

(1997) 01 BOM CK 0036
In the Bombay High Court
Case No : A.S.C.J. W.P. No. 6312 of 1996

Aps Star Industries Ltd. and Others

APPELLANT

Vs

Star Textile Engineering Employees Union and Others

RESPONDENT

Date of Decision : 16-01-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 22, 25
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22(1)

Citation : (1997) 75 FLR 906 : (1997) 1 LLJ 1059

Hon'ble Judges : V.H. Bhairavia, J; Ashok Agarwal, J

Bench : Division Bench

Advocate : J.P. Cama, for the Appellant; Colin Gonsalves and H.C. Mehta, for the Respondent

Judgement

1. It is common ground that no application has been made by the petitioners u/s 25-O of the Industrial Disputes Act, 1947 for permission of the Appropriate Government for closing down its undertaking. Vires of Section 25-O, we are informed, is pending consideration in several petitions. In the circumstances, we issue rule. We also issue notice to the Attorney General of India. As far as interim relief is concerned we find that the Industrial Court in a complaint filed under the Unfair Labour Practices Act, 1947 has passed an interim order, operative part of which provides as under :

"The respondents are hereby directed to adjust the amount of terminal dues of each of the workers towards the wages from March 1, 1996 and notify them the account within one month from the date of this order. The respondents also shall pay to the workers their monthly wages after adjustment of the above said amount, on the pay day for the respective month."

2. Proceedings under the Sick Industrial Companies (Special Provisions) Act, 1985 are pending in so far as the petitioners are concerned. Petitioners, in the circumstances, are unable to pay the wages as directed by the interim order. And this is the burden of the song sung by Shri Cama. In the case of Kamani Tubes

Ltd. v. Kamani Employees Union & Ors. 1987 2 CLR 263, a Division Bench of this Court (Coram : S. P. Bharucha and V. P. Tipins, JJ.) has held that-whether there has been a failure to implement award, settlement or agreement, whatever might be the motive, reason or cause of failure, there is an unfair labour practice Item 9 makes the employer's failure to implement award, settlement or agreement an unfair labour practice. When an employer does not implement an award, settlement or agreement he failed to implement the award, settlement or agreement. There is then failure on the part of the employer to implement an award, settlement or agreement and he is guilty of the unfair labour practice set out in Item 9. The phraseology of item 9 affords no scope for the taking into account of motive or reason or cause for the failure. To read Item 9 in any manner other than as set out above would be to do, violence to its language. To read Item 9 as suggesting that there would be no failure if there was inability to implement would be to read into it the words "without good cause", and that would be impermissible.

3. In the circumstances, we find that inability to pay is no answer to a proceeding under the Unfair Labour Practices Act. As far as operation of the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 are concerned, in the case of S.G. Chemicals and Dyes Trading Employees" Union Vs. S.G. Chemicals and Dyes Trading Limited and Another, , the Apex Court has held that "closure of undertaking contrary to provisions of S. 25-O of Industrial Disputes Act with consequent non-payment of wages as per existing settlement to workmen who continue to be in service due to illegality of closure amounts to unfair labour practice under Item 9 of Schedule IV to Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act."

4. This Court, in the case of Bapurao P. Tawade & Ors. v. Hes Ltd., Bombay & Ors. 1995 II CLR p.81 (Coram Srikrishna, J.), after making a reference to the case of Modi Industries, 1994 I LLJ 383 has observed as under :

"Reliance is placed on the observation in the aforesaid case of Modi Industries (supra), to the effect that the Parliament could never have intended that the industrial unit under the garb of sickness or for any like difficulty may be allowed to shirk its liability to pay the wages to its workers for the work they have done. If such a position is allowed to prevail, the sick company could defeat the legitimate claims of workmen for their wages and other dues by not paying them in the first instance, forcing the workers to resort to their remedies and then pleading the bar in S. 22(1). No construction can be put upon the provisions of S. 22, which could result in a situation of exploitation of human beings, contrary to provisions of our constitutional directives. It is therefore not possible to accept the contention that the payment of earned wages to the workmen (it cannot be disputed that payment under settlement would be wages within the meaning of S. 2(rr) of I.D. Act) was intended to be defeated by invoking the bar under S. 22(1) or to drive the workmen to run to New Delhi for seeking the consent of the BIFR every time their monthly wages were required to be paid. The bar of S.

22(1) of SICA must be held to apply only to such proceeding which are not required for the day to day running of sick industrial company even under a sanctioned scheme or otherwise. Any other interpretation would lead to a ludicrous and unintended result."

5. In view of the aforesaid decisions, we find that the petitioners have failed to make out a prima facie case for grant of interim reliefs. Interim relief, in the circumstances, is refused.