

(1999) 10 BOM CK 0021
In the Bombay High Court
Case No : C.A.J.W.P. No. 3106 of 1999

Association of Engineer Workers

APPELLANT

Vs

Empire Industries Ltd. and Another

RESPONDENT

Date of Decision : 04-10-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 25K(1)

Citation : (2000) 84 FLR 150 : (2000) 3 LLJ 379

Hon'ble Judges : P.S. Patankar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.S. Patankar, J.

Heard both sides.

1. I must note at the outset that the learned counsel for respondent No. 1 (hereinafter referred as respondent) made a fair offer that the respondent is prepared to pay as per V.R. Scheme last introduced by the respondent in 1997 to about 70 remaining workmen, but it is not accepted by the petitioner-Union.

2. Complaint of unfair labour practice u/s 28 read with item 6 of the Schedule 2 and item 9 of Schedule 4 of MRTU and PULP Act, 1971 came to be filed by the petitioner, By the impugned order dated February 24, 1999 the said complaint is partly allowed by the industrial Court, Thane. It has been held that closure of undertaking on the basis of notices dated February 24, 1998 is not illegal but the Court directed payment of wages for July 1991 to all workmen involved in the Complaint ULP No. 431/91. Further closure compensation to workmen as per Section 25-FFF of Industrial Disputes Act, 1947 is also directed to be paid, if not paid. This is challenged here.

3. Notice dated February 24, 1998 u/s 25-FFA of Industrial Disputes Act came to be issued by the respondent intending to close down this undertaking. It is

closed on and from April 26, 1998. Respondent has suffered losses and the accumulated loss for the year 1997-98 was of Rs. 27.5 crores. The contention of the petitioner was that there was lock-out, but it has been negative by the Industrial Court.

4. The only contention raised now is that the respondent has failed to prove that there were less than 100 employees working in the undertaking on each day for 12 months prior to the effecting of closure of undertaking. The learned counsel submitted that even for 1 day during 12 months prior to closure if there are more than 100 workmen employed, then the provision of Chapter V-B is attracted. He submitted that proving its case, respondent should have produced Muster Roll. This has not been done and hence the case of the Petitioner that provisions of Chapter V-B are attracted ought to have been accepted and the case of respondent rejected. Further as the procedure contemplated therein is not followed, the closure was illegal and the respondent was guilty of alleged unfair labour practice. In my opinion, this contention has no merit.

5. Section 25-K(1) under Chapter V-B reads as under:

(1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than (one hundred) workmen were employed on an average per working day for the preceding twelve months.

6. What is contemplated by the said provision is "workmen on an average per working day for the preceding twelve months". If such a contention as raised by the learned Counsel for the petitioner is accepted, then the words "on an average" in the said provision shall be rendered meaningless. These words have been used deliberately. One can easily visualise an emergency or exigency where more than 100 workmen may be needed on a day or few days to overcome the difficulty. This would not fall within Section 25-K(1) and would not be covered. At the same time a company should not be also able to hoodwink the protective provisions contained in Chapter V-B by manipulating the strength of workmen, fairly long period of 12 months is taken for average. The Division Bench of this Court in Chandrabhushan Ramehandra Garu and Others Vs. State of Maharashtra and Others, , considered this aspect and has observed:

"Hence, the obligation to apply for prior permission to the appropriate Government to close down an undertaking u/s 25-O is only upon such employer to whose industrial establishment provisions of Chapter V-B of the said Act apply and as stated in Section 25-K the provisions of Chapter V-B apply to such industrial establishment in which not less than 100 workmen were employed on an average per working day for the preceding 12 months. If in an industrial establishment less than one hundred workmen were employed on an average per working day for the preceding twelve months the provisions of chapter V-B did not apply"

7. In the present case Respondent has produced on record the chart C-7 which

is ; accepted by the petitioner. It shows as under:

Month No. of employees

April 1997 92

May 1997 92

June 1997 88

July 1997 85

August 1997 83

September 1997 82

October 1997 81

November 1997 80

December 1997 78

January 1998 74

February 1998 74

March 1998 74

Therefore it is amply proved that there were less than 100 workmen employed on an average per working day preceding 12 months of the closure. Therefore the provisions of Chapter V-B are not attracted and the closure cannot be said to be illegal.