
(1993) 06 BOM CK 0053

In the Bombay High Court

Case No : Writ Petition No. 2632 of 1988

Association of Engineering Works

APPELLANT

Vs

Oriental Rubber Industries and Others

RESPONDENT

Date of Decision : 22-06-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 25FFA
Trade Unions Act, 1926 — Section 28, 30

Citation : (1993) 06 BOM CK 0053

Hon'ble Judges : B.P. Saraf, J

Bench : Single Bench

Judgement

B.P. Saraf, J.—This writ petition has been filed by the Association of Engineering Workers, Bombay, which is a registered Trade Union. The petitioner represents the employees in the establishment of the respondent company. The petitioner is aggrieved by an order of the Industrial Court Maharashtra, Bombay dated 20-6-1988, dismissing its complaint under Sections 28 and 30 read with item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU AND PULP Act.)

2. The complaint of the petitioner was directed against a notice of closure dated 3.11.188 issued by the respondent company u/s 25-FFA of the Industrial Disputes Act, 1947. The case of the petitioner was that the action of closure of establishment by the impugned notice was illegal and amounted to unfair labour practice within the meaning of the Act. The complaint was filed in 1987 before the Industrial Court Maharashtra, Bombay and was registered as Complaint - ULP No. 1006 of 1987. The Industrial Court heard the parties and dismissed the complaint of the petitioner. The complaint was dismissed on two grounds. First, that the complaint was barred by principles of res-judicata in as much as the very same notice of closure had been challenged by the petitioner, as back as in 1980, which had been registered as complaint (ULP) No. 257 of 1980 and the said complaint was dismissed in view of the finding of the Industrial Court that the closure notice dated 3.11.1980 was bona fide and genuine and there were

good grounds and justification for the respondent company to resort to this remedy of closure. This was done by the Industrial Court by its order dated 8.3.1982.

3. The Industrial Court examined the earlier complaint and the judgment passed thereon and came to a conclusion that the very same notice was subject matter of challenge in the earlier complaint which had been dismissed in view of the finding that the closure was justified and bona fide. It also found that the above finding on the earlier complaint has not been challenged by the petitioner. In that view of the matter, it was of the opinion that the principle of res-judicata applied and no fresh complaint could be filed after long lapse of five years to reagitate the very same issue which had already been decided against the petitioner.

4. The Industrial Court also observed that the complaint made in the year 1987, even otherwise, was grossly barred by limitation because the impugned notice was issued on 3.11.1980 and the present complaint was filed in the year 1987. To this, the reply of the petitioner was that the closure gives rise to a continuous cause of action and, as such, the period of limitation has no application. This contention of the petitioner did not find favour with the Industrial Court. The Industrial Court, therefore, dismissed the complaint also on the ground stated above. Aggrieved by the above order of the Industrial Court, the petitioner has filed the present writ petition.

5. I have heard the learned counsel for the petitioner Mr. Ganguli at length. The fact that the very same notice has been challenged earlier by ways of complaint before the Industrial Court under the provisions of the very same Act is not in dispute. The contention of Mr. Ganguli is that the grievance of the petitioner in the earlier complaint and the complaint filed subsequently are not the same, as such, the principles of res judicata has no application. So far as the delays of seven years in filing the second complaint is concerned. Mr. Ganguli relies on the decision of the Supreme Court in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, and submits that in the matter of condonation of delay the Court should take a liberal approach.

6. I have carefully considered both the submission of Mr. Ganguli and carefully gone through the impugned order of the Industrial Court. The Industrial Court has quoted the operative part of the order passed in the earlier complaint filed by the petitioner in the very same matter which was numbered as (ULP) 257 of 1980 from which it becomes absolutely clear that the second petition was merely an attempt to re-agitate the very same issue which had been concluded against the petitioner earlier. In my opinion, the Industrial Court was fully justified in refusing to entertain such a complaint and no fault can be found with same to justify any interference by this Court under its writ jurisdiction under Article 226 of the Constitution.

7. In view of the above position, the question of delay loses all significance. However, it may be mentioned that the contention of the petitioner before the

Industrial Court that the closure of an establishment gives rise to a continuous cause of action and, as such, no period of limitation applies, does not appear to be tenable in law. As regards the decision of the Supreme Court in *Mst. Katiji*, (supra), it may be observed that the Supreme Court in the above case has given guidelines to the Courts to take a liberal approach in the matter of condonation of delay, but the said judgment should not be read in a manner which may amount to giving a good-bye to all period of limitation prescribed by the statutes. The concept of liberal approach which required a person to explain the delay for each day. It should not be stretched too far because after all period of limitation are intended to bring an end to the litigation at some point of time and they must receive due consideration. Condonation of delay will depend on facts and circumstances of each case. However, in the present case, that question is not very relevant in view of the fact that the second complaint is not maintainable even by application of principles of *res-judicata*.

8. In the light of the foregoing discussion, I am of the clear opinion that the learned Industrial Court was justified in dismissing the second complaint of the petitioner by the impugned order and there is no ground to justify any interference by this Court.

9. In the result, the writ petition is dismissed. No order as to cost.