
(1985) 01 BOM CK 0032
In the Bombay High Court
Case No : Writ Petition No. 558/84

Kirloskar Oil Engines Ltd.

APPELLANT

Vs

V.B. Dharurkar and others

RESPONDENT

Date of Decision : 30-01-1985

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1987) 1 LLJ 366

Hon'ble Judges : R.A. Jahagirdar, J

Bench : Single Bench

Judgement

1. The petitioner is a company incorporated under the Indian Companies Act and having a factory at Pune. The first respondent is a Member of the Industrial Court who has passed the impugned order. The second and the third respondents are two registered trade unions. All the material which is on record shows that the third respondent is a union, being in existence for over at least a decade, whereas the second respondent-union is organising the workmen of the petitioner company newly in the area.

2. The second respondent-union filed a complaint, being (ULP) No. 611 of 1983 under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, charging the petitioner with commission of unfair labour practices. In those proceedings, an application being Ex. U-17, was filed on behalf of the second respondent for interim reliefs. The interim reliefs claimed by the second respondent are as follows :-

"Hence it is prayed that during the pendency of this complaint :

(a) The Respondents No. 1 and 2 may be directed not to hold any negotiations or enter into any agreement/settlement with regard to the general service conditions of the employees and the demands mentioned in the charter of demands of the complainant.

(b) the Respondent No. 1 may be directed to negotiate with complainant on their

charter of demands.

(The petitioner was respondent No. 1 and the third respondent was respondent No. 2 in the proceedings before the Industrial Court). The members of the Industrial Court at Pune in his order dated 31st December, 1983 has discussed the history of the dispute between the parties. He has also noted that neither of the two Unions is recognised union and, therefore, there was no obligation on the petitioner to hold negotiations with one or the other union. The Member of the Industrial Court has also noted the fact that the third respondent-union is having more than 10 years" standing. The Member of the Industrial Court did not even find prima facie the existence of any unfair labour practice on the part of the petitioner. Despite this, however, he proceeded to order -

.... that until further order, if the Respondent No. 1 is holding or would hold any negotiations, talks and discussions with the Respondent No. 2 Union, with regard to the demands, contained in the charter of demands stated to have been served by the Respondent No. 2, on the Respondent No. 1 the Respondent No. 1 should also invite the complainant Union for negotiations, talks and discussions, regarding the demands, in the charter of demands, served by the complainant on the Respondent No. 1 and should hold such discussions and negotiations etc. with complainant Union also, regarding those demands."

It is against this order that the petitioner company has approached this Court under Article 227 of the Constitution.

3. During the pendency of this petition, liberty was given by an order passed by Sawant J. on 26th April, 1984 to the petitioner to enter into a settlement with respondent No. 3 Union. It was, however, made clear that the settlement, if entered into would not be binding on the second respondent-union and its members and the latter were free to pursue their charter of demands according to law.

4. Mr. Rele, the learned Advocate appearing for the petitioner, has naturally quarreled with the order passed by the Industrial Court by contending that the Industrial Court was in error in directing the petitioner company to hold negotiations simultaneously with two unions when in law he found that there was no obligation on the petitioner-company to hold negotiations with either of the unions.

5. There is undoubtedly substance in this contention. Moreover, one does not know what was the purpose of this direction given by the Industrial Court. Mr. Sebastian, the learned Advocate appearing for the second respondent-union before me however, has sought to support the order on the ground that if a company prefers, one union to the other, then it can be said to be prima facie guilty of an unfair labour practice as mentioned in item 2, clause (b) of Schedule II of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act. In other words, according to Mr. Sebastian, by preferring one of the two unions which are already in the field, the employer is

supporting one union by showing partially or granting favour to one of the unions attempting to organise his employees or to its members where such union is not a recognised union. From the facts alleged by the union and from the facts found by the Industrial Court, it is not possible to spell out such an unfair labour practice on the part of the employer. It is highly doubtful whether the unfair labour practice referred to by Mr. Sebastian covers a case where there are already two unions and there is no question of any employer granting favour to one of the unions attempting to organise its employees. In any case, in the absence of any finding by the Industrial Court of the existence of the prima facie case of an unfair labour practice, the order becomes unsustainable.

In any case, pursuant to the order passed by Sawant J., negotiations between the petitioner and the third respondent have already taken place and a settlement has been arrived at between the petitioner-company and the third respondent-union. Copy of the said settlement has been produced under an affidavit sworn by the Vice-President of the petitioner-company on 11th January, 1985. The direction to hold negotiations with both the unions has already failed in view of this interim order passed. The order, therefore, need not be retained on record at all.

This petition, therefore, must succeed. The order passed by the Industrial Court at Pune on 31st December, 1983 under Ex. U-17 in complaint (ULP) No. 611 of 1983 is set aside. No order as to costs in this petition.