

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

WRIT PETITION NO.8041 OF 2019

Indo Energy International Ltd.,
through its Authorized Signatory
Mr. Sunil Namdeo Mahadik. ... Petitioner.

Vs.

Hind Kamgar Sanghatana,
Kharalwadi, Pimpri, Pune. Respondent.

Mr. Rahul Nerlekar, Advocate for the petitioner.
Ms Seema Chopda, Advocate i/b Shri Mayuresh D.
Modgi, Advocate for the Respondent.

Coram : NITIN W. SAMBRE, J.
Date : 10.10.2019

P.C.:

1. This petition is at the behest of employer against an order dated 20th June, 2019 passed by the Industrial Court, Thane whereby application moved by the respondent union under Section 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act (for short “the Act of 1971”) is allowed.

2. Vide the impugned order, the petitioner was directed by the

Industrial Court not to terminate the services of 27 employees, who are listed in Annexure A with complaint, excluding 30 employees, whose services are not disturbed, without following due process of law.

3. The facts necessary for deciding the petition are as under:

Respondent initiated the Complaint (ULP) No.190/2017 under Section 28 read with Item 1(a)(b) and (c) of Schedule II and Item 9 of Schedule IV of the Act of 1971. It is the contention of the respondent union before the Industrial Court, that the employees, whose details are mentioned at Annexure A to the complaint, are appointed by the petitioner and have rendered continuous service of more than 14 years. It is further claimed that the petitioner was engaged in providing services of clearing and forwarding stevedoring operations and ship management. Amongst others, the nature of the work discharged are development of infrastructure work on B.O.T. basis for various government and statutory authorities, construction of roads, bridges, highways etc. as reflected in the memorandum of association of the petitioner company. It is claimed that 57 employees, whose names are mentioned in Annexure A, have decided to form a union and

as such, the petitioner started victimizing the employees by issuing threats. It is claimed that the aforesaid act is contrary to the provisions of the Act of 1971 as narrated herein-above and a relief is claimed in the complaint to desist from engaging in unfair labour practice. Alongwith main complaint, an application under Section 30(2) came to be moved wherein certain interim reliefs are claimed.

4. By way of impugned order, the interim relief of not to terminate the services of 27 employees enlisted in Annexure A came to be ordered.

5. The learned Counsel for the petitioner while questioning the order impugned would urge that earlier the Industrial court has granted similar relief on 8th June, 2018 which was subject matter of challenge in Writ Petition No.6876/2018. The High Court while allowing the said petition by consent has passed the following order on 18th July, 2018.

“After the matter is heard at the some length, learned Counsel for the parties agree that the impugned order can be set aside and the interim application Exhibit U-2 can be remanded back to

the Industrial Court at Thane, for a fresh hearing in accordance with law. Learned Counsel for the Petitioners states that the engagement of 30 employees as indicated by the Petitioners in its affidavit dated 26 April 2018, shall not be disturbed by the Petitioners pending the hearing of the complaint. The parties will be entitled to lead such further evidence before the Industrial court in the pending application, as they may be advised. The writ petition is disposed of.”

6. According to him, in view of dismissal order the services of 30 employees engaged by the petitioner were not disturbed, however, he would urge that opportunity to lead evidence is with an intention to consider the evidence and decide the application afresh. He would urge that the evidence brought on record by the respective parties are not properly looked into by the Industrial Court and the relief which amounts to granting final relief came to be ordered. It is further claimed that there was a denial of employer and employee relationship and that being so, the Industrial Court ought not to have gone into the issue of grant of interim relief. As such, the learned Counsel for the petitioner would urge that this Court needs to re-appreciate the entire gamut of the matter and as such, the order impugned is liable to be quashed and set aside.

7. While countering the said submission, learned Counsel for the respondent would support the order impugned and submit that petition against the interim order ought not to be entertained as the order impugned is supported by proper reasons. According to the learned Counsel, the petition lacks merits and is liable to be dismissed.

8. Considered the rival submissions.

9. With the assistance of learned Counsel for the parties, I have perused the complaint, the application for grant of interim relief, the reply and the other material placed on record before the learned Industrial Court in support of claim for grant of interim relief and also the reasons furnished by the Industrial Court in support of the order of the interim relief not to terminate the services without following due process of law.

10. Amongst others before the Industrial Court it is claimed that appropriate Government in the matter of dispute between the petitioner and the respondent is Central Government, however, the Industrial Court overruled the same particularly having regard to the

terms of the memorandum of association.

11. As far as the issue of grant of interim relief of not to terminate the services, which is claimed to be amounting to final relief is concerned, is this Court is required to consider the case of *Klinger Limited V/s. Subhash Baburao Kambale and others* reported in **2016 (6) Mh.L.J. 543** wherein it is held that mere statement of denial of relationship in the affidavit like petitioner cannot be a basis for denying the relief to hold that there is no jurisdiction in the Industrial Court to entertain the complaint. As such, Court is required to be *prima facie* satisfied whether there exists an employer and employee relationship.

12. In the case in hand as far as the employee in whose favour the Court has granted interim relief to the extent of 27 employees is concerned, in the form of affidavit respondent complainant has produced identity card of 10 employees, health insurance of 7 employees and out of these 17 employees, 3 employees have produced both these documents. The Industrial Court then analyzed the said evidence in the light of the stand taken by the petitioner on

non-existence of employer and employee relationship and upon appreciation of the stand / defence setup by the petitioner has recorded a finding that there existed *prima facie* evidence in the form of aforesaid documentary evidence to infer that there exists an employer and employee relationship between the parties. Not only, the existence of relationship was inferred but the aforesaid documents are formed to be a basis for grant of interim relief in favour of the members of the respondent union for grant of interim relief.

13. The claim in support of the denial of employer - employee relationship setup by the petitioner, particularly by claiming that health insurance or the health cards were issued to the persons residing in the locality so as to avoid any risk, having regard to nature of business operations performed by the petitioner company, was found to be not only unbelievable but also the said stand is irrational.

14. The Industrial Court in view of the provisions of Evidence Act has verified the signatures on these documents i.e. identity cards and the health cards with vakalatnama at Exhs. C-1, reply at C-2 and

affidavit at Exh.C-6 and recorded a *prima facie* finding of employees named in Annexure A to the complaint were employed by the petitioner company.

15. I do not see any reason or illegality which warrants any interference in the impugned order particularly when the order impugned is based on proper appreciation of evidence as the respondent has *prima facie* established the employer and employee relationship.

16. The nature of interim relief granted in favour of 27 employees is only to the extent not to terminate their services without following due process of law. The said relief, in my opinion, is very much justified in the light of the nature of evidence brought on record by the respondent union.

17. That being so, no case for interference is made out. The petition as such fails. **Dismissed.**

(NITIN W. SAMBRE, J.)