

(2008) 09 BOM CK 0043

In the Bombay High Court

Case No : O.O.C.J. Notice of Motion No. 79 of 2008 in Writ Petition No. 2659 of 2005

Britannia Industries Ltd.

APPELLANT

Vs

Maharashtra General Kamgar Union and Another

RESPONDENT

Date of Decision : 16-09-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B, 25O(6)

Citation : (2008) 1 ALLMR 126 : (2009) 122 FLR 800 : (2009) 2 LLJ 555

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : C.U. Singh and P.M. Palshikar, for the Appellant; Anand Grover and Susan Abraham, instructed by Prakash Mahadik, for the Respondent

Judgement

S.A. Bobde, J.—Heard learned Counsel for the parties.

2. This Notice of Motion is taken up by the respondent No. 1 - Union asking for payment of full last drawn wages u/s 17B of the Industrial Disputes Act. The Union is a respondent to a petition filed by the employer against the Order of Industrial Court refusing permission for closing down a Unit of the employer - Britannia Industries Ltd.

3. Rule was issued on the petition in February 2006. It was made returnable in 2nd week of June, 2006. Pending the petition, parties agreed to Minutes of Order dated February 13, 2006. An aspect of the Minutes of order which is significant to this Notice of Motion is that the workmen were to be paid 50% of the last drawn wages from the period beginning the month following the month for which he was paid.

4. The writ petition was taken up for final hearing but a question arising therefrom has been referred for decision to a Larger Bench. In view of the further anticipated delay in the hearing of the writ petition and having regard to an order of this Court dated January 16, 2008 permitting that the notice of

motion may be moved if the matter does not reach for hearing within a reasonable time, the workmen shall move the present application.

5. In short, the contention on behalf of the workmen is that they are entitled to full last drawn wages u/s 17B of the Industrial Disputes Act, which reads as follows:

17B. Payment of full wages to workman pending proceedings in higher Courts.- Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this Section for such period or part, as the case may be.

6. Mr. Singh, learned Counsel for the petitioner strongly contended that the Minutes of Order were arrived at after negotiations and signed by consent of parties and there is no reason to alter the circumstances ordered by the Minutes in the absence of any change. This contention is not acceptable in view of the order of this Court dated January 16, 2008 in which this Court specifically granted permission to renew the prayer in this Notice of Motion being falter some time in the event the writ petition does not reach for hearing within a reasonable time. It must also be noticed that what was submitted by the parties to this Court for the purpose situation were not Consent Terms but Minutes of Order. The learned Counsel for the petitioner-employer is not entirely accurate in the submissions that the interim arrangement was by consent, vide a Judgment of the Supreme Court *Speed Ways Picture Pvt. Ltd. and Another Vs. Union of India (UOI) and Another*, . Thus, in the circumstances, the Notice of Motion is eligible for being considered on merits since the matter has not been heard as contemplated by the parties and having regard to mandate of Section 17B of the Industrial Disputes Act.

7. Mr. Singh, learned Counsel for the petitioner employer submitted that when the Minutes were signed there were 280 workmen in question Out of those about 130-140 has since taken VRS However, at the time of entering the Minutes all the workmen took advantage of the negotiations and therefore the petitioner agreed that they need not file affidavits that they were not gainfully employed, which is otherwise required of Section 17-B of the Act. According to the learned Counsel the workmen were thus relieved of filing affidavit that they were not

employee and yet became entitled to get 50% of the wages. Now, according to the petitioner they would not be entitled to make a prayer in the alternative.

8. There is no merit in this contention. It must be noted that though some workmen later on have accepted VRS, which was offered by the petitioner-employer, the remaining workmen have actually filed affidavits that they have not obtained any gainful employment elsewhere. These affidavits have not been rebutted. Thus, the prerequisites of Section 17B have been complied with. It is also clear that there is no stay to the effect and operation of the order of the Industrial Court and it must be taken that Section 25O(6) applies with full effect. Section 25O(6) reads as follows:

25O. Procedure for closing down an undertaking:

(1)....

(2)....

(3)....

(4)...

(5)....

(6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the, undertaking had not been closed down.

9. In the circumstances, there is no reason why the Notice of Motion should not be allowed. The Notice of Motion is in the circumstances allowed in terms of prayer clause (a), which reads as follows:

(a) Pending hearing and final disposal of the present petition, the order dated February 13, 2006 passed in the present petition be modified and for further order directing the petitioner to pay the workmen, whose names are listed at Exhibit "A" to the affidavit in support of this Notice of Motion, wages in accordance with the provisions Of Section 17B of the Industrial Disputes Act as per the impugned Award dated August 12, 2005 of the Industrial Tribunal;