

(2015) 07 BOM CK 0255

In the Bombay High Court

Case No : Writ Petition No. 7262 of 2015

NRB Bearings Limited

APPELLANT

Vs

Alisab Bapusab Shaikh and Others

RESPONDENT

Date of Decision : 29-07-2015

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28(1), 30(2), 31, 33, 44

Citation : (2015) 5 ABR 297 : (2015) 6 BomCR 365 : (2015) 146 FLR 913 : (2015) LabIC 3680 : (2015) 3 LLJ 695

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : Dankh Sachin V., for the Appellant; Waikos A.B. and Sarvadnya R.S., Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

R.V. Ghuge, J—Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. I have considered the submissions of Shri Dankh, Shri Sarvadnya and Shri Waikos. Issue involved is as regards the order of transfer issued to respondent No. 1 workman which is challenged in Complaint (ULP) No. 56 of 2015. Application Exhibit U-2 has already been rejected by the Industrial Court, Jalna.

5. Shri Dankh makes a statement that the first respondent has already been allotted work in the factory premises of the petitioner and is working pursuant to the impugned order dated 8.7.2015, passed by the Industrial Court below Exhibit U-10, which was filed by the workman for seeking urgent orders under Section 30(2) of the MRTU & PULP Act, 1971.

6. While issuing notice to the respondents, I have considered the facts of this case, which are as under:-

(a) The petitioner assails the order dated 08/07/2015 delivered by the Industrial Court, Jalna below application Exh.U-10 filed in Complaint (ULP) No. 56/2015.

(b) The petitioner makes a serious grievance about the impugned order. The respondent No. 1 was transferred from Jalna to its plant at Pantnagar by order dated 26/02/2015. The respondent challenged his transfer by filing Complaint (ULP) No. 56/2015 u/s. 28(1) r/w Items 3, 5, 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971 alongwith an application for interim relief u/s 30(2).

(c) By order dated 11/03/2015, the Industrial Court rejected application Exh.U-2 and vacated the ad-interim protection granted on 07/03/2015. The respondent was further directed to report at the place of transfer on or before 16/03/2015 and the period of 3 months, for which he was transferred, was to be computed from 16/03/2015.

(d) The petitioner submits that the respondent moved an application with a medical certificate dated 07/04/2015. He had already reported at the place of transfer and had sought leave on medical grounds. Later on, since the respondent submitted the medical certificate indicating that he would be fit to resume duties from 24/06/2015, he was advised to report for duties at Pantnagar by order dated 02/07/2015.

(e) It is further submitted that respondent No. 1 moved an application dated 08/07/2015 before the Industrial Court praying for preponing the date of hearing in the matter from 17/07/2015 to 08/07/2015. It is categorically stated that the copy of the said application was not served upon the petitioner. Yet, the Industrial Court allowed the application and considered application Exh.U-10, which was filed for seeking urgent orders by the respondent and by the impugned order dated 08/07/2015, virtually allowed the application without hearing the petitioner.

(f) It is stated that the proceedings have now been posted to 30/07/2015 for framing of issues. It is, therefore, prayed that this matter needs to be heard urgently and ad-interim orders need to be passed.

(g) The operative part of the impugned order reads as under :-

" (A) The transfer order dated 02/07/2015 issued by respondent, of transfer at Pant Nagar Plant is hereby stayed till the next date.

(B) The respondent is further directed to allow the complainant to resume on duty at the work place at Jalna."

(h) The prayers put forth in application Exh.U-10 are as under:-

"i. Direct the Respondent temporarily to cease and desist from such unfair labour practices;

- ii. Direct the Respondent to keep in abeyance the order of transfer dated 02/07/2015 issued to the Complainant-1 till final disposal of the Complaint;
- iii. Direct the Respondent to allow the Complainant to resume duty at Plot No.C-6, New MIDC, Jalna;
- iv. Any other relief/s to which the Complainants are found entitled be awarded and oblige."

7. Shri Dankh voices a serious grievance about the non-adherence to Regulation 115 of the Industrial Court Regulations, 1975. No notice was issued to the petitioner / management while hearing application Exhibit U-10. He also voices a grievance against the respondents for having not complied with Regulation 115 and having not preferred an application before the Industrial Court to dispense with notice under Regulation 115. He, therefore, prays that this Court may take cognizance of the above narrated circumstances.

8. Shri Sarvadnya and Shri Waikos submit that the application Exhibit U-10 was filed in urgency. There was hardly any time available to the respondents. Nevertheless, the impugned order dated 8.7.2015 is an ad-interim order and the application Exhibit U-10 has not been disposed off. The same is to be heard tomorrow on 30.7.2015. The petitioner -management may file its written say to Exhibit U-10. The respondents do not desire to adjourn the proceedings.

9. Both the learned Advocates for the respondent have no objection for this arrangement.

10. Regulation 115 is an inbuilt mechanism aimed at ensuring that the respondent in a complaint is put to notice before the Court could pass injunctory / preventive orders. Regulation 115 reads as under:-

"115.(1) Where in any action filed under the Act, it is proved by affidavit or other evidence that any of the parties to the action has committed and/or there is a reasonable apprehension that it would commit an Unfair Labour Practice, so as to frustrate the lawful right of the other party, the Court may, on proof of prima facie case in favour of the concerned party, grant temporary injunction to restrain commission of such Unfair Labour Practice and/or make such order for the purpose of stay and preventing such apprehended Unfair Labour Practice until the disposal of the action or until the further orders, after considering the caveat, if any, filed by the parties.

(2) In passing any such orders, the Court will also consider the comparative hardships which may be caused to the parties, and also whether it would be equitable to pass any such order.

(3) Subject to Section 31, the Court will not ordinarily grant ex parte ad-interim injunction or order:

Provided that the party seeking such ex parte ad-interim relief should state what steps it has taken to give notice to the other party about such application and in

case when no such notice of injunction is given or has reached the other party, to state in the Application itself the grounds as to why it has not done so, and about the exigencies of the matter, and in such a case, if satisfied, the Court may pass an ex-parte, ad-interim injunction or the order, in exceptional circumstances.

Provided also that the Court shall also state the grounds why such order is required to be passed without a hearing or issuing advance notice to the other side.

(4) The Court passing such ad-interim ex-parte order shall mention in the order of duration for which the Order would remain in force, which shall not be beyond 15 days from the date of passing the order.

(5) Any party aggrieved by such an injunction order may apply for having that the order set aside, after giving 48 hours notice to the other party which obtained an interim relief. However, in case of exigencies shown from the affidavit or other evidence, Court may, without notice or without hearing the other side, stay the order which it has already passed and also mention in the order the duration for which such a stay order will be operative. It should also mention in that order why no notice of the application for stay could be given to the other party."

11. Shri Dankh submits that though the first respondent has been allocated work pursuant to the order dated 8.7.2015, the impugned order be kept in abeyance and the petitioner shall maintain status quo as existing today, meaning thereby, that the first respondent would be allocated work till the decision of the Industrial Court on Exhibit U-10.

12. The applicant seeking orders of urgent nature, is expected to comply with Regulation 115. The Court is not ordinarily expected to grant ex-parte ad-interim injunctions or preventive orders. Nevertheless, the concerned Court is not precluded from considering a serious urgency voiced by the applicant. While considering such urgency, it is expected that the applicant files an application seeking dispensation of the compliance of Regulation 115. The Labour Court or Industrial Court is expected to exercise their jurisdiction while dealing with grave urgency in matters within the ambit of Regulation 115.

13. This Court in the matter of Sarsabai Kudale Vs. State of Maharashtra and others, (1998) 3 ALLMR 710 : (1998) 3 BomCR 352 : (1999) 2 LLJ 506 , has considered a similar situation. It would be apposite to refer to paragraph Nos. 2 to 6, which are reproduced as under:-

"2.The petitioner claims that she was working as Daily-rated labourer under the respondent No. 4 and her services came to be terminated orally on 4-11-1997. That gave rise to file Complaint (U.L.P.) No. 9/1998, before the Labour Court, Aurangabad on or about 27-1-1998 along with an application for interim relief under section 30(2) of the M.R.T.U. & P.U.L.P. Act, 1971. The learned Judge of the Labour Court, without issuing any notice to the other side, allowed the

application by his order dated. 28-1-1998 and issued notice returnable on 17-2-1998. By this order the learned Judge of the Labour Court directed the respondents to allow the complainant to report for duty forthwith on the post, on which, she was working previously.

3. On receipt of a copy of the said order dated 28-1-1998, the respondent-Department approached the Industrial Court, Aurangabad under section 44 of the M.R.T.U. & P.U.L.P. 1971 and filed Revision Application (U.L.P.) No. 19/1998. By his ex parte order dated 9-2-1998, the learned member of the Industrial Court, Aurangabad allowed the revision application and disposed of the same by quashing and setting aside the order dated 20-1-1998, passed by the Labour Court, Aurangabad on application Exh. U-2. The Industrial Court further directed the Labour Court to decide the application at Exhibit U-2 on 17-2-1998, after hearing both the parties. Mrs. Wadmare learned Counsel for the petitioner contends that, she had filed a caveat in the Industrial Court. Though she is not able to give registration number of the caveat application, it was not proper on the part of the learned member of the Industrial Court to pass order dated 9-2-1998, without issuing notice to the present petitioner. The learned Counsel, however is not able to state any reasons as to why she could not approach the Industrial Court on 9-2-1998 or any time thereafter till the date of filing of the present petition, for review of the ex parte order, by pointing out to the learned member of the Industrial Court that the present petitioner had filed a caveat and the order dated 9-2-1998 was passed without issuing notice or without hearing the advocate of the petitioner.

4. This Court (Division Bench) in the case of Kausalyabai Ganpat Jadhav v. State of Maharashtra and others, reported in had an occasion to deal with the powers of the lower courts to entertain the applications filed under section Official of the M.R.T.U. & P.U.L.P. Act, 1971 and the Division Bench observed, inter alia, as under :-

" The learned member of the tribunal, without notice to the other side, passed an ex parte interim order which in our opinion is wholly unjustified. It is well settled that ordinarily before any such interim order is made, the person who are likely to be affected be heard, and therefore, in such contingencies the Court can always without granting the interim relief, grant the Rule on such interim application and after hearing both the parties, pass appropriate orders in accordance with law. In the present case the learned member of the Industrial Court has disregarded this procedure and proceeded to pass the ex parte interim order."

In spite of this judgment of the Division Bench, the trial Courts were not following the method prescribed and, therefore, the learned Single Judge of this Court gave directions to the President of the Industrial Court to frame Rules under section 33 of the M.R.T.U. & P.U.L.P. Act, 1971 laying down the procedure for exercising the powers under section Official of the said Act, both by the Labour Courts as well as Industrial Courts and accordingly, the rules were

amended by the Industrial Court sometimes in 1992. Accordingly Rule 75 in the Labour Courts (Practice & Procedure) Rules, 1975 and Rule 115 in the Industrial Courts Regulations, 1975, have been introduced. The learned Judge of the Labour Court ought to have referred to these Rules before passing the ex parte order dt. 28-1-1998. It is strange and rather surprising that, the alleged oral termination of 4-11-1997 was set aside by the learned Judge of the Labour Court, without hearing the respondent-Department by the ex-parte order passed on 28-1-1998. Such a course is unsustainable especially when the Division Bench of this Court, in Kausalyabai's case, (cited supra) and also the Rules amended in 1992, put a bar against such practice being followed, which leads to multifarious litigation in the Labour Courts and Industrial Courts. Needless to mention if the Caveat filed by the present petitioner was registered, and if it was brought to the notice of the learned member of the Industrial Court, he could not have proceeded with to pass the impugned order ex parte. Notwithstanding this aspect, nothing had stopped the petitioner from approaching the Industrial Court with review application, pointing out to the learned member of the Industrial Court that the petitioner had filed the caveat application and the impugned order was required to be kept in abeyance and the petitioner was required to be heard afresh, before any order of interim relief was passed. The learned member of the Industrial Court by the impugned order has allowed the revision itself, without notice to the other side. The action of the learned member is most uncalled for and against the canons of established procedure.

5. The trial Courts will be well advised to adhere to the Rules prescribed and in fact, nothing stops the trial courts from issuing a notice and directing the notice to be served through a bailiff so that the matter could not be heard on the next day or any earlier day after service to respondents. Alternatively, the trial courts may call upon the learned advocates of the respective parties to serve a notice to opposite side regarding hearing on application for interim relief on a given date at the earliest possible. If such a course of procedure is followed the multiplicity in litigations, which is uncalled for, could be avoided.

6. It is manifest, in the instant case, that both the courts below have committed gross errors by passing the impugned ex parte orders granting the whole relief at an interlocutory stage and it will be appropriate that the Labour Court is directed to hear and decide the application for interim relief, after giving an opportunity to both the parties, within a fixed period. The parties are directed to appear before the Labour Court, on 19th February, 1998. The Labour Court, Aurangabad, is directed to hear and decide the application at Ex. U-2 in Complaint (U.L.P.) No. 9 of 1998, as expeditiously as possible and in any case within a period of one month from today, after hearing both the parties. The orders passed by both the courts below are hereby quashed and set aside. The Rule is made absolute accordingly with no order as to costs."

14. This Court, dealing with a similar situation in Tata Hydro Electric Power Supply Company Vs. Tata Hydro Companies Employees Union and Others, (1996)

73 FLR 593 , has held in paragraph Nos. 5 to 11 as under:-

"5. Normally, it is not the practice of this Court to interfere in interlocutory matters where substantial justice is done. Contrary to normal practice, it has become necessary to interfere with the impugned ex-parte order as I am satisfied that the order was made either in ignorance of or total defiance of the law laid down on the subject of granting of ex-parte orders, by a judgment of this Court in Dalal Engineering Pvt. Ltd. v. Ramrao Bhaurao Sawant & Ors. (to which I was a party.)

6. There were repeated complaints voiced in several matters arising under the provisions of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, that ex-parte orders with drastic and far reaching consequences were being made by Industrial and Labour Courts, for the asking. The issue was considered in depth in Dalal Engineering Pvt. Ltd. Case (supra) and detailed guidelines were laid down as to when and in what manner ex-parte orders should be made. The President of the Industrial Court was also directed to frame suitable regulations on the subject after consultations with the Labour Bar. Such regulations have been framed by the Industrial Court. Notwithstanding all these, the learned Judge of the Industrial Court, Bombay, appears to have hastily made an ex-parte dated 3rd February, 1996, for which there was apparently no basis whatsoever. Mr. C.U. Singh, learned Counsel for the 1st Respondent, points out that, on an earlier occasion, on a Complaint made by a Union by name, General Labour Union, for the same reliefs, before the Industrial Court, wherein identical ad-interim relief had been given and that the said Complaint came to be dismissed following the law laid down by the Supreme Court in Shramik Utkarsha Sabha v. Raymond Woollen Mills Ltd. & Ors.. Thereafter the workmen concerned moved the present Complaint (ULP) No. 189 of 1996 before the Industrial Court through the representative union under the Bombay Industrial Relations Act (Respondent No. 1 herein).

7. A perusal of the impugned ex-parte order disclosed no imperative necessity for one. My attention has been invited by Counsel on both sides to Regulation 115 of the Industrial Court Regulations, 1975, which has been brought into force from 2nd July 1992 and governed the procedure to be followed by the Industrial Courts while dealing with an application for ex-parte interlocutory orders. Rule 3 of Regulation 115 provides as under :-

"(3) Subject to Section 31, the Court will not ordinarily grant ex-parte ad-interim injunction or order :

Provided that the party seeking such ex-parte ad-interim relief should state what steps it has taken to give notice to the other party about such application and in case when no such notice of injunction is given or has reached the other party, to state in the Application itself the grounds as to why it has not done so, and about the exigencies of the matter, and in such a case, if satisfied, the Court may pass an ex parte, ad-interim injunction or the order, in exceptional circumstances.

Provided also that the Court shall also state the grounds why such order is required to be passed without a hearing or issuing advance notice to the other side."

8. From a perusal of the impugned order at page 268, it appears to me that the learned Judge either was not aware of the statutory provision of Regulation 115(3) or ignored them. In either case, what was done is highly irregular and needs to be interfered with.

9. At the cost of repetition, it may be pointed out that the Regulations governing the procedure and practice of the Industrial Courts are framed in exercise of the delegated Statutory powers vested in the Industrial Court under Section 33 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 and such Regulations validly framed, have statutory force and are required to be mandatorily followed by the Industrial Courts as governing the practice and procedure before it. It is unfortunate that the learned Judge of the Industrial Court made the impugned order without advertence of mind to any of these aspects. An ex-parte interlocutory order, like capital punishment, is justified made only in the rarest of rare cases, and that too for explicit reasons in writing. Anything else, is wholly irregular and unjustified.

10. I believe, I have reiterated the legal principles involved sufficiently, succinctly and intelligibly, so that such errors in the exercise of jurisdiction are scrupulously avoided in future.

11. Mr. Kulkarni, learned Counsel appearing for the petitioners, makes a grievance that the learned Judge has made a hurried operative order on 23rd February 1996 condoning the delay in presentation of the Complaint and then proceeded on long leave. This too, appears to be somewhat irregular. The privilege of making operative orders and supplying the reasons therefore post facto, is that of the Apex Court. If every learned Judge tries to arrogate this privilege to himself, administration of justice would become difficult. The learned Judge of the Industrial Court would do well to bear in mind that his order should be capable of judicial scrutiny by a Superior Court. This Court is reluctant to interfere in orders of condonation of delay provided there is some discernible reason for the condonation of delay. From a perusal of the impugned order dated 23rd February, 1996 it is not possible to fathom the reasons which moved the learned Judge to make the order. However, it is unnecessary for me to further delve into this aspect of the matter, since I am acceding to the request of the learned Counsel for the petitioners that liberty be given to the petitioners to challenge the order as and when the learned Judge is pleased to make the reasons therefore available to them. Hence, I am not interfering with the said order for the present with liberty reserved to the petitioners to challenge it later, if they so desire."

15. In the light of the above, the Labour and Industrial Courts are required to be conscious of the effects of passing ex-parte ad-interim orders and therefore,

should consider the totality of the circumstances and the emergent situation voiced by the applicant within the ambit of Regulation 115. In the instant case, the Industrial Court, Jalna seems to have over looked the legal position while passing an ex-parte order on Exhibit U-10, more so when the application Exhibit U-2 had been rejected earlier.

16. In the result, as the Industrial Court has passed an ex-parte ad-interim order dated 8.7.2015, below Exhibit U-10, in Complaint (ULP) No. 56 of 2015 and in the light of the statement made by Shri Dankh, that status quo would be maintained till the decision on Exhibit U-10, this petition is partly allowed. Following directions are, therefore, issued:-

(A) The order dated 8.10.2015, below Exhibit U-10 shall be kept in abeyance till the decision on Exhibit U-10.

(B) The first respondent shall be allotted duties till the Industrial Court decides application Exhibit U-10.

(C) Looking at the urgency voiced by both the sides, the petitioner shall file its written say to Exhibit U-10 on/or before 7th day of August, 2015 by serving a copy on the respondents.

(D) The Industrial Court shall post the matter for hearing on Exhibit U-10 on 13.8.2015 and if required even on 14.8.2015 and the learned Advocates shall conclude their submissions latest by 14.8.2015.

(E) The Industrial Court shall decide application Exhibit U-10 on/or before 29.8.2015.

17. Since this order has been passed in the presence of the learned Advocates today, they are at liberty to communicate the same to the Industrial Court in the matter posted tomorrow and thereafter, place a copy of this order before the Court.

18. Rule is made partly absolute in above terms.