

(1995) 08 BOM CK 0028

In the Bombay High Court

Case No : Civil Appellate jurisdiction Writ Petition No. 4821 of 1990

Walchandnagar Industries Ltd.

APPELLANT

Vs

V. The Association of Engineering Workers and Others

RESPONDENT

Date of Decision : 30-08-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 24(2)
Trade Unions Act, 1926 — Section 28(1)

Citation : (1998) 3 LLJ 564

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

Bench : Single Bench

Judgement

B.N. Srikrishna, J.—These two writ petitioners are in the nature of cross petitions, which impugn the same order dated 6th April, 1990 made by the Industrial Court in Complaint (ULP) No. 153 of 1985 under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act"). Therefore, they need to be heard and disposed of by common judgment.

2. The petitioner in Writ Petition No. 4821 of 1990 shall hereinafter, for convenience, be referred to as "the employer" and the petitioner in Writ Petition No. 4879 of 1990 (the First respondent in writ petition No. 4821 of 1990) shall be referred to as "the union".

3. The short facts necessary to be considered for deciding these two writ petitions are the following :-

(a) On 7th July, 1985, the employer put up a notice on the notice-board of its industrial establishment declaring suspension of operations in the industrial establishment on several allegations, including the allegations that the workmen were on illegal strike. On 14th July, 1985, the employer issued notice at its Industrial Machinery Division declaring a lock-out with effect from 29th July, 1985. The lock-out was actually commenced from 21st June, 1985 and continued up to 27th September, 1985. The union representing the workmen moved

Complaint (ULP) No. 153 of 1985 u/s 28(1) read with Items 1, 1(b), 2, 2(a), 2(b), 3, 4, 4(a) and 6 of Schedule II and Items 9 and 10 of Schedule IV of the Act before the Industrial Court, Pune. The gist of the case made out in the complaint was that the suspension of operations resorted by the employer with effect from 7th July, 1985 amounted to a lockout without notice and, consequently, an "illegal lock-out" within the meaning of Section 24(2)(a) of the Act. It was also contended that the lock-out had continued from 29th July, 1985 and the lock-out on 29th July, 1985, though preceded by a notice of fourteen days in advance was yet illegal, because the workmen were not served with written notices of lock-out and had no knowledge of the lock-out at all. Consequently, it was contended that that lock-out also must be deemed to be one without advance notice and illegal within the meaning of Section 24(2)(a) of the Act. Without prejudice, it was contended that some workmen had received insufficient notice, as the individual notices posted to them were received much later than 20th July, 1985. For this reason also, it was contended that the lock-out was illegal. The Union sought relief of payment of full back-wages for the entire period from 7th July, 1985 to 27th September, 1985 to the workmen affected. The employer, while contesting the claim, contended that its action was valid and justified and denied that the workmen were entitled to any relief. By the impugned order the Industrial Court held that the workmen were entitled to wages for the first 30 days i.e., 7th July, 1985 to 28th August, 1985 (sic) since it was a period of lock-out without notice and hence illegal. The Industrial Court also held that the subsequent period from 29th August, 1985 (sic) to 23rd September, 1985 being preceded by an effective legal notice, the lock-out was legal. The Industrial Court denied payment of wages for the latter period. Being aggrieved, both the Union and the Employer have approached this Hon'ble Court to impugn different parts of the same order. The employer's petition is writ petition No. 4821 of 1990 and the Union's petition is writ petition No. 4879 of 1990.

4. Having heard the learned Counsel on both sides and perused the impugned order, I am of the view that the impugned order is right on both counts and needs no interference. Not only is it right in law, it does adequate justice to both sides.

5. Despite the submission of Shri Ramaswami the contrary. I am unable to accept the contention that the suspension of operation did not amount to a lock-out. When I asked Shri Ramaswami to expatiate on what really was a "suspension of operations", he stated that it was an act by which the workmen were not permitted to carry out their work, though they were willing to work. He was, however, quick to add that this was a desperate measure taken by the employer because of the continuing illegal strike. In his submission, there was no manner of doubt that the illegal strike would have continued upto 29th July, 1985, even if the suspension of operation had not been resorted to; therefore, there was no reason to award wages for the said period. It is difficult to accept this contention. Even assuming that there was an illegal strike on 7th July, 1985,

the moment the employer displaced the notice declaring what has been euphemistically called a "suspension of operation", the employer in effect told the workmen that he would not give work to them even if they were inclined to report for work.

6. The term "lock-out" is defined u/s 2(1) of the Industrial Disputes Act as "the temporary closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him." In my view, the suspension of operation resorted to by the employer amounted to a "lock-out" within the meaning of Section 2(1) of the Industrial Disputes Act. By virtue of Section 3(18) of the Act, this definition has to be read into the provisions of the Act. Between 7th July, 1985 to 29th July, 1985, the employer did resort to a lock-out which was not preceded by an advance notice of 14 days, Hence, it was an "illegal lock-out" within the meaning of Section 24(2) (a) of the Act. The Industrial Court was, therefore, fully justified in declaring the said action of suspension of operation to be an illegal lockout and directing payment of wages for the aforesaid period.

7. Turning to the merits of writ petition No. 4879 of 1990 filed by the union, two contentions were urged by the union to show that the lock-out commenced from 29th July, 1985 pursuant to the lock-out notice of 14th July, 1985 was illegal. First, that the lock-out notices had been received by the workmen only from the 20th July, 1985 onwards. In paragraph 21 of the impugned order, the Industrial Court has dealt with this contention and effectively demonstrated the hollowness of the contention in the light of the evidence on record before it. Upon evidence on record, the Industrial Court has noticed that the lock-out notices were published both in English and Marathi newspapers circulating in the local area. The Industrial Court has recorded a factual conclusion that the notice of lock-out was issued on 14th July, 1985 and the workers had full knowledge about it. The first contention was, therefore, rightly overruled by the Industrial Court. The second ground on which the lock-out notice was urged to be illegal was that the wages of the workmen, which were required to be paid for the aforesaid period, had not actually been paid. I need not decide the merits of this contention, which also has been rejected by the Industrial Court as Shri Ganguli, learned Advocate for the Union, perhaps realising the hollowness of the argument, very wisely gave it up.

8. The only ground on which the union contends that the lock-out notice dated 29th July, 1985 is illegal, therefore, fails. The Industrial Court was fully justified in declaring that the lock-out effected by notice dated 14th July, 1985 upto 28th July, 1985 was legal and refusing relief for this reason. I find no reason to interfere with the factual findings recorded by the Industrial Court, and the writ petition deserves to be dismissed.

9. In the result, both writ petitions No. 4821 of 1990 and 4879 of 1990 are hereby dismissed. Rules issued therein are discharged.

10. Shri Ganguli points out that the amounts of wages payable to the workmen entitled thereto have been deposited in this Court under an order made by the Supreme Court in petition for Special Leave (Civil) No. 19247 of 1991. He also states that the Supreme Court's order permitted the workmen to withdraw the amounts to which they were entitled, upon filing undertaking with the Registrar of this Court to refund the withdrawn amounts in case the employer's petition succeeded. Shri Ganguli states that a number of persons who, in the meantime, ceased to be in service, have neither filed the required undertakings, nor collected the amounts, which they were entitled to.

11. All undertaking of workmen given in these two writ petitions for collecting the amounts deposited in the Court shall stand discharged forthwith, since the workmen are entitled to the amounts deposited. If any workmen has not collected the amount of the wages for the period between 7th July, 1985 to 28th July, 1985, he is at liberty do so by making an application to the Registrar without undertaking of any kind. Liberty to the Union to move the Court in case of any difficulty.

12. No order as to costs.