

Blue Star Ltd. Vs. Blue Star Workers' Union and another

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SooperKanoon Citation : sooperkanoon.com/349431

Court : Mumbai

Decided On : Aug-19-1997

Reported in : (1996)IILLJ1032bBom

Judge : R.M. Lodha, J.

Acts : [Trade Unions Act, 1926](#) - Sections 23, 30, 30(1) and 32

Appeal No. : W.P. No. 294/1996

Appellant : Blue Star Ltd.

Respondent : Blue Star Workers' Union and another

Judgement :

ORDER

1. Exception is taken by the Petitioner Blue Star Limited to the direction given by the Industrial Court in its operative order dated December 22, 1995 while dismissing the compliant filed by the Respondent No. 1 Blue Star Workers Union, by means of this writ petition filed under Article 226 of the Constitution of India.

2. The Petitioner Blue Star Limited ('employer') is a company incorporated under the Indian Companies Act, 1956 and is engaged in business of air-conditioning products and projects, software exports, medical electronics etc. and has its factory at Pokhran Road, Thane and western regional office at Band Box House, Mumbai. The first Respondent Blue Star Workers Union ('Union') is a trade union

registered under the [Trade Unions Act, 1926](#). It is the case of the employer that on July 1, 1988 from 10.50 a.m. to 11.15 am., 20 employees who were members of the Union entered the cabin of Mr. Anil B. Sawant, Manager-Administration and Personnel and gheraoed him. The employees, according to the employer, neither took prior permission from their superiors before leaving their respective places of work nor they took permission of Mr. Sawant before entering his cabin. On July 11, 1988, the employer issued notice displaying it on notice board stating therein that the act of 29 employees whose names were shown in the notice gheraoing the Manager Personnel and Administration of its Western Regional Office at Band Box House from 10.50 a.m. to 11.15 a.m. on July 1, 1988 amounted to stoppage of work in a concerted manner, withdrawing their labour unilaterally and the employees absented themselves from work for 25 minutes from 10.50 a.m., to 11.15 a.m., and therefore, the said employees shall not be paid the wages for the said period having not earned the same and the adjustment would be carried out in the salaries for the month of July, 1988. The union challenged the said notice as an unfair labour practice on the part of the employer by filing complaint under Item 9, of Schedule IV, of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for Short' 'MRTU and PULP Act'). The Union set out the case in the complaint that the allegations levelled by the employer in the notice dated July 11, 1988 were is factually not true and correct. The said notice was bad in law being violative of the principles of natural justice and against the rules and regulations framed by the employer. According to the Union the contract of employment could not be divided in minutes and hours as has been sought to be made out by the employer and the directions were in fact punitive in nature amounting to unfair labour practice. The said complaint was resisted by the employer. The written statement was filed and employer raised the plea that complaint did not disclose any unfair labour practice on its part nor the employer committed any unfair labour practice under Item 9, of Schedule IV, of the M.R.T.U. and P.U.L.P. Act. The employer justified its action and submitted that the conduct of the concerned employees on July 1, 1988 in gheraoing Manager Administration and Personnel was violative of Clauses 26, 28, 35 and 79 of the Rules and Regulations framed by the employer. Before the Industrial Court the Union examined Shri Shyam Ramkrishna Maheshwari while on behalf of the employer

the Personnel Manager Shri Anil B. Sawant was examined. The parties also provided certain documents before the Industrial Court.

3. The Industrial Court after hearing the parties, held that there was no violation of any agreement, award or any law at the hands of the employer by deducting the wages of the group of the workers for 25 minutes and the complaint filed by the union was liable to be rejected. The Industrial Court held that the employer was entitled to deduct wages proportionately for the period of absence and that the concerned workmen committed misconduct by not taking permission of Mr. Sawant before entering his cabin. Despite the aforesaid findings and the order that complaint filed by the Complainant union deserves to be dismissed, the Industrial Court directed the employer to return the deducted wages of the concerned workmen except four workers viz., Mr. Acharkar, Mr. Ajay Shah, Mr. Prakash Tikam and Mr. Arun Desai. The only question that falls for consideration in this writ petition is : whether the Industrial Court was justified in directing the employer to return the deducted wages of the concerned workmen except four workmen despite its finding that the employer has not indulged in unfair labour practice and that employer was entitled to deduct wages proportionately for the period of absence

4. Though in the typed copy annexed with the writ petition, paragraph-19 has not been correctly typed, Mr. Ganguli, the learned counsel for union showed for my perusal the certified copy of the order dated December 22, 1995. In paragraph 19 of the impugned order the Industrial Court has held thus :

'Considering these circumstances, I have come to the conclusion that there was no violation of any agreement, award or any law at the hands of the Respondents by deducting the wages of the group of workmen for 25 minutes. Therefore, the complaint filed by the complainant will have to be rejected

The said finding recorded by the Industrial Court that the employer has not violated any agreement, award or any law by deducting the wages of the group of workmen for 25 minutes is preceded by detailed discussion made in paragraphs 16 and 18 of the impugned order wherein the Industrial Court, held that by not taking permission of Mr. Sawant in entering his cabin, the concerned workmen had

committed misconduct and that the employer was entitled to deduct wages proportionately for the period of absence. On the face of these findings recorded by the Industrial Court, I am afraid, the direction given in the operative order to the employer to return the deducted wages of the concerned workmen except four workmen on its face cannot be sustained and is apparently erroneous.

5. Section 30 of the MRTU and PULP Act provides the powers of Industrial Court and the Labour Court exercising their respective jurisdiction under it. Sub-section (1) of Section 30 which is relevant for the present purposes reads thus :

'30 Powers of Industrial and Labour Court :

(1) where a Court decides that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice, it may in its order :-

(a) declare that an unfair labour practice has been engaged in or is being engaged in by that person, and specify any other person who has engaged in, or is engaging in the unfair labour practice;

(b) direct all such persons to cease and desist from such unfair labour practice, and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without backwages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate the policy of the Act;

(c) where a recognised union has engaged in or is engaging in, any unfair labour practice, direct that its recognition shall be cancelled or that all or any of its rights under sub-section (1) of Section 20 or its right under Section 23 shall be suspended.'

6. A careful look and reading of the aforesaid provision clearly indicates that after the concerned Industrial Court or Labour Court holds and decides that any person named in the complaint has engaged in or is engaging in any unfair labour practice, it may pass appropriate order of declaration or issue suitable directions. The finding by the Industrial Court or labour Court, as the case may be, that such

person named in the complaint has engaged in or is engaging in unfair labour practice is a foundation on which the order of declaration is built or suitable directions are issued. Sine qua non of passing the order of as contemplated in clauses (a), (b) and (c), of sub-Section (1) of Section 30 is a finding by the concerned Labour Court Or Industrial Court that such person named in the complaint has indulged in or is engaging in unfair labour practice. In other words, the Industrial Court or Labour Court can pass the orders as contemplated in clauses (a), (b), (C) Of Sub-section (1) of Section 30 on its finding that such person has engaged in or is engaging in any unfair labour practice. The Industrial Court or the Labour Court does not possess any power to issue any direction even when it has found that the person named in the complaint has not engaged in or is not engaging in any unfair labour practice.

7. Mr. Ganguli, the learned counsel for union sought to rely upon Section 32 of the MRTU and PULP Act and urged that the Industrial Court or labour Court exercising powers under the said Act has power to decide all connected matters and, therefore, the direction given in the impugned order to the employer while rejecting the complaint were within the jurisdiction of the said Industrial Court.

8. Section 32 of the MRTU and PULP Act reads as follows :

'32. Power of Court to decide all connected matters :- Notwithstanding, anything contained in this Act, the Court shall have the power to decide all matters arising out of any application or complaint referred to it for the decision under any of the provisions of this Act.'

9. Section 32 by its very nature is supplemental provision which empowers the Industrial Court or labour Court exercising the power under the MRTU and PULP Act to decide all matters arising out of any application or complaint referred to it for the decision under any of the provisions of the Act. The said power is intended to be given to the concerned Industrial Court or Labour Court to ensure that certain incidental matters arising out of any application or complaint referred to it for decision may be decided by the said Court notwithstanding anything contained in the Act. The supplemental power provided to the Industrial Court or the Labour Court under the MRTU and PULP Act under Section 32 does not enlarge scope of

jurisdiction exercisable by the said Court but is intended as any other supplemental provision to prevent the ends of justice from being defeated and pass appropriate order with regard thereto. Power exercisable by Labour Court or Industrial Court under Section 32 needs to be harmonious and consistent with the powers given to such Court under Section 30 of the Act and such supplemental power under Section 32 being in aid of the principal powers of the Industrial Court or Labour Court under Section 30 of the Act enables the Court to decide all incidental matters that may be required to be decided while deciding the complaint even in the absence of specific provision. However once the Court holds that no unfair Labour practice has been committed or is being committed, the power of such Court issuing any further direction ends and in the garb of exercise of power under Section 32 it cannot pass the order of declaration or issue direction which it cannot do under Section 30(1). In *National General Mazdoor Union. Thane v. M/s. Nitin Casting Ltd. & Ors.* 1990 2 CLR 641 the provisions contained in Section 32 of the MRTU and PLUP Act came up for consideration and this Court held thus :

'8 Reliance placed by Mr. Puri on Section 32 of the PULP Act in this regard is misplaced. Section 32 is to be found in Chapter VII of the PULP Act, which is headed, 'Powers of Courts. 'Sec. 32 may be re-produced.

Notwithstanding anything contained in this Act, the Court shall have the power to decide all matters arising out of any application or complaint referred to it for the decision under any of the provisions of this Act.'

From the language of Section 32, it is clear to me that this does not enlarge the scope or the extent of the jurisdiction of the Industrial Court beyond what is conferred upon it by the other provisions of the PULP Act. If under the other provisions of the PULP Act the Industrial Court has no jurisdiction to deal with the unfair labour practices mentioned in Schedule IV of the Act. section 32 does not give such power to the Industrial Court. What is contemplated in Section 32 is that the Industrial Court or, for that matter, even the Labour Court has power to decide all matters arising out of an application or a complaint referred to it for decision under the provisions of the PULP Act. The complaint or the application which is referred to the concerned Court must be made to the proper Court. While deciding

such a complaint or an application if certain matters or issues or questions arise, the concerned Court been invested with the power to decide all those matters, issues or questions so arising. The Court is not debarred from dealing with such matters, issues or questions arising merely on the ground that no specific provision has been made elsewhere conferring power upon the concerned Court to deal with such incidental questions. This is the meaning of Section 32 of the PULP Act. It does not enlarge the jurisdiction of either the Industrial Court or of the Labour Court which is otherwise not being conferred upon it by the other provisions of the PULP Act.

10. I find myself in agreement with the view expressed by this Court in *Nitin Castings Ltd.*(supra) that Section 32 of the Act does not enlarge the scope or extent of the jurisdiction of the Industrial Court or Labour Court beyond what is conferred upon it by other provisions of MRTU and PULP Act. As it is the very scheme of the Act clearly spells out that the entire exercise of power by the Industrial Court or Labour Court under MRTU and PULP Act is dependent upon its finding that the person named in the complaint has engaged in unfair labour practice or is engaging in any unfair labour practice and to curb that unfair labour practice, the appropriate order as contemplated under Sec. 30(1) or Sec. 32 of the Act can be passed.

11. I have already referred to the finding recorded by the Industrial Court in the impugned order wherein it has been held that the employer has not violated any agreement, award or any law by deducting the wages of the group of workmen for 25 minutes and that the employer was entitled to deduct wages proportionately for the period of absence. Thus, the Industrial Court held that the employer has not indulged in any unfair Labour practice and that complaint was liable to be dismissed and it ordered accordingly. On the other hand the Industrial Court found that the concerned workmen had committed misconduct by not taking permission of Mr. Sawant in going to his chamber and despite that the Industrial Court has ordered the employer to return the wages of the concerned workmen except four workmen which cannot be sustained since apparently it suffers from serious error of law and needs to be quashed and set aside.

12. Accordingly, the writ petition is allowed. The direction given in the impugned order to the employer to return deducted wages of the concerned workmen is set aside and quashed.

13. Rule is made absolute in aforesaid terms. No costs.

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