

(2000) 02 BOM CK 0020
In the Bombay High Court
Case No : L.P. Appeal No. 234 of 1999

Miraj Taluka Girani Kamgar Sangh

APPELLANT

Vs

Marathe Textile Mills

RESPONDENT

Date of Decision : 11-02-2000

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 119D, 78C

Citation : (2000) 85 FLR 644 : (2000) 1 LLJ 1602

Hon'ble Judges : J.A. Patil, J;A.P. Shah, J

Bench : Division Bench

Advocate : R.S. Kulkarni and Abhay R. Kulkarni, for the Appellant; Ranjit V. More, for the Respondent

Judgement

1. This appeal is directed against the order of the learned single Judge dated September 7, 1999 dismissing the writ petition 4712 of 1999 filed by the appellants in limine.

2. The respondent is a textile mill governed by the provisions of the Bombay Industrial Relations Act, 1946, (Act for short). The appellant is a registered trade union and it is also a recognised and approved union under the provisions of the said Act. On April 1, 1994 the union had entered into a settlement with the management in respect of the Ring frame Department providing for four side and six side work by the employees. There is no dispute that the said settlement is still in force and not terminated by either sides. It seems that the management gave notice of change on June 1, 1999 seeking change in the working in Ring frame Department in respect of which the settlement referred to above had made certain provisions. The change notice was opposed by the union and on June 15, 1999 the Assistant Commissioner of Labour, Sangli admitted this dispute in conciliation and the conciliation proceedings are pending. In conciliation proceedings the union has taken a stand that the notice of change is illegal under Sections 42 and 46 of the said Act in as much as there cannot be any change in the condition of service covered by any settlement or award. It

seems that the dispute between the parties started sometime in July 1999 mainly on account of the change of designation of workmen in the Ring frame Department by omitting the words 6 sides, 2 sides, 4 sides. According to the union the management unilaterally changed the designation of the workmen in the Ring frame Department by omitting 6 sides, 2 sides and 4 sides etc. The management has taken a stand that words 6 sides, 2 sides and 4 sides etc., are not the designations but they only denote working system in the mill.

3. According to the union on July 23, 1999 the workmen approached the management requesting not to change the designation from the attendance cards although they showed their willingness to work as per the instructions of the management. It is alleged by the union that the management made false entries on the attendance cards as "refused to work" and later "on strike". On the other hand the management maintained that the workmen are on sit-in strike on account of the above dispute. Be that as it may be, the fact is that since July 1999 the workmen are reporting for work, surrendering their cards and at the end of the day of the shift they return home by taking back their cards but no work is done in the mill. This position has continued till this date.

4. On July 29, 1999 the appellant union filed an application under Sections 78 and 79 of the Act before the Labour Court at Sangli alleging that the management has resorted to lock-out without notice or following the procedure prescribed by the Act and claimed a declaration that this lock-out is illegal and also claimed consequential reliefs. Along with the application, an interlocutory application was also filed by the union for interim relief. The Labour Court vide judgment and order dated July 30, 1999 dismissed the said application for interim relief on the ground that it has no power to grant such interim relief under the provisions of the said Act. Being aggrieved by the said order dated July 30, 1999 the union filed a revision application before the Industrial Court at Sangli which came to be dismissed vide order dated August 19, 1999. Against the said order of the Industrial Court the union filed Writ Petition No. 4712 of 1999, which also came to be dismissed by the learned single Judge summarily.

5. On a perusal of the judgments of the lower Courts it is seen that the Labour Court has declined to grant interim reliefs mainly on the ground that it had no power to grant such interim relief under the provisions of the said Act. In para 10 of its order the Labour Court observed as under:

".... I have carefully gone through the entire Bombay Industrial Relations Act, 1946 and I also could not find any such authority which says that the Labour Court has power to grant the relief to the applicant union as claimed in this interim application. Therefore I have given my decision by interpreting the provisions of the Bombay Industrial Relations Act, 1946."

6. The Industrial Court in revision application has endorsed the view taken by the Labour Court and observed as under:

"Under the circumstances, only the Labour Court has power to decide legality of

lock-out. Therefore this Court has no jurisdiction to decide the question of legality of lock-out".

7. We are constrained to observe that both the Labour Court as well as the Industrial Court failed to note the express provisions of the Act which empower the Labour Court to grant, interim relief. u/s 119-D of the said Act express provision has been made conferring power to grant interim relief and the same reads as under:

"119-D - In any proceedings before it under this Act, the Industrial Court, a Labour Court or a Wage Board may pass such interim orders as it may consider just and proper".

8. Apart from the above section, under. Section 78-C also powers are conferred on the Labour Court to pass interim orders such as temporarily withdrawing the action pending the proceedings where legality of the action is under consideration and also pass appropriate interim orders for making changes in the similar circumstances. It seems that the Labour Court has failed to notice this relevant provision and came to a wrong conclusion that the interim application filed by the Union was not maintainable.

9. In the instant case, the union has maintained that the employees are not on strike but the management is refusing to provide them work. However, the stand taken by the management is that there is sit in strike in the factory. It seems that the dispute has arisen mainly on account of change notice given by the management which is presently admitted in conciliation. Mr. More the learned counsel for the management is unable to show any provisions which permits the management to introduce change unilaterally when the matter is pending in conciliation. In fact Mr. More made a statement that the management is not implementing the change notice. At the same time there is no demand on the part of the workmen and therefore it is difficult to hold that the workers are on sit in strike. However, we need not express any opinion on this controversy at the interim stage; This issue will have to be decided by the Labour Court at the time of hearing of the complaint. Mr. More stated before us that the management is prepared to start the factory and that the work was never refused by the management. Dr. Kulkarni for the union stated that the workmen are equally keen to work and he pointed out that the workers admittedly are going to the factory and attending all the hours. There is thus really no dispute atleast on the question whether the work of the factory should be commenced. Accordingly we direct the respondent mill to give work to all the workers with effect from February 15, 2000. Dr. Kulkarni on behalf of the workers assured the Court that the workers are ready to give production as per the settlement/agreement dated April 1, 1994. The wages of employees shall be paid with effect from February 15, 2000. The Assistant Labour Commissioner, Sangli is directed to depute an officer not below the rank of Labour Officer to attend the factory every day for a period of 6 weeks from February 15, 2000 and ensure that both the parties adhere to the statements made before the Court and submit a report to this

Court on or before April 3, 2000. Appeal to be posted for further directions on April 4, 2000.

10. In the meantime the Labour Court is directed to expedite the hearing of the main application and decide the same within two months from today. Parties shall appear before the Labour Court on February 21, 2000. The Labour Court shall proceed on day to day basis and dispose of the matter as per the directions of this Court. All questions raised in the complaint including the question of back wages shall be dealt with by the Labour Court in accordance with law.

Liberty to apply.

Parties and the concerned authorities to act on the ordinary copy of this order duly authenticated by the Court Associate.