
(2009) 02 BOM CK 0080

In the Bombay High Court

Case No : Writ Petition No. 8136 of 2008

A.R. Sulphonates Pvt. Ltd.

APPELLANT

Vs

Maharashtra Mathadi and General Kamgar Union and Another

RESPONDENT

Date of Decision : 17-02-2009

Acts Referred:

Citation : (2009) 121 FLR 197 : (2009) 3 LLJ 401

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

Bench : Single Bench

Advocate : K.M. Naik and S.P. Salkar, for the Appellant; A.K. Jalisatgi and Amol Desai for Respondent No. 1 and Sunil M. Chinchwadkar and Rahul D. Oak, for the Respondent

Judgement

S.A. Bobde, J.—Rule, returnable forthwith. Heard by consent.

2. The petitioner has challenged the Order of the Industrial Court, Thane, dated July 14, 2008 in Complaint (ULP) No. 146 of 2006, by which the learned Industrial Court has held that the issues raised by the petitioner vide Exhibit C-3 do not need any consideration and therefore the application is liable to be rejected.

3. The respondent filed a complaint against the petitioner under the MRTU & PULP Act, 1971. In the complaint, the petitioner raised a preliminary objection as to the maintainability of the complaint since the petitioner had denied the relationship of employer and employee with the complainant. This objection was raised vide a Exhibit C-3.

4. The learned Judge however rejected the application on January 23, 2008. Against the rejection, the petitioner approached this Court in Writ Petition No. 3091 of 2008 decided on May 2, 2008. This Court specifically observed; that the petitioner has raised a preliminary objection in view of the Judgments of the Supreme Court in Kalyani Steel Ltd. (2001) AIR SCW 170(2), Cipla Ltd. Vs. Maharashtra General Kamgar Union and Others, , and Sarva Shramik Sangh Vs.

Indian Smelting and Refining Co. Ltd. and Others, . Since this Court found that the Industrial Court had not considered the objection about the maintainability of the complaint, the Court set aside the Order of the Industrial Court and remanded Exhibit C-3 for fresh disposal within a time frame. The Court also recorded that the parties have agreed that they would argue the question of maintainability and the question of interim relief so as to obviate further proceedings.

5. After the remand and inspite of having read the Order of this Court, the Industrial Court has rejected the application at Exhibit C-3 by observing that the application Exhibit C-3 does not need any consideration, as such. Jalisatgi and Chinchwadkar, the learned Counsels for the respondents submitted that in fact the learned Industrial Court has considered the contentions of the petitioner raised in Exhibit C-3. The learned Counsels referred to paragraph 2, where the learned Industrial Court has referred to four decisions. But, obviously that part of the order deals with the contentions of the parties. It was necessary for the Court to have dealt with the contentions; in other words, considered the objections in a proper judicial manner. Subsequently, there is a reference again to those Judgments in paragraph 6 of the Order, but one cannot see any consideration of whether the aforesaid Judgments apply to the present facts under the Maharashtra Mathadi Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969. Indeed, what was required of the learned Industrial Court was to see if the Judgments of the Supreme Court rendered under the Contract Labour Act laid down that the Industrial Court could go into the question of an unfair labour practice where the employer had denied the relationship with an employee. There were other three issues also which as a result have not been properly considered. In any case, whatever view the learned Industrial Court intended to take, it was certainly not open for that Court to observe that the application which is remanded back for hearing does not require any consideration.

6. Mr. Naik, the learned Counsel for the petitioner submitted that the refusal of the Industrial Court to consider the application amounts to disobedience of the Order of this Court. Though having regard to the language used, it might amount to disobedience, it would not be appropriate to lightly attribute any intention to disobey the orders of this Court and therefore the submission of Jalisatgi and Chinchwadkar, the learned Counsel for the respondents that it is a case of an improper use of words, is hereby accepted.

7. However, since the purpose of the remand made by this Court has not been fulfilled and since the Order of the Industrial Court results in substantial miscarriage of justice, the impugned Order is set aside. The application at Exhibit C-3 is remanded back to the Industrial Court for a fresh decision in accordance with law. The Industrial Court is directed to decide the application within a period of two months from the date the parties appear before it. The parties are directed to appear before it on March 16, 2009. Rule is made absolute in the

above terms.