

(1993) 02 BOM CK 0066
In the Bombay High Court
Case No : Appeal No. 16 of 1992

Universal Luggage Mfg. Company Ltd.	APPELLANT
Vs	
General Employees Union and Others	RESPONDENT

Date of Decision : 02-02-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25, 25
Trade Unions Act, 1926 — Section 28

Citation : (1993) 1 LLJ 1207

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : K.K. Sinvi, for the Appellant; Dr. R.S. Kulkarni, for the Respondent

Judgement

Kapadia, J.—This Appeal has been filed by the petitioner against order of the learned single Judge dated December 10th/11th, 1991 in Writ Petition No. 906 of 1991, dismissing the Writ petition filed by the appellant-company against interim order passed by the Industrial Court on February 26, 1991, in Complaint U. L. P. No. 392 of 1990, filed by respondent No. 1 Union under the provisions of Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (hereinafter, for the sake of brevity, referred to as "the said Act, 1971").

2. The facts giving rise to this Appeal, briefly, are as follows :

(a) The appellant is a public limited company, engaged in the business of manufacture of moulded luggage, having factory in Bombay. The appellant-company has three other factories at Valuj, Paithan and Satara.

(b) Respondent No. 1 - Union represents the employees working in the factory of the appellant-company at Bombay.

(c) By notice of lock-out dated April 10, 1990, given u/s 24(2) of the said Act, 1971, the appellant-company purported to effect a lock-out in it's Bombay

factory with effect from April 25, 1990. By statement of reasons appended to the notice of lock-out, the company declared that the Bombay factory had 884 employees; that the workmen were represented by Respondent No. 1 - Union; that the Bombay Factory started working in 1975; that there was a settlement signed with Respondent No. 1-Union in June 1986, which expired on May 31, 1989; that prior to its expiry on May 31, 1989, a notice of termination was given by Respondent No. 1-Union on May 12, 1989; that on July 25, 1989, respondent No. 1 submitted Charter of Demands for revision of service conditions; that the company had suffered financial losses from 1989-1984 upto 1989-1990, amounting to Rs. 797.68 lacs; that the wage ratio to the turnover at the Bombay factory was 33% of the total turnover; and that in the circumstances, the company decided to impose the above lock-out from April 25, 1990. In the statement of reasons it is further stated that the lock-out shall continue till such time as the workmen agreed to the demands of the company vide company's letter dated March 10, 1990 and March 14, 1990. As per the company's demand, 533 workmen out of 884 employees were surplus workmen who will agree to retire voluntarily by submitting resignations to the company and the balance workmen should agree to work at Aurangabad and till such demands of the company are met with, the lock-out shall continue.

(d) In the circumstances, on April 19, 1990, respondent No. 1 - Union preferred Complaint U. L. P. No. 392 of 1990 under Item 6 of Schedule II and Items 9 and 10 of Schedule IV of the said Act, 1971. According to the said Complaint, the service conditions of the workmen at Bombay factory are governed by various agreements signed from time to time. Even the work norms were fixed as per the agreement between the company and the Union. According to the Complaint, the Piramal Group, which has been managing the V.I.P., took over the management of the respondent-company in 1988. The last agreement was signed in June 1986 and it expired after three years. The said agreement was also terminated by the Union who submitted fresh Charter of Demands. According to the Complaint, the company had stopped the workmen from entering the factory from April 11, 1990 i.e., prior to April 25, 1990, as indicated in the notice of lock-out. According to the Complaint, on April 11, 1990, the workmen received notice dated April 10, 1990, purporting to be a notice of lock-out with effect from April 25, 1990. According to the said complaint, the lock-out was unauthorised and it was a counter blast to the charter of demands submitted by the Union. According to the said complaint, by denying work from April 11, 1990, not only Section 24(2) of the said Act, 1971 stood violated, but it also violated the settlement of 1986. In the circumstances, the complaint was filed for declaration that the company was guilty of unfair labour practices under Item 6 of the IIInd Schedule as also items 9 and 10 of the IVth Schedule to the said Act, 1971.

(e) In the said Complaint an application for interim relief was made. By the said application, the first respondent herein sought order of injunction restraining the company from taking steps pursuant to the impugned notice of lock-out dated

April 10, 1990. By interim order passed by the Industrial Court dated February 26, 1991, the Industrial Court prima facie came to the conclusion that the appellant herein had engaged in unfair labour practice under Item 6 of Schedule II as also under Items 9 and 10 of Schedule IV to the said Act, 1971. By the said order, the Industrial Court prima facie also came to the conclusion that in the impugned notice of lock-out the intention of the company was to direct the workmen not to report for work from April 25, 1990; that in fact the lockout was imposed from April 11, 1990 i.e., prior to April 25, 1990; that the reduction of 533 workmen as surplus and the fact that there was nothing in the impugned notice of lock-out that the Management wanted to close down the Bombay establishment and that the notice of lock-out was a subterfuge to circumvent the provisions relating to closure u/s 25-O of the Industrial Disputes Act, 1947. The Industrial Court prima facie also came to the conclusion that there was a breach of 1986 settlement and in the circumstances, Items 9 and 10 of schedule IV to the Act, 1971, stood attracted. The Industrial Court also came to the conclusion prima facie that the lock-out was illegal because it commenced prior to April 25, 1990. The Industrial Court also came to the conclusion prima facie that since individual notices were not served, the lock-out was illegal. However, at this stage it may be clarified that the last two questions have been answered by the learned Single Judge in the impugned order in favour of the company and in the circumstances, it is not necessary to go into the said two questions for the purposes of deciding the Appeal.

(f) Against the impugned order of the Industrial Court dated February 26, 1991, the company preferred the above Writ Petition. Before the learned Single Judge, the main contention of respondent No. 1-Union was that the company had violated Section 25-O of the Industrial Disputes Act, and, therefore, Item 9 of Schedule IV of the said Act, 1971, stood attracted. The case of the first respondent was that inasmuch as the lock-out was illegal, item 6 of Schedule II was also applicable. It was further submitted that in the guise of imposing a lock-out what was done was to impose a closure. The learned Single Judge came to the conclusion that as the order under challenge was an interim order and as the observations of the Industrial Court were prima facie in nature, the order of the Industrial Court was based on plausible view in view of the facts and circumstances of the the case and in the circumstances, the learned Single Judge refused to interfere under Article 226 of the Constitution. The learned Single Judge agreed with the prima facie conclusion of the Industrial Court viz., that what the Management has done amounted to closure which was done in the guise of a lock-out. On consideration of the material, the learned Single Judge also found prima facie that there was violation of 1986 settlement and, therefore, prima facie the company was guilty of unfair labour practice also under Item 9 of Schedule IV to the said Act. 1971. Against the said impugned judgment dated December 10/11, 1991, the present Appeal has been filed.

3. As stated hereinabove, the only question which is required to be decided in the present case is whether the Industrial Court, at the interlocutory stage, was

right in coming to the conclusion that the Management has effected closure in the guise of lock-out and accordingly, the company was guilty of unfair labour practice u/s 28 r/w Item 6 of the Schedule II of the said Act, 1971 and Item 9 of the Schedule IV of the said Act, 1971. Mr. Singvi, on behalf of the appellant, submitted that the Industrial Court had erred in coming to the conclusion that the company had imposed closure in the guise of a lock-out as closure cannot be effected without permission of the Government u/s 25-O of the Industrial Disputes Act. He further submitted that the Industrial Court, while deciding the above complaint, had no jurisdiction to adjudicate as the Complaint was filed u/s 28 r/w the above Items of Schedule II and IV to the said Act, 1971. According to Mr. Singvi, the only question that was relevant was whether there was illegal lock-out u/s 24(2) of the said act, 1971. Mr. Singvi submitted that Item 6 of Schedule II deals with a contingency where the company proposes to or continues a lock-out deemed to be illegal under the Act. He further submits that u/s 25-O of the said Act, 1971, a lock-out is deemed to be illegal where the Labour Court decides in a Reference u/s 25 that the company has resorted to an illegal lock-out and it refuses to withdraw declared illegal lock-out within 48 hours of the declaration u/s 25. In the present case that contingency did not arise and the only question which the Industrial Court was required to decide was whether the lock-out, which commenced from April 11, 1990, was an illegal u/s 24(2) of the said Act, 1971. Lockout Mr. Singvi also submitted that Item 9 of Schedule IV to the said Act was not applicable as there was no violation of any statutory provisions of the Act and there was no violation of 1986 settlement. He also relied upon the judgment of a learned Single Judge of this Court in the case of Arun Wadekar & Ors, v. Executive Engineer, Chief Gate Erection & Ors. reported in (1992 1 CLR 263.

4. Dr. Kulkarni on the other hand submitted that in the present case the interim order of the Industrial Court was challenged by Writ Petition and the learned Single Judge was right in refusing to interfere with the interim order under Article 226 of the Constitution. He further submitted that the above facts clearly indicated that the company had denied work to the workmen which is clearly indicated by the statement of reasons and the denial of the work was on the basis that the workmen shall agree to the demands of the company viz., voluntary retirement of 533 workers out of 884 employees as surplus and the balance workmen should agree to work at Aurangabad. Mr. Kulkarni relied upon the statement of reasons to indicate that prima facie the Industrial Court was right in coming to the conclusion that in effect what was sought to be imposed was a closure and not a lock-out as indicated by the demands of the company which have been reproduced in the statement of reasons. He further submitted that once prima facie it is found that what was intended was a closure and not lock-out, then provisions of Section 25-O of the Industrial Disputes Act stood attracted, and violation of the said Section attracted Item 9 of Schedule IV of the Act, 1971.

5. We are in agreement with the learned Single Judge who has rightly dismissed

the Writ Petition filed by the company. Firstly, as held by the learned Single Judge the matter is at an interim stage and in the facts and circumstances of the case, the view of the Industrial Court that it was a closure, was a possible view which is prima facie in nature, and, therefore, no interference was called for under Article 226 of the Constitution. The statement of reasons clearly indicates prima facie that the lock-out was to continue till such time as the workmen conceded the demands of the company. The demands of the company itself indicate that 533 workmen shall accept voluntary retirement and the remaining shall agree to work at Aurangabad. Prima facie, the Industrial Court was right in coming to the conclusion that the intention of the company was to close down the Bombay unit and in the absence of permission u/s 25-O of the Industrial Disputes Act, the closure could not have been effected. The Industrial Court, by the impugned order, has gone into the intention of the company and has come to the conclusion prima facie that the notice of lock-out was bad in law as what was intended was to close down the unit in the garb of lock-out. In facts and circumstances of the case, we agree with the learned Single Judge that this was a probable view which the Industrial Court was entitled to take at the interlocutory stage. We also agree with the learned Single Judge that Item 9 of the Schedule IV to the said Act also stood attracted as 1986 settlement stood violated. As indicated hereinabove, prima facie, the Industrial Court was right in coming to that conclusion as the Complaint proceeds on the basis that the service conditions and norms of work were governed by the agreement entered into between the company and the Union from time to time, including the last settlement of 1986 and by denying work and wages to the workmen, prima facie, there is a breach of the said settlement of 1986 and in the circumstances, Item 9 of Schedule IV to the Act, 1971, applied to the facts of the case. We may make it clear that the arguments of the learned counsel for the appellant will have to be examined at the final hearing of the matter and the said arguments will have to be decided by an indepth examination of the evidence in order to find out the true intention of the company. One more fact may be also mentioned that on November 4, 1990, the company applied for permission u/s 25-O of the Industrial Disputes Act to close down the Bombay Unit. However the appropriate Government refused the said permission vide letter dated January 1, 1992. These facts, along with the facts which are pleaded, will have to be examined before coming to the legal contention raised herein and in the circumstances we are of the view that all the above facts will require an indepth examination and in the circumstances we agree with the impugned Judgment of the learned Single Judge who has rightly refused to interfere under Article 226 of the Constitution.

6. We make it clear that observations made by us are tentative in nature and the said observations will not bind the Industrial Court at the time of final decision of the said Complaint (U. L. P.) No. 392 of 1990.

7. For the foregoing reasons, Appeal fails and the same is dismissed with costs.