
(1975) 02 BOM CK 0002

In the Bombay High Court

Case No : Special Civil Application No. 394 of 1971

India United Mills Ltd.

APPELLANT

Vs

Rashtriya Mill Mazdoor Sangh

RESPONDENT

Date of Decision : 12-02-1975

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 27A, 3, 30, 32, 33

Citation : (1976) 78 BOMLR 458

Hon'ble Judges : Dighe, J;Desai, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dighe, J.—The short question for decision in this petition is whether the cessation of work by the employees of the petitioner-mills on November 18, 1970 could be called as legal strike. The first respondent, Rashtriya Mill Mazdoor Sangh, is the recognised union so far as the petitioner is concerned. The other three respondents are the employees, The fifth respondent is the Labour Court in which the relief was sought by the petitioner.

2. According to the petitioner, all the employees of all the departments in the mill struck work between 3-40 p.m. and 6-20 p.m. on November 18, 1970, that is because, they desired that the representatives of the first respondent union should be turned out of the mill or that they should be made to resign from the membership of the Rashtriya Mill Mazdoor Sangh. It seemed to be their grievance that the first respondent union had been conducted in the interest of the employers and to the prejudice of the interest of the employees and in order to impress their strong feelings upon some of the employees, who happened to be members of the first respondent-union, they had struck work. Viewing this as an illegal strike, the petitioner approached the Labour Court for a decision that the strike resorted to by the employees in the second shift on November 18, 1970 was illegal as declared u/s 97 of the Bombay Industrial Relations Act, 1946.

3. The written statement filed on behalf of the employees shows that there was stoppage of work in the weaving department from 3-40 p.m. to 4-00 p.m. and 4-15 p.m. to 6-20 p.m. In other departments the stoppage of work was only from 5-15 p.m. to 6-20 p.m. It is denied that any demand on the management of the petitioner-mills was made but it is stated that the employees of their own accord decided that nobody from them should be a member of the first respondent-union. They, therefore, requested their colleagues, who happened to be the members of the union, to resign their membership and in order to impress upon them about their strong feelings, these employees carried the stoppage of work as mentioned above.

4. On December 17, 1970, the 5th Labour Court dismissed the application and it is against this order that the present petition has been filed. Since the Labour Court found conflict in the pleadings of the applicants, the petitioner before us, as to whether as a matter of fact any demand was made on the union, the Labour Court disallowed the petitioner's taking the stand that as a matter of fact such demand was made. In other words, on facts, the position accepted was as stated by the employees that because they had strong feelings and because they were under the legitimate impression that the first respondent-union was working to the benefit of the employers and to the prejudice of the employees-workers, they desired that the representatives of the union should resign and, therefore, in order to demonstrate their strong feelings, there was suo motu stoppage of work. What is material however, is the finding of the Labour Court that this dispute or difference cannot be taken as connected with "any industrial matter" and, therefore, it could not be an industrial dispute as contemplated by the Bombay Industrial Relations Act, 1946.

5. The same question is now agitated before us. All the respondents, though served, remained absent and Dr. Kulkarni was requested to appear as amicus curiae.

6. Mr. Jahagirdar for the petitioner though adopting the case put forward by the employees that on that day they struck work because they desired to impress upon their co-employees, who were members of the first respondent union, the necessity of their resigning on the supposition that the union was not conducting itself in the interest of the employees but was doing so in the interest of the employers, contended that it does amount to illegal strike. That is because, it is said that the recognised unions have certain better rights to represent employees. The action which was a concerted action of the employees was calculated to undermine the rights of the first respondent-union to represent the employees and hence it was an illegal strike. As against this, the contention put forward by Dr. Kulkarni is that though such stoppage of work may in the circumstances amount to indiscipline, the provisions of the Industrial Relations Act, 1946, are not attracted to call it an illegal strike.

7. A glance at Section 97 of the Industrial Relations Act, 1946, would show that a strike shall be illegal if it is commenced or continued without giving notice in

accordance with the provisions of Section 42. That would be relevant provision for our purpose and it is not disputed that such a notice was not given. The stoppage of work was all of a sudden. It was total and, therefore, it was a concerted action. Strike has been defined by Clause (36) of Section 3 of the Industrial Relations Act, 1946. It reads as follows:

"strike" means a total or partial cessation of work by the employees in an industry acting in combination or a concerted refusal or a refusal under a common understanding of employees to continue to work or to accept work, where such cessation or refusal is in consequence of an industrial dispute;

Mere stoppage of work does not amount to strike and that can be well illustrated from the definition in Section 3(35A), which reads as follows:

"stoppage" means a total or partial cessation of work by the employee in an industry acting in combination or a concerted refusal or refusal under a common understanding of employees to continue to work or to accept work, whether such cessation or refusal is or is not in consequence of an industrial dispute;

What is, therefore, necessary is that such concerted action culminating into refusal to work must be in consequence of an "industrial dispute". Industrial dispute is defined under Clause (17) of that very Section 3. It reads as follows:

"Industrial dispute" means any dispute or difference between an employer and employee or between employers and employees or between employees and employees and which is connected with any industrial matter;

Apparently, the dispute, if any, over which cessation of work did take place on November 18, 1970 was between employees and employees. The material question, however, would be whether the same was connected with "" any industrial matter". Now, again, "industrial matter" is defined under Clause (18). It is an inclusive definition and covers four Sub-clauses (a), (6)1 (c) and (d). "We are, however, not concerned with Clauses (a), (b) and (c) and bereft of it, the definition reads as follows:

"industrial matter" means any matter relating to employment, work, wages, hours of work, privileges, rights or duties of employers or employees, or the mode, terms and conditions of employment, and includes-

(a)....

(b)....

(c)....

(d) all questions of what is fair and right in relation to any industrial matter having regard to the interest of the person immediately concerned and of the community as a whole;

8. According to Mr. Jahagirdar, for the petitioner, this dispute with which we are concerned would be covered, by Clause (18) because it relates to the rights or

duties of employers or employees. He does not rely upon other categories as mentioned in the main definition. He places reliance on the inclusive Sub-clause (d) because he says that the question as to what was fair and right in relation to the interest of the persons immediately concerned, viz., against whom the action was directed, would be a relevant factor. In other words, what is contended before us is that coercive action on the part of the employees who had stopped work and who desired that other employees who were members of the first respondent-union should resign was calculated to prejudice the rights of those members not only to remain as members of the first respondent-union out of their free will but also to represent that union whenever the union was called upon to have such representations. Our attention in this connection was invited to Sections 27A onwards in chap. V which relate to "Representations of Employers and Employees and Appearance on their behalf". By reason of Section 27A, except as provided in Sections 32, 33 and 33A, no employee has a right to appear or to act in any proceeding under this Act, except through the representative of employees. Section 30 provides for recognising the representative of employees and subject to Section 33A which empowers all persons who are parties to the dispute to appear in proceeding in which there is dispute between employees and employees, representative union of an industry is given primary right to represent employees in the industry. It is only if such representative union does not exist, that certain other groups or individuals are given authority to represent employees.

9. The argument is, therefore, developed that as the members of the representative union were the targets of coercion, they could not have been able to represent the employees under the above provisions when called upon to do so by the representative union. To that extent their rights or duties were affected and hence by reason of Clause (18) of Section 3 of the Bombay Industrial Relations Act, 1946, it becomes an industrial matter.

10. In this connection, our attention was also invited to Sch. III to the Act which enumerates seven items which could be called as "industrial matters", because the Schedule refers to Section 42 which provides for a notice of change, either at the hands of the employer or at the hands of the employee but in respect of industrial matters specified in different Schedules. Section 42 Sub-section (4) speaks of a change desired either by an employee or a representative union on an application from the union or an employee in three categories, category (iii) of which is as follows:

an industrial matter specified in Schedule III.

It is, therefore, said that all the enumerated items in Sch. III are industrial matters and the relevant provisions would be Item No. 4 of Sch. III which runs as follows:

Matters relating to trade union organization, membership and levies.

11. According to Mr. Jahagirdar, although we are not concerned directly with

Section 42, these items are indicative of what is an industrial matter and Item No. 4 would be of much use because it speaks of trade union organization which was vitally affected in our case. In other words, we are asked to persuade ourselves in holding that by reason of coercion practised against the members of the first respondent union, the question coming to the forefront is in respect of the representative trade union, its organization, its membership, etc. and hence it could be looked upon as an industrial matter, so that Clause (18) could be held as satisfied. Consequently, by reason of Clauses (17) and (36) of Section 3, the stoppage of work could be looked upon as a strike and by reference to Section 97 of the Bombay Industrial Relations Act, 1946, an illegal strike.

12. A little deliberation, however, would show that Item No. 4 of Sch. III appears to have a different function. It appears to be speaking about the internal administration of a trade union. There may be disputes regarding membership or levy of the fee or various matters of the organization. That in our opinion, would be the real object of Item No. 4. Detached from and disconnected with, the internal administration, any action directed against some members, for seeing that they resign the membership would, in our opinion, not be the matter contemplated by Item 4 of Sch. III and we cannot, therefore, uphold the contention put forward by Mr. Jahagirdar in this behalf.

13. Even his argument that the rights of "the union to represent the employees was jeopardised by reason of the coercive action against the employees who happened to be co-employees of respondents Nos. 2, 3 and 4 cannot be accepted so as to hold that there was such stoppage of work which could be called as strike. It looks to us a remote consequence of the act which was essentially a protest with the purpose of making co-employees realise that they may have to amend their ways in conducting the affairs of the union and channelling them to the benefit of the employees, that it would have affected the union, by reducing its membership so considerably as to make it cease being the representative union of the employees so that some other union in its stead could have been looked upon as the representative union after formalities in that behalf were undertaken. Depriving the members against whom the agitation was directed, of the likely opportunity or occasion to represent the union is also indefinite because it is not that each and every member does get an opportunity to represent the union or to speak officially on its behalf by putting an appearance. Since the stoppage of work was not accompanied with any specific formal demand against the employers and since discontinuance of the representative character or depriving the member of the likely opportunity to represent the union, was only a remote consequence and since nothing affecting them vitally was desired as a proximate consequence, it does not look appropriate to hold that the agitation was in relation to "any industrial matter" and hence the finding arrived at by the Labour Court cannot be looked upon as improper.

14. On this aspect there was a long discussion at the Bar and in view of such

discussion it may perhaps be remarked that in conceivable cases, similar type of cessation of work by undertaking concerted action may amount to a strike if some immediate result was desired. For instance, if the union was immediately seized of any problem, the members of the union who were the targets of the action had actually taken certain steps in connection with the problem and the agitation was in connection with these steps or if such problems were to arise in the very near future, some action was anticipated at the hands of those persons against whom the protest was directed and the same, with a view to deterring them from taking that action, it could be said that the coercion was in abridgement or in abstraction of the rights or privileges, the representative union enjoyed. On facts, no such case is made out before us in this petition. We express no opinion on the hypothetical or conceivable cases which has been referred to just above. So far as the present petition is concerned, the stoppage of work for expressing the strong feelings amounted only to indiscipline. It could not be looked upon as a strike as defined in Clause (36) of Section 3 of the Bombay Industrial Relations Act, 1946. In this view of the matter the petition is dismissed and the rule is discharged. No order as to costs. We are thankful to Dr. Kulkarni for giving us help and the benefit of his experience.