

PETITIONER:
M.C. MEHTA

Vs.

RESPONDENT:
UNION OF INDIA & ORS. ETC.

DATE OF JUDGMENT: 18/12/1998

BENCH:
S.SAGHIR AHMAD, & M. JAGANNADHA RAO.,

ACT:

HEADNOTE:

JUDGMENT:
M. JAGANNADHA RAO, J.

The dispute in this batch of T.As. is between the Workmen and Management of M/s Birla Textile (Prog. Textiles Ltd., Calcutta). Common question arise in all these T.As. The I.A. 202 of 1992 (in I.A.. 22 in W.P. 4677 of 1985) has been filed on behalf of 2800 workers of M/s. Birla Textiles (Proprietor Textiles ltd., Calcutta) (the "Industry") who claim to have worked for various periods ranging from 5 to 30 years and whose services are in jeopardy upon the closure of the industry at Delhi, consequent to orders of the court. The reliefs sought for in this I.A. are (i) payment of full back wages w.e.f. 1.12.1996 along with 18% interest (ii) to treat the workmen as in continuous employment for 1.12.1996 (iii) to direct the industry to deem that the workmen have exercised option to shift in accordance with order of this Hon'ble Court, (iv) to direct the industry to give 1 year's wages as shifting bonus (v) to direct the industry to ask the workmen to report at the selection sites after the factory is fully set up and commenced production, with basic amenities for the workers and the families.

The following are the facts: By an order dated 8.7.1996 in M.C.Mehta vs. Union of India [1996 (4) SCC 750], this court directed closure of 168 industries including the industry in question. Various directions were given including the grant of incentives and benefits to industries desiring to relocate and also for payment of various amounts to the workmen. We are mainly concerned with directions 9(a) to (f) issued in the above case which read as follows:-

(9) The workmen employed in the above-mentioned 168 industries shall be entitled to the rights and benefits as indicated hereunder:

(a) The workmen shall have continuity of employment at the new town and place where the industry is shifted. The terms and conditions of their employment shall not be altered to their detriment;
(b) The period between the closure of the industry in Delhi and its restart at the place of relocation shall be treated as active employment and the

workmen shall be paid their full wages with continuity of service;

(c) All those workmen who agree to shift with the industry shall be given one year's wages as "shifting bonus" to help them settle at the new location;

(d) The workmen employed in the industries which fail to relocate and the workmen who are not willing to shift along with the relocated industries, shall be deemed to have been retrenched with effect from 30.11.1996 provided they have been in continuous service (as defined in Section 25-B of the Industries Disputes Act, 1947) for not less than one year in the industries concerned before the said date. They shall be paid compensation in terms of Section 25-F(b) of the Industrial Disputes Act, 1947. These workmen shall also be paid, in addition, one year's wages as additional compensation;

(e) The "shifting bonus" and the compensation payable to the workmen in terms of this judgment shall be paid by the management before 31.12.1996.

(f) The gratuity amount payable to any workmen shall be paid in addition."

Initially, the industry was not prepared to relocate elsewhere and therefore, it informed this court that it would retrench the employees and pay whatever was payable to the workmen under the above order. But pursuant to the suggestions of this court, the industry reconsidered the matter and this court in its order dated 4.12.96 in M.C. Mehta vs. Union of India [1997 (11) SCC 327] observed that the learned counsel for the industries had accepted the court's suggestion to have a "fresh look" into the matter. In the same order dated 4.12.96, this court modified the direction 9(d) relating to payment of back wages as "six years' wages" instead of 'one year wages' in case the industry decided to close down. That would mean that in the event of non-relocation, the workmen would have to be paid 6 years wages and not merely 1 year wages.

Subsequently, in supersession of an earlier notice dated 28.11.96, the industry published a fresh 'notice' on its Notice Board that it had reconsidered the matter as per the order of this court dated 4.12.96 and decided to relocate the industry in Baddi, District Solan (H.P.) and the the workmen who were willing to be relocated at the new site 'Baddi' should inform the management in writing by 25.12.96. If they reported, they would be entitled to continuity, their terms and conditions would not be altered, the period between the closure of the unit at Delhi and its re-start at Baddi would be treated as active employment and they would be paid full wages with continuity of service. Further, all those workmen agreeing to shift would get 1 year's wages as 'shifting bonus' to help them to settle at Baddi. Those who were not willing to shift would be deemed to have been retrenched w.e.f. 30.11.96, provided they were in continuous service (as defined in Section 25-B of the Industrial Disputes Act, 1947) for not less than one year in this unit before the said date. They would be paid compensation in terms of Section 25F(b) of the Industrial Disputes Act and in addition, one year's wages as additional compensation. It was further notified that the shifting bonus to the workmen who agreed to shift and the compensation for those unwilling to shift to 'Baddi' would be paid before 31.12.1996, as per directions of this Court. On 23.12.96, eight unions of workmen of this industry sent a reply stating that the industry had violated

the order of this court as it was relocating in the State of Himachal Pradesh rather than in the National Capital Territory of Delhi as envisaged in the order dated 8.7.96 and that therefore it was not proper for the industry to ask the employees to shift to the State of Himachal Pradesh. But ignoring this reply the industry published a notice on 30.12.96 reiterating its plan to relocate in the State of Himachal Pradesh.

At that stage, this court was approached by the industries for modification of the order dated 8.7.96 and for permitting relocation outside N.C.T. (Delhi). On that, this court passed an order on 31.12.1996 permitting relocation in Haryana, Punjab, Himachal Pradesh, Rajasthan and Uttar Pradesh and said that if they were so relocated, the industries would be treated on par with those industries relocating in N.C.T. (Delhi). This order was to be treated as a clarification of the order dated 8.7.1996.

There was some controversy that when this order was passed in chambers on 31.12.1996, all parties were not present. But the counsel for the industries disputed this contention. Be that as it may, it is not necessary to go into this dispute - particularly, when some latter applications filed by the workmen for recalling this order dated 8.7.96 did not fructify.

Therefore, i.e., after 31.12.96, the industry put up a fresh notice on 4.1.1997 stating that:

"As per the directions of the Hon'ble Supreme Court, those workmen who are willing to shift would be entitled to receive salary/wages for December, 96 and for subsequent months, the workmen should intimate to the management by January 7th 1997 their willingness to shift to Baddi, upon which the Salary/wages for December, 1996 will be disbursed to them on 9th and 10th January, 1997."

On the same day, 4.1.1997, a further notice was put up on the Notice Board that though the industry took steps for payment on 29, 30, 31st December, 1996, no workmen had come to collect the cheques. Hence, it was requested that the workmen might come and collect the cheques.

In reply thereto, seven unions through a Joint Action Committee issued a notice on 6.1.97 to the industry stating that the workmen were willing to move to the State of Himachal Pradesh. The said notice read as follows:

"That all the workman and employees of Birla Textiles Mills hereby give their willingness for relocation/shifting without prejudice to their rights subject to the outcome of the review and other proceedings being pursued by our lawyers before this Hon'ble Supreme Court of India, against the order dated 31.12.96 passed by the Hon'ble Supreme Court of India."

It is the main contention for the industry (respondent) through its senior counsel Shri Kapil Sibal and Shri Dipankar Gupta that the option exercised by the workmen in the above letter agreeing to shift to Baddi was not an unconditional one but was conditional in as much as it stated that they were exercising the option subject to the result of certain applications filed by them in this court i.e. for recall of the order dated 31.12.96. According to respondents, such a conditional option was not within the scope of the order of this court dated 8.7.96. Further, the counsel contended that there was no proof that the individual workman of these unions were parties to this reply. In fact, the status or authority of the Joint Action Committee was not clear, according to them.

In the belief that the conditional offer was bad and the Joint Action Committee had no locus standi to send the reply dated 6.1.97, the industry published further notice on 8.1.97 requesting "each workmen" to give his willingness within one week to shift in terms of the following proforma, to be addressed to the industry:-

"Dear Sirs,

I am willing to shift to Baddi, Distt. Solan (H.P.), when the Delhi Unit of Birla Textiles is being relocated."

On 19.5.97, the Labour Commissioner, N.C.T. (Delhi) directed the industry to pay the various amounts payable to the employees. The industry put up a further notice on 20.5.97 that in view of the reply of the unions dated 6.1.97 agreeing to shift to Baddi, the industry had put up a notice on 8.1.97 requesting the individual workman to respond in a week. None of the workmen responded. The industry then said that it was deeming the employees as retrenched w.e.f. 30.11.1996. This was stated in the further notice dated 20.5.97 and it reads as follows:

"We have been legally advised that those workman who have not expressed in writing their willingness to shift within the stipulated time as per the above referred two notices, be deemed to have been retrenched with effect from 30th November, 1996 as per the order of the Hon'ble Supreme Court dated 8th July, 1996....."

However, the industry wanted to give one more opportunity and issued another notice on 20.5.97 that those who were willing to shift were to report at Baddi on or before 7.6.1997. The said notice dated 20.5.97 stated as follows:

"Such workmen who now give their consent to shift are requested to report at Baddi immediately, in any case, not later than June 7, 1997....."

The Labour Commissioner gave a notice to the industry on 28.5.97 to conform to the directions of this Hon'ble Court regarding payment of shifting bonus etc. On 30.3.98, on account of the delay in the matter, this court directed 3 months wages to be paid.

On the basis of the above facts, learned senior counsel for the appellants Ms. Indira Jaisingh, Shri D.K. Aggarwal and other submitted for the workmen that the industry had violated the orders of this court, and that there was no question of asking individual workmen to give their options in a proforma. According to counsel, the attitude of the industry revealed that it was bent on retrenching the workmen and taking local employees from the H.P. State on lesser wages inasmuch as, if the workmen of the industry were to be continued in employment, they would have to be paid the same wages as were being paid while at Delhi while the minimum wages payable in H.P. to the locals were much lower.

Shri S.B. Sanyal, learned senior counsel for the workmen contended that as per the order of this court dated 8.7.96, there was no question of the industry seeking the option of the employees. Such an obligation to exercise option would arise only after the new industry started functioning at H.P. According to counsel, this court, in its order dated 8.7.96 guaranteed continuity up to the date of restart of the industry at the new location and hence the option asked for by the industry was uncalled for and contrary to orders of this Court.

Counsel for petitioners-workmen in I.A. No.201/97 referred to a letter written by one of the workmen Mr.

Ramakant who stated in his letter dated 23.6.97 that all the workmen were willing to rejoin at Baddi. According to learned counsel, this letter of the workman superseded the offer dated 6.1.1997 made by the employee and that this letter contained an unconditional option to move to the State of Himachal Pradesh. According to learned counsel, after this, the industry could not have treated the applicants as unwilling to join at Baddi. Shri Ranjit Kumar and other counsel also made like submissions on behalf of the workmen.

On the other hand, Shri Kapil Sibal, learned senior counsel for the industry, submitted that the workmen were not entitled to give a conditional option as contained in their letter dated 6.1.97, that the workmen having filed review petitions etc. in this court for recalling the order dated 31.12.96, were indeed - even on 6.1.97 - not willing to go to Solan, H.P. and that the letter dated 6.1.97 was not a valid option, and hence the industry rightly deemed the employees as retrenched w.e.f. 30.11.96. Several opportunities were given by the industry even later to these workmen to come and join at Baddi. As the Joint Action Committee was not a recognised entity, options had to be called from individual workmen. According to him, out of the total number of 2522 workmen as on 30.11.96, those who opted to shift to Baddi, Solan within the time specified, were only 7 workmen, that 595 workmen did not accept the payment and 10 cheques were lying with the workmen or with the postal authorities. In regard to the payment of 3 months salary, as directed by this court on 30.03.98, it was stated that 1938 workmen were eligible to receive the said amount, that 1891 persons took it and cheques of 47 workmen were lying with the industry.

In reply to the contention of the learned senior counsel for the workmen that the workmen had time to join at the new location till the industry was ready for being "restarted", the learned senior counsel Shri Kapil Sibal and Shri Dipankar Gupta contended that would not be a proper interpretation of the order dated 8.7.96 because under para 9(e) of the said order the 'shifting bonus' and the compensation were payable before 31.12.96 and hence this court intended that the workmen should join before 31.12.96. They pointed out that even so, the industry extended the time by issuing several public notices. As the workmen did not opt to go to Baddi before 31.12.96 or by the extended dates as per para 9(d) of the order of this court dated 8.7.96, they were rightly deemed to have been retrenched by 30.11.96 and local people of Himachal Pradesh have already been employed.

Learned senior counsel, Shri Kapil Sibal also referred to the conduct of the workmen which according to him disentitled the workmen to any relief. He submitted that before and after 6.1.97 (the date of notice of the various unions that they were willing to shift to Baddi, subject to the orders in pending applications). The workmen were totally unwilling to go to Baddi. They were repeatedly making attempts by filing review petitions to see that the 31.12.96 order permitting relocation outside N.C.T. OF Delhi, H.P., Rajasthan, Haryana, was recalled. Shri Kapil Sibal referred to the review petition No. 39/97 filed by the workmen seeking review of the order dated 31.12.96 permitting the industries to shift to H.P., Rajasthan, Haryana and Punjab outside the N.C.T. (Delhi). According to the plea of the workmen, the court was to deem industries which were not relocating in N.C.T. (Delhi) as "closed" in view of the orders dated 8.7.96 and 4.12.96. Counsel

submitted that these workmen were interested more in getting the 6 years salary as compensation by treating the industries as closed and as if they were not relocating. Reference was also made to IA 52/97 filed by the Government of N.C.T. (Delhi) for review of the order dated 31.12.96. IA 144 was also similar. These IAs were dismissed by this court on 16.3.98 and on other dates. Learned counsel pointed out that even in the body of the affidavits filed in IA No. 201, 202 and 203, where several other reliefs were asked for, the workers urged that the industries be located in N.C.T. (Delhi). Though some ancillary reliefs were prayed for in these IAs, the entire tenor of the affidavits according to Sri Sibal, was that the order dated 31.12.96 should be recalled. Counsel stated that the workmen had, in fact physically prevented the industry from removing its articles from Delhi to H.P., even as late as on 20.5.97. Shri Dipankar Gupta, learned senior counsel appearing for the respondents also made similar submissions. He also submitted that Baddi was a well developed place with a large number of industries and Banks etc. and all normal facilities were available there if the workmen really desired to shift. According to both counsel, out of 7 unions only 2 unions had filed these IAs while the other unions remained silent. They also submitted that the workmen ought to have helped the industry during relocation and for that purpose, they should have shifted to Baddi even before the industry re-started functioning at that place. The party-in-person who appeared in CP 532 wanted that he be paid the 6 years wages on the basis that the industry was closing and not shifting. In other words, he was not willing to go to Baddi. The counsel for respondents Shri Kapil Sibal stated that a letter with cheque which was sent to him got returned. But if the industry was relocating and he was not shifting, he would get only 1 year wages plus compensation under Section 25F(b) as per the order dated 8.7.1996. The industry was agreeable to pay him 1 year wages in addition to Section 25F(b) compensation.

The points for consideration are:

(i) Whether the management was right in its submissions that the workmen, though given opportunity in various letters to give their option for reporting at Baddi, failed to exercise option and must be deemed to have been retrenched on 30.11.96 in terms of the order dated 8.7.90 and 3.11.96 of this court?

(2) Whether the workmen were right in contending that the management had no right to seek options from the workmen even before the industry was relocated and started functioning at Baddi?

These two points reflect the rival contentions and can be disposed of together.

In our opinion, the true answer to the contentions can be found in the order dated 8.7.96 read with the order dated 31.12.96. We have already extracted the various clauses in para 9 of the order of this court dated 8.7.96. We shall briefly refer to them again. Sub-Clause (a) emphatically says that

"the workmen shall have continuity of employment at the new town and place where the industry is shifted. The terms and conditions of their employment shall not be altered to their detriment."

Sub-clause (b) is important and it says that

"The period between the closure of the industry in Delhi and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with

continuity of service."

The work "continuity" and "restart" used in sub-clauses (a) and (b) of para 9 bring about the main intendment of the order. It is clear, from a plain reading of these clauses that the workmen were to be treated as if they were in service till the time the industry restarted at the relocated place and till such time, their service were to be treated as continuous. If that be so, there was no question of the employer asking them for an option to agree to shift and fix an earlier time limit than the date of starting of the industry at Baddi.

Learned senior counsel for respondents Shri Kapil Sibal and Shri Dipankar Gupta argued that that could not be the true meaning of clauses (a) and (b). The crucial clause according to them was clause (e) which stated that.

"The 'shifting bonus' and the compensation payable to workmen in terms of this judgment shall be paid by the management before 31.12.96."

The 'shifting bonus' was referred to sub-clause (c) and the payment of compensation was referred to in clause (d) and these amounts had to be paid by 31.12.96, as stated in clause (e). According to learned counsel, the option to join at Baddi must have therefore been exercised before 31.12.96. They rely on Clause (d) which reads as follows:

"the workmen employed in the industries which fail to relocate and the workmen who are not willing to shift along with the relocated industries, shall be deemed to have been retrenched with effect from 30.11.96..... and be paid one years wages as additional compensation."

[of course by order dated 4.12.96 in case the industry did not relocate, they had to pay 6 years wages and not merely wages for one year]

On the basis of clauses (c), (d) and (e), the learned senior counsel for the respondents argue that if the workmen did not exercise option by 31.12.96, they were to be deemed as retrenched by 30.11.96.

In our opinion, the contention of the learned senior counsel for the respondents is based upon a misconception of the true import of this court's order dated 8.7.96. As already stated, the two clauses (a) and (b) are crucial and deal with continuity of service of the workmen on the same terms and conditions and the payment of full wages till the "restart" at the new place and these conditions cannot be altered to their detriment. The employees are to be deemed to be in active employment right from the date of "closure" of the industry of Delhi till its "restart" at the place of relocation and they had to be paid their full wages with continuity of service for the said period. There was, therefore, no question of the industry compelling the workmen to exercise any option before the date of such restart informing the industry that they were prepared to rejoin at the place where the industry was proposed to be started. The industry could not be said to be restarted unless and until it had got the plant installed and obtained all necessary permissions for its being commissioned at the new place. Till such time, the workmen were to be deemed to be in service with continuity. In our view, the said continuum could not be broken by the industry by unilaterally asking the workmen to exercise an option to join. Such an option on the part of the workmen was nowhere contemplated by the order of this court dated 8.7.96. The industry was nowhere given any right to seek such an option. This court gave an option for the workmen for 'not joining' and not 'for joining' at the relocated place. Till

the time of 'restart' of the industry at the relocated place, it was open to the workmen to say that they would not rejoin. The only consequence is that if they exercised such an option on any date after the date of closure and before restart, they would still be deemed to have been retrenched w.e.f. 30.11.96 and not with effect from the date on which they exercised their option not to rejoin. In other words, if they opt not to rejoin, they would not be entitled to wages from the date of closure till the date they exercised their option not to rejoin - inasmuch as any such refusal to rejoin at Baddi, communicated to the industry before the date of restart would result in their being deemed to have been retrenched from 30.11.1996.

The industry in our opinion, proceeded on a total misconception of the order of this court dated 8.7.96 and adopted a procedure which ran quite contrary to scheme which was envisaged by this court for the benefit of the workmen. The fact that during the period before the industry was relocated, the workmen approached this court for recall of the order dated 31.12.96 which order permitted relocation of the industry outside N.C.T. (Delhi) could not, in our opinion, be deemed to amount to an option not to rejoin at the proposed place of relocation. In fact the letter dated 6.1.1997 of the workmen could not be treated as a conditional option to rejoin because they were not obligated to give any option to rejoin but they could have, if they so chose, opted not to rejoin. The letter dated 6.1.1997 could not be treated as a letter exercising option not to rejoin at the place of relocation. This is because it specifically contained an offer to rejoin. The fact that the workmen subjected their intention to rejoin to orders of this court did not convert an intention to join into an intention not to join at the relocated place. Further, the right of any party to seek review of orders of this court is a right which is lawfully exercised and cannot be treated as a breach of the order of this court dated 8.7.1996.

For the aforesaid reasons, we reject the contention of the respondents. We accordingly direct the industry to allow all the workmen except those who exercised or would exercise an option not to rejoin - to rejoin at Baddi. In order to avoid any scope for future disputes, we direct all those who are willing to rejoin at Baddi, to report there at Baddi on 14.1.99 and 15.1.99 along with their identity cards or other evidence to identify them and sign or put their thumb-mark in a register in the joint presence of the Dy. Labour Commissioner having jurisdiction over Baddi, District Solan, Himachal Pradesh and the Dy. Labour Commissioner of N.C.T. (Delhi). These officers shall counter sign in the register certifying that the particular workmen had reported at Baddi. All such workmen who rejoin shall be entitled to the benefits of the order of this court dated 8.7.96 and subsequent orders, in respect of continuity, back wages from date of closure till date of such rejoining, in addition to one year's wages towards shifting bonus. The said amount shall be paid by the respondent-industry to each of these workmen, within one week of the rejoining at Baddi. In respect of such of the workmen who do not so report by 15.1.1999 as aforesaid or who otherwise give it in writing to the aforesaid authority that they are not willing to rejoin, they shall be deemed to have been retrenched w.e.f. 30.11.96 and shall be entitled only to one year's wages and also to section 25F9B) compensation as per the order of this court dated 8.7.96. The said amount shall be disbursed to these employees within one week from 15.1.1999 by the respondent-industry.

The applications of the workmen of the industry working at Delhi are accordingly allowed and disposed of in the manner stated above.

As the petitioner in the contempt case (party-in-person) is not willing to join at Baddi the industry will pay him I year's salary plus Section 25F(b) compensation within 15 days from today, if not already paid. The contempt case is disposed of accordingly.

JUDIS