Association of Engineering Workers Vs. S.A. Patil and ors.

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SooperKanoon Citation : sooperkanoon.com/360067

Court : Mumbai

Decided On : Sep-28-1999

Reported in : (2000)IIILLJ415Bom

Judge : Pratibaha Upasani, J.

Acts : Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971

Appeal No. : W.P. No. 3958/1984

Appellant : Association of Engineering Workers

Respondent : S.A. Patil and ors.

Disposition : Petition dismissed

Judgement :
ORDER

Pratibaha Upasani, J.

1. This writ petition is filed by the petitioners, being aggrieved by the Judgment and Order dated July 27, 1984, passed by the Industrial Court, Bombay, dismissing complaint (ULP) No. 417 of 1984 filed by the complainants/present petitioners against Respondent No. 2.

2. The case of the petitioners is that they are the Trade Union registered under the Trade Unions Act. They represent all the employees of Respondent No. 2/Company. Respondent No. 2/Company manufactures automobile ancillaries. The case of the petitioners is that their Union demanded bonus at the rate of 20% and ex-gratia payment at the rate of 15% for the year 1982-83. The Company/Respondent No. 2 offered payment at the rate of 8.33% and an ad hoc payment of Rs. 500/- per workman. There was no settlement reached between respondent No. 2/Company and the workmen.

3. On December 21, 1983, the Company simultaneously displayed two notices, one for closure and the other for lock-out without prejudice to each other. The reasons given for closure and lock-out were the same. The respective notices for closure and lockout alleged that the employees of the Company indulged in 'go-slow' to enforce their demand for ex-gratia payment and for bonus. The company/Respondent No. 2 said that it could not carry on its business any more unless the employees restored normal production.

4. On December 23, 1983, the company/respondent No. 2 filed complaint against the Union and its President and 5 other members alleging that the Union and the workers were indulging in unfair labour practices falling within the mischief of items 5 and 6 of Schedule III of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for the sake of convenience and brevity called M.R.T.U. & P.U.L.P. Act). The said complaint is still pending in the Industrial Court. The Union also filed a complaint dated January 23, 1984, in which it was said that the Company indulged in unfair labour practices under Items 1(a) and 6 of Schedule II and Item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, on and from December 21, 1983.

5. The Industrial Court, Bombay, passed the impugned order on July 27, 1984, dismissing the complaint of the petitioners, after hearing both the sides and after perusing the documents filed by the parties on record. It is against this order that the present writ petition has been filed by the complainants/petitioners.

6. It is the contention, inter alia, of the petitioners that the company cannot declare closure and lock-out simultaneously inasmuch as the circumstances under which

the closure and lock-out can be effected are basically different and conditions precedent to closure and lock-out are also different. It is also their grievance as to whether there can be cessation of business under the law which does not amount to either closure or lock-out or suspension of business for temporary period under model standing orders. The case of the Union appears to be that by not paying wages for the month of December 1983, the Company/Respondent No. 2 has indulged in unfair labour practice under Item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act. The admitted position is that the Company has not paid wages to the workmen for the month of December 1983. It is their contention that the company was bound to pay wages under settlements dated May 9, 1979 and November 19, 1982 and that non-payment of wages for December 1983 was in violation of Item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act.

7. As against this, the contention of Respondent No. 2 is that on November 3, 1983 the company gave festival advance of Rs. 1250/- to each of the workmen and earlier they had given advance of Rs. 250/- to each of the workmen. According to respondent No. 2, it was also on record that on December 20, 1983, the Company had given advance of Rs. 150/-to each of the workmen towards wages for the month of December 1983 and thus, each of the workmen was accountable to the Company for an amount of Rs. 1650/-. The company had declared bonus for the year 1982-83 only at the rate of 8.33% and the amount of advance taken earlier by the workmen was to be adjusted towards bonus and salary. Narrating all these, the company has denied that they had committed unfair labour practice falling within the mischief of Item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, more so because after calculating the wages for 20 days of December 1983, it would be seen that in the case of majority of the workmen, the outstanding advance amount may far exceed , their unpaid December 1983 wages.

8. Thus, the crucial question in the matter is whether the Complaints/Union had proved that the Company had engaged in unfair labour practice under Item 6 of Schedule II of the M.R.T.U. & P.U.L.P. Act. The lower Court after considering the evidence on record came to the conclusion that the said evidence on record showed that the workmen indulged into 'go-slow', as a result of which, there was

fall in production and the Company had to take drastic decision to close down the Ancillary Division to avoid mounting losses and it also gave notice of lock-out just to err on the safer side. Giving this finding, the Industrial Court dismissed the complaint holding in favour of Respondent No. 2/Company. It held, relying upon the decision in Mafatlal Engineering Industries Limited that suspension of manufacturing activities by the Company with effect from December 21, 1983 did not amount to lock-out, much less an illegal lockout and dismissed the complaint.

9. After hearing both the sides and after perusing the record and the impugned judgment, in my opinion, there is no manifest error of law or any infirmity in the impugned judgment so as to warrant interference under Article 227 of the Constitution of India. Hence the following order:

10. Writ Petition No. 3958 of 1984 is dismissed. Rule discharged, Interim order, if any, stands vacated.