
(2004) 07 BOM CK 0130

In the Bombay High Court

Case No : (O.S.) A. No. 371 of 2004 in Writ Petition No. 185 of 2004

BSES Limited

APPELLANT

Vs

Bombay Electric Workers Union and Others

RESPONDENT

Date of Decision : 21-07-2004

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 30

Citation : (2005) 1 LLJ 462

Hon'ble Judges : R.M. Lodha, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : J.P. Cama and R.N. Shah, instructed by Anilkumar, for the Appellant; A.V. Bukhari, Kishore Shetty for Respondent Nos. 1 and 2 and S.S. Naphade, Avinash Jalisatgi for Respondent Nos. 3 to 6, for the Respondent

Final Decision : Allowed

Judgement

1. Heard Mr. J.P. Cama, the learned senior counsel for the appellant. Mr. A.V. Bukhari, the learned counsel for the respondents 1 and 2 and Mr. S.S. Naphade, the learned senior counsel for the respondents 3 to 6.

2. Admit. Heard finally.

3. We shall refer the respondents 1 and 2 as the complainants, the present appellant as the employer and the respondents 3 to 6 as the rival Union. In the complaint, the complainants complained of the unfair labour practices under Item No. 5 of Schedule II and Item No. 9 of Schedule IV of the Act of 1971 allegedly committed by the employer in entering into the settlement with the rival Union and they prayed that the said settlement be declared as illegal and the employer and the rival Union be restrained by an order or injunction from giving effect to and/or implementing in any manner the said settlement. The complainants moved an application for interim relief and prayed for, inter alia, restraint order against the Registrar appointed under the Bombay Industrial Relations Act, 1946 from registering the settlement entered between the employer and the rival

Union and injuncting them from giving effect to or implementing the said settlement.

4. The application for interim relief was contested by the employer as well as the rival Union on diverse grounds. The Industrial Court heard the parties through their counsel and found that a prima facie case of unfair labour practices engaged in by the employer is made out. The Industrial Court also found that the balance of convenience was in favour of the complainants and that prejudice would be caused to the complainants if no interim relief was granted. Accordingly, on the basis of the said finding, the Industrial Court by its order dated November 7, 2003 partly allowed the application of the complainants seeking interim relief. The Industrial Court ordered that the settlement dated September 18, 2003 signed by the employer and their rival Union was not the settlement signed by the complainants or any other authorised person on their behalf. Besides that no other restraint order was granted as prayed for by the complainants in view of the directions given by this Court in Writ Petition No. 2293/2003.

5. Dissatisfied with the aforesaid order of the Industrial Court passed on November 7, 2003, the employer filed writ petition being Writ Petition No. 185/2004 before this Court. Before the learned single Judge the complainants as well as the employer through their advocates consented for setting aside the finding of the Industrial Court about the prima facie case regarding unfair labour practices allegedly engaged in by the employer. The parties kept their right reserved to prove their allegations on merits at the time of final hearing of the complaint. Acting on the said consent of the learned advocates appearing for the complainants and the employer, the learned single Judge set aside the finding of the Industrial Court on the point of unfair labour practice said to have been adopted by the employer in relation to the settlement dated September 18, 2003. However, the learned single Judge despite the fact that the finding of the Industrial Court on the prima facie case of unfair labour practices was set aside, yet maintained the direction given by the Industrial Court in the order dated November 7, 2003. Aggrieved thereby the present appeal has been preferred by the employer.

6. The learned senior counsel for the appellant submitted that prima facie case of unfair labour practice having been set aside by the learned single Judge, the order passed by the Industrial Court by way of interim relief that the settlement dated September 18, 2003 signed between the employer and their rival Union was not the settlement signed by the complainants and rival Union could not have been continued.

7. On the other hand, Mr. A.V. Bukhari, the learned counsel for the complainants submitted that the parties through their advocates consented for setting aside the finding regarding unfair labour practices allegedly engaged in by the employer but at the same time agreed that the ultimate order passed by the Industrial Court shall be maintained and, accordingly, the appellant's grievance

in the appeal is not only misplaced but is dishonest. He invited our attention to the decision in the case of *Uptron India Limited Vs. Shammi Bhan and Another*, : *The Central Council for Research in Ayurveda and Siddha and Another Vs. Dr. K. Santhakumari*, . *Premier Automobiles Ltd. Vs. Engineering Mazdoor Sabha and others*, .

8. The learned counsel for the complainants relied upon paragraph 23 of the report in *Uptron India Ltd. (supra)* that reads

"23. In view of this observation, the question whether the stipulation for automatic termination of services of overstaying the leave would be legally bad or not, was not decided by this Court in the judgment relied upon by Mr. Manoj Swarup. In that judgment the grounds on which the interference was made were different. The judgment of the High Court was set aside on the ground that it could not decide the disputed question of fact in a writ petition and the matter should have been better left to be decided by the Industrial Tribunal. Further the High Court was approached after more than six years of the date on which the cause of action had arisen without there being any cogent explanation for the delay. Mr. Manoj Swarup contended that it was conceded by the counsel appearing on behalf of the employee that the provision in the Standing Orders regarding automatic termination of services is not bad. This was endorsed by this Court by observing that "Learned Counsel for the respondent rightly made no attempt to support this part of the High Court's order." This again cannot be treated to be a finding that provision for automatic termination of services can be validly made in the certified Standing Orders. Even otherwise, a wrong concession on question of law, made by a counsel, is not binding on his client. Such concession cannot constitute a just ground for a binding precedent. The reliance placed by Mr. Manoj Swarup on this judgment, therefore, is wholly out of place."

9. We are unable to find relevance of the aforesaid observations in the facts on hand. It is not a case of either of the parties that concession of the advocates for setting aside the prima facie finding recorded by the Industrial Court was wrong concession in law.

10. In the *Central Council for Research in Ayurveda and Siddha*, (supra) the Apex Court reiterated the legal position that the counsel making admission or concession on question of law which is wrong cannot constitute binding precedent and enure to the benefit of any party. The relevance of the said decision on the question before us is also not understandable for the same reason we have indicated above.

11. The learned single Judge in the impugned order observed thus:

"Though the impugned order is sought to be challenged on various grounds, it is not necessary to deal with all those grounds at this stage and suffice to refer to only one ground relating to the observations made by the Industrial Court regarding the alleged unfair labour practice adopted by the petitioner-company in

the matter of entering into the alleged settlement with its employees. The learned advocates for the respondents, upon taking instructions from their respective clients, have consented for the setting aside of the said findings regarding the unfair labour practice adopted by the petitioner in the matter while reserving their right to prove their allegations in that regard on merits at the time of final hearing of the matter by the Industrial Court. In view of the said submission on behalf of the respondents, as rightly submitted by the learned advocate for the petitioner, it is apparent that those findings regarding the adoption of unfair labour practice by the petitioner-company against its employees in relation to the alleged settlement with its employees are too premature and apparently without even affording proper opportunity to both the parties to put forth their contentions in detail in that regard. In the facts and circumstances of the case, therefore, without going into all the other issues sought to be raised by both the parties, suffice to set aside the findings of the Industrial Court on the point of unfair labour practice stated to have been adopted by the petitioner-company against its employees in relation to the alleged settlement. The Industrial Court should not get influenced in any manner by those findings while deciding the matter on merits, after hearing the parties and after giving opportunity to both the parties to lead evidence in support of their rival contentions on the said issue along with the other issues, if any, in the matter. Accordingly, the said findings are set aside."

12. What we find from the aforesaid order of the learned single Judge is that the parties through their advocates agreed and rather consented that the prima facie finding recorded by the Industrial Court regarding unfair labour practices engaged in by the employer be set aside. The parties reserved their right to prove their stand finally in the complaint. We do not find from the order that there was any concession given by the employer through their advocates that the interim order passed by the Industrial Court be maintained even though the prima facie finding regarding unfair labour practices alleged to have been engaged in by the employer is set aside. There is no such concession as is sought to be made out by the learned counsel for the complainants.

13. Section 30 of the Act of 1971 reads thus:

"30. Powers of Industrial and Labour Courts: (1) Where a Court decides that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice, it may in its order-

(a) declare that an unfair labour practice has been engaged in or is being engaged in by that person, and specify any other person who has engaged in, or is engaging in the unfair labour practice;

(b) direct all such persons to cease and desist from such unfair labour practice, and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without back wages, or the

payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate the policy of the Act;

(c) where a recognised union has engaged in or is engaging in, any unfair labour practice, direct that its recognition shall be cancelled or that all or any of its rights under Sub-section (1) of Section 20 or its right u/s 23 shall be suspended.

(2) In any proceeding before it under this Act, the Court, may pass such interim order (including any temporary relief or restraining order) as it deems just and proper (including directions to the person to withdraw temporarily the practice complained of, which is an issue in such proceeding), pending final decision;

Provided that, the Court may, on an application in that behalf, review any interim order passed by it.

(3) For the purpose of holding an enquiry or proceeding under this Act, the Court shall have the same powers as are vested in Courts in respect of -

(a) proof of facts by affidavit;

(b) summoning and enforcing the attendance of any person, and examining him on oath;

(c) compelling the production of documents; and

(d) issuing commissions for the examination of witnesses.

(4) The Court shall also have powers to call upon any of the parties to proceeding before it to furnish in writing, and in such forms as it may think proper, any information, which is considered relevant for the purpose of any proceedings before it, and the party so called upon shall thereupon furnish the information to the best of its knowledge and belief, and if so required by the Court to do so, verify the same in such manner as may be prescribed."

14. Sub-section (2) thereof enables the Industrial Court and the Labour Courts as the case may be to pass such interim order as it deems just and proper pending final decision in the complaint. The interim order contemplated under Sub-section (2) of Section 30 inter alia is temporary relief to the complainant or a restraint order or direction to the party having been engaged in unfair labour practices to withdraw temporarily the unfair labour practices complained of, which is an issue in the complaint. Grant of such interim order under Sub-section (2) has to be founded on prima facie consideration of the matter about the unfair labour practices having been engaged in by the party against whom the complaint is made. Sans prima facie finding of unfair labour practice having been engaged in by the party against whom the complaint is made, we are afraid, the interim order contemplated under Sub-section (2) of Section 30 cannot be justified. It is true that in the present case, the Industrial Court found prima facie case that the employer had engaged in unfair labour practices and on that basis granted interim relief to the extent it is ordered in the impugned order dated November 7, 2003. However, when the said order was challenged by the

employer before the learned single Judge, the parties particularly the complainants and the employer through their advocates consented that the prima facie finding of unfair labour practices recorded by the Industrial Court be set aside. Once that finding was consented to be set aside, it was not permissible in law to maintain the interim order granted by the Industrial Court and that is where the learned single Judge erred when he observed that there would be no alteration in respect of the interim direction issued in the order dated November 7, 2003 passed by the Industrial Court and that shall remain in force during the pendency of the complaint before the Industrial Court.

15. The prima facie finding of unfair labour practices recorded by the Industrial Court against the employer having been set aside, the interim relief granted in the order dated November 7, 2003 by the Industrial Court could not have been continued by the learned single Judge.

16. We, accordingly, allow this appeal to the extent the learned single Judge has continued the interim order dated November 7, 2003 passed by the Industrial Court.

17. No costs.

18. On the oral prayer made by the learned counsel for complainants, for a period of four weeks, the operation of this order shall remain stayed.

19. Certified copy expedited.