

(2008) 01 BOM CK 0036

In the Bombay High Court

Case No : Writ Petition No. 6131 of 1995

Ruby Coach Builders Limited

APPELLANT

Vs

Shri P.S. Ghose, Member, Industrial Court and Others

RESPONDENT

Date of Decision : 29-01-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(3), 18, 18(3), 20, 28
Payment of Wages Act, 1936 — Section 3, 4, 4(5)

Citation : (2008) 117 FLR 143 : (2008) 4 MhLj 270

Hon'ble Judges : B.H. Marlapalle, J

Bench : Single Bench

Advocate : Aditya Chitale, for the Appellant; N.M. Ganguli and Meena H. Doshi, for the Respondent

Final Decision : Dismissed

Judgement

B.H. Marlapalle, J.—The Petitioner is a private limited company registered under the Companies Act, 1956 with its registered office at Mumbai, which is aggrieved by the Judgment and order dated 29-9-1995 rendered by the Learned Member of the Industrial Court at Mumbai thereby allowing Complaint(ULP)No.692/1994. The Industrial Court held that the petitioner company was guilty of engaging in acts of unfair labour practice under item 9 of Schedule IV of the MRTU & PULP Act, 1971 (for short ?the Act?) and consequently directed the petitioner company to (a) pay wages for the month of June 1993 (b) to pay wages for 14 days of suspension of operation commenced from 13-6-1993 and continued till 13-7-1993 and (c) to pay bonus for the accounting year 1992-93. While admitting this petition interim-relief in terms of prayer Clause (b) was granted as per the order dated 21-12-1995 and consequently the impugned order remains stayed.

2. The petitioner has a factory building coaches of heavy vehicles and was employing around 500 workmen. It had signed settlements from time to time with the representative of its workmen and the last settlement signed in 1990

was to expire at the end of 1993. The said settlement was signed with the elected representative of the workers on 16-8-1990 and as per the same it was agreed by the company to pay bonus at the rate of 20% for each financial year covered by the said settlement. It appears that sometimes in May-June 1993 the industrial relations in the factory were disturbed and respondent no. 1 union forced its entry and claimed majority support. However, the internal union which is impleaded as respondent No. 3 in this petition approached the Industrial Court with an application for recognition and the said application was registered as Application (MRTU) No. 35/1991. The said application was allowed by the Industrial Court vide its Judgement and order dated 1-12-1993 and consequently the certificate of recognition was granted to respondent no.3 union as the recognised union under the Act.

While the application for recognition was pending, the company issued a lock out notice on 30-6-1993 and informed that the lock out will commence from 14-7-1993. On issuing the lock out notice the company suspended the operations of its factory immediately and the lock out commenced from 14-7-1993. Thus from 30-6-1993, the operations of the factory came to stand still as no worker was allowed to enter the factory premises. The lockout was lifted on 27-1-1994. In the meanwhile, the respondent no.3 union submitted a Charter of Demand to the petitioner on 10-8-1993 on behalf of the workmen in the factory and covered by the lock out. The said union after obtaining the recognition addressed a letter to the Dy. Labour Commissioner on 3-1-1994 and requested for intervention on the pending general demands. The parties were called for meeting on 17-1-1994 and finally the settlement was arrived between the petitioner and the respondent no.3 on 10-2-1994 and it was signed in conciliation i.e. u/s 12(3) read with Section 18(3) of the Industrial Disputes Act, 1947. The benefits of the said settlement were applicable only to those workmen who have signed the settlement and it appears that some members of the Complainant union (respondent no.2) did not accept the said settlement and, therefore, they were denied the benefits of the settlement dated 10-2-1994. On or about 24-2-1994 the Respondent No.2 submitted a letter to the company and reiterated its demands for payment of wages for the month of June 1993, payment of wages for the period of suspension of operations and the payment of bonus for the year 1992-93 and there was no response from the petitioner company. Consequently, the union approached the Industrial Court and filed Complaint (ULP) No. 692/1994 on or about 24-4-1994 under item 9 of Schedule IV read with Section 28 of the Act and as noted earlier the said complaint has been allowed by the impugned Judgement and order by the Industrial Court.

3. As before the Industrial Court, the learned Counsel for the company reiterated the same grounds in support of this petition. As per him when a settlement was signed with the recognised union and the issues raised in the complaint were covered by the said settlement, the terms of settlement would be extended only to those workmen who had complied with the requirements of Clause 18 therein namely of furnishing of an undertaking. It was further contended that in the list

of 147 workmen who were not allegedly paid wages/bonus, there were hardly any, who were employees of the petitioner company and most of them were the contract labours engaged to do the work. It was also pointed out that the list of 147 workmen at Exh. U-12 was submitted at the fag end of the trial of the complaint and, therefore, the company could not verify the names of these 147 workmen. However, it submitted the list of 32 out of 147 workmen who were admittedly on the rolls of the company at the relevant time. It was also submitted that the employees had formed a cooperative credit society and most of them were the members of the same society. The said society had approached the Cooperative Court and obtained an injunction against the company on 6-10-1994 in Case No. CIV/320/1994. As per the said order the company was restrained from disbursing wages to the 147 members/workmen and, therefore, the company could not disburse the wages. Mr. Chitale also submitted that the Industrial Court committed a manifest error by holding that the settlement which was signed in 1994 was not implemented and in breach of the said settlement the members of the Complainant union were not given wages for the month of June 1993 and bonus etc. In support of his challenge to the impugned Judgement, Mr. Chitale has relied upon the following decisions.

1) *Shramik Utkarsha Sabha v. Raymond Woollen Mills Ltd. and Ors.* 1995 (1) CLR 607

2) *Vividh Kamgar Sabha v. Kalyani Steels Ltd.* AIR 2001 SCW 170.

4. Mr. Ganguli, the Learned Counsel for Respondent No.2 has supported the impugned Judgement. Admittedly, the settlement dated 10-2-1994 has been signed between the petitioner company and Respondent No.3 union which is a recognised union under the Act. The said settlement has been signed u/s 12(3) read with Section 18(3) of the Industrial Disputes Act, 1947. Section 12(3) of the I.D. Act states that if a settlement of a dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the conciliation officer shall send a report thereof to the Government or an officer authorised in this behalf by the appropriate Government together with Memorandum of Settlement signed by the parties to the dispute. Section 18(3) of the said Act states that the settlement arrived at in the course of conciliation proceedings shall be binding on all the parties to the industrial dispute, all other parties summoned to appear in the proceedings and where the parties to the dispute are composed of workmen, all persons who were employed in the establishment or part of the establishment as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part. The Act has amended Section 18 of the I.D. Act and the following proviso has been added:

provided that where there is a recognised union for any of the agreement under any law for the time being in force thens such an agreement, (not being an agreement in respect of dismissal, discharge, removal, retrenchment, termination of service or suspension of an employee) shall be arrived at between

the employer and the recognised union only and such a grievance shall be binding on all persons referred to in the Clause (c) and Clause (d) of Sub-section (3) of this Section.

5. Thus, the scheme of Section 18 of the I.D. Act read with the rights of the recognised union u/s 20 of the Act and Schedule I therein it is clear that a settlement signed with a recognised union binds all the workmen and a settlement signed in conciliation also binds all the workmen. It will be, therefore, futile to say that the settlement dated 10-2-1994 was only binding on or applicable to the members of the recognised union or those workmen who furnished an undertaking as per Clause 18 of the said settlement.

However, Mr. Chitale is right in his submissions that the Industrial Court was in error in relying upon the settlement dated 10-2-1994 and holding that the petitioner company was guilty of unfair labour practices in as much as the breach of the said settlement. But this by itself will not be sufficient to set aside the impugned Judgement and order. As noted earlier the Complainant union had approached the Industrial Court demanding the wages for June 1993 and for the period of suspension allowance and payment of bonus for the year 1992-93. None of these issues are related to the settlement dated 10-2-1994 and even the issue of bonus does not originate from the said settlement. The settlement dated 10-2-1994 is regarding future payments including bonus etc.

6. For the month of June 1993 the factory was not under lock out and the suspension of operation commenced from 30-6-1993 and perhaps at the end of the working day. Therefore, the workmen were entitled for wages for the month of June 1993. In its written-statement the petitioner company before the Industrial Court stated that it had not denied disbursement of wages for June 1993 but because there was a lock out, the staff to calculate the salaries and wages was not available and consequently on 7-7-1993 the wages were not disbursed but in the next breadth the company reiterated that the wages could not be disbursed because there was an injunction order passed by the Cooperative Court. This is a frivolous ground. The injunction order was passed much later i.e. on 6-10-1994. The lock out was lifted on 27-1-1994.

7. Section 3 of the Payment of Wages Act, 1936 states that every employer shall be responsible for the payment of persons employed by him of all wages required to be paid under the Act. Section 4 of the said Act deals with fixation of wage periods and Sub-section 5 states that wages of every person employed in a factory or industrial establishment in which less than 1000 persons are employed shall be paid before the expiry of 7th day and in any other establishment it shall be paid before the expiry of 10th day, after the last day of wage period in respect of which the wages are paid. The petitioner was required to pay wages for the month of June 1993 and it was the case of the Complainant union that 147 of their members who were the workmen of the petitioner were not paid such wages. This was undoubtedly disputed and it was contended that only 32 of them were the employees of the petitioner company and remaining were employed

through the Contractor. The fact remains that some workmen represented by the Complainant union were denied their wages for the month of June 1993 and this was certainly an act of unfair labour practice within the meaning of item 9 of Schedule IV of the Act in as much as the petitioner company did not comply with the requirements of the Payment of Wages Act, 1936.

It is not disputed that the petitioner was required to pay wages for the period of suspension of operation which right flows from the Standing Orders. If the employer denies employment to any of its workers in the absence of any lock out, lay off or retrenchment notice, it is required to pay wages to the workmen for such period when they are not allowed to enter the premises and resume their duties. Even as per the company the lock out was to commence from 14-7-1993 and this forced unemployment for 14 days from 30-6-1993, at the instance of the employer, thus obliged the petitioner company to pay wages for the period of suspension of operations. Denial to pay such wages is also an unfair labour practice within the meaning of item 9 of Schedule IV of the Act.

8. Coming to the issue of payment of bonus for the accounting year 1992-93, CW 1 Shri Pradeep Bhosale admitted in his deposition that there was no settlement in respect of wages for the month of June 1993 and bonus for the year 1992-93. In his cross examination he admitted that as per the settlement of August, 1990, for the accounting year 1992-93 bonus was to be paid at the rate of 20% and he stated that it was given only to those workmen who reported for duty on lifting the lockout on 27-1-1994. He also admitted that the workmen listed in Exh. U-12 were not paid bonus for the accounting year 1992-93. He also clarified that all the workmen in the list at Exh. 12 were not employees of the company and only 32 of them were the employees of petitioner company and all of them were not given bonus as well as the wages for June and for the period of suspension of operations. Denial of payment of bonus for the accounting year 1992-93 was an act certainly in breach of the settlement signed in August 1990 and undoubtedly payment of bonus is a liability which originates from the Payment of Bonus Act, 1965. The company is thus guilty of unfair labour practice under item 9 of Schedule IV of the Act on account of non payment of bonus for the accounting year 1992-93.

9. In the premises and for the reasons stated hereinabove the findings of the Industrial Court that the company was guilty of unfair labour practice under item 9 of Schedule IV of the act are required to be upheld/confirmed and, therefore, this petition fails. The same is hereby dismissed. Rule discharged. Interim order stands vacated. The monetary dues for payment of wages for June 1993, for the period of suspension of operations and the bonus amount for 1992-93 shall be calculated and paid to the Company's workmen represented by the Complainant union within the period of two months from today.