

(2014) 01 BOM CK 0174

In the Bombay High Court

Case No : Writ Petition No. 1021 of 2004

M/s. Neco Schubert and Salzer Ltd.

APPELLANT

Vs

Krushna Nagorao Lute and Others

RESPONDENT

Date of Decision : 16-01-2014

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 42
Constitution of India, 1950 — Article 19
Industrial Disputes Act, 1947 — Section 33 9A

Citation : (2014) 5 ALLMR 328 : (2014) 2 BomCR 728 : (2014) 142 FLR 65 :
(2014) 3 LLJ 698 : (2014) 6 MhLj 283

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : V.P. Marpakwar, for the Appellant; M.V. Mohokar, Advocate for
Respondent Nos. 1 to 5 and AGP, for the Respondent

Final Decision : Allowed

Judgement

R.K. Deshpande, J.—This petition claims the reliefs as under:

1) Call for the records of Complaint No. ULPA 402 of 2003 decided by Member Industrial Court at Nagpur and upon perusal thereof

a. Set aside the order dated 9/1/2004 declaring it as illegal.

b. Declare that the provisions of Item 2 of Schedule II of B.I.R. Act, 1946 is violative of Article 19 of the Constitution of India and set aside the said Item declaring it to be un-constitutional.

c. Declare that in view of the amendment to the Industrial Disputes Act, 1947 in 1982 (w.e.f. 21.8.1984), the Maharashtra Act No. 1 of 1972 has been impliedly repealed and no complaint is maintainable under the said Act.

d. Grant ad-interim stay to the effect and operation of order dated 9/1/2004 during the pendency of the main petition in the interest of justice.

e. Grant any other or further relief including costs as may be deemed fit in the circumstances of case.

Shri Marpakwar, the learned counsel for the petitioner-employer, submits that the petitioner-employer does not want to press the prayer clauses (b) and (c) above. In view of this, the matter can be dealt with by the Single Judge.

2. The challenge in this petition is to the judgment and order dated 9-1-2004 passed by the Industrial Court, Nagpur, in Complaint (ULP) No. 402 of 2003. It was a complaint invoking Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 on the ground that the petitioner-employer was engaged in unfair labour practice by recruiting new employees and taking overtime work from the permanent employees. The complaint was filed by the elected representatives of the employees under the Bombay Industrial Relations Act, 1946. The Industrial Court has allowed the said complaint and restrained the petitioner-employer from recruiting, continuing or engaging new employees to get overtime work done, which is performed by the permanent employees. It is also directed that the petitioner-employer should get done overtime work from the permanent employees only.

3. The complaint has been allowed, holding that the employees have legal right to get the overtime work and consequently the wages for that purpose. It has also been held that the employment of the new recruits on temporary basis for getting the extra work done, amounts to change in the service conditions and hence, the notice of change u/s 42 of the Bombay Industrial Relations Act was required to be given to the employees and failure to give such notice, vitiates the change. It has further been held that the fresh hands are engaged to get the work done, which the complainants/respondent Nos. 1 to 5 were doing on overtime basis. The Industrial Court has held that in effect, the provisions of Section 33 of the Industrial Disputes Act are attracted and it becomes incumbent on the part of the petitioner-employer to seek permission of the Court to make such a change during the pendency of the industrial dispute.

4. The question as to whether the complainants/respondent Nos. 1 to 5 have a legal right to get the overtime work and consequently the wages for the same, is no more res integra in view of the judgment of the Division Bench of this Court in the case of India Security Press Mazdoor Sangh Vs. Currency Note Press and Others, . The relevant portion in para 5 of the said judgment is reproduced below:

5.... It is well settled work, which is necessitated by the exigencies to be determined solely by the employer. Merely because for a length of time of whatever duration, the shifts were so arranged as to include also the overtime hours of work that would not confer on the workman a right to overtime work. Just as the employer initiates overtime work, he has a right to withdraw it unilaterally. In fact, in the circumstances, there was not even a need for a notice of change. The change in the present case would not be covered either by items

4, 6 or 8 of the Fourth Schedule of the Act on which reliance is placed on behalf of the petitioners. Item 4 speaks of "hours of work" and "rest intervals". It is undisputed that the proposed working hours do not impinge on rest intervals. As far as "hours of work" are concerned, the item refers to the maximum regular hours of work as settled either under an award or settlement or prescribed by the statute. If, for example in the present case, such regular hours of work were sought to be increased, it would have required a notice of change u/s 9A. Admittedly that is not the case. The change is sought to be effected in the overtime hours of work and that too in their excess from 18 to 6. Item 6 speaks of starting, alteration or discontinuance of shift-working otherwise than in accordance with standing orders. It is admitted before us that there are no standing orders on the subject. Therefore, that item is clearly not attracted in the present case. So far as item 8 is concerned viz., withdrawals of any customary concession or privilege or change in usage, we are of the view that overtime work by its very nature cannot be covered by the said item. It cannot be called either a customary concession or a privilege or usage. It is dictated by the exigencies of work which are variable from time to time. Hence no notice u/s 9A was necessary in the recent case. However, probably to be on the safe side, the Respondents had given the notices of change and there is no dispute that it is only after the expiry of the period of the said notices that the changes were effected. We are therefore unable to see any illegality in the Respondent's action.

In view of above, it has to be concluded that the complainants/respondent Nos. 1 to 5 had no right to overtime work, which is necessitated by the exigencies and merely because for length of time of whatever duration the shifts were so arranged as to include the overtime of the work also, that would not confer on a workman right to overtime work. It has to be held that the employer has right to withdraw the overtime work even unilaterally and such action on the part of the employer does not amount to change, requiring a notice u/s 42 of the Bombay Industrial Relations Act. The findings recorded by the Industrial Court to the contrary cannot, therefore, be sustained.

5. The Industrial Court has recorded a finding that the labour component in the industry of the petitioner is fixed at 500 employees as per the licence at Exhibit 33. The employees engaged were only 350. The employer has led evidence to establish that out of 350 employees, 24 employees were either terminated or had resigned and hence the temporary hands for 3 to 4 days in a week were engaged to carry out the extra work as and when the requirement was found. The employment of persons on such temporary basis also did not exceed the component of 24 employees, who were either terminated or had resigned from the posts. Thus, the total strength of 350 employees was not increased nor decreased because of the employment of temporary hands. There is neither any settlement, agreement or award brought on record by the employees to establish that the employer was prohibited from recruiting new employees or had undertaken to provide overtime work to the permanent employees in case of increase in the work. In view of this, the provision of Item 9 of Schedule IV of

the MRTU & PULP Act is not attracted. The Industrial Court has, therefore, committed an error in holding that there was a breach of settlement violative of Item 9 of Schedule IV of the said Act, or even for that matter, the provision of Section 33 of the Industrial Disputes Act was also not attracted, requiring the permission of the Court. Thus, the impugned judgment and order passed by the Industrial Court cannot be sustained.

6. In the result, the petition is allowed. The impugned judgment and order dated 9-1-2004 passed by the Industrial Court, Nagpur, in Complaint (ULP) No. 402 of 2003, is hereby quashed and set aside. The said complaint is hereby dismissed. Rule is made absolute in above terms. No order as to costs.