

(2016) 09 BOM CK 0167

In the Bombay High Court

Case No : Writ Petition No. 5671 of 2015

Indian Coffee Workers Co-op. Society Ltd.

APPELLANT

Vs

Albert s/o Tavid

RESPONDENT

Date of Decision : 16-09-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(b)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Schedule IV Item 9

Citation : (2016) 6 ALLMR 551 : (2017) 1 CLR 167 : (2016) 151 FLR 1015 :
(2017) 1 LLN 364 : (2017) 2 MhLJ 903

Hon'ble Judges : A.S. Chandurkar, J.

Bench : Single Bench

Advocate : J.L. Bhoot, Advocate with A.J. Bhoot, Advocate, for the Respondent
Nos. 1 to 4; M.R. Pillai, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

A.S. Chandurkar, J.(Oral) - Rule heard finally with consent of learned counsel for the parties.

The question that arises for consideration in this writ petition is whether a complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, the Act of 1971) under Schedule IV Item 9 is maintainable for a declaration that non-compliance of the judgment in an earlier complaint filed under Section 28 of the Act of 1971 would amount to an unfair labour practise.

2. The facts giving rise to the present writ petition can be briefly stated thus :

The respondent Nos. 1 to 4 were in employment with the petitioner. Their services came to be terminated by an order dated 30/11/1992. This act of termination was challenged by them by filing separate complaints under Section 28 of the Act of 1971. By a common judgment dated 24/09/1996, the Labour

Court allowed all the complaints and held that by terminating the services of the said respondents, the petitioner had engaged in an unfair labour practise. The Labour Court therefore directed reinstatement of the said respondents with 50% back wages from 01/12/1992 till their reinstatement. This order of reinstatement attained finality as the challenge raised thereto by the petitioner was not successful. After said order became final, the petitioner did not reinstate the said respondents. Hence on 18/06/2015 the said respondents filed Complaint U.L.P. No. 106/2015 stating therein that failure to comply with the earlier judgment amounted to breach of Item 9 to Schedule IV of the Act of 1971. Hence a prayer for reinstatement with back-wages was made.

3. The petitioner filed its written statement and opposed the complaint. A plea was raised that the complaint was not maintainable under Item 9 to Schedule IV of the Act of 1971 on the ground that order passed by the Labour Court in the earlier complaint did not constitute an agreement, award or settlement. The petitioner also filed an application for dismissal of the complaint on the same ground. After hearing the counsel for the parties, the Industrial Court rejected the application for dismissal of the complaint on the ground that an interim order or final order passed by the Labour Court, Industrial Tribunal or National Industrial Tribunal determining the industrial dispute would amount to an award. Being aggrieved, the petitioner has challenged the aforesaid order.

4. Shri M.R. Pillai, the learned counsel for the petitioner submitted that the entire basis for filing the complaint in question was the earlier order passed by the Labour Court on 24/09/1996 in the complaints filed under Section 28 of the Act of 1971. According to him, the provisions of Item 9 to Schedule IV of the Act of 1971 would be attracted only if there was a failure to implement any award, settlement or agreement. He submitted that it was the case of the respondent Nos. 1 to 4 that the earlier order passed by the Labour Court was an award and hence on failure to implement the same, a case of commission of unfair labour practise was made out. According to him the expression "award" was not defined in the Act of 1971. The definition of the expression "award" as per provisions of Section 2(b) of the Industrial Disputes Act, 1947 (for short, the Act of 1947) cannot be taken into consideration while considering the provisions of Item 9 to Schedule IV of the Act of 1971. The provisions of Section 2(b) of the Act of 1947 have to be confined to the provisions of the said Act as said expression as defined could not be relied upon in the present case. In support of his submissions the learned counsel placed reliance upon the judgments of learned Single Judge in 1997 II CLR 1146 Divisional Controller, Maharashtra State Road Transport Corporation, Akola v. Syed Shabir Jani s/o Syed Alisahed, 2009-III-LLJ-401(Bom) A. R. Sulphonates Pvt. Ltd. v. Maharashtra Mathadi & General Kamgar Union and Anr. and 2010(1) Mh.L.J. 173 Zim Laboratories Ltd. Nagpur v. Nagpur General Labour Union, Kalmeshwar. It was therefore submitted that the Industrial Court erred in not dismissing the complaint especially when it had no jurisdiction to entertain the same.

5. On the other hand, Shri J.L. Bhoot, the learned counsel for the respondent Nos. 1 to 4 supported the impugned order. He submitted that the complaint as filed could not be dismissed at an interlocutory stage without first determining whether any unfair labour practise had been committed or not. According to him, the aspect whether there was no failure to implement the award in question in the form of the judgment of the Labour Court in the original complaints was a matter to be decided after the parties had led evidence. He submitted that the Industrial court rightly refused to dismiss the complaint on the grounds on which the same was sought to be dismissed. He submitted that the adjudication of the present nature at an interlocutory stage has been frowned upon by the Honourable Supreme Court and in that regard he placed reliance upon its judgment in AIR 1984 SC 153 D. P. Maheshwari v. Delhi Administration. He also placed reliance upon the decision of learned Single Judge in 1995 (2) Mh.L.J. 342 Waman Pundlikrao Deshmukh v. Shivaji Agriculture College, Amravati, Thr. its Principal. By relying upon the judgment of the Honourable Supreme Court in 2015 (1) Bom. LC 341 Cimco Birla Ltd. v. Rowena Lewis, it was urged that in somewhat similar circumstances, a complaint filed by the aggrieved workman had been entertained. He therefore submitted that there was no case to interfere in the writ petition.

6. I have heard the respective counsel for the parties at length and I have given due consideration to their respective submissions. The undisputed facts are that the initial complaints filed by the respondent Nos. 1 to 4 challenging the order of termination dated 01/12/1992 were decided on 24/09/1996 in their favour. The order of reinstatement and payment of 50% back-wages has attained finality. This order was passed in the complaint filed under Section 28 of the Act of 1971. The subsequent complaint again filed under Section 28 of the Act of 1971 is on account of non-compliance by the petitioner with the earlier orders. The aforesaid facts therefore indicate that the initial adjudication was under Section 28 of the Act of 1971 and the subsequent complaint has been filed under Item 9 to Schedule IV of the Act of 1971 on account of failure to comply with the earlier order.

7. A brief reference to the averments in the present complaint would be useful to answer the question as framed. In paragraph 6 of the said complaint, it has been pleaded as under :

"That the judgment passed by the learned labour court amounts to agreement, award and settlement and the respondent is bound to comply the same. It is the duty of the respondent to comply the order passed by the Labour court and in not complying with the order passed by the Labour court, the respondent has committed breach of the item No. 9 of Schedule IV to the Maharashtra Act No.1 of 1972."

The prayer made in this complaint reads as under :

"Declare that the respondent is engaged in unfair labour practise covered by

item No.9 of Schedule IV to the Maharashtra Act No. 1 of 1972, in not complying with the order passed by the Labour Court, Nagpur on 24/09/1996."

8. The expression "award" has not been defined under the Act of 1971. As per the provisions of Section 3(18) of the Act of 1971, the words and expressions used in the Act of 1971 and not defined therein or in the Bombay Industrial Relations Act, 1946 shall have the meanings assigned to them by the Act of 1947. Section 3(12) defines the expression "order" to mean an order of the Industrial or Labour Court. Under Section 28(1) of the Act of 1971, a complaint can be filed before the competent Court raising a grievance regarding any unfair labour practise being engaged by the employer. Section 28(7) of the Act of 1971 contemplates decision of the Court to be in writing and in the form of an order. Under section 28(8) of the Act of 1971 such order has to be published in the manner prescribed. Under The Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Rules, 1975 especially Rules 25 and 26 thereof, the manner in which the order passed under Section 28(8) of the Act of 1971 is to be published and its report has to be forwarded has been stipulated. Similarly, under Industrial Court Regulations, 1975 Regulation No.109 also prescribes the manner in which such order has to be published and its copy has to be forwarded to the concerned Authority. Under Section 30(1) (b) of the Act of 1971 the Industrial Court or the Labour Court can while deciding the complaint issue directions to the concerned person to cease and desist from committing an unfair labour practise. This has to be to effectuate the policy of the Act of 1971. Under Section 48(1) of the Act of 1971, failure to comply with any order of the Court under Section 30(1) or (2) of the Act of 1971 has been made punishable on conviction. Thereafter under Section 59 of the Act of 1971 if any proceedings with regard to any matter falling within purview of the Act of 1971 is instituted, then no proceedings at the same time can be entertained in respect of the same matter under the Act of 1947.

From the aforesaid scheme of the Act of 1971, it is clear that the expression "order" has been specifically used in the Act of 1971 in contradistinction with the expression "award".

9. If the relevant provisions of Act of 1947 in that context are noted, it can be seen that Section 2(b) defines "award" to mean an interim or final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal. Section 10A(1A) of the Act of 1947 refers to an award passed under an arbitration agreement. Section 11(9) and (10) refers to the execution of an award made by the Labour Court or Industrial Tribunal or National Industrial Tribunal. Section 16 then refers to the manner in which the award has to be prepared and signed. Section 17 refers to publication of such award. The provisions of Section 17A refer to commencement of the award while Section 17B of the Act of 1947 empowers the Court to pay full wages last drawn by a workman in case the order of reinstatement is challenged by the employer. Section 18 refers to the persons on whom the award is binding

while Section 19 refers to the period of operation of an award.

From the aforesaid it can be seen that the expression "award" has a specific connotation under the Act of 1947.

10. If the relevant provisions of the Act of 1971 in the context of an order passed under the Act of 1971 is considered along with the provisions of the Act of 1947 in relation to passing an award under the Act of 1947, it will be clear that the expression "award" by Section 2(b) of the Act of 1947 would be distinct from an "order" passed under the Act of 1971. Both these expressions have different connotations and they operate in separate fields. Hence, under Item-9 to Schedule-IV of the Act of 1971, the failure to implement award, settlement or agreement would mean a failure to implement such award, settlement or agreement as contemplated by the Act of 1947. Failure to implement an order passed under the Act of 1971 cannot by itself be said to be covered by Item-9 to Schedule-IV of the Act of 1971.

11. In Divisional Controller, M.S.R.T.C. Akola (supra) learned Single Judge considered the question as to whether in a writ petition filed by an employer challenging the order of reinstatement passed under the Act of 1971, the employee could maintain an application under Section 17-B of the Act of 1947 for seeking last drawn wages. After considering various provisions of both the Acts, it was held that an order passed under the Act of 1971 could not be treated as an award under the Act of 1947 on the basis of which relief under Section 17-B of the Act of 1947 could be prayed for. This judgment has been referred to by learned Single Judge in Zim Laboratories Ltd. Nagpur (supra) and it has been observed that there can be no debate with the proposition that the order passed by the Industrial Court under the Act of 1971 would not amount to an award. Reference can also be made to the judgment of learned Single Judge in Jugilal Laxminarayan Yadav and another v. State of Maharashtra and others, 1991 MhLJ 318. It was held therein that an interim order passed on an application under Sections 78 and 79 of the Bombay Industrial Relations Act, 1946 could not be termed either as a settlement or award for the purposes of invoking the provisions of Section 33C(1) of the Act of 1947. These decisions fortify the conclusions recorded herein above.

12. The learned counsel for respondent Nos. 1 to 4 placed heavy reliance on the judgment of the Honourable Supreme Court in Cimco Birla Ltd. (supra) by submitting that even an order passed under the Act of 1971 had been treated as an award. A careful reading of the entire judgment does indicate that the Honourable Supreme Court has referred to the order passed under the Act of 1971 as an award. However, such description by itself does not further the case of the respondent Nos. 1 to 4. It is not the ratio of the aforesaid decision that the order passed under the Act of 1971 would be an award under the Act of 1947. Similarly, the reliance placed on the dictionary meaning of the word "award" is also misplaced in view of the provisions of Section 3(18) of the Act of 1971.

13. Further submission made on behalf of the respondent Nos. 1 to 4 that there cannot be piece-meal adjudication of the industrial dispute by entertaining a challenge on a preliminary issue also does not deserve acceptance in the facts of the present case. The question raised in the present matter goes to the root of the matter and the aspect of jurisdiction being exercised by the Industrial Court. A plain reading of the objection filed before the Industrial Court reveals that it is sought to be demonstrated that the complaint as filed by invoking Item-9 to Schedule-IV of the Act of 1971 is itself not maintainable in absence of any award, settlement or agreement under the Act of 1947. Such preliminary objection can be entertained especially when the same is based on a plain interpretation of the relevant provisions without there being any disputed questions. If on plain reading of the complaint itself, it is being urged that the complaint was not tenable and such objection as regard lack of jurisdiction being one that goes to the root of the matter, such objection in these facts can be entertained by the Industrial Court. Moreover, this conclusion has been arrived at on the basis of judgments holding the field.

In D.P. Maheshwari (supra), the management raised a preliminary objection to the maintainability of the reference made under Section 10(1) of the Act of 1947. The same was tried as a preliminary issue with both sides leading evidence. It is in that context that it was observed by the Honourable Supreme Court that all issues arising have to be decided without trying some of them as preliminary issues. In Waman Pundlikrao Deshmukh (supra) the Industrial Court without permitting the complainant to lead evidence and without making any inquiry whatsoever dismissed the complaint on the preliminary objection raised by the non-applicant therein. In the present case the objection to the jurisdiction of the Industrial Court is based on the reliefs sought in the complaint on the ground that the same cannot be granted by said Court for want of jurisdiction. In this view of the matter therefore, the ratio of the decisions in D.P. Maheshwari (supra) and Waman Pundlikrao Deshmukh (supra) cannot be made applicable to the facts of the present case.

14. In the light of aforesaid discussion, the impugned order dated 04/09/2015 passed by the learned Member of the Industrial Court is not found to be sustainable in law. The complaint filed under Item 9 of Schedule IV to the Act of 1971 for seeking implementation of an earlier order passed by the Labour Court under the Act of 1971 is not maintainable.

15. Accordingly, the order dated 04/09/2015 passed below Exhibit-C-2 is set aside. The application moved by the petitioner seeking dismissal of the complaint is allowed. Complaint ULP No. 106/2015 stands dismissed for want of jurisdiction. It is clarified that the remedy available to the respondent Nos. 1 to 4 to seek relief as per the order passed in Complaint Nos. 770/1992 to 773/1992 dated 24/09/1996 is kept open.

Rule is made absolute in aforesaid terms with no order as to costs.