
(2001) 11 BOM CK 0036
In the Bombay High Court
Case No : O.O.C.J. W.P. No. 2056 of 1997

Cipla Employees Union

APPELLANT

Vs

Cipla Limited and Others

RESPONDENT

Date of Decision : 09-11-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 24(2), 25(5)

Citation : (2002) 93 FLR 960 : (2002) 2 LLJ 393

Hon'ble Judges : P.V. Kakade, J

Bench : Single Bench

Advocate : S.J. Deshmukh, for the Appellant; N.M. Ganguli, K.G. Poojari and S.K. Cooper, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Kakade, J.—The petitioner has preferred this writ petition against the order passed by the Member of the Industrial Court, Mumbai, dismissing its complaint (ULP) No. 709 of 1995 u/s 28 read with items 1(b), 5 and 6 of Schedule II and Items 2, 4 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 against respondent No. 1.

2. I have heard the learned counsel for both the sides. Perused the record, including the affidavits filed by the parties in support of their respective contentions.

3. The facts giving rise to the dispute, in brief, are thus;

"The petitioner is a trade union registered under the Trade Unions Act, 1926 and respondent No. 1 is a company formulated under the provisions of the Companies Act, and is engaged in the business of the manufacture of pharmaceutical products in its factories situate at Mumbai. Two employees working at Vikhroli factory of respondent No. 1 observed their scheduled lunch

time, though it appeared that they were asked by their supervisor to observe some different lunch time. After the said employees returned from their lunch time, they were not allowed to go to their respective places of work. When the secretary of the petitioner enquired about it and came to know about this fact, he contacted the supervisor and enquired about the incident. According to the petitioner, there was no provocation either from the workmen or from the union. However, the management of respondent No. 1 declared suspension of operation on that day and in the evening displayed the notice dated May 9, 1995 stating that unless and until each and every workman signed the individual undertaking in the form prescribed and set out in the notice, the workmen would not be allowed to resume their duties. Thereafter the petitioner filed Complaint (ULP) No.492 of 1995 before the Industrial Court, Mumbai, u/s 28 of the MRTU & PULP Act, alleging unfair labour practice, which is still pending. As against this, respondent No. 1 filed Complaint (ULP) No. 493 of 1995 alleging that the employees resorted to strike at the relevant time, which complaint is also pending. At the time of hearing of the interim relief application in the said complaint, working arrangement was arrived at between the parties to the effect that the petitioner will give an undertaking and that respondent No. 1 company will not insist on the individual undertaking. Thereafter the work in the factory resumed from May 22, 1995."

In the meantime, shut down period of the factory was going on and the normal work resumed on May 29, 1995. However, at that time the petitioner demanded that the management should pay full wages to the employees during the extended period of shut down, but the Industrial Court rejected the said application of the petitioner and directed respondent No. 1 to deposit in Court full wages for the entire period of the extended shut down. Thereafter on May 25, 1995, the petitioner-union served a notice of strike on respondent No. 1 of the intention to go on strike with effect from June 9, 1995 or any day thereafter, however, the workmen did not go on strike. In response to this, Respondent No. 1 gave notice dated June 19, 1995 of lock-out, expressing its intention to effect lock-out from July 4, 1995 containing various reasons in the notice of lockout. Thereafter on June 22, 1995, the petitioner served upon respondent No. 1 a fresh notice of strike. The petitioner also replied the notice of lock-out issued by Respondent No. 1. On July 1, 1995, the petitioner withdrew the notice of strike and at that time on June 30, 1995, Respondent No. 1 displayed notice of suspension of operation with effect from July 1, 1995. Thereupon the petitioner filed complaint u/s 28 of the MRTU & PULP Act on July 5, 1995, which is the present Complaint (ULP) No. 709 of 1995.

4. The learned member of the Industrial Court, Mumbai, heard both the sides and came to the conclusion that the petitioner had failed to establish the lock-out declared by the company was illegal and improper and, therefore, the workers were entitled to wages from July 4, 1995 onwards. Consequently, the complaint filed under the said provisions came to be rejected on the ground that the petitioner had failed to establish that respondent No. 1 was indulging in unfair

labour practice as alleged.

5. At the outset, it may be noted that the impugned order is challenged on behalf of the petitioner on the basis of a narrow issue to the effect that the notice of lock-out contemplated u/s 24(2) of MRTU & PULP Act issued by respondent No. 1, which accompanied the mandatory statement of reasons, was based on non-existent reasons and, therefore, the notice itself was rendered illegal. Mr. Deshmukh, the learned counsel for the petitioner submitted that the notice of lock-out is rendered bad because the reasons given therein are not in existence and once the notice is rendered bad, the consequent action is also rendered bad in law. This argument was sought to be countered by Mr. Cooper, the learned counsel for respondent No. 1, with argument that reasons are shown to be in existence and this Court would not be justified in going into the element of sufficiency of reasons for issuance of the notice of lock-out. It was also urged on behalf of respondent No. 1 that the lock-out itself was withdrawn prior to the stipulated time and, therefore, there is no question of rendering the lock-out illegal by virtue of Section 25 of the MRTU & PULP Act. In this regard, it may be noted that MRTU & PULP Act is initially meant for prevention of unfair labour practice. The statement of objects shows that it is for declaring certain strikes and lock-outs as illegal, to define and provide for prevention of certain unfair labour practices. If a lock-out is imposed not complying with the provisions of Section 24(2) of the said Act, then it can be called as illegal in nature. If it is shown by the petitioner that it is illegal in nature, under Rule 23 of the MRTU & PULP Rules, 1975 notice of lock-out is required to be given in Form "J". The notice is required to be accompanied by an annexure containing the statement of reasons. Thus, it is not the non-compliance with the requirement of the above Clause (a) that makes the lock-out-illegal. Under the above Clause (a), lock-out would be rendered illegal if it is:

- (i) Commenced or continued without giving notice in the prescribed form; and
- (ii) or within 14 days of the giving of such notice.

The statement of reasons as required to be annexed to the notice so as to bring to the notice of the employees their actions to change their stand. The reasons are, therefore, integral part of the notice. It is therefore clear that the requirement of giving reasons is a requirement of Rule 23 which prescribed that a notice of lock-out should be in Form "J". It must therefore follow that a lock-out, in order that it is legal must be based on reasons which are relevant. Therefore, it is necessary that the reasons should not be irrelevant i. e. not relating to the industrial relationship or germane to the employer-employee relationship or non-existence or sham reasons.

6. Mr. Deshmukh, the learned counsel for the petitioner brought to my notice the statement of reasons annexed to the notice of lock-out and pointed out, by its contents that the reasons therein were either non-existent or totally false and sham in nature and, therefore, such reasons amounted to non-existent reasons

and consequently notice based upon such reasons is illegal. It was further urged that in order to prove the existence of the said reasons, respondent No. 1 examined its Security Officer, one Mr. Shete through whom the so-called reasons were sought to be proved. No doubt that the evidence of Mr. Shete shows that on each and every individual action he was not present at the site, but it is definitely seen from the record that report of every incident of episode mentioned in the statement of reasons was made to Mr. Shete on which basis the notice was formulated. The Division Bench of our High Court in its ruling in the case of *Modistone Limited Vs. Modistone Employees' Union and Another*, , has concluded that under the provisions of the MRTU & PULP Act, the Industrial Court:

- (a) Can decide whether the lock-out is legal or illegal i.e. whether it is in accordance with the provisions of the MRTU & PULP Act, 1971;
- (b) can decide whether the reasons stated in the notice of lock-out are non-existent or sham or irrelevant i.e. not germane to the employer-employee relationship or not relating to the industrial relationship;
- (c) however, it cannot go into the question of sufficiency or adequacy of reasons;
- (d) the Industrial Court cannot go into the question whether the lock-out is justified. This question can only be agitated before the appropriate Court under the provisions of the Industrial Disputes Act, 1947.

Therefore, in my view, this is what exactly has been done by the Industrial Court in this case while dismissing the complaint. It is now well established that the Industrial Court cannot go into the question of sufficiency or adequacy of the reasons as well as the question whether the lock-out is justified. No doubt, it can decide whether the reasons stated in the notice of lock-out are non-existent or sham or irrelevant. The Division Bench has clarified this aspect by stating that irrelevant means not germane to the employer- employee relationship and not relating to the industrial relationship. In the present case before us, in view of the available evidence on record, it cannot be said that the reasons given for the notice of lock-out are non-existent or sham. In other words, sufficiency or adequacy thereof may be disputed, however, the Industrial Court is forbidden to go into that aspect and, therefore, I am unable to accept the argument advanced by Mr. Deshmukh, the learned counsel on behalf of the petitioner in this regard.

7. The learned counsel for respondent No. 1 on the basis of the record available before him showed that the lock-out was withdrawn on December 28, 1996, which aspect shows that it was withdrawn prior to declaration as contemplated u/s 25 of the said Act and, hence, cannot be held to be illegal. The Division Bench of this Court in the case of *Hariganga Security Services Ltd. Vs. Member, Industrial Court, Maharashtra and others*, has held that Section 25 of the said Act, therefore, has to be considered as a part of the machinery for maintaining and promoting industrial peace. The provisions of Section 25 were designed evidently for the purpose of getting a declaration that the strike and lock-outs which were in contravention of the provisions of the Act are illegal and after such

declaration is made for affording an opportunity to the erring employer or the employees to rectify the error with the promise that thereupon the illegality attaching to the action already taken, would be removed. In this background Sub-section (5) of Section 25 is required to be considered. Therefore, applying the ratio of the said Division Bench ruling of our High Court, I am also of the view that the lock-out which was withdrawn prior to the declaration, would not be illegal as contemplated by Sub-section (5) of Section 25 of the said Act.

8. Then comes the question of propriety of interference by this Court under Article 226 of the Constitution of India. The findings of fact recorded by fact finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be and should not be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken. Therefore, taking into account all these aspects, I hold that it is not a fit case for this Court to interfere with the finding recorded by the Industrial Court, Mumbai.

9. In the result, the writ petition stands dismissed.