
(1990) 08 BOM CK 0011

In the Bombay High Court

Case No : W. Ps. No's. 2972, 2973, 2974 and 2975 of 1983 and W. Ps. No's. 132, 135, 136 and 137 of 1984

Bombay Gumasta Union and others

APPELLANT

Vs

M/s. M.P. Mansuri and another

RESPONDENT

Date of Decision : 29-08-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 24, 24(1), 24(l)(b), 25(1), 33

Citation : (1990) 08 BOM CK 0011

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : Vandana Herur With Anand Grover In W. Ps. Nos. 2972, 2973, 2974 and 2975 of 1983 and in W. Ps. Nos. 132, 135, 136 and 137 of 1984, for the Appellant; N.S. Manudhane for Respondent No. 2 in W.P. No. 132 of 1984, for the Respondent

Judgement

S.M. Daud, J.—These petitions under Article 226 of the Constitution of India take exception to like orders passed by the second respondent being the Presiding Officer of a labour Court in Bombay vis-a-vis the commencement and continuance of a strike by the employees of the first respondents figuring in all the petitions.

2. The first petitioner is a trade union registered under the Trade Unions Act. 1926 and the second petitioner is the General Secretary of the said trade union. Some employees engaged in establishments run by the first respondents and owing allegiance to the first petitioner gave a notice of an intention to proceed on a strike because of the non-fulfillment of certain demands made upon the employers. The notice fell short of the required fourteen days by one day. The employer-respondents took the petitioners to the Labour Court where they solicited a declaration that the strike commenced and continued was illegal and amounted to an unfair labour practice within the meaning of section 25(1) of the

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (PULP Act). The first petitioner is not a recognised union in the establishments run by the employers figuring in the petitions. The stand taken by the petitioners was that the shortage of one day in the service of the notice was curable and in any case Regulations 95 and 97 framed u/s 24 were ultra vires the PULP Act. These defences were negatived, with the result that the declaration solicited by the employer was granted.

3. In these petitions exception is taken to the verdict of the second respondent the stand being a reiteration of the points urged in the Court of the first instance. Sections 24 and 33 to the extent relevant read as follows :-

24. In this Act, unless the context requires otherwise. -

(I) "illegal strike" means a strike which is commenced or continued -

(a) without giving to the employer notice of strike in the prescribed form, or within fourteen days of the giving of such notice;

(b) where there is a recognised union, without obtaining the vote of the majority of the members of the union, in favour of the strike before the notice of the strike is given:

(c)

(d)

33.(1) The Industrial Court may make regulations consistent with the provisions of this Act and rules made thereunder regulating its procedure.

That the shortage of one day does not render the notice invalid is clearly inferable from the decision of a Division Bench of this Court in the case of Premier Automobiles Ltd. and others vs. G. R. Sapre and another. 1981 Lab.I.C. 221 (DB) (Bom.). This decision of course relates to the provision in regard to an illegal lockout which has been dealt with in sub-section (2)(a) of section 24 of the PULP-Act. The same reads as follows :-

24.(2) "illegal lock-out" means a lock-out which is commenced or continued -

(a) without giving to the employees, a notice of lock-out in the prescribed form or within fourteen days of the giving of such notice:

The identity in the words between the two provisions is unmistakable and therefore the provision dealing with an illegal strike will have to be read in the same manner as the provision in regard to an illegal lock-out.

4. The next contention taken up by the petitioners is that Regulation 95 which is said to have been contravened by them is in excess of the power conferred upon the Industrial Court. The regulation impugned has been framed by the Industrial Court pursuant to the power u/s 33(1) of the PULP Act. As the section itself makes clear, the power given to the Industrial Court is to make regulations

consistent with the provisions of the Act and the rules made thereunder the object being regulation of the procedure to be followed in the proceedings before it. Laying down fetters upon a union in the matter of commencing and continuing a strike would not be a matter regulating the procedure to be followed before the Industrial Court. In other words, a fetter relating to the substantive rights of a trade union cannot be treated as if it amounts to a proceeding before the Industrial Court or the Labour Court for which the procedure has to be laid down. The commencement and continuance of strike has nothing to do with the conduct of proceedings before the Industrial and Labour Courts. Petitioners are right in the submission that Regulation 95 is ultra vires the power conferred upon the Industrial Court vide section 33(1) of the PULP Act.

5. The alternative stand taken by the petitioners is that Regulation 95 assuming it to be valid has to be read in conjunction with sub clause (b) of section 24(1) of the PULP Act. This clause governs only strikes initiated and continued by recognised unions. Petitioner No. 1 not being a recognised union is not under an obligation to follow the requirement to giving a fourteen days" notice or giving a notice in the form prescribed by the regulations. This contention also has to be sustained as the words of section 24(1)(b) make it clear that they are reliable only to a strike initialed or continued by a recognised union. In the result the declaration given by the second-respondent cannot be sustained. Petitioners are also entitled to the declaration vis a vis the ultra vires character of Regulation 95 of the Act. Hence the order.

ORDER

Rule in terms of petition prayers (a) and (b) made absolute with parties being left to bear their own costs throughout.