General Labour Union (Red Flag) Bombay

Vs

B. V. Chavan and Others

Civil Appeals Nos. 6092 and 6093 of 1983

(D. A. Desai, V. B. Eradi, V. Khalid JJ)

16.11.1984

JUDGMENT

DESAI, J. -

1. General Labour Union (Red Flag) Bombay filed two complaints, one against M/s Delta Wires Pvt. Ltd. and second against M/s Delta Spokes Manufacturing Company, two sister concerns ('employers' for short) under Section 28 read with Items 1 (a), 1(b), 2, 4(a), 4(f) and 6 of Schedule II of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ('Act' for short). Broadly stated the complaints were that the employers were guilty of imposing and continuing a lock-out and had thus committed unfair labour practice. The employers contended that they had finally and irrevocably closed the industrial undertaking and were not guilty of any unfair labour practice. The complaints were filed in the Industrial Court, Maharashtra, Bombay.

2. The learned Judge framed an issue whether the employer had committed an unfair labour practice by imposing and continuing a lock-out as provided Item 6 of Schedule II of the Act.

3. After hearing the parties, the learned Judge answered the issue in negative and dismissed the complaints.

4. The appellant-Union filed two special civil application in Bombay High Court under Article 226 of the Constitution questioning the correctness of the decision of the Industrial Court. Both the applications were dismissed in limine. The Union thereupon filed these two appeals by special leave.

5. At the hearing of the appeals, Mr. Gobind Dass, learned counsel for the employers stated that the employers have reopened the industrial units and there is partial resumption of manufacturing process. He further stated that the employers are willing to take back all the old workmen and in order to satisfy the Court about the bona fides of the employers he pointed out that nearly 16 old workmen, who responded to the advertisement in a local newspaper, have already been re-employed. Mr Gobind Das stated that the employer will put on record an unconditional undertaking as affidavit in these appeals that no new workman will be recruited in aforementioned two industrial understanding who had not been in previous employment with them without giving first preference to the workmen who were in employment of the two concerns on April 8, 1980 when they were closed down. Mr. M. K. Ramamurthy learned counsel for the appellant-Union, on the other hand, contended that the industrial undertakings of the employers had never been closed or at any rate have resumed working in full and that the old workmen are not being re-employed and new hands

are being recruited.

6. We record the unequivocal undertaking given on behalf of the employers by the learned counsel Shri Gobind Das that all the old workmen who were in service of the employers at the time of the alleged closure, that is upon and inclusive of April 8, 1980, will be re-inducted in service a resumption of work is gradually expanding and that till all the old workmen are re-inducted in service no new hand will be recruited. An undertaking to that effect by Dr. P. D. Meghani s/o Dharam Chand Meghani has been placed on record and is treated as an integral part of this judgment. In order to be assured that the undertaking is carried out in letter and spirit we direct the Industrial Court Maharashtra Bombay to depute its senior ministerial officer to visit the industrial undertakings of the employers and to satisfy itself that the old workmen are being re-inducted in service and that as resumption of production is gradually expanded, the old workmen will be re-inducted in service. There will be a continuous watch by the ministerial officer to be appointed by the Industrial Court till all the old workmen who are willing to be re-inducted in service are taken back in service.

7. In fact this undertaking should have concluded the matter. But there is a statement of law made by Industrial Court while rejecting the complaints filed by the appellant-Union which does not commend to us and to avoid any such error being repeated in future, we, with a view to set right the matter proceed to examine the same in this judgment.

8. The complaints of the union were that employers were guilty of imposing and continuing a lock-out which under the law was illegal. On the other hand, the summation on behalf of the employers was that there was a closer of the industrial undertaking and it was not a case of lock-out. In such a situation where the parties are at variance whether the employers have imposed a lock-out or have closed the establishment it is necessary to find out what was the intention of the employer at the time when it resorts to lock-out or claims to have closed down the industrial undertaking. It is to be determined with accuracy whether the closing down of the industrial activity was as a consequence of imposing lock-out or the owner employer had decided to close down the industrial activity.

9. Lock-out is generally an employer's response to some direct action taken by the Workmen. Closure may be on account of various reasons which may have necessitated closing down of the industrial undertaking. In this case the issue was whether the employer had imposed a lock-out or had closed down the business. In examining this aspect, the Industrial Court observed as under :

> It is not necessary to refer to each and every decision pointed out by Mr Bhatt on the point of lock-out and closure, since now it is well established that in case of a lock-out there is only closure of the place of business whereas in case of a closure there is a closure of the business itself permanent and irrevocable. Whether the closure is brought about mala fide and whether it could have been avoided are matter irrelevant and what is to be seen is whether in fact and in effect there is a closure or not.

We fail to appreciate both the approach and the reasons in support of the approach.

10. Lock-out has been defined in Section 2(1) of the Industrial Disputes Act, 1947 ('ID Act' for short) to mean the closing of a place of business, or the suspension of work or the refusal by an employer to continue to employ any number of persons employed by him. In lock-out the employer refuses to continue to employ the workmen employed by him even though the business activity was not closed down nor intended to be closed down. The essence of lock-out is the refusal of the

employer to continue to employ workmen. There is no intention to close the industrial activity. Even if the suspension of work is ordered it would constitute lock-out. On the other hand closure implies closing of industrial activity as a consequence of which workmen are rendered jobless. Section 22(2) of the ID Act prohibits an employer in a public utility service from locking out any of his workmen without giving notice a provided therein. Section 23 prohibits an employer from declaring a lock-out in contravention of Section 23 is declared illegal. Section 26 of the ID Act provides that any of the practices listed in Schedules II, III and IV would be an unfair labour practice. Imposing continuing a lock-out deemed to be illegal under the Act is an unfair labour practice.

11. While examining whether the employer has imposed a lock-out or has closed the industrial establishment, it is not necessary approach the matter from this angle that the closure has to be irrevocable, final and permanent and that lock-out is necessarily temporary or of a period. The employer may close down industrial activity bona fide on such eventualities as suffering continuous loss, no possibility of revival of business inability for various other reasons to continue the industrial activity. There may be a closure for any of these reasons though these reasons are not exhaustive but are merely illustrative. To say that the closure must always be permanent and irrevocable is to ignore the causes which may have necessitated closure. Change of circumstances may encourage an employer to revive the industrial activity which was really intended to be closed. Therefore the true test is that when it is claimed that the employer has resorted to closure of industrial activity, the Industrial Court in order to determine whether the employer is guilty of unfair practice must ascertain on evidence produced before it whether the closure was a device or pretense to terminate services of workmen or whether it is bona fide and for reasons beyond the control of the employer. The duration of the closure may be a significant fact to determine the intention and bona fides of the employer at the time of closure but is not decisive of the matter. To accept the view taken by the Industrial Court would lead to a startling result in that an employer who has resorted to closure, bona fide wants to repel, revive and re-start the industrial activity he cannot do so on the pain that the closure would be adjudged a device or pretense. Therefore the correct approach ought to be that wen it is claimed that the employer is not guilty of imposing a lock-out but has closed the industrial activity, the Industrial Court before which the action of the employer is questioned must keeping in view all the relevant circumstances at the time of closure decide and determine whether the closure was bona fide one or was a device or a pretense to determine the services of the workmen. Answer to this question would permit the Industrial Court to come to the conclusion one way or the other.

12. Having clarified the position in law, we dispose of the appeals in terms of the undertaking of Dr. P. D. Meghani as recorded in this judgment.

13. Both the appeals are disposed of accordingly.

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