
(1994) 03 BOM CK 0070
In the Bombay High Court
Case No : Writ Petition No. 559 of 1994

Industrial Workers" Union

APPELLANT

Vs

Hindustan Tyres Pvt. Ltd. and others.

RESPONDENT

Date of Decision : 11-03-1994

Acts Referred:

Citation : (1994) 03 BOM CK 0070

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Judgement

D.R. Dhanuka, J.—Heard learned counsel on both sides.

2. Petition is admitted. Rule nisi to issue.

3. For the reasons briefly indicated hereinafter, operation of impugned order dated 17th September 1993 passed by the Industrial Court in Misc. Application (ULP) No. 6 of 1993 is stayed. If the Respondent no. 1 deposits a sum of Rs. 27 lacs in this Court, impugned recovery proceedings shall stand stayed for a period of four weeks from today. Until the said amount is deposited, the stay order even for the period of four weeks shall not operate. For the purpose of the deposit of the said amount, the petitioner shall be at liberty to continue the recovery proceedings in accordance with law.

4. The 1st respondent dismissed all its workmen. On 28th February 1991, the Industrial Tribunal made an award in Reference (IT) No. 12 of 1984 directing reinstatement of the workmen concerned with full back wages. On 31st January 1991, the Industrial Tribunal made an Award in Reference (IT) No. 69 of 1984 directing reinstatement of workmen concerned with full back wages. Being aggrieved by the said awards, the management filed writ petition nos. 838 and 839 of 1991 in this Court. The petitions were admitted.

5. By an order dated 25th March 1991, this Court granted conditional stay on the condition that the management would furnish bank guarantee in sum of Rs. 18

lacs in respect of claim for back wages which was subject matter of writ petition no. 838 of 1991. By an order dated 25th March 1991, this Court granted stay on the condition that the management would furnish guarantee in sum of Rs. 17 lacs in respect of the claim for back wages covered under writ petition No. 839 of 1991. Four weeks time was granted by this Court to furnish the bank guarantees referred to hereinabove. The management committed default. Neither of the two Bank guarantees were furnished.

6. By an order dated 7th October 1991, the Division Bench of this Court dismissed appeal No. 942 of 1991 arising out of writ petition no. 839 of 1991. The court is informed that a review application is pending in this respect. The liability under the Award concerning the said petition has become enforceable. Pendency of the writ petition or the review petition is irrelevant at this stage when the liability under the award is sought to be enforced in view of the management having failed to comply with condition on which stay was granted by this Court. No subordinate authority or Tribunal has jurisdiction to stay recovery of the said amount directly or indirectly merely because the writ petition is pending.

7. By an order dated 6th January 1992, a Division Bench of this Court decided Appeal No. 1101 of 1991 concerning interim order passed by the Single Judge in Writ petition No. 838 of 1991. By the said order, conditional order of stay granted by single Judge of this Court on 25th March 1991 was modified by substituting the figure of Rs. 9 lacs in place of the figure of Rs. 18 lacs for furnishing of the bank guarantee. The requisite bank guarantee was never furnished. Four weeks time granted by the appellate court has also expired. The Court is informed that a precipe has been filed for getting extension of time for furnishing of the bank guarantee and condonation of delay. Merely because a precipe is filed, it does not follow that the conditional stay order is revived. On expiry of time fixed by this Court for furnishing of the bank guarantee, as stated above, and on the management committing default in this behalf, the stay order granted by this Court stood vacated and the liability under the award has become enforceable forthwith.

8. The Industrial Court was approached for assisting the petitioner to recover amounts due and payable under the two awards as contemplated under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Industrial Court has rejected the Misc. Application (ULP) No. 6 of 1993 for issue of recovery certificate on the ground that writ petitions filed by the management are still pending. Since the management has failed to comply with the conditions imposed by this Court for granting of stay, the Industrial Court could not have refused to take necessary action concerning recovery of the amount in accordance with law. The learned Counsel for the management submits that the petitioner union shall have to follow some other procedure for recovery of the amounts due and payable and the procedure followed is not proper. I need not examine this aspect of the matter at this stage.

The fact remains that the management has flouted the conditions imposed on the management of granting stay and the management is obstructing the petitioner from resorting to recovery proceedings without any justification. The learned counsel for the management submits that the management is willing to furnish a bank guarantee for Rs. 9 lacs though at this belated stage sitting singly I have no power to condone the delay or accept the bank guarantee at this stage. I inquired of the learned counsel for the management as to whether he was willing to deposit substantial amount in the Court and the answer was that the management would deposit a sum of Rs. 2 lacs in the Court. The attitude of the Management is totally unsatisfactory. It is unfortunate that by the impugned order, the Industrial Court has purported to stay the recovery of the amounts payable under the two awards without any jurisdiction or justification even though the High Court had granted stay conditionally and the stay orders have stood vacated because of default of management. For reasons discussed above, I have passed the order as indicated in the operative part thereof.

9. Issue of certified copy expedited.