

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1795 OF 1994.

DISTRICT: THANE.

XLO (India) Limited,

..Petitioner.

Versus

1. Association of Engineering
Workers & Ors.

..Respondents.

Mr.P.K.Rele with S.S.Pakale for the petitioner.

Mr.Collin Gonsalves for respondents 1 and 2.

Mr.P.Ramswamy with A.S.Tungare for respondent No.3.

CORAM: SHRI S.H.KAPADIA, J.

DATED: 29TH APRIL, 1994.

GRAL ORDER :

Essentially, this writ Petition concerns challenge to the interim Order passed by the Industrial Court dated 2nd November 1993 in Complaint (ULP) No.559 of 1993. The Petition also seeks to challenge Order passed by the same Court dated 29th March 1994 in Revision Application No.15 of 1993 in Complaint (ULP) No.559 of 1993.

2. By the impugned Order dated 2nd November 1993, the Industrial Court, prima facie, came to the conclusion

that the petitioner herein promoted and established XLO Machines & Tools Limited; that although there was an Agreement of transfer dated 20th September 1985 between the petitioner herein on one hand and XLO Machines Tools Limited, Thane Plant on the other hand, there was no conveyance and the result was that Factory premises of XLO Machines Tools Limited continued to remain in the name of the petitioner and they continued to pay Municipal taxes, Electricity bills, telephone bills etc; that prima facie the Settlement dated 25th October 1985 also indicated that XLO (India) Limited was the employer of the workmen. In this connection, the Industrial Court relied upon Clause 6 of the said Settlement dated 25th October 1985. Clause 6 reads as follows :

"6. That the workmen on transfer to XLO Machine Tools Limited, Thane Plant, shall have no claim against XLO India Limited, Thane Plant in respect of their past services with the said Company by way of compensation, terminal benefits or otherwise and all the liabilities in this respect shall be borne by XLO Machine Tools Ltd. If however XLO Machine Tools Limited disowns any legal liability due to any reason in future, XLO India Limited shall be liable for any claim of the worker referred in this Settlement."

The Industrial Court, prima facie, placed reliance on the last sentence of the Clause which states that if XLO Machine Tools Limited, Thane Plant, disowns any legal liability due to any reason in future, XLO(India) Limited i.e. the petitioners herein, shall be liable for any claim of the workers referred to in the Settlement dated 25th October 1985. The Industrial Court, therefore, directed the petitioners herein to provide work to the concerned employees or in default pay to them their regular wages. This Order is challenged by XLO (India) Limited.

3. Mr. Relu, the learned Advocate appearing on behalf of the petitioners contended that in view of Clause 6 of the above Settlement dated 25th October 1985, and in view of the fact that a separate Company viz. XLO Machine Tools Limited, Thane Plant, came to be established in 1985 which was distinct and also in view of the fact that subsequent Settlement ~~at~~ that took place after 25th October 1985 between the workmen and XLO Machine Tools Limited, ~~at~~ Thane Plant was clearly indicative of the fact that XLO Machine Tools Limited had no connection with XLO (India) Limited and, therefore, he submitted that the petitioners were not liable to provide work to the concerned workmen or in default to pay them their regular wages.

4. Mr. Gonsalves, on the other hand pointed out that the Agreement dated 20th September 1985 was not followed by a Conveyance. The property stands in the name, even today, of XLO (India) Limited. He further submitted that XLO (India) Limited was liable vide Clause 6, if XLO Machine Tools Limited, Thane Plant disowned any legal liability due to any reason in future for any claim of the workmen in the Settlement. In the above circumstances, he submitted that the interim Order is correctly passed by the Industrial Court.

6. In the present case, I am concerned with the interim Order. The Industrial Court has given good reasons on prima facie interpretation of Clause 6 of the said Settlement dated 25th October 1985, particularly in the light of the surrounding circumstances viz. that even today, the property continues to remain in the name of XLO (India) Limited. The Industrial Court, prima facie, has also found that in view of Clause 6 and particularly the last sentence of that Clause, XLO (India) Limited had undertaken to discharge legal liability of XLO Machine Tools Limited, Thane Plant, due to any reason in future. It will have to be decided at the final hearing of the Complaint as to whether XLO Machine Tools Limited and XLO (India) Limited is one and the same establishment. Parties

will have to lead evidence before the Industrial Court and prove their respective claims. At this stage, I am only concerned with Interim Order. Prima facie, the view of the Industrial Court is probable. In the above circumstances, there is no reason to interfere with the Order dated 2nd November 1993.

7. In view of my decision that the Order dated 2nd November 1993 is valid, Mr. Rele, the learned counsel appearing for the petitioner seeks to withdraw the present writ Petition with liberty to file a fresh Petition, ^{only} challenging the Order dated 29th March 1994. This is in view of the fact that the said Order dated 29th March 1994 is only partly in his favour and partly against him. This is also in view of the fact that certain consequences will flow with regard to the Order passed by me, upholding the interim Order dated 2nd November 1993. In the above circumstances, ^{only} to the extent of the Order passed on 29th March 1994, liberty is given to XLO (India) Limited to file appropriate writ Petition and seek relief accordingly.

and also against your Order dated 29.3.94.

8. In view of the above, the writ Petition fails to the extent of my upholding the Order of the Industrial Court dated 2nd November 1993. As regards Order dated 29th March 1994, liberty to the petitioner to file appropriate writ Petition, *if any*.

9. Petition rejected. Certified copy expedited.