

(1995) 03 BOM CK 0055

In the Bombay High Court

Case No : Writ Petition No. 38 of 1989

Kolhapur Zilla Shetkari Vinkari Sahakari Soot Girani Ltd. and
others

APPELLANT

Vs

N. P. Murugali, Judge, Labour Court, Sangli and others

RESPONDENT

Date of Decision : 31-03-1995

Acts Referred:

Citation : (1997) 3 LLJ 592

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : Suresh S. Pakale, for the Appellant; Addl. Govt. Pleader, R.D. Soni and A.Y. Bukhari, for the Respondent

Judgement

1. This writ petition under Articles 226 and 227 of the Constitution of India impugns an order dated December 17, 1988, made by the Labour Court, Sangli, holding charge of Labour Court, Kolhapur, in Application (LCK) No. 4 of 1988 under the provisions of the Bombay Industrial Relations Act, 1946 (hereinafter referred to as "the Act").

2. The First Petitioner is the Managing Director, the Second Petitioner the Chairman and the rest of the Petitioners are Directors of the Co-operative Society which runs a Textile Mill at Ichalkaranji. The Second Respondent is a registered and representative Union of the employees in the concerned local area. The Fourth Respondent is another Union which represents the employees working in the Textile Mills in the same local area.

3. The Second Respondent made an Application (BIR) No. 4 of 1988 u/s 78(1)A(c) of the Act to the Labour Court at Kolhapur. The Kolhapur Zilla Shetkari Vinkari Sahakari Soot Girani Limited and the Managing Director of the said Co-operative Textile Mill were both impleaded as party Opponents to the said Application. The grievance made in the Application, in substance, was that some of the employees were refused entry and work without any justification. This action on the part of the Employer was alleged to be an illegal lock-out. A

declaration to that effect and appropriate relief was prayed for in the Application. An Application for ex parte interim reliefs was also made and on April 12, 1988 the Labour Court issued an ex parte ad interim injunction restraining the two Opponents to the Application from recruiting or allowing any new employee or persons in the Girani, pending final disposal of the main Application. The ad interim order was confirmed by the Labour Court on April 28, 1988 by the following order :

"The Interim Order passed on Exh. U-2 on April 12, 1988 is hereby confirmed.

Case to proceed further."

The interim order was challenged by the Employer before the Industrial Court, Kolhapur, in Revision Application (IC) No. 1 of 1988. The Industrial Court, Kolhapur, by its order dated June 14, 1988, slightly modified the order of injunction granted by the Labour Court, in the following terms :

"The Petitioner Mill shall permit the regular employees to resume duty as per the discussions and arrangement (Ex.C-2). In case the regular employees fail to report duty as per that arrangement, the Petitioner is permitted to employ fresh temporary hands with a specific condition that their services shall be terminated, if necessary to accommodate the regular employee named in the shift list as and when he resumes duty."

4. The Second Respondent moved an Application (LCK) No. 4 of 1988 before the Labour Court alleging that the Soot Girani and its Board of Directors, including the present Petitioners, had disobeyed the operative order of injunction and had thereby committed contempt of the Labour Court and/or committed offences punishable under the Bombay Industrial Relations Act, 1946, and prayed that they be dealt with suitably and punished for the same. The Labour Court directed the Investigating Officer (presumably, the one appointed under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971) to submit a report about the alleged disobedience of orders by the Petitioners. After obtaining the report, the Labour Court held by the impugned order that all the Directors of the Soot Girani had jointly and severally committed breach of the operative order of injunction and thereby committed contempt of the Court. The Labour Court also took the view that disobedience of such injunction order was wilful on the part of the present Petitioners and their Co-Directors, amounting to "Civil Contempt". Having come to the conclusion that the Petitioners had committed contempt of the Labour Court, the Labour Court proceeded to convict them of an offence u/s 12 of the Contempt of Courts Act, 1971 for committing breach of the order of the Labour Court dated April 12, 1988 and sentenced each of them to undergo simple imprisonment in Civil Prison for one month and to pay a fine of Rs. 2,000/- (Rupees two thousand only) each, or in default to suffer simple imprisonment for ten days. It is this order which is challenged in the present writ petition.

5. Mr. Pakale, learned Advocate appearing for the Petitioners, contends that the

order of the Labour Court is wholly without jurisdiction and unsustainable. The contention is correct and needs to be upheld.

6. Section 46(5) of the Act provides that failure to carry out the terms of any settlement, award, registered agreement, effective order or decision of a Wage Board, Industrial Court or Labour Court shall be deemed to be an illegal change. Section 47 of the Act provides that an employer required under the terms of any effective decision or order of a Wage Board, Labour Court or the Industrial Court to carry out a change or withdraw an illegal change, shall comply with such requirement within such time as the Wage Board or Court giving or making the decision or order prescribes and, where no time is prescribed by it, within forty-eight hours of the giving or making of the decision or order. Section 106 of the Act provides that an employer making an illegal change shall be punishable with imprisonment and/or fine which may extend to Rs. 5,000/- (Rupees five thousand only). The remedy of a person, whose grievance is that an effective order of the appropriate forum under the Act has not been implemented or deliberately flouted, is two-fold. Firstly, he may make an application u/s 78(1)A(c) for a declaration of an illegal change and seek appropriate relief therein. In addition, after obtaining such declaration, he may move the Labour Court in its special jurisdiction to convict the reemployed of an offence u/s 106(1) or Section 106(2) of the Act. The Contempt of the Labour Court, Industrial Court and Wage Board or other kinds of Contempt's of Industrial Court, Labour Court and Wage Boards have been dealt with u/s 119A and Section 119B of the Act. A perusal of Section 119A would indicate two features. Firstly there is no reference therein to disobedience of any order or the consequence of such disobedience, as contemplated in Section 106. Secondly, the acts described in sub-section (1), Clauses (a) to (d) of Section 119A are constituted criminal offences for which the forum is required to make a record of the facts constituting an offence and the statement of the accused person as provided in the Code of Criminal Procedure and forward the case to the Magistrate having jurisdiction to try the same. Section 119B of the Act deals with other types of contempt's which would fall within the broad category of acts calculated to improperly influence the Industrial Court, or a Labour Court or a Wage Board or to bring such Court, Board or a member or a Judge thereof into disrepute or contempt or to lower its or his authority or to interfere with the lawful process of the forum. These are acts which would properly fall within the definition of "Criminal Contempt", as contemplated u/s 2(c) of the Contempt of Courts Act, 1971. For such contempt the procedure is that, if the contempt is of the Labour Court, the Labour Court is required to make a report of the material facts to the Industrial Court and the Industrial Court then in turn would forward a report to the High Court which is required to deal with such contempt as if it were contempt of itself and act in accordance with the same procedure and practice as it has an exercise in respect of contempt of itself.

7. The scheme of the Bombay Industrial Relations Act suggests that disobedience, however flagrant, of an order passed by the Labour Court does not

constitute a Contempt of Court, though other remedies are available for dealing with such a situation. In a somewhat parallel situation, under a cognate Act, namely, the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, a Division Bench of this Court in Wazirkhan Sherkhan v. Proprietor M/s. Shrikrishna Gyanoday Cottage Industries, Nagpur 1979 Mh. L.J. 325, had to consider the situation arising u/s 48 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act. The question before the Division Bench was, whether a failure on the part of any person to comply with an order of the Court u/s 30(1)(b) or 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act would amount to "contempt". Interestingly, the marginal note of Section 48 describes such acts as "Contempt's of Industrial or Labour Courts". The Division Bench held that the scheme of the first four sub-sections of Section 48 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act shows that certain offences are created and penalties provided for them. The Division Bench held that, though the Section is marginally headed "Contempt's of Industrial or Labour Courts", the contents of Section 48 are not restricted merely to matters relating to contempt and that so far "contempt" is concerned, the provisions were to be found only in the latter part of sub-sections (5) to (8) of Section 48 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act. Section 119A of the Bombay Industrial Relations Act does not really deal with "Civil Contempt" as understood under the Contempt of Courts Act, 1971. It constitutes offences for which penalties are prescribed and the procedure is a trial before the regular Criminal Court. Section 119B also deals with "criminal contempt" as understood within the meaning of the Contempt of Courts Act, 1971. In such cases, the procedure is the making of a report to the High Court and the High Court to take action as if it was contempt of itself. There is no provision in the entire scheme of the Bombay Industrial Relations Act which empowers the Labour Court to punish for its "contempt". The power to punish for contempt, is the power vested only in a Superior Court of Records such as the High Court or the Supreme Court. The Labour Court can lay claim to no such power. The scheme of the Contempt of Courts Act, 1971 also does not invest the power of punishment for contempt in the Labour Court. In my view, the Labour Court completely misdirected itself in holding that it had the power to punish for contempt of itself. In the first place, the act alleged did not amount to a contempt and, in any event, even if it did, the Labour Court had no power to punish the same u/s 12 of the Contempt of Courts Act, 1971. In my view, the impugned order of the Labour Court is clearly erroneous and contrary to law and needs to be interfered with.

8. In the result, the writ petition is allowed, rule is made absolute and the impugned order of the Labour Court dated December 17, 1988, made in Application (LCK) No. 4 of 1988 is hereby quashed and set aside. Application (LCK) No. 4 of 1988 is remanded to the Labour Court for disposal in accordance with law.

9. The amount of fine, if deposited in the Labour Court pursuant to the impugned order dated December 17, 1988, shall be refunded to the First Petitioner within a month of the First Petitioner applying for refund.

10. Rule is accordingly made absolute with no order as to costs.

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