

(1999) 03 BOM CK 0055
In the Bombay High Court
Case No : Writ Petition No. 484 of 1999

M/s. Oswal Agro Mills Ltd. and others	APPELLANT
Vs	
M/s. Oswal Petrochemicals Employees Union and others	RESPONDENT

Date of Decision : 09-03-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Industrial Disputes Act, 1947 — Section 25
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 24, 25, 28

Citation : (1999) 3 ALLMR 400 : (1999) 3 BomCR 478 : (1999) 2 BOMLR 306 : (1999) 82 FLR 310 : (1999) 2 MhLj 449

Hon'ble Judges : N.J. Pandya, J

Bench : Single Bench

Advocate : K.K. Singhavi, M.S. Naik and S.M. Naik, for the Appellant; Colin Gonsalves, for the Respondent

Judgement

N.J. Pandya, J.—The petition is filed against the interim order that came to be passed by the learned Industrial Court Judge, Mumbai in Complaint (ULP) No. 1481 of 1988. This order was passed on 25-1-1999 below application for interim relief filed by the respondents-union as Exh. U-9.

2. As the petition was filed against the interim relief which had the impact of lifting the dispute of lock out, obviously the petitioner-company was serious about it. Whether the entire petition is heard or after issuing rule in the petition it is heard for interim relief, it would be one and the same. By consent, therefore, the petition itself was taken up for hearing after issuing rule which was waived by Counsel Mr. Colin Gonsalves i/by Ms. Gayatri Singh for the respondent-union. That is how this petition is heard and finally decided by the present order. The complaint as originally filed is Exh. D, page 25. I used the word as originally filed as on 26-11-1998 because on the date of filing of the complaint the disputed lock out was not in existence. What was challenged by way of that complaint of the aforesaid date was the impugned action of the petitioner-company of stoppage of

work which was claimed to be for maintenance. It is technically, therefore, refers to as shut down for maintenance. Thereafter on 28-11-1998 the company issued a notice of lock out. The earlier action of shut down for a period of 45 days was taken on 19-1-1998, which was extended and all through, admittedly the workers were paid full wages.

3. The said event of lock out notice prompted the respondent-union to file an application for amendment of its complaint on 1-12-1998. The company opposed the amendment by reply dated 4-12-1998. By order dated 8-12-1998, the trial Court allowed the amendment application.

4. Application for interim relief was submitted which was rejected on 8-12-1998. After the complaint was amended, application for additional interim relief was filed on 2-12-1998. This was objected to by detail reply filed by the petitioner-company on 14-12-1998 and after hearing both the sides, the learned trial Judge passed an order on 25-1-1999. It is this order, which is sought to be challenged.

5. The impugned order dated 25-1-1999 at pages 143 and 144 reads as follows. :--

"Application for interim relief Exh. U-9 is hereby allowed.

1. The respondents are directed to lift the notice of lock out and suspension of operation dated 28-11-1998 and to provide work to the workmen concerned.

2. In case, the respondent-company does not provide work to the workmen concerned, it should pay the monthly wages to them as it used to pay earlier.

13. The respondent company is granted 15 days time to comply with the interim order in terms of Nos. 1 and 2 above.

4. The respondent company is also further directed to pay arrears of wages within the period of one month from the date of this order. If the parties co-operate, the complaint can be decided early on merits."

6. The petitioner company has strongly assailed the reasoning given in the said order and has commented that without giving a finding that the union has succeeded in making out a prima facie case, the order is passed. The second contention is that when it is a matter of lock out and the complaint being under the provisions of Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971, hereinafter referred to as M.R.T.U. 8s P.U.L.P. Act, the trial Court could not go into the question of justifiability of lock out. It has to see the action of lock out under the provisions of MRTU& PULP Act as set out in section 24 sub section (2) in Chapter V of the said Act. The learned Counsel appearing for the petitioner also referred to section 25 of the said Act and thereafter he drew my attention to Item No. 6 of Schedule II of the said M.R.T.U. 8s P.U.L.P. Act. Item No. 6 reads "Proposing or continuing a lock-out deemed to be illegal under this Act".

7. The complaint as filed and the matter as argued on behalf of the union by the

learned Counsel Shri Colin Gonsalves for the respondent is clearly on the basis that the case sought to be made before the trial Court is not under the said Item No. 6 but under Item No. 9 of Schedule IV. According to him, therefore, there is no question of there being any constraint on the powers of the trial Court to go into the question of justifiability. This submission is made no doubt without conceding the point that even in relation to Item No. 6 in a given case the Court can enter into justifiability when the complaint is filed also with reference to Item No. 9 of Schedule IV or any other related items of Schedule IV.

8. As the complaint challenges the lock out, it is also submitted by the learned Counsel Shri Gonsalves that the case is squarely covered by section 24 sub section (2) clause (h) of the said M.R.T.U. & P.U.L.P. Act. The said Clause (h) reads as under:

"during any period in which any settlement or award is in operation in respect of any of the matters covered by the settlement or award."

9. This point is urged on behalf of the respondent-union mainly on the basis that the lock out is held out as a defence to the complaint and as such there being a settlement between the parties it is clearly hit by the same. About this particular aspect on fact, there is a dispute because admittedly the Award did come to an end as its tenure expired in the month of October, 1998. It is an admitted position that the benefit flowing from this will continue but according to the company the settlement cannot be said to be operational after its expiry. To my mind, much should not be made out of this controversy. As it can be presently seen this case offer totally an unusual feature as far as the unfair labour practice alleged is concerned. As seen above, before the lock out was declared the company had taken shut down on and from 19-9-1998 initially for a period of 45 days. It is adopted according to the company to cut down the costs. The lock out according to the company therefore is a further exercise in this regard and as a part of cutting costs exercise, they had to take into consideration the reduction of wages, as the labour costs through the wages forms considerable part of segment of costs in running the factory.

10. On an average, according to the company the wages drawn by the workmen are Rs. 10,000/- per month and therefore the pay packet is sought to be reduced to Rs. 5000/- on an average. In other words, on offering to pay 50% of the wages, the lock out is imposed.

11. If one turns to the contents of the notice of the lock out, it immediately strikes that the lock out is made effective forthwith though as per Form J., page 63, it is to take effect from 16-12-1998. This will be on and after expiry of 14 days period required under the statute. By statutory it means the said section 24 of the said MRTU & PULP Act. In the reasons required to be stated along with the notice, it has been categorically stated at page 63(b) that the management has decided to suspend the operation of the factory establishment with immediate effect as per separate notice and declared the lock out to be effective on the

expiry of the minimum notice period. The lock out is to continue till such time that all the workmen agree to the measures set out in the said reasoning accompanying notice.

12. This stand of the company is taken to mean and stated to mean that the lock out becomes effective on expiry of the notice period, the workmen will be paid full wages though they will not be permitted to work as the work has been suspended.

13. Till the issuance of the notice on account of shut down, the work was not being carried out and after the issuance of the notice of stoppage of work due to shut down was continued as suspended till the lock-out becomes effective, all through the company continues to pay full wages.

14. On behalf of the petitioner, it was urged that the lock out being a weapon available to the employers and held to be antithesis to strike, it is nothing else but an attempt on the part of the employer to persuade the workers, if necessary by coercive process to see from the employer's point of view and to accede the demand. For this, decision reported in *Management of Kairbetta Estate, Kotagiri Vs. Rajamanickam and Others*, is relied on. In the case of *Kairbetta Estate v. Rajmanikkam*, reliance is placed on the passage at page 278. By referring to the case reported in *General Labour Union (Red Flag) Bombay Vs. B.V. Chavan and Others*, a distinction was drawn between lock out and closure. In the case of *General Labour Union v. B. V. Chavan*, after building up a case on this basis, the learned Counsel for the petitioner went on to submit that when the weapon of lock out is thus invoked and used by the employer, the power of the Court under the MRTU & PULP Act is very very limited and for this purpose reliance is placed on *Majdoor Congress v. Shri S.A. Patil*, (1992) 1 C.L.R. 408. It is Bombay High Court judgment delivered by the learned Single Judge. Same view is to be found in *Mah. General Kamgar Union, Bombay, v. Solid Container Ltd.* (1996) 1 C.L.R. 106.

15. The first of the two cases i.e. decision rendered by the learned Single Judge is of Mr. Justice Ashok Agarwal who is a party to the Division Bench which is a second one in *MGK Union's* case. In order to appreciate the aforesaid submission of the learned Counsel, some facts are required to be gleaned from both the matters. In the first matter of *S.A. Patil's* case, the Union had filed a complaint under Item No. 6 of Schedule II of the said M.R.T.U. & P.U.L.P. Act. The lock out was imposed by notice dated 3-4-1977. It was to effective from 4-4-1977. Obviously it was in contravention of the statutory provisions of section 24 as it was lacking in 14 days notice. The company corrected its action by issuing fresh notice complying with the provisions of the Act. In this background, it was held for the period for which the lock out was admittedly illegal i.e. not in compliance with the statutory provisions, the lock out is of course bad and the workmen are entitled to wages for that period. Afterward when the lock out became effective on compliance of the statutory provisions, the lock out is legal and the Court while dealing with the complaint under Item No. 6 of Schedule II cannot enquire

into its justifiability. For this purpose, the learned Single Judge relied on the case of Billion Plastics P. Ltd. Vs. Dyes and Chemical Workers Union and Others, . It was in connection with illegal strike. The legality of the strike whether it is deemed to be legal or not may be gone into but its justifiability of proprietary cannot be gone into when a complaint is under Schedule III, Item No. 1 of the said M.R.T.U. & P.U.L.P Act Section 24 of the M.R.T.U. & P.U.L.P. Act deals with strike in sub section (I) and with lock out in subsection (2). Adopting the said reasoning of the Billion Plastics case, the learned Single Judge therefore applied the same principle to the question of lock out and its justifiability.

16. The second case gives a very violent picture so far as union is concerned and while dealing with the matter, the learned Judge found that the Company was left with no alternative but to impose the lock out. The efforts of the company for the lock out was preceded by an attempt of closure u/s 25-O which failed. Thereafter, the workmen started agitating more aggressively and the company therefore tried to reason it out with but to no avail. Finally on 7-1-1986 they came out with the notice of the lock out. The application u/s 25(o) of the I.D. Act. was filed on 24-10-1985. Just a day prior to the issuance of the notice on 6-1-1986 there were internal clashes and fights amongst the workers which referred to as one of the reasons for imposing the lock out.

17. In both the cases therefore it is to be seen that the lock out which was imposed had become effective and it was the lock out which was stated to be complained of.

18. As per the facts of the present case narrated briefly above, the complaint was already filed challenging the action of shut down wherein on 27-11-1998 time was sought by the company to file a reply and on that date even the question of grant of interim relief under the complaint originally filed was not taken up. It is on the next date that the lock out notice were given and it is in this background that the trial Court is compelled upon to exercise its power to grant interim relief. It is in this background, the Union continues to espouse the cause of these workmen in relation of Item No. 9 of Schedule IV that was originally done in relation to the said question of shut down.

19. As will be gathered from the complaint as originally filed, the shut down is also described by the Union as nothing else but an illegal closer circumventing the provisions of section 25-O of the I.D. Act. Needless to say this is strongly refuted by the company. This is followed by the notice of lock out which is to take effect on the date mentioned but so far as workmen are concerned, there is hardly any difference as the factory remained closed and shut down. No doubt materially so far as payment of wages is concerned, the workmen are getting their salary on and upto the date of coming into effect of the notice of lock out.

20. When the complaint which was already pending related to a fact situation of work having been stopped and workers being prevented from doing their work or the employer denying the work to the workmen, that they are ready and willing

to do it, the position in my opinion is not at all altered after imposing of lock out. What was stoppage of work under the nomenclature of shut down for maintenance continues to be the position under the nomenclature of lock out.

21. If in this background the aforesaid assertion on the part of the Union that the company has resorted to dubious and devious mean to impose its squall on the workmen and therefore it is neither a shut down nor lock out can certainly be gone into under Item No. 9 of the Schedule IV of the M.R.T.U. & P.U.L.P. Act.

22. By relying upon the aforesaid decision and the aforesaid two Bombay High Court decisions and asserting that the company having fulfilled its statutory requirement, the Court under M.R.T.U. & P.U.L.P. Act has no authority whatsoever to enter the justifiability of it, in my opinion it cannot be accepted.

23. Under the field of Industrial Labour Legislation, the State of Maharashtra is in a unique position as it has as many as three different enactments holding the field. First one no doubt is the Central Legislation Industrial Dispute Act, 14 of 1947. The second one is the Bombay Industrial Relations Act, which is a State Act and the third one is the aforesaid M.R.T.U. & P.U.L.P. Act. In the case of Hindustan Lever Ltd. v. Ashok Vishnu Kate, reported in 1995 Lab. I.C. 2714 the Hon"ble Supreme Court had an occasion to deal with the complaint of unfair labour practice under Item 1 of Schedule IV of the said M.R.T.U. & P.U.L.P. Act. Noting that the said enactment i.e. B.I.R. Act is virtually silent of Unfair Labour Practice and the Central Act, does deal with the Unfair Labour Practice, it is only the said M.R.T.U. & P.U.L.P. Act which is capable of dealing with the Act which is yet to take place. In the Central Act the - Unfair Labour Practice is referred to as committing unfair labour practice while in the M.R.T.U. & P.U.L.P. Act emphasis is on stopping the employer or the employee union engaged in Unfair - Labour Practice. Drawing distinction between "commission" and "engaging" Their Lordships have clearly held that the later term is very comprehensive:

24. Their Lordships have in paragraph 12 of the said judgment dealt with the provisions of I.D. Act, in paragraph 14 M.R.T.U. & P.U.L.P. Act and its scheme has been set out, and in paragraph 15 the conclusion is noted that the said M.R.T.U. & P.U.L.P. Act is brought on the statute book with the above purpose of regulating the activities of trade union and for preventing certain unfair labour practice both on the part of the union and employees as well as the employer. In this background after quoting Schedule IV at page 2721 it has been clearly held at the end of paragraph 18 that if an employee can make out a strong prima facie case for interdicting such a process, he can legitimately invoke the jurisdiction of the Labour Court for preventing such an Unfair Labour Practice for getting fructified or completed.

25. The important aspect therefore is that before completion or fructification the party complaining of can get interim order if prima facie case is made out.

26. In my opinion, therefore, neither of the two judgments namely i.e. Solid Containers and S.K. Patil will help the company.

27. As noted above, the company had already set itself upon the course of action by resorting to what it called a shut down for maintenance. The complaint filed in that regard is ought to be decided which no doubt the company is within its rights. However, before the written statement is filed after obtaining time in that regard on the very next date for getting the time the lock out is declared by the said company. The union has all along been apprehending that the petitioner company will resort to different stratagems to see that the workers are kept out of work. It is in this background that the trial Court was called upon to exercise its power.

28. Till the lock out notice was issued, shut down for maintenance per se would mean that after the maintenance work is over the company would resume production. This would mean that the company will start giving work to the workmen. In between the period that the shut down was in force and the date on which the lock out notice came to be issued, what events have taken place the company is totally silent. In the statement of reasoning, financial difficulties faced by the particular unit of the company is no doubted highlighted. However, before the trial Court it was pointed out by publishing report in the newspapers by the union that the petitioner-company itself is making profit. As this could not be done in the course of hearing the present petition it was urged on behalf of the company that the unit is running in loss and lock out is only in relation to that unit. The question therefore according to this submission will have to be considered only in connection with the unit.

29. I cannot accept this argument. The company like the petitioner-company may have several units. Even if it was not an artificial person, any employer running a large establishment will have different units. However, the employees will be having their relations of master and servant. It is the employer who owns the establishment. The question therefore cannot be considered in a manner that would amount to cylindrical vision by concentrating only on a given unit. Matters of industrial relations have direct bearing on the well being of the company and its employees as also on the over all economy of the country and the society at large. Peripheral vision, that would enable the Court to see the over all view of the matter has to be resorted to and especially when there is admittedly a profit making company approaching to lock out in respect of one particular unit because it is running in loss at interim stage in my opinion that cannot help the employer-company.

30. In the course of trial it may be able to establish its case and convince the Court that the action of lock out was eminently called for.

31. In the course of hearing it was urged that looking to the scheme of sections 24 and 25 of the M.R.T.U. & P.U.L.P. Act, all that the trial Court can do is to consider the legality as laid down by the said two judgments of S.K. Patil & Solid Containers, The learned Counsel further submitted that if at all the Court finds that it is not in keeping with the statutory requirement, the company gets 48 hours time to lift the lock out. Beyond that nothing would happen.

32. In the matter of Universal Luggage Manufacturing Co. Ltd. v. General Employees Union, the Division Bench of this Court was dealing with the matter at interim stage like the present one reported in 1993(1) C.L.R. 421. The case of the union was specifically to the effect that there is unfair labour practice resorted to under Item 6 of Schedule II and 9 & 10 of the M.R.T.U. & P.U.L.P. Act. It was the case of the union that notice of lock out was subterfuge to circumvent the provisions of section 25-O of the I.D. Act relating to the closure. As the matter was at interim stage the learned Judges of the Division Bench held that the view taken by the trial Court is probable and they did not interfere with the same. The said very company's matter had come before the learned Single Judge by way of Writ Petition No. 906 of 1996 where the learned Single Judge had elaborately considered the submission about the lock out and as per the decision reported in Universal Luggage Mfg. Co. Ltd. v. General Employees Union, 1992 (1) C.L.R. 267, had rejected the petition. Paragraphs 2 and 8 of the judgment are material for the purpose.

33. Supreme Court in the case reported in Syndicate Bank and another Vs. K. Umesh Nayak, , has dealt with the case arising from Madras and referring to Item No. 5, wages for strike period of Schedule II under the I.D. Act, also dealt with the general questions of resorting to strike or lock out. For that, details may be had from paragraph 9 of the said judgment. It is quoted hereunder :

"The strike as a weapon was evolved by the workers as a form of direct action during their long struggle with the employers. It is essentially a weapon of last resort being an abnormal aspect of the employer-employee relationship and involves withdrawal of labour disrupting production, services and the running of the enterprise. It is a use by the labour of their economic power to bring the employer to see and meet their viewpoint over total cessation of work it takes various forms such as working to rule, go slow, refusal to work overtime when it is compulsory and a part of the contract of employment, "irritation strike" or staying at work but deliberately doing everything wrong, "running-sore strike" i.e., disobeying the lawful order, sit-down stay-in and lie-down strike etc. The cessation or stoppage of work whether by the employees or by the employer is detrimental to the production and economy and to the well-being of the society as a whole. It is for this reason that the industrial legislation while not denying the right of workmen to strike, has tried to regulate it along with the right of the employer to lock out and has also provided a machinery for peaceful investigation, settlement, arbitration and adjudication of the disputes between them. Where such industrial legislation is not applicable, the contract of employment and the service rules and regulations many times, provide for a suitable machinery for resolution of the disputes. When the law or the contract of employment or the service rules provide for a machinery to resolve the dispute, resort to strike or lock out as a direct action is prima facie unjustified. This is particularly so when the provisions of the law or of the contract or of the service rules in that behalf are breached. For then, the action is also illegal."

34. In the aforesaid Supreme Court judgment, in my opinion is very opposite the facts of the case. Once this position is appreciated in the aforesaid manner the contention that the trial Court could not have entertained into justifiability while granting interim relief even by holding that there is prima facie case in this regard, cannot be accepted.

35. This takes me to the aspect of absence of prima fade case or atleast the facts that have been recorded by the learned trial Judge in his order. However when one turns to the order in the course of its discussion at page 136 paragraph 50 onwards he has held more than once that the complainant has succeeded in making out a prima fade case. The decision therefore cited on behalf of the petitioner on this aspect may merely be referred to. They are Dalai Eng. Pvt. Ltd. v. Ramrao Shamrao Sawant, 1991 (2) C.L.R. 808, V.K. Sarala v. COCSI Ydevas Wam Board 1995 XI L.L.J. 1160.

36. The grievance was certainly made on behalf of the petitioner that the interim relief granted is virtually a final relief. Under the aforesaid circumstances, it is bound to be so. Reliance was placed on Supreme Court decision in the Bank of Maharashtra Vs. Race Shiping and Transport Co. Pvt. Ltd. and another, . Factually this case has no application to the present petition. The matter before the Court in the said bank case was relating to a disputed entry in their account of forged cheque. In spite of this plausible defence, relief was granted in a writ petition for paying Rs. 95,000/- to the petitioner by the company. Deprecating this practice in para 11 and 12 at page 1371 Their Lordships have held that merely because there is prayer clause it is not incumbent to grant any interim relief that has been asked for. The other aspect of balance of convenience has to be looked into.

37. Even going by this context, in my opinion, for grant of interim relief as granted by the trial Court there is justification. In the matter relating to industrial dispute, the balance of convenience has to be seen from the point of view of the employer and employees, distribution of production, and more particularly the forced idleness imposed on the workmen initially with wages and later on without wages.

38. Giving wages without taking work in my opinion would be imposing very highly undignified situation. They are not asking for charity. In return to the labour put in by them, either manual or mental, they are seeking their wages. Stand of the company disclosed so far that for the shut down period wages are paid though they were not allowed to work and on the lock out notice also till it became effective wages are paid without work in my opinion at best it would indicate very unacceptable stand on the part of the employer. Merely because they are to pay wages without taking work would not mean that they can take recourse of any method they like. This observations are made in the light of what is revealed from the date of the shut down till the date of the notice of lock out became effective.

39. Stated above, The company may have sufficient material to support its action

which they can certainly make out before the Court in the course of trial of the complaint. The observations that are made inferences drawn, conclusion arrived at in this order are therefore confined only to the disposal of this petition. They will have no bearing whatsoever on the outcome of the complaint pending before the trial Court. It will be decided on the basis of the material produced and evidence, both oral and documentary led by the respective parties in support of their rival contentions and in accordance with law.

40. So far as the petition is concerned, it fails. Rule discharged.

41. After the judgment was dictated on behalf of the petitioner, the learned Counsel Shri Naik requested that the order be stayed for a period of four weeks. To this, the reply by the respondent union was that if the Court is inclined to stay the order atleast one month's wage should be paid.

42. The request made by the union is reasonable. Therefore the following order is passed :

The operation of the order is stayed for three weeks on condition that within one week from today, one month's wages shall be paid to the workers who are affected by the lock out notice.

The payment made shall be adjusted against the dues if any found to the end of the trial by the Court below.

Issuance of certified copy is expedited.

43. Petition failed. Rule discharged.