
(1995) 06 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition No. 2622 of 1985

Ilac Ltd. and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-06-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25M

Citation : (1995) 71 FLR 476

Hon'ble Judges : S.H. Kapadia, J;M.L. Pendse, J

Bench : Division Bench

Judgement

S.H. Kapadia, J.—By this Writ Petition ILAC Limited (which is under B.I.F.R.) seeks to challenge order of Deputy Labour Commissioner dated 25.7.1985 refusing permission to the Company to lay-off the workmen working in the six factories of the Company.

2. The facts of the case are briefly required to be stated. The said Company owns six factories. The said Company manufactures P.V.C. Prior to 1983 the said factories purported to be closed on the ground of adverse import conditions. The Government refused to grant permission to close down the factories. Thereafter, on 29.5.1985, Company sought permission of the Labour Commissioner u/s (25-M) to lay-off the workmen with effect from 23.5.1985 on the ground of shortage of electricity supply. By impugned order dated 25.7.1985, the Deputy Labour Commissioner rejected the permission on the ground that there was no shortage of power; that the Company did not pay electricity bills of Tata Powers Company and despite opportunities being given to the Company by the Government and Tata Power Company, the bills were not paid and on account of non-payment of bills the Tata Power Company disconnected power supply and for this reason the provisions of Section 25-M of the Industrial Disputes Act are not attracted because there was no shortage of power supply and disconnection for non-payment of bills cannot be equated to shortage of power supply. The Deputy Labour Commissioner also rejected permission sought by the Company on the

ground that the Company applied for permission after illegally imposing lay-off. The lay-off was implemented from May 23, 1985 whereas permission was sought six days after imposing illegal lay-off. The Deputy Labour Commissioner, on facts, therefore, rejected the permission. To complete the chronology of events it may be mentioned that on the day when the impugned order was passed i.e. 25.7.1985 Petitioner applied for reference to the Tribunal. For the reasons given hereinabove the reference application was also rejected on the ground that there was no lay-off in the eyes of law. Thereafter, the record indicates that lockout was imposed by the Company on the ground of alleged violence resorted to by the workmen. Proceedings in that regard are pending in this Court. We do not wish to express any opinion regarding those proceedings. Finally, as stated above, the Company is under B.I.F.R. as of today. The result is that, till today the lay-off imposed in 1985 continues. No attempt has been made even to lift the lay off.

3. At the outset we would like to point out that in the present case in view of the above events we decided to proceed on the factual aspects of the case and on merits. We heard the learned counsel on merits.

4. As regards the challenge to the constitutional validity of the Act the learned counsel conceded that in view of the judgment of the Supreme Court this question does not service. The learned counsel also raised legal contentions with regard to findings of the Labour Commissioner on the question of the time limit to seek permission to lay-off. It is not necessary to go into the question of constitutional validity or into the question of limitation because we have proceeded to decide this matter squarely on the facts and circumstances of the case and accordingly we heard the learned advocate for the petitioner on the merits of the case.

5. The above events clearly indicate that right from 1981 attempts were made to close down the Company on one excuse or the other. Initially in 1981 closure was sought to be effected on the footing that imports of the raw material were not available. The closure permissions as refused. ILAC came on the scene in 1985. Thereafter, the Company laid-off the workmen on the ground that they were not in a position to pay electricity charges because Tata Power Company increased fuel adjustments charges. As correctly held by Deputy Commissioner of Labour, this is not a case of shortage of electricity supply as contemplated u/s 25M of the I.D. Act. It is the case of non-payment of electricity bills and, therefore, permission cannot be granted. Moreover, we find that in the entire petition the Company has pleaded that the increase in fuel adjustment charges by Tata Power Company which are statutory in nature were arbitrary. The Deputy Labour Commissioner was not concerned with the said challenge. In any event we find from the record that both the Government and Tata Power Company gave concession and opportunity to the Company to make the payment but the company failed to make the payment and in the circumstances disconnection took place. In fact, the entire exercise resorted to by the Company was malafide.

It was only to defeat the rights of the workmen. Non-payment of electricity charges cannot be the ground to effect lay-off. The malafide intentions of the Company are borne out also by letter dated 23.1.1985 i.e. much prior to effecting lockout in May 1985. This letter is addressed by the Company to Tata Power Company requesting Tata Company to disconnect the electricity supply. Further despite concessions being given both by the Government and Tata Company payments were not effected. This clearly shows that lay-off was only a subterfuge. In the above facts, there was no lay-off. In the circumstances, Deputy Commissioner of Labour was right in rejecting the permission. When the Company realised that the permission is refused, they applied for reference to the Industrial Tribunal on 25.7.1985 which has been rightly rejected by the Deputy Commissioner of Labour vide impugned order dated October 30, 1985 on the ground that he has considered the entire case on merits vide order dated 25.7.1985. Further it may be mentioned that normally this Court is inclined to grant references to the Government. However, in the present case we find that the Company has resorted to various tactics only to defeat the rights of the employees. Initially, they resorted to closure. Having failed, they resorted to lay-off, which, as stated hereinabove never existed in the eyes of law. Shortage of raw material or power supply in appropriate cases may result in lay-off but in the present case that is not so. In the present power supply. On the contrary, the Company brought about a situation by not paying the electricity charges and, thereafter, they have imposed the alleged lay-off. In the circumstances, the entire exercise is malafide action and in the circumstances we do not wish to interfere under Article 226 of the Constitution.

6. For the foregoing reasons, Writ Petition fails and the same is dismissed with costs.