

(1997) 12 BOM CK 0039

In the Bombay High Court

Case No : O.O.C.J. Writ Petition No. 1849 of 1997

Sarva Mazdoor Sangh

APPELLANT

Vs

Innovations Garment Ltd. and Others

RESPONDENT

Date of Decision : 10-12-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 25

Citation : (1997) 12 BOM CK 0039

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : Mr. Colin Gonsalves, for the Appellant; Mr. V.P. Vaidya, for the Respondent

Judgement

F.I. Rebello, J.—Rule.

2. This petition is directed against the Order dated 11th November 1997 of the Industrial Court Mumbai passed below Exhibit "U-3" by way of interim relief. The petitioner's who were the complainants before the Industrial Court alleged unfair labour practices on the part of the Respondents. It was the contention of the Petitioner that Respondents were employing more than 100 workmen in their factory. Respondent No. 2 displayed a notice dated 30th September 1997 and " informed the employees that Respondent would shift its manufacturing activities to Mussoorie, District Garwal, U.P. State. It is pointed out that the Respondents do not have any factory in Mussoorie and that the contemplated closure of the industrial establishment at Parel amounts to illegal lock-out. The Industrial Court by order dated 11th November 1997 partly allowed the interim relief and directed the Respondents to make payment of wages to all the concerned workmen till 11th November 1997 and further directed to give 15 days joining time to the concerned workmen to enable them to report for work at newly shifted place of manufacturing activities. The Respondents were directed to pay the employees wages and travelling fare for their shifting to Mussoorie. It is this order which is impugned in this writ petition. As the matter involves serious

question as to whether the shifting of the unit amounts to closure and/or lock-out. Rule.

3. The question is on the nature of interim relief that has to be granted. The Respondents have contended that they were forced to close down on account of the notice issued by the Brihanmumbai Municipal Corporation who by their notice had found that Respondents were carrying on the activities without permit under Sections 390 and 479 of the Bombay Municipal Corporation Act. It is subsequent to this notice that a notice dated 3rd September 1997 was put up. In the notice it is pointed out that the Corporation has directed the Respondents to stop the manufacturing activities on the ground that the present manufacturing premises is coming under non-manufacturing zone. No material has been produced by the respondents to show any correspondence whereby the Corporation has directed the Respondents to close down their factory on account of the same coming within a non-manufacturing zone. In fact in the affidavit-in-rejoinder filed by the Petitioner it is pointed out that the structure stand at a site where originally Shakti Mills used to stand. It is also pointed out that a company called Glorious Plastics is also running on the land originally owned by Shakti Mills and that the Directors of Respondent No. 1 are the same as that of Glorious Plastics. It is contended by the Petitioners that the Junior Engineer of the Corporation whom their members contacted pointed out that if the Respondents apply for motor licence the same can be granted on the licence fee being paid. It is also pointed out by the learned Counsel for the Petitioners that in fact that Respondents have no licence for a factory to start the manufacturing plant at Mussoorie. It is also contended that more than 100 workmen are involved.

4. The Petitioners have come to the Court on the ground that there is a illegal lock-out. The contentions of the Respondents is that they are shifting their manufacturing activities and that shifting does not amount to closure of undertaking. Reliance is placed on the Judgment of the learned Single Judge of this Court (His Lordship Shri Justice Kurdukar, as he then was) in the case of Apex Marketing Federation Employees Union v. S.A. Patil and Ors. (reported in 1988 1 CLR 105. A persual of the fact of that case shows that what was being shifted was head office. It was in the circumstances of that case that the learned Single Judge held that Items 3 and 9 of Schedule IV of the MRTU & PULP Act were not attracted. No other Judgment has been cited. In the instant case there are over 100 workers who are involved and as such Chapter V-B of the Industrial Disputes Act will be attracted. The closure of manufacturing activities at Mumbai and shifting manufacturing activities to Mussoorie will prima facie amount to closure if not lock-out of the present factory. In Maharashtra General Kamgar Union v. Vazir Glass Works Ltd. & Ors. (reported in 1996 2 CLR 990 sitting in a Division Bench 1 had observed as under :-

That takes us to the question whether the public interest and other relevant reasons would include State interest. The State is very much concerned with the closure of industries as it has an adverse effect on employment potential in the

State and the soundness of its economy. In fact the legislature itself has recognised this fact by calling on a company/undertaking to move an application u/s 25(O) of the Act to the appropriate Government. There is a purpose behind this. It is the State Government which can give concessions in the form of tax facilities, reduction of power tariff, etc. in order to enable an industry to stand on its own feet and/or to obviate its financial and other difficulties. The State invites entrepreneurs to set up industries in backward area of the State, provides infrastructural facilities, gives subsidies, and tax concessions etc. with a view that more and more industries will be attracted which will help the State provide employment to its residents and bring in resources to meet the expenditure on its welfare schemes for the economically backward and public at large. If an employer who has set up an industry in a State has prospered therein afterwards because of the increase in cost of production arising out of higher wages and cost of raw material, decides to pack off and set up the same industry in some other State where he enjoys better tax benefits or facilities, benefit of low wages and other such concessions, is allowed to close down the industry without making attempts or taking steps to overcome the difficulties the State will be faced with as situation of industries running away to States which offer more facilities as and when cost of production on account of higher wages and/or raw material goes up. In the case like the City of Mumbai where the cost of land has shot up astronomically, industrialist would prefer to close down industries and make their fortune by developing the land and go to neighbouring States to set up such industries. This would lead to a flight of industries which no State can permit. Section 25(O) has behind it this aspect also."

If Section 25(O) of the Industrial Disputes Act is applied then there can be no closure of the factory without permission of the Government. Here admittedly no permission had been taken.

5. In these circumstances, Petitioners having made out a strong prima facie case, the order of the Industrial Court is stayed in terms of prayer clauses (b)(i) to the extent of clause 3. Interim relief also in terms of prayers (b)(iii) and (b)(v) pending the hearing and final disposal of, this petition. The Industrial Court is directed to dispose off the Complaint within, six months from today.