

Bombay High Court

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Kamgar And Majoor Sangh And Anr. vs Labour Secretary Shri Nogi, Union ... on 9 August, 2000

Equivalent citations: 2001 (89) FLR 472, (2001) ILLJ 625 Bom

Bench: A Shah, V Daga

JUDGMENT

1. We have heard Mr. Gonsalves for the Petitioner, Mr. Agarwal for the Respondent Nos. 1 to 4 and Mr. Khatri for Respondent No. 5. By consent the names of the Respondent Nos. 6 to 10 are deleted.

2. The 1 st Petitioner is a trade union which claims to represent majority of 600 workers employed by Respondent No. 5 company in their factory at Umargaon. The Petitioner claims that most of the workers are adivasis and some of them are migrants from U.P., M.P., and Bihar. The Petitioner has alleged that the migrant workers were deprived of their legal dues and wages and faced with starvation they have returned to their home in despair. Only 200 workers are now remaining most of whom are adivasis from the local area. The Petitioner states that though the company claims to have closed its factory from May 1, 1999 but no notice was displayed and the workers continued to work till July 1999. The company failed to comply with the provisions of Section 25-O of the Industrial Disputes Act as there were more than 100 workers working in the factory and the company was required to seek permission before closing down the factory. The wages of the workers were stopped from June 1999. The Petitioner states that the workers immediately approached the administrator in August for recovery of wages for the months of June/July 1999 and requested for restarting the factory. The administrator directed the Resident Dy. Collector-RDC-Mr. Ramesh Chandra to investigate and conciliate in the dispute. Mr. Ramesh Chandra however, took no steps . On the contrary he informed the management of attempts of the workers to have their dispute referred for adjudication. In order to pre-empt the workers the management got a group of 5 workers together and these workers took signatures of the remaining workers on blank piece of paper telling the workers that their signatures are necessary for filing case. Using these signatures Conciliation Officer and the management prepared settlement falsely claiming that these workers represented the other workers and that the workers are agreeable to the settlement. No general body meeting of the workers was ever held. The Petitioner has alleged that the settlement is completely fraudulent and is therefore liable to be set aside. The Petitioner has made several representations to the administrator but to no effect and therefore the Petitioner has filed the present petition under Article 226 of the Constitution.

3. Basically the Petitioner is seeking direction to Respondent Nos. 1 to 4 to refer the industrial dispute raised by the union for adjudication. The Petitioner is also seeking direction to the Respondent No. 1 company to deposit the entire dues of the workers as per the settlement and a further direction to the Labour Commissioner to verify the dues of the workers and to distribute the same to them, without prejudice to their rights in the reference. A direction is also sought that pending the reference the Respondent No. 5 should not sell, transfer or alienate the assets of the company without the permission of this Court and should not evict the workers from their quarters.

4. On behalf of Respondent Nos. 1 to 4, affidavits are filed by the Labour Secretary and the Labour Enforcement Officer. The Secretary Labour has virtually confirmed the allegations made by the Petitioner. It would be useful to reproduce paragraphs 5 and 6 of the affidavit of Secretary Labour which reads as under:

"5. I further say and submit that it was only on October 14, 1999 that a petition was received from a section of workers represented through Kamgar and Majoor Sangh which alleged that the settlement between management and their staff was illegal on the ground that the same was not signed by the authorised representative of the workers and none of the staff have been consulted. Further it was also alleged that the closure of the company was in violation of Section 25-O of the Industrial Disputes Act, 1947. It is hereby confirmed that the deponent directed the Labour Department to examine the legality of the closure as per the provisions of law. It was further observed that in case the settlement was not lawful, the interests of the

workers shall to that extent remain intact. Accordingly the matter was examined in the light of the allegations and it was found that the Respondents No. 5 to 10 had not followed the procedure for closure as laid down by Section 25-O of the I.D. Act. The administration immediately filed a complaint in the Court of the Chief Judicial Magistrate against the company for violation of the provisions of the Act. At that time, the Petitioner/workers were advised to approach the competent Court for getting the settlement agreement set aside in case there were sufficient grounds to do so. It was further stated that no proceedings against the settlement lie before the authorities in the administration.

6. I further say and state that the administration also issued directions to the company stating that workers are to be presumed on their roll and are entitled to their lawful wages. This was in compliance with the provisions of Section 25-O(6) of the I.D. Act. The allegation challenging the competence of the five workers to represent the entire unit cannot be investigated at this stage as most of the workers have left the factory premises as well as the U.T. It is also important to note that a number of them have already accepted part payment under the settlement. The only remedy at this stage lies with the Court."

5. We are prima facie satisfied that there is bona fide dispute about the settlement as according to the workers it has been arrived by playing fraud upon the workers by the officials of the company. There is also a bona fide dispute about infringement of Section 25-O of the Industrial Disputes Act. In our opinion this is a fit case for reference of the dispute to the industrial adjudication. We are also inclined to issue appropriate directions regarding payment of the admitted dues to the workers and protection in respect of their quarters. We, therefore pass the following order:

(i) Respondent Nos. 1 to 4 shall forthwith refer the dispute contained in the Petitioners letter dated November 19, 1999 at Exhibit-F to the petition for adjudication.

(ii) Respondent No. 5 is directed to deposit within 4 weeks from today the dues of all the workmen with the Labour Commissioner (Respondent No. 2) who shall verify the dues payable and distribute the same to the workmen without prejudice to their rights in the reference. The Petitioner union is permitted to assist the Labour Commissioner in this regard.

(iii) Pending the reference the Respondent No. 5 shall not evict the workmen from their quarters.

(iv) The Respondent No. 5 shall not remove, sell, transfer, alienate or create third party rights in any of the assets of the company without the express permission of the Court hearing the reference.

6. Petition is disposed of in the above terms. No order as to costs.

7. The parties and the authorities to act on the ordinary copy of this order duly authenticated by the personal secretary of this Court.