

(1991) 08 BOM CK 0018

In the Bombay High Court

Case No : Writ Petition No's. 1171 of 1987 and 905 of 1988

Arun Wankhede

APPELLANT

Vs

Executive Engineer and Another

RESPONDENT

Date of Decision : 29-08-1991

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 28, 3, 42, 44, 44A
Industrial Disputes Act, 1947 — Section 2, 25
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 2, 25F, 25G, 25J, 28

Citation : (1991) 93 BOMLR 600

Hon'ble Judges : A.A. Desai, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.A. Desai, J.—The question of general importance as raised in these petitions, is as to whether the non-compliance of provisions of law could be a failure on the part of an employer to implement an agreement, so as to constitute an unfair labour practice as envisaged by Item 9, Schedule IV (for brevity "the Entry") of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act of 1971")?

The complaint of petitioners u/s 28 of the Act of 1971 is that their termination as effected by the employer being in violation of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act of 1947"), is an unfair labour practice, under the Entry. The Industrial Court, however, rejected the complaint so made.

2. Mr. S.D. Thakur, the learned Counsel appearing for the petitioner employee, pointed out that failure on the part of employer to implement, Award, Settlement or Agreement is an unfair labour practice as enumerated under the Entry. The Act of 1971 does not, however, defined the term "agreement". Considering the scheme and object of the Act of 1971, the term needs generous and liberal

interpretation. The contract of employment is necessarily an agreement between employer and employee. Such an agreement is regulated according to the provisions of law. Section 25-F and Section 25-G of the Act of 1947 are such provisions. The Standing Order though bears the status of law, is held to be a contract of employment. As such, there could not be any impediment to treat the relevant provisions of law from being the part of agreement as envisaged by the Entry. Section 25-J of the Act of 1947, according to Mr. Thakur by necessary implication, incorporates the provisions under Sections 25F and 25G in the agreement.

3. Section 25-J appears in Chapter VA of the Act of 1947, which mainly deals with lay-off and retrenchment. Provisions dealing with the same subject matter could find place in the Standing Order formulated under Industrial Standing Orders, 1946. Section 25J has therefore been incorporated with a twin object. It provides overriding effect to the provisions in Chapter VI, over those provisions in the Standing Order so far as they are inconsistent. It, however, further provides a protection to those provisions under the Standing Order which are more beneficial to the employees than those provided under Chapter VA. Section 25-J has a limited purpose. It does not intend to incorporate the provisions of Chapter VA either directly or even by necessary implication as a term of contract of employment.

4. The learned Counsel placed reliance on a decision *S.G. Chemicals and Dyes Trading Employees' Union v. S.G. Chemicals and Dyes Trading Limited* 1986 1 L.L.J. 490. Pointing out the observations in para 23, it is contended that non-compliance of Section 25-0 while closing down the Division is held to be a breach of Settlement and, therefore, amounts to unfair labour practice.

Relevant observations are as thus:

In the present case, there was a Settlement arrived at between the Company and the Union under, which certain wages were to be paid by the Company to its workmen. The Company failed to pay such wages from 18th September 1984, to the eighty-four workmen whose services were terminated on the ground that it had closed down its Churchgate Division. As already held, the closing down of the Division was illegal as it was in contravention of the provisions of 25-0 of the Industrial Disputes Act. Under Sub-section (6) of Section 25, where no application for permission under Sub-section (1) of Section 25 is made, the closure of the undertaking is to be deemed to be illegal from the date of the closure and the workmen are to be entitled to all the benefits under any law for the time in force, as if the undertaking had not been closed down. The eighty-four workmen were, therefore, in law entitled to receive from 18th September 1984, onwards their salary and all other benefits payable to them under the Settlement dated 1st February 1979. These not having been paid to them, there was a failure on the part of the Company to implement the said Settlement and consequently the Company was guilty of the unfair labour practice specified in Item 9 of Schedule IV to the Maharashtra Act and the Union was justified in filing

the complaint u/s 28 of the Maharashtra Act complaining of such unfair labour practice.

(emphasis is supplied, by me.)

It is thus amply clear that closing down of a Churchgate Division in violation of Section 25-0 is held to be illegal. Closing down of Division, however, was not held to be an unfair labour practice, as tried to suggest. Nonpayment of salary by the employer in accordance with the settlement dated 1.2.1979 alone is held to be an unfair labour practice under the Act of 1971.

Mr. Thakur then invited my attention to a decision P.S. Kubal v. Ravindra Hindustan Platinum (Pvt.) Limited 1990 (1) L.L.N. 224. This Court relying on a decision cited supra, made an observation in para 10:

The Supreme Court found that the division had been closed in contravention of the provisions of Section 25-0. There was, thus, it held a failure on the part of the employer to implement the settlement and the employer was guilty of the unfair labour practice specified in Item 9 of Schedule IV.

What is extracted by the High Court is not in conformity with the observation of the Supreme Court as reproduced. The authority therefore does not assist the learned Counsel.

5. Mr. Thakur took me through a decision (unreported) rendered by this Court in Miscellaneous Petition No. 1 of 1975 with Special Civil Application No. 9 of 1976, Premier Automobiles Ltd. Bombay v. Engineering Mazdoor Sabha Bombay. The Division Bench has held that the term "agreement" as seen in the Entry has been used in a broad sense. The Standing Order, therefore, cannot be excluded from the term "agreement" merely because part thereof has the imprint of statutory completion.

Mr. Thakur therefore canvassed the term "agreement" unlike settlement and award being without any definition, operates as a residuary clause so as to cover whatever is left out. The term, therefore, comprehends within its ambit the provisions of law.

6. I find extremely difficult to accede. Permitting such interpretation, would be stretching the term beyond its context. No doubt, the Division Bench in a decision of Premier Automobiles Ltd. (cited supra) has observed, the term "agreement" has been used in a broad sense. However, that broad sense can be assigned only in the context in which the term has been engaged by the Legislature.

The Division Bench considered the prominent feature, such as participation, consent and volition, of parties and held that the Standing Order is covered by the term "agreement" though it has to undergo a statutory ritual. However, these are also common features of "award", and "settlement". What is significant and pre-dominant in the Award, Settlement, Agreement as well in Standing

Order as apparent, is the participation of the parties.

Law is a Solemn Will of the Legislature. It operates for or against by its own force. In a legislative process of the Enactment or Amendment, unlike Award, Settlement or Agreement, there can never be a participation, consent or volition of the persons concerned. As such, the provisions of law cannot be analogous to the Standing Order so as to claim inclusion within the term "agreement". People or parties owe their obedience to the Law, being a command of the Sovereign.

7. According to me, it would be more appropriate to examine the design and intention of the Legislature, while deploying the term "agreement" in the Entry. The Act of 1971, by virtue of Sub-section (3) of Section 2 has been made applicable to those Industries which are covered by the Bombay Industrial Relations Act, 1946 (hereinafter referred to as "the Act of 1946") and those which fall within the definition of Section 2(j) of the Act of 1947, for which the State Government is the Appropriate Government. These Acts of 1946 and of 1947 regulate the industrial dispute. The Act of 1971 came into being with a special mission, inter alia to define and provide for prevention of certain unfair labour practices. Sub-section (18) of Section 3 provides that words and expression used and not defined under the Act of 1971 shall have the meaning as assigned firstly by the Act of 1946 and then by the Act of 1947, as regards the industries to which it is applicable. Section 2(b) of the Act of 1947 and Section 3(c) of the Act of 1946 define the term "award" whereas Section 2(p) of the Act of 1947 and Section 3(35) of the Act of 1946 define the term "settlement".

8. Section 2(p) of the Act of 1947 which defines "settlement", however, refers to a term "agreement" as one arrived at during the course of conciliation. It thus conveys adjustment between the parties as regards the Industrial Dispute before the conciliator appointed under the Act of 1947.

Chapter VIII of the Act of 1946 deals with the changes in respect of the matters as enumerated in Schedules II and III appended therewith. Sub-sections (1) and (2) of Section 42 require a notice to be given either by employer or employee in respect of the change required by them, Sub-section (4) thereafter provides for making application for adjudication to the Labour Court or the Industrial Court. However, proviso thereto prevents making of such application agreement is arrived at between the parties. Section 44 thus contemplates agreement between the parties. Section 44A and Section 45 prescribe procedure dealing with such agreements.

The term agreement as engaged in the Entry has definite reference to these agreements arrived at between the parties, in relation to a change or Industrial Dispute under the Acts of 1946 and 1947. These Agreements are binding on the parties viz., Employer and Employee. Failure to implement such agreement would therefore be an unfair labour practice under the Entry.

9. The scheme of the Acts of 1946 and 1947 makes crystal clear that the

agreement, "settlement" or "award" as enumerated under the Entry are in respect of the Industrial disputes or change as specified in the Schedule appended therewith. These Acts also provide for the machinery or remedy in case of any Industrial dispute or an illegal change.

The scheme of Act of 1971 does not undertake a responsibility to re-enforce or implement the provisions of the Act of 1946 or the Act of 1947 or any other law.

10. Moreover, the Schedules as appended to the Act of 1971 have very distinctly described various unfair labour practices. On perusal, they signify, with entire certainty, the in tendencies and evil design on the part of employer and employee. Unfair labour practices as enumerated unequivocally convey definite element of an ulterior motive. If a termination is unlawful-may be due to violation of any of the provisions and is also coupled with any specific characteristics as enumerated, under Item I to Schedule IV, can be assailed by invoking Section 28. However, an illegal termination, simpliciter which is not a result of a peculiar conduct on the part of employer as described could not be assailed under the Act of 1971. Noncompliance of the provision of law by itself does not assume the characteristic of the unfair labour practice.

Termination in violation of the provision of law cannot be covered under the Entry.

11. My attention has also been invited to the Report of the Committee on the unfair labour practices. This Committee was constituted as per the Government Resolution dated 14th February 1968 to define certain activities on the part of employer and employee for being treated as unfair labour practices. The Committee in July 1969 has submitted its report to the Government. They have recommended various activities which could be treated as unfair labour practices. The list thereof is in appendix 7. Item C prescribes the broad category as "Implementation of Labour Laws, Agreements, Settlements and Awards". The Committee laid sufficient emphasis on failure to implement or to circumvent or delay in implementation of the Labour Laws to be considered as an activity to constitute unfair labour practice. The Government, however, while enacting the Act of 1971, has maintained only as provided under the Entry "failure to implement, award, agreement and settlement". The Legislature has specifically omitted even after recommendation, failure or omission or violation of the provisions of labour laws, from being an unfair labour practice under the Entry. As such, the intention of Legislature is explicit and definite.

The Act of 1971, it is pertinent to bear, provides punishment against a person indulging in unfair labour practices and does not desist despite direction. The Act being a semi-penal, the term as used under the Act needs a very strict interpretation. In view of the reasonings, the provisions of law which have a bearing on the terms of employment do not form part of the agreement, under the Entry. Parties have not agitated on the merit of termination.

In the result, the petitions are dismissed. However, no order as to costs.