
(2000) 05 BOM CK 0026

In the Bombay High Court

Case No : Appellate Side W.P. No. 2157 of 2000

Bhor Industries Limited

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 04-05-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 3 ALLMR 807 : (2000) 87 FLR 516 : (2001) 1 LLJ 106

Hon'ble Judges : D.Y. Chandrachud, J;A.P. Shah, J

Bench : Division Bench

Advocate : Shekhar Naphade, for the Appellant; J.S. Pawar, for the Respondent

Judgement

Dr. D.Y. Chandrachud, J.—The Petitioner is engaged in the business of manufacturing coated fabrics and employs about 450 persons. In a complaint, being ULP Complaint No. 651 of 1990 filed before the Industrial Court, the Petitioner made a grievance of a consistent course of conduct alleged to have been resorted to by the recognised union of the employees for obstructing the normal functioning of the work of the company. The complaint made reference to various incidents which were alleged to have taken place, and among them, were the following:

(i) On October 16, 1998, the office bearers of the recognised union entered into the office of the Vice President (Technical) of the company and gheraoed him and other officers in order to secure their demands on the issue of bonus; (ii) the workers had gathered at the gate and obstructed the movement of men and materials to and from the factory; (hi) security personnel were assaulted, there were incidents of violence and employees were not allowed to go out of the factory on October 16, 1998; (iv) the members of the Union threatened and abused the Deputy General Manager (Personnel) on December 7, 1998; (v) on: December 9, 1998 a gate meeting was held in which a strike was called on December 11, 1998, the union was resorting to an illegal strike to ask the management to concede to the demands of the union. An atmosphere of terror

was alleged to have been created by threatening employees who were willing to join duties. An application for interim injunction was moved before the Industrial Court.

2. By an order dated January 18, 1999 the Industrial Court held that the complainant company had made out a strong prima facie case of an unfair labour practice, attracting Item 5 of Schedule III of the M.R.T.U. and P.U.L.P Act, 1971. After hearing counsel for the company as well as the union, the Industrial Court granted relief in the following terms:

"The Respondent Union, its members" sympathizers, colleagues and associates are restrained from obstructing the movement of men, material, machinery and transport, shouting filthy slogans, obstructing the employees, officers, staff members, outsiders from coming to the factory and going out, instigating, abusing and encouraging coercive tactics like gheraoing, threatening, within 200 metres from the periphery of the complainant company at Bhore till the final disposal of the main complaint."

The Petitioner contends that despite the order of the Industrial Court dated January 18, 1999 the union continued to obstruct the orderly functioning of the company. The company thereupon filed another complaint, being complaint ULP No. 417 of 1997 in which the Industrial Court came to the conclusion that there was, prima facie, evidence to show that the union through its members engaged in coercive action which had affected normal production and work. By an order dated December 7, 1999 the Industrial Court granted following relief:

"The application for the interim relief filed at Exh-2 in complaint (ULP) No. 417 of 1999 is hereby allowed. The Respondent union, its members and associates are hereby restrained temporarily i.e. till the disposal of the main complaint, from obstructing the existing workmen, temporary workmen, new workmen and the workmen from the other sister concerns for doing any work in the establishment of the complainant company at Bhore and further from obstructing the movements of the machineries."

3. The Petitioner in the present proceedings under Article 226 of the Constitution contends that though the company is protected by two orders of the Industrial Court, Pune, the recognized union has failed to observe the orders of the Court and that compliance of those orders has been thwarted because of the indifferent and partisan approach adopted by police and Tahsildar who are interfering with the activities of the company. The Petitioner alleges that the police is not cooperating in giving requisite protection and since March 7, 2000 the employees have proceeded on a strike. According to the Petitioner, on March 8, 2000 the Tahsildar, Bhore, directed a contractor engaged by the Petitioner to shut down the thermostat machinery and to leave the premises. The Petitioner set its grievances down in writing by a letter dated March 8, 2000 addressed to the Tahsildar. These allegations are contained in Paras 6, 7 and 8 of the Writ Petition. In para 9 of the Writ Petition it has been stated that on March 20, 2000 the

workers of the company restrained the movement of a car in which the Deputy General Manager and another employee were travelling, and it is alleged that those officers were pulled out of the car by the workmen. The Petitioner alleges in paras 10 and 11 that the police have failed to give adequate protection for the purpose of transporting the material and finished products from the premises of the factory. An allegation has been made in para 12 of the petition to the effect that the Tahsildar, Bhore has together with the workmen ensured that the goods cannot be removed from the factory. Drivers of trucks carrying materials and goods of the company are alleged to have been assaulted and it is stated that trucks have been damaged.

4. In these circumstances, the Petitioner prays that this Court issue a Writ of Mandamus to Respondent Nos. 1 to 6 to enforce the orders of the Industrial Court, Pune and to ensure that the said orders are duly observed and followed. The union has been impleaded as a party in these proceedings and a copy of the petition was served on it. The union is absent despite service of notice. No reply has been filed on behalf of the Tahsildar or the Police controverting the allegations made in the petition, nor indeed did the AGP do so.

5. We have heard Mr. Naphade for the Petitioner and the learned AGP for Respondent Nos. 1 to 6. The facts and circumstances of the case have been set out by us in some detail earlier. The Industrial Court has, by two orders dated January 18, 1999 and December 7, 1999 granted an ad interim injunction restraining the members of the union from obstructing the movement of men and materials to and from the premises of the company. The orders of injunction operate to prevent the union from resorting to coercive tactics, gheraos or threatening the officers of the company and from obstructing the workmen from carrying on their legitimate and bona fide work. The Petitioner submits that despite the orders passed by the Industrial Court the first of which has not been challenged by the Union, the members of the Union have continued to flout those orders and to obstruct the even flow of work of the company. References also have been made to specific incidents, to incidents of assault, obstruction caused to the employees of the company.

6. In *Transmissions P. Ltd. and Another Vs. C.V. Bapat and Others*, a learned single Judge of this Hon'ble High Court, Hon'ble Mr. Justice M.L. PANDSE held that when there existed a reasonable apprehension in the mind of the employer that the workers would not permit him to enter the factory, to remove goods belonging to the management and that the employer would not be able to protect and enjoy his property without assistance from the police and the employer had asked for such protection, the Police Authorities were bound to give protection or assistance to the employer for protecting and enjoying the property and business of the employer. The learned single Judge held that the Police Authorities could not refuse to exercise their powers by declining to give protection to the employer. The learned single Judge held that "the Constitution of India and various statutes have accepted the principle of acquisition and

holding of private property and the police authorities are enjoined to safeguard these interests. It is futile for the State and the Police Authorities to submit that protection cannot be given to the citizen unless public peace and order is threatened." In these circumstances the learned single Judge issued a Writ of Mandamus directing the Police Authorities to give adequate police protection to enable the petitioners to enter the factory premises and to remove finished goods and machinery therefrom subject to the petitioner furnishing security as directed by the Court.

7. We are of the view that in the facts and circumstances of the present case, the petitioners have made out a strong case for the grant of police protection in order to enforce and implement the orders passed by the Industrial Court. The respondent union was given an opportunity to appear before this Court and make its submissions. The union has chosen to remain absent. No litigating party can be allowed to take the law into its own hands. Orders passed by Courts have necessarily to be observed and duly complied with. A breach of an order passed by the Industrial or Labour Court is liable to incur the invocation of the contempt jurisdiction u/s 48 of the M.R.T.U. and P.U.L.P. Act, 1971. A party aggrieved by an order of a Court is entitled to seek its remedies for redressing its grievances. In the present case, the two orders passed by the industrial Court hold the field. The learned counsel appearing on behalf of the petitioner drew our attention to the fact that the respondent Union has challenged the order passed by the Industrial Court on December 7, 1999 in this Court and that notice before admission has been issued in the said writ petition. So long as the order passed by the Industrial Court subsists, the parties must abide by that order. The Tahsildar and the Police cannot adopt a partisan role and they are duty bound to ensure that the orders passed by the Industrial Court in the instant case are scrupulously adhered to. We leave it open to the respondent union its recourse to the remedies available to it to lawfully seek redressed against the orders of the Industrial Court. But a defence of judicial orders cannot be a substitute for a recourse to lawful remedies. The sanctity of judicial decisions must be observed by litigating parties and by administrative, as well as law enforcing machinery of the State. We, therefore, direct that Respondent Nos. 1 to 6 shall forthwith take necessary action to enforce due compliance and observance with the Orders passed by the Industrial Court on January 18, 1999 and December 7, 1999. These directions shall be subject to any further orders that may be passed by this Court or by the Industrial Court in modification of the orders dated January 18, 1999 and December 7, 1999. The Writ Petition stands disposed of accordingly with no order as to costs.