IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 16.02.2017

CWP No.25210 of 2015 (O&M)

Narender Singh Sindhu & others ...Petitioners

Vs.

M/s Haryana Telecom & another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. H.P.S.Ishar, Advocate, for the petitioners.

RAJIV NARAIN RAINA, J.

In the year 1999, M/s Haryana Telecom Limited (HTL) – respondent No.1 was registered as a sick unit under the Sick Industrial Companies (Special Provisions) Act, 1985 (for short 'SICA') and came under the purview of Board of Industrial & Financial Reconstruction (BIFR). The HTL was not in a position to run its plant as it had no orders from Government Agencies like BSNL/MTNL etc which were its lifeline. The respondent's banks had also refused to provide bank guarantees to HTL to participate in tenders. This was the financial death knell of the company. Besides, the HTL began suffering huge losses year after year since 1997-98. Workers were not ensuring productivity and the company had to suffer liquidated damages. It was, under these circumstances, the HTL was forced to take a decision of closure of the unit for these unforeseen reasons. At the time of closure on 28.02.2005, there were 30 workers employed with the HTL. All of them were offered closure notice along with cheques representing closure compensation as full and final dues, but the applicants refused to accept the same when presented by hand and the same were sent to the applicants under registered AD covers. Two of the applicants before the labour court in reference proceedings under Section 10 (1) (c) of the Industrial Disputes Acct, 1947 (for short 'the Act'), namely, S/shri Pancham and Gabar Singh accepted the offer and got their cheques encashed, while three others have accepted the letters and cheques but they did not encash the cheques. The rest of the letters were received back by the respondent with the remarks either 'refused' or 'unserved'.

When the dispute arose and the matter was referred to the Industrial Tribunal, Rohtak. One of the applicants, namely, Birender Singh Rawat approached the HTL and took his full and final dues and bid adieu. On these facts, the Management pleaded before the Labour Court in Reference No.81/2005 that closure was bona fide and the factory was not illegally closed down on 01.03.2005. Since there were only 30 workers, the case did not fall under the provisions of Chapter VB of the Act and, therefore, no permissions were required from the appropriate Government before closure. Since the test of numerical strength was not satisfied, Section 25-O was inapplicable. The claimant-workers could have been dealt with under Section 25-FFF, which provision falls in Chapter V-A. Section 25-FFF explains the proviso to Closure on account of unavoidable circumstances beyond the control of the employer with compensation to be paid in terms of Section 25-F(b) of the Act no exceeding average pay for three months. HTL had pleaded before the Labour Court sufficient explanation as to unavoidable circumstances beyond the control of the Company, which had not closed down merely on account of financial difficulties including financial losses as the Explanation (i) to the proviso to Section 25-FFF mandates, but was on account of cumulative circumstances to the extent that the Company had turned sick and its case pending consideration before the BIFR for revival measures. Therefore, HTL was within its right to snap the employer/employee relationship on offering closure compensation as per the provisions of Section 25-FFF. If the workers had refused to accept cheques or had encashed them, that will not alter the rights of the Management to part ways with the workers in a legal and valid manner. The Labour Court in its vide Award dated 09.04.2015 rightly held that no right of the workmen had been infringed by the Management and they were not entitled to any relief when the provisions of Section 25-FFF read with Section 25-F(b) of the Act were met in compliance, then no industrial rights continued to exist for the benefit of the workmen for a claim of reinstatement and back wages.

The contention of the workmen which requires to be addressed before parting with the order is that all the witnesses deposed in their testimonies that the Management had offered lesser amount than law determined. But the Labour Court observed that the workmen had not adduced any evidence in this regard to show as to what extent the closure compensation offered by the Management vide notices Exs.M-2 and M-5 was inadequate. The conclusion of the labour court respecting this is sound on facts and law. Therefore, there is no substance in this contention and the same is rejected and the view of the Labour Court on this point is correct and is endorsed. The burden of proof was not discharged by the claimants to show short payment.

For the foregoing reasons, there is no merit in this petition, which is ordered to stand dismissed.

Having dismissed the petition, liberty is given to the workers who refused to accept closure compensation to demand the same from the Management, if not directly, then within the proceedings before the BIFR, if they are still pending or by other lawful means in accordance with law. Failure or refusal to accept payments by the workers can be seen as legitimate actions taken to protect the claims in the hope of relief from the Labour Court and not to be seen as having waived their claimed rights.

16.02.2017 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

Whether speaking/reasoned: *Yes*
Whether Reportable: *No*