

(2008) 07 BOM CK 0142

In the Bombay High Court

Case No : O.O.C.J.W.P. No. 1977 of 2006

Agarwal Traders and Another

APPELLANT

Vs

Ankush M. Bhabal and Others

RESPONDENT

Date of Decision : 22-07-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 25(O), 25F, 25FF, 25FFA, 25FFA(1)

Citation : (2008) 3 LLJ 928 : (2009) 1 MhLj 425

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : Sudhir Talsania, S.C., Kiran Bapat and J.K. Desai, for the Appellant; Vinod Shetty and Ketki Rege for Respondent No. 1 and Neel Helekar, for the Respondent

Judgement

S.A. Bobde, J.—This petition by the employer is directed against the Order of the Industrial Court, Mumbai, dated June 6, 2006 holding the petitioners guilty of Unfair Labour Practices under Item 6 of Schedule II and Item 9 of Schedule IV of the MRTU & PULP Act, 1971. The Industrial Court has further directed the petitioners to pay the wages of the complainants till subsistence of contract of employment after deducting the payment already made/deposited.

2. The petitioner No. 1 is a partnership firm engaged in the business of job work of calendaring and packaging of cloth. In 1986, the land upon which the factory of the petitioners was situated was acquired by the BEST Undertaking for construction of Depot. This acquisition was challenged by the Union Sarva Shramik Sangh by Writ Petition No. 1106/1993. This petition was dismissed on June 15, 1993.

3. On July 12, 1993 a Notice of intended lock-out with effect from July 26, 1993 was put up on the notice board. Before the lock-out took effect, on July 13, 1993 the BEST Authorities demolished the factory premises of the petitioners.

4. According to the petitioners they offered the dues to the workmen on account

of closure. Apparently some accepted the dues while others did not.

5. On August 30, 2000 the respondent Nos. 1 to 7 filed a Complaint on their own behalf and on behalf of other workmen totalling 76, after a period of about 7 years claiming that the closure effected by the petitioners is in the guise of the lock-out and being in contravention of Section 25(O) of the Industrial Disputes Act, is illegal since the contract of employment continues, the petitioners are bound to pay the wages to the respondents employees.

6. The Industrial Court condoned the delay of about 7 years and thereupon adjudicated the complaint. It came to the conclusion that the lock-out announced vide a Notice dated July 12, 1993 intended to be effective from July 26, 1993 was illegal and unjustified and further that the petitioners have not taken any steps to terminate the contract of employment and therefore they are liable to pay wages. The learned Industrial Court therefore directed the petitioners to pay wages and legal dues to the respondents workmen till the subsistence of contract of employment.

7. Mr. Talsania, learned Counsel for the petitioners submitted that the Order of the, Industrial Court is unsustainable in law, primarily since the Industrial Court has ignored the existence of the closure of the petitioners establishment on July 13, 1993. According to the learned Counsel it was necessary to give, legal effect to the closure which necessarily terminated the contract of employment and therefore even though the petitioners might be held liable to payment of closure compensation they should not be held liable for payment of wages as if the contract of employment continued.

8. Mr. Shetty the learned Counsel for the respondents submitted that the Industrial Court has come to the conclusion that the lock-out is illegal and since the petitioners had really effected closure in the guise of lock-out, there was a clear unfair labour practices committed by them and therefore the contract of employment must be held to be in existence. Accordingly, the petitioners must be held liable for payment of wages.

9. The procedure of a valid closure is provided by Section 25-FFA of the Industrial Disputes Act, which reads as follows:

25-FFA. Sixty days" notice to be given of intention to close down any undertaking- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this Section shall apply to-

(a) an undertaking in which-

(i) less than fifty workmen are employed, or

(ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

(2) Notwithstanding anything contained in Sub-section (1), the appropriate Government, may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of Sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order).

It may be noted that the respondents have been unable to establish the existence of more than 76 workmen and therefore it is clear that the provisions under Chapter VB which include Section 25-O of the I.D. Act are not applicable.

10. There is no doubt that the closure took place. There was in fact a physical demolition of the petitioners factory by the BEST on July 13, 1993 in pursuance of notice of land acquisition. That thereafter the lock-out notice given on the earlier day July 12, 1993 was not given effect to. It is clear from the complaint that the respondents are aware of this demolition. Earlier the respondents had also challenged the acquisition by way of a writ petition.

11. The question is, in such circumstances what is the responsibility and liability of an employer such as the petitioners. It is clear that Section 25-FFA would not apply to the closure in question because the closure did not take place in pursuance of an intention of employer to close down the undertaking. The closure took place as a result of acquisition of the premises and the demolition of the factory. In the circumstances, the petitioners' liability will have to be worked out in accordance with Section 25-FFF. That liability must therefore be a liability to issue notice and pay compensation in accordance with the provisions of Section 25-F as if the workmen had been retrenched.

12. Mr. Talsania the learned Counsel for the petitioners stated that the petitioners does not claim any protection of liability under Proviso to Section 25-FFF. However, the Industrial Court has ignored the settled position in law that the closure brings an end to the contract of employment and has held that the contract of employment which existed on July 12, 1993 i.e. on the date of the notice of lock-out continued thereafter because the petitioners did not take any steps for terminating the contract of employment. This is a clear error of law on the face of the record. The Industrial Court ought to have noticed the closure and given effect to the said closure by imposing liability of compensation for closure rather than for payment of wages as if the contract of employment subsist.

13. There is in fact very little discussion by the Industrial Court on the existence of closure. On the other hand, the Industrial Court has come to the conclusion that the lock-out proposed by the petitioners was not justified. In doing so the learned Industrial Court overlooked the fact that the lock-out never became

effective since it was intended to take effect from July 26, 1993, Whereas the petitioners factory and establishment suffered a forcible closure because of the land acquisition on July 13, 1993. The order of the Industrial Court is therefore not sustainable. It therefore appears clear that the petitioners establishment was closed with effect from July 13, 1993 and indeed there is no evidence on record to come to a contrary conclusion.

14. It must be made clear that the Petitioners cannot be held liable for any non-compliance because they did not issue notices and offer compensation before the closure.

15. It is a settled law, vide judgment of the Supreme Court in Additional Collector of Customs, Calcutta and Another Vs. Best and Company, and Maruti Udyog Ltd. Vs. Ram Lal and Others, that issuance of a notice and payment of compensation is not a condition precedent for giving effect to a closure as in the case of Section 25-FFF of the Industrial Disputes Act.

16. In Avon Services Production Agencies (P) Ltd. v. Industrial Tribunal, Haryana and Ors. (supra) case the Supreme Court, vide paragraph 16 observed as follows:

...By Section 25-F a prohibition against retrenchment until the conditions prescribed by that Section are fulfilled, is imposed; by Section 25-FFF(1) termination of employment on closure of the undertaking without payment of compensation and without either serving notice or paying wages in lieu of notice is not prohibited. Payment of compensation and payment of wages for the period of notice are not, therefore, conditions precedent to closure.

In Maruti Udyog Ltd. v. Ram Lal and Ors. (supra) case, the Supreme Court, vide paragraph 21 observed as follows:

21. How far and to what extent the provisions of Section 25-F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25-FF and Section 25-FFF of the 1947 Act leaves no manner of doubt that Section 25-F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if used in Section 25-FF and Section 25-FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25-F of the 1947 Act and not the other consequences flowing therefrom. Both Section 25-FF and Section 25-FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose.

17. Thus, the closure of the petitioners establishment cannot be held to be vitiated on the ground that it was not preceded by notice and payment of compensation. The closure was validly effected. This however does not relieve

the petitioners of their liability to pay compensation. Admittedly, the petitioners have not paid closure compensation. According to them they were ready to, but the respondents did not approach them. It is clear that the law casts a duty on the employer to pay the compensation and the employer is not entitled to contend that he wanted to but the workmen did not claim it. It appears that the petitioners have deposited compensation before the Industrial Court as per the order of this Court and the amount has been withdrawn by the respondents.

18. The learned Counsel for the respondents submitted that the petitioners had deliberately avoided payment of compensation from the date of closure i.e. July 13, 1993 and must be held liable to pay interest on the said sum. There is merit in this contention on behalf of the respondents and accordingly I consider it appropriate to direct the petitioners to pay interest at the rate of 12% per annum from July 13, 1993 till the date the amount was deposited by them before the Industrial Court. The petitioners are accordingly directed to deposit the amount of interest, as stated above, before the industrial Court within a period of 12 weeks from today.

19. The respondents shall be at liberty to claim interest of unpaid gratuity in accordance with law, as may be advised. The petitioners shall be at full liberty to defend such an application, if made.

20. At this juncture, it may be noted that the learned Counsel for the petitioners submitted that the learned Industrial Court committed error in entertaining the Dispute after a period of seven years. It is true that there is an inordinate delay. However, having regard to the circumstances of the case, viz. the fact that the respondents mainly are illiterate and appear to have been laid down by their Union, the learned Industrial Court has condoned the delay in the interest of justice. I see no reason to interfere with the order condoning the delay.

21. In the result, the impugned order is hereby set aside. The Petitioners shall be liable, as above.

22. Rule made absolute as indicated above.