

(2001) 03 BOM CK 0008

In the Bombay High Court

Case No : Writ Petition No. 1143 of 1997

I.T.C. Limited (India Tobacco Division)

APPELLANT

Vs

General Labour Union and Another

RESPONDENT

Date of Decision : 15-03-2001

Acts Referred:

Citation : (2001) 4 BomCR 516 : (2002) 92 FLR 1006 : (2001) 3 MhLj 470

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : Mr. P.K. Rele, instructed by Piyush Shah, for the Appellant;

Final Decision : Allowed

Judgement

R.J. Kochar, J.—The petitioner Company is aggrieved by an order passed by the Industrial Court on 11th April 1997 on an application filed by it in the pending Complaint U.L.P. No. 584 of 1997 filed by the respondent union under Item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971, which was not a recognised union.

2. It appears that in March, 1987, the petitioner Company had suspended its manufacturing activities and except 18 workmen all other workmen of the factory had taken voluntary retirement by 1990. On 2nd February, 1991, the petitioner Company terminated the service of the said 18 workmen and declared total closure of the factory and tendered their legal dues. Except one workman all other workmen collected their dues. On 18th April 1991, after the closure of the said factory at Parel, the first respondent union filed a complaint of unfair labour practice (No. 584 of 1991) under Item 9 of Schedule IV of the Act alleging that the petitioner Company had committed unfair labour practice viz., it had refused to employ the workmen and to pay wages to them from 2nd February, 1991 and that there was violation of Chapter V(B) of the Industrial Disputes Act. The petitioner Company contested the said complaint by filing its written statement, inter alia, questioning the maintainability of the said complaint on the ground

that the complainant union had no focus standi to file the said complaint as it was not a recognised union and that there was already in existence a recognised union under the Act. It was also pointed out by the petitioner Company that at an earlier point of time the very same union had filed a complaint U.L.P. No. 538 of 1989 under Items 9 and 10 of Schedule IV and Item 6 of Schedule II of the Act for the very same cause of action. It may be stated that this complaint was filed by the respondent unrecognised union soon after the recognised union had filed a complaint (U.L.P. No. 564 of 1988) which came to be disposed of by a settlement between the parties. The allegations made in the Complaint U.L.P. No. 538 of 1989 were the same or identical in the Complaint U.L.P. No. 564 of 1988.

3. By an order dated 26th November, 1991 the complaint No. 538 of 1989 filed by the first respondent unrecognised union was dismissed, inter alia, on the ground of locus standi to file the complaint and also on merits. The Writ Petition No. 2010 of 1992 filed against the said order was dismissed by this Court. The net result appears to be that the first complaint filed by the Respondent No. 1 i.e, unrecognised union for the very same cause of action was dismissed by the Industrial Court and the said order has been finally confirmed by the Division Bench in Appeal in this Court. It is the case of the petitioner Company that the respondent unrecognised union filed another Complaint for the very same cause of action being the complaint U.L.P. No. 584 of 1991 on behalf of one workman who did not accept the terminal benefits which were accepted by the other workmen and the challenge to the action of the petitioner Company failed upto the appeal stage in this Court. The Petitioner Company therefore requested the Industrial Court by its application dated 21.4.1995 to decide the maintainability of the second complaint for the same cause of action filed against it by the said union which is an unrecognised union. The Petitioner relied upon the celebrated judgment of the Supreme Court in the case of *Shramik Utkarsh Sabha v. Raymond Woolen Mills Ltd. & Ors.*, wherein it was held that an unrecognised Union cannot file a complaint of unfair labour practice when there is a recognised union already in existence. The said application was contested by the respondent unrecognised union. By the order dated 11.4.1997 the Industrial Court dismissed the said application on totally untenable ground. The Industrial Court has totally ignored the fact that the complainant was not a recognised union functioning in the industry viz. Tobacco Manufactures Employees Union. The Industrial Court has curiously observed that it was not the case of the Respondent Company that there is any recognised representative Union in the Respondent Undertaking and that it has not brought any evidence to show that there was a recognised/representative union operating in its undertaking. It is very pertinent to note that the very basis of foundation of the application filed by the Petitioner taking objection to the complaint was that the petitioner was not a recognised union, and therefore, its complaint was not maintainable. Even in the written statement it was pointed out that there was another union functioning in the undertaking as recognised union. It is further pertinent to note that the Respondent No. 1 unrecognised union has never challenged this position that there was a

recognised union functioning in the industry and that the complainant Union itself was not a recognised union. The Respondent Union has throughout maintained this position including in its reply filed to the application of the Petitioner. In the background of the admitted or undisputed position I fail to understand how the Industrial Court could observe that there was no material or evidence to show that there was some other union in existence and operating as a recognised union. According to me, the Industrial Court ought to have decided the said point in respect of maintainability of the complaint filed by the unrecognised union. The legal position as settled by the Supreme Court in the case of *Shramik Utkarsh Sabha v. Raymond Woolen Mills Ltd.* (supra) It is clear that an unrecognised union cannot file a complaint of unfair labour practices. The said complaint has been admittedly filed by the unrecognised union.

4. Secondly It is further pertinent to note that this unrecognised union has been litigating frivolously on behalf of one workman who refused to accept the settlement and the legal dues. This very same union had earlier filed one complaint for the very same cause of action and the Industrial Court had dismissed the said complaint on the ground of maintainability of that complaint filed by an unrecognised union. The said order has been confirmed in the Appeal Court. In fact this point between the same parties has become *resjudicata*. I fail to understand why the Industrial Court did not decide the question of maintainability in the aforesaid peculiar circumstances of the case and allowed the respondent union to litigate frivolously for the sake of litigation.

5. Instead of remanding the matter back to the Industrial Court to decide the question of maintainability I have myself considered the question of maintainability in view of the settled position of law that a complaint filed by the unrecognised union is not maintainable under the provisions of M.R.T.U. & P.U.L.P. Act. In my view, the respondent union is carrying on litigation frivolously for the reasons best known to it. Its earlier complaint was also dismissed on the ground of locus standi for the very same cause of action. The party cannot be permitted to litigate eternally merely because they have opportunity to file and institute the application/complaint, in my opinion this is clear abuse of process of law and the Court. In the aforesaid circumstances I pass the following order :

The impugned order passed by the Industrial Court is quashed and set aside. The Complaint U.L.P. No. 584 of 1991 stands dismissed.

6. Writ Petition allowed Rule is made absolute in terms of prayer clause (a). No order as to costs.