
(1986) 02 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 1411 of 1985

Harish Vijaykumar Khaitan and another

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 24-02-1986

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 10(3), 19(2), 9A

Citation : (1986) 2 BomCR 355 : (1986) 88 BOMLR 186 : (1986) 52 FLR 316 :
(1988) 1 LLJ 314 : (1987) MhLj 794

Hon'ble Judges : H.N. Kantharia, J

Bench : Single Bench

Judgement

1. By this Writ Petition under Article 226 of the Constitution of India the Petitioners challenge the order dated 13th February 1985 passed by the Government of Maharashtra u/s 10(3) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") prohibiting the continuance of the alleged lock-out resorted to by M/s. Avanti Development Company Limited. (Petitioner No. 2). Petitioner No. 1 Harish Vijaykumar Khaitan is a share-holder and the Managing Director of the Petitioner No. 2.

2. Respondent No. 1 is the State of Maharashtra. Respondent No. 2, the Association of Engineering Workers, is a registered Trade Union. It claims to represent the workmen of Petitioner No. 2 Company. Respondents Nos. 3 to 7 are the workmen employed by Petitioner No. 2 and they claim to represent all the workmen.

3. The facts on which the Petitioners based their writ petition are as under :-

Petitioner No. 2 was incorporated under Companies Act on 16th October 1981. It acquired John Baker Division (the present undertaking) from Warren Industrial Limited by an Agreement dated 27th April 1982. M/s. Warren Industrial Limited had purchased the said Unit from M/s. Killick Nixon Limited. Petitioner No. 2 manufactures engineer steel files and has a licensed capacity of 20,000 dozen

per month. The technology of the said undertaking is not up-to-date. According to the Petitioners, the previous owners viz. M/s. Killick Nixon Ltd. and Warren Industrial Limited did not find the working of the undertaking economically viable and, therefor, they had sold it out. The Petitioners acquired the unit with a hope that they would be able to make it economically viable. However, it has been continuously running at a loss. The Petitioners state that when they took over the Unit with liability in respect of employees for the past services under M/s. Warren Industrial Limited and M/s. Killick Nixon Limited in respect of gratuity and retrenchment compensation etc., there were about 300 employees working there.

4. It appears that even before the Petitioners took over the business, as stated above, the workmen were the members of Respondent No. 2. There was a settlement entered into in respect of the service conditions of the workmen between the previous management and Respondent No. 2. The said settlement was to expire on 31st December 1983 but before that Respondent No. 2 terminated the settlement and submitted a fresh character of demands by its letter dated 26th October 1983 and called upon the Petitioners to negotiate. It further appears that several meetings took place between the parties in order to settle the demands of the workmen between January 1984 and June 1984. However, no settlement could be worked out. It is alleged by the Petitioners that from end of April 1984 the workmen started resorting to various illegal and coercive tactics. They were requested not to do so by a notice dated 6th May 1984 but the workmen started agitation and forcibly entered the cabin of the General Manager and gheraoed him when police help was sought. The workmen were again asked not to resort to such activities by a notice dated 10th May 1984. The Petitioners further allege that the Personal Officer of Respondent No. 2 displayed a notice on 25th May 1984 advising the workers about increase in the production and to improve the working of the factory but the workmen gheraoed, insulted, abused and coerced him to remove the said notice. Petitioners' further grievance is that the workmen intensified illegal activities with effect from 1st June 1984 and resorted to deliberate and illegal go-slow. From time to time they were requested to desist from such activities and even disciplinary action was taken against four employees. It further appears that complaints and counter-complaints of unfair labour practices were filed by the parties in the Industrial Court. Such allegations and counter-allegations by and between the parties went on for long. Then the Petitioners issued a notice of lock-out dated 14th June 1984 in accordance with the provisions of Section 24(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, with effect from 29th June 1984. They thus resorted to lock-out effective from 29th June, 1984 vide their notice dated 26th June 1984.

5. Respondent No. 1 issued an order u/s 10(1)(d) of the Act on 13th February 1985 referring the charter of demands for adjudication to the Industrial Tribunal, Bombay and also passed another order on the same day u/s 10(3) of the Act (i.e. the impugned order) prohibiting the alleged lock-out resorted to by the Petitioners. Thereafter, Respondent No. 2 made an application for interim relief in

Unfair Labour Practice Complaint bearing No. 1032 of 1984 pending in the Industrial Court, Bombay that Petitioner No. 2 be directed to immediately lift the lock-out in accordance with the Order dated 13th February 1985 passed by Respondent No. 1 u/s 10(3) of the Act and pay wages to the workmen for the period from 13th February 1985 onwards. The said interim relief application was dismissed by the learned Member of the Industrial Court on 3rd May 1985. Therefore, Respondents Nos. 3 to 7 filed a writ petition bearing No. 1926 of 1985 in this Court on 6th May 1985 challenging the order of the Industrial Court and further sought a direction that Respondent No. 1 should prosecute Petitioner No. 2. The said writ petition was disposed of by a Division Bench consisting of my learned brother Dharmadhikari, J. and myself on 22nd July 1985. We passed the following order :-

"In view of the affidavit filed State it is clear that Government is taking appropriate steps in the matter. The Industrial Court is directed to hear and decide the main matters itself within four months from today. In view of this, Writ Petition allowed to be withdrawn with liberty of file fresh Petition, if necessary."

6. It further appears that the parties were trying to settle the disputes but could arrive at no settlement. Respondent No. 1 had, in the meanwhile, issued a show-causes notice dated 18th March 1985 calling upon petitioner No. 2 to show causes as to why they should not be prosecuted. Petitioner No. 2 submitted an explanation on 11th April 1985. It is the case of the Petitioners that the workmen did not give any undertaking as sought by Petitioner No. 2 by its notice dated 26th June 1984 till the end of May 1985 and that the factory has remained closed for over an year and their financial position has deteriorated so much that it was impossible to re-start the factory unless a substantial financial assistance is received from financial institutions. According to them, the suspension of manufacturing activities indulged in by them was not a lock out as defined u/s 2(1) of the Act and that the impugned order passed by Respondent No. 1 without hearing them and the subsequent decision to prosecute them were bad in law.

7. Then the Petitioners filed the present Petition on 22nd July, 1985 with prayers that the order dated 13th February 1985 passed by Respondent No. 1 u/s 10(3) of the Act (Exh. p) be quashed and set aside and Respondent No. 1 be directed not to prosecute them for alleged contravention of the said Order dated 13th February 1985.

8. This petition is resisted by all the Respondents. Thus, on behalf of Respondent No. 1, an affidavit is filed by Sakharam Govind Sarode, Desk Officer, contending that the Petitioners had backed out from negotiations in the matter of settlement between the parties and that the demands of the workmen were considered in conciliation and the Conciliation Officer filed a failure report on 27th January 1985. Thereafter Respondent No. 1 made a reference of the industrial dispute for adjudication to the Industrial Tribunal by an Order dated 13th February 1985 and prohibited continuance of lock-out by another order passed on the same day. He also contended that the Petitioners had made no grievance prior to the issuance

of prohibitory order, that before the said order was passed they ought to have been heard and that the Petitioners even served a notice of change on the workmen u/s 9A of the Act. He also contended that the workmen recorded on 11th March 1985 that they were not allow to resume duty although they were ready and willing to report back to work in pursuance of the prohibition of lock-out and that thereafter there were discussions before the Labour Commissioner again and in the meanwhile Respondent No. 1 called upon the petitioners to show cause as to why they should not be prosecuted for breach of order u/s 10(3) of the Act. A contention is also raised in this affidavit that the petitioners when they gave a reply to the show-cause notice on 11th April 1985 did not contend that they should have been heard before issuance of Order u/s 10(3) of the Act. A further contention was raised in this affidavit that it was only after the Division Bench of this Court (Dharmadhikari J. and myself) disposed of Writ Petition No. 1926 of 1985 that the Petitioners filed the present Petition which is nothing but an abuse of the process of law and that this Petition is barred by principles of constructive res judicata. Thus, according to Respondent No. 1, the Petitioners have not approached this Court with clean hands and that this Court should not grant them equitable relief under discretionary powers.

9. Returns were also field for and on behalf of Respondents Nos. 3 to 7 through Respondent No. 5, Hemchandra P. Deshpande, resisting the Petition. He also contended that the Petition is not maintainable in law and that the grievance of the Petitioners appears to be issuance of show-cause notice and direction given by this Court in Writ Petition No. 1926 of 1985. He then contended that the Petition was delayed and suffers from laches. According to him the activity of the Petitioners of suspending work amounted to illegal lock-out and that the steps taken by Respondent No. 1 were in accordance with law. He denied all the contentions of the Petitioners as to the adverse financial conditions of the Petitioners to reopen the factory. No returns were filed on behalf of Respondent No. 2.

10. At the hearing, Mr. Naphade, learned counsel appearing on behalf of the Petitioners raised three points for my consideration as under :-

(1) The action of the Petitioners of suspending the work is not a lock-out as defined u/s 2(1) of the Industrial Disputes Act, 1947 as the Petitioners merely resorted to suspension of manufacturing activities;

(11) Assuming, without admitting, that there is a lock-out, the alleged lock-out is not connected with the dispute relating to the general demands referred to the Industrial Tribunal for adjudication and, therefore, u/s 10(3) of the Industrial Disputes Act, 1947, the Government of Maharashtra has no jurisdiction or authority to prohibit lock-out;

(iii) The impugned Order of the Government of Maharashtra is bad in law as it is mala fide, arbitrary and in violation of the principles of natural justice.

11. As regards the first contention of Mr. Naphade that the suspension of

manufacturing activities by the Petitioners is not a lock-out as defined u/s 2(1) of the Act, all that I have to say is that I keep this question open as it involves disputed question of facts and especially because matters are pending in Industrial Court.

12. Regarding second contention of Mr. Naphade that the alleged lock-out is not connected with the dispute relating to the general demands, I am afraid, I am not able to persuade myself to agree with the submission of Mr. Naphade. From the exhaustive narration of the facts which I have made hereinabove it is more than clear that the lock-out, if it is, is very much connected with the dispute relating to the general demands of the employees which now stands referred to the Industrial Tribunal. Thus the earlier settlement between the workmen and the previous management was to expire in December 1983. Notice of termination of that settlement u/s 19(2) of the Act was given by the workmen on 26th October 1983 and new charter of demands was put up. The record further shows that discussions between the parties about the new charter of demands had taken place and even Petitioner No. 2 had at one stage called upon the workmen to submit a revised charter of demands which was submitted on 9th May 1984. There was discussion and Petitioner No. 2 demanded guaranteed increase in the net output. Thereafter there were allegations and counter-allegations of unfair labour practices alleged to have been committed by both sides and it was on 14th June 1984 that the management suspended the work and proposed a lock-out with effect from 29th June 1984. The workmen formed a Committee and approached the management and showed their readiness to give normal production. It also appears that meetings were arranged by Assistant Commissioner of Labour but Petitioner No. 1 avoided attending such meetings and thus Respondent No. 1 was left with no alternative but to refer the demands of the workmen for adjudication on 13th February 1985. It is also important to note that thereafter a notice of change u/s 9A of the Act was given by the management on 27th February 1985 for reducing the demands. This clearly shows that the management had demands against the workmen. The conclusion, therefore, is irresistible that there was nexus between the demands of the workmen and the alleged lock-out.

13. From the above discussion it is also clear that there is no substance in the submission of Mr. Naphade that the impugned order passed by Respondent No. 1 was arbitrary and made for collateral purpose. In fact, the impugned order was passed by Respondent No. 1 after taking into consideration all the relevant aspects of the matter and with full application of mind. Although the impugned order does not give the details of the reasons leading to the passing of the order, the facts and circumstances do disclose that the impugned order was not passed mechanically. Mr. Naphade submitted that the Government passed the impugned order to help out the workmen because the workmen failed to get any interim relief from the Industrial Court which, according to Mr. Naphade, was a mala fide act on the part of the Government. It is difficult to appreciate Mr. Naphade's contention as the record does not show that the Government had any reasons to

be partial to the workmen as against the management.

14. That takes us to considering the most important and crucial contention raised by Mr. Naphade that before passing the impugned order the Government should have given a reasonable opportunity of being heard to the Petitioners. Thus submission of the counsel is that the right to suspend the manufacturing activities which is alleged to be a lock-out by the Respondents, is a common law right and the power to prohibit the exercise of such a right should be used sparingly and bona fide. He further submitted that any restriction on the exercise of such common law right by a statute (in the instant case Section 10(3) of the Act) must be strictly construed and considered and that the Government held no discussions with the Petitioners nor disclosed any reasons in the impugned order as to why the Government thought it fit to issue such prohibitory order denying the Petitioners the exercise of their common law right. Mr. Naphade also submitted that while exercising power u/s 10(3) of the Act, the predominant factor must be the public purpose and at any rate the impugned order should not have been passed without affording a reasonable opportunity of being heard to the Petitioners because the impugned order visits the Petitioners with civil consequences. Mr. Naphade, therefore, very emphatically urged that in passing the impugned Order the Government violated principles of natural justice.

15. Before we proceed to consider whether principles of natural justice were violated by Respondent No. 1 in this case, it would be appropriate to state here the provisions of Section 10(3) of the Act which read as under :-

"10(3). Where an industrial dispute has been referred to a Board (Labour Court, Tribunal or National Tribunal) under this. Section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference."

16. Now, one of the salient provisions of the Industrial Disputes Act is to prevent illegal strikes and lock-outs. With a view to prevent illegal strikes or lock-outs in order to maintain industrial peace whenever the Government acts it acts administratively and in my opinion it would not be reasonable and prudent in such situation to issue show-cause notice and hear the concerned parties. It is difficult to appreciate that just because Government passes prohibitory order as the one under challenge now civil consequences may follow. In my judgment, therefore, it is not necessary for the Government to hear the parties before passing such an order. No principles of natural justice can be said to be violated in such matters.

17. Mr. Naphade relied upon two judgments of the Kerala High Court to emphasise that a hearing should be granted before an order u/s 10(3) of the Act is passed. Thus a single Judge of the Kerala High Court in case of A.K. Kallappa Chettiar and Sons Vs. State of Kerala and Others, held that an order u/s 10(3) of the Act requires a finding on facts and an adjudication thereon and that it is a quasi-judicial power and order thereunder cannot be passed without giving a

reasonable opportunity to all those who would be affected by the order to state and establish their case. The learned single Judge further held that an order u/s 10(3) involves serious consequences to the employer as non-compliance with such an order is illegal and is punishable with imprisonment or fine or both and, therefore, such an order cannot be passed without giving a reasonable opportunity to the person who would be affected by the order, to state and establish his case. While taking similar view, this judgment was relied upon by another single Judge of the Kerala High Court in case of Malayalam Plantations (India) Ltd. and Another Vs. Workmen of Kaliyar Estate and Others, .

18. However, as against such a view taken by the Kerala High Court, there is a ruling of Andhra Pradesh High Court in case of Eenadu Press Workers Union and Another Vs. Government of Andhra Pradesh and Another, . This is a judgment of a Division Bench as against the two judgments of the Kerala High Court of single Judge. In the case before the Andhra Pradesh High Court, the employees made certain demands on the management regarding payment of interim relief granted by the Wage Board for non-journalist employees of the newspaper industry. There was an agreement regarding payment of interim relief and the State Government referred the issue of wages and D.A. to the Tribunal for adjudication and an order u/s 10(3) was also passed. Meanwhile, three lady employees, all members of the Petitioner Union, were suspended for alleged distribution of pamphlets. The workmen went on a strike. The question was whether the order u/s 10(3) was valid and whether the reference of the dispute would preclude any strike by the employees on the question of suspension of women employees. It was held that the strike was in connection with the dispute referred, namely, dispute regarding claim for wages and D.A. and the Government was, therefore, entitled to prohibit the strike u/s 10(3). The Andhra Pradesh High Court further pointed out that while the suspension of the women employees was the immediate cause of the strike the main purpose of the strike was in connection with the dispute relating to the claim for wages and D.A. which alone remained to be settled after the agreement was reached regarding the interim relief. In this view of the matter, the Andhra Pradesh High Court held.

"It is not necessary that the Government should issue a show-cause notice to the parties before passing an order under S. 10(3) prohibiting strikes and lock-outs. It is true that the right to strike is a valuable right in the hands of the employees but at the same time it is well-settled it is not a fundamental right."

19. And then there is a judgment of the Karnataka High Court supporting the view taken by the Andhra Pradesh High Court. The judgment of the Karnataka High Court is in case of Mysore City Powerloom and General Workers' Association, Mysore v. State of Karnataka and another 1984 LabIC 1735 wherein it was held :-

"Where the Government suspended the strike of the registered trade union since the dispute, in connection with which the strike was resorted to, was referred to for the industrial adjudication, it would be within its powers u/s 10(3) and rules

of natural justice need not be complied with.

Having regard to the nature and purpose of the power conferred under sub-section (3) of Section 10 of the Act, by necessary implication the application of rules of natural justice stands excluded. The power conferred under the sub-section is such as would call for an immediate action, on the part of the Government in order to ensure industrial peace, of prohibiting a lock-out or strike, as the case may be when the dispute, in connection with which the lock out or strike was resorted to, had been referred by the appropriate Government for industrial adjudication. To insist on compliance with the Rule of audi alteram partem before passing an order under sub-section (3) of Section 10 is plainly contrary to the common sense of the situation and would make the provision lifeless, and would defeat the purpose of the provision."

20. With respect, I am unable to persuade myself to agree with the view taken by the Kerala High Court and I am in respectful agreement with the view taken by Andhra Pradesh High Court and the Karnataka High Court in the matter of interpretation of Section 10(3) of the Act. So long as our High Court is concerned, my learned brother Pendse. J. has also taken a view, in Writ Petition No. 1183 of 1985 decided on 12th February, 1986, that notice and hearing before an order is passed u/s 10(3) of the Act are not necessary.

21. It is also not possible to accept Mr. Naphade's contention that before the Petitioners are prosecuted, they should be heard. That is so because if the Petitioners are prosecuted in this case, they will have reasonable opportunity of being heard and put forward their case and defence at the trial.

22. Before parting with the judgment, let it be recorded here that in order to substantiate his contention that the impugned order as passed by Respondent No. 1 was bad in law as it was mala fide arbitrary and in violation of principles of natural justice, Mr. Naphade took me through various judgments of the Supreme Court and different High Courts. These judgments are in cases of State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, Kishan Chand Arora Vs. Commissioner of Police, Calcutta, , A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , Papanasam Fishermen Co-op. Society Ltd. and Another Vs. The Collector of Thanjavur and Others, , Jose Kuttiyani and Others Vs. The Registrar of Co-operative Societies, Kerala, Trivandrum and Others, , Jiwat Bai and Sons Vs. G.C. Batra etc., , Nandlal Khodidas Barot Vs. Bar Council of Gujarat and Others, , Yesho Nathu Mahajan and Another Vs. The State of Maharashtra and Others, , Madhya Pradesh Industries Ltd. Vs. The Income Tax Officer, Nagpur, , Balwant Singh and Others Vs. State of Bihar, , Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , Rohtas Industries Vs. S.D. Agarwal and Others, and Swadeshi Cotton Mills Vs. Union of India (UOI), . I do not think it is necessary to deal with these judgments as, regard being had to the facts and circumstances of the case and the well settled law on the point, I am of the view

that the impugned order is neither mala fide nor arbitrary nor passed in violation of principles of natural justice.

23. In this view of the matter, the Writ Petition fails and is dismissed. Rule is accordingly discharged with costs.