

(1995) 03 BOM CK 0008

In the Bombay High Court

Case No : Writ Petition No. 4084 of 1989

Associate Research Director, Regional Fruit Research Station
and Another

APPELLANT

Vs

President, Sindhudurg Shramik Sangh and others

RESPONDENT

Date of Decision : 24-03-1995

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 21

Citation : (1997) 3 LLJ 734

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

**Advocate : Vineet B. Naik, for the Appellant; S.M. Dhadekar, R.S. Doni and Addl.
G.P., for the Respondent**

Judgement

1. This writ petition under Article 227 of the Constitution of India impugns an order dated June 13, 1989, made in Complaint (ULP) No. 127 of 1987 under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act").

2. The First Petitioner is the Director of Regional Fruit Research Station. Konkan Krishi Vidyapeeth, an University constituted under the Maharashtra Agricultural Universities Act. The Second Petitioner is the Registrar of the said Vidyapeeth. The First Respondent is an unrecognised Union which claims to represent some of the workmen employed by the Petitioners.

3. The First Respondent filed a complaint under Items 6 and 10 of Schedule IV of the Act alleging that a large number, about 90, daily rated Mazdoors working in the establishment of the Petitioners were not made permanent in service although they had been working for years together as daily rated Mazdoors. It was alleged in the complaint that the concerned workmen were continued as daily rated workers, for years together, with the object of depriving them of the benefits and status of permanency. The Petitioners opposed the complaint firstly

on the preliminary ground that the First Respondent Union, not being a recognised Union, was not entitled to maintain a complaint of unfair labour practice invoking Items 6 and 10 of Schedule IV of the Act. They also contended on merits that the concerned workmen were not in continuous employment and that they were called as and when work was available to them, as the Petitioners had their own establishment of permanent employees for carrying out the work. The Industrial Court, Kolhapur, which tried the complaint only on the basis of the documents produced by the parties, accepted as correct the information as to the number of days of work put in by each of the concerned workmen, as culled out from the Muster, which was placed on record by the Petitioners. The Industrial Court was of the view that some of the workmen had worked between 300 to 365 days for several years, while some had worked for more than 240 days some time in the past, but had hardly worked for a few years, immediately prior to the complaint. Considering the large number of days on which some of the persons had worked, the Industrial Court negatived that the work was seasonal in character and took the view that the work was perennial in nature. The Industrial Court accepted the case of the First Respondent that there was an unfair labour practice within Item 6 of Schedule IV of the Act and directed that the workmen be confirmed in service in the graded manner as indicated in its operative order. Being aggrieved, the Petitioners are before this Court by the present writ petition.

4. Ms. Dandekar, learned Advocate appearing for the Petitioners, urged that the complaint itself was not maintainable and that the preliminary objection as to the maintainability of the complaint has been erroneously over-ruled by the Industrial Court by placing reliance on the judgment of this Court in *Petroleum Employees' Union and Others v. Bharat Petroleum Corporation Limited and Another*. 1983 Maharashtra Law Journal 618 which now stands impliedly over-ruled by the observations made in the recent judgment of the Supreme Court in *Shramik Uttarsh Sabha Vs. Raymond Woolen Mills Ltd. and others*, . This contention appears to be correct and needs to be upheld.

5. Section 21 of the Act is in two parts. Sub-section (1), (which is the only section relevant for our purpose) deals with a situation covered by the Central Act, namely, the Industrial Disputes Act. The main body of sub-section (1) of Section 21 provides that no employee in an undertaking to which the provisions of the Industrial Disputes Act apply "shall be allowed to appear or act or be represented in any proceeding relating to unfair labour practices specified in Items 2 and 6 of Schedule IV of the Act except through the recognised Union". Then follows a proviso which provides that, "where there is no recognised Union to appear, the employee may himself appear or act in any proceeding relating to any such unfair labour practices". The net effect of the sub-section (1) of Section 21 appears to be that, if there is no recognised Union in an Undertaking, then, with regard to a complaint invoking Item 6 of Schedule IV of the Act, the individual employee can himself appear in the proceeding before the Court. A contrary view was expressed by learned Single Judge of this Court (Bharucha J.,

as His Lordship then was,) in Petroleum Employees" Union case (supra), who took the view that the correct interpretation to be placed in Section 21 of the Act was that where there is a recognised union, only that union could be allowed to appear, act or represent affected employees in proceedings relating to unfair labour practices specified in items 2 to 6 of Schedule IV of the Act. Then the learned Judge proceeded to hold :

"Where, however, there is no recognised union, an employee may himself appear or act in any proceeding relating to such unfair labour practice. This does not mean that unrecognised union cannot act or appear in a proceeding relating to such unfair labour practice. It can represent an employee or the employee may appear himself if he so chooses."

The latter view appears to be over-ruled by the observations made by the Supreme Court in Shramik Uttarsh Sabha case (supra). (Incidentally, the Judgment of the Supreme Court is also by the same learned Judge and it does not appear from the judgment that the judgment of this Court was cited before or considered by the Supreme Court).

6. In Shramik Uttarsh Sabha case (supra) the Supreme Court was concerned with an Undertaking covered under the provisions of the Bombay Industrial Relations Act. While considering the General Scheme of Section 21 of the Act, the Supreme Court has made certain obiter observations which, in my view, run counter to the law laid down in Petroleum Employees" Union case (supra). The relevant observations in paragraph 14 of the judgment in Shramik Uttarsh Sabha case (supra) are.

"Section 21 of the M.R.T.U. and P.U.L.P. Act, upon which emphasis was laid on behalf of the appellants, states that no employee in an undertaking to which the provisions of the Industrial Disputes Act apply shall be allowed to appear or act or be allowed to be represented in any proceeding relating to the unfair labour practices specified in Items 2 and 6 of Schedule IV except through the recognised union. It is important to note that the reference is to employees in an undertaking to which the Industrial Disputes Act applies and not to employees in an undertaking to which the B.I.R. Act applies. Apart therefrom, the Section permits an employee, not an union other than the recognised union, to so appear. The provisions of Section 21 do not, therefore, lead to the conclusion that an union other than a representative union can appear in proceedings relating to all unfair labour practices other than those specified in items 2 and 6 of Schedule IV."

7. In my view, because of the above observations of the Supreme Court in Shramik Uttarsh Sabha (supra), the judgment in Petroleum Employees" Union (supra) must be held to be over-ruled. Since the Industrial Court rejected the contention as to the maintainability of the complaint by solely relying on the judgment of this Court in Petroleum Employees" Union case, to that extent, its order is erroneous on the issue of maintainability. If we apply Section 21, as

interpreted by Shramik Uttarsh Sabha, the result would be that the First Respondent, not being a recognised Union, has no locus standi to file the complaint under Item 6 of Schedule IV of the Act. The Complaint was, therefore, not maintainable and ought to have been dismissed on that short ground.

8. In the result, though I am of the view that the order of the Industrial Court on merits has done substantial justice to the parties, I have no other course except to allow the writ petition, as the complaint itself was not maintainable. Hence, Writ Petition is allowed. Rule is made absolute and the impugned order of the Industrial Court is quashed and set aside, Complaint (UPL) No. 127 of 1987 is hereby dismissed.

9. However, there would be no order as to costs.