

(1955) 02 BOM CK 0025

In the Bombay High Court

Case No : Special Civil Application No. 2080 of 1954

Gambhirji Odharaj

APPELLANT

Vs

Bind Basni Prasad

RESPONDENT

Date of Decision : 08-02-1955

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 114, 114(1), 115, 115A, 13
Constitution of India, 1950 — Article 227

Citation : AIR 1955 Bom 369 : (1955) 57 BOMLR 456 : (1955) ILR (Bom) 740 : (1955) 2 LLJ 202

Hon'ble Judges : Chagla, C.J.;Dixit, J

Bench : Division Bench

Advocate : M.P. Amin, General, V.M. Tarkunde, for the Appellant; A.M. Mehta and Dixit Maneklal and Co., for the Respondent

Judgement

Chagla, C.J.—This petition raises a rather important question as to the construction of Section 115A, Bombay Industrial Relations Act, 1946.

The Sidhpur Mills, respondents No. 3 before us, closed some of their departments on 10-12-1950, and continued the closure till 28-2-1951, and in these three months they played off some of their employees. Playing off is a technical term in industry & we understand that what it means is that due to the closure of certain departments some of the employees are asked to work for less hours than they were working before the closure and these employees are paid on the basis of the less work done by them

On 24-3-1951, 98 employees of the Sidhpur Mills approached the mills in respect of their compensation for being played off under the proviso to Section 42(4), and on 15-5-1951 they applied to the Labour Court in respect of this compensation. This application was No. 450 of 1951. On 25-5-1951, the Mazdoor Mahajan Sangh also applied to the Labour Court in respect of compensation to the employees of the Sidhpur Mills who had been played off for the period December 1950 and January and February 1951, and this application of the

Sangh was No. 505 of 1951.

On 28-8-1951, a compromise was arrived at between the Sangh and the Sidhpur Mills. It may be mentioned that the Sangh is a registered union under the Industrial Relations Act and is also a representative union. The Labour Court passed an order u/s 115A in terms of this compromise. The employees who had made their application on 24-3-1951, and who were not members of the Sangh required the Labour Court to adjudicate upon their application and the Labour Court took the view that in view of the compromise arrived at that application was no longer maintainable and dismissed it.

An appeal was taken to the Industrial Court and the Industrial Court confirmed that decision. There was a further appeal to the Labour Appellate Tribunal which also took the same view, and now one of these 98 employees has come before us alleging that the Labour Court has failed to exercise the jurisdiction vested in it by law and that it was incumbent upon the Labour Court to ? hear the application No. 450 of 1951 and pronounce its decision thereon.

2. The question therefore that We have to consider and decide is whether by reason of the compromise arrived at between the representative union and the employer, the Sidhpur Mills Co. Ltd., it was not competent for the individual employees of the Sidhpur Mills to proceed with an application which they have made u/s 42(4); in other words, whether a compromise arrived at in an application made by the representative union u/s 42(4) was binding upon the employees who had made an independent application to the Labour Court under the same section.

It is pertinent to note that the compromise relied upon by the employer is a compromise which was arrived at in application No. 505 of 1951 and no compromise was arrived at in application No. 450 of 1951. Application No. 450 of 1951 was never heard and never decided. The view taken by the Labour Court was that merely by reason of the compromise arrived at in application No. 505 of 1951, inasmuch as that compromise was between a representative union and the employer, the employees lost their right to get a decision in their own application which they had properly made u/s 42(4).

Now, as we said before, both the applications No. 450 of 1951 and No. 505 of 1951 were made u/s 42(4), and turning to that section, it confers a right both upon an employee and a representative union desiring a change in respect of any order passed by the employer under standing orders, or any industrial matter arising out of the application or interpretation of standing orders, or an industrial matter specified in Schedule III, to make an application to the Labour Court.

Now, before such an application can be made, the employee or a representative union has to approach in the prescribed manner the employer with a request for the change- and also provided no agreement has been arrived at in respect of the change within the prescribed period. The industrial dispute with which we are concerned admittedly relates to standing orders and the matters-specified in

Schedule HI.

3. Now, it is important to look at Sub-section (2) of Section 42 and to see the different scheme envisaged by the Legislature in enacting Section 42(2) and in enacting Section 42(4). Section 42(2) deals with industrial matters not specified in Schedule I or III and in respect of those industrial matters where an employee desires a change, no right has been, given to him to approach the employer. He can only do so through the representative of the employees.

There is reason behind the different scheme-embodied in Section 42(2) and Section 42(4). Schedule II deals with matters which are of general interest to the industry and therefore it is quite possible that the view was taken that with regard to such matters both the approach to the employer and to the Labour Court should be by a representative union and not by individual employees concerned. But Section 42(4) deals with matters contained in Schedules I and III and many of these matters are of particular interest to the employee himself, and it may well be that in a particular case the representative union may not be sufficiently interested to ventilate the grievances of an individual employee, and therefore the Legislature has expressly conferred a right upon the employee who has a grievance with regard to any of the matters contained in Schedule I or III.

In this particular case the 98 employees, after complying with the necessary provision with regard to the giving of notice to the employer, approached the Labour Court in order to ventilate their individual grievances. The representative union, the Sangh, also thought the matter of sufficient importance generally to labour to take up the same grievance and make an application with regard to it. Therefore here we have a case where both the individual employee and the representative union have made concurrent applications to the Labour Court u/s 42(4).

Then an agreement is arrived at between the employer and the representative union and the Labour Court had no alternative except to record that agreement and make it a part of its own decision,

4. Now, the question is, what is the effect of this agreement which is embodied in the decision of the Labour Court. The binding effect of an order or decision of a Labour Court is dealt with in Section 115, and that section, to the extent it is material, provides that an order or decision of a Labour Court against an employer shall bind his successors in interest, heirs and assigns in respect of the undertaking as regards which it is made or given and such order or decision against a registered union shall bind all persons who were members of the union at the date of the order or decision or who become members of the union there after.

It is not disputed that the petitioner was not a member of the representative union at the date when the decision was given by the Labour Court u/s 115A, nor was he a member at the date when the present petition was preferred to this Court. Therefore, bearing in mind the plain language used by the Legislature,

there can be no doubt that this order or decision only binds those-employees who were either members of the union-at the date of the order or decision or who subsequently become its members.

In this connection it is necessary to look at Section 114. That section deals with a registered agreement or a settlement, submission or award and it provides upon whom the agreement, settlement, submission or award is binding. Section 115 deals only with the case of an order or decision of a Wage Board or Labour Court. Section 114 deals with decisions or awards of an Industrial Court which are "not covered by Section 115. Therefore, between Section 114 and Section 115 the Legislature has dealt with the question of the parties who are bound by various agreements, settlements, submissions, awards and decisions which may be given in various proceedings under the Act.

Now, we had occasion to consider and construe Section 114 in -- *Ranchhod Ravji Mota Vs. State of Bombay and Others*, , and there myself and Shah J,, held that when a registered union was a party to an agreement, settlement, submission or award, only those persons who were members of the representative union at the date of such agreement, settlement, submission or award or who became members of the union -thereafter were bound by an agreement, settlement, submission or award, and we came to that conclusion looking to the language, used by the Legislature in Section 114(1)(b).

Now, the language used in Section 115 is identical and it is difficult to understand how -it is possible for us to take a different view of the true meaning of Section 115 from the view we took with regard to the meaning of Section 114.

5. Now, what is urged before us is that Section 115 only refers to a case where a registered union is a party to the agreement or where the decision is against the registered union, and it is pointed out that under the scheme of the Industrial Relations Act a representative union is very different from a registered union.

It is said that a representative union occupies a position of pride under the scheme of the Industrial Relations Act, that certain important rights are conferred upon such a union, that it is only that union that can represent labour for the purpose of collective bargaining, and therefore we must not construe the expression "registered union" in Section 115 as meaning a representative union.

Now, there are two answers to this argument, both of which are completely, in our opinion, conclusive. In the first place a representative union is a registered union. As a matter of fact Section 13 deals with three kinds of registered unions, viz., a representative union, a qualified union, and a primary union. Therefore we have the genus of registered unions and the three species of that genus contemplated by the Act are the three unions to which we have just referred. Now. if the intention of the Legislature was that Section 115 should only refer to two kinds of registered unions, viz., the qualified union and the primary, union and not refer to the third, viz., the representative union, it is impossible to understand why the Legislature should have used the generic expression

"registered union". They, could have either specifically mentioned a qualified union or a primary union or they could have said a registered union other than a representative union.

By no canon of construction is the submission made by the Advocate General justified that in construing the expression "registered union," which is the wide expression used in the Act- we must exclude a part of that class although the Legislature has given no indication whatever in Section 115 that it intended that part or section of the class to be excluded from the operation, of Section 115.

The other answer which is equally conclusive is that if Section 115 does not deal with the case of a decision being given against a representative union, we have asked the Advocate General to point put to us any section in the Act which deals with that case, and after looking through the whole Act the only section that the Advocate General could point his finger at was 5. 94, and when he read Section 94 he realised that even that section did not help him because that section deals with the binding nature only of an order, decision or award of an Industrial Court.

It does not deal with an order or decision of a Labour Court, and what we are dealing with u/s 115 is an order or decision of a Labour Court and not an order, decision or award of an Industrial Court. It may be that read with Section 114 Section 94 may appear to be overlapping. But we are not here considering the relative effect of Section 94 and Section 114 with regard to the subject-matter with which these two sections deal.

We are dealing with Section 115 which deals with the subject matter which is entirely different from the subject matter dealt with by Section 94, and therefore the Advocate General is on the horns of this dilemma that either Section 115 deals with all registered unions, in which case by the very language of the section only those persons who were members of the union or who subsequently become members were bound by the decision, or it does not deal with the case of a representative union, in which case there is no section in the Act which makes a decision against the representative union binding upon those who are not members of that union.

6. It is pointed out that Section 115A it is only when an agreement is arrived at between an employer and a representative union that it is incumbent upon the Tribunal to pass an order or decision in terms of such an agreement, and it is said that the policy of the Legislature was " that when a representative union was a party to the agreement there should be a finality attached to that agreement and that agreement should not be permitted to be questioned or challenged by any individual employees. .

Now, we do realise that the Legislature has attached importance to the representative character of a representative union and it has also taken into consideration the fact that a representative union would normally look after the interests of labour. But if the intention of the Legislature was that when a representative union was a party to an agreement, the right of the employee to

make an application u/s 42(4) should be impaired, nothing was easier than for the Legislature so to provide.

Far from so providing, Section 115 is general in its terms which makes it clear that when a decision is given by the Labour Court and when the decision is against a registered union, it would only bind persons who were members of the union at the date of the order or decision or who became members of the union thereafter.

7. Reliance is then placed on Section 27A of the Act. That section provides that

"Save as provided in Ss,. 32 and 33, no employee shall be allowed to appear or act in any proceeding under this Act except through the representative of employees."

And it is urged that once a representative union has acted in arriving at a settlement with regard to an industrial dispute, that is the only authority that can act on behalf of any employee, and an employee, has not independent right" to agitate his grievance. Now, we have had occasion to point out that Section 27A and Sections 32 and 33 are purely procedural in character and they do not deal with substantive rights of parties, Read ing Sections 27A, 32 and 53 together, the scheme is that whenever a representative union appears in any proceedings that union alone can be heard by any Labour Tribunal.

But if a representative union does not appear, there is nothing to prevent an employee from appearing or from authorising any person to appear for him. Therefore it is perfectly true that even when an application is made by an employee u/s 42(4), if the representative union puts in an appearance, then the representative union alone ;can appear or act for the employee.

It is therefore pointed out that no useful purpose would be served if the Labour Court is asked to consider tile application of the employee u/s 42(4) when only the representative union can be heard on behalf of the employee.

In the first place, it is not necessary to assume that the representative union will appear when this application is considered by the Labour Court.

In the second place, even assuming the representative union does appear, the representative union will appear on behalf of the individual employees, and the application that will be considered and decided by the Labour Court would be the application of the employee and not the application of the representative union. It may even be possible for the Labour Court, having considered the matter from the point of view of the employee, to come to a different conclusion from the one it came to by (giving effect to the agreement arrived at between the employer and the representative union.

What has got to be constantly borne in mind is that the Labour Court is seized of two separate independent" applications, one by the employee and the other by the representative union, and it makes not the slightest difference even if in law

only the representative union can appear in both the applications.

8. Reliance was also placed by the Advocate General on a recent decision of this Court in - *Usman Habib Vs. State of Bombay and Others*, . In that case we were considering an application made u/s 42(2) and we held that the only right that Section 42(2) of the Act confers upon the employee is to submit to the representative union, his grievance and it is ultimately for the representative union alone to decide whether a notice of change should be given, and having so decided it is for the representative union to give the notice, and we considered the scheme of the Act in order to emphasise the fact that the whole scheme of the Act was in conformity with the provisions contained in Section 42(2).

But it is difficult to understand how this decision can be of any assistance to us in construing Section 42(4), when, as we have already pointed out, Section 42(4) gives an independent right to the employee to make an application which independent right has not been conferred upon the employee u/s 42(2).

9. There is one thing more to which we must advert, and that is a matter of some considerable importance, The "Labour Appellate Tribunal was called upon to consider our decision reported in - *"Ranchhod Ravji v. State of Bombay"*, (A), where we construed Section 114 and came to the conclusion that an award was only binding upon persons who were actually members of the union at the date of the award or who subsequently became members of the union and it did not bind employees who were not members of the union when the union was a party to the award.

Now, we should have thought that the question arising u/s 115 is in "pari materia" with our decision u/s 114. The Labour Appellate Tribunal realised that fact and came to the rather surprising conclusion that"" our decision was *art obiter*". They also followed an earlier decision of their own which is reported in *Bombay Government Gazette 1954; Part I, page 583*, and in that judgment they stated that they could not subscribe to the view expressed by the Bombay High Court about the power of representative unions.

10. Mr. Mehta has drawn our attention to Section 95A of the Act_ and that section lays down that

"The determination of .any question of law in "any order, decision, award or declaration passed or made, by the Full Bench of the Industrial Court, constituted under the regulations made u/s 92 shall be recognised as binding and shall be followed in all proceedings under this Act."

And Mr. Mehta's contention is that the Labour Tribunals are bound to accept the view of the law as laid down by the full bench of the Industrial Court and are not bound by the view of the law taken by this Court. In our opinion that contention is entirely erroneous under Art. 227 of the Constitution, every Tribunal in the State of Bombay is subject to the judicial supervision of the High Court, and in proper cases the High Court can correct the decisions of these Tribunals.

If a Tribunal acts without jurisdiction or fails to exercise jurisdiction vested in it or commits an error of law which is patent on the record, the High Court can send for the proceedings and quash any order passed by a Tribunal. If those are the powers of the High Court and if every Tribunal in the State is subordinate to the High Court- it must follow that the law laid down by the High Court is the law as far as the State of Bombay is concerned and every Tribunal in the State of Bombay is bound to accept that law.

If the view of the High Court is not accepted by the Supreme Court and the Supreme Court comes to a different decision, then that would be the law of the land which would be binding upon every Tribunal in India. It would be as futile to suggest that the full bench of the Industrial Court was not bound to obey the law laid down by the Supreme Court as it is for it to suggest that it cannot subscribe to the law laid down by the High Court.

We therefore expect all the Tribunals in the State of Bombay and equally the Labour Tribunals set up under the various "Labour Acts to bear in mind that if any labour legislation comes up for interpretation before the High Court, that interpretation must be accepted by the Tribunals as the correct interpretation. If the High Court has not interpreted any legislation, then certainly u/s. 95A it is for the full bench of the Industrial Court to lay down the law. But in matters which have come before the High Court, the full bench of the Industrial Court itself must decide that the law is what the High Court had laid down.

. 11. Now, there is one disputed question of fact. The Sidhpur Mills, respondents No. 3, have alleged that the petitioner became a member of the Sangh on 25-11-1954, and that he has actually paid subscriptions as a member. If he is a member of the Sangh, then he is bound by the agreement arrived at and he cannot re-litigate the matter in his own application. The petitioner in his affidavit has denied that fact.

12. We will, therefore, set aside the order of the Labour Court, the Industrial Court- and the Labour Appellate Tribunal, and send the matter back to them with a direction that the Labour Court should assume jurisdiction with regard to application No. 450 of 1951 and dispose of it according to law. We will also direct the Labour Court to decide on evidence as to whether- the petitioner joined the Sangh as alleged by respondents No. 3.

If the Labour Court comes to the conclusion, that he has not joined the Sangh, then as already pointed out his application will no longer be maintainable. If on the other hand the Labour Court comes to a contrary conclusion, it will dispose of the application in accordance with law.

Rule absolute with costs. Costs fixed at Rs. 150.

13. Order accordingly.