

WORKMEN OF M/S. BIRLA TEXTILES

v

K.K. BIRLA AND ORS.

MARCH 24, 1999

[S. SAGHIR AHMAD AND M. JAGANNADHA RAO, JJ.]

Constitution of India, 1950 : Articles 129, 21 and 32.

Contempt petition—Shifting of factory to Baddi—Directions issued by Supreme Court regarding—Non-implementation of—In M.C. Mehta's case [JT (1998) 9 SC 104] Supreme Court directed the Management of a factory to allow those workmen, who opted to do so, to join at Baddi on 14/15-1-1999—Certain benefits both to those who opted to join, and to those who did not, were also granted—Such directions were given on the assumption that the factory was fully functional—However, the workmen who reported on the appointed dates were not given jobs as the factory was non-functional and had to return—Therefore, Management was directed to pay to each of these workmen a sum of Rs. 30,000 "on account"—These workman filed a contempt petition against the Management for wilful disobedience of Supreme Court's order—But Management could offer jobs only to 937 workmen as the factory was still not functional—Held : Under these circumstances, earlier order in M.C. Mehta's case modified for the purpose of its due implementation leaving the substance of the order untouched—Contempt cases closed—Contempt of Courts Act, 1971, S.2 (d) Shifting of factory to Baddi—Following directions issued by Supreme Court : 937 workmen to report at baddi and sign or put their thumb marks in a register before Deputy Labour Commissioner—Rs. 500 to be paid to the workmen to meet the extra travel expenditure—Deputy Labour Commissioner to obtain undertaking from these workmen, addressed to Supreme Court, that they will abide by the Rules and Regulations or orders applicable to them—Reporting of the workmen at Baddi on 14/15-1-1999 to be treated as complete and the present order is only a subsequent step in implementation of the earlier order—Wages to the 937 workmen to be paid from date of closure of factory till 15-1-1999 and further up to 31-3-1999 together with additional amount due under this or earlier order by cheque on or before 7-4-1999—Banks to open account on production of certificate of identity to be issued to each workmen by the Labour Commissioner without insisting on other proof of residence—Those workmen (Other than the 937) who had reported at Baddi on 14/15-1-1999

A *to report at Baddi and remain there till they are given jobs—Regular monthly wages to be paid to these workmen during the period of their unemployment—Same procedure as applicable to the 937 workmen also applicable to these workmen.*

Practice and Procedure :

B *Earlier order—Passed due to mistake of court—Modification of—Held: Could be Modified.*

C *In M.C. Mehta's case JT (1998) 9 SC this Court directed the respondent-Management to allow all workmen, opting to do so, to join at Baddi on 14-1-1999 and 15-1-1999. This Court also directed the respondent to grant certain benefits to those workmen who reported at Baddi and also to those who did not. These directions were given by this Court on the assumption that the factory at Baddi was fully functional.*

D *On the appointed dates the workmen had reported at Baddi but had to come back as the factory was not functional and no gate passes were issued to them. Therefore, this Court directed the respondent to pay a sum of Rs. 30,000 to each of these workmen “on account.”*

E *The appellants-workmen have filed the present contempt petition against the respondents for wilful disobedience of this Court's order.*

On behalf of the respondents it was contended that the factory at Baddi was not fully functional and that the respondents could provide jobs to only 937 workmen.

F *Disposing of the contempt petition, this Court*

HELD : 1. *In view of the admitted fact that the factory is not fully functional the order passed in M.C. Mehta's case is modified for the purpose of its due implementation, leaving the substratum of the directions untouched.*

G [156-E]

2. *The following directions are issued :*

H *(a) The 937 workmen are to report at Baddi once again and sign or put their thumb marks in a register before the Deputy Commissioner of Labour on 31-3-1999. [157-A]*

(b) The Management is to pay a sum of Rs. 500 to each of these workmen after they join at Baddi to meet the extra travel expenditure. A

[157-B]

(c) The Deputy Labour Commissioner to obtain an undertaking from each of these 937 workmen, addressed to this Court, that they would continue to work at Baddi and would abide by the Rules and Regulations or other orders applicable to them. [157-D] B

(d) The reporting of the workmen at Baddi on 14-1-1999/15-1-1999 will be treated as complete so far as all these workmen who have already reported on those dates at Baddi and the present order is only meant as a subsequent step in implementation of the earlier orders. [157-E] C

(e) The wages to these 937 workmen from the date of closure up to 15-1-1999 and further up to 31-3-1999 together with other amounts due under this order or earlier orders are to be paid by cheque on or before 7-4-1999. [157-F] D

(f) The banks at Baddi to open the accounts on production of certificate of identity to be issued to each workman by the Labour Commissioner without insisting on other proof of residence. [157-G]

(G) The remaining workmen (other than the 937) who have earlier reported on 14-1-1999/15-1-1999 are to report to Baddi on 9-4-1999 and remain there till they are provided with the jobs. Such workmen will be paid their regular monthly wages even during the period of their unemployment. The same procedure applicable to the 937 workmen is also applicable to these remaining workmen. [158-F; 159-A] E

3. The contempt are closed and the above directions will be treated in modification and continuation of the orders in *M.C. Mehta's case*. F

[159-F]

M.C. Mehta v. Union of India, JT (1998) 9 SC 104, modified.

CIVIL CONTEMPT JURISDICTION : Contempt Petition (C) No. 61 of 1999. G

IN

IA No. 202 In IA No. 22 in W.P (C) NO. 4677 of 1985 Etc. Etc. H

A (Under Article 32 of the Constitution of India.)

Ms. Indira Jaisingh, S.B. Sanyal, K.K. Venugopal, Dushyant Dave, Ms. Venugopal, Anitha Shenoy, Sanjay Gose, Ms. Neeru Vaid, S.R. Bhat, Rakesh Shukla, J.B. Dadachanji, S. Sukumaran, Prag Tripathi, A.T. Patra, O.P. Khaitan, M.C. Mehta, (Ranjit Kumar), (AC), Surya Kant, R.S. Sodhi, Vijay Panjwani, B Mahesh Srivastava, Ms. Nirmala Gupta, Ms. V.D. Khanna, Sanjay Parikh, S. Bagga, Pramod Swarup, (N.K. Mishra) -in person for petitioner in I.A. No. 640., V.B. Saharya, Sudhir Wahi. M.S. Dahiya and Rajinder P. Saxena for the appearing parties.

C The Judgment of the Court was delivered by

M. JAGANNADHA RAO, J. Contempt Petition No.61 of 1999 has been filed by the Workmen of M/s Birla Textiles (Prop Texmaco Ltd., Calcutta) for punishing the four respondents who are incharge of the management of the Industry, on the ground of wilful disobedience of the directions of this Court dated 18.12.1998 in Interlocutory Application No.202 in IA No.22 in Writ Petition No.4677 of 1985. Contempt Petition No.72 of 1999 is a similar petition by the All India Textile Mazdoor Janta Union. Similar Contempt Petition No.92 of 1999 is filed by two petitioners, namely, the Kapra Mazdoor Lal Jhanda Union and one Kanchan Singh. Interlocutory Application by Nawal Kishore Misra in Contempt Petition No.532 of 1997 in Writ Petition No.4677 of 1985 is taken on Board. Interlocutory Application Nos.624-628, 160, 201-203 are filed by the Birla Textiles in IA 22 and 36 in Writ Petition No.4677 of 1985 for extension of time for payment of the amounts ordered by this Court on 18.12.1998 in the judgment of this Court in *M.C.Mehta v. Union of India & Others*, JT (1998) 9 SC 104.

F When the matters came up before us on 1.2.1999, we directed an interim payment of Rs.30,000 to the workmen, 'on account' as the Mill was not admittedly functional.

G In the judgment of this Court dated 18.12.1998 the earlier history of this litigation has been set out in detail and, therefore, we do not propose to refer to the same again. The orders and directions given by this Court in that order can be summarised as follows :

H (1) that the management will allow all workmen (except those who exercised or would exercise an option not to rejoin) to rejoin at Baddi.

(2) All such workmen who report at Baddi on 14.1.1999 and 15.1.1999 and sign or put their thumb-mark in a register before the two designated Dy. Labour Commissioners, shall be entitled to the benefits of the orders of this Court dated 8.7.96 and subsequent orders in respect of continuity, backwages from date of closure of the industry till date of rejoining, in addition to one year's wages towards shifting bonus. The said amount will be paid by the Industry to each workman, within one week of the workmen rejoining at Baddi.

(3) In respect of workmen who do not so report by 15.1.1999 or who otherwise give it in writing to the nominated authority that they are not willing to rejoin, they shall be deemed to have been retrenched w.e.f. 30.11.1996 and shall be entitled only to one year's wages and also to Section 25F(b) compensation as per the orders of this Court dated 8.7.1996. The said amounts shall be disbursed to these employees within one week from 15.1.1999 by the Industry.

The above directions, it will be noticed, were given by this Court on the assumption that the factory at Baddi was fully functional. Otherwise, this Court would not have passed an order that "all" the workmen who desired to rejoin at Baddi should be allowed to rejoin and be paid as aforesaid. Learned senior counsel who appeared before us at that time for the industry also proceeded on the above basis. But what happened after the workmen reported at Baddi on 15.1.1999 and 16.1.1999 is indeed very unfortunate. The factory was not functional and the workmen waited in biting cold not knowing what to do. The amounts payable to them were not disbursed on the ground of the industry filing a fresh writ petition in this Court challenging judicial orders. We were informed that one workman died on account of the acute cold weather and several others fell ill. In our order dated 1.2.1999, we recorded that the workmen had to come back as the Mill was not functional and no gate passes were issued to them. We, therefore, directed that, in respect of all workmen who reported at Baddi (as evidenced by the register maintained by the Labour Commissioners), a sum of Rs.30,000 be paid 'on account' without prejudice to the rights of parties. We are informed that this sum has since been paid.

We may state that, after our orders dated 18.12.1998, the Industry filed writ petition D.423 of 1999 questioning various earlier orders of this Court and also our order dated 18.12.1998. In that writ petition, we issued notice in regard to the Industry's objections to certain earlier orders of this Court and referred the matter to a Constitution Bench but we have not issued

A any notice so far as our order dated 18.12.1998 is concerned. Therefore, the order dated 18.12.1998 stands and has become final and has to be implemented, subject to such further directions as we may now issue in this order.

B Inasmuch as it has been contended before us for the Industry on 1.2.1999 that the factory at Baddi is not yet fully functional, (and even now that is the position) we have directed the Industry to inform us as to what extent the factory is functional and how many workmen can be immediately allowed to work, and if so, which of them. A list of 937 workmen who can immediately join has since been filed by the Industry. It may also be noted that so far as the workmen are concerned, that is to say, those who have reported at Baddi on 14.1.1999 and 15.1.1999, their counsel stated before us that these workers are all willing to work at Baddi from such date as this Court may direct.

D Before we proceed to issue fresh directions, we shall deal with the allegations raised by the workmen in the contempt cases. Counsel appearing for the workmen took serious objection to the tenor of the counter-affidavits filed by the contemnors and in particular to the threat of a possible "lay-off" of the workmen who had reported at Baddi. According to counsel, the Industry was bent upon violating the directions of this Court dated 18.12.1998 and putting all possible obstacles in the way of the workmen.

E The above criticism of the attitude of the industry is, in our opinion, not wholly unjustified. But we do not propose to go into these aspects.

In view of the admitted fact that the factory is not fully functional, we are naturally compelled to modify the orders dated 18.12.1998 for the purpose of its due implementation, leaving the substratum of the directions untouched.

F In Annexure R-3 dated 25.2.1999 filed along with the Counter affidavit dated 26.2.1999, details are given as to the sectionwise summary of workmen who will be provided job 'immediately' at Baddi. There are three categories: viz., 262 workmen belong to Essential Services (Maintenance workmen) divided into various sub-categories; 438 belong to Production department divided into various sub-categories; and 237 belong to the category of workmen to be trained in processing, folding and packing. This makes a total of 937 workmen. The names and identity of each of these workmen has also been furnished by the industry. Therefore, it is agreed that these workmen will be provided job immediately.

H We have already recorded that all workmen who reported at Baddi on

14.1.1999 and 15.1.1999 have come back and, in fact, they were to receive the interim payment of Rs.30,000 at Delhi, on account. Now these 937 workmen have once again to go back at Baddi. We are of the view that inasmuch as the Industry is responsible for not informing this Court earlier, i.e. before the order dated 18.12.1998 was passed - that the factory was not functional, the extra expense of these workmen going to Baddi once again from Delhi has to be borne by the Industry. We accordingly direct the industry to pay a sum of Rs.500 to each of these workmen after they join the job at Baddi, to meet the extra travel expenditure. The 937 workmen will report at Baddi and once again sign or put their thumb-mark in a Register before the Deputy Labour commissioner, Solan, Himachal Pradesh on 31.3.1999. The same will be done at Baddi and for this purpose we direct the said Deputy Labour Commissioner, Solan to proceed to Baddi on 31.3.1999 and we also direct the 937 workmen (who had earlier reported at Baddi on 14.1.1999 and 15.1.1999) to sign in a register before the Deputy Labour Commissioner, Solan on 31.3.1999.

The Deputy Labour Commissioner, Solan shall also obtain a written undertaking from each of these 937 workmen, addressed to this Court, that they will continue to work in the factory at Baddi and will abide by the rules and regulations or other orders applicable to them. Copies of the said undertaking will be handed over by the Deputy Labour Commissioner, Solan to the Industry, for being filed in this Court.

We may, however, make it clear that the reporting of the workmen at Baddi on 14.1.1999/15.1.1999 will be treated as complete so far as all these workmen who have already reported on those dates at Baddi and the present exercise is only meant as a subsequent step in implementation of the earlier orders.

The next question is about payment of the wages to these 937 workmen from the date of closure upto 15.1.1999, the earlier date on which these workmen had reported, together with the wages payable from 15.1.1999 to 31.3.1999. The wages so payable upto 31.3.1999 together with the one year wages payable as shifting bonus and the sum of Rs.500 mentioned above (minus the sum of Rs.30,000 if paid earlier) shall be paid by cheques to each of these 937 workmen, payable on a Bank at Baddi, on or before 07.4.1999. Learned counsel for the workmen have informed us that the Banks at Baddi are not willing to open any accounts unless there is proper identification and proof of local residence. It appears the Banks are insisting on production of a ration-card or some other evidence. In order to get over this problem, we direct the Labour Commissioner, Solan to issue a Certificate of Identity to

A each workman so that upon production of the same before the Bank, the Bank could open accounts without insisting on further evidence. The concerned Bank is directed to open accounts on production of the letter of identity issued by the Labour Commissioner, Solan, without insisting on production of ration card or other evidence.

B The question then is about the other workmen who have reported at Baddi on 14.1.1999/15.1.1999 i.e. other than the above 937 workmen. As of today, the Industry has not informed this Court as to when any particular workman or group of workmen, other than the 937 can join their jobs at Baddi. Learned senior counsel for the Industry, Sri K.K. Venugopal, however, suggested that as and when other jobs are ready, the workmen will be informed and they can report to duty. For this purpose, the learned senior counsel suggested that the remaining workmen can also go back to Baddi and stay there awaiting information from the Industry as to when they can start working.

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D The learned counsel for the workmen on the other hand stated that there is no point in the other workmen going to Baddi at present, when no work is available.

We have considered these points carefully. In our view, the question of the Industry serving notices at Delhi periodically might create serious disputes about service of notices at Delhi. On the other hand, if the remaining workmen proceed to Baddi and remain there, - inasmuch as they have to go to Baddi one day or the other - then it will be easy for service of notices etc. upon them to join the factory work. But at the same time it will be fair if these remaining workers are paid the various amounts due to them, for they have already reported at Baddi on 14.1.1999/15.1.1999 in obedience to the orders of this Court dated 18.12.1998. We, therefore, direct the remaining workmen

E (other than the 937) who have earlier reported on 14.1.1999/15.1.1999 to report at Baddi on 09.4.1999 on which date also we direct the Deputy Labour Commissioner, Solan to be present at Baddi. These workmen too will again sign in the register at Baddi before the Deputy Labour Commissioner on 09.4.1999. On or before 16.4.1999, the wages payable to them from the date of closure upto 09.4.1999, together with shifting bonus of one year wages, plus Rs.500 as stated above towards expense for journey to Baddi will be paid by cheque to each of these other workmen. The Identity letter will be issued to each of them by the Deputy Labour Commissioner, Solan for opening Bank account at Baddi and these workmen will also give an undertaking, as stated earlier, for continuing to work in the factory. As and

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H when the Industry thinks that other sections or departments of the factory

are ready, it shall inform these workmen atleast *two days* in advance so that they can join. It is needless to say that even during the period before these workmen (other than 937) are provided with the jobs at Baddi, they shall be paid their regular monthly wages. Such wages have, in our view, already become payable because of our earlier order dated 18.12.1998 and inasmuch as all these workmen had earlier reported at Baddi on 14.1.1999/15.1.1999. In fact, such an order is clearly consistent with the earlier directions given by this Court.

We have also before us Sri Naval Kishore Misra who has filed an application to recall our order dated 18.12.1998 as our order was based on a mistake of fact. As we are satisfied that there was a mistake on the part of the Court, we set aside the order dated 18.12.1998 so far as Sri Naval Kishore Misra is concerned and direct the industry to pay him Rs.30,000 on account within one week at Delhi. He will report to the Deputy Labour Commissioner at Baddi on 09.4.1999 and sign in the register, give the undertaking as stated earlier and collect the cheque for arrears of wages from the date of closure upto 09.4.1999 and the shifting bonus of one year wage minus Rs.30,000 if he is paid that amount in the meantime. There is no need to pay him the extra Rs.500 as he had not gone to Baddi on 14.1.1999/15.1.1999. His Interlocutory Application is allowed and disposed of accordingly.

The Deputy Labour Commissioner, Solan will not entertain on 31.3.1999 and 09.4.1999, any workman who had not reported earlier on 14.1.1999/15.1.1999 at Baddi except Sri Naval Kishore Misra, in whose respect we have passed separate orders, as stated above.

The Contempt cases are closed and the above directions will be treated as in modification and continuation of our orders dated 18.12.1998. The IAs too stand disposed of in terms of the above directions.

V.S.S.

Petition disposed of.