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WORKMEN OF DEWAN TEA ESTATE AND ORS.

v.

THE MANAGEMENT

(P.B. GAJENDRAGADKAR, K.N. WANCHOO AND K.C. DAS GUPTA JJ.)

Industrial Disputes—Lay-off due to financial position or trade reasons—Whether justified—If common law right could be spelt out of s. 25 of the Industrial Disputes Act to declare lay-off—Standing Order No. 8—"Stoppage of supply" and "other causes beyond his control", meaning of—Industrial Disputes Act, 1947 (*Act* 14 *of* 1947), *ss. 2(kkk) and 25C—Industrial Employment (Standing Orders) Act*, 1946 (*Act* 20 *of* 1946).—*Rule 8 of the Standing Orders.*

As a result of the lay-off declared by the respondent in the 11 tea estates, managed by them an industrial dispute arose between the respondent and their workmen, the appellant. The respondent justified the lay-off on the ground that its financial position was very difficult and that the lay-off was appropriate in the interests of the employees and their own in order to avoid closure of business. The appellants urged, *inter alia*, that the depression in trade or financial difficulties which may be characterised as trade reasons did not justify the lay-off under the relevant Standing Order, and so, they justified their claim for full wages during the period of the lay-off. The Tribunal held that the relevant Standing Order No. 8 justified the lay-off, and the trade reasons resulting from the depression in trade and financial liabilities arising therefrom fell within the scope of the Standing Order. Alternatively, the Tribunal thought that even if the lay-off was not justified by the relevant clause of the Standing Order, the respondent had a common law right to declare a lay-off and this right was recognised by s. 25C of the Industrial Disputes Act, 1947 and since it is a statutory provision, it overrides the relevant clause in the Standing Order. In appeal by special leave:

Held: (*i*) The Tribunal was not right in holding that s. 25C of the Industrial Disputes Act recognises the inherent right of the employer to declare lay-off for reasons which he may regard as sufficient or satisfactory in that behalf. No such common law right can be spelt out from the provisions of s. 25C. When the laying off of the workmen is referred to in s. 25C, it is laying off as defined by s. 2 (kkk), and so, workmen who can claim the benefit of s. 25C must be workmen who are laid off for the reasons contemplated by s. 2(kkk); that is all that s. 25C means. If in any case the lay-off is not covered by the Standing Orders, it will necessarily be governed by the provisions of the Act, and lay-off would be permissible only where one or the other of the factors mentioned by s. 2(kkk) is present, and for such lay-off compensation would be awarded under s. 25C.

(*ii*) "Stoppage of supply" must, in the context, mean stoppage of raw material or other such thing. In regard to the factory, "stoppage of supply" may mean the stoppage of tea leaves, or in the case of field work, it may mean the stoppage of supply of other articles necessary for field operations. "Supply" in the context cannot mean money or funds.

(*iii*) The last clause of r. 8(a) (i) of the Standing Order which refers to "other causes beyond his control" would not take in the financial difficulties of the companies. Other causes beyond his control for one thing should be similar to the causes that have preceded; even otherwise there is no justification for the argument that the financial difficulty which is alleged to have confronted the respondent was beyond its control.

Rule 8(a) (iii) which refers to temporary curtailment of production must obviously be read in the light of r. 8(a) (i) and if the case of the present lay-off does not fall under r. 8(a) (i), r. 8(a)(iii) would not improve the position.

(*iv*) The present dispute must be governed by r. 8(a)(i) of the respondent's Standing Orders. It cannot be accepted that the Standing Orders having been certified before the definition of the lay-off was introduced in the Act, the respondent is entitled to rely upon the said definition in support of the plea that the impugned lay-off was justified.

Management of Kairbetta Estate, Kotagiri v. *Raja-manickam & Ors.*, [1960] 3 S.C.R. 371, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 390 of 1963.

Appeal by special leave from the award dated December 11, 1959, of the Industrial Tribunal, Assam at Gauhati in Reference No. 7 of 1959.

C.B. Agarwal, J.N. Hazarika and *K.P. Gupta*, for the appellants.

Sankar Bannerjee, P.K. Chatterjee, D.N. Gupta and *B.N. Ghosh*, for the respondents.

November 25, 1963. The judgment of the Court was delivered by

GAJENDRAGADKAR, J.—This appeal by special leave arises from an industrial dispute between the respondent, the Management of 11 Tea Estates and the appellants, their workmen. It appears that the appellants raised a dispute against the respondent in regard to the lay-off declared by them in the 11

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estates in question in February, 1959. The said lay-off lasted for 45 days and the appellants' contention was that the lay-off was not justified, and so, they were entitled to their full wages for the period of the lay-off. The respondent's Managing Agents for the nine Companies that run the 11 tea estates in question, resisted this claim on the ground that the lay-off was justified and they alleged that the appellants were not entitled to anything more than the compensation prescribed by section 25C of the Industrial Disputes Act, 1947 (hereinafter called 'the Act'). This dispute was referred to the adjudication of the Industrial Tribunal by the Governor of Assam under s. 10(1)(d) of the Act. The 11 tea estates which are concerned with this dispute were described in Appendix A to the order of reference. It is common ground that these 11 tea estates are run by nine Companies and M/s. Macneill and Barry Ltd. are the Managing Agents of all these companies.

The case for the respondent was that the tea estates in question which are all situated in Cachar District had to face a long period of depression in trade by reason of the poor prices generally commanded by the tea produced by them. In 1959, the management faced a very difficult financial position and it took the view that in the interests of the employees and its own business, it would be appropriate to lay off the workmen for a certain period in order to avoid closure of business. The circumstances which caused financial depression were beyond the control of the management and lay-off was, therefore, inevitable and fully justified.

On the other hand, the appellants urged that there were other tea estates in the district of Cachar which had to face similar problems; the labour costs incurred by the respondent were not higher than the corresponding costs incurred by the other tea estates, the burden of taxes was the same for all the tea estates in the district and the quality of the tea produced was relatively similar. They contended that the difficulty which the respondent had to face

was partly the result of its mismanagement and neglect. They pleaded that the workmen employed by the respondent had been promised continuous work throughout the year and the declaration of lay off for such a long period as 45 days exposed them to the risk of semi-starvation. The appellants also urged that depression in trade or financial difficulties which may be characterised as trade reasons did not justify the lay off under the relevant Standing Order, and so, they justified their claim for full wages during the period of the lay off.

The Tribunal has held that the relevant Standing Order No. 8 justified the lay off. The trade reasons resulting from the depression in trade and financial liabilities arising therefrom fell within the scope of the Standing Order; it has also held that the last clause in the Standing Order which was general in terms could be relied upon by the respondent in support of its plea that the lay off was justified. In the alternative, the Tribunal thought that even if the lay off was not justified by the relevant clause in the Standing Order, the respondent had a common law right to declare a lay off and this right was recognised by s. 25C of the Act. According to the Tribunal, s. 25C recognises this common law right and since it is a statutory provision, it over-rides the relevant clause in the Standing Order. Having thus found that the lay off was justified, the Tribunal proceeded to examine the question as to whether the trade reasons on which the respondent relied had been proved. It then considered the relevant documentary evidence bearing on the point and noticed some general features applicable to all the tea companies before it. "They have suffered losses which are by no means inconsiderable", said the Tribunal, "and some of the companies have not been able to declare dividends in time during the last ten years, though others have declared them from year to year." The Tribunal rejected the respondent's contention that the losses were due to high labour charges, but it found that the tea companies were not making adequate profits. It was satisfied that

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the companies had reserves and large capital assets and would not have found it difficult to raise necessary finances. On the whole, the Tribunal thought it necessary to distinguish between the different tea estates with which it was dealing, and having considered their respective individual cases, it came to the conclusion that out of the nine companies, five companies need not have declared lay off for 45 days. In its opinion, there was justification for lay off in their cases, but its duration should have been 21 days. Acting on this finding, the Tribunal has ordered that for the 24 days in excess of three weeks for which the lay off was justified the said companies should pay their workmen full wages and not merely the compensation prescribed by s. 25C of the Act. In regard to the remaining four companies, the Tribunal held that the lay off was fully justified, and so, the workmen were not entitled to full wages for the period of the lay off. In other words, the award made by the Tribunal partially granted relief to the appellants inasmuch as it gave them full wages against five companies for 24 days only. These five companies are: Bhubandhar, Doyapore, Western Cachar, Borak and Koyah. The other four companies in respect of which the Tribunal has given no relief to the workmen are: Doodputlee, Majagram, Scottpore and Tarrapore. It is this award which has given rise to the present appeal by the appellants.

The first question which arises for our decision is whether the Tribunal was justified in holding that s. 25C recognises the common law right of the respondent to declare a lay off for reasons other than those specified in the relevant clause of the Standing Order. While dealing with this argument, we must proceed on the assumption that the financial difficulties experienced by the respondent at the relevant time which have been compendiously described by it as constituting trading reasons for the lay off do not fall within the purview of the said relevant clause. The respondent's argument is that though the trading reasons may not justify the declaration of the lay off

under the said clause, as prudent employers who must be given liberty to run their industry in the best manner they choose, they have a common law right to declare a lay off if they feel that the alternative to the lay off would be closure and acting bonafide they want to avoid closure and adopt the lesser evil of declaring the lay off. Does section 25C of the Act justify this argument? Section 25C(1) which recognises the right of the workmen who are laid off, for compensation, provides that whenever a workman therein specified has been laid off, he shall be paid by the employer for whole of the period of the lay off, except for such weekly holidays as may intervene, compensation at the rate prescribed by the section. The proviso to this section lays down that the compensation payable to a workman during any period of twelve months shall not be for more than 45 days; and this proviso seems to indicate that the legislature thought that normally the period of lay off within 12 months may not exceed 45 days. Section 25C(2), however, contemplates the possibility that the period of lay off may exceed 45 days, and it lays down that if during any period of 12 months, a workman is laid off for more than 45 days, whether continuously or intermittently, he shall be paid compensation in the manner indicated by it. Thus, the position is that workmen who are laid off are entitled to compensation and the method in which the said compensation has to be calculated has been prescribed by the two clauses of s. 25C.

It is, however, significant that when s. 25C deals with workmen who are laid off and proceeds to prescribe the manner in which compensation should be paid to them, it is inevitably referring to the lay off as defined by s. 2(kkk) of the Act. The said section defines a "lay-off" (with its grammatical variations and cognate expressions) as meaning:

> "the failure, refusal, or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or for any other reason

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to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched."

It would be legitimate to hold that lay off which primarily gives rise to a claim for compensation under s. 25C must be a lay off as defined by s. 2(kkk). If the relevant clauses in the Standing Orders of industrial employers make provisions for lay off and also prescribe the manner in which compensation should be paid to them for such lay off, perhaps the matter may be covered by the said relevant clauses; but if the relevant clause merely provides for circumstances under which lay off may be declared by the employer and a question arises as to how compensation has to be paid to the workmen thus laid off, s. 25C can be invoked by workmen provided, of course, the lay off permitted by the Standing Order also satisfies the requirements of s. 2(kkk). Whether or not s. 25C can be invoked by workmen who are laid off for reasons authorised by the relevant clause of the Standing Order applicable to them when such reasons do not fall under s. 2(kkk), is a matter with which we are not directly concerned in the present appeal. The question which we are concerned with at this stage is whether it can be said that s. 25C recognises a common law right of the industrial employer to lay off his workmen. This question must, in our opinion, be answered in the negative. When the laying off of the workmen is referred to in s. 25C, it is the laying off as defined by s. 2(kkk), and so, workmen who can claim the benefit of s. 25C must be workmen who are laid off and laid off for reasons contemplated by s. 2(kkk); that is all that s. 25C means. If any case is not covered by the Standing Orders, it will necessarily be governed by the provisions of the Act, and lay off would be permissible only where one or the other of the factors mentioned by s. 2(kkk) is present, and for such lay off compensation would be awarded under s. 25C. Therefore, we do not think that the Tribunal was right in holding that s. 25C recognises the inherent right

of the employer to declare lay off for reasons which he may regard as sufficient or satisfactory in that behalf. No such common law right can be spelt out from the provisions of s. 25C.

That takes us to the question whether the lay off in the present case is justified under Rule 8 of the Standing Orders which have been duly certified under the Industrial Employment (Standing Orders) Act (No. 20 of 1946). The relevant portion of Rule 8 reads thus:—

> "Closing and re-opening of sections of the industrial establishments, and temporary stoppages of work, and the rights and liabilities of the employer and workmen arising therefrom.
>
> (a) (1) The Manager may at any time in the event of fire,catastrophe, break down of machinery, stoppage of power or supply, epidemic, civil commotion, strike, extreme climate conditions or other causes beyond his control, close down either the factory or field work or both without notice.
>
> . . . . . .
>
> (iii) In cases where workmen are laid off for short periods on account of failure of plant or a temporary curtailment of production, the period of unemployment shall be treated as compulsory leave either with or without pay, as the case may be, when, however, workmen have to be laid off for an indefinitely long period, their services may be terminated after giving them due notice or pay in lieu thereof."

It will be seen that the circumstances under which a lay off can be declared have been specifically described by Rule 8(a)(1). Two grounds have been urged before us by Mr. Banerjee in support of the Tribunal's conclusion that the impugned lay off is justified. He contends that the clause "stoppage of supply" may cover cases of stoppage of financial assistance. The argument is that in 1959 when the lay off was declared, the companies found that they

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could not raise enough money to carry on the operations in the tea gardens, and so, it was a case of stoppage of supply. If that be so, the lay off would be justified. In our opinion, this argument is wholly misconceived. Stoppage of supply must, in the context, mean stoppage of raw material or other such thing. In regard to the factory, the stoppage of supply may mean the stoppage of tea leaves, or in the case of field work, it may mean the stoppage of supply of other articles necessary for field operations. It is impossible to accept the argument that "supply" in the context can mean money or funds.

The other argument urged before us is that the last clause of R. 8(a)(i) which refers to "other causes beyond his control" would take in the financial difficulties of the Cos. We are not inclined to accept this argument also. Other causes beyond his control for one thing should be similar to the causes that have preceded; even otherwise we see no justification for the argument that the financial difficulty which is alleged to have confronted the respondent was beyond its control. In fact, on this point the Tribunal has made a definite finding that though the respondent had produced a letter from the Chartered Bank of the 9th April, 1959 in which the Bank expressed its reluctance to afford financial facilities, it was by no means clear that the Companies acting through their Managing Agents completely failed to raise the necessary finances at the relevant time. As the Tribunal has observed, the letter written by the Bank shows that it had promised to consider the matter and write to the Companies again; no evidence was produced to show what the Bank subsequently stated and whether finances became available or not. On the other hand, it is clear that at the end of the period of the lay off, all the Cos. started operating their tea gardens and we have been told that the operations have continued uninterrupted ever since. Besides, the letter on which reliance is placed was written in April, 1959, whereas the lay off was declared in February, 1959. Therefore, there is no evidence on the record which can justify

the assumption made by Mr. Banerjee when he raised the contention that the financial difficulties faced by the respondent at the relevant time were beyond its control. The fact that some of the Cos. have been incurring losses and have not made profits would not necessarily show that the financial position which they had to face at the relevant time was beyond their control. It is true, as Mr. Banerjee has pointed out, that the three Cos. Scottpore, Tarrapore and Doodputalee have not been able to pay dividends between 1951 to 1958 and it may be that with the exception of the year 1954, the position of all of them is not very satisfactory; but, on the other hand, there are other tea gardens in the same area and it is not suggested or shown that their position was any better than that of the companies before us. It is also true that at the relevant time, all the tea companies in Cachar in general, and the Managing Agents of the nine companies before us in particular M/s. Macneill and Barry Ltd. were trying their best to persuade the Assam Government to give them some relief in the matter of taxation. But the question which we have to decide is whether the financial position disclosed by the evidence on the record can be described as constituting a cause beyond the control of the respondent. We are not inclined to answer this question in favour of the respondent. Besides, as we have already indicated, having regard to the factors specified by Rule 8(a)(i) before the clause in regard to other causes beyond his control was introduced, it would not be easy to entertain the argument that a trading reason of the kind suggested by Mr. Banerjee can be included in that clause. Therefore, we are satisfied that the Tribunal was in error in holding that the impugned lay off could be justified by Rule 8(a)(i).

Rule 8(a) (iii) which refers to temporary curtailment of production must obviously be read in the light of R. 8(a)(i) and if the case of the present lay off does not fall under R. 8 (a)(i), R. 8(a) (iii) would not improve the position.

Mr. Banerjee has then urged that the present Standing Orders which were duly certified under the

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Standing Orders Act came into force in 1950, whereas s. 2(kkk) which defines a lay off was added to the Act by the Amending Act 43 of 1953 on the 24th October, 1953. His argument is that the Standing Orders having been certified before the definition of the lay off was introduced in the Act, the respondent is entitled to rely upon the said definition in support of the plea that the impugned lay off was justified. Basing himself on the definition of the lay off as prescribed by s. 2(kkk), Mr. Banerjee urged that this definition was wider than R. 8(a)(i) of the respondent's Standing Orders and would take in the trading reasons on which he relies. We are not prepared to accept the argument that in the present case, the respondent can rely on the definition of lay off as prescribed by s. 2(kkk). It will be recalled that the Standing Orders which have been certified under the Standing Orders Act became part of the statutory terms and conditions of service between the industrial employer and his employees. Section 10(1) of the Standing Orders Act provides that the Standing Orders finally certified under this Act shall not, except on agreement between the employer and the workmen, be liable to modification until the expiry of six months from the date on which the Standing Orders or the last modification thereof came into operation. If the Standing Orders thus become the part of the statutory terms and conditions of service, they will govern the relations between the parties unless, of course, it can be shown that any provision of the Act is inconsistent with the said Standing Orders. In that case, it may be permissible to urge that the statutory provision contained in the Act should over-ride the Standing Order which had been certified before the said statutory provision was enacted. Assuming without deciding that s. 2(kkk) may include the trading reasons as suggested by Mr. Banerjee, the definition prescribed by s. 2(kkk) is not a part of the operative provisions of the Act, and so, the argument that there is inconsistency between the definition and the relevant Rule of the Standing Orders does not assist Mr. Banerjee's case. If there had been a provision in the Act specifically providing

that an employer would be entitled to lay off his workmen for the reasons prescribed by s. 2(kkk), it might have been another matter. The only provision on which reliance has been placed is contained in s. 25C and that, as we have already seen, merely takes in the definition of lay off inasmuch as it refers to the workmen as laid off and provides the manner in which compensation would be paid to them. An alleged conflict between the definition of lay off and the substantive rule of the Standing Orders would not, therefore, help the respondent to contend that the definition over-rides the statutory conditions as to lay off included in the certified Standing Order. Therefore, we do not think Mr. Banerjee would be entitled to contend that s. 2(kkk) of the Act is wider than the relevant Rule in the Standing Orders and should apply to the facts of this case. We ought to make it clear that in dealing with this argument, we have not thought it necessary to consider whether the broad and general construction of s. 2(kkk) for which Mr. Banerjee contends is justified. In fact, Mr. Agarwala for the appellants has very strongly urged that the words "for any reason" found in s. 2(kkk) will not take in the trading considerations. He contends and *prima facie* with some force that the said words must be construed *ejusdem generis* with the words that precede them. (*vide Management of Kairbetta Estate, Kotagiri* v. *Rajamanickam & Ors.*)[1] According to him, the circumstances specified in s. 2(kkk) which justify a lay off must be integrally connected with production, and so, trading reasons cannot be included in that definition. According to this argument, the distinguishing features of the genus of which the several circumstances mentioned in the definition are different species, are: they are beyond the control of the employer, are expected to be of a short duration, and are of compulsive effect. As we have already indicated, we do not think it necessary to decide this interesting point in the present appeal because we are satisfied that the present dis-

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pute must be governed by Rule 8(a)(i) of the respondent's Standing Orders.

In the result, we reverse the finding of the Tribunal that the lay off declared by the respondent for 45 days in 1959 was justified. That being so, it is unnecessary to consider the individual cases of the nine respective companies, because whatever may have been their respective financial position, under the relevant Rule they could not validly declare a lay off at all, nor could they have declared the lay off in exercise of their alleged common law right. The questions referred to the Tribunal must, therefore, be answered in favour of the appellants. The appeal is accordingly allowed and the appellants' claim for full wages for the 45 days of lay off in respect of the 11 tea gardens is awarded to them. The appellants will be entitled to their costs throughout.

Appeal allowed.

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N.A. MALBARI AND BROS.

v.

COMMISSIONER OF INCOME-TAX, BOMBAY

(A.K. SARKAR, M. HIDAYATULLAH AND J.C. SHAH, JJ.)

Income Tax—Penalties—One earlier, the second on disclosure of full facts—Whether justifiable—Income-tax Act, 1922 (11 *of* 1922), *s.* 28.

The appellant, a firm of Surat, had a branch at Bangkok, to which it exported cloth, and the branch also made purchases locally and sold them. During the war the business of the branch had been in abeyance, but was re-started after the termination of the hostilities. In its return for the assessment year 1949-50 the appellant did not include any profit of the branch, but stated that the books of account of branch were not available, and therefore its profits might now be assessed on an estimate basis subject to