

(2001) 02 BOM CK 0096

In the Bombay High Court

Case No : Writ Petition No. 1357 of 1997

Mohammed Fekoo Mohammed Yusuf

APPELLANT

Vs

Shree Krishna Woollen Mills Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 08-02-2001

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 73

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2001) 3 ALLMR 434 : (2001) 4 BomCR 280 : (2001) 4 BOMLR 567 :
(2001) 89 FLR 393 : (2001) 1 LLJ 1363 : (2001) 3 MhLj 492

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : Apurva Kaiwar, instructed by Gayatri Singh, for the Appellant; S.R. Pandey and Pradeep Jadhav, for the Respondent

Final Decision : Dismissed

Judgement

R. J. Kochar, J.—The facts and background reflected in this petition are shocking. It also indicates how the representative union under the Bombay Industrial Relations Act, 1946 in the industry of respondent No. 1 has totally neglected the employees and left them in lurch without doing anything to protect their interest. The petitioner in this petition has impugned an order of the Labor Court dated 18th December, 1996 passed by it in the application filed by the petitioner u/s 33-C(2) of the Industrial Disputes Act, 1947. The petitioner being an individual found himself totally helpless and appears to have filed the said application to claim his legal dues such as retrenchment compensation, gratuity, bonus, privilege leave, house rent allowances and wages from 1st September, 1988 to 1994. Realising that the representative union (Woollen Workers Union (Red Flag)) was not looking after the Interest of the workers and has miserably failed to act as a representative union, the workman filed the aforesaid application as per the advice received by him. Though, ex facie, the application is wholly misconceived in law, there is no doubt that grave injustice is done to the

employees as they are neither getting their wages nor are they getting their legal dues including their terminal benefits if at all their employment can be said to have come to an end.

2. The facts are very simple and not disputed. The respondent No. 1 Company had declared a lock-out from 19th April, 1986 and the same is still continuing even after lapse of 14 years when the 20th Century took its turn. It is shocking that the representative union has also not done anything for the employees to protect their employment and to act in the interest of the industry and also in the interest of society at large as contemplated under the provisions of Bombay Industrial Relations Act, 1946. Fourteen years life of the lock-out must be the longest one in the history of the Industrial law. Neither the representative union nor the State Government has taken any steps to restart the wheels of the weaving and spinning machines in the mills of the respondent Company. It also reflects on the callous and cavalier attitude of the Labor machinery which has kept complete lull though the mill is under lock-out for the last more than 14 years and nothing was done by any one in the matter to get a daily bread for the starving families of the employees. This is certainly not the way in which a representative union and a welfare State should behave.

3. The petitioner has filed the application u/s 33-C(2) of the Industrial Disputes Act claiming the aforesaid legal dues including wages for the lock-out period. He has claimed full wages for the entire lock-out period on the basis that the lock-out was illegal and unjustified and he was entitled to get full wages for the said period. Simultaneously, he has also claimed terminal benefits such as retrenchment compensation and gratuity assuming that his services have come to an end. Both the claims obviously cannot lie. He can either get retrenchment compensation and gratuity for the service period or he can claim full wages for the whole lock-out period, as if his services were not terminated. Both the claims are obviously self-contradictory. Therefore, I have said that the whole application is rather misconceived in law. It is an admitted position that the services of the petitioner have not been terminated as no termination orders have been issued to any employee. It is asserted even before me on behalf of the respondent Company that lock-out is still continuing and the services of the employees have not been terminated or discontinued. Shri Pande, the learned Advocate for the respondent Company has submitted that a Court receiver has been appointed and the entire property of the Company is custodia legis. The Court receiver has filed his written statement, wherein he has given the history of the pending suit and order of his appointment. The Court receiver has further submitted that it was not his liability to pay any dues to the petitioner as he was not his employer, nor was he a party before the Labor Court. The Court receiver has also joined the respondent Company to pray for dismissal of the petition as untenable. The scope and parameters of Section 33-C(2) of the Industrial Disputes Act are very well settled. The jurisdiction of the Labor Court under the said provisions is very narrow and the same is akin to the jurisdiction of an executing Court. If any money/benefits are due from an employer, such an application can be filed by

any workman u/s 33-C(2) of the Act praying for determination and computation of such dues. The workman must have an existing right to claim money/benefits from the employer. It means that the right or entitlement of the workman must have been previously determined either by a settlement or an award or under the provisions of law. In the present case, the petitioner, expected the Labor Court to decide and adjudicate the question of his right to claim wages for the lock-out period. According to him, the lock-out was illegal and unjustified and therefore, he is entitled to full wages for the entire period of lock-out. It is, therefore, clear that his right has not been established or crystalised. It, therefore, cannot be said that he has an existing right to get wages for the entire lock-out period on the basis that the lock-out declared by the respondent Company was illegal and unjustified lock-out. The respondent Company on the contrary would assert that the lock-out was perfectly legal and justified and therefore no wages during that period were payable. These are the contesting claims of both the sides which require full adjudication under the provisions of the B.I.R. Act. It is shocking that the representative union after having filed an application for declaration of the lock-out as illegal and for a direction to the respondent Company to withdraw the said lock-out and to pay full wages to the employees, has quietly withdrawn the said application for the reasons best known to it. The Labor Court had no alternative but to dismiss the application for want of prosecution as when the application was called out on 5.3.1999, the learned representative of the union Shri R. S. Pande appeared and filed his withdrawal purshis which was taken on record by the Labor Court. It is not known why the said application No. B.I.R. 229 of 1986 was prolonged and dragged upto 5.3.1999 only to be withdrawn by the union. Shri Pande the learned Advocate for the respondent Company has handed over to me a compilation of the application filed by the representative union before the Labor Court. In the application, the notice issued by the respondent Company also forms part of the record. The notice has completely put the blame on the employees and the union for creating and continuing Labor unrest. The notice further states that in spite of Industrial Court's order, the workers did not resume their duties though the factory was started from 18th February, 1986. It appears from the notice that it was the desperate step taken by he respondent Company to declare lock-out as it found itself in a position to be unable to solve the Labor problem inspite of an agreement with the representative union. According to the management, the workers had adopted deliberately continuous "go slow" and had reduced production by 50% of the regular norms. The notice reflects the violent activities of the workers and the woeful story of the industry, which made it impossible to function, leaving no other alternative but to declare a lock-out. In the notice, the respondent Company has squarely blamed the workers and the union while in the application, the union has blamed the management. In these circumstances, a full fledged adjudication regarding the legality and justifiability of the lock-out is Inevitable. According to me, the union should not have simply withdrawn the said application. Since the present petitioner is claiming wages for the lock-out period as his existing right, the

Labor Court u/s 33-C(2) of the I.D. Act had no jurisdiction to decide the question of legality and justifiability of the lock-out.

4. Ms. Apurva Kaiwar has strenuously urged that the Labor Court has Jurisdiction to decide the question as an incidental issue to the claim of the petitioner workman. She has also cited following judgments to carry her point home.

(i) R. B. Bansilal Abirchand Mills Co. Ltd v. The Labor Court, Nagpur and Ors.

(ii) Sawatram Ramprasad Mills Company Ltd., Akola v. Baliram,,.

(iii) Punjab National Bank Limited v. Kharbanda (K.L.),.

(iv) Ramkrishna Ramnath v. The Presiding Officer, Labor Court, Nagpur and Anr.,.

(v) Sahu Minerals and Properties Limited v. Presiding Officer, Labor Court and Ors.,

(vi) Prabhat Enlarging Works, Nagpur v. Prabhakar Antaramji Bagmare and Ors.,

. (viii) Union of India and Anr. v. S. B. Agnihotri and Anr.,

5. There is absolutely no quarrel with the propositions laid down in the aforesaid judgments. The question whether a lock out is legal or illegal. Justified or unjustified is not an incidental question in the sense as reflected in the above judgments. The full fledged enquiry or adjudication is necessary to determine the right of the workman and the liability of the employer. It, therefore, means that the petitioner did not have an unquestioned or unquestionable existing right to get wages for the lock-out period. The respondent Company has asserted that it was a legal and justified lock-out and therefore, no wages were payable by It. On the contrary, the petitioner is trying to assert that the lock-out was illegal and unjustified and therefore, he was entitled to get full wages for the whole period of lock-out. The Labor Court exercising its very narrow Jurisdiction u/s 33-C(2) of the I.D. Act obviously cannot decide this question as incidental one.

6. Shri Pande, on the other hand has relied upon the judgment of our Division Bench In the case Indu d/o Vishnu Mahajan v. National Safety Council and Ors., Justice S. P. Bharucha (as he then was) has summarised the whole law in para 17 which is reproduced below:-

"17. A Full Bench of the Andhra Pradesh High Court in A.P.S.E, Board, Hyderabad v. Ikram Ahmad. noted the decisions of the Supreme Court and various ous High Courts on Section 33-C(2) and summarised the law as therein laid down. The Full Bench said that an application u/s 33-C(2) of the Industrial Disputes Act was maintainable where a workman claimed an amount of money, but such claim had to be based on an existing right. The existing right itself should have vested in the workman either under a settlement or an award or under the provisions of a statute. Once the right was shown to be existing under any of the above, the Labor Court had jurisdiction to entertain the application. There mere denial of such existing right by the employer did not take away the jurisdiction of the

Labor Court to entertain the application. The denial of the right would only require the Labor Court to enquire whether the right was existing. The Labor Court had jurisdiction to decide and determine this jurisdictional question. The enquiry u/s 33-C(2) in such case would have to be proceeded by an enquiry into the existence of the right and such an enquiry was incidental to the main determination which had been assigned to the Labor Court by Section 33-C(2). Just as an executing Court was competent to interpret the decree, so also the Labor Court was competent to construe the settlement, award or statute under which the right was claimed. Matters such as the interpretation of an award, whether the workman fell within a particular class of workmen entitled to benefits under a settlement, award of statute, the total amount due or the amount at which benefits should be computed were all matters falling within the jurisdiction of the Labor Court u/s 33-C(2)."

In a later judgment my learned Brother Shri B. N. Shrikrishna was also faced with a very similar problem which is before me. In the case of Siemens Ltd. v. Gajanan Vishal Konde and Ors.,. In that case also the workman had claimed wages for lock-put period u/s 33-C(2) of the Act. After considering the various judgments cited before him by the learned Counsel for the workman the learned Single Judge has summarised the law as under:

"... .the Labor Court could not have entertained the claim of the respondent - workman u/s 33-C(2) of the Act, inasmuch as the claim was not preceded by any adjudicatory order of a competent Court/Tribunal holding that, notwithstanding the continuing lock-out, the workmen were entitled to payment for the period of lock-out."

The learned Judge has held that the lock-out wages cannot be claimed u/s 33-C(2) of the Act until the legality and justifiability was finally adjudicated by a competent Court by law. Such a claim for the wages for lockout period has been held to be of a compensatory nature as observed by the Supreme Court in the celebrated judgment delivered In the case of The Statesman v. Their Workmen,. I am in respectful agreement with the learned Judge that the "Labor Court could not have entertained the claim of the workmen u/s 33-C(2) of the Act inasmuch as the claim was not preceded by any adjudicatory order of a competent Court/Tribunal, holding that notwithstanding the continuing lock-out, the workmen were entitled to payment for the period of lock-out." The said judgment of my learned brother Shrikrishna is not only binding upon me but I am also in respectful agreement with the said judgment, which has elaborately considered the very same issue which is before me.

7. In these circumstances, there is no substance in the above petition and therefore, it deserves to be dismissed and the same is dismissed with no orders as to costs.

8. Last but not the least, though the representative union and even the State Government has failed to the workmen, the industry and the community at large

by not moving the wheels of the adjudication machinery to get the final decision in the matter of lock-out, it is my bounden duty under Article 226 of the Constitution of India and in the larger interest of the society, to direct the respondent No. 7, the State of Maharashtra to refer the industrial dispute between the respondent Company and the employees in exercise of its plenary powers u/s 73 of the B.I.R. Act, 1946, to the arbitration of the President, Industrial Court to adjudicate and decide the question whether the lock-out commenced and continued by the respondent Company pursuant to its notice dated 4th April, 1986 is legal and justified and if not what is the proper relief to be given to both the parties. Shri Pande, the learned Counsel has fairly submitted that his clients would not have any objection if such reference is made by the State Government.

9. Since the lock-out is continued from 1986, I propose to give the following directions for expeditious disposal of the industrial dispute.

(i) The respondent No. 7, the State Government, shall refer the above industrial dispute for adjudication to the President, Industrial Court u/s 73 of the B.I.R. Act within 4 weeks from receipt of this order.

(ii) The representative union, shall represent the employees and contest the reference. It shall file its statement of claim within 4 weeks from receipt of the notice from the Industrial Court.

(iii) The respondent Company shall file its written statement and all the documents on which it would rely within 4 weeks thereafter.

(iv) The President, Industrial Court shall record evidence of both the parties on day to day basis and shall hear and dispose of the reference as expeditiously as possible and in any case within 8 months from the date of the order of reference.

(vii) The Court receiver who is a party to the present proceedings shall appear and act in the matter to assist the Court;

(viii) Since the petitioner has been instrumental in getting such an order from this Court, I am granting him a special permission to participate in the reference and to be represented by a legal practitioner of his choice.

(ix) Shri Pradeep Jadhav, the learned A.G.P. is hereby directed to communicate this judgment and order to the appropriate authorities in the State Government.

The State Government shall act on an ordinary copy of this judgment and order authenticated by the Associate of this Court.

With the above directions the Writ Petition is dismissed with no orders as to costs. Rule is discharged.