

(2018) 10 BOM CK 0008

In the Bombay High Court

Case No : Civil Writ Petition No. 11551 Of 2014

Kothari Kamgar Committee

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 05-10-2018

Acts Referred:

Industrial Disputes Act, 1947 — Section 17(2), 20(3), 25(O)(2), 33

Citation : (2018) 10 BOM CK 0008

Hon'ble Judges : Shantanu S. Kemkar, J;Nitin W. Sambre, J

Bench : Division Bench

Advocate : M. Janardhanan, V. S. Gokhale, A. V. Bukhari, Amol B. Desai, Avinash Jalisatgi

Final Decision : Dismissed

Judgement

Â NITIN W. SAMBRE, J

1. Heard Mr. Janardhanan, learned Counsel for the Petitioner, Mr. V. S. Gokhale, learned Counsel for Respondent Nos.1, 3 & 4, Mr. A. V. Bukhari,

Senior Advocate along with Mr. Amol B. Desai along with Mr. Avinash Jalisatgi instructed by Lokeshappa for Respondent No.5.

2. Impugned in the present writ petition is the no objection dated 11.08.2005 issued by the Deputy Labour Commissioner, for developing the factory

land of Respondent No.5 and order dated 20.05.2008 issued to the Municipal Commissioner by the Labour Commissioner and also the letter dated

31.10.2013 and 01.11.2013 issued by the Respondent No.2 i.e. Municipal Commissioner, Thane, justifying and confirming the permission issued for

developing the land of the Respondent No.5 on the ground that same is without any authority, in exercise of any colourable exercise of the powers,

abuse of process of law, arbitrary and violative of the principles of natural justice.

3. The facts necessary for deciding the present writ petition are as under :Â?

Pursuant to the request made by the Respondent No.1, the Respondent Â?" Labour Commissioner on 28.08.2003, declared closure, which was

objected by the Petitioner which is claiming to be a recognized Trade Union registered under the Trade Unions Act, 1926, claiming to be representing the interest of about 70% of the workers.

4. Since, according to the Petitioner, there exists an industrial dispute, the Labour Commissioner made a reference on 10.08.2004 to the Industrial

Court, Thane. The same is numbered as Reference No.1 of 2004. The Petitioner in the said pending reference, on 19.09.2005 moved an application

restraining Respondent No.5 from removing the plant and machinery from the factory premises, which application was rejected on 19.09.2005. Feeling

aggrieved, a Petition preferred before the Court being Writ Petition No. 8900 of 2005, came to be dismissed on 16.02.2006.

5. The Petitioner then pursuant to the provisions of the Right to Information Act, received a copy of the application preferred by Respondent No.5 for

development of the factory dated 22.07.2005 in which there is a reference to the order dated 28.08.2003 passed by the Labour Commissioner, which

is based on an application dated 31.07.2003 filed by Respondent No.5 seeking permission for closure and allowing the same pursuant to the provisions

of Section 25ÂO (2) of the Industrial Disputes Act, 1947. It is claimed that in the said application seeking permission to develop factory premises, the

reference made byÂ the Labour Commissioner of existence of industrial dispute as is reflected in the order dated 10.08.2004 was not disclosed to the

said authority.

6. The Petitioner also received a copy of the communication dated 11.08.2005 whereby Deputy Labour Commissioner granted no objection for

development of the factory premises. It is claimed that on 11.08.2005, the Court Commissioner visited the factory premises and submitted a report

dated 25.2.2011 wherein it is alleged that the stock, plant and machineries from the factory premises were removed, the factory building was

demolished and development activities were undertaken.

7. It appears that during the pendency of reference before the Industrial Court, since the Respondent No.5 started developing the factory premises,

the Petitioner claimed to have lodged an objection on 19.12.2012 bringing to the

notice of the said authorities the aforesaid development, alleging the fraud practised by the Respondent No.5. It is claimed that the development activities by the Respondent No.5 were stopped for a while, however, the same were restored.

8. The Respondent No.2 i.e. the Commissioner of Thane Municipal Corporation, has refused to revoke the development permission on 31.10.2013 and

rather confirmed the earlier stand of 01.11.2013 of granting permission to carryout development. As a consequence, the Petitioner preferred a Writ

Petition No. 11156 of 2013 which was withdrawn on 18.09.2014. As such this writ petition with the prayers referred above.

9. In the aforesaid background of the facts, Mr. Janardhanan, learned Counsel for the Petitioner would urge that the permanent employees of the

Respondent No.5 to the extent of 70%, are the members of the Petitioner's recognized and registered union. Even though a lock out was declared, it is

illegally claimed by the Respondent No.5 and another Union viz " Maharashtra Shramik Sena that the claims of all the employees are settled. He

would then urge that since present Petitioner demonstrated a presence of industrial dispute, the Labour Commissioner made a reference by order

dated 10.08.2004 to the Industrial Court. Once such reference is pending, having noticed that there exists an industrial dispute, the entire act on the

part of Respondent No.5 of removing and disposing of plant machinery, pulling down the factory structure, approaching Respondent No.2 seeking

permission for developing the factory land, the act of Respondent No.2 in granting permission for development is contrary to the

provisions of Section 20(3) and Section 17A of the Industrial Disputes Act, 1947. It is further claimed that once the industrial dispute is pending

before the Industrial Tribunal, pursuant to the provisions of Section 33, no employer shall be entitled to alter to the prejudice of the workmen

concerned in such dispute, the condition of service applicable to them immediately before the commencement of such proceedings. The destruction of

factory has to be read as an act contrary to the said provision. So as to substantiate his contentions, he would draw support from the Judgment of the

Apex Court in the matter of The State of Bihar V/s D. N. Ganguly AIR 1958 SC 1018 . In the aforesaid factual background, Mr. Janardhanan would

urge that the grant of no objection by the Deputy Labour Commissioner is

contrary to the order of reference of industrial dispute passed by the Labour Commissioner on 10.08.2004, as the object with which the reference was made is frustrated.

10. Per contra, the learned Counsel for the Respondents would urge that the petition is wholly misconceived and is not narrating the correct picture.

According to them, the reference to the Industrial Court at the behest of the Petitioner is already answered in negative and a petition to that effect is

pending before this Court, which fact is suppressed by the Petitioner from this Court. It is also claimed that in Writ Petition No. 11156 of 2013

questioning the no objection certificate issued by the Labour Commissioner, this Court has passed an order permitting withdrawal of the writ petition

with liberty to take appropriate proceedings in accordance with law. According to them, the prayers made in the present writ petition and in Writ

Petition No. 11156 of 2013 are overlapping and as such the present writ petition itself is not maintainable. The learned Counsel for the Respondent

then would urge that Writ Petition No. 8900 of 2005 filed by the Petitioner, wherein the issue as regards dismissal of the application by the Industrial

Tribunal pending reference for grant of interim relief was filed, also came to be dismissed, having noticed that there is no prima facie case in favour of

the Petitioner. The fact remains that the order of closure/permission for closure dated 28.08.2003 till date is not interfered with. In the aforesaid

background, it is claimed that the instant writ petition lacks merit and is liable to be dismissed.

11. Considered rival submissions.

12. The present writ petition is pending since 2014 and since the order of closure passed in 2003, the Petitioner is unable to establish its case before

any of the Courts.

13. The factual matrix from the record depicts that of the total employees, 343 were represented by Maharashtra Shramik Sena which is a recognized

Union, which has entered into an agreement about conditions of service on 15.03.1991 which was in existence till 15.03.1993. In view of differences

between the members of the Union and the Employers, a closure was effected and of the 343 employees, 260 have settled their claims. Out of 83

employees, 74 have received their benefits in July 2005 and the remaining 9 employees who were informed to receive their claims, appeared to have

not responded. An industrial dispute pursuant to the provisions of Section 25A?O was referred to the Industrial Court by the Labour Commissioner on

10.04.2004 and the request for an order of injunction from transferring the land moved before the Industrial Court was rejected, which was confirmed

upto the Apex Court in Special Leave Petition No.(C)1464/2007. On 01.10.2005, the Labour Commissioner issued no objection certificate pursuant to

an affidavit of indemnity submitted by Respondent No.5.

14. Pursuant to the complaints made by the few labours, though the development of the factory land was tried to be stalled at the behest of the

Petitioner, the attempts at the behest of the Petitioner remained unfruitful.

15. In the Reference No.1 of 2004, the learned Industrial Court in its award dated 11.10.2011 rejected the reference by recording a finding that the

Petitioner was not in existence at the time when the order of closure dated 28.08.2003 was passed by the Labour Commissioner. It is also observed

that the Petitioner Union has not produced any document to show that majority of the employees are the members of the Petitioner Union at the time

of closure.

16. The fact remains that the said matter is pending before this Court in writ petition.

17. Apart from above, the entire factory land is already developed and it is brought to the notice of this Court that in Writ Petition No. 7566 of 2012

which is still pending for consideration, the issue of illegal closure under Industrial Disputes Act is already sub judice. In our opinion, the claim of the

Petitioner particularly in the light of the prayers made cannot be accepted.

18. In our opinion, the writ petition lacks merits, same is liable to be dismissed and it is accordingly dismissed for the aforesaid reasons. Needless to

say that it shall be open for the Petitioner to pursue Writ Petition No.7566 of 2012, in accordance with law.