
(2004) 06 BOM CK 0094

In the Bombay High Court

Case No : O.S.W.P. No. 749 of 2004 with W.P. No. 1504 of 2004

Rashtriya Kamgar Sanghatana and Another

APPELLANT

Vs

GKW Ltd. and Others

RESPONDENT

Date of Decision : 25-06-2004

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22

Citation : (2004) 6 BomCR 182 : (2005) 1 LLJ 322

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : R.D. Bhat, for the Appellant; C.U. Singh and Abhijeet Raje, instructed by Gagrut and Co., for the Respondent

Final Decision : Dismissed

Judgement

D.Y. Chandrachud, J.—Rule, made returnable forthwith. Counsel appearing on behalf of the Respondent waives service. By consent taken up for hearing and final disposal.

2. Two petitions under Article 226 of the Constitution have been instituted before the Court against an order dated January 21, 2004 of the Industrial Court at Mumbai. The order of the Industrial Court arose out of a complaint of unfair labour practice filed u/s 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 read with Item 9 of the IV Schedule. Briefly stated, the contention of the workmen was that there has been a failure on the part of the employer to pay the earned wages of the workman for the period commencing from February 2002 and that therefore, this constitutes an unfair labour practice under Item 9 of Schedule IV ("failure to implement award, settlement or agreement"). The Industrial Court issued a declaration that the employer had committed an unfair labour practice and directed to the employer to pay wages of the workmen due from January 2002 until the date of

the passing of the order and subsequent thereto. However, the Industrial Court held that since "the matter is under consideration of the BIFR, no time span can be fixed for paying such dues as prayed by the complainant". Similarly, in regard to future wages also the only direction was that the employer shall pay wages in accordance with the Scheme that will be envisaged by the BIFR. The workmen contend that having held that there was an unfair labour practice, the Industrial Court was manifestly in error in making the implementation of its directions conditional upon such orders as may be passed by the BIFR under the Sick Industrial Companies (Special Provisions) Act, 1985, thereby effectively and indefinitely prolonging the payment of earned wages of the workmen. In the petition which has been filed on behalf of the employer, the order of the Industrial Court in so far as it holds the employer guilty of an unfair labour practice has been called into question.

3. The material facts on the basis of which the proceedings arise before this Court may now be briefly considered. Sankey Electrical Stampings and Pressings Division (SESD) is a Division of the employer, GKW Limited and engaged in the manufacture of electrical stampings and laminations since 1940. The Division also manufactures metal pressings for the automobile and white goods industry. Electrical stampings and laminations were also being manufactured by the company in its Division at Bangalore and Howrah, but these factories are now stated to be not functioning for two years. The last settlement regarding the revision of wages and service conditions of the workmen was entered into between the employer and the union in November 1985. The settlement expired in 1988 and the contention of the workmen is that though the company continued to make profits upto 1996-97, there was no wage revision. In or about 1995-96 a company by the name of Powmex Steel Limited with an outstanding liability of Rs. 76 Crores is stated to have merged with the company and it is alleged by the union that the financial position of the company came to be affected as a result of which the operating profit was converted into a loss in 1997-98 because of the heavy interest burden.

4. On January 18, 1998, the company suspended operations and issued a lock-out notice in respect of the SES Division at Bhandup. The lock-out came into effect from February 5, 1998. Two complaints of unfair labour practices were filed by Bharatiya Kamgar Karmachari Mahasangh (BKKM) and 19 employees who were members of the Mumbai Shramik Sangh functioning in the company. The Industrial Court declined to grant interim relief calling upon the company to lift the lock-out and permitting the workmen to report for work. Thereupon two writ petitions were filed before this Court which were admitted by a learned single Judge on March 28, 1998 with a direction to the company to lift the lock-out and to permit the workmen to resume duties. Appeals filed before the Division Bench are stated to have been disposed of by directing the expeditious hearing of the petitions. In the meantime on April 1, 1999, the company filed an application u/s 25-N of the Industrial Disputes Act, 1947 seeking permission to retrench 285 out of 587 workmen. The application was dismissed by the Commissioner of Labour

on May 29, 1999. Thereafter on a review application by the company, there was a reference for adjudication to the Industrial Tribunal.

5. By an order dated September 18/20, 1999 the two writ petitions that were filed against the refusal of interim relief by the Industrial Court were allowed by this Court and the company was directed to lift the lock-out and permit the workmen to report for work. The company was directed to pay wages to the workmen during the period of lock out from the date of the admission of the petition to all the workmen. Aggrieved by the judgment of the learned single Judge the company filed appeals. Several directions were issued by the Division Bench on October 19, 2000, March 2, 2001, July 17, 2001 and March 20, 2002 for the payment of wages and in relation to the lifting of lock-out. The order dated March 20, 2002 passed by a Division Bench of this Court records that on October 18, 2000 the union and the workmen had agreed to give up the back wages for the period of lock-out provided the company was prepared to start and run the factory. The Court recorded that the factory (at Bhandup) had since started working, but the company had not been able to pay the wages of the workmen as and when they fell due. A settlement was arrived at before the Court under which it was agreed that the arrears of wages would be paid in accordance with the time schedule laid down therein. The order of the Court records that the workmen would be discharged of their undertaking to give up the back wages for the period of lock out if any of the arrears remained outstanding after December 31, 2002. The settlement which was arrived at before the Court contemplated the sale of redundant plant and equipment (this being specifically provided in the previous order dated July 17, 2001). In the circumstances, the order of March 20, 2002 recorded that in case the company received any amount till December 31, 2002 from the sale proceeds of the plant or equipment, the company undertook to appropriate the proceeds towards the payment of the arrears of wages.

6. On November 1, 2000 the company lifted the lock-out and the workmen were allowed to report for work in a phased manner the last being in March 2001. In the years 2000 and 2001 the company is stated to have swapped a portion of the land situated at Bhandup to meet the financial liability of the company to financial institution including ICICI, IDBI and IFCI. The balance sheet and P & L Account of the company for the financial year 2000-01 showed a profit after taxation of Rs. 9.39 Crores while the corresponding figure for the financial year 2001-02 showed a profit of Rs. 7.54 Crores. Though for these two years the company had sustained a loss of Rs. 51.17 Crores and of Rs. 41.04 Crores after taxation the net surplus was comprised out of the sale that had taken place of the lands of the company in settlement of the term loans of IFCI, IDBI and ICICI.

7. The company was declared as a Sick Industrial Undertaking by the BIFR on April 2, 2002 under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985.

8. On August 5, 2002 the Industrial Court allowed Reference (IT) No. 84 of 1999

and permitted the company to retrench 385 out of a total of 587 workmen at the Bhandup unit. The award of the Industrial Court has been challenged before this Court and has been stayed by an order dated December 10, 2002.

9. In July, 2002 BKKM which was the recognised union filed a complaint of unfair labour practices claiming payment of earned wages. It may be noted that this complaint was filed, though, by virtue of the settlement which was arrived at on March 20, 2002 before the Division Bench, it was agreed that the workmen and the union will take appropriate action, if the company failed to pay the arrears of wages by December 31, 2002. Rashtriya Kamgar Sanghatana which is before the Court in these proceedings filed a complaint of unfair labour practices on January 22, 2003 challenging the non-payment of earned wages in accordance with the settlement which was recorded in the order dated March 20, 2002 passed by the Division Bench. The two complaints were disposed of in terms of similar orders by the Industrial Court on January 31, 2004.

10. At this stage, it would be material to extract the operative directions issued by the Industrial Court.

"(i) Complaint is partly allowed.

(ii) It is hereby declared that the Respondents have followed the unfair labour practices under Item 9 of Schedule IV of the MRTU & PULP Act. Consequently, the Respondents shall desist from continuing to follow the same.

(iii) The respondent shall pay the total wages to the workmen from January 2002 (remaining 75%) till the date of passing the order. However, since the matter is under the consideration of the BIFR, no time span can be fixed for paying such dues as prayed by the complainant.

(iv) The Respondents shall go on paying the wages to the employees per month as per the Scheme, which will be envisaged by the BIFR."

11. The Industrial Court has thus arrived at the conclusion that there has been a failure on the part of the company to comply with its obligation to pay the earned wages of the workmen since February 2002 implicating an unfair labour practice under Item 9 of Schedule IV of the Act. However, the Court has declined to issue any effective directions for the payment of the earned wages holding that since the matter was under consideration of the BIFR no time span can be fixed for the payment of the dues and that even in so far as future wages are concerned the employer shall pay wages from month to month in accordance with such scheme as may be envisaged by the BIFR.

12. Counsel appearing on behalf of the Petitioner submits that having recorded the finding that workmen had actually worked during the relevant time, the Industrial Court ought to have directed the employer to pay wages for the relevant period without making it subject to the revival scheme pending before the BIFR. Counsel submitted that in view of the settled position in law which has been laid down in several judgments of this Court the payment of earned wages

is not subject to the embargo of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985. Moreover it is submitted that while the financial difficulties of a company or even financial inability is no defence to a complaint under Item 9 of Schedule IV, in the present case as a matter of fact the wages of the workmen in other divisions including the Head Office have been paid. Counsel submitted from the averments in the written statement that the attitude of the company appears to be to defeat the legitimate entitlement of the workmen to the payment of their earned wages.

13. On the other hand it has been urged on behalf of the employer that there is a complete inability on the part of the employer due to financial difficulties to pay the earned wages. While the entitlement of the workmen to the receipt of earned wages has not been disputed, it has been submitted that the position in which the company finds itself has arisen on account of its financial difficulties which are borne out by the evidence of the workmen. In the circumstances, it was sought to be urged that there was no intention on the part of the company not to pay the earned wages and therefore, the commission of an unfair labour practice cannot be presumed. Finally, Counsel stated fairly that though the complaint which has been allowed by the impugned order is filed by a non-recognized union, so far as this Court is concerned, the maintainability of the complaint cannot be disputed in view of the judgment of a Division Bench consisting of Chief Justice B.P. SINGH (as the learned Chief Justice then was) and Justice S.A. BOBDE in *M/s. Warden and Company (India) Limited Vs. Akhil Maharashtra Kamgar Union*, .

14. In considering the issues which arise before the Court in these proceedings, it would be necessary to recapitulate the admitted factual position. The employer had issued a notice of lock-out on January 18, 1998. On September 20, 1999 this Court directed the employer to lift the lock-out and to pay the wages of the workmen. When the matter went in appeal several orders were passed by the Division Bench. The Division Bench made it clear in its order dated July 17, 2001 that the employer shall not be restricted from selling or leasing the redundant plant and machinery for the purpose of raising funds and re-structuring the undertaking. In pursuance of the aforesaid directions, the Court has been informed that some of the redundant machinery was sold wherefrom an amount of Rs. 36 lacs came to be utilised. Thereafter before the Division Bench a settlement was arrived at on March 20, 2002 by which the company agreed to pay the arrears of wages in an agreed time schedule, in any event by December 31, 2002. The workmen agreed to give up the wages for the period of lock-out provided their arrears of wages for the period reflected in the order were paid. There was admittedly a default in compliance of the terms of settlement reflected in the order dated March 20, 2002. The order of the Division Bench also stipulated that the claim of the workmen would be revived if the arrears of wages would not be paid on or before December 31, 2002. Counsel appearing on behalf of the union has placed on the record a chart which shows that the arrears of wages have been paid to the workmen until January 2002. It is common ground

that the wages for the period after January 2002 are in arrears. The workmen have been paid small amounts from time to time which have been appropriated to the payment of arrears for the past period. The net position, however, is that wages after January 2002 are in arrears until date.

15. Before dealing with the submissions which have been urged on behalf of the parties, it would be necessary for this Court to record its disapproval of the stance which has been adopted by the employer in the written statement which has been filed before the Industrial Court. The position of the employer makes distressing reading it would be sufficient to extract what has been stated before the Industrial Court.

"Without prejudice to the aforesaid, I submit that if the workmen are so unsatisfied with their conditions of employment at the SESD, Bhandup, they should quit their employment voluntarily and permit the unit to survive instead of killing it by degrees and in stages by filing false and fabricated litigations. I submit that no workman can quibble or otherwise crib about his employment, on the one hand, and continue to stick or stay in the employment on the other, when it is clear that the employer is unable to run the employment, and is being forced to do so only because of some archaic and quaint labour laws, which have no relevance in the present changed scenario of doing business. I say that if the workmen are so unsatisfied with their employment, they should quit the employment voluntarily and stop mulching the company of wages, for receiving which wages concomitantly and admittedly in the first instance the workmen have no work to perform."

16. There is no cessation of the contract of employment and the workmen continue to be in service and have presented themselves for work before the employer. That being the position, there can be no-plausible defence on the part of the employer to the non-payment of the earned wages of the workmen. The Court must indicate its disapproval of the language which has been used by the employer inter alia to label the litigation which has been legitimately adopted by the workmen for the realization of their dues as "false and fabricated".

17. In so far as the position in law is concerned, it is well settled. In *Kamani Tubes Ltd. v. Kamani Employees Union* 1997 II CLR 263, a Division Bench of this Court consisting of Justice S.P. BHARUCHA (as the learned Chief Justice then was) and Justice V.P. TIPNIS, held that Item 9 makes the employer's failure to implement an award, settlement or agreement an unfair labour practice. When an employer does not implement an award, settlement or agreement, he fails to implement the award, settlement or agreement. The Division Bench held that the phraseology of Item 9 affords no scope for the taking into account of the motive, reason or cause for the failure. This has been reiterated in a subsequent decision in *Aps Star Industries Ltd. and Others Vs. Star Textile Engineering Employees Union and Others*, . In *Girni Kamgar Sangharsha Samiti Vs. Matulya Mills Ltd. and Others*, a Division Bench of this Court held that where the wages of the workers are undisputedly due, the financial inability of the company is no

defence to the non-payment of the wages. The same view has been followed in a judgment of the Division Bench in *Warden & Co. (supra)* where S.A. BOBDE, J. speaking for a Bench of His Lordship and Chief Justice B.P. SINGH (as the learned Chief Justice then was) held that every time when wages are not paid, the employer is engaged in an unfair labour practice under Item 9 of Schedule IV.

18. The Supreme Court has in a recent judgment in *Chairman-cum-Managing Director, National Textiles Corporation Ltd. and Others Vs. N.T.C. (WBAB and O) Ltd. Employees Union and Others*, : had occasion to deal with a submission pleading an inability to pay the wages of the workmen on account of the pendency of proceedings before the BIFR. The Court held that the pendency of the proceedings before the BIFR was not a ground to deny relief to the staff working in the mill which was governed by the Sick Textile Undertakings (Nationalisation) Act, 1974. The Supreme Court held thus at p. 1107 of LLJ:

"14. So far as the argument regarding no relief being admissible to the workers in the mills in view of rehabilitation schemes being worked out before the BIFR, we have to note that the proceedings have been pending since 1993, i.e., for more than ten years. The management was all along fully aware of the demand of the workers of the mills in this behalf. Their cases have been pending in Courts since much before the rehabilitation schemes were conceived of. How long shall the concerned workers be continued to be denied their legitimate claims? In the various deliberations with the workers it has been noted that rehabilitation schemes are independent of any orders that may be passed by this Court. Therefore, pendency of the rehabilitation schemes before the BIFR is not a sufficient ground for us to deny relief to the staff/sub-staff working in the mills. ..."

19. In the present case, the company was declared to be a Sick Industrial undertaking by the BIFR on April 2, 2002. By an order dated September 29, 2003, the BIFR directed the operating agency to advertise a change in the management. That order was challenged before the Calcutta High Court and has been stayed on October 29, 2003.

20. In view of the settled position in law there can be no gainsaying the fact that the provisions of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 are no bar whatsoever to the payment of the earned wages of the workmen. In *Baburao P. Tawade and Others Vs. Hes Ltd. Bombay and Others*, Mr. Justice B.N. SRIKRISHNA (as the Learned Judge then was) held that the payment of earned wages could not have been within the purview of Section 22(1) of the Act and the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 must be held to apply only to such proceedings which are not required for the day-to-day running of the Sick Industrial Company. The same view has been taken by Mr. Justice REBELLO in *Carona Ltd. Vs. Sitaram Atmaram Ghag and others*, where the learned Judge held that consistent with the true import of Article 21 of the Constitution, it is impossible to conceive of a situation where Parliament would be presumed to have taken the view that the wages and

terminal benefits to which workers are entitled are not payable until the permission of the BIFR is obtained. The payment of wages is an intrinsic part of the right to life of the workmen. In following these decisions in the context of the payment of Provident Funds dues I had occasion to deal with the issue in *Ralliwolf Limited Vs. The Regional Provident Fund Commissioner-I, for Maharashtra and Goa and Others*, . The judgment of the Court there holds thus at p. 1435:

"25. No industrial undertaking can work or operate without the work which is rendered by the employees. No work can be demanded save and except for payment of wages and other statutory benefits. The payment of provident fund dues to the Fund, therefore, stands on the same footing as the payment of wages which is due to the employees. That is an entitlement to which the employees are entitled by dint of the work which they have put in. These are dues which are payable whether or not an undertaking is sick. They constitute an intrinsic part of the employees' right to life under Article 21 of the Constitution."

21. Having regard to this settled position in law the company cannot urge as a defence to the payment of earned wages the pendency of proceedings or the provisions of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985. There is some merit in the submission which has been urged on behalf of the union that this is not a case where the company has failed to pay the dues of all workmen in the other divisions on the ground of financial inability. The witness who deposed on behalf of the company was specifically asked in the course of his cross examination as to whether he had received his salary. He stated that he had received his salary in part for January 2002 and thereafter from January 2003 upto November, 2003. The wages which he had received from July 2003 were debited to the Head Office account. He stated that he was not aware upto which date the employees at the Head Office had received their salaries.

22. In the circumstances, therefore I am of the view that the Industrial Court, having correctly come to the conclusion that the employer was guilty of an unfair labour practice has manifestly erred in declining to issue effective directions for the payment of the wages on the ground that the matter is pending consideration before the BIFR. The BIFR has not enjoined the employer from the payment of the earned wages and in any event in view of the well settled position in law the pendency of proceedings under the Sick Industrial Companies (Special Provisions) Act, 1985 cannot be a ruse for not paying the earned wages of the workmen. To delay or defer the payment of the earned wages until a scheme is sanctioned by the BIFR would lead to a manifest mis-carriage of justice. The workers whose families depend upon their livelihood cannot be turned away by asking them to wait for the outcome of a time consuming proceeding before the BIFR. As a Court of justice, the Court cannot stand as a mute spectator to a mis-carriage of justice that is liable to take place as a result

of the reluctance on the part of the Industrial Court to issue effective directions to implement its order.

23. In the circumstances, Writ Petition 749 of 2004 filed by Rashtriya Kamgar Sanghatana shall stand allowed to the extent of quashing and setting aside the second sentence in operative Clause (iii) of the order dated January 31, 2004 and the latter part of operative Clause (iv) commencing with "as per the scheme". There shall be a direction to the effect that the arrears of wages that are due and payable to the workmen shall be paid in six equal monthly instalments; the first of which shall be paid on or before July 15, 2004; while the remaining instalments shall be paid on or before the 15th day of each succeeding month. This shall be in addition to the earned wages for each month which shall be paid by the company on schedule as and when the wages fall due.

24. Writ Petition No. 1504 of 2004 filed by the company shall in the circumstances stand dismissed. There shall be no order as to costs.

25. Parties be given a copy of this order duly authenticated by the Associate/ Personal Secretary of this Court.