

(2001) 02 BOM CK 0081
In the Bombay High Court
Case No : A.S.W.P. No. 2057 of 2000

Voltas Limited (Motor Plant)	Vs	APPELLANT
Voltas Motor Plant Employees Union and Another		RESPONDENT

Date of Decision : 13-02-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 25N, 9A

Citation : (2002) 4 BomCR 784 : (2001) 89 FLR 589 : (2001) 2 LLJ 100 :
(2001) 2 MhLj 856

Hon'ble Judges : V.C. Daga, J

Bench : Single Bench

Advocate : C.U. Singh, instructed by Salgaonkar and Co, for the Appellant;
Coling Gonsalves, for the Respondent

Final Decision : Dismissed

Judgement

V.C. Daga, J.—Heard parties.

Rule made returnable forthwith by consent of parties.

The petitioner-company has invoked writ jurisdiction of this Court under Article 226 of the Constitution of India to challenge the order dated March 24, 2000 passed by the Industrial Court, Thane. The company has been restrained temporarily, amongst others, to act upon notice dated February 15, 2000 whereby the employees were informed of the introduction of Voluntary Retirement Scheme ("VRS" for short).

2. The question presented by this petition is:

Whether the Industrial Court was justified in granting interim relief against the petitioner-company in the facts and circumstances of the case in hand?

FACTUAL MATRIX

3. The factual matrix lies in the narrow compass and it is this:

The petitioner is a public limited company engaged in the business of manufacturing and marketing small electric motors used for refrigerator compressors. It is a unit of Voltas Limited manufacturing and marketing motors to a joint venture company known as Electrolux Voltas Limited, District-Chandrapur 442 907 (M.S.)

4. According to the petitioner-company, many workers realising the bleak economic situation of the company, approached them and requested for introduction of VRS so as to enable them to seek other job opportunities. The petitioner-company came up with the case that considering the bleak business scenario, it was felt necessary to introduce VRS and tried to sketch a bleak business scenario justifying introduction of VRS, the details of which are not necessary for decision of this petition.

5. A notice was displayed by the petitioner-company on February 15, 2000 informing the employees of the introduction of VRS, exhibiting therein the reasons for introduction of the said scheme. The said scheme was made applicable to all permanent general staff of the company. It was to remain in force from February 15, 2000 to February 28, 2000 (both days inclusive). The said scheme was engrafted with certain conditions. One of such conditions reads as under:

"(d) Any employee who retires under this scheme shall not be re-employed by the company or any other company under the same Management nor shall vacancy created under this Scheme be refilled by the Company."

6. The notice displaying VRS further stipulated that Income Tax shall be deducted at source on the amount exceeding Rs. 5,00,000/-so as to prima facie indicate that the VRS has been approved by the Income Tax Authorities, to enable the employees to claim exemption u/s 10 of the Income Tax Act. At any rate, this question can only be gone into at the stage of evidence.

7. The respondent No. 1 is a trade union, recognised as a sole bargaining agent operating in the establishment of the company in Bombay and Thane (hereinafter referred to as "complainant" for short).

8. The complaint was filed at the instance of the Union being Complaint (ULP) No. 124 of 2000 before the Industrial Court, Thane u/s 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("U.L.P. Act" for short), challenging the above VRS notice dated February 15, 2000, complaining infraction of Sections 9-A and 25-N of the Industrial Disputes Act, 1947 ("I.D. Act" for short) and an unfair labour practice on the part of the petitioner-company.

9. In the complaint, it was pleaded by the complainant that the petitioner-company was resorting to all sorts of pressure tactics and causing harassment to the workers on several issues. The petitioner-company was bent upon to demoralise the workers by creating fear psychosis amongst the workers. The

workers were asked to sit at home vide notice dated December 11, 1999 from December 12, 1999 onwards. The workers were allowed to resume work only from December 27, 1999. This was done by projecting that the petitioner-company is facing several problems and, as such, not in a position to provide work.

10. It was further alleged in the complaint that the reasons mentioned in the notice dated February 15, 2000 for introducing VRS were absolutely false and baseless. The petitioner-company created an atmosphere of uncertainty by resorting to various illegal acts so as to project their inability to continue with the manufacturing activities. They have shifted the production of their product to the factory located at Dadra.

11. In the above backdrop, it was alleged that it was a deliberate plan to unemploy the workers and final intention of the management is to close down the Motor Plant by adopting back-door methods. In nutshell, the complainant tried to make out a case that the VRS was bound to result in reduction of number of persons employed in various manufacturing processes, departments and shifts. Thus, the complainant tried to project that the action of the petitioner-company amounted to rationalisation and standardisation of the plant and the same was to result in mass retrenchment of the workmen under the purported scheme of voluntary retirement.

12. The complainant further pleaded that the establishment of the petitioner-company is covered under the provisions of Chapter V-B of the I.D. Act as the petitioner-company was employing more than 145 workmen every day for past many years. It is an "Industrial Establishment" within the meaning of Chapter V - B of the I.D. Act. The petitioner would not have got any permission from the Government for closure, had it been asked for. Thus, according to the complainant, the petitioner-company has deliberately adopted the method of introducing VRS, so as to avoid compliance with the provisions of Chapter V-B of the I.D. Act.

13. In the aforesaid proceeding, an application was moved for interim relief u/s 30(2) of the Act. The Industrial Court, relying upon the pleadings, affidavits and documents filed by the parties and after hearing both of them at length, has allowed the interim application (Exh. U-2) and directed the petitioner-company to maintain the number of workers in each of the manufacturing processes, both department-wise and shift wise and further directed not to reduce the strength of the workers without complying with the provisions of Section 25-N of the I.D. Act and further directed not to change the service conditions of the workmen concerned without first giving them notice of change u/s 9-A of the I.D. Act and enjoined them from acting upon the notice dated February 15, 2000 till disposal of the complaint.

RIVAL SUBMISSIONS Contentions of the Petitioner:

14. The petitioner's case, in a nutshell, is that the learned Member of the

Industrial Court has misdirected himself in law and on facts, and that his order suffers from grave errors of law apparent on the face of the record. Thus the impugned order is perverse; based on conjectures and surmises. The impugned order has also failed to do justice to those workmen who were keen to leave service. According to the learned counsel appearing for the petitioner, the Industrial Court has erroneously held that VRS requires prior permission from the appropriate Government u/s 25-N of the I.D. Act, even though, retrenchment defined u/s 2(00) expressly excludes termination of service brought about by the voluntary retirement of the workman.

15. The learned counsel appearing for the petitioner further tried to point out the various circumstances leading to introduction of VRS and further tried to justify introduction thereof. He further contended that no notice of change u/s 9-A was required to be given prior to introduction of VRS as it does not amount to retrenchment. He urged that neither item No. 10 nor item No. 11 of the Fourth Schedule of the I.D. Act was attracted in the facts and circumstances of the case. Reliance was sought to be placed on the judgments of the Apex Court in the matter of Hindustan Lever Ltd. Vs. Ram Mohan Ray and Others, . The reliance was also placed on the earlier judgment of the Apex Court in the matter of Athalye (D.G.)(Upper Ganges Valley Electricity Supply Co., Ltd.) Vs. State of Uttar Pradesh, . He also relied upon the judgment in the case of Amrit Banaspati Co. Ltd. Vs. S. Taki Bilgrami and Others, and The Motor Transport Controller, Maharashtra State, Bombay and Others Vs. Provincial Rashtriya Motor Kamgar Union, Nagpur and Others, .

16. The learned counsel for the petitioner also urged that no prejudice or adverse effect whatsoever has been demonstrated by the complainant due to introduction of VRS. According to him, neither the workmen who availed of VRS and left service have been shown to be adversely affected nor any prejudice is proved to the workmen who have remained in service. According to him, neither the workmen who availed of VRS and left service have been shown to be adversely affected nor any prejudice is proved to the workmen who have remained in service. According to him, notice of change u/s 9-A of the I.D. Act is only necessary where following two conditions are simultaneously fulfilled:

(1) that the change must be in a service condition listed in the Fourth Schedule; and

(2) that the change must result in a prejudicial or adverse alteration in the said service conditions.

In support of this submission reliance was placed on the judgment in the case of Empress Mills Co-operative Society v. Presiding Officer, Third Labour Court 1988 1 CLR 192 and Rashtriya Motor Karmachari Congress Union v. M.P. State Road Transport Corporation 1985 LIC 220.

17. The learned counsel appearing for the petitioner further urged that the Industrial Court has completely lost sight of the fact that by way of interim relief,

whole relief could not have been granted and that the Court failed to take into account the principles of irreparable injury and balance of convenience while passing the interim order, which is a subject matter of this petition. He, therefore, contended that the impugned order of the Industrial Court suffers from an error apparent on the face of record and cannot stand to the scrutiny of law laid down by the Apex Court as well as this Court. As such, he prayed for making the rule absolute in terms of prayers incorporated in the petition.

Contentions of the complainant (respondent-union):

18. The learned counsel appearing for the complainant urged that the impugned order is a reasoned order based on application of mind to the pleadings, documents, facts and circumstances of the case brought on record and takes into account entire game plan and background under which VRS was introduced by the petitioner-company. According to him, the Industrial Court has rightly reached the conclusion that the introduction of VRS was with mala fide intention to reduce the strength of workers permanently, bypassing the provisions of Section 25-N of the Industrial Disputes Act. He further urged that this Court, not being a Court of appeal, should not interfere with the interim order passed by the Industrial Court. He further urged that this Court should not exercise writ jurisdiction unless conclusion is reached that the view taken by the Industrial Court is unsustainable, perverse and suffers from an error apparent on the face of record not palatable to the judicial conscience of this Court.

19. The learned counsel for the complainant tried to bolster his submission and to contend that the impugned notice in general and Clauses 7(b) and (d) of the said notice in particular unequivocally demonstrates an intention of the management of the petitioner-company to reduce the strength of employees. Clauses 7(b) and (d) of the said notice in particular are pressed in service to show that the petitioner-company has declared VRS by seeking sanction of the Income Tax department, which, according to the complainant, is one of the pointers to show that the strength of the employees is going to be reduced and the service conditions of the workers would be adversely affected, as the company is not going to fill up the vacancies in future, with the result, in his submission, the remaining workers are bound to lose their employment permanently, as such, provision of Section 9-A of the Industrial Disputes Act stands attracted.

20. The impugned notice containing VRS has made the factum of permanent abolition of the posts as clear as anything could be and that the resultant vacancies created are not going to be refilled in future and, ultimately, at the end of the day increase in the workload of the existing workmen is bound to adversely affect the service conditions of the employees, as such, in the submission of the complainant, compliance of Section 9-A of the I.D. Act was mandatory.

21. The learned counsel for the complainant tried to point out that the impugned

notice containing VRS is pregnant with the scheme of permanent reduction of employees. He, therefore urged that as a consequence of VRS there is bound to be a reduction in the number of workers and the possibility of the company not being able to run factory with the remaining compliment and ultimately resorting to the closure thereof cannot be ruled out. In his submission, it was therefore, necessary for the petitioner to seek prior sanction of the Government u/s 25-N of the Industrial Disputes Act. Section 25-N mandates the employer to seek prior permission of the appropriate Government. Section 25-O puts a reasonable restriction on the rights of the employer and mandates compliance of the provisions thereof prior to closure of its undertaking.

22. In the submission of the learned counsel appearing for the complainant, impugned VRS has been foisted on the employees, as there is a dearth of voluntariness in it. It amounts to adoption of unfair labour practices as prescribed under items 9 and 10 of Schedule-IV of the Act. Therefore, according to the complainant, it can certainly be concluded that there is no fair intention on the part of the employer. No relevant documents have been filed by the petitioner-company to support the reasons mentioned in the notice. The petitioner company has not given due importance to the provisions of law and tried its best to circumvent the provisions thereof and ventured to declare VRS bypassing all the boundaries of law.

23. The learned counsel for the complainant further tried to urge that the element of voluntariness is absent in the instant scheme and voluntary retirement introduced by the petitioner. The workers are being forced to take VRS, that too, after creating a fear psychosis in their minds. In his submission, no evidence has been produced on record to show that the company was going through a financial crisis beyond its control. The so-called voluntary retirement scheme is nothing else, but an attempt to effect mass retrenchment.

24. In addition to the aforesaid submissions, it was sought to be brought on record that even after the impugned order of the Industrial Court, petitioner-company has on the midnight of April 15-16, 2000 removed from the factory about forty machines, the list of which was produced at Exh. A which, according to the complainant, are all crucial machines required for running of the factory. According to the complainant, all these machines have been sent to Electrolux Voltas Limited at Hyderabad. In the submission of the complainant, all this has been done in an attempt to overreach the Court.

25. It is also brought on record by way of additional affidavit dated November 9, 2000, stating therein that all the workers were made to sit at home, firstly, in the month of December 1999, secondly, in the month of March 2000 and finally from July 2000 onwards and none of the workers have been permitted to report at the factory gate. All the workers have been made to sit at home continuously from July 2000 till today.

26. In order to bring the notice of VRS within the mischief of provisions of

Section 9-A of the Industrial Disputes Act, reliance was sought to be placed on applicability of items 4, 9, 10 and 11 of Schedule-IV of the Industrial Disputes Act and a number of decisions and authorities were cited in support of submissions extracted hereinabove, such as Hindustan Lever Ltd. Vs. Ashok Vishnu Kate and others, , Hindustan Lever Ltd. Vs. Hindustan Lever Employees' Union and Others, , KEC International Ltd. v. Kamani Employees Union (supra), Amrit Banaspati Co. Ltd v. S. Taki Bilgrami (supra), M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad, .

27. The learned counsel for the complainant further contended that the complainant is a recognised union under the provisions of the Act. Not to bargain in good faith with the recognised union amounts to unfair labour practice. No discussion was ever held with the recognised union before introduction of the VRS. In his submission, to bargain in good faith means to provide full information to the recognised union and to have a meaningful discussion with the intention of arriving at a settlement. In the case in hand, VRS was presented as a fait accompli and that workers have never made any request for introduction of VRS.

28. The learned counsel for the complainant further contended that at the stage of evidence, an evidence would be led to demonstrate that VRS is nothing but a forced mass resignation and that it is nothing but an allurements to resign for a consideration. In his submission the dearth of voluntariness in the entire game plan is writ large, however, all these issues can only be decided by the Industrial Court after recording evidence.

29. In conclusion, the learned counsel for the respondent contended that the issues sought to be raised in this petition should not be decided at this interim stage, as the complaint is still pending before the Industrial Court. According to him, if this Court records final findings, may be either way, then it would mean an end of the original complaint pending before the Industrial Court. He, therefore, prayed for dismissal of petition with costs.

SCOPE OF CONSTITUTIONAL REMEDY

30. Before proceeding to consider the contentions raised on behalf of the parties, it would be profitable to take survey of the scope of writ jurisdiction of this Court. It is a well settled rule of practice of this Court not to interfere with the exercise of discretionary power under Articles 226 and 227 of the Constitution of India, merely because two views are possible on the facts of the case.

31. While exercising its writ jurisdiction, the High Court is not expected to attempt to grant a declaration on the basis of a decision arrived at on a consideration of disputed facts. But, where the basic facts are unchallenged and the inferences to be drawn from them are obvious, the High Court is not debarred from giving a declaration, if it appears necessary in order to meet the ends of justice. In a matter arising under Article 226 of the Constitution, the High Court should not at an interlocutory stage, decide upon the correctness of orders made by a Tribunal with jurisdiction. Where it is open to the Tribunal to reach a

particular conclusion, then it is not a matter which can be corrected by the High Court in exercise of its extraordinary jurisdiction either under Article 226 or under Article 227 of the Constitution. These principles are well established.

CONSIDERATION

32. Once having set down the boundaries of exercise of writ jurisdiction by this Court while examining the orders of the Tribunal, let us examine what could be the approach of the Tribunal at the stage of grant of interim relief. The rule that before issue of interim relief, the Court or Tribunal must satisfy itself that the suitor has a prima facie case, does not mean that the Court or Tribunal should examine the merits of the case closely and come to a conclusion that the suitor has a case in which he is likely to succeed. This would amount to prejudging the case on its merits. All that the Court or Tribunal has to see is that on the face of it the person applying for an interim relief has a case which needs consideration and which is not bound to fail by virtue of some apparent defects. The balance of convenience also has to be looked into. Applying the aforesaid principles, this Court has to examine the impugned order.

33. The complainant before the Industrial Court has certainly raised arguable questions in the complaint filed before the said Court. The complainant has certainly made out a prima facie case for enquiry. The case made out before the Industrial Court did warrant interim relief in favour of the complainant.

34. Having heard the parties to the petition, as already observed hereinabove, the complaint before the Industrial Court and the defence raised in reply to the petition has given rise to various triable issues. One of such issues is, as to whether the introduction of VRS would result in reducing the number of persons giving rise to increase in workload on the remaining employees or workers. Whether the reasons mentioned for introduction of such VRS have been occasioned due to the circumstances over which the Company has no control.

35. The complaint before the Industrial Court has also raised important triable issue as to whether reduction in work force of the company, on rationalisation by way of implementation of VRS, is nothing but an implied retrenchment of the workmen. The Industrial Court after having taken survey of the statutory provisions flowing from the provisions of the Industrial Disputes Act has prima facie considered these questions and found favour with the submissions made by the complainant.

36. At this juncture it will not be out of place to mention that some of the contentions raised by the complainant union and the defence set up by the petitioner employer will have to go through the gamut of proof. Both the parties will have to lead evidence to prove their rival contentions.

37. The complainant union came up with the complaint before the Industrial Court that by coercing and pressuring the employees the company has created fear psychosis in the minds of the employees and later on they have been driven

to accept the VRS. The VRS is nothing but a subterfuge for the retrenchment. The complainant also tried to make out a case that the petitioner employer has created feeling of insecurity among the employees. According to the complainant, a systematic attempt was made by the company to create dismal picture of its economic viability which resulted in creating uncertainty in the minds of the employees and after creating atmosphere of uncertainty, the employees were allured to accept VRS, which, in the submission of the complainant, by no stretch of means can be said to be voluntary retirement or resignation. This question cannot be decided on the basis of rival affidavits. This issue needs to be decided after providing the parties an opportunity to lead evidence and by permitting them to cross examine the rival witnesses. The contention of the petitioner-company in reply is that the introduction of VRS, obviously, is going to result in reduction of number of employees but, according to them, the reasons mentioned by the company for introduction of such VRS are occasioned by the circumstances over which the company has no control. However, in the submission of the petitioner-company, by no stretch of imagination the VRS can lead to reduction of complement as contemplated under items 10 and 11. According to them, the workers who opted for VRS were surplus. In their opinion, there would not be any reduction of workers as contemplated under such items. At any rate this defence placed on record will have to be proved by leading oral and documentary evidence before the Industrial Court

38. In my opinion, prima facie it was obligatory on the part of the petitioner company to place necessary details before the Industrial Court to demonstrate as to how many employees/workers were surplus. As per the notice published by the company, every employee completing age of 40 years or completing permanent service of 10 years as on April 1, 1999 was eligible to opt for VRS. It is, therefore, clear that no material was placed on record by the petitioner so as to demonstrate how many workers were surplus. The VRS as framed had given clear indication that the petitioner-company was prepared to accept the request of all the employees, if they were to opt for VRS. If that be so, prima facie it appears that in the garb of VRS an attempt was to retrench all the workmen, if possible. If the benefit of VRS was intended to be extended to all the workers then, in that event, prima facie it was an attempt to close down the factory without following provisions of Section 25-N of the Industrial Disputes Act. The instances are not uncommon giving rise to unpredictable situation with the entire managerial staff opting for VRS. Some could not run their factories for want of managers and supervisors, with the result, the factories are lying closed, It would thus be the matter of evidence as to what extent the business of the company has dwindled down and to what extent the manpower would be needed by the company in its existing set up, so as to keep the factory running. Whether the industrial unit of the petitioner is viable or not would be a question, which can only be tried and decided on the basis of necessary evidence which may be placed before the Court. Under these circumstances, I am of the firm opinion

that the respondent/complainant union has certainly made out a prima facie case i.e. a case for enquiry. The Supreme Court, in the matter of Martin Burn Ltd. Vs. R.N. Banerjee, as laid down what prima facie case means at p.255 of LLJ:

"While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence let in it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence..."

Applying the above test laid down by the Apex Court, I am of the opinion that the Industrial Court was perfectly justified in granting interim relief. The balance of convenience also lies in favour of the complainant so as to prevent the parties to reach the stage of no-return. Once the VRS is allowed to operate and the parties are allowed to travel till the point of no-return and factory is allowed to put their shutters down then it will be impossible to lift the shutters. Under the circumstance, the possible injury, which may cause, would be irreparable.

39. The impugned order, which is an interim order, is based on proper consideration of the various suggestions raised in the complaint at the interim stage and needs no interference. However, the Industrial Court is directed to decide the complaint on its own merits. The observations made hereinabove are prima facie. It is expected that the Industrial Court shall proceed to decide the complaint as early as possible, at any rate, within six months from the date of receipt of writ of this Court.

40. In the result, petition is dismissed with no order as to costs.

41. All the concerned parties to act on ordinary copy of this order duly authenticated by the Associate/Sheristedar of this Court.

42. The learned counsel for the petitioner prays for stay of this order for four weeks. In the facts and circumstances, prayer is rejected.