
(2005) 03 BOM CK 0102
In the Bombay High Court
Case No : C.A.S.J.W.P. No. 645 of 2005

Anthea Aromatics P. Ltd.

APPELLANT

Vs

Association of Chemical Workers and Others

RESPONDENT

Date of Decision : 14-03-2005

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 30, 30(2), 31(2)

Citation : (2005) 105 FLR 995 : (2005) 2 LLJ 1145

Hon'ble Judges : B.H. Marlapalle, J

Bench : Single Bench

Advocate : A.D. Shetty, Rita Joshi and T. Shetty, for the Appellant; N.D. Buch and Bina Dholakia for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

B.H. Marlapalle, J.—Heard Mr. A.D. Shetty with Ms. Rita Joshi, T. Shetty for petitioners and N.D. Buch with Ms. Bina Dholakia for respondent Nos. 1 and 2. Respondent No. 3 be deleted forthwith.

2. Rule. Ms. N.D. Buch waives service of notice of rule for respondent Nos. 1 and 2. By consent of the parties, the writ petition is heard finally.

3. The learned counsel for the petitioner has also submitted the paper book of the proceedings before the Enquiry Officer.

4. The respondent No. 2 is an employee of the petitioner- company and member of the respondent No. 1. He was working as a Technician Grade-III (skilled category) in the Production Department of Plant-II. He was issued two different charge-sheets i.e. dated; March 19, 2003 and March 24, 2003. As his reply was not found satisfactory to the said charge-sheets, a joint enquiry was held and it was conducted by Mr. K.P. Gurav. The enquiry commenced from May, 2003 and the Enquiry Officer submitted his report on January 28, 2004 and held that the following charges were proved against the respondent-employee on the basis of

evidence placed on record i.e. (a) wilful insubordination and disobedience of lawful and reasonable orders of the superior, (b) disorderly and indecent behaviour in the premises of the establishment, (c) refusal to accept the communication served and (d) commission of an act subversive of discipline and good behaviour on the premises of the establishment. On receipt of the said enquiry report, a copy of the same was forwarded to the charge-sheeted employee vide show cause notice dated February 2, 2004 and to the respondent No. 1 Union.

5. On the basis of the charge-sheet issued, apprehending the dismissal from service, Complaint (ULP) No. 168 of 2003 under Item 1 of Schedule IV of the MRTU & PULP Act, 1971 along with an application for interim relief u/s 30(2) of the said Act was filed on July 18, 2003. This application for interim relief was not pressed. The company while addressing a letter dated February 25, 2004 to the respondent No. 1 pointed out that while the enquiry was in progress against respondent No. 2, he had separate instances indulging in acts of threatening and intimidating two of the key witnesses in the enquiry and also another workman of the company. Two police complaints were lodged against the respondent No. 2 at the Rabale Police Station and a chapter case came to be filed against him. It was also pointed out that the respondent No. 2 was a habitual offender with several cases of misconduct committed during his employment with the company. Under these circumstances, no lenient view to be taken against the charge-sheeted workman and request for voluntary retirement on the basis of monetary claims, could not be accepted. It appears that by an order dated February 26, 2004, the company dismissed the respondent No. 2 by way of punishment.

6. An application Exhibit 17 came to be filed in Complaint (ULP) No. 168 of 2003 for hearing on interim application urgently and the stay to the dismissal order till the hearing of the complaint. This application was rejected by the -learned Judge (Ms. P.P. KARNIK) of the Labour Court vide her order dated February 27, 2004. The learned Judge referred to the decision of the Supreme Court in the case of Union of India and Others Vs. Dinanath Shantaram Karekar and Others, and noted that once the order of termination was sent by the company, it ought to be held to have been communicated to the charge-sheeted workman even though he -may not have actually received the same.

7. A fresh complaint registered as Complaint (ULP) No. 85 of 2004 came to be filed with the Labour Court sometimes in March, 2004 along with an application for interim relief so as to stay the operation of dismissal or to temporarily withdraw/cancel the same. The petitioner-company filed its reply and opposed the said application at Exhibit U-2. However, by an order dated August 4, 2004 the learned Judge (PJ. PATIL) allowed the application for interim relief and directed to withdraw and cancel the order of dismissal dated February 26, 2004 pending the hearing and final disposal of the complaint.

8. Being aggrieved by the said order, the petitioner- company approached the

Industrial Court in Revision Application (ULP) No. 68 of 2004 and the learned Member of the Industrial Court at Thane, was pleased to dismiss the revision application by his judgment and order dated February 1, 2005. Hence, this petition.

9. Mr. Shetty, the learned counsel for the petitioner- company urged that the impugned order passed by the Labour Court is grossly erroneous and against the law laid down by this Court regarding the powers of the Labour Court while entertaining the application for interim relief u/s 30(2) of the MRTU and PULP Act. He submitted that without setting out the reasons of prima facie case of unfair labour practice, the learned Judge of the Labour Court was swayed by the purported undertaking furnished in Complaint (ULP) No. 168 of 2003 and subsequently breached by issuing the dismissal order, whereas in fact, there was no such undertaking furnished before the Labour Court in the earlier proceedings.

10. Ms. Buch, the learned counsel for the respondents on the other hand, has supported the view taken by the Labour Court and confirmed subsequently by the Industrial Court.

11. In the order dated February 27, 2004 passed below the application at Exhibit 17 in Complaint (ULP) No. 168 of 2003 the learned Judge of the II Labour Court at Thane (Ms. P.P. KARNIK) noted in para No. 7 as under:

"Advocate Anaokar appeared on behalf of respondents. No stay (sic) is filed by him but he submitted that as per the assurances many meetings took place about the settlement of the dispute but the complainants were making exorbitant demands and therefore, parties could not settle the matter. He further submitted that as such after making many efforts of the settlement, respondents came to know that no settlement can take place in between the parties and thereafter the order of termination was sent to the Complainant No. 2. He further submitted that when order of termination is sent to the Complainants, the interim relief application is not tenable as there is no pleading regarding the dismissal of Complainant No. 2."

In para 4 of the said order, the learned Judge further noted:

"Admittedly, the case was fixed for hearing on interim relief application. There is no written undertaking given by the respondents regarding not taking any action against the complainant. At the same time, it is necessary to see what is the position at this stage when the Order of dismissal of Complainant No. 2 is already filed on record...."

The above quoted observations though indicated that while Complaint (ULP) No. 168 of 2003 was pending before the II Labour Court, negotiations were on between the parties i.e. company and the complainants and efforts were being made to settle the issue regarding the action to be taken against the Complainant No. 2, amicably. But it appears that exorbitant monetary demands were being made for the voluntary retirement of Complainant No. 2. In any case,

there was no written undertaking furnished by the company to the effect that no action would be taken against the charge-sheeted workman.

12. While allowing the application for interim relief in complaint i.e. Complaint (ULP) No. 85 of 2004, the learned Judge of the I Labour Court (Mr. P.J. PATIL) appears to have been overwhelmed by the so-called, undertaking by the company and he recorded prima facie finding in favour of the complainant only on the basis of this so-called undertaking. In para No. 17 of his order dated August 4, 2004 the learned Judge observed:

"It is pertinent to note that these cases are not applicable to the instant case on the ground that the company had acted in haste in conducting the enquiry inspite of its advocate Shri Mohit Kapoor giving assurance to the Labour Court of not taking any action against the concerned workman and the complainants not insisting on the immediate hearing of interim relief, application. This had not happened in any of these cases, as such the instant case is different from all these cases, and these cases are not applicable to the instant case."

The learned Judge held that the complainants were able to prove prima facie case in their favour. In para No. 19, the learned Judge proceeded to observe as under:

"The record filed by the complainant shows that the Court was given assurance by the advocate Shri Mohit Kapoor on behalf of the company not to take any legal action against the concerned workman till next date and thereafter advocate Shri Mohit Kapoor had withdrawn his Vakalatnama and advocate Shri P.N. Anaokar filed his appearance on behalf of respondent-company thereafter the company proceeded with the enquiry thereby terminating the workman. This itself shows the guilty mind and pre-determined mind on behalf of the respondents to complete the enquiry in undue haste without giving reasonable opportunity to the concerned workman to defend himself as such it is obvious that the balance of convenience is favouring the case of the complainants, therefore, I answer this point as balance of convenience is lying in favour of the complainants".

13. The learned Judge of the Labour Court did not consider the prima facie evidence, nature of charges and unfair labour practice if any, on the part of the management by issuing the order of dismissal.

14. This Court has from time to time settled the law governing the powers of the Labour Court while dealing with an application for interim relief u/s 30(2) of the MRTU & PULP Act. In the case of Dalal Engineering Pvt. Ltd. Vs. Ramrao Bhaurao Sawant and others, , in para 11, the learned single Judge (B.N. SRIKRISHNA, J. as His Lordship then was), observed under at p. 388:

"11. However wide the sweep of the jurisdiction of the Court to prevent unfair labour practices under the Act, however deep and pervasive the doctrine of social justice, the Labour Court and the Industrial Court are both creature of statute,

and have only so much jurisdiction as is conferred upon them thereunder. They cannot assume or usurp them jurisdiction which does not directly flow from the statute under which they function. In the instant case, the jurisdiction to entertain the complaint and grant reliefs therein, interim or final, is conferred on the Labour Court by Section 30 of the Act. Sub-section (1) of the said Section deals with final relief and subsection (2) with that of interim relief. By the judgments of this Court in the Premier Automobiles Ltd. Vs. Engineering Mazdoor Sabha and others, ; and Kirloskar Oil Engines Ltd. Vs. V.B. Dharurkar and others, , the limits of the jurisdiction to issue an interim order u/s 30(2) of the Act, have been surveyed and delineated by this Court. The two judgments have, in unmistakable terms laid down that the jurisdiction to issue an order comes into existence only upon a finding that there is an unfair labour practice. If it is a final order, there must be a final finding, and, if it is an interim order, there must at least be a prima fade finding of unfair labour practice. This is the bare desideratum without which the Court can issue no order u/s 30. Recourse to the doctrine of social justice or Part III of the Constitution may not be necessary for this purpose. Apart from the jurisdictional limits indicated in these two judgments, the Labour Court must also realise that the general principles of law are still applicable to trials before it, unless the contrary is indicated by statute. One general principal of law is that an interim order is intended to ensure that the proceeding which is pending before the Court arising out of specific cause of action does not become frustrated by any act of a party, pending the hearing of the proceeding. This is really the *raison d'etre* for an interim order, be it under any statute...."

15. In the revision application as well, the learned Member of the Industrial Court failed to examine the correctness of the order under challenge and as passed by the Labour Court directing the management to withdraw the order of dismissal and mechanically proceeded to hold that the view taken by the Labour Court did not call for interference. The approach of the Industrial Court is indefensible. It was not sufficient for the Labour Court to consider the so-called undertaking and it was necessary for the Courts below to examine the prima facie case of unfair labour practice and also the issue of balance of convenience. This has not been done. It was also necessary for the Courts below to consider the proceedings before the Enquiry Officer and whether the enquiry was conducted properly or not. Regards also must be had to the nature of charges held to have been proved by the Enquiry Officer while deciding the application for interim relief. The Labour Court failed to follow the law laid down by this Court while exercising its powers u/s 30(2) of the MRTU & PULP Act and therefore, it is imperative that the application filed in Complaint (ULP) No. 85 of 2004 for interim relief is restored and directed to be heard afresh and without being influenced by the so-called undertaking given by the management.

16. In the premises, the petition is allowed and the impugned order passed by the Labour Court in Complaint (ULP) No. 85 of 2004 dated August 4/5, 2004 and order dated February 1, 2005 passed in Revision Application (ULP) No. 68 of

2004 in Complaint (ULP) No. 85 of 2004, is hereby quashed and set aside. The application at Exhibit U/2 in Complaint (ULP) No. 85 of 2004 is hereby restored to file of the I Labour Court at Thane and it is directed that the said application shall be heard and decided afresh and as expeditiously as possible and preferably within a period of six months from the date of first appearance of the parties. The parties to appear before the Labour Court on March 21, 2005 at 11 a.m.

17. Rule made absolute accordingly with no order as to costs. Writ to go to me Labour Court forthwith.