
(1982) 12 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No. 2214 of 1982

Billion Plastics P. Ltd.

APPELLANT

Vs

Dyes and Chemical Workers Union and Others

RESPONDENT

Date of Decision : 20-12-1982

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 24, 25, 30(2)

Citation : (1983) 2 BomCR 25 : (1983) MhLj 572

Hon'ble Judges : C.S. Dharmadhidari, J

Bench : Single Bench

Advocate : S.D. Puri, for the Appellant; Nishita Pradhan and Pankaj M. Patel for respondent Nos. 1 to 3, S.H. Kapadia, for the Respondent

Judgement

C.S. Dharmadhidari, J.—In this writ petition the petitioner Company has challenged the order passed by the industrial Court dated 21st of July, 1982 rejecting the prayer in terms of Clause 4(ii) of the application. The petitioner Company filed an application for interim relief u/s 30(2) of the Maharashtra Recognition of Trade Union and Prevention of Unfair labour Practices Act, 1971 (hereinafter referred to as the Act). Apart from the reliefs an interim relief was also asked for preventing workman from resorting to or continuing strike in Pursuance to the latter dated 3rd July, 1982. It is not necessary to make a detailed reference to other averments made in the application or the reply filed by the Union. It is that part of the interim relief which was denied to the petitioner Company by the Industrial Court by the impugned order. In para 7 of the order the Industrial Court has given its reasons for refusing to grant the interim relief, which reads as under :

"So far as the second relief sound by the complainant company is concerned, it is doubtful whether this Court has jurisdiction to restrain the workman from resorting to a strike. The collective action by group of employees cannot be lightly considered. The strike resorted to by workers has not been mentioned as

an unfair labour practice in the relevant Scheduled to the Act. So when there is no ground to say that the workers resorted to an unfair labour practice, it would not be proper to grant the second relief by way of temporary injunction."

As already observed it is this part of the finding, which is challenged in the present writ petition. Shir Puri, learned Counsel appearing for the petitioner Company contended that the Act is a complete code in itself, which has been enacted with the sole object of preventing unfair labour practice. Resorting to lock-out or a strike is not a fundamental right of anybody, but is merely a weapon which can be used as a last resort after all other avenues are exhausted. Therefore, the industrial Court has got jurisdiction to restrain either the employer or employee from resorting to unjustified lock-out or strike and hence the Tribunal below committed an error in coming to the conclusion that the Court has no jurisdiction to restrain workman from resorting to strike. In support of his contention he placed reliance upon the decision in *The Management of Chandramalai Estate, Ernakulam Vs. Its Workmen and Another*, *Radhey Shyam Sharma Vs. The Post Master General Central Circle Nagpur*, *Mumbai Mazdoor Sabha Vs. Bennet Coleman and Co. Limited and Others*, *Amalendu Gupta and Others Vs. Life Insurance Corporation of India*, and *Nichani Hotels Corporation v. Bombay Labour Union and others* 1981 Mh.L.J. 711. Shir Puri also contended that since the present enactment is a complete code, the Industrial Tribunal while entertaining complaint u/s 30(2) of the said Act will also be entitled to exercise ancillary jurisdiction. According to him in the present case the Industrial Tribunal has refused to exercise the jurisdiction vested in it by law and, therefore, the said order is wholly vitiated.

2. On the other hand it is contended by Ku. Pradhan that the present enactment being a complete code, the entries relating to unfair labour practices are wholly exhaustive and it is not open to this Court to make any addition to the entries by the process of interpretation or construction. In Entry No. 1 in Schedule III the question of propriety or justifiability of strike is not included. As a matter of fact the said question is beyond the scope and the jurisdiction of the Court concerned, while deciding the question of unfair labour practice, though in a given case u/s 25 of the said Act the question of proprietor or justifiability may be relevant. She also contended that unless it is prima facie shown that the strike resorted to is illegal, the Industrial Tribunal has no jurisdiction to pass any interim orders restraining the employees or Union from resorting to a legal strike. In support of her contention she has placed reliance upon the decision of this Court in *Premier Automobiles Ltd. Vs. Engineering Mazdoor Sabha and others*, and *Mumbai Mazdoor Sabha v. Bombay Dyeing and Mfg. Co. Ltd. and others* 1982 L I.C. 1533.

3. For properly appreciating the controversy raised before me it will be advisable if a reference is made to the relevant entry in Schedule III of the Act. Entry No. 1 in Schedule III reads as under :

"To advice or actively support or instigate any strike deemed to be illegal under

this Act."

By section 24 of the Act term "illegal strike" has been defined by the legislature. Then section 25 provides for reference to the Labour Court for a declaration as to whether the strike or lock-out is illegal. Section 26 provides as to what could be termed as unfair labour practice. Then comes section 28 which provides procedure for dealing with a complaint relating to unfair labour practice. Powers of the Court in this behalf are laid down in section 30 of the Act. They by section 32 it is laid down that the Court shall have power to decide all matters arising out of any application or complaint referred to for decision under any of the provisions of this Act. I had an occasion to consider the scope and ambit of these entries in Schedules in *Mumbai Mazdoor Sabha v. Bombay Dyeing* 1982 L I.C. 1533 , wherein after considering the object of the legislature it was held that the present enactment is a complete Code in itself. Entry No. 1 in Schedule III deals with unfair labour practice on the part of the trade union and it is laid down therein that it is an unfair labour practice on the part of the trade union to advice or actively support or instigate any strike deemed to be illegal under the Act. As to which strike will be deemed to be illegal is laid down u/s 24 of the Act and then comes section 25 which provides for a declaration as to which strike could be deemed to be illegal under the Act. The word "deemed" is advisedly used in Item No. 1 of Schedule III so that for entertaining an application u/s 30 for granting necessary relief, the Court need not wait for a declaration u/s 25(b) but the Court can deal with the matter, if it is shown that the strike resorted to is treated or "regarded as being" or "shall be taken to be an illegal strike "under section 24 of the Act. According to Shir Puri, in view of the provisions of section 30(b) which provides for taking such an action or section 32 which confers power upon the Court to decide connected matter as well as the phraseology used in section 24 namely, "unless the context requires otherwise" could with the fact that the strikes and lock-outs can be resorted to only as a last weapon after all other avenues are exhausted, it is open to industrial Court to decide justifiability of a strike and grant interim relief in that behalf restraining the trade union or workers from resorting to or continuing unjustified strike. In this context he has placed strong reliance upon the decision of this Court (Pendse, J,) in *Mumbai Mazdoor Sabha Vs. Bennet Coleman and Co. Limited and Others*, . It is not possible for me to accept this contention for more than one reason. Though under the constitution right to strike is not a fundamental right, the said right is a well recognised right of the workers. It is not that every strike is illegal. In a democratic state workman have every right to withhold labour in support or their demands and therefore, a legal strike is legitimate weapon in matters of industrial relation. It is a safely valve in industrial relations when property resorted to. An illegal strike is a creation of the stature and in the present enactment creation of section 24 of the Act. Legal strike is purely non-violent in character. It is a revolt against repression. It is a well known method of non-co-operation. It is normally declared to redress a wrong which only amounts to refusal of labour to take part in the wrong and thus leave a wrong-doer to his

own resources, in other words to enable other side to see fault in continuing the wrong. Therefore, it will not be fair to say that each and every strike would be illegal. In this context inference could usefully be made to the observations of the Supreme Court in Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, and particularly in para 129 thereof, which reads as under :

"A selective study of the class-law is proper at this place. Before we do this, a few words on the basis of the right to strike and progressive legal thinking led by constitutional guidelines is necessitous. The right to unionise, the right to strike as part of collective bargaining and, subject to the legality and humanity of the situation, the right of the worker group viz. labour, to pressurise the stronger party viz., capital to negotiate and render justice are processes recognised by industrial jurisprudence and supported by social Justice. While society itself in its basic needs of existence may not be held to ransom in the name of the right to bargain and strikers must obey civilized norms in the matter and not be vulgar or violent hoodlums, industry represented by intransigent Managements, may well be made to reel into reason by the strike weapon and cannot then squeal or wail and complain of loss of profits or other ill-effects but must negotiate or get a reference made. The broad basis is that the workers are weaker although they are the producers and their struggled to better their lot has the sanction of the rule of law. Unions and strikes are no more conspiracies than profession and political parties are and, being far weaker, need succour. Part IV of the Constitution, read with Article 19 sows the seeds of this burgeoning jurisprudence. The Gandhian quote at the beginning of this judgment sets the tone of economic equity in Industry. Of course, adventurist, extremist, extraneously inspired and puerile strikes absurdly insane persistence and violent or scorched earth policies boomerang and are anathema for the law. Within these parameters the right to strike is integral to collective bargaining."

4. What is covered by Item No. 1 of Schedule III is the strike which is deemed to be illegal under the said Act. If the strike is legal under the Act, then obviously it is not covered by Item No. 1 of Schedule III. Even while continuing the strike, if the employees indulged in the acts of force and Violence and hold out threats or intimidation in connection with the strike either against non-striking employees or against managerial staff, the same is treated as an unfair labour practice as per Schedule III Entry 2(b). Other items of the Schedule III enumerate the practises which can be treated as unfair labour practices on the part of the trade union. It is needless to say that when the Schedule describes unfair labour practices on the part of the trade union, it must include in its import members of the trade union. Trade union is after all a representative of the employees and therefore the industrial Court was not wholly right in saying that it had no jurisdiction to restrain workman from resorting to strike. It only meant that it cannot restrain workman from resorting to a legal strike. It is not disputed before me even by the learned Counsel for the Union that if the workmen or Union resort to an illegal strike then obviously it is covered by item No. 1 Schedule III.

But while deciding the question of unfair labour practices, what the Court has to see is whether the strike is deemed to be illegal under the Act or not and the Court cannot adjudicate upon its justifiability or propriety. The said area is not covered by section 30 of the Act, which confers a limited power upon the courts to deal with the complaints regarding unfair labour practice. It is needless to say that if a particular controversy is not triable within the purview of the Act, then the jurisdiction of the courts referred to in section 59 or 60 of the Act is not barred. It is more than clear that even for exercising a jurisdiction u/s 30 of the Act in matters of unfair labour practices, the Court must come to certain Prima facie conclusion before issuing or granting any interim relief. In this context a reference could usefully be made to the observation of Chandurkar, J., in *premier Auto Pvt. Ltd. v. Engineering Mazdoor Sabha*, which reads as under :

"I have reproduced earlier the material operative parts of the order of the industrial Court in which the Industrial Court has records a finding that the payment on which reliance was placed by the employees was an ex gratia payment and was not in accordance with the terms of the agreement of 1966. Now if we carefully read the provisions of section 30 of the Act, which regulate the power of the Industrial Court, it will appear that before the power to make any operative order is exercised directing a person to cease and desist from an unfair labour practice, the Court has to find as a fact that the person named in the complaint, has engaged in or is engaging in any unfair labour practice, it will not have jurisdiction to direct the employer to cease or desist from the unfair labour practice complained of. Sub-section (2) of section 30 enables the Court to make an interim order including a direction to the person concerned to withdraw temporarily the practice complained of. It cannot be disputed that the Industrial Court has not come to a finding that there is in fact any unfair labour practice of which the employer is guilty. It is, therefore, apparent that when the two complaints purport to make a grievance of an unfair labour practice, if the particular unfair labour practice complained of has not been found against the employer, the power u/s 30 of the Act could not have been exercised by the Industrial Court. Section 32 of the Act provides for the power of the Court to decide all matters arising out of any application of complaint referred to it for the decision under any of the provisions of the Act. Now this provision is obviously intended to enable the Court to decide the matters which may be incidental to the main complaint of an unfair labour practice alleged by the complainant before the Industrial Court. But if the Industrial Court finds that no unfair labour practice has been proved, it is not possible to find any power in the Court to make an order of an anticipatory nature based on any apprehension that in future any unfair labour practice is likely to be committed. Apart from that, in the instant case, such was never the complaint in the two complaints filed before the Industrial Court."

However, strong reliance was placed by Shir Puri upon the decision of Pendse, J., in *Mumbai Mazdoor Sabha Vs. Bennet Coleman and Co. Limited and Others*, In that case Pendse, J., was concerned with a controversy covered by Item 1(b), 2,

3 and 6 of Schedule II and Item No. 5 of Schedule IV of the Act. Item No. 1 (b) covers in its import, threats of lock-out or closure if a Union should be organized; whereas Item No. 6 deals with proposing or continuing a lock-out deemed to be illegal under this Act. In Schedule III there is no item like Item No. 1(b) of Schedule II. Therefore, in that case while deciding the controversy raised before him the learned Judge was also concerned with Item No. 1 (b) of Schedule II. On the appreciation of the material placed before him, Pendse, J., came to the conclusion that in that case the allegations made by the employers regarding collusion cannot be said to be without foundation. It is needless to say that collusion or fraud must vitiate everything and render it illegal. The learned Judge further found that the lock-out referred to was prima facie collusive. In this context it was held by Pendse, J., that the order of interim relief could have been passed by the Labour Court restraining the employers from resorting to look-out. In my opinion, the decision in the said case is obviously distinguishable. The area and the field covered by Schedule III and Schedule II is to some extent distinct and different. In a look-out, even the willing workers are restrained or prohibited from attending to their duties, whereas in a case of strike, that is not the position. The strike may be total or partial. Further while enacting Schedule II and Schedule III the legislature in its wisdom has not included in Schedule III an item akin to item No. 1(b) of Schedule II. Therefore, the law laid down by Pendse, J., in *Mumbai Mazdoor Sabha Vs. Bennet Coleman and Co. Limited and Others*, is not applicable to the facts and circumstances of the present case. It is not necessary to make a detailed reference to other cases on which reliance is placed by Shri Puri because in my opinion they are not germane for deciding the controversy raised in the present petition. Once it is held that justifiably of the strike is beyond the scope of Item No. 1 of Schedule III, then it is not necessary to deal with the question as to whether a strike should be resorted to as a last resort after all other avenues are exhausted. These are, matters which are covered by the other provisions of the present Act as well as other enactments in the field and it is not that the employer is without any remedy in that behalf. In the present case we are only concerned with limited controversy restricted to Item No. 1 in Schedule III. It is quite obvious that indulging in unfair labour practice is looked upon by the enactment very seriously and it results in penal consequences. u/s 13 of the Act even the recognition of a trade union is liable to be cancelled. It is well settled that when non-compliance of a particular provision is liable to result in a penal consequence; that the said provision should be construed strictly. Therefore, entries in Schedule III will have to be strictly construed and so construed it takes in its import only those strikes, which are deemed to be illegal under the Act. Therefore, it is not possible for me to accept the broad proposition of Shri Puri that even though the strike is legal, it being unjustified, the Court has jurisdiction to grant interim relief in the nature of injunction. It was also contended by Shri Puri that the present strike is also illegal, in view of the mandatory provisions of the Act. However, I do not propose to deal with this aspect of the matter, since such a contention was not raised before the lower Court. A contention was also raised before me by the

respondents that the Industrial Court committed an error even in granting prayer (a); however it is not necessary for me to deal with and decide the said contention, since that part of the order is not challenged by the respondent union.

5. In the result, therefore, the petition fails. The rule is discharged with no order as to costs.

As a necessary consequence of this decision, ad Interim order passed by this Court also stands vacated.