Sahu Minerals & Properties Ltd vs Presiding Officer, Labour Court & Ors on 6 August, 1975

Equivalent citations: 1975 AIR 1745, 1976 SCR (1) 263, AIR 1975 SUPREME COURT 1745, 1976 3 SCC 93, 1975 LAB. I. C. 1224, 1976 (1) SCR 263, 1976 (1) SCJ 513, 1975 2 LABLJ 341, 48 FJR 21, 31 FACLR 162

Author: A. Alagiriswami

Bench: A. Alagiriswami, P.K. Goswami, N.L. Untwalia

PETITIONER:
SAHU MINERALS & PROPERTIES LTD.

Vs.

RESPONDENT:
PRESIDING OFFICER, LABOUR COURT & ORS.

DATE OF JUDGMENT06/08/1975

BENCH:
ALAGIRISWAMI, A.
BENCH:
ALAGIRISWAMI, A.
GOSWAMI, P.K.
UNTWALIA, N.L.

CITATION:
1975 AIR 1745 1976 SCR (1) 263
1976 SCC (3) 93
CITATOR INFO :
R 1978 SC 275 (5)

ACT:
Industrial Disputes Act, 1947, Sections 25F proviso to see. 25FFF(1) and section 33C(2)-Labour Court asked so decide retrenchment compensation pay able to workmen question of retrenchment or the closure of factory beyond control of employer if could be decided by Labour Court-Item 10 to Third Schedule, if attracted.

HEADNOTE:
The Government of Bihar sent to the Labour Court, Chota Nagpur Division, Ranchi, application in respect of 73 workers of the appellant for decision under sec. 33C(2) of

the Industrial Disputes Act for retrenchment compensation. The contention of the appellant was that it was a case of closer for reasons beyond its control and that, therefore, the workmen were entitled to compensation under the proviso to sub-section (1) of sec. 25FFF of the Act and not to retrenchment compensation. The workers contended that they were entitled to retrenchment compensation under sec. 25F. The Labour Court held that it was a case of retrenchment. The writ petitions filed by the employer in the High Court has failed and these appeals have been preferred to this Court on the basis of the certificate of fitness granted by the High Court.

Dismissing the appeals,

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HELD : (i) It was competent to the Labour Court to decade whether the case before it was a case of retrenchment compensation or the proviso to sub-sec. (1) of section 25FFF was attracted on closure of the establishment. Even the employer does not dispute that the workmen are entitled to compensation. It only says that the compensation should be calculated on a particular basis different from the basis on which the workmen claim. The claim also falls under Chapter VA of the Act. [266H; 267B-C]

Central Bank of India Ltd. v. P. S. Rajagopalan [1964] 3 S.C.R. 140 relied on.

U.P. Electric Company v. R. K. Shukla [1970] 1 S.C.R. 507 and South Arcot Elect. Co. v. N. K. Khan [1969] 2 S.C.R. 902, referred to.

(ii) Item No. 10 of the Third Schedule to the Act does not say that all questions arising out of retrenchment of workmen and closure of establishment have to be decided by Industrial Tribunal. This entry refers to cases where the right to retrench workers or to lose an establishment is disputed and that question is referred for adjudication to the Industrial Tribunal. In that case the Tribunal will be competent to decide whether the closure or retrenchment was justified and whether the retrenchment workmen should be reinstated or the workers in the establishment purported to have been closed should be continued to be paid on basis that the so-called closure was no closure at all. In the present case the workmen do not ask for reinstatement. They accept the termination of the services and ask for compensation. The only dispute is about the compensation whether it is to be paid under s. 25F or 25FFF. Item 10 of Third schedule will not cover such a case. [267D-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1266 & 1267 of 1969.

From the Judgment and order dated the 29th July, 1968 of the Patna High Court in Civil Writ Jurisdiction Case No. 61 of 1967 H. K. Puri and K. K. Mohan, for the appellant D. Goburdhan, for respondent Nos. 1 and 2 (In both the appear) Respondent No. 21 (In C.A. No. 1266/69) and for respondent No. 60 (in C.A. No. 1267/69).

A. K. Nag, for respondent Nos. 3-19 (In C.A. No. 1266/69) and for respondent Nos, 4, S, 7-9, 11-32, 35-42, 44-52, 54-58 (In C.A. No. 1267/69).

The Judgment of the Court was delivered by ALAGIRISWAMI, J. By two notifications dated 22-6-65 and 28-8-65 the Government of Bihar sent to the Labour Court, Chota Nagpur Division, Ranchi, applications in respect of 73 workers of the appellant for decision under s. 33C(2) of the Industrial disputes Act for retrenchment compensation. The employer contended that it was a case of closure for reasons beyond its control and that therefore the workmen were entitled to compensation under the proviso to subsection (1) of s. 25FFF of the Act and not to retrenchment compensation workers contended, however, that they were entitled to retrenchment compensation under s.25F. The Labour Court held that it was a case of retrenchment. Two writ petitions filed by the employer before the High Court of Patna failed and these appeals have been filed in pursuance of a certificate of fitness granted by the High Court.

The argument on behalf of the appellant is that where there is a dispute before the Labour Court considering an application under s. 33C(2) as to whether the workmen had been retrenched or the factory had been closed for reasons beyond the control of the employer, it was not a matter which the Labour Court was competent to decide and that it was a matter which only an Industrial Tribunal considering a reference under s. 10 is competent to decide. In particular Item 10 of the Third Schedule to the Act is relied upon to show that the matter relating to retrenchment and closure is one which only an Industrial Tribunal is competent to decide. Reliance is placed upon a decision of this Court in U.P. Elect. Co. v. R. K. Shukla(1) where it was held that the power of the Labour Court is to complete the compensation claimed to be payable to the workmen on the footing that there has been retrenchment of the workmen, that where retrenchment is conceded and the only matter in dispute is that by virtue of s. 25FFF no liability to pay compensation has arisen the Labour Court will be competent to decide the question, that in such a case the question is one of computation and not of determination, of the conditions precedent to the accrual of liability, and that where the dispute is whether workmen have been retrenched and computation of the amount is subsidiary or incidental, the Labour Curt will have no authority to trespass upon the powers of the Tribunal with which it is statutorily invested.

In the U.P. Electric Company case (supra) the facts were somewhat different. The Court in that case noticed at page 513 of the report that-

> "The company had expressly raised a contention that they had not retrenched the workmen and that the workmen had voluntarily abandoned the Company's service by seeking employment with the Board even before the company closed its undertaking".

This Court emphasised at page 5l7 of the report that- If the liability arises from an award, settlement or under the provisions of Ch. V-A or by virtue of a statute or a scheme made thereunder, mere denial by the employer may not be sufficient to negative the claim under s. 33C(2) before the Labour Court".

We, therefore, do not see how the decision in the U.P. Electric Company's case (supra) can come to the aid of the appellant in this case. The said case is clearly distinguishable on the peculiar facts as noticed above.

In Central Bank of India Ltd v. P. S. Rajagopalan(1) this Court considered the scope of s. 33C(2) elaborately and it would be necessary to quote at some length from that decision. In that case it was urged by the employer that s. 33C(2) can be invoked by a workman who is entitled to receive from the employer the benefit there specified, but the right of the workman to receive the benefit has to be admitted and could not be a matter of dispute between the parties and that the only point which the labour Court can determine is one in relation to computation of the benefit ill terms of money. This Court observed:

> "We are not impressed by this argument. In our opinion on a fair and reasonable construction of sub-s. (2) it is clear that if a workman's right to receive the benefit is disputed, that may have to be determined by the Labour Court. Before proceeding to compute the benefit in terms of money the Labour Court inevitably has to deal with the question as to whether the workman has a right to receive that benefit. If the said right is not disputed, nothing more needs to be done and the labour Court can proceed to compute the value of the benefit in terms of money; but if the said right is disputed the Labour Court must deal with that question and decide whether workman has the right to receive the benefit as alleged by him and it is only if the Labour Court answers this point in favour of the workman that the next question of making necessary computation can arise. It seems to us that the opening clause of sub-s. (2) docs not admit of the construction for which the appellant contends unless we add some words in that clause. The clause "Where any workman is entitled to receive from the employer any benefit" does not mean "where such workman is admittedly, or admitted to be.

entitled to receive such benefit." The appellant's constructional would necessarily introduce the addition of the words "admittedly, or admitted to be" in that clause, and that clearly is not permissible. Besides, if seems to us that is the appellant's construction is accepted it would necessarily mean that it would be at the option of the employer to allow the workman to avail himself of the remedy provided by sub- s. (2), because he has merely to raise an objection on the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labour Court to entertain the workman's application. The claim under s. 33C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by sub-s.(2). As Maxwell in Interpretation of Statutes, p. 350, has observed 'where an Act confers a

jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution; we must accordingly hold that s. 33C(2) takes within its purview case of workmen who claimed that the benefit to which they are entitled should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers. Incidentally, it may be relevant to add that it would be somewhat odd that under sub-s (3), the Labour Court should have been authorised to delegate the work of computing the money value of the benefit to the Commissioner if the determination of the said question was the only task assigned to the Labour Court under sub-s. (2). On the other hand, sub-s.(3) becomes intelligible if it is held that what can be assigned to the Commissioner includes only a part of the assignment of the Labour of Court under sub-s. (2)". Further on this Court observed:

> "It is thus clear that claims made under s.33C(1), by itself can be only claims referable to the settlement, award, or the relevant provisions of Chapter VA. These words of limitations are not to be found in s.33C(2) and to that extent, the scope of s. 33C(2) is undoubtedly wider than that of s. 33C(1)... It is unnecessary in the present appeals either to state exhaustively or even to indicate broadly what other categories of claims can fall under s. 33C(2). There is no doubt that the three categories of claims mentioned in s. 33C (1) fall under s. 33C(2) and in that sense, s. 33C(2) can itself be deemed to be a kind of execution proceeding, but it is possible that claims not based on settlements, awards or made under the provisions of Chapter VA, may also be competent under s. 33C(2) and that may illustrate its wider scope."

This Court then went on to discuss some of the claims which would not fall under s.33C(2), which is not very relevant for the purposes of this case. The present case stand on an even stronger footing. Even the employer does not dispute that the workmen are entitled to compensation. It only says that the compensation should be calculated on a particular basis different from the basis on which the workmen claim. The claim also falls under Chapter VA.

In the decision in South Arcot, Elect. Co. v. N. K. Khan(1) where a right had been claimed by the various workmen in their applications under s. 33C(2), it was held that it was a right which accured to them under s.25FF of the Act and was an existing right at the time when these applications were made, that the Labour Court clearly had jurisdiction to decide whether such a right did or did not exist when dealing with the application under that provision, and that the mere denial of that by the company could not take away its jurisdiction.

We hold that in this case it was competent to the Labour Court to decide whether the case before it was a case of retrenchment compensation or the proviso to sub-s. (1) of s. 25FFF was attracted on closure of the establishment. The question even according to the employer falls under s. 25FFF and therefore in deciding that question the Labour Court has necessarily to decide whether the proviso has been satisfied.

We do not consider that the reference to item No. 10 of the Third Schedule to the Act can decide the matter one way or the other. The item reads as follows:

"10. Retrenchment of workmen and closure of establishment It does not say that all questions arising out of retrenchment of workmen and closure of establishments have to be decided by Industrial Tribunal. Logically if the contentions is to be accepted, even if the question of retrenchment is not disputed the Labour Court will not be competent to decide the question of compensation payable in a case of retrenchment because it raises a question of jurisdiction. This entry should therefore be held to refer to cases where the right to retrench workers or to close an establishment is disputed and that question is referred for adjudication to the Industrial Tribunal. In that case the Tribunal will be competent to decide whether the closure or retrenchment was justified and whether the retrenched workmen should be reinstated or the workers in the establishment purported to have been closed should be continued to be paid on the basis that the so-called closure was to closure at all. In the present case the workmen do not ask for reinstatement. They accept the termination of their services and ask for compensation. The only dispute is about the compensation whether it is to be paid under s.25F or 25FFF. Item 10 of Third Schedule will not cover such a case.

We therefore uphold the decision of the High Court and dismiss these appeals with costs.

V.M.K. Appeals dismissed.