

(2000) 02 BOM CK 0073
In the Bombay High Court
Case No : O.O.C.J.W.P. No. 178 of 2000

Vazir Glass Works

APPELLANT

Vs

Bharat R. Tayade and Others

RESPONDENT

Date of Decision : 16-02-2000

Acts Referred:

Citation : (2000) 2 LLJ 687

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

Bench : Single Bench

Advocate : K.K. Singhvi and M.V. Bhatt and M.P. Jambualikar, instructed by R.L. Narlekar, for the Appellant; Rele and A. Shaikh, for the Respondent

Final Decision : Dismissed

Judgement

F.I. Rebello, J.—The Petitioner by the present Petition impugns the orders dated August 10, 1998 and November 25, 1999 passed by the Labour Court and the Industrial Court respectively.

2. The Respondent No. 1 had filed a complaint against the Petitioner herein alleging unfair labour practices on the part of the Petitioner under Items 1(a)(b) (d) and (f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. It was the case of the Respondent No. 1 that the Petitioners were intending to close down their factory and to that effect had put up a notice. It was their contention that the same amounted to the act of unfair labour practices and consequently the Petitioner should be desisted from committing the act of unfair labour practices. An application for interim relief was also prayed for. During the course of the proceedings, the Respondent No. 1 applied for an amendment of the complaint whereby they sought to contend that there was functional integrality between the Petitioners and the Respondent No. 2. It is also further contended that the Petitioners and Respondent No. 2 constitute one Undertaking and therefore before closing down part of the Undertaking permission u/s 25-O is required as number of employees is clearly above 100.

3. The Respondents filed their reply. It is contended that they are entitled to close down for the reasons set out in the closure notice. It is further contended that the provisions of Chapter VB of the Industrial Disputes Act, 1947 would not apply as number of workers have fallen below 100 and what would be applicable would be Chapter VA. It was also contended that in fact there is a de facto closure and that being the case it cannot be said that any unfair labour practice has been committed on behalf of the Petitioners.

4. The Labour Court by its order on exhibit "U-2" dated August 10, 1998 restrained the Petitioners and five others from closing down its factory at Bombay with effect from August 10, 1998 and terminating the employees listed in Annexure "A". The Respondents were also restrained from transferring and/or shifting the said machines from the factory at Bombay to any other place. The Respondents were also directed to pay wages to all the workers as per the Minimum Wages Act. The Respondent No. 1 thereafter applied for clarification of the order in view of the grant of minimum wages by the order dated August 10, 1998. The said application for clarification was disposed of by passing an order on October 11, 1998 below Exhibit "U-12". The application was rejected.

5. Aggrieved by the Order, three Revisions were preferred. One by the Petitioners herein. The other by Respondent No. 2 on the ground that no directions could be issued against said Respondent and the third by Respondent No. 1 in so far as the grant of minimum wages are concerned. The Industrial Court by a common order dated November 25, 1999 allowed the Revision Application preferred by Respondent No. 2. In so far as the revision preferred by the petitioners herein was concerned the same was rejected and the revision preferred by Respondent No. 1 was allowed to the extent that there was a direction that the Petitioners herein were to pay wages to the workers to which they were entitled prior to the passing of the impugned order dated August 10, 1998.

6. Aggrieved by the said order, Petitioners have approached this Court. It is principally contended that both the Courts below misdirected themselves in law relying on the Judgment of this Court in the case of Maharashtra General Kamgar Union Vs. Vazir Glass Works Ltd. and Others, . It is contended that what was in issue before this Court in the said Judgment was the permission for closure sought for under Chapter VB. Admittedly, in the present case Chapter VB is not attracted and what is attracted is Chapter VA considering averments by the complainant themselves that number of workers have fallen below 100. In this context it is contended that once Chapter VB was not attracted reliance by the Courts below on the Judgment of this Court cannot be sustained. Attention is also invited to para 22 of the Judgment to contend that this Court has held that Petitioners and the Respondent No. 2 are two distinct legal entities. In these circumstances, it is contended that what the Courts below had to consider was only whether there was a real closure or a de facto closure. To consider what is real closure reliance is placed amongst others on the Judgments of the Apex Court in the case of The Andhra Prabha Ltd. and Others Vs. Secretary, Madras

Union of Journalists and Others, and in the case of Kalinga Tubes Ltd. Vs. Their Workmen, .

Secondly, it is contended that the Petitioners by themselves could not have maintained the Complaint on behalf of all the other workmen. It is, therefore, contended that to that extent also the orders are liable to be quashed and set aside.

And lastly, it is contended that there could not be a general direction as given by the Courts below. At the highest what could have been given is not to terminate the services without following the procedure according to law.

7. On behalf of the Respondent No. 1 their learned Counsel contends that what the Petitioners are impugning are interim orders passed by the Court below. All that the Courts have done after coming to the conclusion that there is a prima facie case is to maintain the status quo. It is, therefore, contended that this Court should not interfere at this stage in respect of the interim orders which have "been passed. It is further contended that the Court can go into the issue whether the closure is bona fide or whether it is a mere pretence of a closure and/or it is mala fide. Reliance for that has been placed on the Judgment of the Apex Court in the case of Banaras Ice Factory Limited Vs. Its Workmen, . Attention of the Court is also invited to the paragraph 22 of the Judgment in Maharashtra General Kamgar Union v. Vazir Glass Work Ltd. (supra) to contend that for all purposes the Respondent No. 2 had stepped into the shoes of the Petitioners herein. This Court it is contended while considering the earlier petition for permission under Chapter VB has considered all aspect in so far as Petitioners and Respondent No. 2 are concerned. It is contended, therefore, at least at the prima facie stage those findings must be looked into and as such the Courts below were not wrong in considering those aspects of the matter. It is further contended that the real test would be as to whether there is total closure of business. The Court it is contended can lift the corporate veil to examine the said aspect. Reliance is sought to be placed on the Judgment in the case of Industrial Perfumes Ltd. Vs. Industrial Perfumes Workers Union, . It is contended further that in so far as maintenance of the compliant is concerned the complaint of unfair labour practices could have been maintained by the Petitioner.

8. Considering these aspects and the orders, the question would be whether this Court should interfere with the interim order in the exercise of its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

9. It is true that what is in issue before this Court while delivering Judgment in the case of Maharashtra General Kamgar Union v. Vazir Glass Works Ltd. and Ors. (supra) was consideration of cases under Chapter VB of the Industrial Disputes Act, 1947. Under Chapter VB before an establishment/industry is closed down permission has to be sought from the Appropriate Government. In the case of Maharashtra General Kamgar Union v. Vazir Glass Works Ltd. and Ors. (supra) the Appropriate Government had refused permission. After various challenges

the matter was remanded by the Apex Court to the Industrial Tribunal. The issue before the Industrial Tribunal was whether the Appropriate Government was right in refusing to grant permission. The Industrial Tribunal held in favour of the Petitioner against which the Petition came to be filed before this Court. The Order of the Industrial Tribunal was reversed on the grounds as discussed in the Judgment itself. Therefore, the learned Counsel for the Petitioners may be right in contending that the observations in the said Judgment may not be applicable in so far as present case is concerned which would be under Chapter VA and for which purpose all that the Court has to consider is whether the closure is real.

10. The complainant/Respondent No. 1 had come to the Court with the contention that the Petitioners are being closed on account of setting up a factory by Respondent No. 2 to which the entire production of the Petitioner was diverted. It is further their contention that there is functional integrality between the Petitioner and Respondent No. 2. My attention is also being invited to the guarantee given to the workmen for payment consequent upon the V.R. Scheme effected by the Petitioners herein after the Judgment of the Court. The said guarantee is exhibited as Exhibit "D" to the Complaint. The relevant portion of the guarantee may be reproduced.

"In case any failure on the part of the Vazir Glass Works Limited to fulfill their commitment in that respect we undertake to fulfill all the financial obligations in respect of the Unpaid Deferred Amount to resigned workers/employees under the above Voluntary Retirement Scheme."

The Company is authorised to issue this guarantee in terms of the following Resolution of the Board of Directors dated April 21, 1997.

"Resolved that Neutral Glass & Allied Industries Limited, do hereby stand as a guarantor to the workers/employees of Vazir Glass Works Limited, retired under the Voluntary Retirement Scheme dated April 24, 1997, in respect of their Unpaid Deferred Payments under the said Voluntary Retirement Scheme."

"Further resolved that in case of failure on the part of Vazir Glass Works to pay the deferred amounts to the resigned workers/employees, the company hereby undertakes to pay to the resigned workers their dues of Deferred Payment under the above Voluntary Retirement Scheme."

"Further Resolved That Company's Managing Director be and is hereby authorised to sign the Guarantee papers on behalf of the Company."

"Further Resolved That the Company's Common Seal is affixed in the presence of Managing Director and Company Secretary or any other person."

11. While considering relationship between the Petitioners and Respondent No. 1, this Court in Maharashtra General Kamgar Union v. Vazir Glass Works Ltd. and Ors. (supra), to which I was a party, the following question was posted after considering the various facts that emerged on record at p. 243.

"22. One may pose a question whether any reasonable person with these facts on record would come to a conclusion that the Neutral Glass & Allied Works is a competitor of respondent company or would it come to the conclusion that the Neutral Glass & Allied Works has stepped into the shoes of the Respondent company to carry on the production which the Respondent company was carrying out at its Andheri Factory."

These observations were made after setting out the various facts in the earlier part of the Judgment based on material before the Court as to how the entire production was transferred from the Petitioner Company to the Respondent No. 2 as also key management personnel.

12. Bearing in mind these findings recorded in the earlier Judgment and the present guarantee given and the stand by the Complainant herein that the Petitioners and Respondent No. 2 have functional integrality to my mind the issue of Relationship between Petitioner and Respondent No. 2 will have to be gone into. This is not merely therefore a case where the Petitioners intend to close down the factory or whether it amounts to a de facto closure. The key issue would be whether even if the establishment is de facto closed whether the business is also closed. In a case like *mis* where the Petitioners are prima facie actually involved in setting up another company to carry out all its manufacturing activities which it was carrying out and divert its customers to Respondent No. 2 and then declare its intention to close down the unit, whether that would be closure in the eyes of law and whether in that event the ratio laid down in the case of *Banaras Ice Factory Ltd. v. Their Workmen* (supra) and in the case of *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, will have to be considered. It is true that both the Labour Court and the Industrial Court have not addressed themselves directly on this question but reading the two orders it is clear that what the two Courts below have done by reference to the Judgments of this Court in *Maharashtra General Kamgar Union* (supra), was in fact considering *mis* very issue. I, therefore, find no error apparent or any jurisdictional error which require exercise of the extraordinary jurisdiction in so far as this aspect is concerned.

13. Next is the contention on behalf of the Petitioners that Respondent No. 1 could not have maintained the complaint. It is true that in reply to the Complaint the Petitioners have taken a contention that Respondent No. 1 could not have maintained the Complaint. However, I do not find any discussion about the same in both the orders. That also could be in the event the matter was not raised. I am so holding as on the perusal of the Memo of Revision I find that the Petitioners have nowhere contended that such a contention regarding maintenance of the complaint by Respondent No. 1 was argued and raised by them and not answered by the Labour Court. Even before the Industrial Court in the oral arguments such a contention is not even raised. It would therefore not be possible for this Court for the first time in the exercise of its powers under Article 226 and 227 of the Constitution of India to permit the Petitioners to raise

the issue even though the impugned orders may be interim orders. Even otherwise the complaint is by an employee. The acts of unfair labour practices alleged are under Item I of Schedule IV. Complaint pertains to closure of the establishment. Once the Courts below prima facie have come to the conclusion that there is an act of unfair labour practices, it is a direction to the Petitioners to desist from committing that unfair labour practice. That cannot be limited to the Respondent No. 1 alone but that would be in so far as closure of the factory itself. In that light of the matter at this prima facie stage, even if the plea is to be considered, it is not possible to uphold the contention of the Petitioners herein.

14. The only other contention was regarding the generality of the order whereby the Petitioners have been directed not to terminate the services of the employee. I need not interfere with the orders on that count. Suffice it to say that the orders must mean that no act of termination can take place without following the due procedure under law.

15. With the above clarifications, I find no cause for interfering with the above impugned Orders and consequently the petition is rejected.

16. At this stage learned Counsel for the Petitioners prays that the stay granted be continued. There was a stay earlier granted. In that light of the matter, the stay earlier granted to continue for a further period of six weeks from today.

17. P.A. to give ordinary copy of this order to the parties concerned.

18. Issuance of certified copy expedited.