

Bombay High Court

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All India Trade Union Congress vs Ravi Fisheries Limited & Ors. on 15 October, 1999

Equivalent citations: 2000 (1) BomCR 612, (2000) IILLJ 745 Bom

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Bench: R Lodha

ORDER

R.M. LODHA, J.

1. By this contempt petition, the petitioner viz. All India Trade Union Congress prays that respondent Nos. 1 to 3 be punished for having committed the civil contempt for wilfully disobeying the order of the Division Bench dated May 5, 1998 in Writ Petition No. 124 of 1998 and for direction to respondents to comply with the said order and further directions to respondents to pay to the workers wages listed at annexure "B" to the writ petition for the months of June, July, August, September and October, 1998. The contempt petition was filed on 6th November, 1998.

2. Writ Petition No. 124 of 1998 was at the instance of Suja Abraham and others wherein it was prayed that the respondent Nos. 2 to 7 who were employers be directed to comply with all labour legislations in respect of the workers employed in their establishment. The present petitioner-union was one of the petitioners in the writ petition. The Division Bench disposed of the writ petition on 5-5-98 with the following direction.

"Considering (i) the state of affairs prevailing in the region with regard to the factory workers (ii) the submissions of the learned Counsel for the parties and (iii) the Report of the Collector, we issue the following further directions: -

(a) the Labour Commissioner as well as the Collector, Thane District, to keep constant vigil to see that labour welfare legislations are specifically enforced. They would keep constant watch with regard to the enforcement of (i) The Minimum Wages Act, 1948, (ii) Contract Labour (Regulation and Abolition) Act, 1970, (iii) The Factories Act, 1948, (iv) The Employees State Insurance Corporation Act, 1948, (v) The Employees Provident Fund and Miscellaneous Provisions Act, 1996, (vi) Inter State Migrant Workmen Act, 1979, (vii) The Maternity Benefits Act, 1961, (viii) Industrial Employment (Standing Orders) Act, 1946 and all other Labour Welfare Legislation. For this purpose, the Superior Officers would carry out inspection in various factories within their jurisdiction and find out, on spot inspection whether the provisions of the aforesaid Acts are implemented or not. In the present case it has been pointed out that Employees State Insurance Corporation Act was not at all complied with. In any set of circumstances in future appropriate care should be taken by all concerned Officers and inspection should not be left in the hands of lower-ranking officers.

(b) with regard to migrant workwomen, the concerned factory owner should provide residential accommodation to them so that they are safe and protected from other abuses by contractors and other persons.

(c) we make it clear that it would be open to the Bhartiya Mahila Federation, which is a Non-Governmental Organisation, to visit the premises where women employees are working and to find out their grievances. All factory owners, particularly the respondents, are directed to allow free access to the office bearers of Bhartiya Mahila Foundation to places where women employees are working or are residing.

(d) it is further directed that the respondents/factory owners should see that employment is provided to seasonal workers who were previously employed in their factories. This is required to be done so that contractors may not exploit needy workman/women by taking undue advantage.

(e) Respondent No. 2 is directed not to victimise any worker associated with this petition on any ground whatsoever and to re-employ the following workmen viz.,

(i) Nirmala Masurkar

(ii) Sushila Shinde, and

(iii) Lalita Gurav.

Learned Counsel for respondent No. 2 states that these workwomen would be appointed at the commencement of the next-succeeding seasons, if they offer to work.

(f) As far as petitioner No. 1, Abraham, is concerned, it has been agreed that respondent No. 2 would see that an amount of Rs. 2, 500/- per month is paid to her for the rest of her life. For this purpose, an amount which will fetch interest of Rs. 2,500/ per month would be deposited by respondent No. 2 in fixed deposit with a Bank or in any other scheme of a Post Office of the village where petitioner No. 1 finally settles down, within one month from the date of receipt of the address from petitioner No. 1. During that time respondent No. 2 would send a cheque of Rs. 2,500/- every month to petitioner No. 1. On the death of petitioner No. 1, the aforesaid Fixed Deposit amount would vest in her heirs and legal representatives or any other duly authorised person/s.

(g) In view of the aforesaid payment being made by respondent No. 2 towards compensation to petitioner No. 1. Respondent No. 1 Corporation would not be required to pay any amount to petitioner No. 1 nor they would recover any amount from respondent No. 2 in respect of petitioner No. 1."

3. For the purpose of present contempt petition, the directions contained in the aforesaid Clauses (d) and (e) are relevant since the grievance of the petitioner in this contempt petition is that though the season started with effect from June, 1998, the employers respondents have not re-employed any of the seasonal workers. The said act on the part of the employers, according to the contemner, is deliberate, intentional and willful in breach of the directions given by this Court on 5-5-98. The petitioner has averred that right from June, 1998, the union on behalf of the concerned employees have been requesting the employers-respondent Nos. 1 and 2 to employ the seasonal workers as well as three specified workers in the order viz. Nirmala Masurkar, Sushila Shinde and Lalita Gurav but the employers played mischievous and fraudulent game of compliance through letters and records but avoided giving employment to seasonal workers in letter and spirit of the order dated 5-5-98. The petitioner has referred to the communication with the Labour Authorities from time to time and averred that the employers do not seem to be in mood to comply with the order though month of November had already begun and the fishing season lasts only till the month of April.

4. The contempt petition is contested by respondent Nos. 1 to 3 and an affidavit-in-reply has been filed on their behalf by one Mr. J.J. Thakur, Manager, Personal and Administration of the respondent Nos. 1 and 2 companies. In the said affidavit, it is stated that the order dated 5-5-98 was passed immediately before the Court vacation but the copy of the order was made available after reopening of the Court in the second week of June, 1998 and upon receipt thereof, the clarification of the order was sought and this Court was pleased to clarify the order on 2-9-98. It is further stated in the affidavit that prior to the commencement of the regular season, the respondent Nos. 1 and 2 issued a public notice in the two leading newspapers viz. Indian Express and Loksatta inviting applications from all the seasonal workers who had worked with the employers respondent Nos. 1 and 2 in the previous years for employment in the ensuing season. The said notice appeared in the Bombay edition of both the aforesaid newspapers on 12-9-1998 and not a single application was received upto 21-9-98. One Ms. Jane Cox sent 98 applications of the concerned employees which were received on 25-9-98. The deponent has stated in the affidavit that pursuant to receipt of all the applications, those were forwarded to the contractor and list of said 98 workers was prepared in a descending order based upon their length of service at their factories in the previous year. Based on that, letters of appointment dated

6-10-1998 were issued to the first 30 workers to join duties with effect from 15-10-98. Amongst the aforesaid 30 workers, 26 workers reported for work on 15-10-98 at 9.15 a.m. but the recognised union viz. Maharashtra General Kamgar Union operating in the employers' establishment objected to the employment of the aforesaid seasonal workmen and prevented their entry. Ultimately, the things with the recognised union could be sorted out by 12.45 p.m. and workers were asked to join the work and they were also assured that they would be paid their wages for the full day but upon instigation of petitioner-union, the workers refused to join the duties. It is stated in the affidavit-in-reply that none of these workers reported for work on 16-10-1998 or any day thereafter though a letter dated 17-10-1998 was addressed to all these 30 workers to join on or before 26-10-1998. On 26-10-1998 these workers did not report the work and another letter dated 28-10-98 was sent to all these 30 workers asking them to join before 3-11-1998 but none of the workers reported on 3-11-1998 as well and another letter dated 4-11-1998 was addressed to all the thirty workers asking them to join on/or before 14-11-1998. The deponent has further stated that the workers whose names appeared at serial Nos. 31 to 61 of the list of workers, letters dated 28-10-98 were sent to them offering them employment with effect from 1-11-98 but these workers did not report on 1-11-98 or any date thereafter. Then a reminder was sent to these 31 workers to report on/or before 14-11-98 but they also did not appear in response to the letter. To the remaining workers, letters of appointment were issued on 14-11-98 asking them to join duties with immediate effect but none of them joined their duties till the date of the filing of the affidavit. In sum and substance, the reply of respondent Nos. 1 to 3 is that, they have always been ready and willing to employ the concerned workmen as per their length of service in phased manner upon the onset of season but the said employees at the instigation of the union were adamant in demanding wages right from the month of June, 1998, though the season had not begun from that month and therefore, the said workers did not resume their duties. The respondent Nos. 1 to 3 therefore, have stated that there is no intentional or deliberate or wilful disobedience of the order passed by this Court on 5-5-98 and further clarified on 2-9-98.

5. There is no dispute that all concerned employees were re-employed by the respondents-employers with effect from 17-12-98 after the order was passed by this Court in this contempt petition on 15-12-98 and they remained in employment till the end of the season. The grievance of the learned Counsel for petitioner is that the employers systematically avoided to grant employment to the seasonal employees on time and only created evidence to plead defence that they never intended to disobey the order and therefore, the conduct of the employers should be sternly viewed. The learned Counsel for petitioner also urged that since the concerned employees were re-employed only from 17-12-98, now the employers should be directed to pay the concerned employees wages from the beginning of the season.

6. Mr. Jagtiani, learned Senior Counsel appearing for respondent Nos. 1 to 3 vehemently opposed this contempt petition and urged that there is absolutely no wilful disobedience or breach of the order by respondent Nos. 1 to 3 and therefore the contempt petition is liable to be dismissed. The learned Senior Counsel however submitted that the employers respondent Nos. 1 to 3 are prepared to pay wages to 26 employees who were present on 15-10-98 from that dates as a matter of gesture. He also submitted that the two women employees viz. Nirmala Masurkar and Sushila Shinde whose names find place in the operative order in Clause (e) though are not entitled to wages for the period before they joined their duties, the employers are prepared to pay them wages from 18th August, 1998 when they sent letter to the employers offering themselves for employment.

7. I have considered the submissions of the learned Counsel for parties and also perused the available material placed on record by the parties.

8. The writ petition was disposed of by the High Court on 5-5-98 giving certain directions including directions contained in Clause (d) and (e). The said order was clarified by the Division Bench on 2-9-98 upon the application made by the employers whereby the direction contained in Clause (d) was modified by adding the words "and they are re-employed in the same capacity in which they were employed in the previous year" after the word "their factories". Though in the contempt petition, the petitioner has averred that the season begins from the month of June, it is apparent even from the averments made in the writ petition that the

season begins at the end of the month of July. That means, in other words, the season starts from the month of August. Since the employers had already moved this Court for clarification of the order immediately after the reopening of the Court in the month of June, 1998 and that clarification was ordered on 2-9-98 if the employers did not re-employ the concerned employees before that date, it cannot be said that the employers wilfully or intentionally committed breach of the order dated 5-5-98. After the order was clarified by the Division Bench on 2-9-98 admittedly, the employers issued public notice inviting applications from seasonal workers who had worked with them on contract between August, 1997 and April, 1998 i.e. preceding season. All those seasonal workers who were interested in re-employment were asked to submit their applications in writing to reach the employers on or before 21st September, 1998. This public notice was published in two newspapers viz. Loksatta and Indian Express on 12-9-98. There is also no dispute that in response to the public notice, one Ms. Jane Cox, Advocate alongwith a forwarding letter forwarded 98 applications by the workers seeking re-employment which was received by the employers on 25-9-98. The employer respondent No. 2 herein seems to have communicated to the concerned applicants whose addresses were given that their applications have been forwarded to the contractors for their employment on the same terms and conditions and in the same capacity as were applicable to them during their previous service at the factory but they denied that the applicants approached them on 10-6-98 as alleged. The contractors offered the employment to the applicants by their communication dated 6-10-98 on the terms and conditions mentioned in the said communication and the applicants were directed to accept the said terms and conditions and report on 15-10-98. On 15-10-98, out of 30 employees who were informed to report on duty on 15-10-98, 26 workers reported for work but they were not given employment. The stand of the employers is that the recognised union operating in their establishment objected to their employment and the matter with the recognized union could be sorted out only by 12.45 p.m. and when at that time the workers were asked to report, they refused. On the other hand, from the letter dated 15-10-98, sent by Shri Mujawar, Government Labour Officer to the respondent No. 1 employer, it appears that 26 women workers had come to report for the work on that date. They waited at factory gate since 8.45 a.m. but they were not taken on employment. Shri Mujawar met Shri J.J. Thakur, Personal and Administrative Officer as well as the contractor Pinto and they were asked to employ the waiting workers but the said officers refused to take the workers on duty immediately on the ground that the matter needs to be discussed with the Director of the Company and that the Union had also objected to their employment. There appears to be some inconsistency in the stand taken by the employers regarding the incident dated 15-10-98. The workers who were present on that day ought to have been employed and given work from that date. However, this question should not deter me long in view of the offer made by the learned Senior Counsel appearing for the employers that those workers who were present on 15-10-98. Without prejudice to the contention of the employers, shall be paid wages from 15-10-98 though they effectively joined their duties on 17-12-98. In view thereof, no further discussion in this regard needs to be made. The employers have set up the defence that upon onset of season and receipt of 98 applications from the workers, the list of said 98 workers was prepared in a descending order based upon their length of service at their factories in the previous year and letters of appointment were issued in accordance with that seniority and the first 30 workers were offered duties with effect from 15-10-98 vide letters of appointment dated 6-10-98 to other 30 employees, the letters were issued on 28-10-98 asking them to report on duty on 1-11-98 and the remaining workers were issued letters of appointment on 14-11-98 asking them to join duties with immediate effect. By this method, offering employment to previous workers, the employers cannot be said to have violated the order dated 5-5-98 because there is no grievance even raised by petitioner-union that the letters of appointment were sent by employers arbitrarily or the said letters were not in accordance with the length of service with the employers. Moreover, it is apparent that the workers had been insisting for wages to be paid from the month of June, 1998 which was not acceptable to the employers. If the workers had not insisted for the wages to be paid from the month of June, 1998, perhaps, the problem would not have arisen and the workers could have been re-employed earlier. By the communication sent by petitioner-union to the Deputy Labour Commissioner, Thane on 9-11-98 it transpires that for full implementation of the order passed by this Court on 5-5-98, the union demanded (a) immediate employment to all the listed women numbering approximately 109; (b) the employment of those workers in the unit and trade (category) in which they were employed in previous seasons; and (c) all the listed workers be supposed to be employed since June 1998 and since the employers failed to comply all such workers from June 1998, they should be paid back-wages from

June, 1998. In the said communication dated 9-11-98, the petitioner-union has stated in an unequivocal terms that on their advice, the workmen have deferred joining the duties till they hear from employers in respect of demands (b) and (c) and suggestions made by Deputy Labour Commissioner. When the season started on the end of the month of July, 1998 i.e. from the 1st of August, 1998, the demand raised by the union on behalf of the concerned workers that they should be paid wages from June, 1998 as if they were employed from that month was grossly unreasonable and union appears to have wrongly advised the concerned workers to defer joining the duties till the matter is sorted out in respect of the demand of payment of wages from the month of June, 1998. If the employers did not accede to unreasonable demand made by the union and was not agreeable to pay the wages to the employees from the month of June, 1998 when the season had in fact not begun, it cannot be said that the employers wilfully disobeyed the order of this Court dated 5-5-98 and amended on 2-9-98.

9. It cannot be lost sight of that this contempt petition has been filed by the union and affidavit in support of the contempt petition has also been filed by one of the office bearers of the union but there is not a single affidavit of any of the concerned employees supporting the allegations made in the contempt petition. This aspect is of some reference because the employers have taken the stand that the concerned workers are fully satisfied with the implementation of the order by re-employing them on 17-12-98 and they have no grievance whatsoever but the petitioner union desperate in seeking its entry in the establishment of the employers when there is already recognised union operating in the establishment of employers.

10. As regards the three employees specified in Clause (e) of the operative order dated 5-5-1998, two of them viz. Nirmala Masurkar and Sushila Shinde sent a letter to respondent No. 1 on 18-8-98 informing them to have resumed duties on 11-8-98 but they were employed only on 17-12-98. Without going into the rival contentions in respect of these two employees, in view of the statement made by the learned Senior Counsel that the said two employees viz. Nirmala Masurkar and Sushila Shinde shall be paid their wages with effect from 18-8-98, I am satisfied that no further discussion is required in respect of these two employees. As regards the third employee Lalita Gurav specified in Clause (e) there is no dispute that she did not apply for re-employment having married and settled at Ratnagiri and she did not claim to be re-employed.

11. For all these reasons, the contempt petition is disposed of by the following order :-

i) The 26 employees who presented themselves and reported for joining duty on 15-10-98 whose names appeared in the list at page 43 of the compilation of documents submitted by petitioner, countersigned by K.A. Mujawar, Government Labour Officer shall be deemed to have been re-employed by the concerned

employer-respondents with effect from 15-10-98 and the said 26 employees shall be paid accordingly, arrears of the wages for the period from 15-10-98 till 16-12-98 within four weeks from today. The statement of the learned Senior Counsel appearing for employers that the said employees have been paid\*their wages from 17-12-98 till the end of season is accepted.

ii) The two employees viz. Nirmala Masurkar and Sushila Shinde whose names appear in Clause (e) of operative order of 5-5-98 shall be deemed to have been re-employed with effect from 18-8-98 and shall be paid the arrears of wages from 18-8-98 to 16-12-98 within four weeks from today. The statement of the learned Senior Counsel appearing for employers that they have been paid their wages from 17-12-98 till the end of season is accepted.

iii) The notices of contempt issued to respondent Nos. 1 to 3 shall be treated discharged upon compliance of the aforesaid directions within time. No costs.