

(1995) 03 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition No's. 794, 795 and 796 of 1989

Balaram Balayya

APPELLANT

Vs

R. K. Textile (P) Ltd. and others

RESPONDENT

Date of Decision : 15-03-1995

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 3, 33
Industrial Disputes Act, 1947 — Section 25

Citation : (1995) 4 BomCR 253 : (1995) 71 FLR 467 : (1997) 3 LLJ 512 :
(1995) 2 MhLj 611

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : R.J. Kochar, for the Appellant; S.M. Naik, for the Respondent

Judgement

1. These three writ petitions arising out of the same set of facts and law, and from a common judgment of the Industrial Court, Bombay, challenge the order of the Industrial Court, Maharashtra, Bombay, dated November 16, 1988, made in appeal (IC) No. 168 of 1988, Appeal (IC) No. 169 of 1987 and Appeal (IC) No. 170 of 1987 and, therefore, can be conveniently disposed of by a common judgment.

2. The facts which are common to all the three writ petitions are : the First Respondent in each of these writ petitions is a processing unit engaged in manufacturing activities in the Textile Industry in Bombay covered by the provisions of the Bombay Industrial Relations Act, 1946 (hereinafter referred to as the "Act"). With effect from November 23, 1983, the workmen were not given any work when they reported for work at scheduled times and that they were refused work with an endorsement "NW" (no work) made on their attendance cards. This situation continued for some time. Thereafter these four workmen petitioners sent letters of approach on March 15, 1984 u/s 42(4) of the Act demanding that they be paid full wages for the period when they were not given work. There being no agreement on the dispute, these petitioners filed

application (BIR) No. 59 of 1984, application (BIR) No. 60 of 1984 and application (BIR) No. 61 of 1984 before the Labour Court, Bombay, alleging that the action of the First Respondent in not assigning them work and turning them away from work amounted to a closure for which they were entitled to closure compensation equivalent to the full wages which they would have earned had they been assigned work during the relevant period. The First Respondent contested the three applications. The Labour Court by three separate orders dated September 30, 1987 made in the three applications held that the applications could not be dismissed for want of approach letter within the prescribed period; that the First Respondent had given "lay-off to the employees during the period from November 1983 to February 1984 by writing remarks "NW" (no work) on their attendance cards, which amounted to "lay-off as defined u/s 25C of the Industrial Disputes Act. Unfortunately, inspite of these clear findings, the applications of these petitioners were dismissed by taking the view that there was no allegation that the closure was an "illegal closure" within the meaning of Section 98A of the Act and, therefore, the Labour had no jurisdiction u/s 78 of the Act to grant compensation or wages and that their only remedy was to file applications u/s 33-C(2) of the Industrial Disputes Act. The aggrieved petitioners filed three appeals, Appeal (IC) No. 168 of 1987, Appeal (IC) No. 169 of 1987 and Appeal (IC) No. 170 of 1987 challenging the orders of the Labour Court u/s 84 of the Act before the Industrial Court, Bombay. The Industrial Court, by the impugned orders, dismissed the appeals and hence the petitioners are before this Court by these three writ petitions.

3. Mr. Naik, learned Advocate appearing for the First Respondent, contended that the argument raised by the First Respondent before the Labour Court and the Industrial Court was that the quantum of compensation could not be uniformly fixed at the rate of 50 per cent, as provided u/s 25C of the Industrial Disputes Act, but that, the Court had discretion to award such quantum of compensation after taking into consideration the circumstances of the case and that it was unfortunate that the two Courts below misunderstood the contention of the First Respondent and dismissed the claims as not permissible u/s 78 of the Act.

4. Though, upon the concession made by Mr. Naik the orders could have been set aside and the applications remanded for retrial, I have decided to deliver a judgment, in order to obviate such misconception of law in future on the part of the Labour and Industrial Court.

5. Section 78(1)A(a)(i)(iii) of the Act gives jurisdiction, inter alia, to the Labour Court to decide a dispute regarding any change made by an employer or desired by an employee in respect of an industrial matter specified in Schedule III of the Act (except Item 5 thereof), and the matters arising out of such change. Item 7 of Schedule III of the Act expressly enumerates "payment of compensation for closures" as an industrial matter. The expression "closure" is defined in Section 3(8-A) of the Act, as "the closing of any place or part of a place of employment or the total or partial suspension of work by an employer or the total or partial

refusal by an employer to continue to employ persons employed by him, whether such closing, suspension or refusal is or is not in consequence of an industrial dispute". The petitioners were entitled to raise a dispute that the refusal of employment to them on certain dates amounted to a closure within the meaning of Section 3(8-A) of the Act and that they had not been paid any compensation for such closure and, therefore, they desired a change in respect of an industrial matter enumerated in Item 7 of Schedule III of the Act. The petitioners were, therefore, entitled to make an application u/s 78(1)A(a)(iii), but before making the application they should have approached the employer with a notice indicating the desired change, as provided in Section 42(4) of the Act. The facts of the present case show that such an approach notice was given by the employees on March 15, 1994 and that there was no agreement thereupon within the prescribed period. Therefore, an industrial dispute, within the contemplation of the explanation to Section 78 of the Act, did arise. In these circumstances, the Labour Court clearly had jurisdiction to entertain the applications for closure. It is unfortunate that the Labour Court misdirected itself in law in thinking that, though the First Respondent was liable to pay closure compensation, such relief could not be granted u/s 78 of the Act and that, the petitioners had to take recourse only to Section 33-C(2) of the Industrial Disputes Act for claiming the relief. The Labour Court erred in dismissing the applications on this misconceived view of the legal provisions. It is more unfortunate that the Industrial Court mechanically affirmed the three orders of the Labour Court in the appeals by also misconstruing the legal provisions. The observations in paragraph 8 of the impugned order of the Industrial Court indicate that the Industrial Court was perhaps labouring under the wrong impression that the compensation could not be granted by the Labour Court, unless the closure was illegal and/or improper. It may be true that in a situation where an employee is removed from service by a wrongful order, compensation cannot be granted unless it is first declared that the order was illegal and set aside. However, with respect to a claim for compensation for closure, such is not the case. In fact, the jurisdiction of the Labour Court under the Act is wider than the jurisdiction of the Labour Court u/s 33-C(2) of the Industrial Disputes Act. The Labour Court, while exercising jurisdiction u/s 33-C(2) of the Industrial Disputes Act, may not be able to grant anything more than the lay-off compensation prescribed by Section 25C of the Industrial Disputes Act, once it is held that there is a situation of "lay-off" within the meaning of Section 25C of the Industrial Disputes Act. The Labour Court u/s 78 of the Act, 25 however, can consider all aspects of the matter and arrive at an amount of compensation which would meet the ends of justice. The illegality of the closure may be one of the factors to be considered, but it is pertinent to note that it is not the only factor to be considered. Even if the closure is perfectly legal, the employees are entitled to claim compensation therefore and it would be a matter of balancing of conflicting claims, depending on the circumstances of each case.

6. In my view, the orders of both Courts below are clearly erroneous and

contrary to the provision of the Act and need to be set aside.

7. Write petitions are allowed. The impugned orders of the Labour Court and Industrial Court are hereby quashed and set aside. Application (BIR) No. 59 of 1984, Application (BIR) No. 60 of 1984 and Application (BIR) No. 61 of 1984 are restored and remanded to the file of the 6th Labour Court, Bombay, for disposal in accordance with law. Since the matters have been pending for such a long time, it is expected that the Labour Court would dispose of the matters with due expedition.

8. Rules in write petition No. 794 of 1989, write petition No. 795 of 1989 and write petition No. 796 of 1984 are, accordingly, made absolute, with no order as to costs.