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Devidayal Rolling Mills Vs. Engineering Workers Union and Ors.

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Court : Mumbai

Decided On : Jan-14-2008

Reported in : 2008(3)ALLMR344; 2008(2)BomCR9; (2008)110BOMLR317; [2008(119)FLR129]; (2009)ILLJ36Bom; 2008(4)MhLj607

Judge : B.H. Marlapalle, J.

Acts : Industrial Disputes Act, 1947 - Sections 25FFA, 25O, 25O(1) and 25N; Maharashtra Recognition Of Trade Union and Prevention of Unfair Labour Practices Act - Sections 3(3), 3(15), 24(2) and 25; Constitution of India - Article 227

Appeal No. : Writ Petition Nos. 5387 of 1996 and 190 of 1998

Appellant : Devidayal Rolling Mills;Engineering Workers' Union

Respondent : Engineering Workers Union and Ors.;Devidayal Rolling Mills

Advocate for Def. : P.M. Patel, Adv. for Respondent No. 1 and ;P.K. Rele, Sr. Adv. and ;Rajesh Gehani, Adv. in Writ Petition No. 2037 of 1999

Advocate for Pet/Ap. : P.K. Rele, Sr. Adv. and ;Rajesh Gehani, Adv. in Writ Petition Nos. 5387 and 190 of 1998 and ;P.M. Patel, Adv. in Writ Petition No. 2037 of 1999

Judgement :

B.H. Marlapalle, J.

1. All these three petitions treated to be under Article 227 of the Constitution raise a common challenge and that is the judgment and order dated 10/4/1996 rendered by the learned Member of the Industrial Court at Mumbai whereby Complaint (ULP) No. 587 of 1992 came to be dismissed as infructuous and Complaint (ULP) No. 1111 of 1992 was partly allowed holding that the employer -company had committed unfair labour practices under Items 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971 (for short 'the Act') by declaring illegal the lock-out from 21/4/1992. Consequently the company was directed to pay the lock-out wages to the 41 workmen concerned in the complaint from 21/4/1992 to 3/2/1993. The amount deposited towards the lock out wages was directed to be adjusted against the arrears. The first two petitions have been filed by the employer - company whereas the third petition has been filed by the complainant - Union.

2. Some of the relevant and undisputed facts leading to these petitions are that the company was employing about 41 workmen on its rolls and there was a settlement signed between the parties from time to time and last such settlement was dated 20/4/1987. On 4/4/1992 the company issued a notice of lock out (Form J) under Section 24(2) of the Act read with Rule 23 and as per the said notice the lock out was to commence from 21st April 1992. The Union by its letter dated 6/4/1992 objected to the said notice and refuted the allegations made in the notice of lockout against the workmen -Union. On or about 20/4/992 the Union filed Complaint (ULP) No. 587 of 1992 under Item 6 of Schedule II and Items 9 and 10 of Schedule IV of the Act and challenged the lockout notice. While the said complaint was pending before the Industrial Court, the company issued a notice of closure on 4/2/1993 and the factory thus came to be closed down. In the mean while on or about 12/8/1992 the Union filed yet another complaint registered as Complaint (ULP) No. 1111 of 1992 under Items 9 and 10 of Schedule IV of the Act. The said complaint was on the basis of the Union's apprehension that the lock out so continued would result in the closure of the company and, therefore, by the subsequent complaint directions were sought for payment of full wages from 21/4/1992 till the lifting of the lock out and to restrain the company from removing / shifting / selling machineries including all equipments and tools and also from

selling / disposing of the factory premises or in any way transferring its tenancy rights pending the final disposal of the - complaint. In the event of the closure of the factory the directions were sought to deposit all the legal dues such as notice pay, retrenchment compensation, gratuity, provident fund etc. and other earned wages and dues of the workmen in the Court pending the final disposal of the complaint. The subsequent complaint came to be amended after the lock out notice was issued as per the order passed by the Industrial Court below Exhibit U-16 on 19/4/1995. It was prayed to declare the closure as illegal as it was in breach of the mandatory provisions of Section 25(O)(1) of the Industrial Disputes Act, 1947. In support of this prayer it was contended that the other establishments of the company at Reay Road and Delhi establishment as well as the factory at Aurangabad were required to be treated as one unit on the basis of the functional integrality and if so held the closure of the company was without seeking permission of the State Government and more so when the total strength of the workmen in all the three units was more than 100. The Union also complained of breach of the requirements of Section 25FFA of the I.D. Act. Needless to mention both the complaints were opposed by the company by filing Written Statement. On behalf of the Union Shri P.R. Krishnan, Secretary was examined, whereas on behalf of the company Shri Abhay Murlidhar Patole, Production Manager / Works Manager was examined before the Industrial Court. In the Complaint (ULP) No. 587 of 1992 the following issue was framed:

(a) Whether the Complainant proves that Respondent has committed unfair labour practices under Item 6 of Schedule II and Items 9 and 10 of Schedule IV as alleged in the complaint

Whereas in Complaint (ULP) No. 1111 of 1992 the issues framed were:

(a) Does the Complainant prove that the Respondents have committed unfair labour practices by committing breach of provisions of Sections 25(O) and 25(N) of the I.D. Act?

(b) Does the Complainant prove that the closure declared by the Respondent company is illegal?

(c) Whether there is a functional integrality amongst the Respondent Company in its alleged branches situated at Paithan (Aurangabad), Delhi and its registered office at Bombay?

(d) To what relief the complainant is entitled to.

3. By the impugned common judgment the Industrial Court held that the Union could not prove the allegations of unfair labour practices under item 6 of Schedule II as well as Items 9 and 10 of Schedule IV of the Act in so far as the notice of lock out was concerned. This finding implies that the Court rejected the challenge to the lock out notice as being illegal. Further, the Court proceeded to hold that the company was not guilty of the breach of the requirements of Sections 25(O) and 25(N) of the I.D. Act. Based on its findings on Issue No. (c) regarding the functional integrality of the three establishments the Industrial Court held that the establishment at Sayani Road was a separate establishment within the meaning of the Act and, therefore, the company was not required to apply and obtain permission for closure under Sections 25(O) and 25(N) of the I.D. Act. The Industrial Court further held that the closure declared by the company could not be held to be illegal and on the contrary the Court observed that the closure effected by the company was perfectly legal. The Industrial Court proceeded to consider whether the workmen concerned were entitled for the lock out wages till the date of the closure and as per the Industrial Court this was a crucial question. It recorded a finding that the company was forcing the workmen to do additional work of the absentee workmen and that it amount to unfair labour practice within the meaning of Items 9 and 10 of Schedule IV and even if some isolated individual cases were there during the last about thirty years where the workmen were working voluntarily for eight hours continuously in place of absentee workmen, it could not be treated that they were willingly doing so and in fact they were doing so under the economic compulsions and it could not be treated to be as a matter of custom or practice under any existing settlement or award. The Industrial Court further went to observe that though the lockout notice was not illegal, the company's action of lock-out from 21/4/1992 to 3/2/1993 was illegal and unjustified. The company has, therefore, challenged the common judgment and the Union claims in Writ Petition No. 2037 of 1999 that the lock out effected by the

company from 4th February 1993 ought to have been held as illegal.

4. Mr. Rele, the learned Senior Counsel for the company pointed out at the threshold the conflicting findings recorded by the Industrial Court both against the lock out notice as well as the closure notice and submitted that once the Industrial Court recorded a finding that the lock out as well as closure was effected legally, it was not permissible for the Industrial Court to examine the issue of justifiability of lock out. In support of this argument Mr.Rele has relied upon a decision of this Court (D.B.) in the case of Modistone Ltd. v. Modistone Employees Union and Ors. 2001 L.I.C. 1826. It was further submitted by Mr. Rele that the learned Member of the Industrial Court has recorded contradictory findings in as much as after holding that the action of lockout as well as closure was legal, the learned Member proceeded to observe that both the actions were illegal. It was pointed out that the Industrial Court was aware of its limits on the issue of justifiability of the action of lockout while deciding the complaint of unfair labour practice, but it proceeded to depart from the well established legal position and went on to consider the issue of justifiability in terms of the following observations:

Even though I have found that the closure effected by the employer is perfectly legal, still the crucial question that arises for consideration is as to whether the workmen concerned and entitled for the lockout wages from the date of lockout till the date of closure.

Mr. Rele also referred to the Lalla Award passed in Reference (IT) No. 383 of 1972 and the subsequent practice well established that one worker from the pair of two was to leave for one hour in the alternate and thus every workman was working for four hours in a shift duty of eight hours and in case of the absence of any member of the pair, the other workman was working on overtime so that the production activities could not be hampered. There was no reason for the Industrial Court to hold that these well established practices amounted to any illegality so as to hold that the employer was guilty of unfair labour practice within the meaning of Items 9 and 10 of Schedule IV of the Act by declaring the illegal lockout from 21/4/1992.

5. Mr. Patel the learned Counsel for the respondent-Union, on the other hand, submitted that the award passed in Reference (IT) No. 383 of 1972 was followed by the Union and every member of the pair of workers was working for 30 minutes in every 60 minutes of work, though the working hours in a shift time of 8 hours were 4 hours for every worker. The management insisted to do away with 30 minutes rest between one hour and called upon the workman concerned to continuously work if the other member of the pair was absent. When the workers refused to do so, the action of lockout was forced upon the workers. Mr.Patel referred to the notice of lockout dated 4/4/1992 and the Annexure in support of the said notice. As per him the reasons for the lockout as stated in the Annexure were false and no record was produced before the Industrial Court in support of the allegations that the production was dropped down to about 50% of the normal production from 22/2/1992 onwards. He also submitted that there was no documentary evidence brought on record in support of the allegation that the management was suffering the loss of Rs.50,000/-every day. The workmen had refused to work continuously in case of absentee. As per Mr.Patel the lockout was not justified and the reasons for lockout were fabricated and the lockout was used as a tool to close down the factory operations in February, 1993. Mr.Patel, therefore, supported the view taken by the Industrial Court in holding that the petitioner-company was guilty of engaging in unfair labour practice within the meaning of Items 9 and 10 of Schedule IV by declaring the lockout as per the notice dated 4/4/1992 and hence the Industrial Court was justified in granting wages from the date of lockout till the date of closure of the factory.

6. There can be no doubt that when the notice of lockout is challenged by filing a Complaint of unfair labour practice under Item 6 of Schedule II, the Industrial Court is required to deal with the same as an application for declaration of the lockout as illegal and take upon itself the powers of the Labour Court under Section 25 of the Act as has been held by a Division Bench of this Court in the case of Maharashtra General Kamgar Union v. Balkrishna Pen Pvt. Ltd. 1987 (II) CLR 374 . The lockout notice was challenged at the first instance in Complaint (ULP) No. 587 of 1992. The said complaint has been dismissed as infructuous. The Complaint (ULP) No. 1111 of 1992 filed subsequently on or about 12/8/1992 had initially challenged the continued lockout commenced from 21/4/1992 and prayed for directions to pay full

wages for the entire period of lockout and restrained the respondent-employer from removing/shifting/selling machineries listed in Annexure -D. The complaint was amended so as to challenge the notice of closure dated 4/4/1992 and the amendment was allowed on 19/4/1995 and after amendment the Industrial Court framed the issues as noted in para 2 of this Judgment and all the three issues have been answered against the complainant-Union. Thus, the first complaint was dismissed as infructuous and the three issues framed in Complaint (ULP) No. 1111 of 1992 have been answered against the complainant-Union. Despite this, the Industrial Court proceeded to allow Complaint (ULP) No. 1111 of 1992 partly. the Industrial Court held and declared that the management had engaged in unfair labour practices under Items 9 and 10 of Schedule IV by declaring the lockout illegal from 21/4/1992. It is clear from the issues framed in Complaint (ULP) No. 1111 of 1992 that no such issue was framed regarding the legality or otherwise of the lockout declared by the Company with effect from 21/4/1992.

The Industrial Court referred to the award passed in Reference (IT) No. 383 of 1972 and more particularly the fact that the award was in terms of the settlement and reproduced the relevant terms reading as under:

It is agreed by and between the parties that with effect from the date of signing this settlement, the workmen in production Department shall be working for 30 minutes in every 60 minutes of work in 8 hours per day i.e. they will work for 30 minutes and will take rest for 30 minutes.

The Industrial Court also referred to the depositions of the Company's witness Shri Patole (Exh.C-14) wherein he had admitted that the working hours were laid down in the previous settlement dated 28/9/1973 and that four hours work and four hours rest was the procedure followed because of the rigid nature of work. The Industrial Court proceeded to observe that the company was forcing the workmen to do the additional work of absentee workmen and, therefore, it amounted to unfair labour practice under Items 9 and 10 of Schedule IV of the Act. In para 35 of the impugned judgment the Industrial Court made the following observations:.No doubt overtime has been paid to such workmen and on some occasions workmen were working continuously for 8 hours in place of absentee workmen. The isolated

cases due to individual willingness, out of economic compulsions in the long history of 30 years cannot be treated as a custom and practice in derogation of the existing settlement in Lalla Award. If the award passed by the Tribunal is permitted to be crucified and nullified by such illegal custom and practice, then no sanctity will be left to the Award passed by the Judicial Tribunals. Mr. Krishnan has rightly urged that a collective settlement which has the force of law is Industrial jurisprudence cannot be superseded by imposition of individual contracts as laid down in the case between Western India Match Co. v. its Workmen reported in : (1973)IILLJ403SC .

In para 37 of the impugned judgment, the Industrial Court made the following observations in relation to Complaint (ULP) No. 1111 of 1992:

However, the relief relating to the lockout can be granted if Complaint (ULP) No. 1111 of 1992, because it has been proved and established beyond all reasonable doubt that the respondent company has committed breach of the Lalla Award by insisting the employees to work continuously for 8 hours and when co-workmen remains absent. There was no justifiable and legal reason whatsoever for the employer to effect the lockout on the workmen refusing to work in place of the absentee workmen, as it was totally hazardous for their health and life to work continuously for 8 hours. There is no satisfactory evidence to show that the company's financial position has been lowered down and that the company was passing through the financial crisis. The said reason for the lockout has not been proved properly. The facts and circumstances of the case thus discussed and the case laws quoted in support of submissions by Mr.Krishnan will make absolutely clear that the Company's action of lockout from 21/4/1992 to 3/2/1993 is illegal, it being the result of unfair labour practices committed by the Company. I left with other alternative than to say that the union has succeeded in proving its claim for lockout wages. Accordingly, 41 workmen are entitled for full wages for lockout period in this case....

7. It is thus clear that the Industrial Court proceeded to examine the issue of justifiability of the lockout commenced from 21/4/1992 which issue was not within its jurisdiction in a Complaint of unfair labour practice as has been held by this

Court in the case of Modistone Ltd. (Supra).

8. It would be also necessary to refer to the depositions of Shri P.R. Krishnan, the witness examined by the Complainant -Union. In his cross-examination, the witness stated,

It is not true that at each place of manufacturing a pair of employees is appointed. It is not true that the second category of workmen are required to work continuously for 8 hours. I say that they work for four hours. All the workmen in the company, designated above, except maintenance workmen, work for 4 hours. They have to work as per the Award passed by Shri Lalla.

There was a specific question asked to this witness of the Union in his cross-examination and answer therefor is reduced in writing in verbatum:

Q. Whether there is any settlement signed by you with the company which prohibits that the company shall not take the work from the workmen in place of absentee?

Ans. No settlement provides that the company can take work from the workman in place of absentee.

9. On the other hand, Shri A.M. Patole, the witness examined by the Company in his examination-in-chief, in para 3, stated as under:

Pair of employees is deployed at each place of the first category. Idea is each person has to work for one hour, and afterwards he will take rest for another one. During such rest hours of the first employee, the second co-employee work. That means in normal shift of 8 hours, one has to work only for four hours and has to take rest for 4 hours. But, if co-employee is absent then the first one has to work for 8 hours. In place of his absentee co-employee. The co-employee at the most can remain absent from duty at the most for 40 days in a year, and if somebody remains absent beyond that period, then we make substitute arrangement.

This practice was going on in the company since its inception till end. The workmen or the union never objected for such practice. The workmen who was

required to work in place of co-workmen because of his absence, use to get over time plus 5 minutes rest per hour. Ex.C-6 colly. is the statement showing the additional emoluments we used to give to the workmen working in place of co-employee. I have signed on all the statements. The contents therein are true and correct.

In para 6 of his depositions, the witness stated, Thereafter the production was running smoothly till 1992. In February 1992 the workmen again stopped the practice to work as per old practice. Company started suffering financial losses. Our repeated appeals failed. Again a second notice of lockout was displayed. That lockout notice is at Annexure 'D' to the Complaint. Contents therein are true. It is exhibited as Exh.U-7. We effected lockout from 21/4/1992. The copy of the lockout notice was sent to all the statutory authorities including the complainant union. Lockout notice is duly signed by me. The lockout was in force for about 10 months. During the said period the technology has changed a lot. Company has found it fit to close down the unit as it was not viable under any circumstances, to run it.

10. This witness was subjected to cross-examination and on the issue of four hours work in alternate he stated in para 24 of his cross-examination as under:

It is true that 4 hours work and 4 hours rest was a procedure followed, because of rigid nature of work. It was only for certain category of persons working in high degree c.g. Ours was a non-ferrous industry. Non-ferrous industry means the industries using raw material other than steel. Our raw material was the copper. It is not true that because of the union's letter dt. 13/1/1992, we have locked out the workmen. It is not true that we have locked out the workmen because demand was sent by the union vide letter dt. 13/1/1992.

11. The evidence brought on record by the Company, therefore, clearly indicated that the workmen used to work in pair and every workman worked for 4 hours in the shift of 8 hours. In addition, if one member of the pair remained absent, the present member was required to work for second hour with a break of five minutes of rest and this seems to have happened only for a maximum of 40 days and if the workman remained absent beyond 40 days from the pair, there used to be a substitute arrangement made. On the face of this evidence, it was not permissible

for the Industrial Court to hold that the employer was guilty of forcing the workmen to work beyond 4 hours more so when it was admitted even by Mr. Krishnan that such working when the other member of the pair was absent was going on firstly on account of the terms of the settlement which was, in fact, converted into an award and more particularly known as 'Lalla Award' and secondly the practice prevailed for number of years, such a practice was not suddenly introduced either on the formation of the Union or immediately after the charter demand was submitted vide letter dated 13/1/1992. The evidence further went on to show that the company had declared the lockout in the year 1988 and the same was withdrawn on the assurance given by the otherside and the practice continued of working for four hours initially. Mr. Patel the learned Counsel for the Union sought to submit that there was no compulsion to work for 40 minutes and it was unilateraly changed to one hour. These submissions have no support in the evidence placed on record before the Industrial Court. The finding recorded by the Industrial Court that the workmen were forced to work more time is also not supported and it is proved by the evidence that such practice of working of over time when the other member of a pair was absent was existing for years together and as has been noted earlier, such working on over time was only by way of exigency on account of the other member of the pair was absent. At the same time, if such absence was beyond 40 days, the company was making an arrangement for a substitute workman.

12. Even otherwise when the learned Member of the Industrial Court had recorded a finding that the lockout was legal, he fell in manifest errors in holding that the lockout was illegal on the ground that the management was forcing the workmen to work on over time and when they refused to do so, lockout was effected. It is well settled that the Industrial Court cannot examine the issue of justifiability of either lockout or strike in a complaint of unfair labour practice and such a power is available when the reference is being adjudicated on the justifiability or otherwise of an action of lockout or strike. Thus on all counts the impugned order is unsustainable and the same has to be quashed and set aside.

13. The Union in its writ petition has mainly challenged the issue of functional integrality of three units which the Industrial Court held in favour of the

management by the impugned judgment. The evidence considered by the Industrial Court clearly proved that the establishments at Bombay, Aurabgabad, Delhi and Bombay Head Office had no functional integrality and they were separate establishments. Section 3(15) defines the word 'undertaking' for the purpose of Chapter III of the Act and it means any concern in industry to be one undertaking. The term 'concern' has been defined in Section 3(3) and which means any premises including the precincts thereof where any industry to which the Central Act applies is carried on. The factory at Aurangabad and the factory at Sayani Road are two different establishments and, therefore, the findings recorded by the Industrial Court on the issue of functional integrality cannot be termed as perverse or erroneous and, therefore the challenge to the same raised by the Union in Writ Petition No. 2037 of 1999 must fail.

14. In the premises, Writ Petition No. 5387 of 1996 succeeds and the same is hereby allowed. The common judgment and order dated 10/4/1996 so far it relates to Complaint (ULP) No. 1111 of 1992 is hereby quashed and set aside and the said Complaint stands dismissed. The order passed in Misc. Application No. 68 of 1995 dated 16/4/1996 (Exh.'S') is also quashed and set aside.

Writ Petition No. 190 of 1998 is allowed and the order passed in Misc. Application (ULP) No. of 1997 on 15/12/1997 is hereby quashed and set aside.

Rule in Writ Petition Nos.5387/96 and 190/98 is made absolute accordingly.

Writ Petition No. 2037 of 1999 stands dismissed. Rule discharged.

The amount deposited by the petitioner-company is allowed to be withdrawn with interest accrued, if any.

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