

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3117 OF 2008

Eagle Flask Industries Ltd.

..Petitioner.

Vs.

Bharatiya Kamgar Sena

..Respondent.

....

Mr. D.J. Bhanage for the Petitioner.

Mr. M.D. Nagle for the Respondent.

.....

CORAM: DR. D.Y. CHANDRACHUD, J.

18th June, 2008.

P.C. :

1. The Industrial Court by its impugned order dated 5th March, 2008 has allowed a complaint under item 9 of Schedule IV to the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The challenge is by the employer.

2. A settlement was entered into on 28th September, 2004 under Section 2(P) of the Industrial Disputes Act, 1947 between the Petitioner and two unions. The Respondent union did not sign the settlement. The settlement was implemented on and after 8th November, 2004 and in paragraph 14 of the Petition it has been

stated that an amount of **Rs.1.72** Crores approximately was disbursed. The plant and machinery was sold in pursuance of the settlement, the Court is informed, on 26th May, 2005. The Respondent instituted a complaint on 2nd September, 2005. A perusal of the averments contained in paragraph 10 of the complaint would show that the claim which is preferred before the Industrial Court was on the basis that the licence under the Factories Act was not renewed after 31st December, 2004. The claim before the Industrial Court was on the basis of compensation payable until 31st December, 2004. During the course of his cross-examination the witness who deposed on behalf of the union admitted that the settlement had been implemented in respect of those employees who had accepted the settlement and that he had calculated the amount as claimed "on the imagination that the factory is closed on 31.12.2004". The Industrial Court has in paragraph 13 of the judgment observed that the union could not establish that work was carried on till 31st December, 2004 but nonetheless allowed the claim taking the cut off date as April 2004. It is undisputed before the Court that the cut off date mentioned in the settlement dated 28th September, 2004 is 31st March, 2003. This date has been accepted by the large body of workmen who

have received the benefit of the settlement dated 28th September, 2004. Almost 867 out of 965 employees have accepted the benefit of the settlement dated 28th September, 2004. In these circumstances, the issues which have been raised in the Petition would warrant consideration for final hearing and the grant of interim relief until the Petition is heard and disposed of. For these reasons, rule is issued. There shall be an interim order in terms of prayer clause B. This interim order shall, however, not preclude those of the remaining workmen from taking the benefit of the settlement dated 28th September, 2004 on the same terms and conditions as applicable to those workmen who have accepted the settlement.

Rule made returnable on 22nd September, 2008.
