**(1994) 06 BOM CK 0079**

**In the Bombay High Court**

**Case No :** Writ Petition No. 2894 of 1990

Bharat Containers Pvt Ltd APPELLANT

Vs

Engineering Workers Union and others RESPONDENT

**Date of Decision :** 27-06-1994

**Acts Referred:**

**Citation :** (1994) 06 BOM CK 0079

**Hon'ble Judges :** S.H. Kapadia, J

**Bench :** Single Bench

## Judgement

S.H. Kapadia, J.—By this Writ Petition, the Company seeks to challenge Judgment and Order of the Industrial Court dated 31st August 1990, allowing the Complaint filed by Engineering Workers union being Complaint (ULP) No. 103 of 1986. By the impugned Order, the Industrial Court has come to the conclusion by a very exhaustive Judgment that the Company was guilty of unfair labour practice under Item 9 of Schedule IV to the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. By the impugned Order, the Industrial Court directed the company to give/pay all the benefits to ten workmen, which the Company had unlawfully deducted on the ground that the workmen did not give the requisites production as required under the Settlement dated 4th May 1984.

2. In the above case, the following facts are required to be stated :

(a) On 4th May 1984, a Settlement was arrived at between the Company on the one hand and the Engineering Workers Union. The relevant clause of the said settlement reads as follows :

"7. WAGE INCREASE LINKED WITH PRODUCTION

(a) It is hereby agreed that in addition to the Special Pay of Rs. 104/- per month which is already linked with production as per terms of Settlement dated 4.9.1979, and additional amount of Rs. 65/- payable under the terms of this settlement shall also be linked with production. Thus the total amount of Rs. 169/- per month per workman shall be linked to average production per shift for the month as per the production figure given in Col. 5 of Schedule I attached to this Settlement. This Special pay of Rs. 169/- shall be payable if the average production per shift for the month is equal to the production figures mentioned in Col. 5 of Schedule I. However if the average production per shift for the month falls below the agreed figures in column 5 but is higher than the minimum production figures per shift given in Col. 4, the Special Pay shall be paid proportionate to the increase over the minimum production figures."

Clause 7(a) reproduced hereinabove, therefore, deals with wage increase linked with production. Clause 7(a) provides that it is agreed that in addition to the Special Pay of Rs. 104/- per month which is linked with production as per the earlier terms of the Settlement dated 4th September 1979, an additional amount of Rs. 65/- shall be paid under the terms of the Settlement dated 4th May, 1984. It further lays down that the total amount of Rs. 169/- per month per workman shall be linked to the average production per shift for the month as per the production figures given in Column No. 5 of Schedule I attached to the Settlement. It further provides the Special Pay of Rs. 169/- shall be paid if the average production per shift for the month is equal to the production figures mentioned in Column No. 5 of Schedule I. It further provides that if average production per shift for the month falls below the agreed figures in Column No. 5, but is higher than the minimum production figures per shift given in Column No. 4 then the Special Pay shall be paid proportionately to the increase of the minimum production figures. Needless to state that Clause 7 (a) is required to be read alongwith the production figures contemplated by Schedule I (at Pg. 57 of the Writ Petition) which deals with minimum and average production figures per shift taking into account tool change, set up and minor break down/adjustment time.

(b) In the present case, the above Complaint (ULP) No. 103 of 1986 was filed by the Engineering Workers Union on 3rd February 1986. It was the case of the Union in the said Complaint, inter alia, that the Company had illegally withheld and/or deducted Rs. 169/- from the wages for the month of December 1985 due on 7th January 1986. According to the Union, the said illegal deduction of Rs. 169/- was made without any notice or any reason. According to the Union, the Company had no right to make the above deduction without following the terms and conditions laid down under the Settlement dated 4th May 1984 and consequentially, the act of deducting the said amount of Rs. 169/- amounted to unfair labour practice under Item 9 of Schedule IV to the said Act, 1971. It is further alleged that the Company made the above deduction on a false pretext viz. that the workmen did not give normal production. It was the case of the workmen that the normal production could not be given for want of sufficient raw material. It was the case of the workmen that they were not given sufficient raw material. At this stage it may be mentioned that the Company manufactures plastic capsules in which toothpaste is stored for which raw material was required to be supplied by the company, the raw material being aluminium slug. Secondly, it is was alleged by the workmen that they were not in a position to give normal production also because the machines were not in order and the tool requirements were also not in order. In the above circumstances, it was alleged that as a vindictive measure, the Company had made the above deduction amongst other illegal actions taken against the workmen.

(c) By way of Written Statement filed to the said complaint, the Company denied the above allegation. In the present case, exhaustive evidence was led by both sides. Written arguments were also filed before the Industrial Court. Ultimately, as stated hereinabove, by a detailed Judgment running into several pages, the Industrial Court came to the conclusion that the workmen were not at fault. The Industrial Court came to the conclusion that the machines were outdated and in the circumstances, the workmen cannot be faulted. The Industrial Court also came to the conclusion some of the existing machinery came to be transferred to Nagpur in November 1985 and, therefore, the said workmen could not have been blamed for not achieving normal production. The Industrial Court also came to the conclusion that no norms were fixed vis-a-vis the imported machinery of the new machinery installed after the Settlement. The Industrial Court also found that the raw material i.e. the aluminium slug supplied to the workmen was not adequate. The Industrial Court also came to the conclusion that even the number of workmen were reduced after the Settlement. In the above circumstances, the deductions effected by the Company were illegal and without authority of law and accordingly, the Complaint came to be allowed. Being aggrieved by the said decision, the present Writ Petition has been filed.

3. Mr. Bhatt, the learned counsel appearing on behalf of the Company, at the very outset, submitted that the Industrial Court has made observations which were not in consonance with the evidence on record. Mr. Bhatt drew my attention to certain observations, particularly with regard to facts and figures mentioned in the Balance Sheets. He submitted that although the Balance Sheets prior to 1984 indicated that the machines were obsolete, the Balance Sheets for the subsequent years did not indicate that the machines were out-dated and that there was nothing on record to show that the production had gone down on account of the machinery being old and out-dated. He submitted that the findings of the Industrial Court were totally perverse in the sense that facts and figures in the Balance Sheets of the earlier year are shown as facts for the year 1985-1986. Mr. Bhatt further submitted that the Written arguments of the Union have been reproduced as findings in the Judgment of the Industrial Court which clearly shows non-application of mind and non-appreciation of the evidence on record. It is, therefore, contended that on wrong appreciation of evidence the Industrial Court has come to the conclusion that the Complaint ought to be allowed.

4. There is a difference between perversity and mistakes which may occur in the Judgment, particularly when the Judgment run into several hundreds of pages.

In the present case, the learned counsel for the petitioner drew my attention to certain findings of the Industrial Court with regard to the figures and the notes in the Balance Sheets of the Company. He submitted that the learned Judge has merely reproduced the written arguments and has not appreciated the evidence on record and, therefore, the said findings are perverse. I do not agree with the said submission. In the present case, in order to satisfy my judicial conscience, I personally examined the evidence on record and I find that the Industrial Court was right in coming to the conclusion that the machinery in question was totally out-dated and old. In this connection, it may be mentioned that Mr. Bhatt very fairly supplied to me the copies of the Annual Reports of the Company right from 1979-1980. Each of the reports from 1979-1980, 1980-1981 and 1981-1982 have a foot-note which indicates clearly that the machinery in question was obsolete, old and out-dated. This footnote, according to the learned counsel, has been made by the Company in the Annual Reports because the Company was required to import new machinery. The fact remains that the above Settlement was entered into by the Company with the Workers Union on 4th May 1984 with the full knowledge that the machines were old and out-dated. I am not inclined to accept the contention of Mr. Bhatt, the learned counsel appearing for the Company that this note in the Annual Report was only made with the object or in order to enable the Company to import new machinery. The footnote in the Annual Report clearly indicates as a matter of fact that the machines in question were old and out-dated. Now, as regards the subsequent Balance Sheets for the years 1984-1985 and 1985-1986, it is true that there is no such note in the Annual Report to the effect that the machinery was old and out-dated. However, at Pgs. 170 and 171, which is the evidence on record, there is a specific case of the workmen to the effect that there were frequent break-downs and complaints were made by the workmen to the Operators who have made the corresponding notes. In order to go further in the matter, I called for Exhibit C-48 which exhibit contains the reports made by the Operators. The said reports clearly indicate that there were frequent breakdowns on account of various reasons. Mr. Bhatt tried to explain the above position by saying that those break-downs were only effected for specific purposes like lubrication of the machinery or for minor repairs. He submitted that Schedule I to the said Settlement does contemplate such minor repairs on account of which there are break-downs. I do not see any merit in the said contention. Firstly, Exhibit C-48 indicate large number of complaints which indicate frequent break-downs. Mr. Bhatt is right in his contention that deductions have not been made for such break-downs. Nonetheless, the fact remains that if one goes through the said Exhibit C-48, the number of break-downs atleast upto November 1985 are clearly indicative of the fact that the machinery was out-dated and obsolete. According to Mr. Bhatt new machinery was imported in 1981-1982. If that be the case, then Annual Reports for 1983-1984 show that old and obsolete machinery existed. The figures given in the Judgment at Pg. 392 also indicate that in November 1985 Schuller Horizontal Press. Mall Printing Drying Oven, Mald Tube Lacrine Machine etc. (in all 12 machines) came to be transferred to Nagpur where a new Establishment carrying on the same activity was started by the Company. In this connection, it is interesting to note firstly that the workmen have produced a letter written by the Company dated 26th March 1986 (Exhibit-F to the Petition) in which the Company has stated that a similar factory has been duly established at Nagpur where they are manufacturing similar products. By the said letter, the Company has stated that some of the machinery from the Chamber Plant has been transferred to Nagpur. It is also stated that obsolete and redundant machinery has been transferred from Chamber Plant to Nagpur. This letter is clearly indicative of the fact that machinery transferred to Nagpur is obsolete and that it belonged to the Chamber Plant. This clearly shows that even in March 1986, the company has admitted that some of the machinery in Chamber Plant was obsolete. If this be the case, then production, as sought to be achieved, could not have been achieved. The Company, by the said letter, has in terms admitted that some of the machinery at the Chamber Plant was obsolete. Secondly, there is no explanation why obsolete and out-dated machinery should have been transferred to Nagpur. In this connection, it is interesting to note from the evidence of the Company that atleast two machines were transferred to Nagpur and that these two machines were transferred prior to November 1985 when they were being used at the Chamber Plant for producing the final output. Now, if this evidence is properly appreciated it is clearly indicative of the fact that old machines were there at Chamber and whatever were the good machines which could be operated for production of the output were also transferred to Nagpur. In the above circumstances, the Industrial Court was right in coming to the conclusion that the workers cannot be blamed for the so called under production and the deduction made by the Company was clearly erroneous. The machinery at Chamber was out-dated and obsolete and whatever was good was also sought to be transferred to Nagpur. I am not inclined to accept the contention of Mr. Bhatt that old machinery or the obsolete machinery alone was transferred to Nagpur. Nagpur was a new Establishment and one fails to understand why old and obsolete machines should be transferred to Nagpur. Further, this contention is contrary to the evidence of Shri Aher, the Manager who has categorically stated in his evidence that good machines at Chamber were transferred to Nagpur and as a result in the above circumstances, the Industrial Court was right in allowing the Complaint. The Industrial Court was right in coming to the conclusion that qua the imported machinery, no norms were fixed under the above Settlement. The Industrial Court was also right in coming to the conclusion that the company did not lead the evidence of the Storekeeper nor produced any record to show supply of new materials from the Stores to the machines and in the circumstances, the Industrial Court concluded that adequate quantity of raw material was not supplied. This findings is a finding of fact and I do not see any reason to disturb the said finding. I have discussed the evidence with regard to the nature of the machinery at length only to show that the Judgment of the Industrial Court, although has got some errors, cannot be faulted. The said Judgment is not perverse. The evidence on record clearly indicates that the deductions made by the Company were wrongful and that the Company was guilty of unfair labour practice. Mr. Bhatt, the learned counsel appearing on behalf of the Company lastly contended that in the present case, the pleadings were totally vague. Mr. Bhatt relies upon large number of Judgments of this Court as well as the Supreme Court to show that if the pleadings do not establish cause of action or if they do not give material particulars or facts, then the Complaint should be dismissed. I do not see any merit in the said contention. The workmen went to the Industrial Court specifically with a plea that the deductions made by the Company were unlawful on the ground that the machinery was obsolete and outdated. They also went to the Industrial Court on the ground that the supply of raw material was not adequate. In the above circumstances, Issues were framed, evidence was led and ultimately, the Industrial Court has granted the relief. Lastly, it may be mentioned that in the present case, I have a very limited jurisdiction. I am no sitting in Appeal over the findings of the Industrial Court. If two views are possible. I am not inclined to interfere with the findings of fact.

5. I do not find any merit in this petition. The petition, therefore, fails and the same is accordingly dismissed with no order as to costs.

6. At the time of admission of the above Writ Petition, the Registrar, Industrial Court, Bombay, was directed to pay to the individual workman, an amount of 25% of his entitlement under the impugned Order of the Industrial Court. As regards the balance of 75% of the amount, the Registrar, Industrial Court, Bombay was directed to keep the balance amount in a fixed deposit of Nationalised Bank which, I am informed, the Registrar, Industrial Court, Bombay has done. The Registrar is directed to pay the balance amount to the individual workman with interest on the maturity of the Fixed Deposits.

7. Mr. Bhatt, the learned counsel appearing on behalf of the Company applies for stay of the operation of this Judgment and Order for a period of 4 weeks. Mr. Shetye has no objection. Accordingly, the present Judgment and Order is stayed for a period of 4 weeks from today.

8. Certified copy expedited.

 