

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5148 OF 2018

Kirloskar Pneumatic Co. Ltd. ... Petitioner
Versus
Kirloskar Pneumatic Kamgar Sanghatana ... Respondent

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Mr. Kiran Bapat a/w Mr. Mahesh Londhe, Mr. Aditya Bhat and Mr. Netaji Gawade I/b Sanjay Udeshi & co. for the Petitioner.

Mr. P. Rao, Senior Advocate a/w Mr. Prashant Kshirsagar I/b Vishal Laxman Kolekar for the Respondent.

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CORAM : S.C.GUPTE, J.

DATE : 5 JUNE 2018

P.C. :

. Heard learned Counsel for the parties.

2 **Rule.** Rule is taken up forthwith for hearing by consent of Counsel.

3 The petition impugns an interim order passed by the Industrial Court at Pune on a complaint of unfair legal practices under Item-1, 1(a), 4(a) & (f) of Schedule-II and Items-9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("MRTU & PULP Act"). The Respondent-union is the complainant. The Respondent claims to be a registered trade union and is one of the two unions functioning in the Petitioner's factory, the other union being Kirloskar Pneumatic Kamgar Sanghatana. The thrust of the complaint is

that the other union is a bogus and unregistered trade union, representing only 65 employees. It is the grievance of the Respondent that the Petitioner has not been allowing the members of the Respondent-union to organize themselves into a union for the purpose of collective bargaining. The Respondent, accordingly, prays for certain directions against the Petitioner-employer and their officers which include directions for application of the benefits of settlement including overtime wages to its members as well as permanent restraint from giving threats to its members to leave the complainant union. An interim order was sought from the Industrial Court in this complaint for restraining the Petitioner-employer from threatening Junior Engineers/Senior Engineers, who had filed affidavits in the complaint, with discharge or dismissal or termination of services without following due process of law till the decision of the main complaint. By an order dated 10 October 2017, this interim injunction was granted by the Industrial Court. It is not a matter of dispute that in the meantime, the union came to be registered and has been operating in the Petitioner's factory. So also, the Petitioner has admittedly accepted the interim order passed on 10 October 2017 and has been complying with it. It is, however, the grievance of the Petitioner that after the interim order was passed, the concerned employees, who claim to be members of the Respondent-union, went on an en masse strike and refrained from attending the factory for a period of around 62 days and as a result, in pursuance of a charge-sheet given to the concerned employees, the Petitioner has started departmental enquiry against the employees. These proceedings have been participated in by the employees concerned. The employees have been represented by Advocates and, according to the Petitioner, principles of natural justice are being duly followed in the

enquiry proceeding. At the moment, examination-in-chief of the management witness is over and the witness is under cross examination by the concerned employees. At this stage, a complaint is filed by the Respondent-union before the Industrial Court that since the issue as to the status of the concerned employees as workmen of the Petitioner-employer needs to be decided, enquiry proceedings conducted purportedly on the basis that they are not workmen of the Petitioner-employer should not be proceeded with. By the impugned order, the Industrial Court accepted this contention of the Respondent and restrained the Petitioner from conducting the enquiry proceedings. That order is challenged in this petition.

4 It is firstly to be noticed that the enquiry proceedings presently conducted against the absentee employees is not the subject matter of the unfair labour practices' complaint presently pending before the Industrial Court. The grievance of the Respondent-union before the Industrial Court in the main complaint is substantially different from the grievance made in the interim application, on which the impugned order came to be passed. Secondly, and more importantly, there is no finding rendered by the Industrial Court in the impugned order that the enquiry proceedings presently being conducted against the absentee employees in any way amounts to an unfair labour practice. After noticing that in its order passed earlier under Section 30 of MRTU & PULP Act on the original complaint the Industrial Court has *prima facie* concluded that the members of the complainant union, i.e. Junior Engineers / Senior Engineers, fall under the definition of 'workman' and restrained the Petitioner-employer from terminating their services except by following due process of law, the

Industrial Court observes that the enquiry proceedings are being conducted with the presumption that the members of the complainant union do not fall under the definition of 'workman'. The Industrial Court proceeds to hold that what is the due process of law depends upon whether or not the members of the Respondent-union are workmen and whether or not standing orders are applicable to them. Purportedly on the ground that this issue, namely, whether the members of the Respondent-union are workmen or not, needs to be decided before any enquiry can be proceeded with against the concerned employees, the Industrial Court appears to have issued the impugned interim injunction after framing a preliminary issue as to whether the members of the complainant union fall within the definition of workmen under Section 2(s) of the Industrial Disputes Act, 1947.

5 Whether or not members of the Respondent-union fall within the definition of 'workman' under Section 2(s) of the Industrial Disputes Act, 1947, no fault can be found with the fact that departmental enquiry is being conducted against these members. The Petitioner-employer purportedly proceeds on the footing that the employees are not covered under the definition of workmen and yet, by choice, the Petitioner-employer would like to conduct an enquiry into their alleged misconduct, whereas, on the other hand, the employees themselves are resisting the enquiry *inter alia* on the ground that they are the workmen of the Petitioner-employer and are governed by the applicable standing orders. Both the Petitioner and the Respondent-union can assert their respective cases in the enquiry proceedings. No purpose would be served by withholding the enquiry pending the decision of the Industrial Court on

whether or not the concerned employees fall within the definition of 'workman' under Section 2(s) of the Industrial Disputes Act, 1947. This is particularly so, since the enquiry proceedings for the misconduct alleged on the part of the delinquent employees are not the subject matter of the main complaint under MRTU & PULP Act.

6 In the premises, the impugned order of the Industrial court suffers from grave infirmity and error of jurisdiction and cannot be sustained. Rule is, accordingly, made absolute by quashing and setting aside the impugned order. The Industrial court has already fixed a timeline for determining the preliminary issue framed in the matter. The parties may abide by that timeline.

7 Learned Counsel for the Respondent-union applies for stay. Stay is refused.

(S.C. GUPTE, J.)