(1981) 03 BOM CK 0042

Bombay High Court

Case No: Writ Petition 3022 of 1980, etc.

Workmen of Mukund Iron and Steel Works Ltd.		APPELLANT
	Vs	
Mukund Iron and Steel Works Ltd. and others		RESPONDENT

Date of Decision: March 30, 1981

Acts Referred:

- Industrial Disputes Act, 1947 - Section 18, 25

Citation: (1981) 43 FLR 253 : (1982) 1 LLJ 140

Hon'ble Judges: D.B. Deshpande, C.J; Sujata V. Manohar, J

Bench: Division Bench

Judgement

Deshpande, C.J.

These two Writ Petitions Nos. 3022 of 1980 and 3264 of 1980 and Writ Petition no. 169 of 1981 filed on the original side of this Court are directed against the same order of the Assistant Labour Commissioner, Bombay, dated 14-10-1980. The Assistant Commissioner by this order partly allowed the application of the employers to retrench 80 workmen though employers applied for permission to retrench 139 workmen. Legality of this order is challenged by Sarva Shramik Sang, representative-union of the workmen recognised as such under the provisions of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act (hereinafter referred to as ''M.R.T. and P.U.L.P. Act'') in Writ Petition No. 3022 of 1980. The Rashtriya Mukund employees'' Union claiming to be representative of some of the workmen has challenged the same order in Writ Petition No. 3264 of 1980. Rule in these two writ petitions was granted on 22-10-1980. The said order of this Court granting Rule and granting stay was challenged by the employers in the Supreme Court SLP of the employers was dismissed but writ petitions were directed to be disposed of by the end of March, 1981. Thereafter, employers also filed Writ Petition No. 169 of 1981 on the original side of this Court challenging the same

order. The preliminary objection was raised against maintainability of this writ petition by Mr. Narayan Shetye, the learned advocate appearing for the workmen to the ground of laches. It is true that delay in presentation of the writ petition on the original side is not properly explained. We do not think it necessary to go into this question of laches as we thought it fit to hear this petition as also along with two petitions as by earlier order, the said writ petition also was kept for hearing along with these two petitions.

2. The facts in this case lie in narrow compass. All these workmen are employed at Kurla Establishment of the employers company. Employers were manufacturing truck links at their Kurla plant. The same were intended for consumption for Defence Department of Government of India. The defence secretariat had informed the employers earlier by letter dated 18th October, 1978 that Government will not be able to place any order for the truck links thereafter. The employers appear to have carried correspondence with the defence secretariat in this behalf for the continuation of such work by the employers. By December, 1979, all the contracts that were entrusted to the employers were carried out and track links were no more manufactured by the employers. Production of alloys was also undertaken by the employers. The quantity of the said manufacturing process, however, could not absorb all the 139 workmen. The petitioners, therefore, made this application to respondent No. 2, to whom powers under S. 25-N of the Industrial Disputes Act have been delegated by the State Government to grant or refuse permission for retrenchment at the relevant time.

3. After making some enquiry, the impugned order was passed by respondent No. 2, He accepted the employers'' case that defence department had stopped placing any order for the supply of truck links and manufacturing of Alloys could not absorb so many workmen. He relied on the record placed before him by the employer''s company in support of his conclusion that production of truck links and fallen down and not truck links were manufactured since December, 1979. He, however, concluded that reduction in the production of truck links cannot justify retrenchment of 139 workmen. According to him, this could justify retrenchment of only 80 workmen. Consistent with this finding, the Assistant Labour Commissioner a lowed employers'' application partly permitting them to retrench 80 workmen and refusing permission to retrench 59 workmen. Hence this challenge by the workmen and employers of the said order.

4. On the scanty material before us, we do no think it possible to interfere with the finding of the Assistant Labour Commissioner that production of truck links has fallen and from December, 1979 onwards manufacturing process of track links has been completely stopped. The Assistant Labour Commissioner. However, himself has made the following observations in the last paragraph of his order :

"Lastly, I would have to add here in that the management had at one time mentioned that they can provide more employment opportunities to the workmen if

the workmen are willing to co-operate to give agreed norms of production."

The Assistant Labour Commissioner has further observed :

"This would itself take care of the present problem of retrenchment."

The officer, however, thought that any probe in the same was outside the scope u/s 25-N of the Industrial Disputes Act and therefore, he did not think it necessary to examine merits of the said matter.

5. Mr. Narayan Shetye and Dr. Kulkarni, the learned advocates appearing for the workmen contend that subsisting existence of the employment opportunities to the workmen is relevant to decide whether retrenchment application should be granted or not. The Assistant Labour Commissioner can however, have jurisdiction, so contends Mr. Shetye, to grant permission to retrenchment when, employers can still afford to give work to the workmen and employment opportunities for the workmen still exist in the company. The refusal of the Assistant Labour Commissioner to go into that question amounts according to Mr. Shetye, refusal to exercise jurisdiction vested by law in him. The Assistant Labour Commissioner could not have granted permission to retrench even 80 workmen when on the admission of the employers, employment opportunities were in existence but they were unable to afford opportunities of work to the workmen because, they were not willing to co-operate to give agreed norms of production. If the workmen fail to co-operate and do not give agreed norm of production, the workmen are liable to be dealt with in the disciplinary proceedings under standing orders applicable to them and can even be removed from the service if the lack of co-operation happens to be there. But any such lack of co-operation cannot furnish basis for retrenchment where no enquiry has been made and opportunity to dispute the allegation is not given. The Assistant Labour Commissioner was obviously in error in not considering this aspect and observing that it was outside the scope of his investigation, under S. 25-N of the Industrial Disputes Act.

6. There are two indications which fortify the impression about the existence of employment opportunities. Admittedly, settlement was reached between workmen on the one hand and employers on the other on 21st April, 1980. This settlement was reached before application for permission to retrenchment was made on 12th July, 1980. It is common ground that this settlement was arrived at under S. 2(p) and S. 18 of the Industrial Disputes Act and terms therein are binding both on the workmen and also employers. It is not in dispute that this settlement was necessitated because of the dispute with regard to implementation of the earlier settlement between workmen and employer reached on 21st October, 1978. The settlement contemplates fixing standard and norms of production. Some incentives are contemplated in the scheme to ensure increase in the production. The norms contemplated govern the 139 workmen of employers in same manner as the same govern over 100 workmen of the employers. The circumstance that settlement

should not make any reference to he absence of adequate work for the 139 employees and should not reserve liberty for the employers to retrench them on account of fall in the production goes to support the inference that the company had enough work even by, at any rate, the date of settlement, viz., 21st April, 1980. This runs counter to the case of the employers that there was not work for the 139 workmen since December, 1979 when production of truck links was completely stopped due to stoppage of entrustment of contract by Government of India. Both these settlements dated 21-10-1978 and 21-4-1980 are expressly referred to in the written defence set up by the workmen to the proposed retrenchment before the Assistant Labour Commissioner, It is true that the relevant clause suggests as if these two agreements contemplate restraint against retrenchment though no clause to that effect could be traced in both these settlement deeds. It cannot, however, go to destroy the plain implication of the settlements. Absence of even any whisper as to the need for retrenchment in any section of factory and fixing norms of production even with regard to 139 workmen against there being no work in the company for the workmen concerned.

7. The finding of the Assistant Labour Commissioner that there has been fall in production of truck links need not be disputed or doubted. Absence of any contracts to procure truck links by itself cannot show that no other work can be carried out in the factory with the available machinery therein. It is true that it is not the function of the Labour Commissioner to request the employers to start new work and refuse permission to retrench on that ground. The Assistant Labour Commissioner has still to find out whether any work in the company existed which could have absorbed its workmen. It was necessary to know in what way the workmen were continued to be employed from December, 1979 when production of truck links is alleged to have been completely stopped. It is not possible to believe that employers could afford to spend lakhs of rupees for 139 workmen if it had no work whatsoever to give to these workmen. This circumstance also fortifies our impression that the company cannot be said to be without work to justify the contemplated retrenchment. Mr. Rele the learned advocate appearing for respondent No. 2 contends that mere affording to give some employment opportunities to the workmen by itself, cannot amount to existence of actual work for these workmen. This no doubt, would be so, It is not, however, clear from the record as to in what manner employment opportunities were available for these workmen Allegation as to workmen being not norms of production suggests prima facie that some work was already available in the company but due to misconduct of the workmen in not giving co-operation and agreed norms of production, the same could not be given to workmen. These facts may have their own different consequences. At any rate, this requires further probe as also the circumstances, why settlement dated 21-4-1980 should not have any reference to contemplate retrenchment. The Assistant Labour Commissioner has not grasped the implication of these factors and wrongly thought that important factor as to what extent employment opportunities were available, was outside the

scope of his investigation.

8. Mr. Rele also contends that the Assistant Labour Commissioner cannot decide as to which work should be undertaken by the employers and determine whether all the workmen or few of them can be absorbed in the plant. The contention so presented is undoubtedly attractive. As made clear earlier, what is necessary is to ascertain whether actually there was any work for these 139 workmen or not from December, 1979 to the date of retrenchment application. Continuance of the workmen in the employment from December, 1979 prima facie goes to support the workmen''s contention that there was work in the company at the time of settlement and retrenchment was unjustified. This requires investigation. Assistant Labour Commissioner not having approached this problem in this way, remand has become necessary.

9. Mr. Rele contended that order does not indicate on what basis 80 workmen alone were found liable to be retrenched and on what ground permission to retrench other workmen was refused. In the absence of any reasons, contention of Mr. Rele cannot but be accepted as correct. The order as a whole, is liable to be quashed.

10. We accordingly allow all the three writ application set aside the impugned order of the Assistant Labour Commissioner and direct the authority concerned to hold enquiry afresh. We are informed at the Bar that the Assistant Labour Commissioner to whom powers under S. 25-N were entrusted, is no more possessed of these powers. Government, therefore, will dispose of these applications of the employers itself or delegate its powers to some other officer for the disposal thereof in accordance with law.

11. Rule made absolute. There will be no order as to costs in the facts and circumstances of the case.

12. This order will not be implemented for one month from today.