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Association of Engineering Workers Vs. Crompton Greaves Limited and ors.

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Court : Mumbai

Decided On : Feb-22-2001

Reported in : 2001(4)BomCR156; (2001)3BOMLR171; [2001(89)FLR1047]; (2001)IILLJ529Bom

Judge : Mr. R.J. Kochar, J.

Acts : Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practice Act, 1971 - Sections 28 and 30(2); [Constitution of India](#) - Article 226; Industrial Dispute Act - Sections 25(O) and (N); Income Tax Act

Appeal No. : Writ Petition No. 8 of 2001

Appellant : Association of Engineering Workers

Respondent : Crompton Greaves Limited and ors.

Advocate for Def. : Ms. Geetanjali Prabhu, ;Mr. K.M. Nayak and ;Mr. S.P. Dhulapkar, Advs., ;i/b Sanjay Udeshi

Advocate for Pet/Ap. : Mr. S.J. Deshmukh and ;Mr. N.M. Ganguli, Advs.

Disposition : Petition Dismissed

Judgement :

ORDER

R. J. Kochar, J.

1. The order impugned by the petitioner is only an interim order passed by the Industrial Court in a complaint of unfair labour practice filed by the petitioner union against the respondents under Section 28 of the M.R.T.U. & P.U.L.P. Act, 1971 read with Items 5 of Schedule II and 2, 3, 9 and 10 of Schedule IV of the Act. The petitioner union had filed an application for interim orders under section 30(2) of the Act praying for a direction to the respondents not to shift, sell or give plant and machinery and one division in any manner whatsoever and to relocate all the machines at their original places and that to start working of the departments viz., machine shop, dye casting, winding shop, tool room, maintenance and steel department and further not to sell, lease out or part with the land, premises and structure M-I Division in whatsoever manner. The Industrial Court heard both the parties and passed the impugned order. From the order of the Industrial Court it appears that even at the interim stage the petitioner union had made its submissions to quite a great length as if the main complaint of unfair labour practice was being heard. The respondents, of course, had to meet the case, may be with equal length.

2. The petitioner union has given challenge to the said interim order of the Industrial Court under Article 226 of the [Constitution of India](#). The complaint is still pending before the Industrial Court. Shri Deshmukh the learned Counsel for the petitioner union has vehemently submitted that the respondent Company has ill-intentions and motives to shift the factory from the original place to the neighbouring place which was a tenanted land and after getting the existing structure vacated it would develop the land by building a 57 storied skyscraper. Shri Deshmukh has summarised his submissions as under :-

(a) The shifting of the factory from the existing place to the adjoining place amounts to closure of the place of employment and such closure being in contravention of Section 25(O) of the I.D. Act amounts to unfair labour practice within the meaning of Item 9 of M.R.T.U. & P.U.L.P. Act. 1971;

(b) Respondent Company had introduced a so-called voluntary retirement scheme, which amounts to retrenchment in contravention of Section 25N of the

I.D. Act:

Shri Deshmukh has pointed out that in fact there is no scheme at all and individual workmen and officers were individually pressurised and forced to submit application showing willingness to leave the employment, if they were paid certain amount;

(c) The so-called V.R.S. was effected in contravention of Section 9A of the I.D. Act i.e., no notice of change was given by the respondent Company before Introducing the change, which would have effect of reduction in the number of persons employed by the Company;

(d) In getting the applications for voluntary retirement scheme, there was use of force and violence at the instances of the respondent Company and that there were instance of assault, beating and violation, pressure brought upon by the Company through its hirelings and therefore, Item 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, was attracted;

(e) The petitioner being recognised union, under M.R.T.U. & P.U.L.P. Act, ought to have been consulted before taking any such decision affecting the employees, the respondents have not negotiated collectively on any of these matters with the recognised union and, therefore, it had engaged in unfair labour practice within the meaning of Item 5 of Schedule 11 of the Act;

(f) Shri Deshmukh has further vehemently submitted that the respondent Company has bypassed the recognised union before taking such major decisions which would bring about change in the work place of the employees. It has closed the place of work at (A) as shown in the sketch in contravention of Section 25(O) of the Act. According to Shri Deshmukh. this was not mere shifting but closing of the place of employment and, therefore, according to him compliance of Section 25(O) was mandatory and admittedly, the respondents having not complied with the said provisions have engaged in unfair labour practice within the meaning of Item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act. He has further pointed out that there were mala fides in the decision of the shifting from place A to place B, as the place A was owned by the respondent Company itself and it was a much larger area

than the place B which was in the possession of the company on lease-hold basis. The respondent Company has received a notice from the landlord for vacating the said premises. In these circumstances, Shri Deshmukh has submitted that it was a clever device on the part of the respondent Company, first to shift from its own premises to the tenanted premises and, thereafter, to get a notice of eviction and then to get a decree in favour of landlord by collusion. The last step of the respondent company would be to plead helplessness in the face of the decree of eviction of the premises, which would finally result in apennant and irrevocable closure of the factory, which was shifted from site A to site B with a very clever scheme.

Shri Deshmukh has also attacked the so-called voluntary retirement scheme introduced by the respondent Company. He was making vehement submissions that there was no scheme which was sanctioned under the Income Tax Act and even nothing was displayed on the notice board and/ or the recognised union was not consulted or informed about the so-called scheme.

3. On my enquiry from Shri Naik. the learned Counsel for the respondent Company very candidly admitted, that there was no formal scheme for voluntary retirement and that it was left to the individual employees to write to the management and to leave the employment after getting sumptuous amounts from the Company. Shri Naik however, further, added that there was no complaint or grievance made by any employee that he was coerced or forced to leave the employment on the basis of the voluntary retirement scheme. Shri Naik has also pointed out that the petitioner union had very little following amongst the employees and that is why it did not even bother to submit afresh charter of demands after the settlement of 1992 had expired on 31st March, 1994. Shri Naik also pointed out that the union never addressed a letter to the respondent Company that at any point of time the Company had refused to negotiate with the union on any issue. The petitioner union had also never written any letter complaining about the alleged force coercion or violence on the employees. Shri Naik has also submitted that as a matter of fact, there was no closure of the place of business or employment. The manufacturing activities and the business, according to Shri Naik, was still continuing and going on and, therefore, the

question of closure and permission to close down the place of employment did not arise at all. Shri Naik has also pointed out that shifting of the manufacturing activities from site A to site B did not amount to closure. Shri Naik has pointed out that in the process of re-organisation of business and to make the unit economically viable to run the existing business on more efficient basis. Shri Naik has also pointed out that the petitioner union has invoked Item 2 of Schedule IV of the Act as there was no strike and, therefore, there was no question of breaking the strike. Shri Naik has also pointed out that the Item 11 of Schedule IV of the I.D. Act had no application at all.

4. The petitioner union was aggrieved by the interim order dated 13th November, 2000 passed by the Industrial Court and, therefore, surprisingly had again approached the Industrial Court under the guise of application for review of the order. The Industrial Court had to decide such an application for the so-called review of its own order. From the review order also it appears that more or less the same grounds were agitated. The Industrial Court by its reasoned order dated 30th November, 2000 rejected the review application. I have carefully gone through the proceedings with the assistance of both the learned Counsel. The Industrial Court has refused to grant any interim orders after carefully considering the contentions and pleadings of the parties. The Industrial Court has considered the case prima facie and came to its conclusion that there was no prima facie case to grant any interim orders at that stage. According to the Industrial Court, the balance of convenience was in favour of the respondent Company. The Industrial Court was further made to consider its own judgment once again under review but there was no change in the decision of the industrial Court. Broadly speaking the Industrial Court has considered the matter twice and has come to the same conclusion. I hasten to say that it was only a prima facie view of the Industrial Court and finally on the basis of the evidence, the Industrial Court may change the same. In its interim order, the Industrial Court has considered itemwise the whole case of the petitioner union. I have also gone through the main complaint, but to say the least, the complaint did not contain the specific issues and point but had made all general averments. Under the provisions of the M.R.T.U. & P.U.L.P. Act the complainants have to be very specific about the allegations of the unfair labour practice. The Act does not contemplate general and vague philosophy of social

justice. The allegations of the unfair labour practice must squarely fit in the items straight away and not by a long drawn process of logic and reasoning, such as the allegations of closure made by the petitioner union in its complaint i.e. by shifting from site A to place B and in future the intention of the Company is to get eviction decree and to vacate the premises and then to close down the place of employment. The union will have to act when actually the respondent would close down the place on employment as contemplated by the law.

5. The Industrial Court has given its own reasons and has considered the whole case on the basis of the record. It is not possible for me to interfere at this stage under extra ordinary jurisdiction of Article 226 of the [Constitution of India](#). The Industrial Court will finally decide the complaint on the basis of the evidence adduced by both the parties without getting influenced in any way by the observations made in the interim order and by this Court at this stage. I, therefore, find no merits and substance in the present writ petition, which deserves to be dismissed and the same is dismissed with no orders as to costs. The interim orders granted at the admission stage stands vacated.

6. In these circumstances, though I have discharged the rule, it will be in the interest of Justice to direct the Industrial Court to dispose of the complaint as expeditiously as possible within 6 months from receipt of the writ of this Court. Both the learned Advocates for their parties shall extend full co-operation to the Industrial Court and the Industrial Court shall not adjourn the matter as far as possible. It is further made clear that if the respondent Company proceeds further with its plans of developing the area A it may do so at its own risk and it will not plead for equity on the ground that some development or construction has taken place on the land and pulling down the structure constructed would be affecting the people who have invested in the same. It would, therefore, be advisable that the respondent Company does not take such a high risk of going on with its development plan, if any, on the premises shown and marked as site A in the sketch at page 13 in the list of documents produced before me. Any hasty action on its part would perhaps cost it heavily.