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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5062 OF 2016

M/s. Redium Creation Ltd. & Ors. ...Petitioners
vs
Engineering Workers Association ...Respondent

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Mr. S.K. Talsania, Senior Advocate, a/w. Mr. Pramod Anaokar and Mr. Rahul D. Oka, for the Petitioner.

Ms. Nayana Buch, a/w. Mr. Shailesh More, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATED: APRIL 27, 2016

P.C. :

. Heard learned Counsel for the parties. This petition challenges two orders passed by the Industrial Court at Thane, Maharashtra, on a complaint filed by the Respondent Union under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the Act").

2. The disputes between the parties concern a lockout declared by the first Petitioner Company. The Respondent Union had filed a complaint under Section 28 read with Item 6 of Schedule II and Items 9 and 10 of Schedule IV of the Act, challenging the lockout as illegal for 202 members of the Respondent Union and an unfair labour practice. The Union sought a direction against the Petitioner to allow its member workmen to resume their duties and to pay their wages and salary

against an undertaking given by the Union that they would maintain peace and tranquility at the work place. In the complaint, the Respondent Union filed an application for interim relief, for directions to the Petitioner herein not to give effect to the lockout and allow the workmen, named in the notice, to resume normal duties and to pay wages to them. That prayer was rejected by the Industrial Court by its order dated 24 July 2014. The Respondent Union carried the matter before this Court in a writ petition, which came to be dismissed by a learned Single Judge of this Court. The Respondent Union, thereupon, carried the matter before the Supreme Court in a Special Leave Petition. When the SLP initially came up for hearing, the Supreme Court, by its order dated 10 April 2015, directed the first Petitioner employer to calculate and deposit in the Court the wages payable to the workmen, affected by the lockout, with effect from 1 August 2014 onwards. Such deposit was to be made within two months from the date of the order, i.e. on or before 10 April 2015. In pursuance of this order, a sum of Rs.1,40,32,249/- was deposited by the first Petitioner herein in the Supreme Court, towards wages payable to the affected workmen between 1 August 2014 and 30 April 2015. On 27 July 2015, the Supreme Court recorded a statement of learned Counsel for the first Petitioner employer that it was ready to lift the lockout qua 150 out of a total 202 workmen, to be named in a list. In pursuance of this statement, the lockout was lifted qua 150 workmen on 14 August 2015. As for the remaining 52 workmen, 12 had already resigned and left the employment of the first Petitioner. For the remaining 40 workmen, the lockout was lifted on 1 September 2015. Upon lifting of the lock-out, these workmen were separately charge-sheeted and suspended pending a domestic enquiry proposed by the first Petitioner. Finally, when the matter reached hearing before the Supreme Court on 14 October 2015, the Court was pleased to grant leave and dispose of the appeal by issuing appropriate directions for disbursement of the amount deposited in Court to the affected workmen and investment of the balance amount. The Supreme Court also issued directions to the Industrial Court concerning further interim orders that may be considered by it in the pending complaint.

3. Pursuant to this order, the Respondent Union made an application before the Industrial Court in its pending complaint that the first Petitioner be directed to make a further deposit of wages concerning 150 employees, the lockout in whose case was lifted on 14 August 2015, due for the period 1 May 2015 to 14 August 2015 and for the remaining 40 employees, the lockout in whose case was lifted on 1 September 2015, due for the period between 1 May 2015 and 1 September 2015. The Respondent Union also made an application for disbursement of 50% of wages for the period of lockout to 40 workmen, in pursuance of the liberty reserved by the Supreme Court in its order dated 14 October 2015.

4. By two separate orders dated 4 April 2016, the Industrial Court directed the first Petitioner herein (i) to calculate and deposit the amount of wages for the period from 1 May 2015 to 14 August 2015 in respect of 150 employees, and for the period from 1 May 2015 to 1 September 2015 in respect of 40 workmen, in the Court within a period of three weeks, and (ii) to disburse 50% wages for the lockout period to

40 chargesheeted and suspended workmen against the same undertaking, as was submitted by 150 employees earlier, along with a bank guarantee covering the amount received by them towards such disbursement. Both these orders are impugned by the Petitioners before this Court in the present writ petition.

5. The controversy in the present petition insofar as the deposit of balance wages for the lockout period is concerned, the main contention of the Respondent Union is that the Supreme Court order of 10 April 2015 required the first Petitioner to calculate and deposit wages payable to workmen affected by the lockout from 1 August 2014 onwards. (20 July 2014 was the date of the lockout.) It is submitted by learned Counsel for the Respondent Union that the word "onwards" suggests that the deposit was to be made for the entire period of lockout. On the other hand, it is submitted by Mr. Talsania, learned Senior Counsel appearing for the Petitioners, that we are now governed by a final order passed by the Supreme Court on the Civil Appeal, namely, the order dated 14 October 2015. He submits that despite noting that the deposit towards the affected 150 workmen was not made for the entire lock-out period, the Supreme Court merely directed disbursal of 50% wages to the affected workmen and not a further deposit of wages for the balance lock-out period.

6. The Supreme Court order notes that the lockout wages were deposited by the first Petitioner only for the period between 1 August 2014 and 30 April 2015 and not for the balance period of the lockout. After noting this deposit, what the Supreme Court proceeded to consider

was the interim entitlement of the affected workmen to receive wages for the period of lockout. The Court had noted that the lockout was lifted for 150 workmen on 14 August 2015, and for the remaining 40 workmen on 1 September 2015. The issue before the Court was whether the amount deposited by the first Petitioner could be released in favour of the workmen concerned during the pendency of the complaint before the Industrial Court. The Court noted that it was true that the workmen had suffered lockout for nearly one year and might have been put to great hardship on that account but that it was equally true that their entitlement to wages during the lockout period would depend upon whether the lockout was legally valid and justified or not, which finding was yet to be recorded by the Industrial Court. In the premises, the Supreme Court ordered disbursement of 50% of lockout wages to 150 workmen, in whose case the lockout was lifted on 14 August 2015. The Supreme Court also left it to the Industrial Court to examine whether any payment of wages could be made to the balance 40 workmen as and by way of an interim relief. The Supreme Court allowed the Industrial Court to disburse such payment, if such payment was found due, from out of the amount lying in deposit before the Court. The Supreme Court also gave liberty to the Industrial Court to direct further deposit by the first Petitioner "in case of shortfall to enable it to make the payment of such wages as the Industrial Court may consider just and proper". In other words, being conscious of the fact that the lock-out wages of the affected workmen were deposited for the period only between 1 August 2014 and 30 April 2015 and not for the period from 1 May 2015 to 14 August 2015, the Supreme Court did not direct a further deposit by the first Petitioner. The Supreme Court directed disbursement of 50% wages of 150 workmen affected by lockout from out of the deposited amount. Such wages naturally would have to be paid throughout the period of lockout, i.e. upto 14 August 2015. The Supreme Court also gave liberty to the Industrial Court to consider if similar lockout wages ought to be paid to the balance 40 workmen, whose cases stood on a different footing, since in their case though the lockout was withdrawn, they were facing disciplinary proceedings and suspended. The Industrial Court was, accordingly, free to examine whether any payment of wages ought to be made in their favour by way of interim direction and in case the Industrial Court came to a conclusion that any particular payment deserved to be made, the Industrial Court was free to utilise the amount already in deposit for such payment. It is only in the event of any shortfall as a result of such disbursal that the Industrial Court was at liberty to direct further deposit by the employer Company. In other words, the Industrial Court's power to direct further deposit was circumscribed by a limitation, namely, that there must be a shortfall considering the total disbursal required to be made in pursuance of the final order of the Supreme Court and also after considering similar interim relief to 40 workmen in pursuance of the liberty reserved by the Supreme Court for the Industrial Court. The direction of the Industrial Court to the first Petitioner Company to calculate and deposit the amount of wages for the closure period between 1 May 2015 and 14 August 2015 in respect of 150 workmen, and from 1 May 2015 to 1 September 2015 in respect of 40 workmen, is clearly not in order. Such payment could not have been ordered in the light of directions given by the Supreme Court.

7. Insofar as disbursal of 50% of wages for the lockout period to 40 workmen, who were charge-sheeted and suspended pending the enquiry, is concerned, learned Counsel for the Petitioners submits that since this disbursal is allowed against furnishing of a bank guarantee by the concerned workmen, he does not press his challenge against the impugned order (order below Exhibit U(11-B)). He, however, submits that liberty should be reserved to him in case the order below Exhibit U(11-B) is reviewed by the Court and the stipulation of bank guarantee is done away with. (There is an application for review of this order at the instance of the Respondent Union insofar the impugned order directs furnishing of a bank guarantee towards the amount to be disbursed.) All contentions of both the parties in the review application, on merits, are kept open. In case the review order goes against the Petitioners, that is to say, the bank guarantee is dispensed with by the Industrial Court, the Petitioners are at liberty to challenge such order, on the basis *inter alia* of the contentions raised in the present petition.

8. The writ petition is disposed of accordingly. There shall be no order as to costs.

(S.C. GUPTE, J.)