

(2000) 05 BOM CK 0008

In the Bombay High Court

Case No : C.A.S.J.W.P. No. 4460 of 1988 and W.P. 299 of 1989

C.S. Dixit

APPELLANT

Vs

Bajaj Tempo Ltd.

RESPONDENT

Date of Decision : 05-05-2000

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 59

Citation : (2001) 2 BomCR 289 : (2000) 86 FLR 491 : (2000) 2 LLJ 561 : (2000) 4 MhLj 261

Hon'ble Judges : V.C. Daga, J;Ranjana Desai, J;N.J. Pandya, J

Bench : Full Bench

Advocate : S.M. Dharap and S.B. Naik, for the Appellant; S.K. Talsania and Sanjay Udesi, instructed by Haresh Mehta and Co., for the Respondent

Judgement

N.J. Pandya, J.—By order dated February 26, 1992 the learned Single Judge of this Court was pleased to refer this matter to a larger Bench under the following circumstances.

2. An order of the First Labour Court Pune, in Reference (IDA) No. 172 of 1984 was challenged in the present petition before the learned Single Judge. The view taken by the First Labour Court was in view of the provisions of Section 59 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the "Act") and it had not entertained the award. As could be seen from the file, the learned single Judge by his order dated February 18, 1992, in this very petition, had taken a decision in favour of the petitioner, but before he could sign the judgment, the Division Bench judgment of this Court was brought to his notice rendered in Shivaji Agricultural College, Amravati v. Mukhtyar Ahmed S/o. Haji Mian Sheikh and Anr. reported in 1987 M.L.J. 646. In the earlier order of February 20, 1992, on behalf of the petitioner, reliance was placed on a judgment of the Division Bench of this Court given in Maharashtra State Road Transport Corporation v. Yadao reported in 1985 LIC 1012.

3. Having noted these two judgments, the learned single Judge found that there is a conflict between the two.

4. One more judgment, which is to be kept in mind, would be Consolidated Pneumatic Tool Company (India) Ltd. v. R.A. Gadekar and Ors. reported in 1986 1 CLR 322

5. The judgment in Yadao's case (supra) refers to Section 59 of the Act and draws a conclusion that it is akin to that of Section 10 or Section 11 of the CPC which enjoins upon a Court not to proceed with trials of suits where similar issues were also directly and substantially in issue in another suit. It further noted that the legislative's intention is to prevent multiplicity of proceedings, possibility of contradictory verdicts and wastage of judicial time; in short public policy.

6. As against that the said Mukhtyar Ahmed's case reported (supra) has noted that Section 59 cannot be assumed to be based only on the principles of res judicata. According to the Learned Judges, the Legislative policy appeared to restrict the choice of remedy and forum. They have gone to the extent observing that once the choice is made and matter is presented, the other remedy is lost.

7. These conclusions are drawn mainly on the basis of the words "Instituted" and "entertained" used in Section 59. Section 59 of the said Act reads as under:

"59. Bar of proceedings under Bombay or Central Act:- 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 proceedings 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."

8. Judgment in the case of Consolidated Pneumatic Tool Company (I) Ltd. (supra) has also borne in mind the use of these two words and has indicated that the word "institute" u/s 59 of the Act can be taken as meaning "setting on foot an enquiry" and, on that basis, the learned Judges of the Division Bench have come to the conclusion that if nothing more than filing a complaint under the Act has been done and the same has been withdrawn before any effective steps are taken, then the bar of Section 59 of the said Act would not apply. They, of course, observed that what could be termed as effective steps will again depend upon the facts and circumstances of each case. In the said Mukhtyar Ahmed's case (supra) the learned Judges of the Division Bench have segmented the proceedings in the four stages, the first as such is, the presentation of the matter, second is the entertaining, third is the trial and fourth is the decision.

9. About these four stages, under the existing system in this country, both as to the procedural law and substantive law, there cannot, be any dispute. However,

when the learned Judges have come to the conclusion, on the facts of that case, that after the arguments were heard at the final stage, while taking decision the matter was decided only on limitation and, therefore, the bar u/s 59 of the said Act would apply. In our opinion, this gives rise to a question as to whether remedy given under the Act can at all be said to be invoked when, on account of the statute of limitation, the remedy itself is barred.

10. This gives rise to a question as to what could possibly be the set of circumstances which can attract the bar of Section 59. In the order dated February 20, 1992, the learned Single Judge of this Court has, in paragraph 7, observed as follows:

"We examine the provisions of Section 59 of the said Act, in the light of the underlying legislative philosophy, as expounded in the above two judgments, viz., that of discouraging multiplicity of proceedings, it becomes clear that the bar is intended only to shut out a party who has resorted to a remedy and failed therein. If the remedy had been refused on the ground of non-maintainability, it is inconceivable that the party can be shut out by successfully invoking the bar u/s 59."

11. Decided in the aforesaid background, if one turns to the facts of the instant case, the bar is sought to be applied on the basis that in a pending matter before the Industrial Court under the said Act, an attempt to get the pending application amended had failed. Thereafter, reference under Industrial Disputes Act, 1947 was made with regard to the very matter which was sought to be agitated by way of amendment. Amendment not having been allowed, it is difficult to say that the plea raised thereby was at all entertained by the Industrial Court under the said Act.

12. Going by the view in Mukhtyar Ahmed's case (supra) this would be the position if mere institution is enough. According to the learned Judges, if we remember the four stages or segments, which were culled out in Mukhtyar Ahmed's case (supra) by the very learned Judges, it is quite obvious that rejection of the application to amend would obviously mean that nothing was entertained by the Industrial Court.

13. One more aspect of the matter has to be seen in the background of the aforesaid attempt for amendment. It is with regard to the matter which was sought to be raised before the Industrial Court on one hand and the Labour Court on the other. Factually, in the instant case, the Industrial Court was dealing with the pending inquiry and other related matters. During the pendency of proceedings before the Industrial Court under the said Act by way of subsequent development, the employees against whom the inquiry was held came to be dismissed. This fact was sought to be raised by way of amendment before the Industrial Court in a pending matter under the said Act. It failed as noted above.

14. Subsequent thereto, under the Industrial Disputes Act, 1947, a reference came to be made against which the bar of Section 59 was invoked successfully

by the employer. The question therefore is that, could it be said to be a matter which was entertained or even instituted before the Industrial Court, in view of rejection of amendment, obviously, the answer would be no. From the angle of a civil law and principles of cause of action, if one examined the question with the obvious that the cause of action in a pending matter was ongoing inquiry and other related matters and the reference was with regard to the subsequent development of dismissal was an independent cause of action.

15. This aspect has been, in our opinion, very correctly gone into by the learned Single Judge of this Court in Writ Petition No. 756 of 1998 in the case of S.S. Miranda Ltd. v. Rangbahadur Singh and Ors. reported in 1998 2 CLR 277.

16. In the instant case, the amendment was disallowed and therefore, it cannot be said that the matter was entertained by the Industrial Court under the said Act. Likewise the bar of limitation having the effect of shutting out the remedy even if the question is decided at the end of trial, in our opinion, would have the effect of shutting the doors of the Court, on account of non-maintainability which is a direct result of the remedy of approaching the Industrial Court under the said Act being barred because of the statute of limitation. As has been noted so far in the various decisions, the provision of Section 59 is based on the salutary principle of compelling a party to stick to the remedy that he had taken recourse to. Obviously, when the remedy itself is barred, it cannot be said that he had taken recourse to the very remedy which is barred.

17. Likewise, on account of the subsequent development, if there is a new cause of action, as noted above, in the instant case, that matter, unless allowed to be raised before the Industrial Court under the said Act, cannot be said to be brought before the Industrial Court seeking to remedy the grievance, as the amendment itself was disallowed. Obviously, therefore, it was not possible to say that the remedy was resorted to.

18. Going back to the said four segments of stages, as set out in Mukhtyar Ahmed's case (supra) lodging of a complaint unless numbered and order having been passed cannot be said to have been entertained and then only, in our opinion, it can be said that the remedy is taken recourse to. However, if the statute of limitation is pleaded, everything will be wiped out, and the petitioner, who is hit by the statute of limitation, shall have to be treated as a person being refused the entry even though the point as to limitation may have been decided at the end of trial. In that event, of course, even if all four stages have been gone through, the bar of Section 59 of the said Act cannot be invoked.

19. In our opinion, there is no question of bar of Section 59 being invoked when the matter sought to be agitated is based on a new cause of action. As the matter was pending before the Industrial Court under the said Act, obviously it was not dealing with the said new cause of action.

20. In our opinion, therefore, mere filing of a complaint under the said Act without anything done in the matter will not attract the bar of Section 59. If the

statute of limitation is successfully invoked in a matter before the Industrial Court under the said Act, the bar will not apply. About the new cause of action, also as noted above, there is no question of invoking the bar at all.

21. We are further of the opinion that if before any effective steps are taken by the Industrial Court under the said Act when the matter is withdrawn then also the bar would not apply. As to what could be the effective steps the question is to be decided as to the facts and circumstances of the case. It is obviously not possible to enumerate all possible set of circumstances which in a given case will induce us to conclude that the effective steps are not taken. At the same time, if effective steps are taken, bar u/s 59 would certainly apply. No party can be permitted to either shop the forum or avoid outcome of its own action on the ground of exigency of convenience.

22. For the aforesaid reasons, in our opinion, the decision in the case of Mukhtyar Ahmed's case (supra) will not lay down the correct law. As per the views expressed in the case of Consolidated Pneumatic Tool Company (supra), we answer the reference accordingly. Ordinarily we would have sent the matter back to the learned Single Judge to take a decision. However, in view of the fact that, only on this point the Award has been rejected, we allow the petition and make the rule absolute.

23. Parties are left to bear their own costs.