secretary of the appellant Union addressed a letter to the Regional Labour Commissioner, Jabalpur, by which the present dispute was raised. The first paragraph of that letter says: "that the Company had notified is decision to close down the mine with effect from July 1, 1967, that some of the workers were served with notices of retrenchment individually but that retrenchment compensation was not paid by the management which was illegal and violative of the provisions of the Industrial Disputes Act". This grievance assumes the validity of the decision to close down the business and proceeds to make a claim arising out of a valid closure namely, a claim for retrenchment compensation. The second paragraph of the (Chandrachud, C. J.) the aforesaid letter begins by saying that "the closure of the mine and the factory is malafide". The reasons for the closure are then set out in that paragraph which winds up by saying that the Union was of the opinion that the closure was not for business reasons but was a malafide decision taken in order to drive the Union out of existence and to cheat the workers of their lawful dues.

On June 28, 1967, the Managing Director of the respondent sent a reply to the Regional Labour Commissioner dealing with the contentions made by the Union in its letter of June 22,, 1967. The Managing Director contended that no industrial dispute existed or was apprehended and that the Conciliation officer had, therefore, no jurisdiction under the Act to hold any proceedings. In the order dated April 30, 1970, of the Industrial Tribunal-cum-Labour Court, Jabalpur, reference has been made to an affidavit which was filed on behalf of the workers for the purpose of securing an interim award. We have, looked at the affidavit for ourselves and are in agreement with the view expressed by the Tribunal that there is a clear and unequivocal admission on the part of the workers in that affidavit to the effect that the business was in fact closed by the respondent. The High Court has also referred to a statement dated June 16, 1967, in which it was stated on behalf of the workmen that since the establishment had already closed down, there was no necessity for making submissions on the point relating to the reduction in the number of employees and revision of the workload.

Learned counsel for the appellant relies upon a judgment of this Court in The Management of Express Newspapers Ltd. v. Workers and Staff Employed under it and others,(1) in which it was observed that if, in fact and in substance, the closure of the business is a lock out and the business has been apparently closed for the purpose of disguising a lock out and a dispute is raised in respect of such a closure it would be an industrial dispute which an Industrial Tribunal is competent to deal with. There, can, with respect, be no quarrel with this proposition but the true question which arises for consideration is whether in the instant case there was any dispute at all, whether there was in fact a closure or whether the management purported to close the business as a cloak or disguise for what in fact and substance was a lock out. As

we have shown earlier no such dispute was ever raised, the limited dispute which was raised by the appellant being whether the closure of the business was effected for a proper and a justifiable reason.

The appellant's counsel also drew our attention to the definition of 'closure' in section 2(8) of the State Act according to which 'closure' (1) [1963] 3 S.C.R. 540, 548 to the extent material, means the closing of any place or part of a place of employment or the total or partial suspension of work by an employer or the total or partial refusal by an employer to continue to employ persons employed by him whether such closing, suspension or refusal is or is not in consequence of an industrial dispute. It may perhaps be that the concept of 'closure' in the State Act is wider than what is commonly understood by that expression but we do not appreciate how the circumstance that even a partial closure of a business is closure within the meaning of the State Act can assist the appellant in its contention that under the terms of the present references, the Tribunals were entitled to enter into the question as to the fact of the closure. In this connection the provisions of section 82 of the state Act, to which Mr. Tarkunde appearing on behalf of the respondent drew our attention, are very significant. That section provides that the State Government may make a reference to a Labour Court or the Industrial Court for a declaration whether any proposed strike, lock-

out, closure or stoppage will be illegal. If ever it was the case of the appellant that there was in fact no closure and there was really an illegal lock-out, the reference would have been asked for and made not under section 51 under which it was made, but under section 82.

We are, therefore, of the view that the High Court was right in coming to the conclusion that the two Tribunals had no jurisdiction to go behind the references and inquire into the question whether the closure of business, which was in fact effected" was decided upon for reasons which were proper and justifiable. The propriety of or justification for the closure of a business, in fact and truly effected, cannot raise an industrial dispute as contemplated by the State and Central Acts.

It is unnecessary to consider the second question as regards the payment of retrenchment compensation and we will, therefore, express no opinion as to whether the Tribunals had jurisdiction to go into that question. Happily, the parties have arrived at a settlement on that question under which, the respondent agrees to fix within a period of six months from today the retrenchment compensation payable to the retrenched workers in accordance with the provisions of section 25FFF of the Central Act, namely, the Industrial Disputes Act, 1947, without the aid of the proviso to that section. After the retrenchment compensation is so fixed, a copy of the decision fixing the compensation payable to each of the workers will be sent by the respondent to the appellant Union. The workers or their legal representatives, as the case may be, will then be entitled to receive the retrenchment compensation from the respondent, which agrees to pay the same to them. The respondent will be entitled to set off of the amounts of retrenchment compen-

(Chandrachud, C.J.) sation already paid to the workers against the amounts found due to them under this settlement. On receiving the retrenchment compensation the workers concerned shall withdraw the applications, if any, filed by them for relief in that behalf.

We would only like to add that the compensation which will be paid to the workers will be without prejudice to their right, if any, to get employment from the respondent in the new business as and when occasion arises.

The appeals are accordingly dismissed but there will be no order as to costs.

N.V.K. Appeals dismissed.