
(2011) 07 BOM CK 0057

In the Bombay High Court

Case No : Letters Patent Appeal No. 8 of 2011 in Writ Petition No. 8774 of 2010

Thomson Press (India) Limited and others

APPELLANT

Vs

Thomson Press Kamgar Sanghatana

RESPONDENT

Date of Decision : 12-07-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(2)

Citation : (2011) 131 FLR 88

Hon'ble Judges : P.B. Majmudar, J;Mridula Bhatkar, J

Bench : Division Bench

Advocate : J.P. Cama, K.S. Bapat instructed by Mahesh Shukla, for the Appellant; Jane Cox, for the Respondent

Judgement

P.B. Majmudar and Mrs. Mridula Bhatkar, JJ.—This Letters Patent Appeal is directed against the judgment and order of the learned single Judge passed in Writ Petition No. 8774 of 2010. By the impugned judgment and order, the learned Single Judge allowed the writ petition filed by the respondents- union and set aside the order passed by the Industrial Court, Thane in Complaint ULP No. 174 of 2010. The Industrial Court permitted the appellant-company to shift some of the machineries from their existing unit from Airoli to their other unit. The Industrial Court came to the conclusion that shifting of such machineries may not amount to violation of Item-8 of Schedule-IV The respondent-union has filed the said complaint on the ground that at the time when the strike is going on, the employer tried to shift the machineries which may result to breaking the strike. Learned Single Judge however, was of the opinion that if machineries are allowed to be transferred, the strike may be frustrated and therefore, action of the management may amount to unfair labour practice.

During the course of hearing, both sides submitted lengthy arguments on the point as to whether shifting of the machineries from one unit to another unit may amount to unfair labour practice as envisaged in Item-8 of Schedule-IV of the Act. During the course of hearing, both the parties also tried to amicably settle

the dispute and we are happy to note that the appellants and respondents have amicably settled the dispute and Minutes of Order signed by both the parties as well as by their respective Advocates are filed and taken on record. In view of the same, order of the learned Single Judge is substituted by the Minutes of Order. It is pointed out to the Court that the order of the learned Single Judge as well as of the Industrial Court both are reportable orders. The said orders should not be treated as precedent in any other case. Since the main point involved in the matter was examined by this Court, and this Court was required to pronounce the judgment as to whether shifting of the machineries may amount to unfair labour practice under Item 8 of Schedule-IV we would like to make it clear that neither the order of the Industrial Court nor the order of Single Judge should be treated as precedent in any other future case. In view of the fact that this appeal is disposed of by accepting the Minutes of Order submitted by both the sides, the order of the learned Single Judge as well of the Industrial Court stand set aside.

2. In view of settlement arrived at between the parties, the demand raised by the respondent-union is required to be referred to the appropriate Government u/s 10(2) of the Industrial Disputes Act. On referring the same, appropriate Government shall refer the matter to appropriate Court by joint reference and the concerned Industrial Tribunal to whom the dispute is referred, may adjudicate the said dispute as earliest, in any case within a period of six months from such reference. Tribunal may decide the matter on day to day basis so that the matter can be decided within time bound programme. The State Government is directed to make reference as indicated above, within a period of one month from today, so that the matter will not be further delayed. Regarding the wages for the strike period, the demand is already raised by the union. It is agreed between the parties that the Conciliation officer may submit his report immediately in any case within a period of two weeks from today and on receiving failure report, appropriate Government shall refer the dispute regarding wages for the strike period, for adjudication to the appropriate Industrial Tribunal. The State Government after receiving the failure report, shall refer the dispute to the appropriate Government within a period of one month and the concerned Tribunal shall dispose of the said reference within a period of nine months thereafter. The Tribunal may decide the aforesaid reference in a time bound manner as parties are agreed to settle the dispute with a view that pending dispute can be put to an end without further delay.

3. Representative of Union has agreed before the Court that the workers will not resort to any unlawful activities and will maintain peace and healthy atmosphere and will act as per the Minutes of Order placed before this Court in its true spirit and will not interfere with in the movement of the machineries or movement of man power which may be in the case of emergency. They will not interfere with the transfer of machineries if so required in the circumstances of the case and will permit the outsider, if such outsider is required for doing normal industrial work. If any outsider is required to be brought as per the practice and procedure

and policy if any, the same will not be obstructed by the workmen. It is further agreed that the existing employees will not be victimized nor they will be subject to un-necessary harassment by way of transfer.

4. The Consent Terms duly signed by the parties are accordingly taken on record. Minutes of order are taken on record. Court appreciate the gesture on behalf of both the sides in settling the issue and this Court has no doubt in mind that both the parties shall also act fairly and in its true spirit. Petition disposed of accordingly.

In view of disposal of the petition, Civil Application is also disposed of.