

(2018) 08 BOM CK 0062
In the Bombay High Court
Case No : Writ Petition No.6099 Of 2018

Viraj Engineering Company Through Its Partner	APPELLANT
Vs	
Viraj Engineering Employees Union And Ors	RESPONDENT

Date of Decision : 09-08-2018

Acts Referred:

Maharashtra Recognition Of Trade Unions And Prevention Of Unfair Labour Practices Act, 1971 — Section 28, 30(2)
Industrial Disputes Act, 1947 — Section 2(cc), 25F, 25F(b), 25FFF, 25FFF(1)

Citation : (2018) 08 BOM CK 0062

Hon'ble Judges : S.C. GUPTE, J

Bench : Single Bench

Advocate : Meelan Topkar, Vijayprakash Yadav

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the parties. Rule. Rule taken up for hearing by consent of Counsel.

2. The petition challenges an order passed by the Industrial Court at Nashik rejecting the Petitioner's interim application under Section 30(2) of the MRTU & PULP Act in a complaint of unfair labour practice filed by the Petitioner. The Petitioner is a partnership firm engaged in manufacture of engineering components. There were 14 workers working in the engineering undertaking of the Petitioner. On 9 March 2018, the Petitioner decided to close its factory and accordingly issued closure notices, both individual and public, and claims to have even paid all legal dues of its workers in accordance with law. Its grievance in the complaint is that after settlement of legal dues of the workers, when it was trying to remove its plant and machinery, Respondent No.1 union and its supporters opposed and obstructed the ingress or egress of material, persons and goods. A police complaint

was made in respect of these obstructions. The Petitioner then proceeded to file the present complaint of unfair labour practice against the

Respondents under Section 28 read with items 1, 2 (a) and (b) and (6) of Schedule III of MRTU & PULP Act. In its complaint, the Petitioner applied

for interim relief under Exhibit CÂ2. Vide its impugned order dated 21 April 2018, the Industrial Court rejected that application. That order is

challenged in the present petition.

3. The impugned order of the Industrial Court rejecting the Petitioner's interim application is on the basis, firstly, that the alleged closure was not under

any unavoidable circumstance beyond the control of the employer. The Court observed that as against the contention of the employer that its owner

Jitendra Raghunath Patil was unable to look after the company because of his old age and had, therefore, proposed the closure, the complainant

company, being a partnership firm, could well carry on its business through the other partners. Secondly, the Court held that there was an assurance

given by the complainant company to its employees at the time of shifting of its unit producing oil from Nashik to Satara that such shifting would not

affect the service conditions of its employees in the manufacturing line (where these 14 workers were engaged). The Court held that closure of the

company effected by the Petitioner herein was contrary to its assurance given to the employees and, hence, illegal. The Court, in the premises, held

that the Petitioner had failed to make out a prima facie case and that the balance of convenience was not in its favour and also that there was no

likelihood of any irreparable loss being caused to the Petitioner if the interim injunction was not granted. That is how the interim application was

rejected by the Industrial Court.

4. 'Closure' is defined under the Industrial Disputes Act (clause (cc) of Section 2) as permanent closing down of a place of employment or part

thereof. If an employer permanently closes down the place of employment or its part, he must do so on the condition provided under Section 25ÂFFF

of the Industrial Disputes Act. SubÂsection (1) of Section 25ÂFFF provides that if any undertaking is closed down for any reason whatsoever, every

workman, who is in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of

subÂsection (2), be entitled to notice and compensation in accordance with the

provisions of Section 25A of the Act, as if the workman had been retrenched. Section 25A provides (clause (a)) for one month's notice in writing or wages for the period of notice in lieu of such notice and (clause (b)) compensation equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months. Subsection (1) has a proviso, which applies to a case where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer. In such case, compensation to be paid to the workman under clause (b) of Section 25A (i.e. retrenchment compensation of fifteen days' average pay for every completed year or part) shall not exceed his average pay for three months. The Industrial Court, in the present case, has considered whether the undertaking in the present case was closed down on account of unavoidable circumstances beyond the control of the employer. The Court held that it was not and hence, treated the closure as an action in breach of Section 25A. This really was not germane for the consideration of the complaint since it was not the case of the employer that the closure was covered by the proviso to subsection (1) of Section 25A. The employer's case was that it was a closure under the first part of Subsection (1) of Section 25A and the workers were entitled not only to a compensation not exceeding average pay of three months but equivalent to fifteen days' average pay for every year of continuous service. The employer in fact claimed to have paid such compensation to the workmen, which the latter even accepted. In the premises, the whole focus of the enquiry exhibits a clear misdirection in law.

5. Even the second ground considered by the Industrial Court for refusing interim relief is prima facie irrelevant and not germane to the issue at hand.

The assurance given by the Petitioner to the union on behalf of its workmen on 31 January 2016 was, in the first place, in connection with the then proposed transfer of its undertaking relating to manufacture of oil outside Nashik. What it assured was that as a result of this transfer, no adverse impact would ensue on the service conditions of its employees at Nashik working in the undertaking of manufacture of engineering parts. That was in January 2016. The closure effected more than two years after this event was not as a result of shifting of the oil undertaking outside Nashik. No such case can be urged on the basis of material produced before the Court. The

closure was said to be in the fresh exigencies as a result of the inability of the employer to carry on the business. The second reason for denying interim relief also does not hold any water.

6. The fact that the closure notice was given to the workmen one day prior to the closure of the unit is also neither here nor there for the purpose of testing the legality of the closure. Under Section 25AFFF of the Act, which, in turn, refers to Section 25AF of the Act, workmen are entitled to one month's notice or wages for the period of one month in lieu of such notice. The working of the total compensation paid to the workmen in the present case, as disclosed by the Petitioner to the Industrial Court, shows that notice pay of one month was part of the total package of compensation paid to the workmen.

7. In the premises, the impugned order of the Industrial Court is clearly untenable and deserves to be interfered with. The interim application of the Petitioner deserves to be allowed.

8. Accordingly, Rule is made absolute and the petition is allowed by quashing and setting aside the impugned order passed by the Industrial Court at Nashik dated 21 April 2018 and allowing the interim application of the Petitioner, being Exhibit CÂ2, in terms of prayer clause (a) thereof. No order as to costs.