
(2014) 01 BOM CK 0056

In the Bombay High Court

Case No : Writ Petition No. 4464 of 2013

Arun Shrikrishna Katole

APPELLANT

Vs

Divisional Controller, Maharashtra State Road Transport
Corporation and Others

RESPONDENT

Date of Decision : 17-01-2014

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 44

Citation : (2014) 141 FLR 416 : (2014) 3 LLJ 215

Hon'ble Judges : A.B. Chaudhari, J

Bench : Single Bench

**Advocate : P.D. Meghe, Advocate for the Appellant; V.G. Wankhede, Advocate
for the Respondent**

Final Decision : Allowed

Judgement

A.B. Chaudhari, J.—Rule. Rule is made returnable forthwith. Learned Adv. Mr. V.G. Wankhede waives service on behalf of respondent Nos. 1 and 2. By consent, this Writ Petition is taken up for final hearing.

By the present Writ Petition, there is a challenge to the common Judgment and Order dated 11th June, 2013 passed by the Industrial Court, Maharashtra, (Akola Bench), Akola, in Revision ULP Nos. 38 and 39 both of 2011.

In support of the Writ Petition, learned Adv. Mr. Meghe for the petitioner argued that the learned Member of the Industrial Court committed a serious error of law in interfering with the order passed by the Judge, Labour Court, Akola, deciding the preliminary issue as to whether the enquiry was fair and proper in a pending Complaint ULP No. 105 of 1995 filed by the petitioner. Mr. Meghe submitted that the decision in the case of The Cooper Engineering Limited Vs. Shri P.P. Mundhe, , by a three-Judge Bench of the Supreme Court and in particular para. 22 thereof has not been followed by the Industrial Court and the said decision of the Supreme Court has been repeatedly followed by the Apex Court as well as by

various High Courts and hence the Industrial Court committed an error, which is required to be corrected. The Industrial Court should not have interfered with the trial of Complaint ULP No. 105 of 1995 which is as it is pending since 1995 and, therefore, the decision on merits, one way or the other, ought to have been allowed to be rendered. Mr. Meghe then pointed out that as a matter of fact, a Single Judge of this Court had set aside, in the earlier round of litigation, the Judgments and Orders of the Industrial Court and Labour Court with a view to give opportunity to the employer-MSRTC to produce such evidence as was advised and, therefore, that was the one more reason why apart from what is observed in para. 22 of the Judgment in case of Cooper Engineering Ltd., the Industrial Court could not have interfered with the order made by the Labour Court.

2. Per contra, learned Adv. Mr. Wankhede supported the impugned order passed by the Industrial Court in the Revision, and argued that if the order on preliminary issues is itself not sustainable, the jurisdiction of the Revisional Court is not barred. To support his contention, he relied on the Judgment of Single Judge of this Court in the case of Mahindra and Mahindra Vs. Suryabahn Avhad, .

3. Heard the learned Counsel for the rival parties. Perused the impugned judgment and order. I have also perused the order deciding the preliminary issue passed by the Labour Court. The Labour Court has given reasons for holding that the enquiry was not fair and proper. It would be appropriate to quote para. 9 from the Labour Court's order:--

9. On the basis of this evidence and xerox copies of enquiry proceeding on record, the Advocate for the complainant submitted that the charges leveled against the complainant is of serious nature. The charge is of preparing false documents, destroying the documents, not keeping the documents or record required to be kept by the conductor and misappropriation of the amount during the period 1st February, 1993 to 18.5.1994, then it is the duty of the respondents to supply all relevant documents to the complainant for defending his case. He submitted that the complainant by application dated 10.10.1994 requested the respondents to give the documents between 1st February, 1993 to 18.5.1994 on which basis the preliminary investigation was carried out. He also contended said documents are very essential for his perusal and inspection before enquiry is proceeded. In spite of the application the respondents have not given all the documents and on the contrary the respondents in their say before the Enquiry Officer contended that as there is erasure or overwriting, it not required to give documents to the complainant and they will give the inspection of the documents in the enquiry. He submitted that in spite of this say by the respondents that they will give the inspection of the documents in the enquiry, he made submissions at bar that inspection of the documents were not given to the complainant and that he made his submissions on the limited documents given to him which is reflected in enquiry report on page Nos. 10 and 25. He further submitted that admittedly from the enquiry report, it shows that

complainant has given application on 10.10.1994 for documents, but said application is not in enquiry proceeding produced by the respondents. It shows all the documents were not given to the complainant while defending enquiry and it is against the principles of natural justice. Supply of documents and giving inspection of documents to the complainant is valuable right of the complainant. Unless all the documents are given to him, he cannot defend fairly. Therefore, this is a ground for holding that enquiry is not fair and proper.

Apart from other reasons given in the subsequent paragraphs, the Industrial Court then reversed the order of the Labour Court answering the preliminary issue and hence the petition has been filed.

4. The question before this Court is whether the Industrial Court should have entertained the Revision Applications in the light of para. 22 of the landmark judgment in the case of Cooper Engineering? Para. 22 of the said Judgment reads thus:--

22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced, it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.

5. It is clear from the reading of the Labour Court order that sound reasons have been furnished by the Labour Court for answering the preliminary issue in favour of the workman and permission to lead the evidence before the Court as claimed by the employer has been granted. This is, therefore, a case where the employer itself asked for a permission to lead evidence in case preliminary issue is decided against the employer. In the light of aforesaid para. 22 of the Supreme Court Judgment the employer was expected to wait for the final decision in the complaint on merits, instead of challenging the same in Revision u/s 44 of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act. That was all the more so because this Court had remanded the matter to the Labour Court in order to give an opportunity to MSRTC to produce documents in support of the charges leveled and allegedly proved against the employee. Apart from the facts in this case, the pronouncement of law in para. 22 of the Supreme

Court judgment is loud and clear and it is unfortunate that the Industrial Court has not referred to the said decision, nor the parties before Industrial Court, but then it was expected of the Industrial Court to know the celebrated decision in the case of Cooper Engineering. There was one more factor, namely that the complaint (ULP) is pending before Labour Court from 1995, and, therefore, that was another reason the Industrial Court should not have entertained a revision against an order on the preliminary issue.

It is, thus, clear that that the Industrial Court committed a serious error of law in not following the para. 22 of the Supreme Court Judgment in the aforesaid decision. That being so, the following order would subserve the interest of justice:--

ORDER

(a) Writ Petition No. 4464 of 2013 is allowed.

(b) The impugned common Judgment and Order dated 11th June, 2013 gassed by the Revisional Court, namely Industrial Court, Maharashtra, Akola, in Revision ULP Nos. 38 and 39 both of 2011 is set aside.

(c) The Labour Court is directed to decide the complaint within a period of four months from today, since it relates to the year 1995. The Maharashtra State Road Transport Corporation shall produce its evidence as early as possible.

(d) Parties to appear before the Labour Court on 27th January, 2014, on which date the ULP Complaint is already fixed and exchange the list of witnesses or the evidences, as the case may be. The Labour Court shall not adjourn the proceedings unnecessarily.

In the circumstances of the case, there shall be no order as to costs.