
(1995) 04 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 2692 of 1990

V.K. Engineering Works Pvt. Ltd.

APPELLANT

Vs

Gunjotikar V.B. and others

RESPONDENT

Date of Decision : 25-04-1995

Acts Referred:

Citation : (1997) 3 LLJ 1151

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : C.U. Singh, for the Appellant;

Judgement

1. This Writ Petition under Articles 226 and 227 of the Constitution of India is directed against an ex-parte order dated February 17, 1987 made by the Industrial Court in Complaint (ULP) No. 121 of 1986 and an order dated April 11, 1990 made by the Industrial Court in Misc. Application (ULP) No. 3 of 1987 refusing to set aside the ex-parte order.

The 2nd Respondent Union has not appeared despite service.

2. Complainant (ULP) No. 121 of 1986 was filed by the 2nd Respondent Union against the petitioner alleging unfair labour practice under Item 6 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, (hereinafter referred to as the Act). In substance, the allegation was that the Petitioner company had effected an illegal lock-out with effect from January 16, 1986 as against the four workmen named in paragraph 3(a) of the Complaint by refusing to give work to them continuously from January 16, 1986. A declaration to that effect and relief of reinstatement with full back wages as well as interim relief were prayed for. An application was made on February 11, 1986 for interim relief. The prayer for interim relief was a temporary lifting of the lock-out and giving employment to the four workmen, Bhola Prasad Yadav, Arjun Prasad Yadav, Mewalal Harijan and D. Prasad Choudhary. On February 17, 1987 when the application for interim relief was

taken up for bearing, it appears that no one was present for the petitioner despite due service of the application for interim relief and the notice to show cause why interim relief as prayed for should not be granted. The Industrial Court made an ex-parte order on February 17, 1987 to the following effect :

"It is hereby declared that the Respondent Company has indulged in and is indulging in unfair labour practice under Item 6 of Schedule II of the M.R.T.U. & P.U.L.P. Act on and from January 16, 1986 by refusing to give work to the concerned four workmen namely, (1) Bhola Prasad Yadav, (2) Arjun Prasad Yadav, (3) Mewalal Harijan, and (4) D. P. Choudhary.

The respondent company is hereby directed to lift the lock-out within 8 days from today and to pay to the concerned four workmen full wages with effect from January 16, 1986 till they are given work."

3. When it came to know about the ex-parte order, the petitioner filed an application on March 19, 1987 in which it prayed that the ex-parte order dated February 17, 1987 be set aside and the interim relief application and the complaint be heard on merits and a fresh opportunity be given to the petitioner to contest them. In the said application the petitioner had pointed out several circumstances which, according to it, amounted to sufficient cause for its non-appearance on the date of hearing of the interim application. By the impugned order dated April 11, 1990, the Industrial Court held that the evidence adduced by the petitioner did not show that there was sufficient cause for its non-appearance on the due date of hearing of the interim application so as to set aside the ex-parte order. In this view of the matter, the Industrial Court dismissed the Misc. Application (ULP) No. 3 of 1987 taken out by the petitioner for setting aside the ex-parte order dated February 17, 1987. Being aggrieved by both the orders, the petitioner is before this Court by way of present writ petition.

4. Though Mr. C. U. Singh, learned Counsel for the petitioner, urged that the dismissal of Misc. Application (ULP) No. 3 of 1987 was wholly unjustified by placing reliance on the judgment of a learned Single Judge of this Court in *Prakash Mishra v. Central Institute for Cotton Research* 1986 Lab. I.C. 745 , and also a judgment of the Supreme Court of India in *Rafiq and Another Vs. Munshilal and Another*, . I do not consider it necessary to go into this aspect of the matter. Since the ex-parte order itself has been squarely challenged in this Writ Petition, I shall proceed to consider the merits of the ex-parte order on the assumption that there was no good ground for the petitioner to remain absent on the date of hearing of the interim relief application made by 1st Respondent Union.

5. Merely because an order is made ex-parte it does not absolve the Court from deciding the case before it in accordance with law. In the instant case what was being heard ex-parte was the application for interim relief dated February 11, 1986 made by the 1st Respondent. It is unfortunate that the learned Judge of the Industrial Court in his enthusiasm lost sight of the fact that he was merely

deciding an interlocutory application. The operative order made in ex-parte order dated February 17, 1987 shows that the learned Judge has declared that the petitioner had indulged in and was indulging in unfair labour practice under Item 6 of Schedule II and granted consequential relief of direction to lift the lock-out within 8 days and payment of full wages from January 16, 1986 till the workmen concerned were given work. Such a declaration and such relief could have been granted only after hearing the complaint, at the conclusion of the Trial of the complaint, if the Industrial Court came to the conclusion that the Complainant had made out the case alleged in the Complaint. It is also an elementary, principle of law that the interim relief cannot be the whole of the relief which party would be entitled to in case he succeeds in the case. This is exactly what has happened in the present case. Though styled in the garb of an interim order, the Industrial Court has granted the whole relief to the 1st Respondent which could be granted only if the complaint succeeds. This is a serious infirmity in the ex-parte order even if it is assumed that the Industrial Court was justified in making an ex-parte order. The order is, therefore, liable to be set aside on this ground alone.

6. In the result, the writ petition succeeds. The impugned order dated February 17, 1987 made by the Industrial Court in complaint (ULP) No. 121 of 1986 is hereby quashed and set aside. The application for interim relief by the 1st Respondents is restored to file of the Industrial Court. The Industrial Court shall hear the parties afresh and, after giving opportunity for a fair hearing to both sides decide the application in accordance with law, as expeditiously as possible.

Rule is accordingly made absolute with no order as to costs.

Issuance of the certified copy of this judgment is expedited.