
(1991) 10 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 3086 of 1984

Delux Theatres Pvt. Ltd.

APPELLANT

Vs

Bombay Labour Union

RESPONDENT

Date of Decision : 03-10-1991

Acts Referred:

Citation : (1995) 3 LLJ 257

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : K.K. Vyas, for the Appellant; R.J. Kochar, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Srikrishna, J.—This writ petition impugns the order of the Industrial Court, Bombay, dated 9th July, 1984, made in Complaint (ULP) No. 140 of 1983 under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the Act).

2. The petitioner is a Private Limited Company doing the business of exhibiting films and owns a Cinema Theatre known as "Navrang Cinema" at Andheri. There were about 38 workmen working on the premises of Navrang Cinema. Out of these, we are concerned only with 10 workmen who were employed in the five Cafeterias situated on the premises of the said Navrang Cinema. The others were employed in connection with the exhibition of pictures and we are not concerned with them in the present petition. Some time in the last week of January 1983, 13 workmen connected with the exhibition of pictures and 7 workmen working in the Cafeterias, became members of the respondent-union. The respondent addressed a letter dated 27th January, 1983, informing the petitioner that the majority of the workmen working in their establishment had become its members and called upon the petitioner to recognise it as the authorised sole collective bargaining agent. It also made certain other demands in regard to the application of the Bombay Shops and Establishment Act and payment of

minimum wages to its member-workmen. On 29th January, 1983, the services of 4 of such workmen who had become members of the respondent-union were abruptly terminated by the petitioner. On 30th January, 1983, the petitioner terminated the services of another 5 workmen. All these 9 workmen were the workmen who were connected with the exhibition of films. On 3rd February, 1983, one of the workmen concerned in the present petition, namely, Tanaji J. Limkar was removed from service. Again on 25th February, 1983, another 5 workmen working in the Cafeteria, who are all workmen concerned in the present petition, were also abruptly removed from service. The respondent-union alleges that all these workmen had been told by one Ismailbhai Patel, a Director of the petitioner company and its manager to resign from the membership of the respondent union. It is also alleged that the petitioner terminated, in all, services of 8 workmen who were working in the Cafeteria because they did not resign from the membership of the respondent union. Curiously, however, during this period 7 workmen connected with exhibition of films addressed a joint letter of resignation on 18th February, 1983, to the respondent-union and purported to resign from its membership. The respondent-union filed a complaint before the Industrial Court, Bombay, in which after making the factual allegations as to the circumstances under which the services of the 8 concerned workmen, (1) Ibrahim Yusuf Patel, (2) Wali Ismail Patel, (3) Yakub Hasan Patel, (4) Mohamed K.M., (5) D.V. Kadam, (6) Sadanand S. Gawde, (7) Shankar Ratnu Ramane and (8) Tanaji J. Limkar, were terminated in quick succession, the respondent-union contended that the termination of the services of the said 8 workmen amounted to unfair labour practice within the meaning of Items 1(a), 4(a) and 4(f) of Schedule II of the Act.

3. The petitioner contested the complaint and contended that in or about March 1973, the director and shareholders of the company had sold all their shares to the present share-holders and that since March 1973, the affairs of the petitioner company were being looked after by Ismail Patel, Ismail I. Bhagat and Smt. Farida Ismail Patel. The case made out was that at the time the new shareholders acquired the property known as "Navrang Cinema", there were five Canteens situated in the said Cinema and by an agreement dated 15.4.1974, these Canteens were given on lease to a firm carrying on the business in the name of Navrang Cafeteria. It was alleged that the workmen working in the five Cafeterias were all workmen of the said Navrang Cafeteria and not of the petitioner-company. It was contended that there was no rural relationship of the employer and the employee between the petitioner-company and the concerned workmen of the Cafeteria. The petitioner took up the stand that it was not the real employer of the 8 workmen in question and that the complaint was misconceived and not maintainable against it. The petitioner also denied adverse allegations with regard to unfair labour practice and maintained that there was no case on merits.

4. The Industrial Court, after recording evidence came to the conclusion that no unfair labour practice falling within Item 1(a) and 4(f) of Schedule II of the Act

had been made out. It, however, took the view that the evidence on record showed that an unfair labour practice within the meaning of Item 4(a) of Schedule II of the Act had been made out. The Industrial Court gave an appropriate declaration and granted relief of reinstatement to the 8 concerned workmen with continuity of service and full back wages for the interregnum. The petitioner-company is before this Court to impugn this order of the Industrial Court.

5. Mr. Vyas, learned Advocate for the petitioner, vehemently contended that the impugned order of Industrial Court is utterly perverse and that even though the Industrial Court had rightly held that no unfair labour practice under Items 1(a) and 4(f) had been found against that petitioner-employer, without there being any evidence on record, the Industrial Court has perversely concluded that the unfair labour practice under item 4(a) of Schedule II of the Act had been made out. Though Mr. Vyas attempted to persuade me to take the view that the evidence on record was insufficient to warrant a finding of unfair labour practice, I am not persuaded to do so, as under Article 227 of the Constitution of India, this Court is not required to go into the question of adequacy or otherwise of the evidence on record. I shall, however, consider the issue as to whether the finding of unfair labour practice is perverse as contended. This, of course, would require a detailed scrutiny of the evidence on record which has been enclosed with the petition.

6. Before I take up the scrutiny of the evidence on record, albeit, for the limited purpose of testing the finding of the Industrial Court for perversity, I may note here one contention advanced by Mr. Kochar, learned Advocate appearing for the respondent-union. Mr. Kochar, while supporting the finding recorded by the Industrial Court as to unfair labour practice under Item 4(a) of Schedule II of the Act, alternatively contended that in any event there was more than enough material on record for the Industrial Court to have returned a finding of unfair labour practice even under Item 1(a) of Schedule II of the Act and this Court may hold so, if it is inclined to take the view that the unfair labour practice under Item 4(a) has not been made out on the basis of the evidence on record. In my view, there is substance in this contention, Whether the unfair labour practice could be subsumed under one or other item of the Schedule is a matter of legal categorisation and the legal label attached by the Trial Court to the facts found is not determinative. If, after proper appreciation of the evidence on record, there have been findings as to the facts, though merely because the legal categorisation of the factual findings is erroneous, it would not justify interference with the order of the Industrial Court.

7. In my judgment, the Industrial Court was right in dismissing the case under Item 4(f) of Schedule II of the Act on account of the simple fact that none of the workmen removed from service was an office bearer or was shown to be an active union worker. The Industrial Court has, however, held that the unfair labour practice of encouraging or discouraging membership in the union by

discriminating against the employees, by discharging or punishing employees, because they urged other employees to join or organise a union, within the meaning of Item 4(a) of Schedule II of the Act, has been proved. In order to facilitate further discussion, it is necessary to reproduce the relevant provisions of Items I and 4, Schedule II of the Act, which are as under: -

"1 To interfere with, restrain or coerce employees in exercise of their right to organise, form, join or assist a trade union and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, that is to say -

(a) threatening employees with discharge or dismissal, if they join a union;

(b)

(c)

4. To encourage or discourage membership in any union by discriminating against any employee, that is to say -

(a) discharging or punishing an employee because he urged other employees to join or organise a union;

(b)

(c)

(d)

(e)

(f) discharging office bearers or active union members, on account of their union activities.

The Industrial Court rejected the contention of the water-tight compartmentalisation of workmen by placing reliance on the observations of the Supreme Court in *Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others*, . In the inimitable words of Krishna Iyer, J., the true test of the employer-employee relationship is:-

"The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with direct relationship excontractor is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different, perfect paper arrangement, that the real employer is the management, not the immediate contractor. Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry,

the local conditions and the like may be resorted to when labour legislation casts welfare obligations on the real employer, based on Articles 38, 39, 42, 43 and 43-A of the Constitution. The Court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the way of legal appearances."

Relying on this test and applying it to the facts before it, the Industrial Court came to the conclusion that despite the paper arrangement set up to obfuscate identification of the real employer, the real employer was the petitioner-company inasmuch as it was the petitioner-company which was interested in running Navrang Theatre. Though, for the purpose of running its business, it had introduced several intermediaries, some for the purpose of distributing films and some for the purpose of running the Cafeterias, ultimately by application of the economic control test postulated by Krishna Iyer J. in Hussain Bhai's case (supra), the petitioner-company was held to be the real employer. In view of the peculiar facts of the case before it, the Industrial Court was perfectly justified in arriving at this conclusion. Once this conclusion was reached, it was a short hop therefrom to the other conclusion.

8. As to the unfair labour practice, the Industrial Court looked at the totality of the circumstances and held that there was an unfair labour practice. The circumstances were eloquent. And what were they? On 27th January, 1983, the respondent-union writes a letter to the petitioner-company informing the petitioner-company that a overwhelming majority of the workmen in its establishment had become its members. It claims recognition as sole collective bargaining agent of the workmen of the petitioner's establishment. It also voices grievance as to non-implementation of the minimum wage rates and the provisions of the Bombay Shops and Establishment Act as to overtime wages and weekly off compensation. On 29th January, 1983, 4 of the workmen employed in connection with the exhibition of films are removed from service, 5 more are thrown out on 30th January, 1983, one workman is removed on 3rd February, 1983 and on 18th February, 1988, 7 workmen purportedly tendered resignation from the membership of the respondent-union. The circumstances were sufficiently eloquent for the Industrial Court to read the scenario in proper perspective. Doubtless, Mr. Vyas urges that each one of these was an unconnected event with no casual or other connection with the other. In my view, if these were the circumstances, the Industrial Court was perfectly justified in inferring that the workman including the 8 workmen concerned in the complaint were removed for what the employer thought was their unpardonable sin of joining the respondent-union.

9. This is not all. The oral evidence before the Industrial Court is further illuminating. One Vallibhai Ismail Patel was examined by the respondent-union. His evidence makes it clear that the workmen in the canteen became members of the respondent- union in January 1983. After giving the details of how the workmen were removed, this witness says :

"Because we did not leave the union our services were terminated. Shri Ismail

Bhai the Director of the respondent had told us to leave the union.

He was cross-examined on several aspects of the matter and it was suggested to him that he was not an employee of the petitioner-company but he denied the said suggestion made to him. On the relevant issue, he says in his cross-examination:

"All canteen employees were told to leave the union on the same day. He (Ismail Bhai) said this to the employees in the balcony."

10. The witness Shankar Ratnu Ramane also gave evidence that he had become member of the respondent-union in January 1983 and along with him D.V. Kadam, S.S. Ghavde and T.J. Limkar (all concerned workmen) had become members of the respondent-union. Then he says:

"After we became members of the union the manager told us to resign from the union. We told him that we would not resign. He then terminated our services. This took place on 30.1.1983. On that day I was alone terminated. Limkar was terminated after I was terminated. Gawde and Kadam were removed from service before 31.1.83. I was removed from service because I became the member of the Union."

He also denied the suggestion that he was not really an employee of the petitioner-company and that he was an employee of M/s. Multi Services, who are the intermediaries resorted to by the petitioner-company.

11. We then have the evidence of Tanaji Jyoti Limkar, who also states that he became the member of the respondent-union in January 1983 and says:

"My services were terminated from 3.2.83, because I joined the union."

He also denies the suggestion that he was in the employment of M/s. Multi Services and not of the petitioner-company. What is significant in the evidence of the aforesaid witnesses is the total absence of cross-examination with regard to their asserted reason as to why they and other workmen were removed from service.

12. As against this evidence, Ismail Mussa Patel, one of the Directors of the petitioner-company, who was examined in support of its case, denied that the concerned workmen were not employees of the petitioner-company and asserted that they were employees of Navrang Cafeteria. He also denied having told them, to resign from the membership of the Bombay Labour Union or the suggested motivation for the termination of the services of the concerned workmen.

13. In the face of this evidence on the record, it is difficult to agree with the contention of Mr. Vyas that the Industrial Court's finding as to unfair labour practice is perverse. It is trite knowledge that the evidence as to unfair labour practice or victimisation is in most of the cases inferential or circumstantial. An Industrial Court trying a complaint of unfair labour practice, can hardly hope to get direct evidence on the issue. It is the duty of the Industrial Court, therefore,

to look at the totality of the circumstances brought on record by the evidence and raise probable inferences from the cumulative effect of the evidence placed on record. This, the Industrial Court, in my view, has done properly. I am, therefore, unable to accept the contention that the findings recorded by the Industrial Court are perverse.

14. The question then arises as to whether there was at all evidence about any of the employees concerned urging other employees to join or organise a trade union. It is true that though the evidence on record strongly suggests domination of legitimate trade union activity of the workmen, there is no specific evidence that any employee was removed from service because he "urged" others to "join or organise" the union, the Bombay Labour Union, in the instant case. This, however, does not conclude the matter. I am inclined to accept the contention of Mr. Kochar that though the Industrial Court has held that there was no unfair labour practice within the meaning of Item I(a) the evidence on record showed that the situation is really one which could be subsumed under Item 1 of Schedule II of the Act. The evidence unmistakably showed that after the respondent-union had communicated that the concerned workmen had become members of its union, the manager and the director of the petitioner-company called the workmen concerned and told them to leave the union and that it was their failure to leave the union which resulted in their being thrown out of the employment. The fact that 7 of the workmen collectively resigned suddenly from the membership of the Bombay Labour Union is also a tell-tale circumstance. Taken cumulatively, these circumstances do indicate that the petitioner-company was interfering with or coercing the employees in exercise of their right to organise, form or join or assist a trade union or to engage in certain activities for the purpose of collective bargaining. In my view, on the material on record, an unfair labour practice within the meaning of item 1(a) of Schedule II was made out.

15. In the result I uphold the order of the Industrial Court, though for slightly different reasons than the one given by the Industrial Court. The order is very much sustainable on the material on record and needs no interference under Article 227 of the Constitution of India. There is no merit in this petition which is liable to be dismissed.

16. In the premises, the petition is hereby dismissed and the Rule discharged.

17. Mr. Vyas applies for leave under Article 133(a) of the Constitution of India. In my view, no substantial question of law of general importance as to require leave being granted under Article 133 Clause (a) arises. Certificate declined. Application for stay declined. Certified copy to be expedited.