

(2011) 08 BOM CK 0102

In the Bombay High Court

Case No : Writ Petition No. 7802 of 2009

Bhagwan Trimbak Deokar and Others

APPELLANT

Vs

Zilla Parishad

RESPONDENT

Date of Decision : 12-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 22, 32
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 30(2), 39, 48(1), 50

Citation : (2011) 5 ALLMR 635 : (2012) 2 BomCR 300 : (2011) 113 BOMLR
2959 : (2011) 131 FLR 444 : (2011) 131 FLR 443 : (2012) 2 LLJ 346 : (2011) 6
MhLj 366

Hon'ble Judges : Nishita Mhatre, J; M.T. Joshi, J

Bench : Division Bench

Advocate : P.V. Barde, for the Appellant; S.T. Shelke, for the Respondent

Judgement

Nishita Mhatre, J.—The Writ Petition has been filed by the workers employed with the Zilla Parishad, Ahmednagar i.e. the Respondent herein. Complaint (ULP) No. 141 of 1987 was filed under Items 5, 6, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the M.R.T.U. & P.U.L.P. Act") by the Petitioners seeking permanency in service. The Industrial Court by its order dated 4th April, 1990 declared that the Respondent had committed an unfair labour practice under Item 6 of Schedule IV of the M.R.T.U. & P.U.L.P. Act. The Respondent was directed to accord the Petitioners the status and benefits of permanency with effect from 1st July, 1987. The Industrial Court also directed the Respondent to fix the salary and allowance of the Petitioners in the time scale as per the posts held by them and to further pay them all monetary benefits, including bonus on or before 30th June, 1990, failing which, the Zilla Parishad was liable to pay the interest at the rate of 12% p.a. with effect from 1st April, 1990 till the realization of the amount.

2. Instead of abiding by the orders of the Industrial Court, an agreement was

entered into by the Respondent with the Petitioners that an independent trust would be created by the Respondent with the Petitioners as employees of the trust. The agreement was to be in force from 1st October, 1990 to 30th September, 1995. The parties agreed that in the event the entire proposal was not implemented as scheduled, the Petitioners would be reverted as permanent employees of the Zilla Parishad. It appears that the application for registration of the trust was rejected by the Assistant Charity Commissioner, and therefore, the agreement between the parties was not implemented. Complaint (ULP) No. 219 of 1996 was preferred by the Petitioners under item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act in respect of the non implementation of the order passed in Complaint (ULP) No. 141 of 1987 on 27th January, 1992. The Industrial Court by its order dated 26th February, 2007 held that the Respondent had committed an unfair labour practice and directed the Respondent to implement the order.

3. This order of the Industrial Court was challenged by the Respondent in Writ Petition No. 3162 of 2008 before this Court. A statement of the Counsel of the Respondent was recorded on the basis of the communication received by him from the Chief 4 wp7802.09 Controller-cum-Accountant and Finance Officer, Zilla Parishad, Ahmednagar, that the Petitioners, who were the Respondents in that Petition, would be paid the pay scale and other benefits till they were in service. The Petition was disposed of in view of this statement.

4. According to the Petitioners, they have neither been accorded the status of permanency nor been paid the arrears of the salary and other allowances as directed by the Industrial Court. They have filed the present Petition seeking a direction to the Respondent to comply with the order dated 4th April, 1990 passed in Complaint (ULP) No. 141 of 1997 by the Industrial Court, Ahmednagar.

5. In our opinion, such a Writ Petition is not maintainable. The Petitioners are entitled to take recourse to the provisions of the M.R.T.U. & P.U.L.P. Act for implementation of the order and for claiming monetary benefits u/s 50 of the M.R.T.U. & P.U.L.P. Act. As regards the prayer that status and privileges of permanency not having been extended to the Petitioners despite the order of the Industrial Court, the Petitioners are free to take such action as is available to them in law, including filing of a Complaint u/s 48(1) of the M.R.T.U. & P.U.L.P. Act.

6. Shri. Barde, the learned Advocate appearing for the Petitioners points out that approaching the Labour Court u/s 48(1) for disobedience of the order passed by the Industrial Court is not an alternate or efficacious remedy as sanction from the State Government would have to be obtained before prosecuting the proceedings against the Chief Executive Officer of the Zilla Parishad. He points out that a learned Single Judge of this Court in the case of "N.J. Lawankar and Ors. v. Anil Devidas Garad and Ors." reported in "2008(1) Bom.C.R. (Cri.) 175" has held that before a criminal complaint is filed u/s 48(1) of the M.R.T.U. & P.U.L.P. Act against a public servant, sanction for prosecuting him would have to be obtained u/s 197 of the Criminal Procedure Code. Furthermore, it has been

held that when a person is not a party to the original complaint, he cannot be made party to the criminal complaint filed u/s 48(1) of the M.R.T.U. & P.U.L.P. Act. Mr. Barde points out that in view of the aforesaid judgment the Petitioners approach u/s 48(1) of the M.R.T.U. & P.U.L.P. Act would be in futile.

7. We have been informed that a another learned Single Judge of this Court in "Uttam Dattatraya Kahane v. Chandramohan Hangekar" in Criminal Writ Petition No. 203 of 2010 decided on 1st March, 2011 has taken a contrary view although the judgment in Lawankar's case was pointed out to the learned Judge.

8. In Lawankar's case, a criminal complaint was filed against an IAS Officer, who was the Chairman and the Managing Director of the M.S.R.T.C. Mumbai. It was the contention of the workmen in Lawankar's case that the Chairman and the Managing Director and other Officers had violated an order of the Industrial Court, and therefore, were liable to be prosecuted for disobedience of an order passed by the Industrial Court. The learned Single Judge relied on the decision of the Supreme Court in the case of "M.R. Patil v. Member, Industrial Court, reported in "1997(4) Bom.C.R. (S.C.) 636" and held that a prosecution under the provisions of the M.R.T.U. & P.U.L.P. Act could not be launched against a public servant, without the sanction of the State. The Court also observed that a complaint for having committed a contempt could not be filed against the Officer of a company, who was not a party to the original complaint.

9. In the case of "M.R. Patil and Anr. v. Member, Industrial Court, and Anr. reported in "1997 AIR S.C. 1429", the Supreme Court considered the circumstances in which a cognizance of offences under the M.R.T.U. & P.U.L.P. Act can be taken by the Labour Court. It was held that the provisions of Section 39 of the M.R.T.U. & P.U.L.P. Act is mandatory. A complaint about the alleged breach or non-compliance of any direction or order passed by the Industrial Court can be filed only by a person affected or by a recognized union or by the Investigating Officer. Since the complaint was filed by an unregistered union, the Court held that the complaint u/s 48(1) by such a body of workers was not maintainable. It, therefore, quashed the prosecution pending before the Labour Court. While disposing of this Criminal Appeal, the Supreme Court has observed in paragraph No. 18 thus:

18. As the above discussion of ours is sufficient to quash the impugned prosecution we need not discuss the other patent infirmities relating to the procedure adopted by the Labour Court in dealing with the complaint and to the rejection of the indefensible contention raised on behalf of the Appellant No. 1 about the maintainability of the prosecution in view of Section 197, Code of Criminal Procedure .

These are the observations, which are relied on by the learned Single Judge in Lawankar's Case for concluding that sanction for prosecution is required.

10. It would be appropriate at this stage to consider some of the provisions of the M.R.T.U. & P.U.L.P. Act. The Act has been enacted for the recognition of the

Trade Unions and for prevention of unfair labour practices on the part of the employers, trade unions and workmen. An independent machinery is constituted under the Act for enforcing the provisions relating to an unfair labour practices and to provide for the matters connected with the aforesaid purposes.

11. The Chapter-VIII of the M.R.T.U. & P.U.L.P. Act prescribes the powers of the Labour Court and the Industrial Court to try offences under the Act. Section 38 empowers the Labour Court to try an offence punishable under the Act. Cognizance of an offence can be taken by the Labour Court only on a complaint of facts constituting such an offence being made by the person affected thereby or by a recognised union or on a report in writing by the Investigating Officer. Section 40 prescribes the powers of the Labour Court and the procedure to be followed in such trials. It stipulates that the Labour Court shall have all the powers under the Code of Criminal Procedure of a Presidency Magistrate in Greater Bombay and a Magistrate of the First Class elsewhere, and in the trial of every such offence, the procedure laid down in Chapter XXII of Code of Criminal Procedure for a summary trial, in which an appeal lies, is to be followed. The rest of the provisions of the Code of Criminal Procedure are to be exercised by the Court so far as they may be applicable to such a trial. Section 41, empowers the Labour Court to impose a punishment higher than contained in Section 32 of the Code of Criminal Procedure. Chapter IX of the M.R.T.U. & P.U.L.P. Act deals with the penalties, which can be imposed. Section 48 contemplates that any person, who fails to comply with an order of the Court passed under Clause (b) of Sub-section (1) or Sub-section (2) of Section 30 of the Act shall, on conviction, be punished with imprisonment for three months or with a fine, which may extend to five thousand rupees. Under Sub-section (2) of Section 48, a person, who omits to produce any document or to furnish information which he is legally bound to produce, or refuses to bind himself by an oath or affirmation to state the truth or refuses to answer any question demanded of him touching the subject or insults or causes any interruption in the judicial proceedings, either before the Industrial Court or the Labour Court, he shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or both. Thus, Section 48 prescribes the nature and instances of contempt, which are punishable under the M.R.T.U. & P.U.L.P. Act. The issue is whether, while deciding whether a person has committed a contempt of an order of the Labour Court or of the Industrial Court, sanction must be obtained from the Government u/s 197 of the Code of Criminal Procedure, before he can be prosecuted. As we have already noted, the offences which are punishable under the Act, are to be tried by the Labour Court by following the procedure laid down in Chapter XXII of the Code of Criminal Procedure for summary trial, in which an appeal lies and the rest of the provisions of the Code of Criminal Procedure are made applicable so far as they may apply for such a trial. Section 197 of the Code of Criminal Procedure provides that sanction from the appropriate Government is required to prosecute a public servant, if he is accused of any offence alleged to have been

committed by him while acting or purporting to act in the discharge of his official duty.

12. In our opinion, though the procedure for a summary trial is to be followed while dealing with a complaint u/s 48(1) of the M.R.T.U. & P.U.L.P. Act, it does not necessarily mean that the provisions of Section 197 would be applicable to a complaint filed u/s 48 of the M.R.T.U. & P.U.L.P. Act. It is only the procedural aspect which is borrowed from the Code of Criminal Procedure while dealing with a complaint u/s 48(1) and not the substantive aspects of the Code. The bar to prosecution for offences contained in the Code would not apply automatically to the provisions of the M.R.T.U. & P.U.L.P. Act. This is because the object of the M.R.T.U. & P.U.L.P. Act is to prevent unfair labour practices. Placing a constraint on an employee or a recognized Union in filing a complaint u/s 48(1) of the M.R.T.U. & P.U.L.P. Act would amount to rewriting the legislation. The provisions of the Code of Criminal Procedure cannot be incorporated in to provisions of the M.R.T.U. & P.U.L.P. Act. All that Section 40 prescribes is that the procedure for a summary trial must be adopted and the provisions of the Code so far as they are applicable for the conduct of such a trial must be followed. This would include the issuance of process, recording of a plea of accused, issuing summons to a witness directing him to attend or to produce any document or material at the hearing etc. The provisions of Section 197 of the Code cannot be imported into the M.R.T.U. & P.U.L.P. Act. Sanction is to be obtained u/s 197 of the Code for prosecuting a public servant who has committed an offence. Disobedience of an order of the Labour Court or the Industrial Court may not be strictly speaking an offence. It would amount to a contempt of court for which a separate machinery is provided under the MRTU and PULP Act, rather than having to take recourse of the Contempt of Courts Act. The provisions of Section 48(1) are akin to the provisions for punishing a person for having committed a civil contempt as stipulated in the Contempt of Courts Act. In fact the marginal note of this section is "Contempt of Industrial or Labour Courts". It is true that the marginal note may not aid in construction but it can certainly indicate the intent of the section. Once an act of contempt is brought to the notice of the Court which the court takes cognizance of, it is a matter between the Court and the alleged contemnor, and therefore, such sanction would not be required. In such circumstances, in our opinion, the bar of Section 197 being invoked would not arise.

13. Unfortunately, the learned Single Judge in Lawankar's case has misconstrued the observations of the Supreme Court in paragraph 18 in M.R. Patil's case. Although, the Supreme Court has observed that a contention was raised on behalf of the Appellant before it regarding the maintainability of the prosecution in view of Section 197 of the Code of Criminal Procedure, the Apex Court has not considered this aspect at all since the appeal before it was disposed of on another issue.

14. Mr. Barde has relied on the Judgments of the Supreme Court in the case of "Choudhary Parveen Sultana v. State of West Bengal and Anr." reported in "A.I.R.

2009 S.C. 1404" and "Parkash Singh Badal and Anr. v. State of Punjab and Ors." reported at "AIR 2007 S.C. 1274" in support of his contention that a person who breaches the law or an order of the court cannot be said to be acting in his official capacity. He submits that excesses or misuse of authority cannot be protected in case of a public servant u/s 197 of the Code of Criminal Procedure. We need not advert to these Judgments as in our view the provisions of Section 197 of the Code cannot be read into the provisions of the MRTU and PULP Act for dealing with a case of contempt.

15. In these circumstances, we see no reason to entertain the Writ Petition. The Petitioners have ample remedies available to them to redress their grievance. The Petition is rejected, relegating the Petitioners to avail of alternate remedies under the Labour laws.