

(1984) 06 BOM CK 0028

In the Bombay High Court

Case No : Writ Petition No. 822 and 823 of 1984

Kishanlal Ramlal

APPELLANT

Vs

Balkrishna Shetty and Others and Rajkumar Motwani and Others

RESPONDENT

Date of Decision : 13-06-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

Citation : (1984) 2 BomCR 368

Hon'ble Judges : B.C. Gadgil, J

Bench : Single Bench

Advocate : Shekhar Naphade, for the Appellant; J.G. Gadkari, for respondent Nos. 1 and 2, W.N. Yande A.G.P., for the Respondent

Judgement

B.C. Gadgil, J.—These two petitions can be conveniently decided by a common judgment, as practically same and similar controversy exists in both of them.

2. In both these petitions the petitioner is the owner and proprietor of Rasna Restaurant, Churchgate, Bombay. Respondent No. 1 in Writ Petition No. 822 of 1984 is one Balkrishna. He was in service of Kishanlal. The services of Rajkumar and Balkrishna came to an end in 1976. Respondent No. 1 in Writ Petition No. 823 of 1984 (hereinafter referred to as Rajkumar) was serving with the petitioner (hereinafter referred to as Kishanlal). In 1976 the services of Rajkumar came to an end. A complaint was made about this termination of service of Balkrishna and Rajkumar with an allegation that the said termination was by way of victimisation and in colourable exercise of the powers of the employer. Such type of termination has been defined as unfair labour practice as per item No. 1(a) and (b) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the Unfair Practices Act). This complaint was filed u/s 28 of the said Act. On 10-7-1980 the Labour Court, Bombay, decided the said complaint after recording

a finding that the termination of these two employees Rajkumar and Balkrishna constituted an unfair labour practice. A direction was given by the Labour Court that these employees should be reinstated with full back wages. A copy of this order is at pages 19 to 30 in the compilation of Writ Petition No. 823 of 1984. It is common ground that the said order was challenged on behalf of Kishanlal upto the Supreme Court and Kishanlal has lost throughout. On 17-12-1980 another application was made by the Labour Union before the Industrial Court, Bombay, making a grievance that Kishanlal has committed unfair labour practice as contemplated by Item No. 9 of Schedule IV. That item states that failure to implement an award would be an unfair labour practice. The contention was that the above mentioned order of the Labour Court dated 10-7-80 was an award as contemplated by item No. 9 and that Kishanlal has committed an unfair labour practice by not reinstating the two employees and also by not giving them all the back wages. This application or complaint was opposed on behalf of Kishanlal on various grounds. One of the grounds was that the order dated 10-7-1980 passed by the Labour Court was not an award as contemplated by Item No. 9 and consequently, non-implementation of that order would not be an unfair labour practice. This contention was rejected by the Industrial Court. A finding was recorded that there has been an unfair labour practice not on the part of Kishanlal as envisaged by item No. 9 of Schedule IV. This decision was given on 22-12-1981 (vide pages 40 to 50 of the compilation in Writ Petition No. 823 of 1984). In substance, the Industrial Court again directed reinstatement of the two employees with all full back wages.

3. Section 50 of the Unfair Labour Practices Act provides a remedy for execution of an order under which any amount is made recoverable from the employer. The contention of the employees is that Kishanlal did not obey this order dated 22-12-1981. Balkrishna, therefore, filed Application No. 43 of 1982 before the Industrial Court, Bombay, claiming the arrears right from the termination of service upto the date of the application. Similar Application No. 42 of 1982 was filed by Rajkumar.

4. The applications were opposed by Kishanlal on various grounds. However, the only ground that is material for the purpose of deciding these writ petitions is that the order dated 22-12-1981 is a nullity and consequently there cannot be any execution of such null and void order. It is true that this contention was not specifically taken in the written statement, but Shri Naphade told me that the said contention has been raised during the course of the arguments. The Industrial Court rejected all the contentions of Kishanlal in both these applications and consequently an order was passed directing recovery of certain amount and payment thereof to Balkrishna and Rajkumar. Order in favour of Balkrishna is at pages 114 to 118 of the compilation in Writ Petition No. 822 of 1984, while similar order in favour of Rajkumar is at pages 119 to 123 of the compilation in Writ Petition No. 823 of 1984.

5. At the time of the arguments of these writ petitions, Shri Naphade contended

that he would be arguing only one point viz., that the order dated 22-12-1981 was a nullity and that consequently that order would not be executable. In substance, his contention is that the said order dated 22-12-1981 was passed by the Industrial Court without jurisdiction and that the writ petitioner Kishanlal can agitate this point even when the two employees initiate proceedings for recovery of the amount under that order.

6. The order dated 22-12-1981 is made by the Industrial Court on the basis that Kishanlal has committed an unfair labour practice as contemplated by Item No. 9 of Schedule IV. I have already observed that item states that failure to implement an award would be an unfair labour practice. It is material to note that the term "award" has not been defined by the Unfair Labour Practices Act. However, section 3(18) of the Unfair Labour Practices Act has made certain provisions to adopt the meanings even assigned to certain terms under the Industrial Disputes Act. That clause reads as follows :

"Words and expressions used in this Act and not defined therein, but defined in the Bombay Act, shall, in relation to an industry to which the provisions of the Bombay Act apply, have the meanings assigned to them by the Bombay Act; and in any other case, shall have the meanings assigned to them by the Central Act."

The Hotel industry is not covered by the Bombay Act. Consequently, the meanings assigned by Central Act would be relevant. u/s 3(2), the Central Act is defined to mean the Industrial Disputes Act. Shri Naphade contended that while considering the question of an existence or otherwise of an unfair labour practice contemplated by Item No. 9 of Schedule IV, it would, therefore, be necessary to find out whether there was an award within the meaning of the Industrial Disputes Act. Section 2(b) of the Industrial Disputes Act has defined the term "award" as follows :

" "award" means an interim or a final determination of the industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made u/s 10A."

Section 2(kka) provides that the Labour Court would be a Labour Court constituted u/s 7 of the Industrial Disputes Act, while according to section 2(r), the Tribunal means an Industrial Tribunal constituted u/s 7A of the Industrial disputes Act. Reading all these definitions together, Shri Naphade contended that the award contemplated by Item No. 9 of Schedule IV of the Unfair Labour Practices Act must be an award by the Labour Court or the Industrial Tribunal as constituted under the Industrial Disputes Act. He drew my attention to the fact that the Unfair Labour Practices Act also envisages the constitution of Labour Courts and Industrial Courts. For example, section 3(10) says that the "Labour Court" would be a Court constituted u/s 6 of the Unfair Labour Practices Act, while the "Industrial Court" is defined u/s 3(8) to mean an Industrial Court constituted u/s 4 of the Unfair Labour Practices Act. Shri Naphade, therefore, contended that the first order dated 10-7-1980 would be an order of the Labour

Court under the Unfair Labour Practices Act and that noncompliance of that order would not mean that there was any omission to implement an award as contemplated by Item No. 9. It is in this way that he urged that the Industrial Court under the Unfair Labour Practices Act has wrongly usurped the jurisdiction while passing the order dated 22-12-1981 by holding that the order dated 10-7-1980 is an award as per Item No. 9.

7. In my opinion, it is not necessary to consider the contention of Shri Naphade that the Industrial Court while passing the order dated 22-12-1981 has committed an error in holding that the non-compliance of the order dated 10-7-1980 would be a non-implementation of the award as contemplated by Item No. 9. The petition deserves to be dismissed even if this contention is assumed to be correct.

8. The contention of Shri Naphade is that by treating an order under the Unfair Labour Practices Act as an award under the Industrial Disputes Act the Industrial Court has usurped jurisdiction at the time of deciding the controversy on 22-12-1981. It was also submitted that the order dated 22-12-1981 would thus be an order without jurisdiction and consequently it would be a nullity. Section 28 of the Unfair Labour Practices Act enables the Labour Court or the Industrial Court to deal with a complaint whenever an allegation is made that the employer is engaged in any unfair labour practice. As soon as such a complaint is made, the Industrial Court or the Labour Court constituted under the Unfair Labour Practices Act will have jurisdiction to entertain and to investigate it. In such inquiry the said authority will decide as to whether any unfair labour practice has been committed or not. If the finding would be in the affirmative, there would be an order in favour of the aggrieved party. Otherwise, the complaint would be dismissed. What has been done by the Industrial Court in the present case is that after taking cognizance of the matter in a rightful manner it applied its mind in order to find out as to whether any unfair labour practice has been committed. The said authority interpreted the provisions of both the Acts and came to the conclusion that the unfair labour practice has been so committed. It will not be correct to hold that a wrong decision about the commission of an unfair labour practice would mean that jurisdiction has been wrongly assumed. As a matter of fact, such a decision, whether right or wrong, would be in exercise of the jurisdiction which vested in the said authority. That authority does not assure or usurp jurisdiction by recording a finding about unfair labour practice. To say that the authority constituted u/s 28 of the Unfair Labour Practices Act has no jurisdiction to decide whether unfair labour practice has been committed or not is nothing short of saying that the competent authority has no jurisdiction to decide the controversy. As already observed, the decision given by that authority may be right or may be wrong. But after all, it will be a decision with jurisdiction.

9. Shri Naphade relied upon the decision of the Supreme Court in the case of Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others, . In that case, certain dispute was referred to the Labour Court under the Industrial Disputes Act. While

adjudicating on the said dispute, the Labour Court transgressed the limits of the reference and made certain orders not covered by the reference. What will be the effect of a decision on such point has been considered by the Supreme Court. The material head-note reads as follows :---

"They (the Labour Court and the Industrial Tribunal) are entitled to deal with the disputes referred to them, but they cannot travel outside the terms of reference and deal with matters not included in the reference, Therefore, the Labour Court would be justified in refusing to implement the award, if it was satisfied that the direction in the award on which the employees' claim u/s 33C(2) for computation of money value is based, is without jurisdiction."

This decision of the Supreme Court would not be of any avail to the petitioner, inasmuch as the Tribunal has usurped jurisdiction over the matters not referred to it.

10. There cannot be any dispute that a decision without jurisdiction would be a nullity. But the main question in these petitions is as to whether a decision about commission of an unfair labour practice can be said to be without jurisdiction, particularly when a grievance in that respect is cognizable by the Industrial Court u/s 28 of the Unfair Labour Practices Act. For obvious reasons, such a decision would be a decision by an authority having jurisdiction, though that decision may be right or wrong.

11. When the order dated 22-12-1981 is sought to be executed by filing Applications Nos. 42 and 43 of 1982, Kishanlal would not be able to contend that the execution should not be directed because the order may be wrong. The decision dated 22-12-1981, even if it is wrong, would constitute *res judicata*. The Supreme Court has held in the case of *Satyadhan Ghosal and Others Vs. Sm. Deorajin Debi and Another*, , that the principles of *res judicata* apply between the two stages of the same litigation.

12. Of course, such a decision would not be *res judicata* if it is without jurisdiction. The question as to whether a particular decision is with jurisdiction or without jurisdiction has been considered by the Supreme Court in the case of *Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy*, . I will reproduce the relevant portions of the judgment from paragraphs 5, 9 and 10;

Paragraph 5 :

".... A previous decision on a matter in issue is a composite decision : the decision on law cannot be dissociated from the decision on facts on which the right is founded. A decision on an issue of law will be as *res judicata* in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different, not when the law has since the earlier decision been altered by a Competent Authority, nor when the decision relates to the jurisdiction of the Court to try the earlier proceeding nor when the earlier

decision declares valid a transaction which is prohibited by law. "

Paragraph 9 :

".... A question relating to the jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of the Court. If by an erroneous interpretation of the statute the Court holds that it has no jurisdiction, the question would not, in our judgment, operate as res judicata."

Paragraph 10 :

" It is true that in determining the application of the rule of res judicata the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent Court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But where the decision is on a question of law, i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue" in section 11. Code of Civil Procedure, means the right litigated between the parties, i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of the order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land."

This decision, therefore, clearly lays down that an erroneous decision about the existence or otherwise of the jurisdiction of an authority would not be res judicata, while an erroneous decision on a question of law by an authority which has jurisdiction to decide that question would be res judicata. In view of this legal position, it would be very difficult for Shri Naphade to contend that the order dated 22-12-1981 was a decision without jurisdiction of the authority and that consequently it would be a nullity and that question can be agitated. It will not, therefore, be open for Kishanlal to resist the execution of the order dated 22-12-1981.

13. There is one more point which needs to be considered. The order that is sought to be challenged as a nullity or without jurisdiction is dated 22-12-1981. The present writ petitions have been filed in 1984. The petitioner has not explained this long delay in approaching the Court by filing the writ petitions. The petitions also deserve to be rejected on the ground of leaches and unexplained delay.

14. Rule in Writ Petition No. 822 of 1984 is discharged with costs. Rule in Writ

Petition No. 823 of 1984 is discharged with costs. The amount deposited in these writ petitions should be paid to respondent No. 1 in each of the petitions towards the satisfaction of their claim. At this stage, Shri Naphade orally made two prayers. Firstly, he submitted that a certificate may be issued under Article 133 of the Constitution that these matters involve substantial question of law of general importance. I do not think that any such question arises. Hence, this prayer is rejected. The second prayer is that the amount deposited in this Court should not be paid to the respondents Balkrishna and Rajkumar as the petitioner wants to file an appeal to the Supreme Court. Shri Gadkari contended that there has been wrongful termination of service of both the employees in 1976 and that the amount deposited in Court would cover the arrears from that year. He rightly urged that in this background it would not be in the fitness of things to pass any order withholding payment to the employees. The second prayer is also rejected.