All India Labour Union Vs Jeewanlal (1929) Ltd. and Another

Court: Bombay High Court

Date of Decision: Sept. 4, 1986

Acts Referred: Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 â€" Section 30, 59

Citation: (1986) 88 BOMLR 560 : (1995) 3 LLJ 755

Hon'ble Judges: S.M. Daud, J

Bench: Single Bench

Advocate: S.M. Dharap, for the Appellant; S.D. Puri and NEMO, for the Respondent

Final Decision: Allowed

Judgement

S.M. Daud, J.
This petition under Article 227 of the Constitution is directed against an order passed by a Member of the Industrial Court

in relation to interim relief claimed in a complaint (ULP) moved under Schedule IV Item No. 9 of the Maharashtra Recognition of Trade Unions

and Prevention of Unfair Labour Practices Act, 1971 (PULP Act).

2. The points that arise for determination in the instant petition have to be considered in the following background:

Respondent No. 1 (employer) is doing business in the name and style of M/s. Crown Aluminium Works, Bombay and it has a labour force of

about 100 workers. In the year 1981, a dispute arose between the employer and the workers in relation to pay allowances and other conditions of

employment. On August 20, 1981 through the mediation of the Conciliation Officer, the employer and the workmen came to an amicable

settlement which was reduced to writing in a memorandum , dated 20.8.1981. Under this settlement, the workers were to be paid a particular

wage for the period of five years, which period, was to come to an end on 31.7.1986. On 6.4.1985, i.e. quite sometime before the date stipulated

for the expiry of the settlement, the employer addressed a notice to the petitioner - which was a recognised Union at this date of its desire to effect

certain changes as detailed in the annexure "A". This purported to be a notice of change u/s 9A of the Industrial Disputes Act, 1947 (I.D Act).

Briefly stated, under the notice the employer proposed to effect a substantial reduction in the wages payable to its different classes of workers. The

change was opposed by the petitioner, whereupon the matter went to the Conciliation Officer. The Conciliation Officer on 23.5.1985, recorded

his inability to bring about a settlement and informed parties of having sent a letter to that effect to the Government in the Industries, Energy and

Labour Department. The employer gave effect to the change, and on 8.6.1986, the petitioner sent a letter of protest. In due course, came to be

filed Complaint (ULP) No. 519 of 1985 in the Industrial Court. Interim relief was sought u/s 30 of the PULP Act calling for an order to the

employer to desist from implementing the change proposed by the notice. The contention was that merely giving a notice of change did not

authorise the employer to implement the said change. This was because until the settlement of 1981 was substituted by another settlement or

adjudication, the employer had no right to give effect to the change proposed in the notice. The contravention of the statute was patent, and

therefore, an interim direction had to be issued to restrain the same. The employer opposed the interim relief claimed on a number of grounds.

Firstly, it was contended that the complaint lodged by the workmen could not be said to be within the purview of Item 9 of Schedule IV of the

PULP Act. Secondly, it was contended that the reduction in the wages carried out by the employer was after giving notice and pursuant to the

terms of the settlement. The said settlement permitted the employer to effect a reduction in the wages in the event of misconduct or go slow or non-

cooperation on the part of the workers. It was all these factors which had brought the employer to the verge of ruin. Therefore, it could not be said

that any illegal change had been given notice of or had been carried out by the employer. Thirdly, there was the bar of Section 59 of the PULP

Act. Proceedings under the ID Act had already begun, and for that reason, Section 59 of the PULP Act applied. Lastly, the petitioner could not in

the guise of interim relief seek something which was sought as the final remedy in the complaint.

3. The learned Member of the Industrial Court before whom the matter came up, held that prima-facie Section 59 of the PULP Act barred the

complaint, that no prima-facie case had been made out to warrant the grant of interim relief, that Section 9A of the ID Act could not be said to

have been violated and that it did not appear that there had been a violation of the terms of the settlement of 1981. Aggrieved by this order, the

recognised Union has moved the present, petition. As interim relief, employer has been directed to pay to the workers wages and D.A. at 75% of

the wage level prevailing as on June 5, 1985. Having regard to the submissions made before me, the points for determination are:-

(1) Whether the complaint moved by the petitioner was prima-facie maintainable?

(2) Did the petitioner prove a prima facie contravention of the law ?

(3) What order ?

My findings, for reasons given below, are:-

(1) Yes.

(2) Yes.

(3) See order.

REASONS

4. The employer questions the maintainability of the complaint moved by the petitioner. The argument is that proceedings under the ID Act had

begun and the Conciliation Officer had submitted a failure report. The response of the Government to the said report was not known. Even if it

was against the petitioner, the latter was not helpless. In any case, there was no reason for the petitioner to assume that the Government would not

make a reference u/s 10 of the I.D. Act. In this connection, reliance was placed upon Section 59 of the PULP Act which reads thus:-

If any proceeding in respect of any matter falling within the purview of this Act is instituted under this Act, then no proceeding shall at any time be

entertained by any authority in respect of that matter under the Central Act or, as the case may be, the Bombay Act; and if any proceeding in

respect of any matter within the purview of this Act is instituted under the Central Act, or as the case may be, the Bombay Act, then no proceeding

shall at any time be entertained by the Industrial or Labour Court under this Act.

Reliance is placed upon the second part of the above provision, it being pointed out that a proceeding under the I.D. Act has begun and has not

come to an end. At first blush, the argument seems unquestionable. Mr. Dharap representing the petitioner, argues that the subject-matter of the

proceeding under the I.D Act is not the same as the subject-matter of the complaint out of which the order assailed, arose. Learned Counsel

submits that the cause of action giving rise to the proceeding under the ID Act was a notice proposing to effect a change in the wage structure. In

the instant case, the subject-matter of the complaint is the effected change in the wage structure. In support of this contention, Mr. Dharap relies

upon the following exposition in Vallabh Das Vs. Madan Lal and Others,

For deciding that question we have to see whether the suit from which this appeal arises is in respect of the same subject-matter that was in

litigation in the previous suit. The expression ""subject-matter"" is not defined in the Civil Procedure Code. It does not mean property. That

expression includes the cause of action and the relief claimed. Unless the cause of action and the relief claimed in the second suit are the same as in

the first suit, it cannot be said that the subject-matter of the second suit is the same as that in the previous suit

Mr. Dharap submits that though this passage expounds a rule appearing in Order XXIII of the Code of Civil Procedure, the principle would apply

also to proceedings under Industrial legislation. Counsel for the employer questions this submission pointing out that the words used in Section 59

are ""any proceeding"" and that the word ""any"", appears in the section more than three times. Substantially the two proceedings are identical and a

mere play with the words will not suffice to avoid the bar of Section 59 of the PULP Act. It is not possible to accept this submission. It is well

settled that exclusionary provisions in any enactment have to be strictly construed. The words ""any proceeding"" and ""any"" upon which reliance is

placed by the Counsel for the employer have to be understood in the context of the qualifying expression which is ""falling within the purview of this

Act"". The proceedings under the I.D. Act question the validity of the notice proposing to effect a change. In other words, the petitioner took

exception to the very idea of the employer desiring to effect a reduction in the wages of the workers. In the complaint under the PULP Act, the aim

is to get struck down the reduction pursuant to the notice already given. So far as the Member of the Industrial Court is concerned, he has made

contradictory observations vis-a-vis this point. At one stage, he remarks that it is ""really doubtful"" as to whether such a complaint can be

proceeded with having regard to Section 59 of the PULP Act. At another place, the learned Member says that the matter is not as simple as was

tried to be made out by the representative of the Company who had appeared before him. Prima-facie, I hold that Section 59 is not attracted.

5. The next objection to the complaint is the alleged inapplicability of Schedule IV"s Item 9, to the grievance raised by the petitioner. This provision

reads thus:

Failure to implement award, settlement or agreement"".

It was argued that there had been no failure to implement the 1981 settlement. In fact, the said settlement had been in force until a change had been

effected pursuant to the notice of change given on April 6, 1985. I have not been able to understand this contention. The 1981 settlement was to

be in force for a period of five years ending with August 1986. The notice, proposed to effect a change prior thereto. To that extent, there was a

going back upon the 1981 settlement. The fact that said settlement had been given effect to for 3 1/2 years or so, would not mean that there had

been no ""failure"". Retracing its step after 3 1/2 years instead of following the terms of settlement for the entire duration fixed by the parties

thereunder, would constitute a failure within the contemplation of the aforementioned item in Schedule IV.

6. It was then submitted that there was no failure within the meaning of Item 9, inasmuch as the reduction itself was in terms of Clauses 8 and 11 of

the settlement. These clauses read as follows:-

It is further distinctly understood and agreed that the workmen should give all co-operation to the Management for improvement in production,

quantitatively and qualitatively as well as for the maintenance of discipline in the factory. In the event of misconduct or go-slow or non-cooperation

the Management shall be entitled to take such punitive action against the workmen concerned as the Management may deem fit.

In case of any misconduct or go-slow in production the Management will be free to deduct proportionate wages of the concerned workmen if

proved"".

I do not see how the employer can determine or infer misconduct or go slow on the part of the workmen as a whole or individually, without there

being a proper enquiry after following the prescribed procedure. Clause 11 permits a deduction of proportionate wages of the concerned

workmen, on proof of mis-conduct or go slow in production. These are questions of fact and they do not stand established or proved by the

affidavit tendered on behalf of the employer at page 61 of the paper book. This affidavit speaks of the low productivity of the workmen employed

in respondent No. 1''s concern. However, it is not open to the employer to take a unilateral decision about its strained finances being attributable to

the lapses of the workmen. Therefore, the reduction in the wages cannot be something done within the terms of 1981 settlement. That the

settlement continues in force, until substituted by another settlement or by an adjudication is expounded in Haribhau v. F.H. Lala reported in 72

B.L.R. 192 and L.I.C. v. D.J. Bahadur and Ors. reported in Labour Law Journal Volume I 1981 1.

In the former case, the relevant excerpts are thus:-

It is apparent that as there was liberty in the workmen to demand alteration, there must be corresponding liberty in the company to demand

alteration and revision of the percentage of dearness allowance to the prejudice of the workmen. The question that is raised and requires to be

decided is about whether, because such a demand for revision of the rate of dearness allowance could be raised, the employer had liberty

unilaterally to bring into force and implement that demand and reduce unilaterally the dearness allowance by 40 per cent as stated in the notice of

change tendered u/s 9A. The scheme of the Industrial Disputes Act thus appears to us to have deprived both the employer and the workmen of the

liberty to have the terms and conditions of service altered by unilateral action on either side. The employer was not left with liberty to make his own

contract regarding the right to alter the terms and conditions of a reference u/s 10 of the Act... The right of the workmen to an upward revision of

conditions of service is not circumscribed by the provisions in the Industrial Disputes Act. There, is no freedom to parties in that connection. This

right exists but wherever the conditions of service have been previously adjudicated upon and declared by an award it can only be enforced

through a reference made u/s 10 or by contract or by settlement"".

In the LIC case (see supra), Mr. Justice Krishna Iyer speaking for the majority observed :-

...termination notice or notice of change of the award or settlement does not perish but survives to bind until reincarnation, in any modified form in

a fresh regulation of conditions of service by a settlement or award, (see page 21 supra)"".

7. It was lastly submitted that the order passed by the Industrial Court could not be interfered with as the complaint was pending and only an

interim matter had been decided. As against this, Mr. Dharap submits that a patent illegality disfigures the order impugned in this petition. I agree.

The employer without regard for the law and acting unilaterally has effected a change in the wage structure and the change has resulted in a

reduction of wages by 40 to 50%. This cannot be permitted and the workmen cannot be denied the interim relief claimed by them on the ground

that the matter awaits a fuller consideration. The whole purpose of the I.D. Act and the PULP Act is to curb unfair labour practices On the part of

the employer as also the employees. If either party is entitled to go its own way, the whole edifice of Industrial Law so laboriously built up will

collapse. That cannot be permitted. The result is that the petition succeeds and hence the order.

ORDER

The order impugned in this petition is hereby quashed. Respondent No. 1 employer is prohibited from effecting a change in the wage structure as

laid down by the settlement of 1981 until the disposal of the complaint moved by the petitioner or an order passed by an appropriate authority

under any enactment. The arrears of wages withheld pursuant to the notice of change vis-a-vis the 1981 settlement, shall be paid within a month to

the workmen. Costs in this petition to abide the final decision upon the complaint. Rule in the above terms, made absolute.