

(2012) 03 BOM CK 0028

In the Bombay High Court

Case No : Appellate Side Criminal Application No. 264 of 2011

I.H. Mehta

APPELLANT

Vs

Ashok Bhargav Jadhav and Others

RESPONDENT

Date of Decision : 09-03-2012

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 106, 3
Criminal Procedure Code, 1973 (CrPC) — Section 482
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 30, 48

Citation : (2013) ALLMR(Cri) 530 : (2012) 134 FLR 1088

Hon'ble Judges : R.C. Chavan, J

Bench : Single Bench

Advocate : A.V. Bukhari assisted with Avinash Jalisatgi and R.B. Sawant, for the Appellant; Arshad Shaikh for Respondent No. 1 and Y.M. Nakhwa, Additional Public Prosecutor for the State, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Chavan, J.—This application u/s 482 of the Criminal Procedure Code is taken up for final hearing at the admission stage by consent of the parties.

The application questions the revisional order of the learned President, Industrial Court, Mumbai, dismissing the applicants revision application against the order passed by the learned Judge, Labour Court, Mumbai, dated 4.11.2008, holding that there was sufficient ground for proceeding against respondent No. 1- Company and accused No. 4, the present applicant.

The case has a chequered history. Complainant Ashok Jadhav was one of the 75 or so employees who had refused to accept VRS from the mill where they were employed, namely, Standard Industries Limited. Since the Standard Industries Limited came to a close, the employees who did not opt for VRS were shifted to another establishment at Sewree. Naturally, instead of providing work to the employees in three shifts, only one shift was operated and the facilities also got

proportionately reduced. The main grievance, however, is that the employees were not paid their wages at proper time. There was always a delay in payment of wages. A complaint had been filed by the complainant and others against the mill. A learned Member of the Industrial Court on 14.12.2000 directed respondent No. 1, i.e., Standard Industries Limited not to alter the service conditions of the complainant prejudicially without following the due process of law till further orders. It is this order which was allegedly breached by the employer as well as its Chairman, Managing Director, the present applicant, who was the General Manager and one Administrative Manager. Against them a complaint was filed by respondent Ashok Jadhav for offence punishable u/s 48 of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (for short, the MRTU & PULP Act). It seems that process was ordered to be issued by the learned Judge, Labour Court. This order was challenged before the Industrial Court by the present applicant by filing Revision Application No. 19 of 2001. This was allowed and the order of the Labour Court was set aside directing the Labour Court to apply its mind afresh to the evidence on the record and to pass a reasoned order as against the present applicant. The Chairman of the company also filed another Revision Application bearing No. 21 of 2001 and the Managing Director of the Company Shri K.J. Pardiwal too filed another Revision Application bearing No. 22 of 2001. These revision applications were allowed. The order directing issuance of process against them was set aside. The employer Standard Industries Limited filed Revision Application No. 52 of 2005 which was allowed by Order dated 20.6.2006 whereby the order directing issuance of process was set aside and the learned Judge, Labour Court was directed to apply his mind afresh to the evidence on the record and to pass necessary orders. It appears that Shri D.M. Gohil, Administrative Manager, also filed a revision and had succeeded in getting the order directing issuance of process against him quashed.

2. Accordingly, the learned Judge, Labour Court seems to have applied his mind afresh and passed the order dated 4.11.2008 directing issuance of process against the present applicant and the employer Standard Industries Limited. The order dated 4.11.2008 was challenged by the applicant before the Industrial Court. The learned President of the Industrial Court dismissed the revision by his order dated 7.1.2011. Aggrieved thereby, the applicant is before this Court.

3. I have heard the learned Counsel for the applicant and the learned Counsel for the respondent /original complainant. The contention of the learned Counsel for the applicant that once the order directing issuance of process was set aside, it was not open for the learned Judge, Labour Court to again issue process, has to be rejected because it is not that the order was quashed or set aside by the learned Member, Industrial Court because it was meritless, but because the learned Member found that the matter required a fresh consideration. Therefore, it is not that upon the order being set aside, the learned Judge of the Labour Court was reviewing or recalling his own order. In any case, it is not that the learned Judge, Labour Court had initially refused to issue process against the

applicant. It seems that he has been consistently holding that there was material to issue process against the applicant.

4. It was next submitted that the entire foundation of the complaint is shaky, in as much as it relies on breach of the order dated 14.12.2000, passed by the learned Member, Industrial Court directing the employer not to alter the service condition of the employees prejudicially without following the due process of law in a proceeding to which the applicant was not a party. The learned Counsel for the respondent sought to demonstrate that the applicant was in fact a party to the proceedings in which the order came to be passed by the learned Member, Industrial Court, Shri Mantri. However, he did not press this point and therefore not much need be made about it. Further discussion would have to proceed on the assumption that the applicant was not a party to the proceedings in which the order directing the employer not to alter the service conditions was passed.

5. From the compilation which is filed by the applicant himself, it cannot be said that at least insofar as payment of salaries is concerned, the employer had been scrupulous in paying the salaries at appropriate time. There had always been delays ranging from 15-20 days in paying the salaries. The other allegations in the complaint do not merit reference, since they are all not serious in nature. However, delay in payment of wages is a material deviation which may attract the charge of changing the conditions of service without giving a notice, as required under Clause 1 of Fourth Schedule of the Industrial Disputes Act, 1947.

6. The question is, whether the present applicant could be held responsible for this deviation or alteration in conditions of service to the prejudice of the employees in his capacity as General Manager of the company? The learned Counsel for the applicant submitted that since the applicant was not a party to the proceedings in which the Member, Industrial Court had issued those directions, he could not be held liable for the alleged prejudice and therefore could not be prosecuted. For this purpose, he relied on a judgment of this Court in ICICI Bank Ltd. and others v. State of Maharashtra and another. 2010 (3) CLR 725 As rightly pointed out by the learned Counsel for the respondent, the observations in the said judgment would have no bearing on the present case, since that was rendered in the context of provisions of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981, the provisions whereof are different from those in the MRTU & PULP Act. The learned Counsel for the applicant next relied on a judgment of this Court in Modi Xerox Ltd. and others v. Ms. Niloo Makhija and another. 2005 (4) LLN 513 In that case the Court had observed, on facts, that para 3 of the petition did not disclose any fact as such which could reveal the responsibility of the remaining petitioners for non-compliance of the order which came up for consideration in that petition. Therefore, the crucial question would be, whether the complaint discloses facts which could reveal complicity of the applicant in disobedience of the order passed by the Member, Industrial Court?

7. In Association of Engineering Workers Vs. The Super Tool Co. (P) Ltd. and

others, the question was of personal liability being fastened on the Directors to pay the wages. In this context, the Court had observed that there could not be, in the ordinary course, any question, where a limited company is the employer, of any Director or even the Chairman being personally directed to pay the wages of the workers. The Court had emphasised the words in the ordinary course explaining that there can be instances where monies and property had been siphoned off by the Directors in-charge of the company.

8. The learned Counsel for the applicant also relied on a judgment of a Division Bench of this Court in *M/s. C. Eduljee & Company Ltd. and another v. First Labour Court, Nagpur and others*, 1976 Lab. IC 1077 on the question as to who is an employer, as defined under the Bombay Industrial Relations Act, 1946. The Court held that only because the term employer under Clause (14) of section 3 of the BIR Act included any agent of an employer, it was not possible to extend the same meaning for the purpose of section 106 of the BIR Act, making him culpable under sub-section (1) or (2), though he was not a party under the earlier proceedings of adjudication. The Court had clarified that any person contemplated by the Act would be an employer who can be subjected to penal proceedings under the Act.

9. The learned Counsel for the respondent, on the other hand, principally relied on the provisions of sections 30 and 48 of the MRTU & PULP Act. He submitted that the provisions are so clear as to require no aid for interpreting them. He pointed out that section 30 enables a Court to hold that a person named in the complaint or any other person has engaged in or is engaging in unfair labour practice. However, here any other person has to be specified by the Court. He submitted that section 48 refers to any person who fails to comply with any order of the Court and therefore, according to the learned Counsel, it would be improper to hold that only the person who was a party to the proceedings in which the order disobeyed was passed could be held liable. According to the learned Counsel, the applicant was the General Manager of the company and therefore he was the person responsible for complying with the orders passed against the company. He pointed out that in the complaint it had been specifically averred in para 13 that the applicant was one of the four persons named to have failed to obey and honour the orders of the Court. Therefore, according to him, it would be improper to hold that the applicant had absolutely nothing to do with the implementation of the orders passed against the employer. He sought to rely on some judgments, namely, an unreported decision of a Division Bench of this Court, dated 12.9.2001, delivered in Writ Petition No. 1679 of 2001 (*Harinath R. Tiwari and others v. Standard Industries Ltd. and others*), *Satish J. Mehta and Others Vs. The State of Maharashtra*, and *M.R. Patil, Vice-chairman and Managing Dir., Mah. S.R.T. Corpn. and Another Vs. Member, Industrial Court, Amravati and Another*, which it may not be necessary to deal with at length. Since the order dated 14.12.2000 enjoined the employer/accused No. 1 company not to alter the service conditions of the complainant prejudicially, it would follow that the officer of the company who was in-charge of

running the company would have to execute or follow the directions in the order, and since the applicant was the General Manager, whether he was made a party to the proceedings or not, it would fall to his duties to ensure that the order was not breached. It cannot, therefore, be said that merely because the applicant was not a party to the proceedings before the Industrial Court when the order dated 14.12.2000 was passed, he could not be proceeded against u/s 48 of the MRTU & PULP Act. The application is, therefore, dismissed. At this stage, the learned Counsel for the applicant prays for stay of proceedings before the Trial Court for a period of eight weeks to enable the applicant to carry the matter further. Prayer granted. The proceedings before the Trial Court are stayed for a period of eight weeks.