2000 Vol. 102(2) Bom. L.R. 639

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Before Mr. Justice F. I. Rebello

Writ Petition No. 2405 of 1999, decided on 16.3.2000

M/S. SUBHASH SILK MILLS LTD.

v.

MILL MAZDOOR SABHA & ORS.

[A] Constitution of India, 1950 - Article 226 - Jurisdiction of Writ Court - Reappreciation of evidence - Not permissible unless there is non-consideration or wrong construction of the material.

Held : *A Writ Court exercising jurisdiction under Article 226 of the Constitution of India does not sit to reappreciate evidence, unless from the record it is apparent that there is non-consideration of material on record or wrong construction of the material.* *[Para 5]*

[B] Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 - Item 9 of Schedule IV r/w section 59 - Lock out - Continuance - Legality or illegality-Jurisdiction of Industrial Court - Initiation of proceedings under Industrial Disputes Act or Bombay Industrial Relations Act - Not permissible - Lock out held illegal - Workers entitled to wages for that period.

Held : *The expression "illegal lock out" means a lock-out which has commenced or continued. In other words the continuation is also an aspect which the Industrial Court can look into. Further, the complaint as filed is also in respect of Item No. 9 of Schedule IV. Once Item No. 9 of Schedule IV is attracted, the Industrial Court can examine the Issue whether continuance of lock out is legal or illegal.*

Apart from that Section 59 would be an embargo. Once proceedings are initiated under the provisions of this Act, then no proceedings can be initiated under the Industrial Disputes Act, 1947 or Bombay Industrial Relations Act. This can only be if the nature and scope of the enquiry in both the disputes is the same. The contention therefore that the Industrial Court in a complaint under M.R.T.U. and P.U.L.P. Act cannot go into the question of continuance of lock out as illegal or legal has to be rejected.

Once the lock-out is illegal or the suspension of work is a guise to close down the establishment, the consequences must follow that those who were denied employment without following the due process of law must be paid wages for that period. *[Para 6]*

[C] Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 - Sec. 32 - Complaint filed by Union - Evidence of non-member workers - Consideration thereof by Industrial Court -Within its powers - Industrial Court not bound by Civil Procedure Code or by the Evidence Act.

Held : *A Union functions for the benefit of the workers. Once the complaint was filed by the union, merely because some of the workers were not willing to accept its membership or leadership would not and cannot result in rejection of their evidence. As the Industrial Court has noted the object of both the Union and workers was the same, namely to point out, that the lock out imposed was illegal. Once that be so and more so considering Section 32 of the M.R.T.U. & P.U.L.P. Act, 1971, it cannot be said that Industrial Court was not closeted with the powers whilst deciding the matter, to consider the evidence of such other workers. The Industrial Court is not hide bound either by the Civil Procedure Code or by the Evidence Act. Industrial jurisprudence as developed is to promote industrial peace and resolve industrial or individual disputes. This exercise of the Industrial Court cannot be said to be unknown to law and/or that it discloses any error of law apparent on the face of the record and/or is without jurisdiction.* *[Para 7]*

Cases Cited :

Bank of India v. T. S. Kelawala & Others, 1990 (1) C.L.R. 748 : 1990 L.L.R. 313 (SC) : 1990 (60) F.L.R. 898.

Bharatiya Kamgar Karmachari Mahasangh v. M/s. G.K.W. Limited, 1998 (1) C.L.R. 1078.

Mafatlal Employees Union v. Mafatlal Engineering, 1983 (46) F.L.R. 429.

Maharashtra General Kamgar Union v. Solid Containers Ltd. & Ors., 1996 (1) C.L.R. 106 : 1996 (II) L.L.N. 168.

Modi Stones Employees Union v. Modi Stones Limited and another, 1999 (1) C.L.R. 356.

Mumbai Mazdoor Sabha v. Bennett Coleman and Co. Limited and others, 1980 (1) L.L.J. 112 : 1980 (1) L.L.N. 532.

Nayak v. Syndicate Bank, AIR 1995 SC 319 : 1994 (5) SCC 572 : 1994 (2) L.L.J. 836 : 1994 (3) S.L.J. 213 : 1994 (69) F.L.R. 806 : 1994 (2) L.L.N. 1296 : 1995 (1) L.L.J. 798.

Oswal Agro Mills Limited & Ors. v. Oswal Petrochemicals Employees Union & Others, 1999 (1) C.L.R. 752.

Mr. C. U. SINGH i/b Mr. S. M. NAIK, For the Petitioners.
Mr. SAILESH C. NAIDU i/b Mr. MANISH DESAI, for Respondent No. 1.
Mr. COLIN GONSALVES with Ms. GAYATRI SINGH, for Respondent Nos. 2 to 4.

JUDGMENT (Per F. I. Rebello, J.)

The Petitioners have approached this Court against the order dated 29th July, 1999 whereby the Industrial Court has allowed the Complaint (ULP) No. 214 of 1998 filed by the Mill Mazdoor Sabha, the recognised Union. The Industrial Court has held that the Petitioners herein are engaged in unfair labour practices, set out under Items 9 and 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act and therefore directed the

Petitioners to cease and desist from the unfair labour practices. The Petitioners have also been directed to lift the lock out effected from 20th February, 1998 in the establishment within a period of 48 hours from the instant declaration. The Petitioners have been further directed to pay wages along with the monetary benefits from the date of imposition of the lock out till the date of their resuming normal duties, along with interest at 12% p.a. deducting therefrom any payment made against the wages during the said period, if any. By the same order Complaint (ULP) No. 273 of 1998 filed by some workers has been dismissed as not maintainable.

The workmen whose complaint was dismissed had filed a Writ Petition before this Court being Writ Petition No. 2093 of 1999. The said Petition was disposed of by Order dated 20th August, 1999. The learned Judge therein has held that as the Petition was pressed only against the findings of the Industrial Court filed by the workmen and as the Court has admitted a similar Petition filed by the recognised Union, the Petition was not being admitted. The learned Judge, however, accepted the statement made on behalf of the Petitioners herein that in the event the Mill files a Petition against the Order dated 29th July, 1999 the Petitioners therein would be made parties without prejudice to the contention of the Mill that the complaint filed by the workmen is not maintainable at law.

2. The Industrial Court in its order has noted in paragraph 2 that in both the complaints the Court was called upon to decide common question of facts and law. In these circumstances the Court has proceeded to dispose of the complaint by a common Judgment after recording common evidence. The Industrial Court after holding the complaint by the workmen as not maintainable, yet proceeded while answering the Issues to observe that the evidence led by the workers could not be ignored as that would mean denial of justice to the workers. There are some other observations in para 11 of the Order which I do not propose to advert to. The Industrial Court, thereafter, on consideration of the material before it came to hold in paragraph 29, that the suspension of operation from 20th February, 1998 had all the trappings of a lock out. This conclusion followed from the findings given by the Industrial Court that there was a demand made by the Respondents Mill, to call on the workers to accept the alternative work and in that context the lock out imposed was to make the worker to see its point of view, by adopting coercive process. This point had to be considered more so as the Petitioners herein in their written statement in answer to the complaint filed by the workman had taken the plea, without prejudice, that the notice of lock out is only given by way of abundant precaution and in fact there is no lock-out but merely a suspension of operations, as there is no demand placed on the employees as contemplated in the definition of lock out. The Industrial Court thereafter in paragraph 32 has given a finding that the Company under the guise of lock out was intending to impose a closure. In so giving the finding, the Industrial Court has relied on the evidence both oral and documentary led before it. On behalf of the Petitioners they had examined their General Manager whose evidence for reasons set out in the order was rejected by the Industrial Court. The Industrial Court also relied on the exhibit 'U-76'. Exhibit 'U-76' is the prospectus issued by the Petitioners, after it was converted from a Private Limited Company into a Public Limited Company and had invited

the public to subscribe to its share capital. The Industrial Court has relied on the said Exhibit to arrive at the conclusion that in fact the Company wanted to close the present unit and shift the same to the new unit started at Khopoli. The arguments on behalf of the Petitioners that the proposal was dropped was rejected.

3. With the above background, the Petition and the contentions raised need to be dealt with. Before that I must also advert to the Order of this Court dated 23rd September, 1999 during the pendency of this petition, based on the minutes of the Order filed by the parties to the Petition and their Counsel. In terms of the said minutes, it was agreed that every workman would execute an undertaking in the proforma marked Exhibit 1. The undertaking was to be executed and furnished to the Company before resuming duty as per the agreed schedule. On behalf of the Respondents, their learned Counsel has made statement that all the workers have given such an undertaking. In terms of the minutes of the order, the time table for resumption of work in the phased manner was also laid down. In other words, insofar as the resumption of work or reopening of the factory, was covered by the order dated 23rd September, 1999. The Company has not adhered to the order and consequently contempt petition has been also filed. it must, however, be made clear that the same was without prejudice to the rights and contentions of the parties and all contentions were kept open.

4. Before I deal with the contentions, it would be advisable to refer to the notice of suspension and lock-out. Exhibit "B" to the Petition is the notice dated 20th February, 1998 wherein the Petitioners informed the workmen that the operation in the Company were being suspended. It is therein set out that the Petitioners had a Weaving Department along with necessary preparatory machines to feed looms. There was also a Dyeing and Printing Departments. As per requirements of the situation, the Petitioners started giving alternate work to some of the workmen so that they need not be required to be retrenched or laid off. It is then stated that some mischievous elements have been misguiding some of the workers as a consequence of which they were adamant not to accept the alternate work. Even a weaver was not accepting a weaver's work on an alternate weaving machine or a helper working on Ager machine was refusing alternate work on another Ager machine. There were 20 cases filed by Ms. Gayatri Singh before the Labour Court for restraining the Company from providing work/ alternate work as explained above. One of the application had been dismissed on the ground, that acceptance of said alternate work is proper and legal. Refusal to accept alternate work has been going on since around October, 1997. After the dismissal of the said application, Ms. Gayatri Singh, Advocate, had been instigating workers to take law in their own hands and to put direct pressure on the Petitioners by throttling movement of fully woven fabrics, ready for sale, outside the Mill premises. Reference is then made to gherao of truck No. MH-04-H-1289 and the notice dated 19th February, 1998 put to that effect. It is then set out that on 19th February, 1998 at 8.45 p.m. a large number of workers along with unknown outsiders gathered outside the Mill gate and ordered the security staff to call Technical Consultant Mr. Kiran Bansali. On his arrival the workers threatened him that he would be killed and his car would be burnt. A

complaint to that effect was lodged at the Police Station. On 20th February, 1998 grey goods were loaded in the lift of building so that they could be removed to enable large containers of kerosene to be transported to the Printing Department on the 2nd floor. The workers threatened and forcibly disallowed removal of the goods. On 20th February, 1998 large number of persons including workmen gathered outside the Mill gate threatening violence and created extremely tense atmosphere. Police had to be called. Attempts to explain the matter to the workers did not yield any fruit and on the contrary instigation continued. The Notice of lock out is dated 20th February, 1998 indicating that the undertaking of the Company will be locked out from 9th March, 1998. The reasons given are the same as given in the notice of suspension.

I may also at this stage refer to the Exhibit U-76, the prospectus issued by the Company dated 6th March, 1995. The prospectus amongst others highlights creative features. Amongst them were "Project for expansion and relocation of existing manufacturing facilities, expected to result in annual benefits to the tune of Rs. 345 lacs." Thereafter, it is highlighted as under:-

"The Company does not foresee any problem on VRS as the agreement has already been signed with the Union of workers and the scheme is already in progress. No problem is foreseen on shifting of Plant and Machinery as this is a matter internal to the Company."

Then under the heading "Objects of the Issue", it is set out as under :-

"The Company has planned to shift the existing manufacturing facilities and expand its present capacities for weaving, dyeing and printing. In order to bring down the cost of production it has decided to shift its existing plant from Andheri, Bombay to Sajgaon, Khopoli and reduce the work force by offering Voluntary Retirement Scheme."

It is then set out that the capital market was being approached with a view to achieve amongst others the following objects :-

"To shift the existing factory from Andheri, Bombay to Sajgaon, Khopoli."

The cost of shifting is set as Rs. 75 lacs and VRS as Rs. 250 lacs. Various other statements to the same effect are reiterated in various parts of the prospectus. I do not propose to refer to them considering as to what has already been set out.

I may also point out that the Industrial Court has accepted the evidence led on behalf of the recognised Union. As evidence was led in common, the evidence led on behalf of the workmen has also been considered for reasons given in the order. The Industrial Court has chosen to disbelieve or not regard the evidence of the Manager of the Mill for the reasons observed in the order itself. The Industrial Court has observed that the oral evidence of Mr. Malhotra R. R. the sole management witness does not inspire any credence unless it is supported by any cogent evidence. The Industrial Court has observed that it found Mr. Malhotra R. R. blissfully complacent, reiterating how the appearance of Ms. Gayatri Singh in the establishment of the Mill has spoiled the atmosphere and how she has instigated the workers to indulge into riotous and disorderly behaviour, culminating in imposing of suspension of operation. He has then observed that for every question in cross-examination, he had tailor-made answer. Also in cross-examination he has avoided answering question on the pretext of his inability and requirement to advert to the office record.

5. With the above background, the submissions made on behalf of the Petitioners can now be examined.

It is firstly contended that while considering the issue of lock out what has to be examined is the definition under the Bombay Industrial Relations Act. Under the Bombay Industrial Relations Act it must be established that there was an element of demand and element of coercion. In the present case the nature of demand in the lock out notice is merely seeking compliance of the Contract of Employment and as such the same cannot be said to be a demand contemplated under the definition of lock out and thus the suspension of operations effected by the Petitioner cannot be termed to be a lock out. Further, if the suspension of operations is not a lock out, then the complaint itself would not be maintainable and the impugned order would be without jurisdiction. For that purpose reliance is placed in the Judgment of *Mafatlal Employees Union v. Mafatlal Engineering,*[1].

This contention need to be first disposed of. First and foremost the Industrial Court has given a specific finding in its order in paragraph 29 that there was a coercive process and that the ingredients of lock out were satisfied. Can it be said that the findings by the Industrial Court disclose any error apparent on the face of the record and/or is so perverse that no Tribunal reasonably instructed in law could have arrived at that finding. Before I deal with that let me advert to the Judgment in *Mafatlal Engineering Industrial Ltd.* (supra). In that case, on the facts before the Court, the learned Single Judge has observed that the action of the employer was to seek compliance with the terms of settlement which assured that the employees would not indulge in any violent acts or indisciplined behaviour. The learned Single Judge has held that this cannot be said to be a demand on the part of the employer. If there was no demand, then the definition of the lock out within the meaning of the Bombay Industrial Relations Act would not be satisfied and therefore there could not be said to be a lock out as contemplated in law. As set out earlier whether a particular act amounts to a lock out or not depends on the facts of each case. This facts in *Mafatlal Engineering Industries Ltd.* (supra) were different from the facts as set out herein. On the material before the Industrial Court, the Industrial Court has given a finding that there was an element of coercion. That is the finding of fact. That finding of fact cannot be said to be perverse. A Writ Court exercising jurisdiction under Article 226 of the Constitution of India does not sit to reappreciate evidence, unless from the record it is apparent that there is non-consideration of material on record or wrong constructions of the material. It is only in those circumstances will this Court interfere in the exercise of its extra ordinary jurisdiction. To my mind, no such case has been made out and consequently, I find no reason to interfere with the findings recorded by the Industrial Court that there was an element of coercion. In these circumstances, the first contention must be rejected.

6. It is contended that the Industrial Court had no jurisdiction to decide the justifiability of the lock out, if it is so held. In my view this issue is no longer *res integra* considering the Judgment in the case of Writ Petition

1. 1983 (46) F.L.R. 429.

No. 1021 of 1998 decided on 27th March, 1998 between *Modi Stones Employees Union v. Modi Stones Limited and another,*[1] and of another learned Single Judge of this Court Pandya, J. in *Oswal Agro Mills Limited & Ors. v. Oswal Petrochemicals Employees Union & Others,*[2]. It is no doubt true that the matters are in appeal. *In Bharatiya Kamgar Karmachari Mahasangh v. M/s. G.K.W. Limited,*[3] I myself has occasion to consider the law. Though it was at the *interim* stage the entire law has been considered. I had taken a view that even if the initial lock-out was legal, whether its continuation is legal can be gone into considering the law as laid down in *Nayak v. Syndicate Bank,*[4]. I had occasion to differentiate the view taken by a Division Bench of this Court in *Maharashtra General Kamgar Union v. Solid Containers Ltd. & Ors.,*[5] for the reasons set out therein. Learned Counsel contends that there was no reference to the provisions of section 24(2) of the M.R.T.U. & P.U.L.P. Act. If Section 24(2) is considered as also the nature of the enquiry that can be gone into under the MRTU & PULP Act, it is contended it is possible to arrive at a different conclusion. In my opinion that would make no difference, as the expression illegal lock out means a lock-out which has commenced or continued. In other words the continuation is also an aspect which the Industrial Court can look into. Further, the complaint as filed is also in respect of Item No. 9 of Schedule IV. Once Item No. 9 of Schedule IV is attracted, the Industrial Court can examine the Issue whether continuance of lock out is legal or illegal. Therefore, to my mind that would make no difference. Apart from that Section 59 would be an embargo. Once proceedings are initiated under the provisions of this Act, then no proceedings can be initiated under the Industrial Disputes Act, 1947 or Bombay Industrial Relations Act. This can only be if the nature and scope of the enquiry in both the disputes is the same. The contention therefore that the Industrial Court in a complaint under M.R.T.U. and P.U.L.P. Act cannot go into the question of continuance of lock out as illegal or legal has to be rejected.

It is thereafter submitted that on facts also, the Industrial Court has misdirected itself and has not taken into consideration while directing payment, the law as laid down in *Bank of India v. T. S. Kelawala & Others,*[6] What was in issue in that case was the question, if the workers had worked for some of the working hours and had gone on strike for part of the working hours, whether the action of the Management in withholding pay for the full day could be justified. The Apex Court considering the various provisions of the Standing Orders, and the Payment of Wages Act came to the conclusion that the Management therein was justified in deducting the wages. In the instant case once the Industrial Court came to the conclusion that the lock -out was in fact a guise for closure and/or for that matter that there was no basis for imposing the lock-out as evident by the evidence on record. The ratio of the Judgment in the case of *Bank of India* (supra) would not apply. Once the lock out is illegal or the suspension of work is

1. 1999 (1) C.L.R. 356.
2. 1999(1) C.L.R. 752.
3. 1998(1) C.L.R. 1078.
4. AIR 1995 SC 319 : 1994 (5) SCC 572 : 1994 (2) L.L.J. 836 : 1994 (3) S.L.J. 213 : 1994 (69) F.L.R. 806 : 1994 (2) L.L.N. 1296 : 1995 (1) L.L.J. 798.
5. 1996 (1) C.L.R. 106 : 1996 (II) L.L.N. 168.
6. 1990 (1) C.L.R. 748 : 1990 L.L.R. 313 (SC) : 1990 (60) F.L.R. 898.

a guise to close down the establishment, the consequences must follow that those who were denied employment without following the due process of law must be paid wages for that period.

7. It is then contended that the Industrial Court was wrong in either impleading the workers or considering their evidence. The Industrial Court, it is contended, ought to have excluded the evidence led on behalf of the workers as the complaint considered was by the Union. In the first instance, even if the recognised Union had opposed admission of examination of those witnesses, it has made no grievance at this stage. A Union functions for the benefit of the workers, Once the complaint was filed by the Union, merely because some of the workers were not willing to accept its membership or leadership would not and cannot result in rejection of their evidence. As the Industrial Court has noted the object of both the Union and workers was the same, namely to point out, that the lock out imposed was illegal. Once that be so and more so considering Section 32 of the M.R.T.U. & P.U.L.P. Act, 1971, it cannot be said that Industrial Court was not closeted with the powers whilst deciding the matter, to consider the evidence of such other workers. In order to do justice and to arrive at a correct conclusion, whether the workers were examined on behalf of themselves or on behalf of the Union, all that the Industrial Court has done is while disposing of the complaint by the recognised Union, also considered the evidence brought on record by the workmen. The Industrial Court is not hide bound either by the Civil Procedure Code or by the Evidence Act. Industrial jurisprudence as developed is to promote industrial peace and resolve industrial or individual disputes. This exercise of the Industrial Court cannot be said to be unknown to law and/or that it discloses any error of law apparent on the face of the record and/or is without jurisdiction. It is not as if the Petitioners had no opportunity of cross-examining those witnesses. In fact they have so done. That contention therefore must also be rejected.

8. In the additional submission as filed, it is sought to be contended that the Industrial Court has placed unnecessary reliance on Exhibit U-76 that is the prospectus. It is pointed out from the evidence on record that there was no intention of shifting to Khopoli as envisaged in the prospectus of 1995. Exhibit U-76 was a document issued by the Petitioners. If the Petitioners wanted to go back on Exhibit U-76, the Directors or any one of the Directors could have examined themselves so that the contention of the Company could be tested. This has not been done. In these circumstances reliance by the Industrial Court on Exhibit U-76 cannot be faulted. The mere fact that the Khopoli Unit is still functioning is no answer. The entire purpose as per the prospectus of setting up the Khopoli Unit was to reduce the work force of the Petitioners plant at Saki-Naka and transfer the plant and machineries to Khopoli.

Having said so, reference may not be made to the Judgment of Pendse, J. in the case of *Mumbai Mazdoor Sabha v. Bennett Coleman and Co. Limited and others*,[1]. The learned Judge has observed while considering a contention on behalf of the employer that it has an inherent right to declare a lock-out and it was not bound to adopt proceedings to declare the strike

1. 1980 (1) L.L.J. 112 : 1980 (1) L.L.N. 532.

as illegal or compel the few striking men to return to work. The learned Judge has observed as under :-

"This attitude of the employer reflects unawareness of the modern principles governing the relations of master and servant. In the changing milieu, it cannot be overlooked that industry is run not only for the benefit of the employer and the employees but also for an unseen and uncared for third force, represented by society at large. That requires that an employer must take reasonable steps to enable smooth running of industry and only after the failure to achieve that goal the last fatal step of lock out should be resorted to."

On the facts of this case, it is seen that the entire dispute arose in respect of 20 employees. These 20 employees have resorted to legal proceedings. Resorting to legal proceedings cannot be a ground to impose a lock out. Apart from that, the instances which were the immediate cause to declare lock out were on 19th and 20th February, 1998. The evidence on record discloses that no worker has been charge-sheeted; no worker was arrested for any act of violence either on 19th February, 1998 or 20th February, 1998. The documentary evidence produced by Shri Malhotra is not backed by any evidence documentary or oral. If it was the case of the Petitioners that there was large scale violence and/or threats to the security of the personnel, the least duty cast on the Petitioners was to eamine the watchman and/or other Managerial personnel or others. That has not been done. It is left to speculation. The Court cannot displace evidence based on speculation. The Court must go by the evidence on record. In the record before the Industrial Court, there was no material whatsoever to justify the allegations as contained either in the notice of suspension and/or the reasons for the lock out. The Industrial Court has appreciated the issue correctly and has in my opinion given reasons for arriving at the conclusion that has been arrived at while answering the Issue. Having said so I am of the opinion that the Petitioners have not made out any case and consequently the Petition must be dismissed.

For the reasons aforementioned, Petition dismissed.

In the circumstances of the case, there shall be no order as to costs.

9. P. A. to give ordinary copy of this Judgment to the parties concerned.

10. Issuance of certificate copy expedited.
