

(1999) 01 BOM CK 0011
In the Bombay High Court
Case No : O.O.C.J.W.P. No. 216 of 1997

Ritz Private Limited

APPELLANT

Vs

Lal Bavta Hotel Aur Bakery Mazdoor Union and Another

RESPONDENT

Date of Decision : 14-01-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 25N, 25O
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28(1)

Citation : (1999) 81 FLR 524 : (1999) 2 LLJ 255

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

Bench : Single Bench

Advocate : C.U. Singh and Sanjay Udeshi, for the Appellant;

Judgement

N.J. Pandya, J.—This petition is filed by the employer/management against the order passed by the Industrial Court, Maharashtra, Mumbai in compliant (ULP) No. 1666 of 1991 on November 29, 1996. The petitioner-employer is running a hotel viz. Ritz Hotel, and Respondent No. 1 Union has filed a complaint on behalf of one Shri. V.T. Kumar as its member, who at the relevant time worked as a "South Indian Cook" for preparing South Indian dishes in the hotel of the petitioner-employer. The above South Indian Kitchen in the Hotel was started somewhere in the year 1976.

2. Initially, Mr. V.T. Kumar was appointed on probation as a "South Indian Cook" in August 1976 and he was confirmed on the said post w.e.f. January 1, 1977. Further, it is stated by the petitioner-employer that South Indian Kitchen was running in loss and was no more profitable. Accordingly, it was decided by the management of the hotel to close down "South Indian Kitchen department."

3. Since the petitioner-employer viz. Ritz Hotel is an establishment which employs more than 50 workmen, on September 16, 1991 the Petitioner-employer issued a Notice to the appropriate Government u/s 25-FFA of the Industrial Disputes Act, 1947, stating therein that the Petitioner-employer

intends to close down their department viz. South Indian Kitchen of M/s. Ritz Private Limited, Bombay w.e.f. November 16, 1991. The above notice of proposed closure was received and acknowledged by the Secretary to the Govt. of Maharashtra as well as the office of the Commissioner of Labour.

4. On November 16, 1991 the Petitioner-employer closed down the South Indian Kitchen in accordance with closure of establishment Notice dated September 16, 1991 which was issued to the Appropriate Government 60 days in advance.

5. Pursuant to the said closure of establishment Shri. V.T. Kumar, workman/employee was found surplus and, therefore, he was retrenched/terminated from services with immediate effect by issuing notice of retrenchment/termination dated November 16, 1991. While retrenching the services of the above workman, due compensation was offered to him, but he has not collected the same from the employer.

6. It is further stated by the petitioner-employer that on November 19, 1991, the 1st Respondent-Union issued a strike Notice to protest against the closure of the South Indian Kitchen department and consequent retrenchment/termination of Shri V.T. Kumar, workman. It is further contended that in view of the pending Strike Notice, the Petitioner-management also initiated talks with the 1st Respondent-union in order to explain that the action taken was bonafide and necessary for the further development and financial health of the hotel and also to explore the possibilities of settlement.

7. Since the settlement was not possible, on December 5, 1991 a Complaint (U.L.P.) No. 1666 of 1991 came to be filed by the 1st Respondent-union on behalf of the employee-workman to challenge breach of Chapter V-B Sections 25-N, 25N(c) and 25-O of the Industrial Disputes Act, 1947 and also u/s 28(1), items 4(a) and (f) of Schedule II and item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

8. Learned trial Court answered the issues in favour of the employee-cook, who was represented through the Union viz. Lal Bavta Hotel Aur Bakery Mazdoor Union. The Industrial Court, while holding the claim of the employee, did not consider the claim of reinstatement because at present South Indian Kitchen is not functioning with the employer-respondent/present petitioner. It is further declared and directed by the Industrial Court that the employee (original complainant) is entitled to full back wages with effect from November 16, 1991 with retrenchment compensation as per the provisions of the Act and also entitled to get 12% interest on back wages. But it is not categorically stated by the Industrial Court that as to for what period the interest is to be calculated. He has again reiterated that as the South Indian Kitchen is not functioning with the employer, the reinstatement cannot be considered.

9. The learned Industrial Court has set out the rival contentions and various materials brought on record by the respective parties before him. He has also referred the evidence of both parties and discussed the same. However, with

regard to the important aspect of applicability of Chapter V-B of the Industrial Disputes Act, 1947 to the present case, after quoting the definition of Factory as contained in the Factories Act, 1948 in his judgment at p.26 i.e. present petition p.no. 136 at the end of the quotation, the learned Industrial Court has specifically stated that only mobile hotel is excluded from the Factories Act, otherwise the hotel is covered under the Factories Act. In other words the Industrial Court has come to the conclusion that when the respondent-employer/present petitioner in its establishment was employing more than 100 workmen for the preceding 12 months and since both the parties have admitted this fact, the provision of Chapter V-B of the Industrial Disputes Act, 1947 are fully applicable. This has categorically been recorded at page 140.

10. After considering various decisions cited by both the parties for his perusal, the learned Industrial Judge has noticed all case-laws and then goes on record to the effect that

"Only because the hotel does not cover in the definition of the factory, other provisions are not applicable, this cannot be accepted"

This has categorically been recorded at pages 141 to 149 of the present petition/proceeding.

11. Even though the learned Industrial Judge accepts the reasons for the retrenchment/termination of the employee on face of the record without entering into the obvious question as to the applicability of Chapter V-B of the Industrial Disputes Act, 1947 and without setting out specific reasons for negating the contentions that the Chapter V-B is not applicable he could not have held by firstly giving his own reading of the said provisions and, secondly by making a sweeping statement, a hotel being covered and only mobile hotel is excluded from the definition. Relevant definitions are quoted on p. 135 and 136.

12. I will not go into the details of the definitions in this order. With reference to that, if one considers the proviso, it clearly indicates that only mobile unit/hotel belonging to the armed forces of the Union, a railway running shed and a hotel or cooking/eating place are not included. This is preceded by an exclusion of a mine subject to the operation of the Mines Act, 1952 (35 of 1952).

13. I deliberately deal separately with these two provisions because apparently the learned Industrial Court was impressed with the use of words "a mobile unit" in relation to the unit belonging to the armed forces and also words "railway running shed" or "a hotel, restaurant or eating place". If according to the learned Industrial Judge the use of subsequent words "hotel, restaurant, or eating place" were to be covered by the element of mobility which is to be found in respect of the mobile unit of the armed forces or the effect of "running shed" in relation to the railway shed, I fail to understand as to how he will be able to deal with a case when he considers "a mine" subject to the operation of the Mines Act, 1952. Definitely "a mine" could never be mobile. A hotel may or may not be mobile and likewise a restaurant or eating place.

14. When the words "mobile unit" are used only in relation to a unit belonging to armed forces of the Union, the remaining entries to be found in the same provision cannot be considered as mobile because each one of them covers a different category. The learned Judge's attempt to decide the matter before him only on the basis of the use of the word "mobile unit" in relation to the armed forces of the Union is not permissible.

15. The learned Industrial Judge has while accepting these circumstances referred to above, rejected the contention raised on behalf of the petitioner-employer and has not set out any other reason and on the contrary has proceeded on the basis that more than 100 workmen were in the petitioner's employment.

16. If one comes to Chapter V-B, the definition clause makes it clear that it would not be applicable to the present case.

17. The Industrial Court Judge has proceeded on the one hand, to grant retrenchment compensation and on the other, to grant full back wages with interest and out going wages till retirement.

18. The material placed on record makes it abundantly clear that all throughout the management made offers for settlement as well as offered compensation as per Section 25-F of the Industrial Disputes Act. The provisions of Sections 25-N and 25-O are not attracted in absence of applicability of Chapter V-B of the Industrial Disputes Act, 1947. Therefore the entire basis and structure of the order of the Industrial Court has become unsustainable.

(i) The petition succeeds.

(ii) The Award passed by the Industrial Court dated November 29, 1991 is quashed and set aside.

(iii) The action of retrenchment/ termination taken by the petitioner/employer on November 16, 1991 is restored and confirmed.

Pursuant to the earlier order passed by this Court on December 17, 1997 interim relief in terms of prayer (b) was granted to the Petitioner subject to the petitioner depositing in this Court 1.50 lacs out of which the worker was free to take back Rs. 50,000 without security and the balance of Rs. 1 lac was to be invested by the Office in Fixed Deposit in any Nationalised Bank. The amount invested together with interest if any shall be refunded to the Petitioner.

Rule is made absolute in the aforesaid terms.