
(1999) 03 BOM CK 0079
In the Bombay High Court
Case No : I.P. Appeal No. 42 of 1999

Kamani Employees Union	Vs	APPELLANT
K.E.C. International Ltd. and Others		RESPONDENT

Date of Decision : 10-03-1999

Acts Referred:

Citation : (2000) 84 FLR 748 : (1999) 2 LLJ 1069

Hon'ble Judges : A.V. Savant, J;A.C. Agarwal, J

Bench : Division Bench

Advocate : Anand Grover and Meena H. Doshi, for the Appellant; J.P. Cama and K.P. Anil Kumar for Respondent Nos. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard both the learned Counsel. Mr. Grover for the Appellant-Union and Mr, Cama for Respondent Nos. 1 to 4.
2. The Appeal is against the order dated March 5, 1999 passed by the learned Single Judge in Writ Petition No. 1019 of 1999. The writ petition was filed against the interim order dated February 17, 1999 passed by the Industrial Court, Mumbai, in the pending Complaint (ULP) No. 852 of 1997. The matter had come to this Court earlier against the interim order passed by the Industrial Court. However, this Court had directed the Industrial Court to reconsider the question of interim relief pending the Complaint. Upon such reconsideration of the application for interim relief, the Industrial Court has come to the conclusion that the 1st Respondent-Company should be permitted to shift certain machinery from its Kurla Plant in Mumbai to Butibori Plant at Nagpur. The details of the items of Plant and Machinery, permitted to be shifted from Kurla to Butibori, are set out in the operative part of the order dated February 17, 1999.
3. When this interim order dated February 17, 1999 was challenged in Writ Petition No. 1019 of 1999, the learned Single Judge has, in the impugned order, come to the prima facie. conclusion that the machinery was lying idle at Kurla

and that the 1st Respondent-Company had got some orders to be executed at Butibori and the said machinery was required there- The machinery, which is permitted to be shifted, from Kurla to Butibori, would cost Rs. 110 lacs" if the 1st Respondent-Company were to purchase it in the market today. Rather than permitting the machinery to lie idle and non-functional at Kurla, the learned Single Judge thought it proper to confirm the interim order subject to certain modifications. The modifications, ordered, are to secure the interests of the Appellant, inasmuch as, what has now been done under the impugned order is to appoint the Court Receiver, High Court, Bombay, as the Receiver of the machinery which has been permitted to be shifted by the Industrial Court from Kurla to Butibori after ensuring that the machinery is insured. The 1st Respondent-Company has been directed to file separate undertakings in this Court to bring the machinery back from Butibori to Kurla in the event of the Industrial Court directing the 1st Respondent-Company to do so. It has further been made clear that the shifting of the machinery by the 1st Respondent-Company as the agent of the Court Receiver, will not create any equities in favour of the 1st Respondent-Company and will not affect the merits of the pending Complaints. It is this order which is challenged before us.

4. At the outset, it must be mentioned that out of 690 workmen, excepting the present 78 workmen, who are disputing the impugned order before us, rest of the 612 workmen have accepted the benefits of the Voluntary Retirement Scheme (VRS). Even in respect of the present 78 workmen, who are disputing the said VRS, Mr. Cama appearing for Respondent Nos. 1 to 4, today makes a statement before us as under:

"The 1st Respondent-Company has two construction Units at present at Mahad and Chiplun in Maharashtra. The. 1st Respondent-Company is willing to offer employment to the 78 workmen at the construction Units at Mahad and Chiplun, till the disposal of the Complaint pending before the Industrial Court. The concerned workmen, (out of 78) will be given alternate work, provided they apply in writing to the 1st Respondent-Company within a period of two weeks from today."

Mr. Grover for the Appellant-Union objects to our recording the statement of Mr. Cama on the ground that the work, which may be offered to the 78 workmen, may not be suitable. Mr. Cama makes a further statement that the 1st Respondent-Company will offer suitable work to the 78 workmen. We have identified the number of workman to be 78 on the basis of paragraph 4 of the Minutes of Order dated October 9, 1998 in Appeal No. 474 of 1990 which was earlier disposed of by this Court remanding the matter back to the Industrial Court.

5. This Court, while passing the order dated October 9, 1988 in Appeal No. 474 of 1990 has already expedited the Complaint which is directed to be disposed of by October 9, 1999. In our view, having regard to the fact that 612 out of the 690 workmen have accepted the benefits of the Voluntary Retirement Scheme,

rather than permitting the machinery to lie idle at Kurla, interests of justice would be better served by permitting the machinery to be shifted to Butibori since the 1st Respondent-Company needs it at Butibori. The protection granted by the learned Judge, under the impugned order is, in our view, adequate. While the Industrial Court had permitted the 1st Respondent-Company to shift the machinery, the learned Single Judge has appointed the Court Receiver, High Court, Bombay as Receiver of the said machinery and the 1st Respondent-Company, is permitted to shift and operate the said machinery only as the agent of the Court Receiver. Since the machinery belongs to the 1st Respondent-Company, we do think it necessary to put the 1st Respondent-Company to terms of security or loyalty.

6. In addition to the above protection granted under the impugned order, we are satisfied about the bona fide of the 1st Respondent-Company in view of the future offer made by Mr. Cama, which we have recorded in para 4 above. In the circumstances, we do not think that any case is made out for intervention in this Appeal with the interim arrangement arrived at under the impugned order. The undertaking, directed to be filed by the 1st Respondent-Company, have already been filed.

7. In the circumstances, there is no merit in the Appeal. The Appeal is summarily dismissed. No order as to costs.

8. At this stage, Mr. Grover prays for stay of the operation of this order for two weeks and a direction to the 1st Respondent- Company not to go ahead with the transport of the machinery. Mr. Cama opposes the prayer on the ground that the 1st Respondent- Company has already booked trucks and trailers for transport of the machinery from Kurla to Butibori. Cranes have been booked for loading the machinery in trucks and trailers. The loading operation had commenced, but pursuant to the statement made before this Court yesterday, the operation has been suspended. The total cost, to be incurred by the 1st Respondent-Company for loading and transporting the machinery, would be approximately a lac of rupees. In the circumstances, we do not think it proper to grant any stay, particularly in view of the protection granted by the learned Single Judge under the impugned order and the statement made by Mr. Cama, which is recorded in paragraph 4 above.

9. In the circumstances, the prayer made by Mr. Grover is rejected.

10. In view of the disposal of the Appeal, nothing survives in the Civil Application and the same is disposed of accordingly.