

(2011) 07 BOM CK 0185

In the Bombay High Court

Case No : Writ Petition No. 1072 of 2011

Spentex Industries Ltd.

APPELLANT

Vs

Member, Industrial Court Judge, Second Labour Court

RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 30(2), 33

Citation : (2012) 1 ALLMR 249 : (2012) 3 BomCR 409 : (2011) 131 FLR 843 :
(2012) 1 LLJ 750 : (2012) 1 MhLj 161

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : S.G. Zinjarde, for the Appellant; A.D. Sonak, Learned Asstt. Govt. Pleader for Resondent Nos. 1 and 2 and Samudra Singh, Learned Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R. M. Savant J.

1. Rule with the consent of the parties made returnable forthwith and heard.

2. The above petition filed under Articles 226 and 227 of the Constitution of India takes exception to the order dated 08/11/2010 passed by the learned Industrial Court, Nagpur in Revision ULP No. 173/2009, by which order the Revision Application filed by the Petitioner came to be rejected and consequently the order dated 03/12/2009 passed by the learned 2nd Labour Court, Nagpur came to be confirmed.

3. Shorn of unnecessary details, a few facts can be stated thus.

The Respondent No. 3 herein has filed Complaint ULP No. 11/2009 alleging unfair labour practice against the Petitioner under Item 1 (a), (b), (c), (d), (f) and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971 (hereinafter referred to as to the "said Act").

The complaint was filed at the intermediate stage when the Enquiry Officer, who had conducted the enquiry against the Respondent No. 3 complainant, had submitted his report to the Petitioner Company. The complainant had sought interim reliefs qua the further action being taken pursuant to the said report. The said Complaint ULP No. 11/2009 was filed by the Respondent No. 3 on the apprehended dismissal based on the Enquiry Report. In the said complaint, the Respondent No. 3 filed an application for interim relief u/s 30(2) of the said Act. In the said application an order of status quo came to be passed on 11/02/2009 and thereafter by order dated 09/03/2009, the application for interim relief came to be rejected, as the same was founded on an apprehension.

4. It appears that the Respondent No. 3 thereafter filed an application for amendment of the Complaint, in view of the dismissal order dated 13/03/2009, which was served upon him on 17/03/2009. The Respondent also filed an application for interim relief on account of fresh cause of action, which was sought to be incorporated in the Complaint by way of amendment. The said application for amendment was replied to by the Petitioner Company, however by an order passed by the Labour Court the said application came to be allowed and consequently the Complaint came to be amended so as to incorporate a challenge to the dismissal order dated 13/03/2009. The interim application filed by the Respondent No. 3 thereafter was taken up for consideration. It is pertinent to note that though the said application was served upon the Petitioner Company, no separate reply was filed to the said application. The Petitioner Company had filed its written statement to the Complaint as originally filed. The Labour Court considered the said application for interim relief filed by the Respondent No. 3 and as mentioned herein above by the impugned order dated 03/12/2009 allowed the same. The learned Labour Court held that the interim relief initially came to be rejected on the ground that the Complaint was filed on apprehension, but since the Petitioner Company had later on by its order dated 13/03/2009 dismissed the Respondent No. 3 from services even though the Complaint was pending. The Labour Court thought it fit to grant the interim relief as prayed for. The Labour Court was of the view that there was deliberate attempt on the part of the Petitioner Company of not filing the reply and thereafter proceeding to issue the dismissal order dated 13/03/2009. The Labour Court directed the Petitioner Company to reinstate the Respondent No. 3 and stayed the effect and implementation of the dismissal order dated 13/03/2009.

5. Aggrieved by the said order dated 03/12/2009 passed by the 2nd Labour Court, Nagpur, the Petitioner Company herein filed a Revision Application being Revision ULP No. 173/2009. The Revisional Court considering the conspectus of case law cited before it more especially relating to the adverse action of dismissal taken during the pendency of proceedings dismissed the Revision Application and confirmed the order dated 03/12/2009 passed by the 2nd Labour Court, Nagpur granting interim reliefs.

6. Heard the learned Counsel for the parties.

On behalf of the Petitioner, learned Counsel Shri Zinjarde would contend that it was impermissible for the Courts below to grant relief, which was in the nature of the final relief. The learned Counsel would further contend that it was incumbent on the part of the Labour Court to frame an issue as regards the fairness of the enquiry as the said issue has to be framed in terms of the judgment of the Apex Court in the matter of The Cooper Engineering Limited Vs. Shri P.P. Mundhe, . The learned Counsel also relied upon the judgment of learned Single Judge of this Court reported in 2003 III CLR 557 in the matter of Parsik Janata Sahakari Bank Ltd., Thane v. Shantaram Balwant Takane and Ors. in support of his submission that unless a strong prima facie case is made out, no interim relief would be granted and in the instant case the Respondent No. 3 instead of dealing with the enquiry officer's report, had approached the Labour Court by way of the said Complaint ULP No. 11/2009.

Per contra, it is submitted by Shri Samudra Singh, the learned Counsel appearing for the Respondent No. 3 workman that no interference is called for with the order passed by the Labour Court as well as the Revisional Court in the light of the conduct of the Petitioner Company. The learned Counsel would contend that an order was passed by the Labour Court on 09/03/2011 directing the Respondent No. 3 to submit his reply to the enquiry officer's report. Since the next two days i.e. 10th and 11th of March, 2009 were holidays, the Respondent No. 3 became aware of the order dated 09/03/2009 only on 12/03/2009, but on the very next day, the Petitioner company had issued the dismissal order, which was served on the Respondent No. 3 on 17th March, 2009. The learned Counsel would further contend that the principles applicable to the Section 33 of the Industrial Disputes Act would be equally applicable in respect of the proceedings under the M.R.T.U. & P.U.L.P. Act, 1971 in the matter of informing the Court, or seeking its permission in respect of the actions sought to be taken pending the proceedings.

7. Having heard the learned Counsel for the parties, I have bestowed my anxious consideration to the rival contentions.

In the instant case, it is pertinent to note that the Labour Court had passed an order on 09/03/2009 directing the Respondent No. 3 to file a reply to the Enquiry Officer's Report. The next two days i.e. 10th and 11th of March, 2009 were holidays and the Respondent No. 3 became aware of the order only on 12/03/2009. But before he could file a reply, the Petitioner Company hurriedly issued the dismissal order on 13/03/2009, which was served on the Respondent No. 3 on 17/03/2009. It is further required to be noted that the Complaint was pending and the Respondent No. 3 had sought to amend the Complaint so as to incorporate a challenge to the dismissal order and had also filed an application for interim relief in respect of the said dismissal order. Both the Courts below in the said fact situation were right in coming to the conclusion that the Petitioner Company had sought to avoid filing its reply so that a covert action of dismissal could be taken against the Respondent No. 3. Though, it is debatable

whether the principles applicable in respect of Section 33 of the Industrial Disputes Act, would *stricto sensu* apply to the proceedings under the M.R.T.U. & P.U.L.P. Act, 1971, but the least that was expected from the PetitionerCompany was that when the parties were before the Court and when an application for interim relief was pending, the PetitionerCompany ought to have informed the Court of the action it proposes to take based on the enquiry officer's report. Having not done so, in my view, the Courts below were right in protecting the services of the Respondent No. 3 pending the Complaint. The facts of the present case are such that the discretion exercised by the Courts below in granting the interim relief cannot be faulted with.

8. In so far as the judgments of the Apex Court in *The Cooper Engineering case* and in the case of *Parsik Janata Sahakari Bank Ltd.* *supra* in the fact situation as mentioned above, the same would have no application, as the PetitionerCompany cannot be allowed to take advantage of its own wrong and then contend that the preliminary issue ought to have been framed by the trial Court as regards the justness of the enquiry.

9. In that view of the matter, no case for interference in the writ jurisdiction is made out. The writ petition is accordingly dismissed. Rule is discharged.

10. However, hearing of the Complaint ULP No. 11/2009 is expedited and is directed to be disposed of within a period of six months from receipt of the writ of this Court.