

Blue Star Workers Union Vs. Blue Star Ltd. and ors.

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Court : Mumbai

Decided On : Jul-16-1990

Reported in : [1991(61)FLR524]; (1992)ILLJ239Bom

Judge : M.L. Pendse, J.

Acts : [Trade Unions Act, 1926](#) - Sections 18(3) and 28(1)

Appeal No. : W.P. No. 1959/1990

Appellant : Blue Star Workers Union

Respondent : Blue Star Ltd. and ors.

Judgement :

M.L. Pendse, J.

Rule, returnable forthwith. Mr. Rele for Respondent No. 1, waives service. Respondent No. 2 is a formal party. Heard Counsel

1. By this petition filed under Article 226 of the Constitution of India, the petitioner Union is challenging legality of order dated June 15, 1990 passed by the Industrial Court, Bombay dismissing the complaint filed by the petitioners as regards unfair labour practice under Section 28(1) read with Item Nos. 9 and 10 of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Respondent NO. 1 Company till the year 1969 had its

manufacturing activities of Colaba and thereafter the manufacturing work was shifted to Thane and the repair and service activities were carried out at Colaba. From the year 1969 canteen facility existed at Colaba. The petitioner claims that food and other items are supplied to the workman at Colaba establishment through a contractor at the rates fixed mutually. The petitioner claims that canteen facility, including the rates of food items supplied, is a condition of service and it is not permissible for the Company to unilaterally revise the rates to the detriment of the workmen. The petitioner claims that on February 9, 1990 the Company informed the Union that the prices of food items have remained constant for over eight years even though the prices in the market have been spiralling. The latter claimed that the management was required to increase the subsidy to the canteen contractor while the rates paid by the employees remained unchanged. The letter further recites that the rates of food items were discussed in the meeting with the Union Office bearers and the proposed revised rates were also disclosed revised rates were also disclosed. Subsequently on April 7, 1990 a notice was put up by the Regional Manager and the Company displayed revised canteen rates. This action on the part of the management led to filing of complaint before the Industrial Court.

2. The gravamen of the complaint before the Industrial Court was that the canteen facilities, including the rates to be charged, is a condition of service and it is not open for the management to unilaterally alter it. The Union claimed that the rates were settled by what transpired between the management and the Union in the year 1985 and thereafter it is not permissible to revise the rates without an agreement or without seeking a reference to the proper authority and obtaining award.

3. The Industrial Court by the impugned order came to the conclusion that canteen facility and the rates to be charged for food items is not a condition of service but the facility was given to the workmen merely as a welfare activity. The Industrial Court further held that the canteen was run by the management on 'no profit no loss' basis. The Industrial Court also recorded a finding that it was not in dispute between the parties that the proposed increase in the rates would not give any profit to the management. On the strength of this finding, the Industrial Court

dismissed the complaint, and that has given rise to the present petition.

4. Ms. Jaisingh, learned counsel appearing on behalf of the petitioner Union, submitted that the canteen facility, inclusive of rates to be charged for food items, is a condition of service. The learned counsel urged that this facility is available to the workmen at Colaba workshop right from the year 1969. It was contended that the rates were revised from time to time and last revision was in the year 1980, but the revision of rates was by agreement of parties. The learned counsel urged that the Industrial Court ought to have concluded that canteen facility, inclusive of rates to be charged, is a condition of service established by continuous usage. It is not possible to accede to the submission.

5. It is required to be stated that though the canteen facility is available to the employees at Colaba workshop, the facility was given on 'no profit no loss' basis. As prices of the food items increased from time to time, the rates were revised till the year 1980. On October 28, 1983 the management submitted charter of demands in respect of several items and one of the items was canteen subsidy at Bombay establishment and it was Demand No. 14 submitted to the Union. In the year 1983 the Union had also submitted charter of demands raising several claims. Demand No. 14 raised by the management mentioned that with the rising cost of materials and the fact that the workmen's share in the canteen expenses has remained unaltered over the past six years and the canteen expenses incurred by the management cannot be increased further, and therefore it was proposed that at Colaba canteen only tea service will be provided and no snacks will be served in canteen in any of Bombay establishments. The demand made by the Union and the management ended in a settlement and the Memorandum of Settlement under Section 12(3) read with Section 18(3) of the Industrial Disputes Act, 1947 was signed by the parties on November 1, 1985. As regards Demand No. 14, the Company agreed not to press the demand. It is necessary to set out two conditions agreed between the parties and those are Clauses 33 and 35. Clause 33 reads as under :-

'This settlement is in full and final settlement of the Union's Charter of Demands dated April 25, 1983 and the Management's Charter of Demands dated October

28, 1983 and September 14, 1984.'

Clause 35 read as under :-

'The Union, workmen and the Company agree that the terms of employment and conditions of service prevailing immediately prior to the signing of this settlement and which are not specifically revised by this settlement shall remain unaltered and binding of the parties.'

Ms. Jaisingh submitted that the conjoint reading of Clauses 33 and 35 makes it clear that the company accepted that the demand for increase of rates was given up. From this settlement, urges the learned counsel, that it should be concluded that the canteen facility, including rates to be charged, was a condition of service. Ms. Jaisingh submits that the period during which the settlement remained in operation is over and still it is not permissible for the Company to unilaterally increase the rates. It was contended that unless the claim for increase or revision of rates is referred to conciliation and in absence of agreement reference is made to the Industrial Court, it is not permissible to increase the rates and the company by increasing the rates had committed unfair labour practice. The submission is not correct. It is undoubtedly true that while arriving at the settlement in the year 1985 the Company gave up demand No. 14 made by Charter of Demands. That demand merely provided that at Colaba canteen only tea will be served and not the food items. From Clauses 33 and 35 and on perusal of Demand No. 14, it cannot be concluded that canteen facility, inclusive of rates to be charged, is a condition of service. It is undoubtedly true that the canteen facility was given to the workmen for over several years, but from that fact it cannot be concluded that even fixation of rates of food items is also a part of the condition of service. The Industrial Court held that as canteen was run on 'no profit no loss' basis, the facility was merely welfare facility and cannot be a condition of service. Ms. Jaisingh submitted that the approach is not correct. It is true that the Welfare facility can also be a condition of service, but it cannot be concluded that every welfare facility was necessarily condition of service. The question as to whether a particular facility is a condition of service would depend upon facts and circumstances of each case and it is not possible to hold that the conclusion reached by the

Industrial Court in the present case is incorrect.

6. The Industrial Court also found that the rates proposed to be increased would not give any profit to the management. Exhibit 'G' is a copy of the notice dated April 7, 1990 issued by the Regional Manager setting out the revised rates effective from May 2, 1990, and the perusal of the rates clearly indicates that the rates charged are neither exorbitant nor unreasonable. The prices of food items are rising at a rapid rate and it is impossible to suggest that the rates should not be revised in spite of rise of prices.

On the last occasion when the petition came up for hearing, I suggested to both the Counsel that the rates have to be revised and how they should be revised should be worked out by the parties. The petition was adjourned for two weeks, but the parties are unable to reach any agreement. In my judgment, the conclusion of the Industrial Court that the Company is not guilty of any unfair labour practice cannot be faulted with and the petition must fail.

7. Accordingly, rule is discharged. There will be no order as to costs.

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