
(2000) 08 BOM CK 0039

In the Bombay High Court

Case No : A.S.L.P.A. No. 234 of 1999 in Writ Petition No. 4712 of 1999

Miraj Taluka Girani Kamgar Sangh

APPELLANT

Vs

Marathe Textile Mills

RESPONDENT

Date of Decision : 01-08-2000

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 119D

Citation : (2000) 2 LLJ 1641

Hon'ble Judges : Ranjana Desai, J;B.N. Srikrishna, J

Bench : Division Bench

Advocate : R.S. Kulkarni, for the Appellant; J.P. Cama, for the Respondent

Judgement

Srikrishna, J.—This appeal is directed against the order of the learned single Judge of this Court dated September 7, 1999 summarily rejecting Writ Petition No. 4712/1999. Thanks to litigious tenacity, there have been several rounds of litigation upto the Supreme Court. But, for the purpose of disposing of this L.P.A., it is not necessary to go into the history of those litigations and it would suffice to indicate only the short facts which have bearing on the present Letters Patent Appeal.

2. The necessary and salient facts are as under:

The 1st respondent is a Textile Mill at Sangli governed by the provisions of the Bombay Industrial Relations Act, 1946 (hereinafter referred to as "the Act"). The appellant is a registered representative and approved union in entitled to act as representative of employees u/s 30 of the Act. On April 1, 1994 the appellant union had entered into a settlement with the 1st respondent's management for changing the working system in the Ring Frame Department from four sides to a side to six sides to a side. This settlement is still in force and has not been terminated by either party. On June 1, 1999 the 1st respondent employer gave a notice of change u/s 42(2) of the Act in which the crux of the demand was for change of working system resulting in increase of the workload on the Ring

Frame employees. The employees objected to the terms of the notice of change and the ensuing dispute still pending before the Conciliation machinery under the Act. The appellant has taken up the stand before the conciliation proceedings, that the notice of change itself is illegal since it has been given when the parties are bound by the terms of settlement which is binding and operative. Sometime in July 1999, the 1st respondent's management introduced or attempted to introduce changes of designations of workmen in the Ring Frame Department by omitting their description as "6 sides", "4 sides", "2 sides" etc. This change was also objected to by the employees, who were apprehensive that, under the garb of changing designations, the employees might be called upon to attend to more number of sides in the Ring Frame Department than what was agreed under the settlement dated June 1, 1999.

3. Thus there arose a dispute on this issue. It is also not in dispute that the work came to a standstill. What is hotly, disputed, however, is whether the work came to a standstill because the employees refused to do work as required or because the 1st respondent employer refused to give them work.

4. On July 29, 1999, the appellant union filed an application u/s 78 read with Section 79 of the Act before the Labour Court at Sangli alleging, inter alia, that the management of the 1st respondent had unlawfully, and contrary to the provisions of Section 97(2) of the Act, resorted to a lockout by refusing to give the normal work and wages to the employees. The 1st respondent also came up with an application before the Labour Court u/s 97(1) alleging that the work had stopped on account of an illegal strike on the part of the employees. The application of the appellant was numbered as Application (BIR) No. 5 of 1999 before the Labour Court at Sangli.

5. The appellant moved an application for interim relief in which it alleged that there was a prima facie case of illegal lockout on the part of the 1st respondent employer and, consequently, claimed interim relief by way of an interim direction to the employer to reopen the factory and allot original work to the employees. This application for interim relief was opposed by the 1st respondent, who contended that there was no lockout at all and that the work had stopped on account of an illegal strike on the part of the employees. This application was heard before the Labour Court, which by its order dated July 30, 1999 took the view that the Labour Court exercising jurisdiction under the Act had not been invested with the power to grant interim relief in a proceeding for declaration of illegal lock-out. Consequently, the Labour Court was of the view that it had no jurisdiction to entertain the application for interim relief. Apart from expressing its view on the jurisdictional issue, the Labour Court also recorded a finding that no prima facie case for granting interim relief had been made out. Being aggrieved by this order, the appellant union moved a revision application u/s 5 of the B.I.R. Act before the Industrial Court at Kolhapur, This revision application came to be dismissed by the order of the Industrial Court dated August 19, 1999. The Industrial Court agreed with the views expressed by the Labour Court

both on the jurisdictional issue and on the merits of the application.

6. The appellant challenged the order of the Industrial Court by its Writ Petition No. 4712 of 1999. This writ petition was summarily rejected by the learned single Judge by his order dated September 7, 1999. The learned single Judge in his order made no reference to the jurisdictional issue, but expressed a view that as both the Courts below had appreciated the documents produced on record, considered the circumstances and came to the conclusion that the petitioner had failed to get any interim relief in the matter, there was no reason to take a different view. The present Letters Patent Appeal challenges this order of the learned single Judge.

7. We may mention here that the appeal came up for admission and interim relief, on September 23, 1999. Although the appeal was admitted, interim relief was declined. The appellant union challenged the order of the Division Bench declining interim relief before the Supreme Court. The Supreme Court, while dismissing the SLP filed by the appellant union gave liberty to the appellant to approach the High Court for expeditious disposal of the appeal. This liberty was exercised and the appeal was taken up for final hearing before the Division Bench of A.P. shah and J.A. PATIL, JJ.

8. After hearing the appeal, the Division Bench of A.P. shAH and J.A. pATIL, JJ made an order on February 11, 2000 in which they were inclined to disagree with the two Courts below and the learned single Judge on the issue of jurisdiction. The Division Bench took the view that, in view of Section 119-D of the Act, the Labour Court very much had jurisdiction to entertain an application for interim relief. Before the Division Bench could consider the challenge to the merits of the order, an offer was made by the counsel appearing for the respondent employer that the management of the respondent employer was prepared to and would restart the factory. An arrangement was made by which directions were issued to the Assistant Labour Commissioner to remain present and ensure that the Factory was reopened and the workers were given their normal work. The Assistant Labour Commissioner was also directed to submit a report in the matter. Such a report submitted by the Assistant Labour Commissioner on March 24, 2000 has been placed on record. The substance of the report is that the union and the employees were agreeable to start the production of the mills and that they were demanding the restarting of production even though there had been no payment of wages for the last about 8 months. The Assistant Labour Commissioner concluded the report by saying: "According to me, the employees are ready to work but the opponent is not willing to provide the work and to start the production. I am of the opinion that the opponent failed to start the production of the mill within a period of six weeks."

9. The present civil application was taken out by the appellant union complaining that despite the assurance given to the Court by the learned Counsel of the respondent employer, there was no work given to the employees, nor were their wages being paid.

10. We have heard Dr. R.S. Kulkarni for the appellant union and Mr. J.P. Cama for the respondent employer. While Dr. Kulkarni contends that the employers have deliberately brought about a situation of denying work and wages to the employees in order to economically strangle them into submission, Mr. Cama maintains that though the employer bona fide offered to restart work through its Counsel before the Division Bench of A.P. SHAH and J.A. PATIL, JJ. on February 21, 2000. Accordingly work was started and the offer was intended to be implemented, but there have been several genuine circumstances which have overtaken the respondent employer making it impossible for the respondent employer to fulfil the assurance given to the Court. Mr. Cama relied on an order of this Court in an application taken out by the Creditor Bank by which the employer's assets were enjoined from being alienated; he also relied on an order of the Sales Tax Authorities attaching the assets of the employer; he relied on the fact that the Maharashtra State Electricity Board had disconnected power supply for continued default in payment of their electricity bills. He also relied on an order made by the Debt Recovery Tribunal attaching the assets of the respondent employer. The balance sheets of the employer were shown to drive home point that the employer is today extremely in the red, irrespective of the reasons which might have led to the present financial stringency.

11. Fortunately, the learned Counsel for the respondent employer did not attempt to sustain the correctness of the orders of the two Courts below or that of the learned single Judge. He fairly conceded that the Labour Court, at all points of time, did have jurisdiction to entertain the application for interim relief and should have squarely dealt with it on merits. He suggested that all the orders may be set aside and urged that there is no need for interim relief now since the main application i.e. B.I.R. Applications No. 5 and 85 of 2000 are themselves being heard finally. In fact, the Labour Court has covered more than 75% of the ground towards deciding the said cases. In these circumstances, the submission of the learned Counsel is that the Labour Court may be allowed to give its final decision in the main applications themselves without being hampered by an application for interim relief at this stage.

12. Dr. Kulkarni however, strongly rejoins and refutes the dismal picture of financial doom presented by the learned Counsel for the respondent employer. He urges that the electricity bills of M.S.E.B. were the results of past liability which had accrued before the present management took over and there was a working arrangement for discharging the said liability by convenient agreed installments; as to the other orders freezing the assets of the employer towards the liabilities, Dr. Kulkarni contends that these have been conveniently engineered so as to get out of the assurance given to the Court on February 21, 2000. He also points out that none of these have been clearly reflected in the balance sheets that were presented to the Court.

13. It appears to us that we need not go into the aspect of financial stringency or otherwise of the employer for that is a matter which rightly ought to be tried by

the Trial Court on evidence. We take notice of the concession made for the employer and agree that the order of the Labour Court dated July 30, 1999 in B.I.R. Application No. 5/99; the order of the Industrial Court dated August 19, 1999 in Revision Application No. 4/99 and the order of the learned single Judge dated September 9, 1999 made in Writ Petition No. 4712/99 be set aside. Consequently, the writ petition should also come to an end since it was only directed against the interlocutory order. The issue of lock-out or strike at large before the Trial Court, which is about to deliver its decisions in the applications which are being tried. We are informed that another three months time would be required for the Trial Court to complete the trial. We think that the trial can be conveniently finished by October 31, 2000 and appropriate directions given to the Trial Court to hasten the trial of the applications so as to comply with this deadline,

14. The final question, which confronts us is should the employees go without work or wages from the date when they moved the Trial Court for interim relief till October 31, 2000? It is not in dispute that no work had been offered to the employees, nor have they been paid any wages for the entire interregnum from July 23, 1999 till today. It is urged by the learned counsel for the appellant that, in July 1999 wages were paid as ordered upto that date. Even assuming this to be correct, the fact remains that from July 1999, almost for a period of one year, there is neither work nor wages given to the workmen. The trial of the main applications itself may go on for a couple of months more. In the circumstances, we are of the view that some amount of sustenance must be paid to the workmen, Mr. Cama was unable to dispute this on principle, but urged that this amount of sustenance should be minimal and in no event should it be more than one month's wages. Further, he pointed out that about 128 workmen had tendered unconditional resignations from their service and such affidavits have already been filed on record of the present proceedings. He submits that the Court should consider excluding those cases of 128 workmen while directing payment of sustenance wages. Dr. Kulkarni, however, rejoins that these are all cases where resignations have been extracted by coercion from the workers by putting extreme economic pressure, and, in some cases, even by misrepresentation. We however, need not go into the unseemly controversy. This is a matter which would require assessment of evidence and we would prefer that the Trial Court deals with it.

15. In the result, upon a conspectus of all factors, we are of the view that the orders which are the subject matters of the appeal need to be set aside and appropriate directions given for hastening up the trial of the main applications before the Trial Court and for ensuring that some amount is paid towards the sustenance of the workers in the interregnum. Hence, on an over all consideration of all matters, we make the following order:

(i) The order of the Labour Court dated July 30, 1999 made in B.I.R. Application (LCS) No. 5 of 1999 is set aside.

- (ii) The order of the Industrial Court at Kolhapur dated August 19, 1999 made in Revision Application (IC) No. 4 of 1999 is set aside.
- (iii) The order of the learned single Judge dated September 9, 1999 made in Writ Petition No. 4712 of 1999 which is in appeal is also set aside.
- (iv) Rule issued on the Writ Petition No. 4712 of 1999 is discharged and the writ petition is dismissed.
- (v) The Trial Court is directed to complete the trial and make its orders in B.I.R. Application (LCS) No. 5 of 1999 and 85 of 2000 not later than October 31, 2000.
- (vi) The 1st respondent shall, within a period of four weeks from today, deposit in the Trial Court an amount equivalent to the wages of all the workers for the period from February 11, 2000 to October 31, 2000.
- (vii) Liberty to the employees to apply to the Trial Court for withdrawing the amount. The Trial Court shall give a hearing to the employer, particularly taking note of the allegation that a large number of employees have ceased to be in service and make appropriate orders with regard to withdrawal of amount.
- (viii) Letters Patent Appeal is accordingly disposed of with these directions.
- (ix) No order as to costs. (x) Certified copy expedited.
- (xi) A copy of this order duly authenticated by the Sheristedar of this Court be supplied to the parties.