

(2001) 11 CHH CK 0001
In the Chhattisgarh High Court
Case No : Writ Petition No. 5167/99

Bhilai Engineering Corporation Ltd.

APPELLANT

Vs

Pragatisheel Engineering Shramik Sangh and Others

RESPONDENT

Date of Decision : 08-11-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 17
Madhya Pradesh Industrial Relations Act, 1960 — Section 51, 65(3)

Citation : (2001) 2 CGLJ 431 : (2002) 1 MPHT 35

Hon'ble Judges : Fakhruddin, J

Bench : Division Bench

Advocate : N.C. Jain, H.N. Vyas and Rohit Arya, for the Appellant; R.K. Gupta and Gautham Bhaduri, for the Respondent

Judgement

Fakhruddin, J.—The records of the Industrial Court has been received.

2. Respondent Union has filed return to the petition. It has also filed application seeking interim direction to both parties.

3. Respondent Union has also filed affidavits of workers.

4. Held learned counsel Sarvshri P.S. Nair, N.S. Kale, N.C. Jain, H.N. Vyas, Rohit Arya, R.K. Gupta (JBP), Manindra Shrivastava, Ashish Shrivastava and Shri P.S. Koshy, for the employer/Company and Shri Ranbir Singh and Shri Gautam Bhaduri, Govt. Advocates for the State and employees/ Union by Shri Sujay Pal. It is pertinent to mention that in this case, hearing has taken continuously from time to time and Shri Pal, Shri Kanak Tiwari and Shri R.K. Gupta (BSP) have also addressed the Court for employees/Union.

5. The Union/employees filed various petitions for reinstatement with back wages and the petitioner/employer company has filed this petition against the award dated 16-10-1999 passed by the Industrial Court, Raipur. The Companies filed petition against grant of compensation to the tune of Rs. 20,000/- to each of the

workman and claimed interim relief that during the pendency of the petition the recovery be stayed.

6. Learned counsel for the petitioner submits that on a reference made in the year 1993 by the State Government the Industrial Court, Raipur issued notices to the parties. The terms of reference are as under:

?1? D;k osru ,oa Hkrksa ds iqujh{k.k dk vkSfpR; gS \ \ ;fn gk? rks osru] egaxkbZ Hk?kk ,oa vU; Hk?kksa dh D;k ;kstuk gksuk pkfg;s ,oa bl laca/k esa fu;kstd dks D;k funsZ"k fn;s tkuk pkfg, \ \

?2? D;k izfro"kZ 15 fnuksa dk vkdfLed vodk"k] 10 fnuksa dk R;kSgkjH vodk"k rFkk 30 fnu dk fpfdRlk vodk"k fn;s tkus dk vkSfpR; gS \ \ ;fn gk? rks bl laca/k esa fu;kstd dks D;k funsZ"k fn;k tkuk pkfg, \ \

?3? D;k layXu ifjf"k"V esa mYysf[kr ,EiykbZt dk Isok i`Fkdhdj.k oS/k ,oa mfpr gS \ \ ;fn ugha rks bl laca/k esa fu;kstd dks D;k funsZ"k fn;s tkus pkfg, \ \

7. On the objection the matter was referred to a Division Bench of the Industrial Court, which decided the matters order dated 31-5-1995 and overruling objections, the matters were remanded back to the Industrial Court for deciding on merits. The petitioner/employer challenged the order dated 31-5-1995 by filing a Writ Petition No. 1231/1995 at Indore Bench of High Court of M.P. which was dismissed on 27-9-1996. Thereafter the petitioner/employer filed a Letters Patent Appeal No. 155/1996 before the Indore Bench of High Court of Madhya Pradesh against the order passed by the Single Bench. While deciding the L.P.A. there was a difference of opinion between the Hon"ble Judges of Division Bench. Therefore, the matter was sent for opinion of a third Hon"ble Judge. On the opinion given by the third Hon"ble Judge dated 12-5-1997 the matter was placed before the same Division Bench, however there was again difference of opinion. Thereafter, the respondent Union filed Civil Appeal Nos. 737, 738, 739 and 740 of 1999 before the Apex Court. The Hon"ble Supreme Court passed order dated 18-2-1999. Meanwhile the Bench was constituted. The Full Bench comprising Hon"ble Mr. Justice B.A. Khan, Hon"ble Mr. Justice S.B. Sakrikar and Hon"ble Mr. Justice V.K. Agrawal passed the order on 6-4-1999 in the LPA. The said order is extracted herein below:--

"After arguing for a while learned counsel for parties agreed for disposal of these appeals by the following consent order:--

(1) Industrial Court order dated 31-5-95 upholding the maintainability of reference and the writ Court order dated 27-9-95 affirming that order is upheld. In other words the reference made by the Government to the Industrial Court is found in order and would not be subject to any further objection by the appellants.

(2) Industrial Court at Raipur shall now proceed to decide the reference on merits as per law on hearing the parties.

(3) Parties shall appear before the Industrial Court at Raipur on 10th May, 1999 and thereafter Court shall take steps to ensure expeditious disposal of the reference within four months from this date. In case it is not possible for it to adhere to the prescribed schedule for some reason it shall approach the Division Bench of this Court at Indore for any further extension of time on cogent reasons.

(4) Considering that this Court had already ordered status quo vis-a-vis the present status of respondent employees. Industrial Court's interim order dated 12-10-1995 naturally had lost much of its shine in the process. Therefore, such status quo shall be maintained in respect of employees present status till any appropriate orders in this regard are passed by the Industrial Court. However, if any of the employees had taken benefit of that order they shall continue to enjoy that benefit subject to the final outcome of the reference. This shall not however, come in the way of respondent-employees to approach the Industrial Court again for any interim relief, if so advised and on so doing the Court shall examine and consider the prayer on hearing the parties and pass appropriate orders.

(5) Mr. Mathur, learned counsel for the appellants in all fairness also appreciated that this was not need to press any challenge to the reference No. 4 which pertains to the power/justification to grant interim relief by Industrial Court which otherwise enjoys that powers.

(6) Both parties shall of course be at liberty to take an appropriate remedy in case they feel aggrieved of the Industrial Court order.

(7) Any observations made by successive Benches of this Court touching the substance and merit of the dispute between the parties shall have no bearing in the disposal of the reference by the Industrial Court which shall proceed in the matter uninfluenced by any such observations, if any, and in accordance with law."

8. Counsel for the parties have been heard at length as according to the counsel appearing for the parties even for grant of interim relief i.e., for staying the recovery of Rs. 20,000/- or for not staying and granting interim relief, for reinstatement or otherwise. Learned counsel appearing for the parties vehemently addressed on the prima facie case, balance of convenience and irreparable injury and touched all aspects and as such the matter was heard consequently for many days and thereafter heard again on 31-10-2001.

9. Counsel for the employer/petitioner referred to Abdul Rahiman Kunju M. Vs. State of Kerala and Others, , Issco Pipes v. Santhi Kumar 1988 (II) MPWN 195 , Workmen of Joint Steamer Companies Vs. Joint Steamer Companies, , General Labour Union (Red Flag), Bombay Vs. Ahmedabad Mfg. and Calico Printing Co. Ltd. and Others, , Dena Nath and others Vs. National Fertilisers Ltd. and others, , Gwalior Tanks and Vessels Ltd. v. G.T.B. Shramik Congress and Anr. 1999 (I) M.P.L.S.R. 393 , Madho Ram Vs. P.K. Jain, . The sum and substances of the submission is that reference is not proper. The list submitted along with reference shows that many employers are suspended employees. There is no

relationship between employer and employees and that the award of Rs. 20,000/- is illegal and contrary to law. The burden and onus has wrongly been placed on the employers. There is no prima facie case and the award of compensation at the behest of Union is not tenable. The Industrial Court adopted sympathetic attitude and failed to consider that the Companies and the industries shall be ruined.

10. Counsel for the employees submitted that the Industrial Tribunal has already passed the award. The Tribunal has found prima facie case in favour of the employees but the re-instatement has been refused on hyper technical ground and mainly that the matter was pending in the Industrial Courts or one or the other Bench of the High Court. It is submitted that the matter remained pending not because of the fault of the employees. In the reference, the objections were raised by the employer, which was decided by the Division Bench of the Industrial Court. 15 writ petitions were filed by the employers which were dismissed by the Single Bench of High Court while deciding W.P. No. 1231/1995. Then the employers filed LPA which was decided thereafter the matter was referred to Third Hon'ble Judge, because of difference of opinion between Hon'ble Judges. Learned counsel further submits that it was the employers who were approaching the Court or the Benches of the Court and ultimately the Full Bench was constituted which decided the matter on 6-4-1999 by consent order. Before Full Bench after arguing for a while learned counsel for the parties had agreed for disposal of the matters. So it is not the union or employees who are mainly at fault and yet they have been denied the re- instatement on that count. The employees till today did not get instatement on that count. The employees till today did not get even single paise. They and their family have to survive. They have to feed themselves. Some how or the other they have passed the days hoping and ultimately their claim has been denied that by now they might have done this or that. The Industrial Court though noted that time has lapsed but failed to consider that if this yard stick is applied then no workman once removed or suspended would get back the job as time is likely to be consumed in decision at the behest of one party or the other. There is limit of borrowing and borrowing from whom. One cannot kill himself nor family i.e., wife, children and parents. It is also submitted that not a single paise has been paid even after the award has been passed to pay Rs. 20,000/- to each of the workman. He also relied on a decision reported in *Vikramaditya Pandey v. Industrial Tribunal* 2001 (II) SCC 423. It is also contended that a perusal of para 4 of the order passed by the Full Bench go to show that the status quo has been maintained in respect of the employees present status. It is further submitted that the employees were further permitted to approach the Industrial Court. The fruits of the award which has been passed cannot be denied to them without prejudice to their rights of re-instatement. Learned counsel for the employees further submitted that for granting interim direction in favour of the employees aid for guiding provision i.e., Section 65 (3) of the M.P.I.R. Act can be taken. It is contended that Section 65 (3) of the M.P.I.R. Act is analogous to the Section 17B of the I.D. Act.

Paragraphs 49, 50, 51, 52 as a whole. Para 54 of the said award has also been read as a whole.

11. Learned counsel for the employers submitted that direction of award regarding payment be stayed. It is submitted that if the amount is disbursed to the employees they will not be able to get it back. It is further submitted that the industries will suffer and that since last seven years as the employees are out from the Companies and are surviving which goes to show that they can survive for more years. Learned counsel for the Union/employees on the other hand submitted that so far as the validity of reference or otherwise is concerned, the matter is concluded by Full Bench. They have referred to the Full Bench order, which has been quoted hereinabove. They have specially referred Paras 3 and 4 whereby status quo was ordered to be maintained in respect of employees' present status. The Full Bench even allowed liberty to approach Industrial Court for any interim relief if so advised and on so doing the Industrial Court was directed to examine and consider the prayer. They also referred to para 5 and para 6 was referred to contend that the liberty to take appropriate remedy in case they feel aggrieved of the Industrial Courts' order was granted to both the parties. It is unfortunate that the matter remained pending for such a long years and the employees got nothing. In every case, wherever the situation is like this the workers who are out of job have to survive one way or other. One cannot live without the basis requirement of food and shelter, they cannot kill themselves and the legitimate dues found by Tribunal cannot be denied on this count, especially when the Industrial Court after considering the entire material on record has directed the payment of a sum of Rs. 20,000/- instead of re-instatement and all those matters are to be considered as both the parties have challenged the award.

12. Learned counsel for the companies/employers vehemently submitted that the Companies would suffer irreparably. On the one hand there are companies and on the other hand there are workmen who are out of employment and are prosecuting their matters as the award partially is in their favour. Even in an ordinary suit or under Order 41 Rule 1 (3) where a decree for money is passed if the stay is prayed the requirement of law is for payment of money or furnishing sufficient security.

13. On 26-9-2001, this Court had given opportunity to the parties to try for amicable, settlement, if any. The settlement could not be arrived at and the case was listed on 10-10-2001. The matter was then listed on 11-10-2001. On 12-10-2001 while hearing on interim relief, it was noted that the general relief on behalf of all the employees has been claimed whereas affidavits of individual employees have not been filed. The individual employees were allowed to submit their affidavits with photographs within 10 days and copy be supplied to the other side. Affidavits have been filed. There is some delay. It is condoned. Liberty was given to the respondent to file affidavit. The affidavits are taken on record. Copies have been supplied, as stated. If not supplied, let it be supplied.

14. As is apparent from foregoing paragraphs as quoted hereinabove, the questions raised have been considered by this Court. So far as the validity of reference or otherwise for the purpose of grant of interim relief to the parties is concerned, the Full Bench order goes to show that the Industrial Court has considered it finally and this Court has considered it provisionally for the purpose of grant of interim relief and is of the opinion that interim orders can be passed. The award passed has been read in extenso and specially from para 40 onwards. Paras 47, 48, 49, 51, 52, 53 and 54 are relevant and have been read but for the sake of brevity they are not reproduced.

15. The petition under Articles 226/221 of the Constitution of India is by the employees' Union and the employers have also filed petition. Since interim relief is claimed by both the parties and even otherwise, the Court has power to grant interim relief and can pass orders keeping in mind the facts and circumstances. The contention that the matter remained pending for some years and the employees remained idle without getting any relief, can survive without any payment to them and there should be absolute stay in favour of Company/ Industries, has no substance and deserves to be rejected.

16. The petitions filed by the companies/industries are under Articles 226/227 of the Constitution of India. The powers under Articles 226/227 are to be exercised keeping into consideration all aspects, facts and circumstances and materials on record in order to do justice with rival parties. Harmonious approach has to be adopted, and, too technical approach one way or the other is neither justified nor desirable. It is unfortunate that the dispute arose, however since there was a dispute, and it was referred to the Govt., reference has been made (the terms of the reference have been quoted herein above). The reference was challenged but ultimately by decision of the Full Bench that controversy by the consent order to that extent as indicated in the Full Bench judgment is resolved. It is no doubt that the dispute has remained pending since last 7 years ultimately the Tribunal has decided and award has been passed, directing payment of Rs. 20,000/- to each of the workman. However, if the stay is granted to the Company/Industries, the workmen who have been held entitled prima facie to get Rs. 20,000/- will be deprived. Under the circumstances some via-media keeping balance between the two has to be evolved. Such interim relief that may be equitable to both in the opinion of this Court deserves to be granted. Some viable and intermediary relief has to be chalked out and granted. Such powers to do justice are inherent in every Court and specially while exercising powers under Articles 226/227 High Court has such powers and it is a fit case where the powers should be exercised to maintain the balance.

17. Having thus giving thoughtful consideration and in totality of the facts and circumstances the petitioner/employer is directed to deposit Rs. 20,000/- for each of the workman in a nationalized bank within a period of 3 weeks from the date of this order. The interest accrued on this sum shall be payable to each of the respective workman who has filed the affidavit, by the Assistant Labour

Commissioner, Raipur himself or otherwise shall depute a responsible Officer duly authorized in this behalf to see that the amount is deposited and interest accrued on it is disbursed by crossed draft/cheques or such other mode as may be feasible. The State of Chhattisgarh would render due cooperation.

18. If any dispute regarding identity of the workman arises it will be raised before the Assistant Commissioner or the officer authorized by him who shall decide the same. It is further made clear that if it is proved that the affidavit filed in this Court is wrong, the person concerned shall be liable to be dealt with in accordance with law by this Court and all have to be very careful. Undue obstruction and untenable objection will also be dealt with in accordance with law.

19. A copy of this order shall be placed on records to each of the connected matters filed by the parties and which have been heard analogously.