
(1994) 07 BOM CK 0072

In the Bombay High Court

Case No : Appeal No. 538 of 1993 in Writ Petition No. 3089 of 1988

General Secretary, Best Workers" Union

APPELLANT

Vs

N.A. Kadam and Others

RESPONDENT

Date of Decision : 06-07-1994

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 3, 78, 79, 97, 97A
Constitution of India, 1950 — Article 226

Citation : (1994) 07 BOM CK 0072

Hon'ble Judges : N.D. Vyas, J;M.L. Pendse, J

Bench : Division Bench

Judgement

M.L. Pendse, J.—The General Manager, B. E. S. & T. Undertaking filed Application No. 709 of 1983 before the Labour Court, Bombay u/s 97(1)(b) and 97(A) read with Section 78(1)(A)(C) and 79 of the Bombay Industrial Relations Act, 1946. The application recites that the BEST Workers" Union is a representative and approved Union for Transport Industry of the Undertaking. Prior to October 4, 1983, the Union held gate meetings and the active workers of the Union instigated and exhorted the employees to go on strike on October 4, 1983. The application further recites that by holding the meetings, the Union and the active workers not only instigated the strike but gave strong support to the call given by the leader of the BEST Workers" Union. The application further recites that on October 4, 1983, the political parties had declared Bharat Bandh and the Union joined the Bandh. The result of this strike call given by the Union was that the loyal workers were assaulted and the buses run by the Transport Company were damaged causing loss to the Undertaking. The application, therefore sought a declaration that the strike resorted to by the Union was illegal.

The Union filed its reply and claimed that the employees were asked to stop the work and the call was not to go on strike. The reply also claims that the stoppage of work was not in pursuance of any demands or in respect of any industrial dispute pending before the Labour Court.

2. The Labour Court recorded evidence and by order dated February 26, 1988, the Labour Court declared that the Union had resorted to an illegal strike in support of Bandh on October 4, 1983. The Union preferred Revision Application No. 8 of 1988 before the Industrial Court, Bombay, but the Revision Application came to be dismissed by order dated August 22, 1988. The Union then preferred Writ Petition No. 3089 of 1988 under Article 226 of the Constitution of India but the learned Single Judge by impugned judgment dated March 5, 1993 dismissed the petition holding that the orders passed by the lower authorities do not suffer from any error of law or non-application of mind. All these orders are challenged in this appeal.

3. Shri Bharucha, learned counsel appearing on behalf of the appellant, submitted that the three authorities below did not take into consideration the serious consequences which flow from declaring the strike illegal. The immediate consequence is that the union which is recognised and approved by the Transport Industry will lose the recognition and loss of recognition of a Union would result into serious repercussions. Shri Bharucha submitted that the assumption of the two authorities below and the learned Single Judge that the Union indulged in strike is not accurate. The Union had merely given a call for stoppage of work. We find considerable merit in the submission urged by the learned counsel. The expression "stoppage" has been defined u/s 3(35A) of Bombay Industrial Relations Act and, inter alia, means a total or partial cessation of work, whether such cessation or refusal is or is not in consequence of an industrial dispute. The expression "strike" is defined u/s 3(36) and means a total or partial cessation of work in consequence of industrial dispute. Shri Bharucha submits and, in our judgment, with considerable merit that the cessation of work for a day was not in consequence of an industrial dispute. Though the demands made by the Union were pending adjudication, the call for cessation of work on October 4, 1983 was not consequence of an industrial dispute and, therefore, the cessation of work will not automatically be considered as strike. The contention of Shri Bharucha that the cessation of work merely amounted to stoppage required acceptance in the facts and circumstances of the case. Section 97 of Chapter XIV of the Act defines when a strike shall be illegal, while Section 97A sets out when the stoppage shall be illegal. In our judgment, as the call given by the Union for cessation of work on October 4, 1983 was not one of strike as contemplated by the Act, the declaration given by the Labour Court and confirmed by the Industrial Court and the learned Single Judge cannot be sustained.

4. Accordingly appeal succeeds and order dated February 26, 1988 passed by the First Labour Court, Bombay in Application No. 709, 1988 passed by Industrial Court, Bombay in Revision Application No. 8 of 1988 and the judgment delivered by learned Single Judge on March 5, 1993 in Writ Petition No. 3089 of 1988 are set aside and the application filed by the general Manager of the Undertaking stands dismissed. In the circumstances of the case, there will be no order as to costs.