
(1996) 07 BOM CK 0082

In the Bombay High Court

Case No : Notice of Motion No. 207 of 1996 in Writ Petition No. 2473 of 1994

Oriental Containers Ltd.

APPELLANT

Vs

Engineering Workers" Association and Others

RESPONDENT

Date of Decision : 19-07-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (1998) 3 LLJ 95

Hon'ble Judges : V.P. Tipnis, J;F.I. Rebello, J

Bench : Division Bench

Advocate : J.P. Cama, C.U. Singh and V.P. Sawant, for the Appellant; N.D. Buch and H.D. Buch, for the Respondent

Final Decision : Dismissed

Judgement

Tipnis, J.—This Notice of Motion seeks that this Court should direct that a criminal complaint be filed against the respondents excepting Respondent No. 2 under the provisions of Section 340 of the Code of Criminal Procedure for offences under Sections 193, 196, 199 and 200 of the Indian Penal Code.

2. An affidavit in support of the Motion filed by the Chief Executive and Secretary of the Petitioner-company states that in the proceedings before the Labour Court, the Labour Court directed reinstatement of the workmen with continuity of service and full backwages with effect from their respective dates of dismissal. The said award was challenged in this Court by filing Writ Petition No. 2473 of 1994. The matter initially came up before the learned single Judge who granted ad interim relief. The petition admittedly was filed sometime in December 1994. It came up again for orders on February 1, 1995 when the learned Judge continued the interim relief till the final hearing of the main petition and further observed that the petitioners shall pay the salary to the respondents workmen u/s 17-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act") and the respondent-workmen have to make a declaration that they are not gainfully employed anywhere. Respondent No. 4 made an affidavit in support of

the Notice of Motion taken out by the Association being Notice of Motion No. 208 of 1995 in the aforesaid Writ Petition enclosing 27 affidavits of the workmen declaring that they are not gainfully employed. Para 5, which is common in all the affidavits is as under :

"I say and submit that I have not been employed in any establishment during the period from the date of my dismissal from the petitioner-company till date and have not received any remuneration from any other employer during the said period or any part thereof and the requirement of Section 17-B have been duly complied with and it would be in the fitness of things that this Hon'ble Court may be pleased to direct the petitioner company to pay full wages last drawn inclusive of any maintenance allowance admissible to me during the pendency of the present petition."

3. It is the case of the company that Respondents "No. 3, 4 and 5 who are office bearers of the Union have connived with the respondents in making statements known to be false or believed to be false. Thereafter it is stated that Respondent No. 6 had been in the employment of one Poysha Industrial Company Ltd. Details of other respondents are given to which we have occasion to make a reference. In short, the submission is that some of the respondent-workmen have made false affidavits before this Court in support of the Notice of Motion under the provisions of Section 17-B of the Act and have thus committed offences under various Sections of the Indian Penal Code mentioned earlier and this Court, under the provisions of Section 340 of the Code of Criminal Procedure, should direct an appropriate Officer to file a complaint against the respondent-workmen and the Union leaders in that behalf.

4. The Notice of Motion is stoutly opposed by the Union and the workmen. It is contended that the report of the alleged private investigating agency cannot take the place of proof even prima facie and on merits it does not show that any false statement was made in the affidavit. It is further contended that the statements in the affidavits of the workmen were made relying upon the decision of the Kerala High Court reported in 1995 2 C.L.R. 126. In the affidavit, it is also contended that even if some of the workmen might have got some remuneration and got employment, it is not in the sense in which the employment is referred to u/s 17-B of the Act.

5. We have heard the learned counsel for both the sides at some length. It requires to be noticed that in these proceedings before us, we have to consider whether it is expedient in the interests of justice that an enquiry should be made into any offence referred to in Clause (b) of Section 195 which appears to have been committed in or in relation to any proceeding in this Court. Therefore, we are of the clear opinion that not only we must find that there is cogent material which, if unrebutted, may have a reasonable likelihood to establish specified offence, but also in addition to that, we must be satisfied that it is expedient in the interests of justice to institute a prosecution against the alleged offenders.

6. this respect it is relevant to notice that the provisions of Section 17-B of the Act provide that when an award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workmen, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court. It is, therefore, clear that the affidavit which is required to be filed is relevant for the purpose of assertion that the workman had not been employed in any establishment during the period of pendency of such proceedings before a particular Court.

7. the facts before us, the petition was filed by the company sometime in December, 1994 and was admitted on December 19, 1994. Admittedly, the petition was disposed of on March 8, 1996 and the affidavits by the concerned workmen were filed on March 22, 1995.

8. It further requires to be noticed that finally this Court dismissed the Writ Petition by judgment and order dated March 8, 1996. It is an admitted position that SLP filed by the company against the judgment was also dismissed on April 8, 1996. Ms. Buch, learned counsel appearing for the respondents-workmen upon specific instructions, submits that none of the workmen as of this day has been reinstated and not a single farthing has been paid to any of the Workmen towards backwages. Mr. Cama, learned counsel appearing for the petitioners, is not in a position to categorically state whether any of the workmen has been reinstated and whether any amount whatever has been paid to any one of the workmen. Ms. Buch further points out that, as a matter of fact, despite a specific direction to deposit the amount of back wages in this Court absolutely no amount has been paid till this date by the company.

9. As stated earlier, the workmen have filed their affidavits on March 22, 1995 and, therefore, in terms of Section 17-B of the Act, so far as this case is concerned, the period between December, 1994 and March 22, 1995 would be a relevant period. We are meticulous about this period inasmuch as if permission is granted, it will result into criminal prosecution and, therefore, we will have to interpret all provisions strictly as is the settled law.

10. In the aforesaid set of facts, if we see the material brought to our notice by the company by way of this Notice of Motion, copy of the letter dated April 26, 1996, which is exh. "C" to the affidavit in support of the Motion is a letter written on behalf of Poysha Industrial Company Ltd. with reference to the letter of the company dated April 25, 1996 which clearly shows that Poysha Industrial Company Ltd. suspended the operations of its Thane factory with effect from, May 1, 1994 i.e. much prior to the filing of the petition. The second para of the letter shows that the information available confirms that G.M. Shrivardhankar has been in their employment since July, 1995 and his gross daily wage was Rs.

119. Apart from the fact that during the relevant period, this very letter demonstrates that Shrivardhankar could not be gainfully employed in the aforesaid company; the letter hardly throws any light as to what was the nature of the, employment with the said company. The letter is hardly a prima facie evidence to suggest that the said Shrivardhankar was continuously employed and that too on adequate remuneration. Another certificate by Manager of Automobile Centre shows that Gopinath Ghag was in their badli employment from February 28, 1992 to March 1, 1992 i.e. much prior to the filing of the petition. The third document in respect of Janardhan Kapse shows that one private investigator Jal B. Contractor has stated that confidential enquiries revealed that the said Kapse is working with H.A.H. Bachooali Tin Factory. His provident fund number is also given. The Investigation report is dated May 30, 1996 i.e. much after the disposal of the petition. In our opinion, apart from not getting any clinching details regarding the amount of "pay, the nature of employment it does not show that Kapse was employed during the period of pendency of the petition. In respect of Harischandra Ghag, it is stated by the said investigator Jal B. Contractor that he is operating a printing press in the name of Ajay Printers. In our opinion, that does not show that he had been employed in any establishment. In case of Salgaonkar also, the said private detective agency has stated that confidential enquiries revealed, that the said Salgaonkar is working as a methodic worker at Chinchpokli and that he has been working as much for the last seven years. In the case of Ramchandra P. Kadam, report dated May 30, 1996 shows that confidential enquiries revealed that he was working with Metal Printers. In the case of Mohan Jadhav, confidential enquiries revealed that he is working with Metal Printers. In the case of Syed Hassan, the confidential investigations revealed that he is working as Turner in Metal Printers. In the case of Fakir Mohammed, it is stated that he is operating a stove repairing shop situate at B.D.D.chawl No. 12, Worli, Mumbai, and it is reliably learnt that his daily income appears to be Rs. 150 to Rs. 200. In respect of Ramlakhan Jaiswal, the investigator has stated that confidential enquiries revealed that he has established a Siddhi Vinayak Mandir and two other small Mandirs in his house and next to his residence and he has become a Poojari himself. Devotees come there and offer cash and materials.

11. The aforesaid reports by the private detective agency, in our opinion are hardly suggestive that the respective workmen were gainfully employed and were having adequate remuneration during the relevant period for the purposes of Section 17-B. If that be so, we are not at all even prima facie satisfied that the workmen so far as this particular period is concerned have made any false statement on oath. At least, It is not even prima facie established and the material adduced by the company in the aforesaid manner is thoroughly inadequate for this Court to initiate prosecution under the provisions of Section 340 Cr.P.C.

12. The matter does not rest there. We are of the clear opinion that it is also not expedient and in the interests of justice to initiate proceedings for prosecution

against the workmen before us. Firstly, it requires to be noticed that the company "while opposing the Notice of Motion of the workmen for wages u/s 17-B and for that matter, in fact pleaded some reports of the same investigating agency. The matter was dealt with by the Division Bench. While disposing of the main petition, in para 17 of its judgment, the Division Bench has observed that "the employer has not placed any material before this Court that the workmen had been receiving adequate remuneration during this period. The employer has referred to a report of some detective agency but has not filed an affidavit stating that the report has been accepted to be correct. The report of the detective agency is not per se, any evidence. Evidence has to be led in proof thereof and no evidence has been led in the instant case and no reliance can be placed upon the report of the detective agency as is sought to be contended. The employer has successfully succeeded in preventing the workmen from getting the benefit of the benevolent provisions contained in Section 17-B of the Act. We are of the clear opinion that in fact, the company had unsuccessfully attempted to agitate this issue. We cannot allow our jurisdiction to be utilised by the employer by alleging that a particular material was not with it and subsequent to the decision, the detective agency has given them the material and, therefore, now again we should look into the question. On merits, we have found against the employer, as indicated in the earlier part of the judgment. However, we are also considering this aspect that, in fact, in our opinion, the employer had unsuccessfully agitated the issue regarding the material before the Division Bench. What is most important is that, ultimately, no benefit u/s 17-B was obtained by any of the workmen. No orders were passed on the Notice of Motion. The Notice of Motion was heard along with the main petition and in the judgment in para 20, the Court ordered that Notice of Motion No. 208 of 1995 has become infructuous in view of the order in the main writ petition. This is also a reason for us in feeling that it is not expedient and in the interests of justice to initiate criminal proceedings. As stated earlier, the employer has lost upto the Apex Court and it is the submissions of Ms. Buch that till this date, none of the workmen has been reinstated and not a single penny has been paid to anyone of the workmen. We cannot allow the employer to utilise this forum in this fashion. This is also an additional reason for our not feeling it expedient and in the interests of justice, in the facts and circumstances of this particular case, to initiate proceedings u/s 340 of the Cr.P.C.

13. Before parting with this case, we would like to state that any person filing an affidavit before the Court has to be extremely careful and the statements made on oath in affidavits must be true. Making of false statements on oath in affidavits cannot be countenanced and the person making such false statements on oath in an affidavit exposes himself not only to criminal liability but also to liability for contempt of the Court. Of course that statements are false have to be proved. We cannot over-emphasise the need that any party filing an affidavit before the Court has to be extremely careful and should take statements in the affidavit which are true.

14. In the result, we do not find any merit in this Notice of Motion and the Notice of Motion is dismissed. There shall be no order as to costs.