
(1987) 08 BOM CK 0030

In the Bombay High Court

Case No : A. No. 360 of 1985 In Writ Petition No. 533 of 1985

Kamani Tubes Limited

APPELLANT

Vs

Kamani Employees Union and Others

RESPONDENT

Date of Decision : 19-08-1987

Acts Referred:

Citation : (1987) 89 BOMLR 417 : (1995) 3 LLJ 345 : (1987) MhLj 861

Hon'ble Judges : V.P. Tipnis, J; S.P. Bharucha, J

Bench : Division Bench

Advocate : J.P. Cama, for the Appellant; Nishita Mhatre, for the Respondent

Final Decision : Dismissed

Judgement

Bharucha, J

1. The appellant is a public limited company. It employs some 700 workmen at its factory at Kurla and its head office in Bombay. The 1st respondent is the trade union of these workmen. The 1st: respondent filed a complaint in the Industrial Court alleging that the appellant was guilty of the Unfair Labour Practice listed at Item 9 in Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, that is of "failure to implement award, settlement or agreement". The 1st respondent complained that the appellants workmen had not been paid wages for the months of Nov. and Dec. 1984 and upto the date upon which the complaint was filed, i.e., 28th February 1985.

2. The Industrial Court noted that there ; was no scope for oral evidence in the complaint and proceeded to dispose it of on arguments. It found it difficult to accept the submission made by counsel on behalf of the appellant that the appellants inability to pay wages would not amount to a failure to implement a settlement or agreement. In view of the clear and unambiguous words of Item 9, the non-payment of wages by the appellant on the due dates squarely fell within the mischief of the unfair labour practice therein described. It said, "The financial difficulties of the company, though real, would not be a defence."

3. The appellant impugned the Industrial Courts order in the writ petition. The writ petition was summarily dismissed. The learned single judge found that the contract of employment itself created a liability to pay wages and was, therefore, an agreement within the meaning of Item 9. Besides, there was a settlement about wages. The decision of the Industrial Court was, therefore, proper.

4. On behalf of the appellant what is argued is that there had been no "failure" to pay the wages because the appellant was in no financial position to do so.

5. Item 9 makes the employers "failure to implement award, settlement or agreement" an unfair labour practice. When an employer does not implement an award, settlement or agreement he fails to implement the award, settlement or agreement. There is then a failure on the part of the employer to implement an award, settlement or agreement and he is guilty of the unfair labour practice set out in Item 9. The phraseology of Item 9 affords no scope for the taking into account of motive or reason or cause for the failure. To read Item 9 in any manner other than as set out above would be to do violence to its language. To read Item 9 as suggesting that there would be no failure if there was inability to implement would be to read into it the words "without good cause", and that would be impermissible. The Industrial Court was, therefore, justified in reading Item 9 in this manner.

6. Mr. Cama, learned counsel for the appellant, in the course of telling us that the appellant was in grave financial difficulty and unable to pay the wages, took us through what we may call its comparatively recent financial history. This starts with a loan of Rs. 64. 12 lakhs given by the appellant to a sister public limited company Jaipur Metals and Electricals Ltd. For the purpose of making this advance the appellant borrowed from other sister concern, Kamani Metallic Oxide Ltd. Jaipur Metals & Electricals Ltd. was then declared a relief undertaking and the appellant was unable to recover the money it had advanced. Thereafter, because of disputes among the members of the Kamani family, Kamani Metallic Oxide Ltd. recalled the loan advanced to the appellant and started winding up proceeding. The appellant was left high and dry. It is not necessary for the purposes of what we are aiming at to go on with this dismissal tale. The point we are making is that for the purposes of the so-called "Kamani Group" the appellant disregarded prudent business practices and the interests of inter alia, its workmen and placed itself in a position of such financial embarrassment that it could not even meet its wage bill. It is to protect workmen against employers such as the appellant that Item 9 has been framed in a manner which admits of no excuse. Where there has been non-implementation of an award, settlement or agreement there is an unfair labour practice.

7. There is yet another reason why the appellant's writ petition cannot be entertained. The appellant has, by its cynical indifference to its obligations, brought financial calamity upon itself and, which is more relevant for our purpose, upon its innocent workmen. It is not proper that the machinery of Article 226 should, in the circumstances, be made available to the appellant.

8. The learned single judge was, therefore, justified in rejecting the petition.
9. The appeal is dismissed.
10. The appellant shall pay to the 1st respondent the costs of the appeal.