

(1985) 06 BOM CK 0029

In the Bombay High Court

Case No : Appeal No. 1175 of 1984 in O.S. Writ Petition No. 1204 of 1984

Bombay Electric Supply and Transport Undertaking and
Another

APPELLANT

Vs

BEST Kamgar Union and Others

RESPONDENT

Date of Decision : 14-06-1985

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 23, 27A, 3(38), 30, 35
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 22(2)

Citation : (1986) 1 BomCR 440 : (1986) 52 FLR 39

Hon'ble Judges : Sujata V. Manohar, J; M.H. Kania, J

Bench : Division Bench

Advocate : K.K. Singhvi and B.N. Singhvi, instructed by Crawford Bayley and
Co, for the Appellant; A.H. Desai and P.A. Sabastian for respondent Nos. 1 and
41, for the Respondent

Final Decision : Dismissed

Judgement

M.H. Kania, J.—This is an appeal against the judgment of a learned Single Judge of this Court dated August 16, 1984 whereby the aforesaid Writ Petition No. 1204 of 1984 was allowed.

2. The appellant No. 1 which was respondent No. 1 in the writ petition is an industry admittedly covered by the provisions of the Bombay Industrial Relations Act, 1946 (hereinafter referred to as "the B.I.R. Act"). The respondent No. 1 herein which was the petitioner No. 1, in the writ petition is a trade union some of the whose members are working in the undertaking of the appellant No. 1. Respondents Nos. 2 to 41 are workers working in the B.E.S.T. Undertaking, the appellant No. 1, who are members of respondent No. 1 Union. Respondents Nos. 42 and 43, whose names have been deleted from the title of the memorandum of appeal on the application of Mr. Singhvi, are registered as representative Unions under the provisions of the B.I.R. Act. Respondent No. 1 Union is registered under the Indian Trade Unions Act and operates in the industry of the appellant

No. 1. Respondents Nos. 2 to 41 herein who were also respondents Nos. 2 to 41 before the learned trial Judge were charge-sheeted for misconduct by the appellant No. 1 Undertaking and a departmental enquiry was started against each of them. They applied that they should be allowed to be defended by representatives of respondent No. 1 Union who were not employees of the appellant No. 1. That request was turned down by the Enquiry Officer under Standing Order No. 23 applicable to the appellant No. 1 undertaking. That Standing Order lays down the mode of conducting a departmental enquiry against an employee charged with misconduct of the nature likely to lead to the imposition of a penalty mentioned in Standing Order No. 21 Clauses (a) to (g). It permits the employee to be defended only by his representative u/s 30 of the B.I.R. Act, that is a union registered as a representative union under the provisions of the B.I.R. Act or another employee of his choice. The Enquiry Officer found that the representatives of respondent No. 1 Union whose services were sought for representation by respondents Nos. 2 to 41 were not employees of the appellant No. 1 undertaking, and hence he rejected the application of respondents Nos. 2 to 41 to be represented as aforesaid. It is this refusal which gave rise to the writ petition.

3. Before the learned trial Judge, Mr. Desai, learned Counsel who appeared for the petitioners, and who appears for the respondents before us, contended that under sub-section (2) of section 22 of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 being Maharashtra Act 1 of 1972 (hereinafter referred to as "the said Act of 1972"), a right was conferred on respondent No. 1 Union to represent its members in any departmental enquiry of the aforesaid type which might be held against them and that right could not be defeated by any standing order. On the other hand, it was contended by Mr. Singhvi, who appeared for respondents Nos. 1 and 2 to the writ petition and the appellant herein that section 22 of the Act of 1972 had no application to any industry like the Undertaking of the appellant No. 1 which was governed by the provisions of the B.I.R. Act. The contention of Mr. Desai was accepted by the learned trial Judge who allowed the petition. It is that judgement which is sought to be challenged before us.

4. Mr. Singhvi, learned Counsel on behalf of the appellant urged before us that under Standing Order No. 23 applicable to the appellant No. 1 Undertaking, at the hearing of a departmental enquiry against an employee, he is entitled to be defended by a representative Union u/s 30 of the B.I.R. Act or by an employee of his choice, and he cannot, be allowed to be represented by any other person. It was urged by him that these standing orders have statutory force as they were framed in accordance with the provisions of section 35 of the B.I.R. Act. It was further contended by him that section 22 of the Act of 1972 could have no application to an industry which was covered by the B.I.R. Act, because in the case of such an industry, there could not be any recognised union as contemplated under the Act of 1972 and the applicability of section 22 was impliedly excluded in such a case. It was on the other hand the contention of Mr.

Desai who appeared on behalf of respondent Nos. 1 to 41 that the right conferred by sub-section (2) of section 22 of the Act of 1972 was an unconditional right and that right could not be defeated as there was no provision in law stating that section 22 would not apply to an industry covered by the B.I.R. Act nor was any such implication warranted.

5. In order to examine the aforesaid contentions, it will be useful to take note of certain provisions of the relevant statutes and standing orders. The B.I.R. Act was enacted in 1946 with a view to regulate the relations of employers and employees in certain matters and to encourage collective bargaining. This can be seen from the title and the preamble to that Act. Chapter III of the B.I.R. Act provides for registration of unions. Sub-section (1) of section 13 of the Act read with section 3(38) provides, very briefly, that any trade union registered under the Indian Trade Unions Act, 1926, which has for the period of three calendar months immediately preceding the calendar month in which it applies for registration as a Representative Union, a membership of not less than 25% of the total number of employees employed in any industry in any local area is entitled to apply to the Registrar for registration as the Representative Union for such industry. Sub-section (2) of section 13 provides that if in a local area no Representative Union has been registered for a particular industry, a union with not less than 5% of membership of the total number of employees employed in such industry might apply for registration as a Qualified Union for such industry in such area. Sub-section (3) of section 13 provides that where there is neither a Representative Union nor a Qualified Union for an industry in a local area, a union with a membership of not less than 15% of the total number of employees employed in any undertaking in such industry might apply for registration as a Primary Union for such industry for that local area. Certain rights are conferred by the B.I.R. Act on Representative Unions, Qualified Unions and Primary Unions, as well as on unions which are treated as approved Unions under the provisions of Chapter IV. Section 27A of that Act provides that except as provided in sections 32, 33 and 33A, with which we are not concerned, no employee shall be allowed to appear or act in any proceeding under that Act except through the representative of employees. u/s 3(32), "representative of employees" means a representative of employees entitled to appear or act as such u/s 30. Admittedly respondent No. 1 therein was not entitled to act as the representative for respondents Nos. 2 to 41 u/s 30 of the B.I.R. Act. Chapter VII of the B.I.R. Act deals with standing orders and section 35 provides for the manner in which the standing orders must be settled by the Commissioners of Labour. A reading of the section makes it clear that standing orders for an industry are intended to regulate the relations between the employees and the employers in that industry with regard to the industrial matters mentioned in Schedule I of the Act. Item 11 of Schedule I of that Act deals with the question of punishment for misconduct and acts or omissions which constitute misconduct. Sub-section (1) of section 40 in Chapter VII, in terms, provides that the standing orders settled under that Chapter and in operation shall be determinative of the relations between the

employers and the employees in regard to all industrial matters specified in Schedule 1. Certain Standing Orders were settled for the appellant No. 1 industry and amendment from time to time in accordance with the provisions of Chapter VII of the B.I.R. Act and Standing Orders No. 23 deals with an employee charged with misconduct of a nature which (if established) is likely to lead to the imposition of any of the penalties (d) to (g) or suspension for a period exceeding 7 days under sub-clause (c) under Clause (1) of Standing Order 21.

The relevant part of Standing Order 23 runs as follows :

".....At the hearing of the case he shall be given an opportunity to answer the charge and permitted to be defended by his representative u/s 30 of the Bombay Industrial Relations Act, 1946 or by an employee of his choice....."

It is common ground that the departmental inquiries in the present case were of the type to which Standing Order 23 would apply. Standing Order 31 runs as follows :

"Nothing contained in these Standing Orders shall operate in derogation of any law applicable or to the prejudice of any right under a registered agreement, settlement, or award for the time being in force or contract of service, if any, or customs or usage of the Undertaking."

Coming to Act I of 1972, a perusal of the title to the said Act and the preamble shows that Act was enacted inter alia for the recognition to trade unions for facilitating collective bargaining for certain undertakings, to state their rights and obligations and to confer certain powers on unrecognised unions. Chapter III of that Act deals with recognition of unions. Sub-section (2) of section 10 in that chapter provides that the provisions of that chapter would not apply to undertakings in industries to which the provisions of the "Bombay Act" for the time being apply. Sub-section (1) of section 3, being the definition section, provides that unless the context require otherwise under the said Act, "Bombay Act" means the Bombay Industrial Relations Act, 1946. Chapter IV of the Act I of 1972 deals with the obligation and rights of recognised unions, other unions and certain employees. Section 22 which forms part of Chapter IV deals with the rights of unrecognised unions. Section 22 runs as follows :

"Such Officers, members of the office staff and members of any union (other than a recognised union) as may be authorised by or under the rules made in this behalf by the State Government shall, in such manner and subject to such conditions as may be prescribed, have a right---

(i) to meet and discuss with an employer or any person appointed by him in that behalf, the grievances of any individual member relating to his discharge, removal, retrenchment, termination of service and suspension;

(ii) to appear on behalf of any of its members employed in the undertaking in any domestic or departmental inquiry held by the employer."

6. The submission of Mr. Singhvi, learned Counsel on behalf of the appellants is that section 22 of the Act I of 1972 has no application to an industry covered by the B.I.R. Act as there cannot be any recognised union in such an industry and, by implication, that section is applicable only to an industry where there can be a recognised union. It was urged by him that Chapters III and IV of the Act of 1972 are linked together and a combined reading of the same shows that section 22 impliedly cannot apply to an industry to which the provisions of Chapter III do not apply. It was submitted by him, in the alternative, that relations between the appellant No. 1 Undertaking and its employees were governed by the standing order framed under Chapter VII of the B.I.R. Act, and hence Standing Order No. 23 referred to earlier must prevail over the provisions of sub-section (2) of section 22 of the Act I of 1972. It was further urged by him that, in any event, under the provisions of section 27A of the B.I.R. Act, the respondent Nos. 2 to 41 were not entitled to appear in the aforesaid proceedings except through other employees of the appellant No. 1 undertaking. We find that it is not possible to accept the contentions of Mr. Singhvi. Unlike Chapter III of Act No. I of 1972, there is nothing specific in Chapter IV of that Act which would exclude the applicability of the provisions therein to undertakings to which the B.I.R. Act applies. We cannot lose sight of the fact that the long title and the preamble of Act I of 1972 clearly shows that one of the objects of that Act was to confer certain powers on unrecognised unions. The right conferred by section 22(2) on unrecognised unions is not expressly limited to the industries to which the B.I.R. Act do not apply nor, in our view, is there anything which would lead to such a conclusion by way of any necessary implication. On the other hand, a perusal of section 21 sub-section (2) also in Chapter IV shows that sub-section was intended to apply notwithstanding anything contained in the B.I.R. Act and under that sub-section, it is provided that notwithstanding anything contained in the B.I.R. Act, no employee in any industry to which the provisions of the B.I.R. Act for the time being apply, shall be allowed to appear or act or allowed to be represented in any proceeding relating to unfair labour practices specified in Items 2 and 6 of Schedule IV of the Act I of 1972 except through the representative of employees entitled to appear u/s 30 of the B.I.R. Act. Similarly, a perusal of the Explanation to section 23 would show that the B.I.R. Act was taken into account in providing that for the purposes of that section a recognised union would include a representative union under the B.I.R. Act. This would clearly suggest that it was not intended that, the provisions of Chapter IV should not apply to an undertaking which was governed, covered by the B.I.R. Act. Coming to the Standing Orders of the appellant No. 1 in our opinion, a standing order framed under the provisions of Chapter VII of the B.I.R. Act cannot defeat a statutory right conferred under another Act and this conclusion is strongly fortified by the provisions of Standing Order 31 which inter alia provides that the standing orders would not operate in derogation of any law which is applicable. In view of what we have stated earlier, it is not possible to accept Mr. Singhvi's contention that the provisions of section 32 are not applicable to industries governed by the B.I.R. Act. Coming next to the submission of Mr. Singhvi based

on section 27A of the B.I.R. Act, we may point out that section only deals with proceedings under the B.I.R. Act. A perusal of Chapters X, XI and XII of the B.I.R. Act shows that by the expression "proceedings under this Act" used in section 27A what was meant was conciliation proceedings and proceedings, such as arbitration proceedings, proceedings before the labour courts or wage Boards which are dealt with in Chapters X, XI, XII and XIIA of the B.I.R. Act. Perusal of Chapter XIIB, XIII and XV further shows that proceedings before wage Boards, courts of Industrial Arbitration and courts of Inquiry might also be regarded as proceedings under the B.I.R. Act. But it is not possible to accept the contention that the proceedings under standing orders framed under B.I.R. Act become proceedings under the B.I.R. Act itself. In our view, there is no warrant at all to come to any such conclusion. In our opinion section 27A of the B.I.R. Act has no application to the departmental enquiries in which respondents Nos. 2 to 41 are being tried and the submission of Mr. Singhvi based on the provisions of section 27A of the B.I.R. Act must also be rejected.

7. In the result, the appeal fails and is dismissed with costs.