(1989) 12 BOM CK 0027

Bombay High Court

Case No: Appeal No. 941 of 1989

Association of Engineering Workers		APPELLANT
	Vs	
The Super Tool Co. (P) Ltd. and others		RESPONDENT

Date of Decision: Dec. 11, 1989

Acts Referred:

- Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 - Section 48, 50

Citation: (1990) 60 FLR 650 : (1991) 2 LLJ 454

Hon'ble Judges: S.K. Desai, J; M.P. Kenia, J

Bench: Division Bench

Judgement

Desai, J.
This appeal is preferred against the order of the Learned Single Judge giving limited injunction to the petitioners against penal prosecution which may be launched against them in pursuance of the interim orders of the Industrial Court.

2. It is clear to us that the Learned Single Judge has based his order upon an order passed by another Learned Single Judge in Writ Petition No. 512 of 1989.

3. We are not bound by the order of the Learned Single Judge in writ Petition No. 512 of 1989. In our opinion if the order or the Industrial Court granting interim reliefs in the manner in which it has granted, was illegal even prima facie or contrary to the scheme of the Act or ought not to have been passed as and by way of interim relief without disposal of the complaint, the appropriate order for the High Court in its writ jurisdiction would have been to stay the said order either conditionally or unconditionally. Such a stay was not granted.

4. Only two remedies are available to the workmen to recover the amount ordered from the employer. The first remedy is the remedy u/s 50 of the Maharashtra

Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act, 1971), which we shall hold as normal remedy, and the same is available in respect of various amounts which are awarded against the employer. Under the Industrial Disputes Act or any similar other enactments, as also under MRTU & PULP Act, 1971 such amounts can be recovered through the Collector as land revenue. This Court has had occasion repeatedly to consider the ineffectiveness of this method. Time and again the Collector''s representative finds a lock on the employer''s place of business or puts up a report that the employer is not available for some reason, true or false, and hence the proceedings are interminably delayed. The efficiency with which the State recovers its land revenue is merely seen in the efficiency with which the dues of the employees are recovered through this mechanism. The other method, presumably, is to launch a criminal prosecution u/s 48 of the Act which deals with Contempt of Industrial or Labour Courts (this is the heading given in the margin). If the recovery of the amount is not stayed, is there any warrant in Writ jurisdiction for staying the criminal prosecution against the employer for recovery of the amount ? In the writ petition, the petitioners have not impugned resort to Section 48 to recover the amount awarded as interim relief on a complaint of unfair labour practice. Indeed, in our opinion, if such prosecution is launched against the employer, it may then be open to the employer to move the High Court in its criminal writ jurisdiction for quashing the complaint as being incompetent. We express no opinion as to the merits of any such procedure if followed. We are, however, of the opinion that there is no warrant on the petition, as it stands for staying the criminal prosecution of the employer.

5. We are, however, faced with another difficulty. Not merely has the Industrial Court directed payment of wages by the employer i.e. the company to the concerned workman, who had directed respondent No. 3 before it (i.e., the petitioner No. 3 in the writ petition) to pay the wages. In the order of the Industrial Court, there is no indication why he is to be personally made liable, to pay such wages. There cannot be, in the ordinary course, any question, where a limited company is the employer, of any Direction or even the Chairman of the Board of Directors being personally directed to pay the wages of the workers. We must emphasise the words ''in the ordinary course''. There may be instances where monies and the property have been secreted or swallowed by any one of the Directors or person in charge of the company. In such a situation, not only the employees, but other creditors of the company may attempt to follow the property in the hands of the Director or Manager of the company towards their claim. However, this requires some specific allegation and, prima facie findings. There is not such specific allegation nor any finding to this effect. In the circumstances, it could have been appropriate for the learned Single Judge to stay the operation of this order atleast qua the third petitioner before him (the third respondent before the Industrial Court). That not having been done, we think it would be appropriate to stay launching of criminal proceedings as against original third respondent

(Petitioner No. 3).

6. In the result, we allow the Appeal, partially. We maintain the restraint of criminal proceedings as against petitioner No. 3 before the learned Single Judge but allow the appeal qua the remaining part of the order and permit, subject to the caveat we have indicated herein-above, viz. that it would be open to the company to contend before the Magistrate or a Higher Court that resort to prosecution u/s 48 is not available to the workman as a matter of law for non-compliance with such an order.

7. This is not the first occasion on which we find the Industrial Court passing interim orders in matters where it would be desirable to dispose of the entire complaint itself. The company had sought to close down its undertaking on the footing that no permission of the Government was required, the number of its employees being less than specified under the Act. According to the workers, there was another undertaking run or controlled by the Director of this company and the number of the workers employed by said undertaking had to be added to the number of workers, employed by present company. According to this contention, if the total number was aggregated in the aforesaid manner, the limit would be crossed and permission of the Government would become mandatory. The principles for considering whether two undertakings are to be regarded as allied undertaking are now well settled and indeed have been indicated by the Learned Member of the Industrial Court in his order. The application of these in the instant case cannot create much difficulty. We hope the complaint will be disposed of expeditiously and, in our opinion, it should be disposed of, in any case, not later than April 30, 1990. We hope that the lawyers will co-operate.

8. Our observations to be communicated forthwith to the Industrial Court.

9. This disposes of the appeal. The parties are directed to bear their own costs of the Appeal.