

(2019) 01 BOM CK 0038
In the Bombay High Court
Case No : Writ Petition No. 599 Of 2018

Hindustan Unilever Ltd. Buldhana Thr. Factory Manager Mr. Shabber Badshah APPELLANT

Vs

Prashant S/O Pralhadrao Nayse And Another RESPONDENT

Date of Decision : 11-01-2019

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 30(2)

Citation : (2019) 4 MahLJ 173 : (2019) LLR 419 : (2019) 2 LLJ 134 : (2019) 161 FLR 831 : (2019) 1 AIIMR 871

Hon'ble Judges : Manish Pitale, J

Bench : Single Bench

Advocate : H.V.Thakur, S.D. Thakur

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner and respondent No.1. Though served with the notice of final disposal, none appears for respondent No.2, who is a formal party.

2. Rule. Rule made returnable forthwith. The writ petition is heard finally with the consent of the learned counsel for the petitioner and respondent No.1.

3. By this writ petition, the petitioner-company has challenged order dated 24/10/2017 passed by the Industrial Court, Akola in a complaint filed by respondent No.1. By the said order, the Industrial Court has partly allowed application for stay moved by respondent No.1 directing that the enquiry proceedings initiated by the petitioner shall remain stayed during the pendency of the complaint before the Industrial Court. However, the petitioner was granted liberty to proceed further with the enquiry upon allowing respondent No.1 to engage a lawyer as defence representative in the enquiry proceedings. In fact, the question that arises for consideration is, as to whether respondent No.1 is entitled to engage the services of a lawyer as his defence representative in the

enquiry initiated by the petitioner against him.

4. Respondent No.1 is an employee working with the petitioner-company. On 26/04/2017 a charge-sheet was issued against respondent No.1 wherein it was stated that respondent No.1 had indulged in misconduct under clauses 24(a), 24(b), 24(k) and 24(l) of the Model Standing Orders under the Bombay Industrial Relations Act, 1946 (hereinafter referred to as "Act of 1946") applicable to respondent No.1. On the basis of the aforesaid charge-sheet, enquiry was initiated against respondent No.1 wherein the petitioner appointed its representative and respondent No.1 appointed his defence representative being one Mr. Patil, who was Secretary of the representative union. About 12 meetings of the enquiry committee were held from May, 2017 onwards and thereafter, respondent No.1 moved an application before the enquiry officer seeking permission on 01/07/2017 for being represented by a lawyer/advocate as his defence representative. On 08/07/2017, the enquiry officer rejected the said application of respondent No.1.

5. On 08/09/2017, respondent No.1 filed complaint under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "Act of 1971") before the Industrial Court claiming that by rejecting the aforesaid application of respondent No.1 to be represented by an advocate before the enquiry officer, unfair labour practice had been committed under Item 9 of Schedule IV of the Act of 1971, as there was violation of principles of natural justice. It was further prayed that a direction be given for permission to respondent No.1 to engage advocate as his defence representative in the enquiry proceedings. Along with the said application, respondent No.1 also moved an application for stay of the enquiry proceedings during the pendency of the complaint before the Industrial Court. By the impugned order dated 24/10/2017, the Industrial Court partly allowed the application for stay filed by respondent No.1 in the aforesaid manner. Aggrieved by the same, the petitioner has filed the present writ petition, wherein notice was issued for final disposal on 12/03/2018. The contesting respondent No.1 entered appearance through counsel.

6. Mr.H.V.Thakur, learned counsel appearing for the petitioner- company, submitted that the impugned order passed by the Industrial Court was wholly unsustainable, firstly, because it was in the teeth of Model Standing Orders framed under the Act of 1946 as also law laid down in the context of the right of a delinquent employee to be represented by a legal practitioner and secondly, it was submitted that respondent No.1 had failed to make out any prima facie case regarding unfair labour practice on the part of the petitioner-company and that therefore, the impugned order was required to be set aside. It was pointed out that the Model Standing Orders specifically provided that a delinquent employee like respondent No.1 would be entitled to be defended by an operative working in the same department as himself and there was no provision about such a delinquent employee being represented by a legal practitioner/advocate. It was

pointed out that the memorandum of agreement signed between the petitioner and the representative union, particularly clause 5 thereof, specifically provided that a delinquent employee may be defended by a co-employee from the concerned factory only and that no employee/union leader/other person, who was not an employee employed in the unit, would be allowed to represent a delinquent employee in a domestic enquiry. Even in the agreement, there was no clause permitting the delinquent employee to be represented by an advocate. It was pointed out that the Hon'ble Supreme Court in the case of *Crescent Dyes and Chemicals Ltd., v. Ram Naresh Tripathi*, reported in (1993) 2 SCC 115 had clearly laid down that a delinquent has no right to be represented through counsel or agent unless the law specifically confers such a right and that in this case the concerned law was the aforesaid Model Standing Orders. It was further contended that a Division Bench of this Court in the case of *BSES Limited v. Bombay Electric Workers Union & Ors.*, reported in 2004 III CLR 470 had laid down that the Industrial Court could pass an interim order in a complaint only if a prima facie finding could be given by the Court that an unfair labour practice had been committed by the employer. It was further submitted that the representative of the petitioner-company in the enquiry was not a legally trained person and, therefore, there was no substance in the demand made by respondent No.1 that he should be represented by a legal practitioner/advocate. It was submitted that in the present case no such prima facie case made out by respondent No.1 and that the Industrial Court erred in passing the impugned order and granting stay of the enquiry against respondent No.1.

7. On the other hand, Mr.S.D.Thakur, learned counsel appearing for respondent No.1, submitted that if there was violation of principles of natural justice, the entire enquiry proceedings would stand vitiated and that therefore, in the facts of the present case, respondent No.1 was justified in demanding that he should be represented by an advocate as his defence representative. The learned counsel contended that the nature of charges in the present case were such that only an advocate could effectively defend respondent No.1 and, therefore, a case of unfair labour practice was clearly made out by respondent No.1 justifying the impugned order passed by the Industrial Court. It was further contended on behalf of respondent No.1 that there had been instances when the Courts had held that principles of natural justice would stand violated if the delinquent employee is not permitted to be represented by an advocate, as complicated questions would be involved and assistance of a legally trained person was necessary. The learned counsel placed reliance on judgments of the Hon'ble Supreme Court and this Court, which are as follows :-

(1) *D.K. Yadav v. J.M.A. Industries Ltd.*, reported in (1993) 3 SCC 259 (3J).

(2) *Rattanlal Sharma v. Managing Committee, Dr. Hariram (Co- Education) Higher Secondary School*, reported in (1993) 4 SCC 10 (2J).

(3) *Yeshwant Harichandra Gharat v. Chairrant Chemicals (I) Ltd.*, reported in 2010 (4) LLJ 225 (Bom).

(4) Management of Chidambaram Shipcare Pvt.Ltd. v. Presiding Officer, Principal Labour, Chennai, reported in 2011 (7) MLJ 1065 (Madras).

(5) Anil Bapu Ingawale v. The State of Maharashtra, reported in 2012 (6) Mh.L.J. 126 (Bom).

(6) Hari Om Sharma v. Kulachi Hansraj Model School, reported in 2017 LabLR 3 (Delhi).

(7) P.M.Ruikar Trust Yavatmal v. Punjaram Dharmaji Wagdarkar, reported in 2016 (2) BCR 369 (Bom) (DB).

8. Heard learned counsel for the parties. The question that arises for determination is, whether respondent No.1 is justified in claiming that he is entitled to be represented by an advocate as his defence representative and in the event, he is deprived of such an opportunity, it would result in violation of his rights leading to the entire proceedings before the enquiry officer being vitiated. In order to examine the veracity of the claim made by respondent No.1, it would be necessary to consider the relevant provisions governing the procedure for conducting enquiry against delinquent employee like respondent No.1. It is undisputed that the provisions of the Act of 1946 apply to the present case. The Model Standing Orders framed under the Act of 1946 provide that when an enquiry is initiated against a delinquent employee, he/she shall be permitted to be defended by an operative working in the same department as himself and there is no mention of any permission for the delinquent employee to be represented by an advocate in such a domestic enquiry. The relevant standing order i.e. clause 25(4) reads as under :-

"25(4) An operative against whom an enquiry is proposed to be held shall be given a charge sheet clearly setting forth the circumstances appearing against him and requiring his explanation. He shall be permitted to appear personally for defending himself or shall be permitted to be defended on his behalf by an operative working in the same department or by an office bearer of a trade union of which he is a member or by his representative under Section 30 of the Bombay Industrial Relations Act, 1946. Except for reasons to be recorded in writing by the officer holding the enquiry the workman shall be permitted to produce witness in his defence and cross examine any witness on whose evidence the charge sheet rests. A concise summary of the evidence led on either side and the operative's plea shall be recorded."

Apart from this, clause 5 of the agreement entered into between the petitioner-company and the representative union reads as follows :-

"5. The employees agree that in the event of any discipline related matter, upon a domestic enquiry being conducted by the management related in the said matter, the employee may be defended by a co-employee from the Khamgaon Factory only. It is agreed that no employee/union leader/other person who is not an employee employed in the unit will be allowed to represent the employee/

employees against whom the domestic enquiry is being conducted. It is further agreed that in the event of the suspension of an employee pending enquiry, subsistence allowance will be payable only for those days on which the employee signs his attendance at the factory gate. The suspended employee would not be entitled to any subsistence allowance in case he fails to sign the attendance register. It is also agreed that the employees/unions will fully co-operate in the process of certification of Standing Orders for the unit, a copy of which is annexed herewith as Annexure 5".

9. A perusal of the aforesaid clauses of the Model Standing Orders and the agreement, would show that it is nowhere provided that a delinquent employee would be entitled to be represented by an advocate/lawyer. In fact, it is specifically provided that the delinquent employee would be represented by a co-employee from the very unit in which he/she is working. The Hon'ble Supreme Court in the case of *Crescent Dyes and Chemicals Ltd. v. Ram Naresh Tripathi* (supra) after discussing the question of delinquent employee being represented by a legal practitioner, has held that there is no absolute right of being represented except as such recognized by standing orders. The Hon'ble Supreme Court has held in the aforesaid judgment specifically in para 17, as follows:-

"17. It is, therefore, clear from the above case-law that the right to be represented through counsel or agent can be restricted, controlled or regulated by statute, rules, regulations or Standing Orders. A delinquent has no right to be represented through counsel or agent unless the law specifically confers such a right. The requirement of the rule of natural justice insofar as the delinquent's right of hearing is concerned, cannot and does not extend to a right to be represented through counsel or agent. In the instant case the delinquent's right of representation was regulated by the Standing Orders which permitted a clerk or a workman working with him in the same department to represent him and this right stood expanded on Sections 21 and 22 (ii) permitting representation through an officer, staff-member or a member of the union, albeit on being authorised by the State Government. The object and purpose of such provisions is to ensure that the domestic enquiry is completed with despatch and is not prolonged endlessly. Secondly, when the person defending the delinquent is from the department or establishment in which the delinquent is working he would be well conversant with the working of that department and the relevant rules and would, therefore, be able to render satisfactory service to the delinquent. Thirdly, not only would the entire proceedings be completed quickly but also inexpensively. It is, therefore, not correct to contend that the Standing Order or Section 22(ii) of the Act conflicts with the principles of natural justice."

10. The facts of the present case further show that respondent No.1 is being represented in the enquiry by his defence representative and that such representative conducted proceedings before the enquiry officer for as many as twelve meetings. It is relevant that respondent No.1 himself has been president of the union of workers of the petitioner-company. It has come on record that

neither the earlier representative of the petitioner-company (management) nor the present representative in the enquiry proceedings is a legally trained person. In fact, the person representing the petitioner-company in the enquiry proceedings at present is a food technology engineer, representing the petitioner company in an enquiry for the first time and he has no training in the legal field. Thus, it cannot be said that respondent No.1 will stand deprived of any valuable right or that principles of natural justice would stand violated if he is not permitted to be represented by an advocate/legal practitioner. The fact that the presiding/enquiry officer is a legally trained person cannot lead to a right accruing in respondent No.1 for being represented by an advocate because the enquiry officer would be conducting the enquiry and he would certainly not represent either the petitioner-company or respondent No.1. Therefore, apart from the fact that the Model Standing Orders and the agreement between the petitioner-company and the representative union do not provide for a delinquent employee being represented by an advocate, the facts of the present case do not show that there is any peculiarity requiring the demand of respondent No.1 to be accepted.

11. The contention raised on behalf of respondent No.1 that the nature of the charges was such that respondent No.1 could be effectively represented only by an advocate, is also unsustainable. A perusal of the charges does not show that there is any peculiarity in the charges and that absence of an advocate representing respondent No.1 would deprive him of effective representation. The thrust of the charges against respondent No.1 is insubordination, inciting others for illegal strike, indecent behaviour and subversive acts. None of these charges can be said to be so peculiar that only an advocate representing respondent No.1 could effectively defend him. As regards judgments of the Hon'ble Supreme Court relied upon by the learned counsel appearing for respondent No.1, a perusal of the said judgments shows that they pertain to the general concept of principles of natural justice and their violation. In the facts of the cases before the Hon'ble Supreme Court, it was found that the actions of the employer were such that there was violation of principles of natural justice and, therefore, findings were rendered in favour of the employee. The judgments of this Court and those of the Madras High Court and Delhi High Court pertained to situations where the management was represented by a legally trained person, requiring the representation of the delinquent employee also by an advocate. In some cases, the relevant rules specifically provided for representation of the delinquent employee by an advocate. Thus, all the judgments relied upon by the counsel appearing for respondent No.1 are clearly distinguishable and they do not take the case of respondent No.1 any further.

12. The learned counsel appearing for the petitioner-company was justified in relying upon the judgment of the Division Bench of this Court in the case of *BSES Ltd. v. Bombay Electric Workers Union & Ors.* (supra), wherein it has been held that the Industrial Court has to come to a prima facie conclusion of unfair labour practice for passing an interim order as contemplated under section 30(2) of the

Act of 1971. In the present case, respondent No.1 has claimed that the petitioner- company has indulged in unfair labour practice under Item 9 of Schedule IV of the Act of 1971, which pertains to failure on the part of the petitioner-company to adhere to terms of agreement. In the present case, clause 5 of the agreement of the petitioner-company with the representative union, quoted above, clearly shows that there is no provision for respondent No.1 being represented by an advocate and that he can be represented only by a co-employee working in the same unit. Thus, the facts of the present case prima facie show that the agreement in question provides for something contrary to what respondent No.1 is claiming. In such situation, it cannot be said that respondent No.1 had made out any prima facie case regarding unfair labour practice by the petitioner-company. In this situation, the Industrial Court erred in exercising jurisdiction under section 30(2) of the Act of 1971 to partly allow the application of respondent No.1 by the impugned order.

13. In the light of the above, it becomes evident that the impugned order is unsustainable. Accordingly, the present writ petition is allowed. The impugned order dated 24/10/2017 passed by the Industrial Court is quashed and set aside.

14. Rule is made absolute in the above terms. No order as to costs.