
(2003) 08 BOM CK 0109
In the Bombay High Court
Case No : Writ Petition No. 337 of 2001

Bennett Coleman and Co.

APPELLANT

Vs

Bombay Union of Journalists

RESPONDENT

Date of Decision : 14-08-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2003) 4 ALLMR 1 : (2004) 1 BomCR 75 : (2004) 2 LLJ 130

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : S.C. Dharmadhikari and Saumya Srikrishna, for the Appellant;
Hutoxi Tavadia, for the Respondent

Judgement

R.M.S. Khandearkar, J.—Heard the learned Advocates for the parties.

2. The petitioners challenge the order dated October 20, 2000 passed by the Industrial Court, Mumbai, answering the preliminary issues in favour of the respondent (No. 1). The preliminary issues relate to the locus standi of an unrecognised union to maintain a complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, hereinafter called as "the MRTU & PULP Act" and regarding the non-maintainability of the complaint at the instance of the working journalists on the ground that they are not the workmen within the meaning of the Industrial Disputes Act, 1947, hereinafter called as "the said Act".

3. Though the issue as to whether the working journalists are workmen within the meaning of the said expression under the said Act or not was resolved by the decision of the learned single Judge of this Court in the matter of Bennett Coleman Co. Ltd. and others Vs. Mumbai Mazdoor Sabha, , the learned advocate for the petitioners, placing reliance on the decision of the Constitutional Bench of the Apex Court in the matter of H.R. Adyanthaya Vs. Sandoz (India) Ltd., etc. etc., , submitted that the decision of the learned single Judge is no more a good law and the working journalists, without ascertaining the nature of the services

rendered by such journalists, en masse they cannot be held to be workmen within the meaning of the said expression under the said Act and each case will have to be decided on the facts thereof and that the Industrial Court ignoring the same having answered the preliminary issue in the negative, has acted in improper exercise of jurisdiction and therefore warrants interference in the impugned order. The learned advocate for the respondent, on the other hand, drawing attention to the said decision of the learned single Judge and of the Delhi High Court in the *The Management of Statesman Ltd., New Delhi Vs. Lt. Governor, Delhi and Others*, as well as on the point of binding nature of the ratio and law relating to ratio decidendi drawing attention to the decision of the Apex Court in the matter of *M/s. Orient Paper and Industries Ltd. and another Vs. State of Orissa and others*, , submitted that the provisions of the MRTU & PULP Act, 1971 have been amended subsequent to the decision of the Apex Court in *Sandoz (India) Ltd. 's case (supra)* and, therefore, the ruling of the learned single Judge of this Court in *Bennett Coleman Co. Ltd.'s case (supra)* will apply to the cases instituted at the instance of the working journalists and therefore no fault can be found with the impugned order.

4. Upon hearing the learned advocates for the parties at length and what has transpired in the course of the arguments, it is not necessary to detain this matter any further and/or to adjudicate the said points in this petition and the petition can be disposed of by consent order, as under:

(A) While setting aside the finding on the point of maintainability, the parties are at liberty to amend the pleadings before the Industrial Court and to lead evidence in support of their rival contentions relating to the preliminary issue/s sought to be raised or that may be raised consequent to the amendment of the pleadings.

(B) The Industrial Court based on the pleadings and the issues to be framed shall deal with the same in accordance with the provisions of law, without being in any way influenced by its findings in the impugned order.

(C) As regards the preliminary issue pertaining to the locus standi of an unrecognised union, the petitioners do not press for the said objection in view of the decision of the Division Bench of this Court in *M/s. Warden and Company (India) Limited Vs. Akhil Maharashtra Kamgar Union*, , wherein it has been held that it is not the exclusive right of a recognised union to institute and prosecute a complaint under the MRTU and PULP Act in relation to unfair labour practices, other than those specified in items 2 and 6 of Schedule IV of the MRTU & PULP Act, and an unrecognised union is not debarred from filing a complaint on behalf of the workmen in respect of any matter under the MRTU & PULP Act except item Nos. 2 and 6 of Schedule IV thereof. Undisputedly, the complaint in question was under item 9 of Schedule IV of the MRTU & PULP Act and therefore, it is maintainable in view of the said decision of the Division Bench, and therefore, the finding arrived at by the Industrial Court on this issue does not warrant any interference.

5. The rule is, therefore, made absolute in the above terms with no order as to costs and the Industrial Court is directed to decide the preliminary issue/s after framing the same based on the pleadings, as they stand today as well as after considering the pleadings to be incorporated on amendment, and giving opportunity to the parties of leading evidence in support of their rival contentions, in accordance with the provisions of law.

6. Needless to say that in case of plea of ouster of jurisdiction or absence of non-maintainability of the complaint, it is primarily for the party raising the plea to establish the same and the Industrial Court will have to bear in mind the said basic principle of law while dealing with the matter.

7. The learned advocate for the respondent has also drawn attention to the fact that the litigation is being fought since 1989. Considering the same, the Industrial Court shall expedite the disposal of the matter and shall dispose of the preliminary issue/s, to be framed in the matter, within four months from the date of framing of such issue/s. It is made clear that this Court has not expressed any opinion on any of the rival contentions raised in the matter, except on the point of locus standi.