

(1994) 10 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition No. 6225 of 1987

Dipak Ray and Others

APPELLANT

Vs

Mafatlal Engineering Employees Union and Others

RESPONDENT

Date of Decision : 20-10-1994

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 106, 3
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10A, 32
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 30, 41, 45, 48

Citation : (1995) 2 BomCR 216 : (1995) 70 FLR 593 : (1995) 2 MhLj 149

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

Bench : Single Bench

Judgement

B.N. Srikrishna, J.—This writ petition under Articles 226 and 227 of the Constitution of India is directed against an order dated 8th December, 1987, made by the Industrial Court, Thane, in Revision Application (ULP) No. 83 of 1987, under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act").

2. The crucial issue in the present writ petition is whether a Director or Officer of a Company incorporated under the Companies Act, 1956 can be liable for contravention of an order passed under the provisions of the Act even though such Director or Officer was not party to the proceedings in which the order was passed, despite there being no provision in the Act imposing such vicarious penal liability on a Director or Officer of a limited Company for the default of a limited Company.

3. The First Petitioner is the Executive Director, the Second Petitioner the General Manager (Operations) and the Third Petitioner the Deputy Personnel Manager of a limited Company known as Mafatlal Engineering Industries Limited (hereinafter referred to as "the company"). The Company was party to an Arbitration Award u/s 10-A of the Industrial Disputes Act, 1947 made on 17th May, 1965. Under

the terms of the said Award made by the Arbitrator, Salim M. Merchant, the Company was required to discontinue the employment of contract Labour which was prohibited except in the employments specified in the said Award.

4. On 29th April, 1985, the Arbitration Award was terminated by a Trade Union known as Kamgar Utkarsha Sabha. Some time in October, 1987, the First Respondent Union filed a complaint, Complaint (ULP) No. 367 of 1987, before the Industrial Court, Thane, invoking Items 9 and 10 of Schedule IV of the Act. The gist of the case made out in the said complaint was that, despite a prohibition against employment of contract labour in employments other than those specified in Arbitration Award of Salim M. Merchant, the Company had continued to engage contract Labour in non-excepted employments and, therefore, the Company was engaged in an unfair Labour practice within the meaning of Item 9 of Schedule IV of the Act. To this complaint there were only two Respondents, the Company itself and the Deputy Commissioner of Labour, Thane. On 2nd November, 1987 the First Respondent moved an application for interim relief and obtained an ex parte ad-interim injunction order in terms of prayer 3(a) of the interim relief application. The order granted an ad-interim injunction restraining the Company from engaging any contract labour on any job except as provided in the Arbitration Award of Salim M. Merchant dated 17th May, 1965. This ex parte ad-interim injunction order was served upon the Company on 3rd November, 1987 together with a notice of hearing made returnable on 18th December, 1987. On 10th November, 1987 the Company filed an affidavit of the Third Petitioner opposing the interim relief and prayed for vacating the ad-interim order and for dismissal of the application for interim relief. However, the Industrial Court does not appear to have heard the said application immediately. The application was heard and the ad-interim order was vacated on 27th November, 1987.

5. In the meanwhile, on 16th November, 1987, the First Respondent filed a complaint, Miscellaneous Complaint (ULP) No. 153 of 1987, before the Labour Court, Thane, invoking the provisions of sections 30, 28, 41 and 45 of the Act. It was alleged therein that the ex parte ad-interim injunction order dated 2nd November, 1987, issued by the Industrial Court, Thane, had been served on the Company on 3rd November, 1987 and that, despite due notice of the said order which injected the Company from engaging any contract labour pending the hearing of the interim relief application, the Company had disobeyed the said order and continued to engage contract labour on jobs other than the ones specified in the Arbitration Award. It was, therefore alleged that the persons named as accused in the Miscellaneous complaint (ULP) No. 153 of 1987 were guilty of offences u/s 48 of the Act for which they were liable to be punished in accordance with the Act. It may be noticed here that in Miscellaneous Complaint (ULP) No. 153 of 1987 the Company was the first accused, Nos. 2, 3 and 4 were the present Writ Petitioners, while accused Nos. 5 to 9 were other Officers of the Company. The Labour Court issued summonses to all the accused name in the complaint, including the three Petitioners before this Court.

6. The Petitioners challenged the issue of summonses to them by their Revision Application (ULP) No. 83 of 1987 before the Industrial Court, Thane, and prayed for quashing of the proceedings against them. Apart from the contention about the summonses being in wrong form, the principal contention urged in the Revision Application was that the Revision Applicants 2 to 9, the individual Director and Officers of the Company, could not be prosecuted for the alleged offences inasmuch as they were not parties to the original proceedings in Complaint (ULP) No. 367 of 1987 in which the ex parte ad-interim injunction, alleged to have breached, had been passed. Reliance was placed by the Revision Applicants on the judgment of a Division Bench of this Court in M/s. Eduljee & Company Ltd. and another v. First Labour Court, Nagpur and others 1976 L.I.C. 1077. The Industrial Court accepted this argument in respect of the Revision Applicants 5 to 9, quashed the proceedings against them and dismissed the Miscellaneous Complaint (ULP) No. 153 of 1987 as against them. As against the present Writ Petitioners (Revision Applicants 2, 3 and 4), the Industrial Court was of the view that the notices issued to them were liable to be set aside because they were in the wrong form. Finally, by its order, the Industrial Court set aside the notices issued to the present three Writ Petitioners and remanded the matter to the Labour Court for "proper procedure as per law". It is this order of the Industrial Court which is challenged in the present writ petition.

7. Mr. Talsania, learned counsel for the Writ Petitioners, has reiterated the same contentions which were urged before the Industrial Court. He contends that no complaint u/s 48(1) of the Act would have been filed against the present Writ Petitioners as they were no party-Respondents to the original Complaint (ULP) No. 367 of 1987 in which the ex parte order was passed. It is contended that the only party-Respondent to the original Complaint (ULP) No. 367 of 1987 was the Company and, therefore, the complaint was not maintainable against any person other than the Company.

8. In my view, there is merit in this contention which needs to be upheld. The reliance placed by the learned counsel on the judgment of the Division Bench in Eduljee's case is apposite. In Eduljee's case, the Employer was covered under the provisions of the Bombay Industrial Relations Act. A certain order was passed by the Labour court against the Employer Company which was alleged to have been disobeyed by the Company. A criminal complaint u/s 106 of the Bombay Industrial Relations Act was filed against two individual Directors who were not parties to the original proceedings. In these circumstances, notwithstanding the extended definition of the expression "Employer" u/s 3(14) of the Bombay Industrial Relations Act, the Division Bench of our High Court was of the view that, a person against whom criminal proceedings u/s 106 of the Bombay Industrial Relations act were initiated must, firstly, be an Employer and secondly, a person who had affected a change which had been found to be illegal or a person who was required under an effective decision of the Labour Court to carry out the change or withdraw the illegal change. The Division Bench was of the view that unless these two conditions were fulfilled, the criminal proceedings

could not be entertained. The Division Bench observed.

"It is primary in the scheme of these two sub-sections that there has to be a prior adjudication against an employer and as a result of that adjudication the employer is exposed to certain penalties. The adjudication which is the basis for initiating proceedings under sub-sections (1) and (2) obviously must precede and further the person who is sought to be subjected to prosecution must be party in that adjudication. Any other construction of these two sub-sections would lead to anomalous results, for, a person to be brought before the Court facing a prosecution, if he is not a party to the earlier adjudication, would not be in a position to challenge the same, for there is a finality attached to that adjudication under the provisions of the Act and, secondly, the Court trying such a person for an offence contemplated by these sub-sections will not be able to go behind the earlier adjudication."

In my view, the reasons advanced by the Division Bench for holding the prosecution u/s 106 of the Bombay Industrial Relations Act as not maintainable, unless the person against whom the prosecution is sought to be launched was himself a party to the earlier proceedings in which an effective order was passed against him, is equally applicable to a prosecution u/s 48(1) of the Act. The crux of the offence alleged u/s 48(1) was that there was failure to comply with an order passed by a Court under Clause (b) of sub-section (1) of section 30 of the Act by the persons sought to be made accused in the complaint. A perusal of the scheme and the provisions of the Act shows a discernible absence of any provisions for vicarious criminal liability. Reliance placed by the Industrial Court on the provisions of section 32 of the Industrial Disputes Act, for holding that a Director or an Officer incharge of the Management of a body corporate or a Company would be vicariously liable for a criminal act of the Company, is wholly unsustainable. Section 32 of the Industrial Disputes Act would be attracted only if there is an offence under the said Act. It is trite law that there can be no vicarious liability in criminal jurisprudence, unless any statute has specifically provided for the same. Section 32 of the Industrial Disputes Act plays this role of creating vicarious penal liability and a Director, Manager or other Officer incharge of the Management, as provided in section 32 of the Industrial Disputes Act, becomes liable for the Criminal act of a Company. There is no such provision under the Act, which significantly applies to industries covered both by the Bombay Industrial Relations Act and the Industrial Disputes Act. In my view in the absence of such clear cut provision making a Director or an Officer of a Company vicariously liable of a criminal act of the Company, it would not be possible to prosecute a Director or individual officer for an offence alleged to have been committed by the Company and the prosecution would not be maintainable. The view taken in *Eduljee's* case is equally applicable here and, unless an individual Director or Officer was himself party to the original proceedings in which the order which is alleged to have been breached, was made, he cannot be made liable in subsequent proceedings in which the criminal jurisdiction of the Labour Court to try offences under the Act is invoked. While

the Industrial Court was right in dismissing the criminal complaint, Miscellaneous Complaint (ULP) No. 153 of 1987, as against Revision Applicants 5 to 9, it erred in not dismissing the complaint against the present writ petitioners also, since it was obvious that they were not parties to the original proceedings (Complaint (ULP) No. 367 of 1987) in which the ex parte ad-interim injunction order, which is alleged to have been disobeyed, was passed. In these circumstances, I am of the view that Miscellaneous Complaint (ULP) No. 153 of 1987 is not maintainable against the three present writ petitioners and, therefore, all proceedings therein against the three present writ petitioners are liable to be quashed.

9. In the result, rule is made absolute by quashing all proceedings in Miscellaneous Complaint (ULP) No. 153 of 1987 as against the petitioners in this writ petition and dismissing the said complaint as against the petitioners in this writ petition.

10. No order as to costs.