INDIAN HUME PIPE CO. LTD. A

v.

THEIR WORKMEN

February 8, 1968

[G. K. MITTER AND K. S. HEGDE, JJ.] B

Industrial Dispute—Closure—Tribunal whether can go into bona fides *of closure—Retrenchment— 'Last come first go'—Tribunal not competent to apply principle without plea being raised.*

The Industrial Tribunal, deciding a dispute between the appellant company and its workmen held that the notice of closure given by the company was not *bona fide* and that the principle of 'last come first go' C should have been applied by the company in retrenching twelve of its workmen. In appeal to this Court.

HELD : (i) Once the Tribunal finds that an employer has closed his factory as a matter of fact it is not concerned to go into the question as to the motive which guided him and to come to a conclusion that because of the previous history of the dispute between the employer and the employees the closure was not justified Such a closure cannot give D rise to an industrial dispute. [135 D]

Pipraich Sugar Mills Ltd. v. *P.S.M. Mazdoor Union,* [1957] 1 L.L.J. 235, *K. M. Padmanabha Ayyar* v. *State of Madras,* [1954] 1 L.L.J. 469, *Tea Districts Labour Association, Calcutta* v. *Ex-employees of Tea Districts Labour Association and Anr.* [1960] 3 S.C.R. 207, *Hatisingh Manufacturing Co. Ltd.* v. *Union of India,* [1960]) S.C.R. 528, *Express Newspapers (P) Ltd.* v. *The Workers,* A.I.R. 1963 S.C. 569 and *Andhra Prabha* v. *Madras Union of Journalists,* [1967] 3 S.C.R. 901, applied. E

(ii) The plea as to the application of the principle 'last come first go' was not taken in the written statement of the Union and the Tribunal was not competent to go into that question at all. [135 F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1829 of 1967. F

Appeal by special leave from the Award dated June 30, 1967 of the Third Industrial Tribunal, West Bengal in Case No. VIII-87 of 1965.

M. C. Setalvad, K. P. Mookerjee and *I. N. Shroff,* for the appellant. G

Janardan Sharma and *S. K. Nandi,* for the respondents.

The Judgment of the Court was delivered by

Mitter, J. This is an appeal by special leave against an award dated June 30, 1967 of the Third Industrial Tribunal, West Bengal, in Case No. VIII-87 of 1965 finding that the retrenchment H of 12 workmen and the closure of the factory of the appellant were both illegal and unjustified. The Tribunal accordingly directed

A that the workers whose services had been purported to be terminated on the ground of closure must be deemed to be still in service of the company and they should receive all their wages and allowances with effect from the date when their services were terminated.

The two issues which were referred by the order of the Government of West Bengal dated April 23, 1965 under s. 10 of the B Industrial Disputes Act between the appellant Company and their workmen were :

(1) Whether the closure of the factory at Barakar is *bona fide* and in the circumstances justified ? To what relief, if any, are the workmen entitled ?

C (2) Whether the retrenchment of the following workmen is justified ? To what relief, if any, are they entitled ?

(1) Kuldip Goala, (2) Chandra Bahadur, (3) Gour Baidyakar, (4) Pradip Kumar Dey, (5) Dular Chand Prasad, (6) Gangadhar Pandey, (7) Mahendra D Bhagat, (8) Sunil Kumar Chatterjee, (9) Balai Chandra Ghose, (10) Surendra Kumbhakar, (11) Sagar Chandra Ghose, (12) Paresh Gope.

The facts about which there is no dispute are as follows. The appellant is a big engineering concern with its head office at E Bombay and factories and establishments numbering about sixty spread all over India and Ceylon. In West Bengal it had two factories, one at Barakar and the other at Konnagore near Calcutta. The distance between the two factories is about 140 miles. The Barakar factory had about 85 workmen daily-rated as well as monthly-rated. The factory was situated quite close to Grand Trunk road. The whole area of the factory and its surroundings F including the Grand Trunk road was coal bearing land from which coal had been extracted towards the end of the nineteenth century or the beginning of the twentieth century. On December 18, 1962 there was a subsidence of the earth towards the north of the Grand Trunk road passing through Barakar town affecting a surface area of about 100′ × 60′. This is corroborated by a letter G of the Inspecting Officer, Circle III of the Coal Board Asansol to the Barakar Electric Supply Co. Ltd., a copy whereof was sent to the appellant. This letter shows that the subsidence had affected a part of the premises of the factory of the appellant and appeared to have a trend of extending towards the occupied quarters of the appellant's factory. Simultaneously, there was a de- H claration of the Mines Department of India that Barakar town near Asansol had been declared unsafe. The declaration further shows that this was the second time when the town had been so declared unsafe and according to the Mines Department this was

due to the fact that the area involved was above a 70 year old abandoned colliery. It appears that there was another subsidence in the same area on May 4, 1963 as a result whereof the approach road to the appellant's factory was badly damaged. There was also damage to a portion of the manager's quarters near the factory gate. By letter dated May 15, 1963 addressed to the Chief Inspector of Mines, Government of India, the appellant wanted the site to be inspected for the purpose of finding out whether there was any chance of further subsidence. That the subsidences were real was not questioned before the Industrial Tribunal nor is there any controversy regarding the same before us. This has been referred to in many official correspondence which have been exhibited in this case. On July 18, 1963 there was a letter from the office of the Chief Inspector of Mines to the appellant that its factory was situate on a goaf made in the last part of the nineteenth century and was therefore dangerous for habitation. It was also mentioned in that letter that the factory having been declared unstable, restarting of the factory on that site could not be recommended. On September 12, 1963 the head office of the appellant at Bombay wrote to its office at Barakar that it was considering closing down of the above factory as a precautionary safety measure and that it was not thinking of shifting the factory but intended to close it completely. The last portion of the letter seems to have been necessitated by enquiries started by the factory at Barakar regarding the availability of a suitable site not very far away to which the factory could be shifted. It appears that inspection had been made of a plot at Rajbandh but the idea of shifting the factory to that site had to be given up because of the unavailability of high tension electric line. The intention to close down the factory is also apparent from letters written by it to several authorities including the Controller of Purchase and Stores, Durgapur Steel Plant, Burdwan dated November 12, 1963 and to the Executive Engineer Ganga Barrage Investigation Division, Berhampore dated July 14, 1964 showing that in view of the intended closure of the factory it would not be in a position to execute the orders from the Barakar factory.

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On September 23, 1964 the company served notices on twelve of its workmen to the effect that their services had become surplus to the appellant's requirement and they were being given one month's notice of termination of service and would be paid all legal dues *i.e.*, earned wages, leave wages, retrenchment compensation etc. on October 23, 1964. At the intercession of the Assistant Labour Commissioner, Government of West Bengal, the appellant agreed to retain these 12 workmen in their employment at first till November 4, 1964 and then till December 12, 1964. On December 31, 1964 the company gave notice of closure and termination of service to all the workmen individually. The

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A workmen were intimated that they would be paid one month's notice wages in lieu of one month's notice, retrenchment compensation as per provisions of the Industrial Disputes Act, 1947, wages in lieu of earned leave due, if any, as on to-date as also for the proportionate earned leave for the current year till the last day of service, gratuity amount, if due, as per terms of settlement award, B earned wages and such other legally due amounts, if any. Mention was also made of the bonus for the years 1962-63 and 1963-64.

There is no dispute that the factory was closed on December 31, 1964 and the dispute raised was referred to the Industrial Tribunal in April, 1965. The Tribunal noted in its award that the C factory was closed by the appellant with effect from January 1, 1965 but it went into the question as to whether the closure of the factory was *bona fide* and justified in the circumstances of the case and came to the conclusion that the reason given by the company to justify the closure was *mala fide* for the purpose of dispensing with the services of the Barakar factory workers who had since the formation of their union been fighting the appellant for D betterment of their service conditions.

There can be no doubt that there had been disputes between the appellant and its workers from 1957 to 1961 and that other Industrial Tribunals had in the past criticised strongly the labour practice of the appellant. Examining the evidence before it, the E Tribunal was of the view that the decision of the head office of the appellant at Bombay to close the factory was in retaliation of the strike notice given by the Union in the middle of August 1963 over the question of bonus for 1961-62. The Tribunal sought to fortify its conclusion observing that the factory was not closed immediately or at a reasonable time after the actual subsi- F dences in December 1962 or May 1963 and that it made no effort to render the factory area safe from further subsidence by sand stowing, a method which had been resorted to in respect of the subsidence of the Grand Trunk road. It also referred to the evidence to the effect that several other concerns which had fac- G tories in the neighbourhood of the appellant did not close down their factories.

In our opinion, it was not open to the Tribunal to go into the question as to the motive of the appellant in closing down its factory at Barakar and to enquire whether it was *bona fide*, or *mala fide* with some oblique purpose, namely to punish the work- H men for the union activities in fighting the appellant. It has been laid down by this Court in a series of decisions that it is not for Industrial Tribunals to enquire into the motive to find out whether the closure is justified or not. As far back as 1957, it was

observed by this Court in *Pipraich Sugar Mills Ltd.* v. *P. S. M. Mazdoor Union*(1) that : A

> "where the business has been closed and it is either admitted or found that the closure is real and *bona fide* any dispute arising with reference thereto would, as held in *K. M. Padmanabha Ayyar* v. *State of Madras*(2), fall outside the purview of the Industrial Disputes Act. And that will *a fortiori* be so, if a dispute arises—if one such can be conceived—after the closure of the business between the *quondam* employer and employees." B

The use of the expression *'bona fide'* in the above quotation does not refer to the motive behind the closure but to the fact of the C closure. The question about the *bona fides* of the closure had to be examined in the case of *Tea Districts Labour Association, Calcutta* v. *Ex-employees of Tea Districts Labour Association and another*(3). There two agencies of the appellant at Koraput and Berhampur were closed by the appellant and that was the finding of the Tribunal. This Court held that once it was established that D the agencies had in fact been closed the finding about the *mala fides* of the closure would not "justify the conclusion that the said two agencies should be deemed to continue" and allow the Tribunal to make an award on that basis.

In *Hatisingh Manufacturing Co. Ltd.* v. *Union of India*(4) it was observed that : E

> "Loss of service due to closure stands on the same footing as loss of service due to retrenchment, for in both cases, the employee is thrown out of employment suddenly and for no fault of his and the hardships which he has to face are, whether unemployment is the result of retrenchment or closure of business, the same. If the F true basis of the impugned provisions is the achievement of social justice, it is immaterial to consider the motives of the employer or to decide whether the closure is *bona fide* or otherwise."

Reference may also be made to *Express Newspapers (P) Ltd.* v. G *The Workers*(5). In this case the main question was whether there was a closure or a lockout and it was observed by this Court (at p. 573):

> "If the action taken by the appellant is not a lockout but is a closure, *bona fide* and genuine, the dispute

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(1) [1957] 1 L.L.J. 235 at 239.
(2) [1954] 1 L.L.J. 469.
(3) [1960] 3 S.C.R. 207.
(4) [1960] 3 S.C.R. 528 at 537.
(5) A.I.R. 1963 S.C. 569.

A which the respondents may raise in respect of such a closure is not an industrial dispute at all. On the other hand, if, in fact and in substance it is a lockout, but the said action has adopted the disguise of a closure, and a dispute is raised in respect of such an action, it would be an industrial dispute which industrial adjudication is
B competent to deal with."

The question of the motive of the employer in closing an establishment had to be examined by this Court again in *Andhra Prabha* v. *Madras Union of Journalists*(1). It was pointed out there that there might be more than one motive working in the mind of the employer leading him to close his establishment and it was not for
C the Industrial Tribunal to examine that question meticulously and decide on the *bona fides* of the motive.

In view of these decisions, our conclusion is that once the Tribunal finds that an employer has closed its factory as a matter of fact it is not concerned to go into the question as to the motive
D which guided him and to come to a conclusion that because of the previous history of the dispute between the employer and the employees the closure was not justified. Such a closure cannot give rise to an industrial dispute.

The above conclusion is sufficient to allow the appeal, but one last point remains. The Tribunal had evidence before it of at
E least two workers of the Barakar factory having been transferred in the past to other places. On the basis of this evidence, the Tribunal went into the question as to whether the company even if it decided to effect a retrenchment of the 12 workmen should have applied the principle 'last come first go' and found out whether these workmen could be transferred to other places if they were
F senior to those retained. It is not disputed that no such plea was taken in the written statement of the union and with all respect to the Tribunal, it was not competent to go into that question at all. There is no evidence here as to the terms of employment of the workers in other units of the factory. The nearest units to the Barakar factory were the one at Konnagore and the other at Patna at a distance of 200 miles from Barakar. The
G point not having been raised by the union and without going into the question as to whether it was feasible for the appellant to effect such transfers, the Tribunal should not have attempted to apply the principle of 'last come first go'.

In the result, we allow the appeal holding that the closure of the factory at Barakar was *bona fide* and genuine. We also hold
H that in view of that finding the Tribunal could not examine the question of retrenchment of the 12 workmen and give them the

(1) [1967] 3 S.C.R. 901.

relief it sought to do. There is no dispute that the appellant did offer to pay the workmen all their dues on the basis of the closure. The appeal is allowed and the award is set aside. We do not however propose to make any order as to costs of this appeal. A

G.C. *Appeal allowed.* B