
(1999) 07 BOM CK 0028
In the Bombay High Court
Case No : O.O.C.J.W.P. No. 1866 of 1999

B.O.C. India Ltd.	Vs	APPELLANT
Indian Oxygen Employees Union		RESPONDENT

Date of Decision : 28-07-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 13
Industrial Disputes Act, 1947 — Section 11(3), 250

Citation : (2000) 1 LLJ 472

Hon'ble Judges : A.P. Shah, J

Bench : Single Bench

Advocate : M.M. Verma and Rajesh Gehani, for the Appellant; C.L. Dudhia and H.D. Buch, for the Respondent

Final Decision : Partly Allowed

Judgement

A.P. SHAH, J.—Rule.

2. Respondents waive service.

3. By consent petition is taken up for final hearing.

4. The subject matter of this petition under Article 226 of the Constitution of India is the order dated July 19, 1999 made by the Industrial Tribunal on the application U-8 in Reference (IT) No. 11 of 1999.

5. The application Exhibit U-8 came to be filed by the respondents in Reference (IT) No. 11 of 1999 pending before the Industrial Tribunal. The said reference u/s 25-O of the Industrial Disputes Act, 1947 is made to the Industrial Tribunal pursuant to the order passed by this Court on April 13, 1999.

6. During the pendency of the reference application U-8 has been filed wherein the union has prayed that the employer be directed to produce certain documents mentioned in item Nos. 1 to 11 of the said application. The employer resisted the said application by filing a reply contending inter alia that the

application and discovery of documents sought by the union is too general in nature and the documents of which inspection is sought have no bearing on the matters in issue and as such inspection should not be allowed. It was also contended that the economic unavailability of Ghatkopar unit is the subject matter of the reference and the various documents, letters, production, sales, customers and other information pertaining to the other units, are not at all relevant for the purpose of deciding the reference.

7. The Tribunal by the impugned order directed the employer to produce documents mentioned at item Nos. 1, 2, 3, 4, 5, 6, 10 and 11 and the balance sheet and profit and loss account from 1995 to 1998 of the Ghatkopar unit within a period of one week.

8. Mr. Verma learned counsel appearing for the petitioner submitted a roving and fishing enquiry should not be permitted when the issues are confined to only the economic unavailability of the unit at Ghatkopar. Mr. Verma submitted that the Tribunal has committed an error in holding that the provisions of Order 11 Rule 13 of the C.P.C. are not applicable to the adjudication proceedings under the Industrial Disputes Act in respect of inspection and production of documents. Mr. Verma drew my attention to Sub-section (3) of Section 11 which provides that the Tribunal shall have the same powers as are vested on the Civil Court under the CPC pertaining to compelling of production of documents and materials objects. He drew my attention to the Division Bench decision of this Court reported in *The 20Th Century-fox Corp. (India) (P.) Ltd. Vs. F.H. Lala and Others*, . He also referred to a decision of the single Judge in *U.B.S. Publishers and Distributors Ltd. v. Industrial Workers Union and Anr.* reported in 1997 I CLR 1155.

9. At the outset it is apparent that the Tribunal was not right in observing that the provisions of Order 11 are not attracted to the adjudication proceedings by the Industrial Tribunal is not correct in *20th Century Fox Co. (India) Pvt. Ltd. (supra)*, the Division Bench after surveying the relevant provision of the Industrial Disputes Act and the Rules framed thereunder and the provisions of the CPC as well as various judgments, ruled that a party to a litigation cannot be permitted to embark on a fishing and roving enquiry in the hope that some material will come to hand on the basis of which he can set out his case. Further the Division Bench cautioned that in appropriate case if the material is necessary the Tribunal can order production of relevant documents for the purposes of adjudication but before that can be done, it would be the duty of the party asking the production of documents to make out a case why it would be necessary for certain documents to be produced. Similar is the view taken by the single Judge in the aforesaid *UBS Publishers and Distributors Ltd.*, 's case (*supra*).

10. Reverting to the merits of the case Mr. Verma appearing for the petitioner very fairly stated that he does not wish to press the challenge in respect of item Nos. 1, 2 and 11. As regards item No. 2 Mr. Verma pointed out that product-wise sale figures for the period 1995 onwards are given in the company's application

u/s 25-O. He states that the sale figures for the period 1992-1995 shall be furnished to the union as per the order of the Tribunal.

11. At item Nos. 3 and 4 the union has demanded names and locations of the customers of the company from the year 1992 to 1999 and sales summary unit-wise giving details product wise, quantity wise and sales value in respect of company's products at Ghatkopar factory. It seems that the company has contended that it has shifted the production, manufacture and sales and supply to the third party contractors at Khapoli, New Bombay and Thane to be nearer to the customers. In order to meet this contention the union has demanded the particulars regarding the names and location of customers. It has been brought to my notice by Mr. Verma that there are more than 600 customers and it is virtually impossible for the company to give figures of sales of all the customers. Instead Mr. Verma has agreed to give inspection of the relevant record to the union. This is acceptable to Mr. Dudhia appearing for the union.

12. As far as item No. 5 is concerned Mr. Verma agreed to give the particulars of major items of modernisation and the amount spent for such modernisation at Ghatkopar unit. However; I do not see any justification for the demand of such particulars in respect of other units of the petitioner company. Similarly I do not see any justification for demand of audited profit and loss accounts in respect of the other units of the petitioner company as per item No. 6. The union cannot be permitted to embark upon a fishing and roving inquiry with the hope that in such inquiry some material may emerge which may ultimately help the union to set out its case. Item No. 10 pertains to the information relating to number of officers and emoluments paid to them by way of salaries, allowances, perquisites paid in cash and kind under different heads for each of the years from 1991 to 1998 employed at Ghatkopar factory and each of the other units of the company as well as third party contractors. In my opinion this information is also not relevant for the purpose of determination of the application u/s 25-O. The Tribunal has not assigned any reason for ordering the company to furnish such information. Therefore prayer in respect of Item Nos. 5, 6 and 10 cannot be accepted.

13. In the result, writ petition is partly allowed. The petitioner company is directed to supply the relevant documents and information and also to grant inspection of the relevant record pertaining to items 3 and 4 within a fortnight from today. Mr. Verma assures the Court that the office bearers of the Union, who shall not exceed three in number along with their Advocate, are free to take inspection of the relevant documents during the working hours in the company's premises.

14. Time to dispose of the Reference is extended upto October 15, 1999.

15. Parties and the Industrial Tribunal to act on the ordinary copy of this order duly authenticated by the Court Associate.