

(1986) 02 BOM CK 0032
In the Bombay High Court
Case No : Writ Petition No. 507 of 1986

Consolidated Pneumatic Tool Company (India) Ltd.	APPELLANT
Vs	
R.A. Gadekar and Others	RESPONDENT

Date of Decision : 28-02-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 5
Industrial Disputes Act, 1947 — Section 10
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 59

Citation : (1986) 1 BomCR 484 : (1986) 52 FLR 467 : (1986) MhLj 238

Hon'ble Judges : S.W. Puranik, J;C.S. Dharmadhikari, J

Bench : Division Bench

Advocate : F.N. Kaka and S.F. Parakh, for the Appellant; S.J. Deshmukh and N.M. Ganguli for respondent No. 2 and H.L. Gokhale, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

C.S. Dharmadhikari, J.—In this petition the petitioner company has challenged the order passed by the Industrial Tribunal dated 7th October 1985 holding that the references made u/s 10 of the Industrial Disputes Act, 1947, are not barred by section 59 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, hereinafter referred to as the "MRTU and PULP Act."

2. It appears from record that initially a complaint under the MRTU and PULP Act was filed before the competent Court, qua some of the employees who are also covered by the reference made by the Government under the Industrial Disputes Act on 5th March, 1985. In the said proceedings a contention was raised by the present petitioners that the employees have taken recourse to the provisions of the Industrial Disputes Act and as such the complaint is not maintainable in view of the provisions of section 59 of the MRTU and PULP Act. It appears that when the complaint under the MRTU and PULP Act was filed conciliation proceeding

were pending. Subsequently reference came to be made by the State Government covering the cases of 57 employees. The complaint under the MRTU and PULP Act was qua 53 employees only. After the references were made on 5th March, 1985, the Association of the Engineering Workers which was complainant in the complaint filed under the MRTU and PULP Act, filed an application seeking permission to withdraw the complaint in view of the pendency of the references. The Industrial Tribunal, Nasik, on 17th of July, 1985 passed the following order :

"Complainant's Advocate Shri Ashokan filed pursis Exh. U-8 that the complainant Union do not wish to proceed with the complaint in view of the reference received in this Court regarding the dismissal of the workers involved. The respondent Company has no objection. Hence the complaint stands disposed of for want of prosecution. No order as to costs".

3. After the withdrawal of the said proceedings the Union filed a statement of claim in the reference proceedings and the Company filed its written statement. In that written statement a preliminary objection was raised that the references are not maintainable in view of the provisions of section 59 of the MRTU and PULP Act. The Industrial Tribunal overruled the said preliminary objection and as already observed it is this order which is challenged in the present petition.

4. For deciding the controversy raised in the present petition, it is worthwhile to make a detailed reference to section 59 of the MRTU and PULP Act which reads as under :

"59. If any proceeding in respect of any matter falling within the purview of this Act is instituted under this Act, then no proceeding shall at any time be entertained by any authority in respect of that matter under the Central Act, or, as the case may be, the Bombay Act, and if any proceeding in respect of any matter within the purview of this Act is instituted under the Central Act, or as the case may be, the Bombay Act, then no proceeding shall at any time be entertained by the Industrial or Labour Court under this Act."

From the bare reading of this section it is quite clear that it involves a principle of double jeopardy and option or election of remedy and, therefore, if any proceeding in respect of any matter falling within the purview of the MRTU and PULP Act is instituted, then it is directed that no proceeding shall at any time be entertained by any authority in respect of that matter under the Central Act or, the Bombay Act, as the case may be. The question still remains as to what is the true scope of section 59 of the MRTU and PULP Act. In our view no general rule could be laid down which will be applicable to all the cases so far as the amplitude of section 59 is concerned. To some extent it must depend upon the facts and circumstances of each case. As already observed initially the Union has raised a demand under the Industrial Disputes Act which was pending for conciliation. Thereafter a complaint under the MRTU and PULP Act came to be filed. In the said complaint it was contended by the employer that in view of the pendency of proceedings under the Industrial Disputes Act, the complaint was

not maintainable. When the references covering larger controversy and involving more employees were made, the Union by its pursis withdrew the complaint to which the Company had also no objection. After the said complaint was withdrawn, now a contention is again raised that the proceedings under the Central Act are barred by section 59 of the MRTU and PULP Act. To say the least, the Company is estopped by its own conduct from raising such a contention. When a complaint under the MRTU and PULP Act, was filed an objection based on the very section was raised that it was not maintainable since the conciliation proceeding under the Industrial Disputes Act was pending. When the complaint is withdrawn to which the company had no objection, again a contention is being raised that the proceeding under the Industrial Disputes Act is not maintainable. It is conceded before us the qua seven employees who were not covered by the earlier complaint, a reference could proceed. In our view the Company is trying to blow hot and cold in the same breath, which cannot be permitted.

5. In this context it is also pertinent to note that the withdrawal of the complaint was not unconditional. The complaint was withdrawn since references were made by the State Government covering a larger area. However, it is contended by Shri Kaka, learned Counsel appearing for the petitioner that once it is shown that the proceedings in respect of the same matter were instituted under the MRTU and PULP Act, then the Industrial Tribunal has no jurisdiction to entertain the references under the Central Act in view of the specific wording of section 59 of the MRTU and PULP Act. It is not possible for us to accept the broad proposition. The word "institute" as used u/s 59 can be taken as meaning "setting on foot an enquiry" which means something more than mere filing of complaint. Where the applicant does nothing more than filing a complaint under the Act and withdraws it before any effective steps are taken, then in our view the provisions of section 59 of the MRTU and PULP Act will not apply. Obviously as to what could be termed as effective steps will again depend upon the facts and circumstances of each case. Similar expression seems to have been used in section 3 sub-section (5) of the Workmen's Compensation Act. The expression "institute" as used in the said Act i.e. Wokmen's Compensation Act fell for consideration of the Madras High Court in S. Suppiah Chettiar Vs. V. Chinnathurai and Another, , wherein after making a reference to the meaning assigned to the said term of Law Lexicon by Ramnath Iyer and other law dictionaries, the Madras High Court held that the word "institute" means something more than mere filing of a claim. We are in respectful agreement with the view taken by the Madras High Court. Therefore, if an applicant does nothing more than filing the complaint under the Act, and withdraws it before any effective steps are taken, then it cannot be said that the proceedings were instituted under the MRTU and PULP Act. In our view such a meaning will have to be given to the said term. If the interpretation and construction suggested by Shri Kaka is accepted then it will result in palpable injustice and absurd inconvenience. It is well settled principle of interpretation of statutes that a construction should not be put upon a statutory provision which would lead to manifest absurdity or futility, palpable injustice or absurd

inconvenience or anomaly. In the circumstances, if a complaint filed is withdrawn by consent of parties and that too in view of the reference made under the Central Act, then for all practical purposes it will have to be held that in law no proceedings were instituted under the MRTU and PULP Act. In any case, having regard to the facts and the circumstances of the present case the present petitioner-company is estopped by its own conduct from raising such a contention.

6. The decisions to which a reference was made before us i.e. one reported in 1984(49) FLR page 232, Mahendra Gajanan Kharsor & others. v. Zonal Manager, Maharashtra State Co-operative Marketing, Federation Ltd. and 1985 Current Labour Reports page 100, Maharashtra Girni Kamgar Union v. M/s. Carona Sahu Co. Pvt. Ltd. & others, are obviously distinguishable on facts. In the earlier decision it was held that the conciliation proceedings cannot be equated with the proceedings under the Central Act within the contemplation of section 59 of the MRTU and PULP Act. In Maharashtra Girni Kamgar Union's case the complaint was already filed under the MRTU and PULP Act and effective steps were also taken in that behalf. Therefore, it was held that the State Government had no power to make a reference to determine identical question. The said finding was based on the facts of that case and, therefore, the decision is distinguishable.

7. In the present case, as already observed, when the complaint under the MRTU and PULP Act was filed an objection was raised that it is barred by section 59 since conciliation proceedings were pending. When the said complaint was withdrawn in view of the references made under the Central Act and that too with the consent of the petitioner-company now a contention is raised that the proceedings under the Central Act are barred by section 59 of the MRTU and PULP Act. In our view the stand taken by the petitioner-company being wholly inconsistent, the company cannot be permitted to go back and is now estopped from raising such a contention. Further in the references made, the dispute referred to is about 57 employees whereas the complaint was restricted to 50 employees only. Therefore, in any case references must survive qua other 7 employees. This being the position the Industrial Tribunal was wholly right in taking a view that the present proceedings under the Central Act are not barred by the provisions of section 59 of the MRTU and PULP Act.

8. Even otherwise having regard to the peculiar facts and circumstances of the present case, in our view this is not a fit case, wherein any interference is called for in the extraordinary jurisdiction of this Court, with the order passed by the Industrial Tribunal overruling the preliminary objection raised by the petitioner-company.