
(1960) 01 BOM CK 0012

In the Bombay High Court

Case No : Special Civil Application No. 12 of 1960 with Civil Application No. 15 of 1960

Ananta Shripati Bhorade and Others

APPELLANT

Vs

Meher (M.R.) and Others

RESPONDENT

Date of Decision : 06-01-1960

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 115A, 27A, 32, 33

Citation : (1960) 2 LLJ 170

Hon'ble Judges : S.T. Desai, J

Bench : Single Bench

Judgement

S.T. Desai, J.—There is no substance in this petition. The petitioners 176 in number are employees of the Bombay Dyeing and Manufacturing Company Limited, the 5th respondents before us. Respondents 1 & 2 are members of the industrial court. The 3rd respondent is the State of Bombay and the 4th respondent is the Rashtria mill mazdoor sangh, which is a representative union registered as such under the provisions of the Bombay industrial Relations Act, 1946. The 5th respondents, to be referred to by us hereafter as the mills, put up a notice for the information of the employees stating that they had decided to discontinue the working of 1,086 ordinary looms in stages and that as a first stage in that direction, the mills had decided to stop 780 ordinary looms in the specified sections of its weaving department with effect from 3 November, 1959. About that time a large number of employees of the mills moved the labour court at Bombay on 16 October, 1959 for declaring the proposed action of the mills as illegal and for orders directing the mills for not giving effect to the same. A preliminary objection was raised on behalf of the mills challenging the jurisdiction of the court and maintainability of the application. That objection was upheld by the labour court. On 3 November, 1959 the mills stopped the working of 780 ordinary looms in certain sections of the weaving department.

2. According to the petitioners, upon the dismissal of their application by the

labour court they moved the Labour Ministry of the State of Bombay for a reference to the industrial court under the provisions of the Bombay Industrial Relations Act. In the petition they state that they have reasons to believe that it was only because of the efforts made by them that the Government of Bombay made a reference under S. 99 of the Act. That position has been challenged by the respondents and it would appear from the record that there is nothing to show that the reference was made by the State of Bombay in pursuance of any efforts made by the other petitioners. It would appear on the other hand that the reference was made by the State of Bombay at the instance of the 4th respondent, the representative union.

3. After the reference was made by the State of Bombay, it moved the industrial court for orders restraining the 5th respondent from carrying out the proposed action of installation of automatic looms. The application seeking a prohibitory order was fixed for hearing on 20 October, 1959. The mills gave an undertaking to the industrial court to the effect that the 780 looms would not be dismantled pending the disposal of the application and that the status quo would be maintained.

4. On 23 December 1959 the petitioners filed applications in the industrial court, inter alia, contending that the representative union, the 4th respondent, was acting mala fide and in an arbitrary manner and that the union was likely to enter into an illegal agreement with the mills. In those applications the petitioners also prayed that the name of the representative union should be struck off the record of the reference. They also prayed that in any event they should be permitted to file a statement of case, lead evidence and advance arguments in the matter of that reference. The purport of the applications was that the petitioners should be allowed to appear and proceed with the reference, although there was a representative union on the record.

5. On the same date, an application was made to the court stating that a compromise of a number of disputes between the mills and its workmen had been arrived at and that settlement should be recorded by the industrial court. Two orders were passed by the industrial court on the same date; one in the applications filed by the petitioners, whereby they had prayed that they should be allowed to proceed with the reference and that the name of the representative union should be struck off the record; and the other in the application stating that the disputes between the mills and the workmen represented by their union had been settled. The applications made by the petitioners were dismissed and the order stated :-

"As the representative union has appeared in this proceeding as the representative of employees, the individual employees cannot be added as parties nor can they be heard (see decision of the Full Bench of this Court in *Rashtriya Mills Mazdoor Sangh, Bombay v. Millowners' Association, Bombay*, and others 1954 I C.R. 94.)"

6. The order passed by the industrial court on the other application may be set out in extenso :

"In this reference the company and the Rashtriya mill mazdoor sangh, the representative union, have come to an agreement (annexed hereto) and there to an endorsement on the agreement that the State of Bombay has no objection to the settlement.

2. In the agreement the parties have requested the court to pass an order in terms of the settlement in this reference. But when we pointed out to the parties the difficulty of passing an order in terms of the settlement when the reference by Government was for a decision that there was an illegal closure, the parties stated that an order need not be passed in terms of the agreement and that no orders may be passed on the reference in view of the agreement, and that the reference may be treated as disposed of.

3. In view of the foregoing, no orders are necessary on this reference. The reference stands disposed of. The company is relieved of the undertaking given by it in the pendency of this proceeding."

7. The reference related to "an illegal closure." The compromise, a copy of which is annexed to the order, shows that a number of disputes between the mills and the workmen were settled as part of the compromise and some of those matters did not fall within the purview of the reference made by the Government. We are informed by learned counsel for the mills that it was because of this difficulty that the industrial court was unable to pass any order in terms of the settlement in the reference. That position has not been challenged before us by learned counsel on the other side.

8. The whole argument of Mr. Nargolkar, learned counsel for the petitioner, is that the industrial court was in error when it refused to allow the petitioners to be added as parties to the reference and when it refused to hear them on the ground that the representative union was appearing in the proceeding as the representative of the employees. The argument urged before us lies in a narrow compass and is sought to be founded on an interpretation of S. 27A read with Ss. 32 and 33 of the Act. Before we turn to examine the argument, it will be convenient to set out the three sections :-

27A."Save as provided in Ss. 32 and 33, no employee shall be allowed to appear or act in any proceeding under this Act except through the representative of employees."

32."A conciliator, a board, an arbitrator, a wage board, a labour court and the industrial court may, if he or it considers it expedient for the ends of justice, permit an individual, whether an employee or not, to appear in any proceeding before him or it;

Provided that no such individual shall be permitted to appear in any proceedings in which a representative union has appeared as the representative of

employees."

33."Notwithstanding anything contained in any other provision of this Act, an employee or a representative union shall be entitled to appear through any person,

(a) in all proceedings before the industrial court;

(aa) in all proceedings before a wage board;

(b) in proceedings before a labour court for deciding whether a strike, lock-out, closure or stoppage or change or an order passed by an employer under the standing orders is illegal or for deciding any industrial dispute referred to it under S. 72;

(c) in such other proceedings as the industrial court may, on application made in that behalf, permit :-

Provided that a legal practitioner shall not be permitted under Clause (c) to appear in any proceeding under this Act except before a labour court as provided in S. 83A or the industrial court :

Provided further that no employee shall be entitled to appear through any person in any proceeding under this Act in which a representative union has appeared as the representative of employees."

9. It is urged that what has to be considered in interpreting these sections is to give full effect to the provisions of Ss. 32 and 33 and then turn to S. 27A for the ascertainment of its true meaning. We have read the sections in the order in which Mr. Nargolkar has asked us to read them. Even on reading the sections in the order suggested by learned counsel, we do not think it is possible to accede to the argument which we shall immediately state. The argument is that even when employees are represented by a representative union, it is open to them to appear and be heard in any proceedings under the Act.

10. Section 27A which deals with "appearance on behalf of the employees" in terms lays down that no employee can be allowed to appear or act in any proceeding under the Act except through the representative of employees. Two savings to that provision are engrafted and they are to be found in the provisions of Ss. 32 and 33, which we shall presently examine. Those savings apart, the rule of general application is that an employee cannot claim the right to appear and act in any proceeding except through the representative of employees. Of course, if an employee is individually concerned in any dispute or reference the position would be different and that situation is amply provided for in the Act itself. As to who are representatives of employees is laid down in S. 30, the material part of which is as under :-

"The following shall be entitled to appear or act in the order of preference specified as the representative of employees in an industry in any local area :-

- (1) a representative union for such industry;
- (ii) a qualified or primary union of which the majority of employees directly affected by the change concerned are members;
- (iii) any qualified or primary union in respect of such industry authorized in the prescribed manner in that behalf by the employees concerned;
- (iv) the labour officer if authorized by the employees concerned;
- (v) the persons elected by the employees in accordance with the provisions of S. 28 or where the proviso to Sub-section (1) thereof applies, the employees themselves;
- (vi) the labour officer;

* * *."

11. Sections 27A and 30 must be read together and on reading them together, it is plain that as a general rule it is not open to individual employees to appear or act in any proceeding, but they must do so through the representative of the employees. The order of preference specified in S. 30 provides for adequate representation for the employees. In the case before us it is clear that the representative union was a party to the reference, which was made by the State of Bombay to the industrial court. The language of S. 27A is in terms express, explicit and mandatory, and if the case falls to be determined under S. 27A read with S. 30, there is no scope for the suggestion that the petitioners were entitled to appear and act before the industrial court. The argument of the learned counsel, however, is that Ss. 32 and 33 contain language which in effect would not override, militate against the operation of S. 27A and the court must give effect to the same.

12. Let us turn to examine the language of those sections. Section 32 deals with persons who may appear in proceedings. It authorizes the tribunal under the Act including the industrial court to permit an individual whether an employee or not to appear in any proceeding before it. This is left to the discretion of the tribunal, but even this discretion is circumscribed by the condition laid down in the proviso and the effect of the proviso is that no such individual can be permitted to appear in any proceedings in which a representative union has appeared as a representative of the employees. In view of the plain language of this section, it is extremely difficult to see how it can be said that there to anything in the section which lends support to the contention urged before us on behalf of the petitioners.

13. Then it is said that in any event S. 33 takes the case of the petitioners outside the operation of S. 27A. Emphasis has been placed on the initial words of the section "notwithstanding anything contained in any other provision of this Act." We agree that effect must be given to the initial words of the section, but we have also said that S. 33 is one of the two exceptions expressly mentioned in

S. 27A to the operation of that section. These words "notwithstanding anything contained in any other provision of this Act" if given the fullest effect, as urged before us by Mr. Nargolkar, would mean that notwithstanding the general rule laid down in S. 27A, an employee shall be entitled to appear through any person. The argument has proceeded that if an employee is entitled to appear through any person, there is no reason why he would not be entitled to appear in person. Then it is said that the second proviso to the section does not in any manner affect the position of the petitioners. In our opinion, the argument is ill-founded. Section 33 carves out an exception to the broad general rule, which places an embargo upon the rights of individual employees to appear in proceedings under the Act. It is of the nature of a saving or an exception. However liberally interpreted, that saving or exception cannot be read to mean that even when there is a representative union appearing as representative of the employees, the employees themselves can go before the tribunal and say that they are entitled to appear in the proceedings on their own behalf. But it has been said that this is a basic right of every workman. We agree as a general proposition that in an industrial dispute it is the right of the employees to appear before a tribunal. But having regard, however, to the very nature of industrial relations, the legislature has thought it fit to circumscribe that right by laying down that individual employees cannot be allowed to appear and act in proceedings when there is a representative union capable of representing them and in fact represents them. To accede to the argument of Mr. Nargolkar would, in our judgment require us to go counter to the whole scheme of the Act and the relevant provisions of the Act and particularly Ss. 27A, 32 and 33.

14. Our attention has been drawn by Mr. Nargolkar to two decisions of this court - *Bidi Leaves and Tobacco Merchants' Association Vs. State of Bombay*, and; *N. M. Naik v. Colaba Land Mills, Bombay 1960 I L.L.J. 48*. With respect we would have examined those decisions but they have little bearing on the question before us and it is unnecessary to burden this judgment with an examination of those cases. There is nothing in those cases, which in our opinion can lend any support to the argument urged before us.

15. Another argument urged before us by Mr. Nargolkar is that the industrial court would have made an order or given an award if it had been satisfied that the compromise was not in contravention of any of the provisions of the Act. The suggestion seems to be that the industrial court found a difficulty and regarded the settlement as something which was not legal. We asked learned counsel what that difficulty could be. He was not able to give us any answer to that. All that was said in support of the argument was to refer us to S. 115A of the Act. We have already mentioned in the earlier part of our judgment that the compromise arrived at by the mills with the representative union of the employees embraces disputes which were not the subject-matter of the reference and obviously in respect of the same no award could be made by the industrial court and no order or decision could be given by it. Therefore, the present contention must also be negatived.

16. In the petition the petitioners have alleged that the industrial court had abandoned its own statutory function at the instance of the respondents 4 and 5, namely, the representative union and the mills and connivance of the third respondent, that is the state of Bombay. The petitioners have also stated that all the respondents had acted objectively speaking in a mala fide manner and deprived the main party, namely, the employees including the petitioners, of the benefit of the declaration of the industrial court to which they were entitled in accordance with law. They have also stated that the state government and the industrial court had unfortunately and probably unwittingly become a party to mala fide intentions of the respondents 4 and 5. The state of Bombay, which is represented before us by counsel Mr. Sorabji, asked for time to put in an affidavit for the purpose of controverting those allegations. Mr. Nargolkar appearing for the petitioners stated before us that he did not propose to urge before us any argument founded on any mala fides or connivance. In view of that, we did not adjourn the hearing of the matter and allowed the matter to proceed without an affidavit being put in on behalf of the third respondent. The hearing has proceeded on the footing that those allegations have been controverted on behalf of the third respondent.

17. In the result, the petition fails and will be dismissed with costs. The interim injunction will be dissolved.