

(2008) 11 BOM CK 0076

In the Bombay High Court

Case No : Writ Petition No's. 446 and 1481 of 2006

Indorama Synthetics India Ltd.

APPELLANT

Vs

Vijay and Others

RESPONDENT

Date of Decision : 20-11-2008

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 42(1)

Citation : (2010) 124 FLR 217

Hon'ble Judges : Vasanti A. Naik, J

Bench : Single Bench

Advocate : R.B. Puranik and A.V. Desai, for the Appellant; S.D. Thakur, for the Respondent

Final Decision : Dismissed

Judgement

Mrs. Vasanti A. Naik, J.—Both these petitions arise out of the order passed by the Industrial Court, Nagpur, in Complaint (ULPN) No. 245/2004 on 10th October, 2005, and since common questions arise for determination in these two writ petitions, they are heard together and are decided by this common judgment.

The Petitioner in Writ Petition No. 446/2006 is a limited Company dealing in manufacturing and sale of synthetic fibres and draws texturised yarn. The petitioner in Writ Petition No. 446/2006 is hereinafter referred to as the "Company" for the sake of brevity. The establishment of the Company consisted of three divisions, viz. Polyester Division, DTY Division and Spun Yarn Division. The Company had entered into a settlement with the elected representatives of the employees on 22.5.2002.

2. The petitioners in Writ Petition No. 1481/2006 are the elected representatives of the employees. They are hereinafter referred to as the "Representatives" for the sake of brevity. The representatives had filed the complaint before the Industrial Court, Nagpur, u/s 28 & 30 of the M.R.T.U. & P.U.L.P. Act, 1971. It was the case of the Representatives that the company had transferred their

employees from the Quality Control Department and by doing so had effected an illegal change without issuing a notice of change u/s 42(1) of the Bombay Industrial Relations Act. It was stated in the Complaint that the Company had planned to close down the Quality Control Department and grant the work to the employees of the contractors. It was stated in the complaint filed by the Representatives that the Quality Control Department was required to have 28 employees in terms of Settlement dated 22.5.2002. It was stated that the employees working in the Quality Control Department were being shifted and transferred to the POY Department, resulting in bringing out a drastic change in the manning and workload as specified in the Settlement dated 22.5.2002. According to the Representatives, the reduction in the manpower and workload was unilateral and without taking the representatives in confidence. It was also stated in the complaint that the action on the part of the company resulted in an illegal change as contemplated u/s 46 of the Act of 1946.

3. The Company filed its reply to the complaint filed by the Representatives. It was stated in the reply that the figure of 28 employees stated by the complainant related only to the Quality Control Department attached to the Polyester Division. It was stated that by the Settlement dated 22.5.2002, it was decided that 28 employees will work in the Quality Control Department and 3 other employees would be placed in Multi Skill Pool. It was denied by the Company that any manning and workload norms were fixed by the Settlement dated 22.5.2002 or that the Company was acting in contravention of the Settlement. It was specifically denied that the action of the Company resulted in an illegal change. The Company sought for the dismissal of the complaint with costs.

4. The Industrial Court, Nagpur, by the impugned order dated 10th October, 2005, partly allowed the complaint filed by the representatives and declared that the transfer of 5 employees viz., Chandrashekhar Ukarde, Mangesh Vidhale, Samir Bux, Harihar Rokade and Ravindra Kothe did not amount to unfair labour practice within the meaning of Item 9 of Schedule IV of the Act of 1971. The Industrial Court, Nagpur, however, held that the transfer of Chhotu Junghare and 19 others from the Quality Control Department to the Packing Department was illegal and amounted to unfair labour practice under Item 9 of Schedule IV of the Act of 1971, The transfer orders of 20 employees from the Quality Control Department were held to be illegal and were set aside. The Company has challenged the part of the order which declares that the Company has committed unfair labour practice by transferring the 20 employees from the Quality Control Department to the Packing Department and directs their redeployment in their Quality Control Department. Similarly, the Representatives have challenged that part of the impugned order which declares that the transfer of the 5 employees mentioned herein above did not amount to unfair labour practice.

5. Shri R.B. Puranik, learned Counsel for the Company submitted that the Industrial Court committed a serious error in allowing the complaint to the extent

of 20 employees in the Quality Control Department and declaring that the Company had committed an unfair labour practice under Item 9 of Schedule IV of the Act of 1971. According to the learned Counsel for the petitioner company, though in terms of Clause (7) of the Settlement dated 22.5.2002, the complement of manpower or the employees in the Quality Control Department was fixed, term No. 21 of the Settlement clearly empowered the Company to transfer the employees from one department to other according to the exigencies and need and an employee refusing to obey the transfer order was liable to be penalised in view of Clause No. 21 of the Settlement. It is submitted on behalf of the Company that Clause (7) & Clause (21) of the Settlement should be read together and the Industrial Court has also rightly read them together to dismiss the complaint in respect of some employees working in the Quality Control Department. It is stated on behalf of the Company that it is a settled principle of law that the settlement has to be read as whole and the clauses of the Settlement cannot be read in isolation. It is submitted on behalf of the petitioner that the complements in terms of Clause (7) is not fixed for all times to come and in view of Clause (21) of the Settlement, the Company was empowered to transfer the employees from one department to the other department. The learned Counsel for the Company canvassed that the Industrial Court, Nagpur, was not justified in holding that the Company had tried to transfer 20 employees in the Packing Department and therefore, the action on the part of the Company amounted to unfair labour practice. The learned Counsel for the company relied in the judgments reported in *Jilajit Ramnandan Chaudhari and others v. Dawn Mills Ltd. and others* 2003 (99) FLR 184 (Bom.), and *Amrit Banaspati Co. Ltd. Vs. S. Taki Bilgrami and Others*, , to substantiate his submissions. It was submitted on behalf of the Company that there was no reduction in the number of persons in this case as almost all the employees working in the Quality Control Department were transferred. The learned Counsel for the Company lastly submitted that the assignment of work and the transfer of workers within the establishment was a matter falling under Item 2 of Schedule III of the Act of 1946 and hence there was no necessity to give a notice of change, as submitted on behalf of the representatives, as envisaged u/s 46(2) of the Act of 1945 The learned Counsel for the Company sought for the modification of the impugned order dated 10.10.2005.

6. Shri S.D. Thakur, learned Counsel for the Representatives submitted that the Industrial Court ought to have held that there was a change in the terms of the settlement dated 22.5.2002 and the change could not have been effected without issuing a notice u/s 42 of the Act of 1946. The learned Counsel for the representatives canvassed that the change was made by the Company not only in an industrial matter mentioned in Schedule II of the Act of 1946, but the Company had also made a change in contravention of the terms of the settlement dated 22.5.2002 by reducing the manpower in one department and increasing in the number of persons employed in the other department by transferring the employees from the Quality Control Department to the other

departments. According to the learned Counsel for the representatives, Item 2 of Schedule III could not be invoked in this case as submitted on behalf of the Company, but Item 1 & 2 of Schedule II was indeed applicable to the facts of this case. It is submitted on behalf of the Representatives that the change effected by the transfer was clearly in contravention of the terms of Clause (7) of the Settlement dated 22.5.2002 and hence it was an illegal change within the meaning of section 46 of the Act of 1946, as it was effected without following the procedure prescribed under the law. The learned Counsel for the Representatives relied on the provisions of section 46(3) and section 46(5) of the Act of 1946. It is submitted on behalf of the representatives that the Company cannot invoke the provisions of Clause 21 of the Settlement dated 22.5.2002 by giving a complete go-by to the provisions of Clause (7) of the same. It is submitted on behalf of the Representatives that the Industrial Court, Nagpur, drifted away from the main issue to consider as to whether there was a change in the nature of duties and there was an unfair labour practice committed by the Company, though this issue was secondary and did not have a direct bearing on the main issue of illegal change which falls for consideration before the Industrial Court in view of the provisions of section 46(2), (3) & (5) of the Act of 1946. The learned Counsel for the representatives also sought for a modification of the impugned order.

7. After the judgment was dictated in part and after it was realised by the Company that the Court did not find favour with the submissions made on behalf of the Company, Shri A.V. Desai the learned Counsel for the company, in the midst of the judgment raised a technical objection that the Writ Petition No. 1481/2006 filed by the representatives was not maintainable and could not be proceeded with on the ground that there was a fresh election of the representatives during the pendency of the petition and the presently elected representatives are not substituted as petitioners in Writ Petition No. 1481/2006. This objection cannot be entertained at this stage, specially when the judgment is dictated in part, even otherwise, it is noticed that the petitioner has also not joined the newly elected representatives as party respondents to their Writ Petition No. 446/2006 and this shows that this technical objection is an afterthought and is raised in the midst of the judgment so as to stall the judgment. It is not in dispute that when the complaint was filed and during the pendency of the complaint, the elected representatives had duly prosecuted the matter on behalf of the employees of the company. Also, on considering the aims and objects of the Bombay Industrial Relations Act, 1946, it is necessary to decide the issues involved in these writ petitions.

8. I have considered the submissions made on behalf of the parties and have also perused the impugned judgment passed by the Industrial Court. The Industrial Court had failed to consider whether there was an illegal change as contemplated u/s 46(2) and (3) of the Act of 1946. The representatives had asserted in the complaint that there was a reduction in posts as well as in persons, i.e. that there was a reduction in complement prescribed by Clause (7)

of the Settlement dated 22.5.2002. Clause (7) of the settlement which was effected between the employer and the elected representatives of the employees spoke about the complement of the workers in a particular department. The complement in the Quality Control Department as per the annexures to the settlement in terms of Clause (7) showed that the Quality Control Department consisted of 28 employees. The company has relied on Clause (21) of the settlement which empowers the company to transfer the employees from one department to another. The provisions of Clause (7) and Clause (21) of the Settlement dated 22.5.2002 should be read harmoniously. Transfers u/s (21) of the settlement could have been effected without giving notice of change only in case there was no reduction in the strength of the workers or no change in the complement in the Quality Control Department. Clause (7) of the Settlement dated 22.5.2002 could not have been altered or contravened without issuing any notice of change u/s 42 of the Act of 1946. One of the terms of the settlement relating to the transfer of the employees cannot be read in such a manner so as to obliterate the other material clause in the settlement relating to the complement of the employees in a particular department. Though the item of transfer fell in Schedule 3 of the Act of 1946 by effecting the transfers in question, it could be safely said that Items 1 and 2 of Schedule 2 were attracted. It is apparent from the record that 26 out of the 28 employees in Quality Control Department were transferred from Quality Control Department to the other departments and there is nothing on record to show and it is also not the case of the company that there was no reduction of persons or posts in the Quality Control Department and increase in the number of persons or posts in the other department. It is necessary to note that there was no assertion by the company in the reply to the complaint that there was no change in the complement prescribed by Clause (7) of the settlement dated 22.5.2002. The Industrial Court was not justified in not considering this aspect of the matter and holding that there was no illegal change so far as the transfer of 6 employees was concerned.

9. Section 46(3) of the Act of 1946 stipulates that no employer shall make any change in contravention of the terms of a settlement but it is apparent from the record that one of the material terms of the settlement dated 22.5.2002 was contravened by the employer by transferring almost all the employees from the Quality Control Department to the other departments when the complement in the Quality Control Department as prescribed by Clause (7) of the settlement was liable to be maintained. Since the change in the settlement was made by the company in contravention of the provisions of section 46(3) of the Act, the Industrial Court ought to have declared the same as illegal. Since there was a reduction in the complement in the Quality Control Department and an increase in the complement in the other departments, Items 1 and 2 of Schedule were attracted in this case and, therefore, a notice of change ought to have been given by the company as required by the provisions of sub-section (1) of section 42 of the Act of 1946. The judgment reported in 2003 (3) CLR 185 and relied on by the Counsel for the company cannot be made applicable to the facts of this

case as in the said case, the Court was considering a matter where the transfers were challenged by the employees on the ground that there was a change in the nature and duties and there was a monetary loss to the employees. There was no challenge to the transfers on the ground of decrease or increase in the complement of a department. On facts, this Court held in the reported judgment that there was neither any monetary loss to the employees nor there was any change in the service conditions, and hence, the action of transfer was justified. In the case in hand, it is apparent that there is a contravention of the terms of Clause (7) of the settlement effected by the transfer orders and, hence, it can be said that the aforesaid reported judgment is inapplicable to the facts of the case as it is clearly distinguishable on facts. So also, the judgment reported in *Amrit Banaspati Co. Ltd. Vs. S. Taki Bilgrami and Others*, would also not come to the rescue of the company as in the reported Supreme Court decision, the employer had terminated the services of the employees on account of closure of shift. In the instant case, it is not the case of the company that there was a closure of the Quality Control Department and, therefore, Items 1 and 2 of Schedule 2 of the Act of 1946 could not have been invoked.

10. For the reasons aforesaid, it is necessary to hold that the transfer of the employees from the Quality Control Department to the other departments amounted to illegal change within the meaning of section 46 of the Bombay Industrial Relations Act, 1946. It is hereby declared that the company had committed unfair labour practices under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 and the, company is hereby directed to desist from further committing the same.

11. At this juncture, it is brought to the notice of this Court that during the pendency of the proceedings and even prior to the initiation of the proceedings, some of the employees from the Quality Control Department had opted for transfer to the other departments and had also voluntarily accepted and opted for promotions in the other departments and these transfers and promotions had been effected in case of those employees at their volition and, hence, they would not be entitled to take the benefit of the judgment passed by this Court, today. There is much substance in the submission made on behalf of the Company as individual cases were not dealt with, by the Industrial Court or this Court and an issue of general nature was considered on a complaint filed on behalf of the employees by the elected representatives This judgment would, therefore, have no effect on the transfers and promotions which have been effected on the volition of the employees concerned.

12. For the reasons aforesaid, the impugned judgment passed by the Industrial Court, Nagpur on 10.10.2005 in Complaint (ULPN) No. 245/2004 is hereby modified in the aforesaid terms.

13. Rule is made absolute in the aforesaid terms in Writ Petition No. 1481/2006. Writ Petition No. 446/2006 is hereby dismissed Order accordingly. No order as to

costs.