

(2004) 06 BOM CK 0105

In the Bombay High Court

Case No : Writ Petition No. 2304 of 1994

Shri Vinodchandra Mathubhai Bhatt

APPELLANT

Vs

Shah Mallabel Castings Ltd., Shri B.A. Shelar, Presiding
Officer, 2nd Labour Court and Shri G.S. Baj, Member,
Industrial Court

RESPONDENT

Date of Decision : 29-06-2004

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 44, 50

Citation : (2004) 4 ALLMR 744 : (2005) 2 BomCR 958 : (2005) 1 LLJ 299 :
(2004) 4 MhLj 166

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : K.S. Bapat, for the Appellant;

Final Decision : Allowed

Judgement

Nishita Mhatre, J.—This petition is directed against the orders of the Labour Court allowing an application for restoring the complaint which was disposed of ex-parte and the order of the Industrial Court in the revision application filed against the order of the Labour Court. Both these orders show extreme non-application of mind and this may be due to incompetence or something more than meets the eye.

2. The respondent No. 1 though served, has chosen to remain absent. On an earlier occasion when the matter came up for hearing, the advocate for the Petitioner was directed to give fresh notice since nobody appeared for the Respondent.

3. The Petitioner joined service of Respondent No. 1 and was confirmed after four months. He was promoted thereafter. On 2.1.1978, the Petitioner was dismissed for service by Respondent No. 1. A complaint was, therefore, filed by the Petitioner under Item 1 of Schedule IV of the MRTU & PULP Act before the Labour

Court, Bombay. Respondent No. 1 appeared and in its reply raised the issue as to the maintainability of the complaint since according to Respondent No. 1, the Petitioner was not a workman. It appears that in April, 1979, the management of Respondent No. 1 changed. However, Respondent No. 1 continued to be represented before the Labour Court. The Petitioner was then examined on the preliminary issue as to whether he was a workman. The evidence of one S.M. Rane was led on behalf of the Respondent on the preliminary issue. After the evidence was recorded, the Labour Court on 8.3.1985 came to the conclusion that the Petitioner was a workman. Being aggrieved by this order, Respondent No. 1 preferred the revision application u/s 44 of the Act before the Industrial Court. The Revision Application was dismissed by the Industrial Court on 27.10.1986. In 1987, the advocate for Respondent No. 1 withdrew his appearance. Therefore, the Labour Court issued two notices to Respondent No. 1 on 27.8.1987 and 8.12.1987. It appears that Respondent No. 1 remained absent, despite these notices being received by him. Therefore, on 13.8.1987, the Petitioner filed an application praying that the complaint be decided ex-parte. By the same application, the petitioner informed the Court that the Court Receiver has been appointed in respect of Respondent No. 1. On 16.9.1987, the Petitioner filed an affidavit by way of examination in chief wherein he has mentioned about the lockout of the Respondent-company. The Labour Court allowed the complaint on 16.10.1987. On 8.12.1987, the Petitioner called upon Respondent No. 1 to pay him the dues payable under the order including backwages from 2.1.1978 to 31.12.1985 and compensation equivalent to 3 months salary. After almost a year of receiving the notice on 1.10.1988, Respondent No. 1 preferred an application for setting aside the order dated 16.10.1987 and for a stay of the recovery proceedings instituted by the Petitioner. The Petitioner opposed the application and sought to deposit of the backwages and other dues. By the order dated 13.10.1989, the Labour Court granted a conditional stay of the recovery on Respondent No. 1 depositing Rs. 45,000/- in this Court. Since this amount was not deposited, the recovery certificate was issued for Rs. 45,000/- on 18.6.1990.

4. After the evidence was recorded, the Labour court allowed the application for restoration and restored the complaint. Consequently, the recovery proceedings were stayed. This order was passed despite the earlier order directing deposit of Rs. 45,000/- being flouted. Aggrieved by the order of the Labour Court, the Petitioner preferred a revision application. The Industrial Court dismissed the revision application by coming to the conclusion that although Respondent No. 1 had approached the Court after a period of almost two years, he was entitled to have the complaint restored to file. The Industrial Court came to the conclusion that the Petitioner had suppressed material facts about the lock-out, change of management and of the appointment of the Court Receiver and therefore, the Revision was rejected.

5. A perusal of the order of the Labour Court, shows complete non-application of mind. The Labour Court erroneously came to the conclusion that Respondent No. 1 was entitled to restoration of the complaint since the notices issued by the

Court to the Respondent No. 1 and the advocate on record were issued to the previous management. The contention of Respondent No. 1 that it had no knowledge about the proceedings was accepted by the Labour Court. The Labour Court by observing thus, had not considered the evidence on record where the Managing Director of Respondent No. 1 has stated in the cross-examination that the new management took over the previous management in April, 1979. He has also stated that he was not aware as to whether one S.M. Rane was examine on behalf of Respondent No. 1 in the complaint although he was the Managing Director at that time. The witness of Respondent No. 1 appears to be blissfully of unaware of the Court proceedings despite being the Managing Director. He has denied the receipt of all the communications sent to him either by the Court or by the Petitioner. However, he has admitted that the Petitioner had filed an application for issuance of a recovery certificate u/s 50 of the Act and that Respondent No. 1 had contested it. Despite this evidence on record, the Labour Court came to the conclusion that Respondent No. 1 was not aware of the Court proceedings and that it had made out sufficient case for restoring the complain leading to the order of the Labour Court and the evidence recorded before it shows that the Labour Court has been impressed by things other than the evidence on record.

6. The Industrial Court has committed the same error. The observations of the Industrial Court that the Petitioner had not informed the Court about the lock-out, change in management or about the Court Receiver being appointed are not borne out from the facts in this case. On 13.8.1987, the Petitioner had filed an application for deciding the matter ex-parte. It has also been stated in the application that the Respondent No. 1 had appeared and had contested the proceedings by examining their own witnesses for the preliminary issue. However, since the respondents had remained absent continuously for a long period, it was prayed that the complaint be decided ex-parte. This application has not been considered by the Industrial Court at all. Further the examination in chief by Respondent No. 1 was considered by the Labour Court by passing the order on 16.10.1987. The Labour Court has observed that Respondent No. 1 had refused to accept the service and the Director, the Respondent No. 2 therein, had been duly served. The Labour Court has considered the fact that the company had been closed from 1.1.1986. Accordingly, the Labour Court granted full wages from 2.1.1978 upto 31.12.1985 since the company was closed from 1.1.1986 and further amount of compensation. It is surprising that the Industrial Court has lost site of these facts and has come to the conclusion that the Petitioner had suppressed any material from the Court. Obviously, what weighed with the Industrial Court was not the material on record.

7. In the result, the Petition is allowed. Rule made absolute with costs quantified at Rs. 10,000/-.