

(1987) 08 BOM CK 0060

In the Bombay High Court

Case No : Writ Petition No. 1391 of 1987 with Miscellaneous Civil Application No. 63 of 1987, Arising out of W.P. No. 1178 of 1987

Chandrapur Zilla Cement Kamgar Sangh and Naresh Puglia
and Others

APPELLANT

Vs

Manikgarh Cement

RESPONDENT

Date of Decision : 26-08-1987

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 25, 28, 30

Citation : (1988) 1 BomCR 72

Hon'ble Judges : M.M. Qazi, J

Bench : Single Bench

Advocate : B.M. Khan, for the Appellant; V.R. Manohar and R.B. Puranik, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Qazi, J.—Both the petitions are being disposed of by this judgment since the point involved is common.

2. The petitioner is a Union of workers registered under the provisions of the Indian Trade Unions Act, 1926, and the respondent, is a Company duly incorporated under the provisions of the Indian Companies Act. 1950. It is an industry which is engaged in manufacture of cement. According to the petitioner, since the respondent did not implement the Award, dispute arose and notice dated 20th April, 1987, of the strike was given. The strike was to commence from 8-5-1987. The respondent made a reference u/s 25 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act. 1971. (for short the Act) before the 4th Labour Court, Nagpur on 4-5-1987 for a declaration that the strike resorted to by the petitioner Union was illegal. There is no dispute that the reference is still pending.

2-A. The respondent filed complaint (ULPN) No. 305 of 1987 before the Industrial

Court, Nagpur (Shri S.V. Vaze) against the petitioner and three others u/s 28 of the Act, for a declaration that the strike which was to commence on 8-5-1987 and which had been advanced instigated and actively supported by the Union had to be deemed an illegal one, firstly because it was commenced within fourteen days of the date of strike notice, and secondly because of the substituting settlement. The respondent contended that by advising and instigating such as strike and inducing the workers to adopt violent means to pressurise the management, the Union had been indulging in unfair labour practices covered by items 1 and 5 of Schedules III of the Act. The respondent sought for a declaration likewise and direction to the Union and its office bearers to cases and desist therefore. It also for an interim relief in terms of section 30(2) of the Act. The Industrial Court vide order dated 25-5-1987 granted interim relief. The operative part (Para 11) of the order is reproduces below :---

"In the result, the application is allowed and order passed by this Court earlier on this application is confirmed and in reiteration is directed that the respondents shall cease and desist from advising, supporting and instigating the striking workers in strikes matter during the pendency of the complaint filled. Though it is left to the respondents to decide the mode and manner for complying with the direction given, still with a view to obviate any controversy in that behalf and any proceeding arising there from, it is being laid down that issuing of a written communication in that behalf by respondents addressed to the striking workers and publication thereof at the notice board of the Union office and notice as a compliance with the direction given."

The aforesaid order was challenged by the petitioner before this Court Writ Petition No. 1178 of 1987 decided on 12-6-1987. This Court confirmed the above order of the State Industrial Court with little modification.

3. In view of the strike by the petitioner, the respondents wanted to make fresh recruitment with a view to keep the Plant going. The petitioner, therefore, filed a company u/s 28 read with Item 4(b) of Schedule II and Item 8 of Schedule IV of the Act, praying that the respondent be restrained from making requirement till the time the strike was declared illegal. The petitioner contended that the act of the respondent in making requirement prior to seeking the declaration of the strike as illegal amounts to unfair labour practice falling within the mischief of Item 8 in Schedule IV of the Act. The petitioner simultaneously filed an application in terms of section 30(2) of the Act, praying for an interim relief that the respondent be restrained from making fresh recruitment during the pendency of the complaint or till the time the strike was declared illegal. The respondent contested this application. According to it, the parties had entered into a settlement in terms of section 2(p) of the Industrial Disputes Act, on 30th December, 1986. According to it, the petitioner had agreed not to make any demand involving financial implications for a period of three years. In short, the contention of the respondent was that the petitioner has resorted to strike notwithstanding the settlement which was solemnly reached between the parties.

It has also been contended on behalf of the respondent that some of the demands which are being raised having already been covered under the settlement and therefore the strike is prima facie illegal. According to it, it needed skeleton strength of the workers for maintenance of the plant and machinery and, therefore, it was necessary to make appointment of some persons purely on a temporary basis. The State Industrial Court found that the notice of strike given by the petitioners was prima facie illegal and in view of this, it refused to grant the interim relief to the petitioner, and hence the present petition.

4. Mr. Khan vehemently contended that the reference u/s 25(1) of the Act filed by the respondent for a declaration that the strike was illegal, is still pending. Relying on section 25(5) he submitted that even if the strike is declared illegal under section, it will be open to the petitioner to withdraw the strike within 48 hours of such declaration and once it is withdrawn, the strike shall not be illegal for the purposes of this Act. In view of this Mr. Khan submitted that the State Industrial Court had no jurisdiction to examine the issue as to whether the strike call given by the petitioner was legal or not. In my view there is obvious fallacy in this argument. Sub-section (5) of section 25 of the Act reads thus ---

"Where any strike or lock out declared to be illegal under this section is withdrawn within 48 hours of such declaration, such a strike or lock out shall not, for the purposes of this Act, be deemed to be illegal under this Act."

In my view, the strike which is otherwise declared illegal under this section shall be deemed to be not illegal for the purposes of this Act if the same is withdrawn within 48 hours of the declaration, because of the fiction created by the Legislature. The words "under the section" are important and significant, which shows that only such strikes shall be deemed to be not illegal which are declared illegal under this section if the strike is withdrawn within 48 hours. Therefore, the fiction operates only with reference to the strike which is declared illegal u/s 25 of the Act. This, in my view, cannot debar the State Industrial Court while examining the complaint u/s 28 of the Act in order to find out whether the act complained of really amounts to unfair labour practice. Sub-section (7) of section 28 reads thus ---

"The decision of the Court, which shall be in writing, shall be in the form of an order. The order of the Court shall be final and shall not be called in question in any civil or Criminal Court."

5. Section 30 of the Act deals with powers of the Industrial Court to grant such reliefs as may, in the opinion of the Court, be necessary to effectuate the policy of the Act. Sub-section (2) of section 30 empowers the Court to pass such interim order as it deems just and proper pending final decision. There is no dispute that the impugned order is passed by the State Industrial Court in pursuance of its power under sub-section (2) of section 30 of the Act. In other words the impugned order is passed only pending the final decision of the complaint u/s 28 of the Act. While passing the impugned order, the Court had to

examine whether prima facie there was substance in the complaint or not. While examining this, naturally the crucial question which fell for consideration was whether the strike call given by the petitioner Union was legal or not. Schedule IV deals with general unfair labour practices on the part of the employers. Item 8 in the said schedule reads as under---

"To recruit employees during a strike which is not an illegal strike".

6. The case of the petitioner Union in the complaint is that the strike call given by it is not an illegal one, and, therefore, the respondent was not entitled to recruit employees during such a strike, and since it is recruiting the employees, this section of the respondent would amount to unfair labour practice. According to Mr. Khan, since the reference u/s 25 is still pending before the Labour Court, the State Industrial Court cannot consider the question as to whether the strike is legal or not. In other words according to him, the State Industrial Court must presume that the strike is legal till it is declared illegal by the Labour Court u/s 25 of the Act. According to him, if the State Industrial Court is allowed to consider this issue, it would lead to two conflicting decisions by two different Authorities which cannot be the intention of the Legislature. In my opinion, there is no substance in this submission. The State Industrial Court has got to, prima facie, find out as to whether the strike is legal or not. In the absence of any declaration by the Labour Court u/s 25 of the Act, the State Industrial Court cannot take it for granted that the strike is legal. Whether to grant interim relief or not is a discretion of the Court and the same has to be exercised judicially. While exercising the discretion the Court has got to examine the complaint on merits in order to find out. Prima facie, whether there is substance in the complaint. If the argument of Mr. Khan is accepted and taken to its logical end, it would mean that the State Industrial Court has no jurisdiction even to examine the case on merits prima facie. Such an approach, in my opinion, would be contrary to all the well-known principles governing the issue of granting interim relief.

7. I have already shown above that the State Industrial Court has already found on earlier occasion vide order dated 5-5-1987 that some of the demands raised by the petitioner are covered by the settlement dated 30-12-1986 and, therefore, prima facie, there was no justification for the petitioner to give a strike call. This order has been confirmed by this Court 12-6-1987 with little modification. Though a review petition has been filed against that order, but in view of the reasons stated above, I see no reason to review the order dated 12-6-1986. The review petition is accordingly dismissed.

8. The trial Court has discussed all the aspects of the matter exhaustively and has also discussed the various decisions which were cited before it. I see no reason to take a different view from the one which has already been taken by the State Industrial Court. The petition without substance and the same is dismissed. Rule is discharged.