

(2001) 11 BOM CK 0029

In the Bombay High Court

Case No : Writ Petition No. 2472 of 1998

Association of Engineering Workers, Mumbai

APPELLANT

Vs

A.T.V. Limited, Mumbai and Another

RESPONDENT

Date of Decision : 06-11-2001

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 30(2), 4, 6

Citation : (2002) 2 BomCR 51 : (2002) 93 FLR 528 : (2002) 2 MhLj 419

Hon'ble Judges : P.V. Kakade, J

Bench : Single Bench

Advocate : Colin Gonsalves, for the Appellant; P.K. Rele, instructed by D.A. Athavale, for the Respondent

Judgement

P.V. Kakade, J.—The petitioner has aimed this writ petition against the impugned order dated 19-6-1998 passed by the Member, Industrial Court, Mumbai, dismissing the Complaint (ULP) No. 308 of 1985 of the petitioner.

2. I have heard the learned counsel for both sides. Perused the record including the documents annexed to the petition.

The facts giving rise to the dispute, in brief, are thus :--

The petitioner Association of Engineering Workers filed the complaint alleging that the respondent No. 1 Company had indulged in unfair labour practices. The management of the respondent No. 1 Company called the union activists and tried to persuade them not to join the complainant union when the management had come to know that the employees were trying to join the complainant union. Management also allegedly threatened the employees with dismissal from service. It was also alleged that the management had threatened the employees with locking them out or closing down the undertaking if the said employees persisted to join the complainant union. It was alleged that, on the night of 11-4-1985, the management surreptitiously removed certain machinery and

semi-finished goods from the factory premises. Again on 1-5-1985 some raw material and certain machinery were removed from the factory. The employees went to the factory on 2-5-1985 for work at 7.00 a.m. in the morning at which time they were allegedly assaulted from some outsiders. The management also called the police to intervene at that time. The employees went to work at factory on 4-5-1985, however, they were prevented by the management from entering the factory premises and to do the work and refused to give any work to the employees. In short, according to the complainant union, the refusal by the management to give work to the employees was lock-out within the meaning of term u/s 2(1) of the Industrial Disputes Act. The said lock-out beside being unjustified was also illegal and deemed to be illegal under the provisions of the MRTU and PULP Act, inter-alia for the reasons that the management of the respondent Company had not given any notice as required u/s 24(2)(a) of the said Act. According to the complainant, the said lock-out was in furtherance of the management's threats to effect a lock-out if the employees persisted in joining or continuing to be the members of the complainant union. The complainant also alleged that they were entitled to the full wages for the total period of the said alleged lock-out in accordance with the agreement of the employment which the management of the respondent No. 1 had broken.

In the course of the amendment in the said complaint, the dispute in respect of three workers was sought to be raised alleging that it amounted to unfair labour practice under Item No. 9 of Schedule IV of the MRTU and PULP Act, 1971..It was also alleged that the respondent No. 1 Company did not allow the rest 23 workers to resume duty on 4-5-1985 while in fact the said workmen were regularly reporting for duty and had offered for work every day.

It may be noted at this juncture that the original complaint was adjudicated by the Industrial Court and after hearing both parties, by order dated 7-4-1995 the complaint was allowed by the Court by making a declaration of unfair labour practices on the part of the respondent No. 1 Company and appropriate directions by way of affirmative action to allow 27 workmen to report on duty and to pay them all backwages and all benefits of continuity of service and also the unpaid wages for the said period. The time limit for implementation of the said order was to be made within two months. The said order was duly served on the respondent No. 1 Company for implementation.

Thereafter the respondent No. 1 made a review application purported to be u/s 30(2) of the MRTU and PULP Act for review of the said order dated 7-1995 requesting to re-open the hearing of the complaint. The petitioner objected to the said review application on the ground of maintainability of the same under the said provisions. The Industrial Court heard the said objections of the petitioner and by order dated 5-7-1995 held that the said review application was maintainable and directed expeditious hearing of the review application.

After framing the issues, respondent No. 1 sought to make amendment to the review application. By order dated 14-12-1995, the Industrial Court allowed the

said application for amendment on payment of cost at Rs. 1000/- to the petitioner and allowed the petitioner to file additional objections/reply to the review application. The Industrial Court also directed the respondent No. 1 Company to furnish the bank guarantees to the tune of Rs. 3 lacs to secure all the workmen concerned in the dispute.

The review application was thereafter heard. During the hearing of the same, the respondent No. 1 sought to introduce additional documents and in spite of petitioner's objections for production of such documents at this stage, the Industrial Court, by its order dated 16-2-1996 allowed the production of the said documents. After hearing the parties in the said review petition, the Industrial Court by order dated 11-10-1996 allowed the review application and set aside the order dated 7-4-1995 in Complaint (ULP) No. 308 of 1985 for the purpose of reviewing the same, if necessary, on merits after hearing both sides.

Thereafter the petitioner also sought to amend the complaint and after hearing the parties afresh the Industrial Court by order dated 19-6-1998 finally dismissed the Complaint (ULP) No. 308 of 1985. Hence this writ petition.

3. At the outset, it may be noted that the learned counsel for the petitioner made two submissions in this regard. Firstly, it was submitted that the act of the Industrial Court in reviewing the earlier order purported to be under the powers u/s 30 Sub-section (2) of the MRTU and PULP Act was patently illegal and, therefore, the entire subsequent proceeding and consequent dismissal of this complaint are rendered bad in law. The second objection raised on behalf of the petitioner is in respect of finding recorded by the Industrial Court in respect of jurisdiction of the said Court holding that the grievance made out by the complainant about their alleged illegal termination did not fall under Item 9 of Schedule IV but it fell under Item 1 of the said schedule and, therefore, the Industrial Court had no jurisdiction to try the issue of illegal termination as it totally falls within the jurisdiction of the Labour Court. In view of this position, it would be just and proper on my part initially to deal with the dispute revolving around the order of review passed by the Industrial Court.

No doubt that the provision of Section 30 Sub-section (2) of the MRTU and PULP Act makes it clear that the Industrial Court or Labour Court has power to review its interim orders. In other words, as submitted by the learned counsel for the petitioner, there is no jurisdiction vested either in Industrial Court or in Labour Court under the said provision to review its final order and, therefore, such act committed by the Industrial Court in this case is totally illegal and without jurisdiction.

Perusal of the review application Exh. "D" annexed to the petition and reply of the complainant union filed thereto vis-a-vis the order dated 5-7-1995 passed by the Industrial Court holding review application maintainable would show that the lower Court has assessed all Pros and Cons of the issue before holding that the review application was maintainable. In short, the issue of maintainability is

decided on the criteria that, when the decision taken by that Court reflected glaring omissions and patent mistake or grave error, it was right for the Court to invoke the power to review the alleged erroneous order. In doing so, the Industrial Court has also relied upon several rulings of the Apex Court as well as this Court. In my considered view, taking the facts and circumstances into account involved in this case, the principles laid down by the Supreme Court in the case of *S. Nagaraj and Ors. v. State of Karnataka and Anr.*, reported in 1994 (1) LLJ 857, would be aptly applicable to the present case. In the said ruling it was observed thus :--

"Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to any one. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher Courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice, then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court."

It must be noted that, review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the course and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest Court indicating the circumstances in which it could rectify its order, the Courts culled out such power to avoid abuse of process or miscarriage of justice. Therefore, in my considered view, the learned Member of the Industrial Court was right in holding that the review application was maintainable when he came across certain facts which, in his view, were necessary for judicial adjudication and absence of consideration thereof would amount to miscarriage of justice.

It is further pertinent to note that, when an amendment was sought by the respondent No. 1 Company to the review application, it was hotly challenged and when it was allowed and fresh adjudication was made by the Labour Court, the present petitioner participated in the entire proceeding. As the record shows, the review order was granted by the order dated 11-10-1996. There is no answer to the question as to why at this stage the petitioner complainant did not file the writ petition raising the objections which are now being pressed into service. It is

also seen that the petitioner not only participated in adjudication at all stages but submitted to the jurisdiction of the Industrial Court when the matter was heard afresh and, therefore, in my view, the review order which was passed properly, cannot be challenged. This is especially in view of the fact that petitioners themselves amended their complaint which amendment was allowed and further the petitioner was allowed to lead its evidence on the basis of amended complaint. Hence, I hold that the objections sought to be raised for entire process of review made by the Industrial Court is devoid of any merits.

4. Second submissions made on behalf of the petitioner is with regard to the finding recorded by the Industrial Court pertaining to lack of jurisdiction in Industrial Court to adjudicate the complaint purported to be made under Item 1 of Schedule IV of the MRTU and PULP Act. The record shows that, in the course of the complaint it was urged on behalf of the respondent Company that, if the grievances of the petitioner complainant were that the services of the workmen were illegally terminated by the respondent Company, the case of the petitioner would not fall under Item 9 of Schedule IV of the MRTU and PULP Act but it would fall under Item 1 of Schedule IV of the said Act which ousted the jurisdiction of the Industrial Court by virtue of provision of Section 5 of the said Act.

On the basis of this aspect, the lower Court proceeded to assess the evidence on record and came to the conclusion that it was obviously the case of the petitioner complainant that 23 workmen were illegally terminated from their services though they reported for duty on the gate of the factory. While this contention of the petitioner was resisted by the respondent Company by saying that in spite of notices to the workmen to join their duties they remained absent without any notice, therefore, their names were struck from the muster-cum-wage register. Assessing these rival contentions, the Member, Industrial Court concluded that the complaint of complainant Association clearly falls under Item I(e) of Schedule IV and not under Item 9 of Schedule IV of the MRTU and PULP Act and, therefore, the Industrial Court had no jurisdiction in that regard. In support of this view, the Industrial Court sought to rely upon the ruling of this Court in the case of A-Z (Industrial) Premises Co-op. Society Ltd. v. A. T. Utekar and Ors., reported in 1997 2 CLR 1033 wherein it was held that the order of the Industrial Court, under the similar facts and circumstances, that it can try entire complaint suffers from serious error of jurisdiction and cannot be sustained in law. The perusal of the Industrial Court order, therefore, shows that, on the basis of this view, the issue of alleged illegal termination of 23 workers which is now crux of the matter, has not been adjudicated at all.

On the background of these aspects; the learned counsel, for the petitioner invited my attention to the recent ruling of the Division Bench of our High Court in the case of R.P. Sawant and Others Vs. Bajaj Auto Ltd. and Another, wherein the Single Judge Judgment in A-Z (Industrial) Premises Co-op. Society Ltd."s case is overruled so far as this point is concerned. The Division Bench in R.P.

Sawant's case (supra) has observed thus :--

"We are unable to read these two judgments in the manner in which the Industrial Court has read it for more than one reasons. Section 7 of the 1911 Act provides that it shall be the duty of the Labour Court established under the Act to decide complaints relating to unfair labour practices prescribed in Item 1 of Schedule IV and to try offences punishable under the Act. The duties of the Industrial Court enumerated in Section 5 of the 1971 Act do not include the duty to decide the complaint relating to unfair labour practices under Item 1 of Schedule IV. Section 32 of the 1971 Act entitled "Power of Court to decide all connected matters" reads as under:--

"Notwithstanding anything contained in this Act, the Court shall have the power to decide all matters arising out of any application or complaint referred to it for the decision under any of the provisions of this Act."

"A conjoint reading of Sections 5, 7 and 32 of the 1971 Act would make it clear that, though, for the purpose of exercising initial jurisdiction into a substantive complaint, the jurisdiction have been compartmentalized inasmuch as the Labour Court has no jurisdiction to entertain complaints other than complaints falling under Item 1 of Schedule IV of the 1971 Act and conversely, the Industrial Court has been given powers to entertain complaints in all other matters, it does not mean that the Industrial Court, while exercising jurisdiction within the sphere legitimately assigned to it, cannot pass an order which is required to be done in the interest of justice. It cannot be forgotten that Section 32 starts with a non-obstante clause "Notwithstanding anything contained in this Act" and provides that the Court trying the matter shall have the power to decide "all matters arising out of any application or complaint referred to it for the decision under any of the provisions of this Act.....".

Therefore, the legal position is now well settled that it was within the jurisdiction of the Industrial Court to adjudicate the entire issue in respect of the alleged illegal termination of 23 workers in this case and reliance put on the ruling in the case of A-Z (Industrial) Premises Co-op. Society Ltd. 's case (supra) holding that Industrial Court has no jurisdiction in such case is unjustified and, therefore, note is required to be taken of the situation.

In view of this factual matrix vis-a-vis the legal position, the only course available is to remand the matter to the Industrial Court for adjudication of the issue relating to alleged termination of 23 workers of the petitioner, lest they should be forced to take lengthy recourse under the judgment of the Industrial Court to go to the Labour Court and file the fresh complaint. I may also make it clear that, except for this issue, all other findings of facts recorded by the Industrial Court are found to be based on evidence available on record and, therefore, need not be disturbed in any way whatsoever.

5. In the result, the impugned order dated 19-6-1998 dismissing the complaint is set aside only to the extent of Issue No. 2 raised in the order of the Industrial

Court holding that it has no jurisdiction to try the issue in respect of alleged illegal termination of 23 workers of the petitioner. For that purpose the matter is remanded to the Member, Industrial Court, Mumbai, for adjudication on the said issue which would be completed as expeditiously as possible and at any rate within six months from the date of this order.

The writ petition stands disposed of.