
(1987) 02 BOM CK 0058
In the Bombay High Court
Case No : Writ Petition No. 466 of 1986

Maharashtra General Kamgar Union	Vs	APPELLANT
Hotel in Phom. and Others		RESPONDENT

Date of Decision : 16-02-1987

Acts Referred:

Citation : (1987) 54 FLR 441 : (1995) 3 LLJ 198

Hon'ble Judges : S.K. Desai, J;N.K. Parekh, J

Bench : Division Bench

Advocate : N.M. Ganguli, for the Appellant; H.H. Madan, (R1), for the Respondent

Judgement

Desai, J.

This Appeal can be disposed of at the stage of admission. Accordingly, the Appeal is admitted. Mr. Madon on behalf of the 1st Respondent waives service. Respondent No. 2 being the Industrial Court need not be served in Appeal. By consent, the Appeal is placed on board for hearing and called out. Advocates are heard.

2. This Appeal is from a speaking order passed by the single Judge holding; that no intervention with the decision or the Industrial Court is called for. The Industrial Court had held on the material before it that what the employer had done after giving notice of closure on 28th December 1983 was to effect a closure from 1st March 1984. However, it is the admitted position that the restaurant in the Hotel was restarted on 15th June 1984 and that within one or two weeks thereafter all the departments of the hotel being the employer's business had resumed activities and had recommenced work though not with all the original employees.

3. It was very strenuously urged before us that subsequent events are totally irrelevant and that the Court concerned with the position existing as on 1st March 1984. Again it was submitted that the employer called this a closure and

that this was almost decisive. Of course, there were other technical contentions raised, viz., that the complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act was not a proper remedy, that the Union or the workmen had not challenged the purported closure though notice had been given to it and that the claim for re-employment in the manner done was misconceived. The aforesaid contentions are technical contentions and need not be gone into at this stage. Indeed, it would appear to us that the Industrial Court as also Labour Courts should be in a position to rise above technicalities and find a way out if justice of the matter so requires. However, the other two points raised by the employer, viz., that subsequent events are irrelevant or that the employer's description of the occasion for ceasing of employment is conclusive require to be gone into. It would appear to us that the authorities which were cited before us on behalf of the employer themselves militate against acceptance of such broad propositions. The first of the authorities cited was *Kalinga Tubes Ltd. Vs. Their Workmen*, . In the said decision, Grover J. speaking for the Supreme Court has referred to earlier decisions of that Court wherein it was indicated that the closure has to be genuine and bona fide in the sense that it should be a closure in fact and not a mere pretence of closure. In the very same authority it was noted that the business must be closed down finally and irrevocably. In the instant case, it is alleged by the Union and the workmen that what was done after 1 st March 1984 was to carry out repairs and renovation after which in June 1994 the restaurant initially and thereafter the entire hotel was reopened. Can this not be said to be a mere pretence of a closure on account of perhaps most improper activities of the workmen which had brought the business of the hotel to a standstill ? Indeed it was open to the management to have charge sheeted the workmen and to have terminated their services after proper inquiry. It has not done so. Instead, it has adopted, what prima facie appears to us, to be a device of a closure.

4. Similarly the argument that subsequent events are irrelevant cannot be accepted. The correct position is that the duration of the closure is a significant fact though not decisive or conclusive of the matter. This is borne out by a proper appraisal and perusal of the second decision relied on by Mr. Madon on behalf of the 1st Respondent Company. In *General Labour Union v. B.V. Chavan* (1985) 66 FJR 103, the necessary observations are to be found at pp. 106-107. It would appear on the facts that there was no change of circumstances in the two and a half to three months" period to encourage this employer to revive his activity. Indeed, the business had become unmanageable on account of the earlier activities of the workmen. After the business was closed down by the employer or by adopting the device of a closure, the employer carried out certain renovations and repair work and thereafter recommenced his activities. Can this be considered to be a genuine closure or a mere pretence of a closure or a purported closure? It would appear to us that the Industrial Court has not properly directed itself to consider the evidence in its entirety and has merely accepted the case of the employer. It may be that at the final hearing of the Writ

Petition this Court may feel that the decision of the Industrial Court was perhaps only an incorrect conclusion and not a perverse conclusion and, therefore, not one which calls for interference. However, these are certainly matters to be gone into in depth. It is not possible to stamp the decision as correct or hold at the threshold itself that no interference is called for. If that be so, the Appeal is required to be allowed and the impugned order set aside.

5. Accordingly, the Appeal is allowed and the order of the Single Judge will stand substituted by the following Order:-

"Rule Advocate for the 1st Respondent waives service. Return within six weeks. Rejoinder, if any, within three weeks thereafter".

The time to make the return and the rejoinder, of course, will be computed from today and not from the date of the final order.

6. Ordinarily, this is a matter which calls for an Order of payment of costs against the 1st Respondent since the matter has been argued at inordinate length. However, in a matter between employer and employee costs should not be normally awarded unless the conduct of one of the parties or of the Advocate representing the party can be characterised as improper. This is not such a case where one is required to depart from the general rule. Accordingly costs of the Appeal are made costs in the Writ Petition.

7. We want to make one thing clear finally. Even if the Court ultimately decides that the decision of closure was not a true closure but pretence of a closure, even then if the court is of the opinion that the conduct of the employees at the time when the decision was taken was gross or so improper that the employer was constrained to take the step, then it may hold that this is not a fit matter for exercise of Writ Jurisdiction by the High Court. However, this point cannot be gone into at the threshold stage as it would depend upon a full reappraisal of the evidence. We only make it clear that we have not ruled out any such approach at the hearing of the Writ Petition. The other views expressed are also prima facie views.