M/S Oswal Agro Furane Ltd. & Anr vs Oswal Agro Furance Workers Union & Ors on 14 February, 2005

Equivalent citations: AIR 2005 SUPREME COURT 1555, 2005 (3) SCC 224, 2005 AIR SCW 1050, 2005 LAB. I. C. 1325, 2005 (2) SLT 554, (2005) 5 ALL WC 4077, (2005) 2 JCR 10 (SC), (2005) 2 JT 260 (SC), 2005 (2) JT 260, 2005 (4) SRJ 44, 2005 (2) SERVLJ 240 SC, 2005 (1) LABLN 21, 2005 (2) SCALE 134, 2005 LAB LR 305, (2005) 27 ALLINDCAS 1 (SC), 2005 (27) ALLINDCAS 1, 2005 SCC (L&S) 381, (2005) 1 SCT 838, (2005) 2 SCJ 228, (2005) 2 SERVLR 362, (2005) 2 SUPREME 63, (2005) 104 FACLR 992, (2005) 1 KER LT 936, (2005) 1 CURLR 816, (2005) 1 LABLJ 1117, (2005) 2 SCALE 134

Author: S.B. Sinha

Bench: N.S. Hegde, S.B. Sinha

CASE NO.:
Appeal (civil) 1469 of 1999

PETITIONER:
M/s Oswal Agro Furane Ltd. & Anr.

RESPONDENT:
Oswal Agro Furance Workers Union & Ors.

DATE OF JUDGMENT: 14/02/2005

BENCH:
N.S. Hegde & S.B. Sinha

JUDGMENT:

J U D G M E N T S.B. SINHA, J :

INTRODUCTION :

Whether in a case of closure of an industrial undertaking, prior permission of the appropriate Government is imperative and whether a settlement arrived at by and between the employer and the workmen would prevail over the statutory requirements as contained in Section 25-N and Section 25-O of the Industrial Disputes Act, 1947 ('the Act', for short) are the primal questions involved in this appeal which arises from a judgment and order passed by a Division Bench of the Punjab & Haryana High Court dated 10.7.1998 in CWP No.8214 of 1997 allowing the writ petition filed by the Respondents herein.

BACKGROUND FACTS :

The Appellant's industrial undertaking was set up as a 100% Export Oriented Unit for Paddy Processing, Furfural and Rice Bran Extraction. Allegedly, in view of lack of demand in the international market of its product, Rice Bran Oil was sold by it in the local market, wherefor no Registration-cum-Allocation Certificate below the minimum price was obtained. The said purported statutory violation was the subject-matter of a writ petition filed by the Appellant herein before the Delhi High Court which was allowed.

The matter came up for consideration before this Court and in its judgment rendered in Agricultural and Processed Food Products etc. vs. Oswal Agro Furane and Others etc. [(1996) 4 SCC 297] this Court held that the Appellant is liable to pay a sum of Rs. fifty crores under different heads to the State. Allegedly, on the ground such a huge liability had been incurred, a notice dated 29.5.1996 was issued to the State Government in terms of Section 25-O of the Act. Notices were also issued to the workmen on 12.6.1996 whereupon a purported settlement was arrived at on or about 14.6.1996 in terms of Section 12(3) of the Act. The Respondents herein questioned the said settlement by filing a writ petition which, as noticed hereinbefore, was allowed.

HIGH COURT :

The High Court in its impugned judgment arrived at the following findings :

1. As the Management had not applied for prior permission to close down the industrial undertaking as is mandatorily required under Section 25-O of the Act, the purported notice dated 29.5.1996 was illegal.

2. The closure of the industrial undertaking of the Appellant being illegal, the workmen were entitled to all the benefits in terms of sub-section (6) of Section 25-O of the Act. Although the settlement dated 14.6.1996 took place as a result of the purported closing down of the industry, a valid closure itself being a foundation of such settlement and it being illegal and void and, thus, cannot be sustained in law.

3. Closure of the industrial undertaking resulting in retrenchment as contained in Section 25-N of the Act envisages fulfillment of two conditions precedent therefor, namely, (1) three months' notice/ notice pay in lieu thereof; and (2) prior permission of the appropriate Government and both being mandatory in nature; the retrenchment of the workmen was illegal as prior permission therefor had not been sought from the State.

4. The provisions of Sections 25-J, 25-N and 25-F should be read conjointly with Section 25-N of the Act.

5. Although Section 18 of the Act makes a settlement binding on all workmen but such settlement cannot be entered into in contravention of the provisions of Chapters VA and VB of the Act.

SUBMISSIONS :

Mr. P.N. Puri, the learned counsel appearing on behalf of the Appellant would submit that having regard to the purport and object of the Industrial Disputes Act , a settlement arrived at in course of conciliation proceedings within the meaning of sub-section (3) of Section 12 of the Act being binding on all workmen in terms of Section 18 thereof; the High Court committed an error in passing the impugned judgment. The learned counsel would contend that in view of such a settlement, the writ petition filed by the Respondents was not maintainable. Strong reliance in this behalf has been placed on P. Virudhachalam and Others vs. Management of Lotus Mills and Another [(1998) 1 SCC 650]. The learned counsel would further urge that the non-obstante clause contained in Section 25-J occurring in Chapter V-A will have no application in relation to a proceedings contained in Chapter V-B thereof. Reliance in this behalf was placed on Engineering Kamgar Union vs. Electro Steels Castings Ltd. and Another.[(2004) 6 SCC 36]. .

Mr. Himinder Lal, the learned counsel appearing on behalf of the Respondents, on the other hand, would submit that the provisions of Sections 25-N and 25-O are imperative in character.

THE RELEVANT PROVISIONS OF THE ACT :

Section 2(p) defines a settlement as one arrived at in the course of conciliation proceedings and includes a written agreement by and between the employer and workmen entered into otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorized in this behalf by the appropriate Government and the conciliation officer. Section 12 of the Act provides for duties of conciliation officers. Sub-section (3) thereof provides that if a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute. Section 18 of the Act provides for the binding nature of such settlement, sub-section (3) whereof reads as under :

"(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

Section 25-N of the Act lays down conditions precedent to retrenchment of workmen whereas Section 25-O provides for the procedure for closing down an undertaking of an industrial establishment. Section 25- N of the Act lays down two conditions before a retrenchment of workman can be effected which are : (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment or paid in lieu such notice wages for the said period; and (b) the prior permission of the appropriate Government has been obtained by the employer on an application made in this behalf. Sub-section (2) of Section 25-N provides for the manner in which the application for permission under sub-section (1) is required to be made. Sub-section (3) of Section 25-N postulates grant or refusal of such permission by the appropriate Government upon making such enquiry as it may think fit after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, and also having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors. Sub-section (4) of Section 25-N provides that when an order passed by the appropriate Government is not communicated within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period. Sub-section (7) of Section 25-N provides for the consequences emanating from non-making of application for permission under sub-section (1) or where such permission has been refused, stating the retrenchment of the workman shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.. The only exception provided for as regard grant of exemption from the operation thereof is contained in sub-section (8) thereof i.e. in a case where the appropriate Government is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it may by order direct that the provisions of sub-section (1) shall not apply in relation to such establishment.

Section 25-O of the Act contains similar provisions as regard issuance of such notice and passing of an order by the appropriate Government.

DETERMINATION :

It is not in dispute that the Appellant herein did not ask for grant of such prior permission before the appropriate Government disclosing its intention to effect closure of the said unit and such question of grant of prior permission by the State did not arise.

Constitutionality of Section 25-N of the Act came up for consideration before a Constitution Bench of this Court in Workmen of Meenakshi Mills Ltd. and Others etc. vs. Meenakshi Mills Ltd. and Another etc. [(1992) 3 SCC 336], wherein inter alia, a contention was raised that Section 25-O as it originally stood having been declared unconstitutional by this Court in Excel Wear etc. vs. Union of India and Others etc. [(1978) 4 SCC 224] holding that an employer has a fundamental right not to carry on any business, Section 25-N on the same analogy should be held to be ultra vires. In Meenakshi Mills (supra) this Court noticed the distinguishing features between Sections 25-N and 25-O as originally enacted and the amendments effected therein in terms of the Industrial Disputes (Amendment) Act, 1984.

The following contentions raised therein by the learned counsel appearing on behalf of the employer were noticed by this Court :

"(1) Adjudication by a judicial body available in the case of retrenchment under Section 25-F has been substituted by an administrative order passed by an executive authority in the case of retrenchment under Section 25-N and thereby a function which was traditionally performed by Industrial Tribunals/Labour Courts has been conferred on an executive authority.

(II) No guidelines have been prescribed for the exercise of the power by the appropriate Government or authority under sub-section (2) of Section 25-N and it would be permissible for the authority to pass its order on policy considerations which may have nothing to do with an individual employer's legitimate need to reorganize its business. The requirement that reasons must be recorded by the appropriate Government or authority for its order under sub-section (2) of Section 25-N is not a sufficient safeguard against arbitrary action since no yardstick is laid down for judging the validity of those reasons.

(III) There is no provision for appeal or revision against the order passed by the appropriate Government or authority refusing to grant permission to retrench under sub-section (2) of Section 25-N Judicial review under Article 226 of the Constitution is not an adequate remedy.

(IV) The provisions are ex facie arbitrary and discriminatory inasmuch as while the workmen have a right to challenge, on facts, the correctness of an order passed under sub-section (2) granting permission for retrenchment before the Industrial Tribunal by seeking a reference under Section 10 of the Act, the management does not have a similar right to challenge the validity of an order passed under sub-section (2)

refusing to grant permission for retrenchment."

This Court rejected all the aforementioned contentions and upheld the constitutionality of the said Act.

A bare perusal of the provisions contained in Sections 25-N and 25-O of the Act leaves no manner of doubt that the employer who intends to close down the undertaking and/or effect retrenchment of workmen working in such industrial establishment, is bound to apply for prior permission at least ninety days before the date on which the intended closure is to take place. They constitute conditions precedent for effecting a valid closure, whereas the provisions of Section 25-N of the Act provides for conditions precedent to retrenchment; Section 25-O speaks of procedure for closing down an undertaking. Obtaining a prior permission from the appropriate Government, thus, must be held to be imperative in character.

A settlement within the meaning of Section 2(p) read with sub-section (3) of Section 18 of the Act undoubtedly binds the workmen but the question which would arise is, would it mean that thereby the provisions contained in Sections 25-N and 25-O are not required to be complied with? The answer to the said question must be rendered in the negative. A settlement can be arrived at between the employer and workmen in case of an industrial dispute. An industrial dispute may arise as regard the validity of a retrenchment or a closure or otherwise. Such a settlement, however, as regard retrenchment or closure can be arrived at provided such retrenchment or closure has been effected in accordance with law. Requirements of issuance of a notice in terms of Sections 25-N and 25-O, as the case may, and/or a decision thereupon by the appropriate Government are clearly suggestive of the fact that thereby a public policy has been laid down. The State Government before granting or refusing such permission is not only required to comply with the principles of natural justice by giving an opportunity of hearing both to the employer and the workmen but also is required to assign reasons in support thereof and is also required to pass an order having regard to the several factors laid down therein. One of the factors besides others which is required to be taken into consideration by the appropriate Government before grant or refusal of such permission is the interest of the workmen. The aforementioned provisions being imperative in character would prevail over the right of the parties to arrive at a settlement. Such a settlement must conform to the statutory conditions laying down a public policy. A contract which may otherwise be valid, however, must satisfy the tests of public policy not only in terms of the aforementioned provisions but also in terms of Section 23 of the Indian Contract Act.

It is trite that having regard to the maxim "ex turpi causa non oritur actio", an agreement which opposes public policy as laid down in terms of Sections 25-N and 25-O of the Act would be void and of no effect. The Parliament has acknowledged the governing factors of such public policy. Furthermore, the imperative character of the statutory requirements would also be borne out from the fact that in terms of sub-section (7) of Section 25- N and sub-section (6) of Section 25-O, a legal fiction has been created. The effect of such a legal fiction is now well-known. [See East End Dwellings Co. Ltd. V. Finsbury Borough Council [(1951) 2 All ER 587, Om Hemrajani vs. State of U.P. and Another (2005) 1 SCC 617 and M/s Maruti Udyog Ltd. vs. Ram Lal & Ors. 2005 (1) SCALE 585].

The consequences flowing from such a mandatory requirements as contained in Sections 25-N and 25-O must, therefore, be given full effect. The decision of this Court in P. Virudhachalam (supra) relied upon by Mr. Puri does not advance the case of the Appellant herein. In that case, this Court was concerned with a settlement arrived at in terms of Section 25-C of the Act. The validity of such a settlement was upheld in view of the first proviso to Section 25-C of the Act. Having regard to the provisions contained in the first proviso appended to Section 25-C of the Act, this Court observed that Section 25-J thereof would not come in the way of giving effect to such settlement. However, the provisions contained in Sections 25- N and 25-O do not contain any such provision in terms whereof the employer and employees can arrive at a settlement.

In Engineering Kamgar Union (supra), the question which fell for consideration of this Court was as to whether in relation to an industry which was governed by the State Act, the provisions of Section 25-O would be attracted. This Court held that having regard to the provisions contained in Article 254 of the Constitution of India, the provisions of the State Act shall prevail over the Parliamentary Act as the former received the assent of the President of India stating :

> "The contention of Mr. Banerjee to the effect that Section 25J of the Central Act has been incorporated by reference in Section 25S cannot be accepted. Section 25S does not introduce a non-obstante clause as regard Chapter V-A. Furthermore, Section 25J is not a part of Chapter V-B. By reason of Section 25S, the provisions of Chapter V-A were made applicable only in relation to certain establishments referred to in Chapter V-B. The Parliament has deliberately used the words "so far as may be" which would also indicate that provisions of Chapter V-A were to apply to the industrial establishments mentioned in Chapter V-B. The non-obstante clause contained in Section 25J does not apply to the entire Chapter V-B. Applicability of Chapter V-A in relation to the industrial establishments covered by Chapter V-B in terms of Section 25J vis-`-vis Section 25S is permissible but the contention cannot be taken any further so as to make Section 25O of the Central Act prevail over the State Act by taking recourse to the non-obstante clause. Non-obstante clause contained in Section 25J is, thus, required to be kept confined to Chapter V-A only and in that view of the matter we have no hesitation in holding that Chapter V-B does not have an overriding effect over the State Act."

Indisputably, in this case, the industrial undertaking belonging to the Appellant herein attracts the provisions of Chapter VB of the Act and consequently the provisions referred to in Section 2(s) including Section 25J shall apply in relation thereto.

The decision of this Court in Engineering Kamgar Union (supra) thus, must be understood to have been rendered in the fact situation obtaining therein.

CONCLUSION :

> For the reasons aforementioned, we do not find any merit in this appeal which is accordingly dismissed. However, in the facts and circumstances of the case, there

shall be no order as to costs.