
(1977) 08 BOM CK 0026

In the Bombay High Court

Case No : Sp. C.A. No"s. 1883, 2298 and 2547 of 1977 and 1265 of 1978

Kothari Auto Parts Manufacturing Pvt. Ltd.

APPELLANT

Vs

K.R. Pawar

RESPONDENT

Date of Decision : 08-08-1977

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2

Citation : (1979) 81 BOMLR 411

Hon'ble Judges : Pendse, J;Deshpande, J

Bench : Division Bench

Judgement

Pendse, J.—The question that falls for determination in these four petitions is the correct and true interpretation of Rule 6 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Rules, 1975 (hereinafter referred to as "the Rules").

2. The facts of these petitions are somewhat similar and for the purposes of this judgment we will refer to the facts in Special Civil Application No. 2298 of 1977. The petitioner is a private limited company and respondents Nos. 2 and 3 are registered trade unions. After the enactment of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act") on February 1, 1972, respondent No. 2 has filed an application u/s 11 of the Act for being registered as a recognized trade union for the undertaking. As required by the provisions of Section 12 (/) of the Act, the Industrial Court having found that the application was in order directed that a notice be displayed on the notice board of the petitioner undertaking declaring the intention to consider the application of respondent No. 2 and calling upon the union and the employer to show cause within the prescribed time as to why the recognition should not be granted. There is no dispute between the parties that the said notice was duly published on the notice board of the petitioner company on February 16, 1977. Rule 6 provides that the period to show cause under Sub-section (1) of Section 12 shall be eight days from the date of the notice displayed

on the notice board. The notice stated that the Industrial Court will hear the application on March 1, 1977. On the date of hearing, the petitioner made an application seeking time to file written-statement on the ground that advocate of the petitioner had suffered a fracture of the leg and consequently unable to prepare and file the written-statement in time. The proceedings thereupon were adjourned to March 28, 1977. On the adjourned date the petitioner filed the written-statement, but the Industrial Court refused to entertain it on the ground that it was not filed within period prescribed by Rule 6. The application for condonation of delay was turned down, on the finding that provision of Rule 6 is mandatory. The order passed on June 29, 1977 is under challenge in Petition No. 2298 of 1977 filed under Article 226 of the Constitution of India. After refusing to take the written-objections of the petitioner on record, the Industrial Court proceeded with the inquiry of the application filed by respondent No. 2 and by an order dated September 13, 1977 granted the application directing that respondent No. 2 be registered as a recognized union. The petitioner has challenged this order too by carrying out an amendment to petition No. 2298 of 1977.

3. Mr. Kapadia, the learned advocate appearing on behalf of the petitioner contended that the Industrial Court was in error in refusing to entertain the objections filed by the petitioner on the ground that the objections were filed beyond the period of eight days. It was urged by the learned counsel that it was an error to treat Rule 6 as mandatory and refuse to entertain objections filed beyond that period. The learned counsel argued that Rule 6 should be treated as merely directory and failure to strictly comply with Rule 6 should not be so fatal as to prevent the employer from participating in proceedings. The crucial question which requires determination is whether the provisions of Rule 6 are mandatory or directory. Before we answer the question, it is necessary to find out the provisions of the Act, which provide for filing the application for recognition of the union and for filing objections to such application.

4. Chapter III of the Act provides for recognition of unions. Section 11 (7) lays down that any union which has for the whole of the period of six calendar months immediately preceding the calendar month in which it so applies under the section, a membership of not less than thirty per cent, of the total number of employees employed in any undertaking may apply in the prescribed form to the Industrial Court for being registered as a recognised union for such undertaking. Sub-section (2) of Section 11 provides that such application u/s 11 (/) shall be disposed of by the Industrial Court as far as possible within a period of three months. The provisions of this section undoubtedly indicate that the proceedings u/s 11 for recognition of the union must be decided expeditiously and without any loss of time. There cannot be any dispute that the Industrial Court is required to decide the question of recognition at an early date because of pre-requisite condition of existence of membership of thirty per cent for a period of six months immediately prior to the date of application. Turning to the provisions of Section 12 (1), it is clear that it is divided into four or five parts. First,

Industrial Court is required to hold a preliminary scrutiny to find out whether the application filed is in order. On being so satisfied the Industrial Court will direct notice to be displayed on the notice board of the undertaking declaring its intention to consider the said application on the dates specified in the notice. The notice so displayed will also call upon any union having membership of employees in that undertaking and the employees and employers affected by the proposal to show cause within the prescribed time as to why the recognition should not be granted. Section 12 (7) provides that the cause has to be shown within the prescribed time. The word "prescribed" is not defined under this Act but Section 3(18) of the Act provides that the words and expressions used in this Act and not defined shall have the meaning assigned to them by the Industrial Disputes Act, 1947. Section 2(m) of the Industrial Disputes Act, 1947, defines the word "prescribed" to mean "prescribed by rules made under this Act". This indicates that the phrase "within a prescribed time" used in Section 12 (7) of the Act means one prescribed by the Rules. Section 61 of the Act enables the State Government to make Rules for carrying out the purposes of this Act and in pursuance of the powers conferred the Government of Maharashtra have published Rules on September 8, 1975, in the Official Gazette. Rule 6 is as under :

Period of show cause notice - The period to show cause as to why recognition should not be granted to the applicant union under Sub-section (1) of Section 12 shall be eight days from the date of the notice displayed under that sub-section.

5. It was urged on behalf of the respondents that the object of the provisions of Sections 11 and 12 of the Act is that proceedings instituted for recognition of the union should be disposed of as early as possible and, therefore, the Legislature has prescribed a period of three months for disposal of the application. To enable the Industrial Court to dispose of an application within that period the Legislature has also prescribed a period of eight days for filing objections. To achieve the object of expeditious decision, if Legislature prescribes period to perform certain acts leading to ultimate decision then, argues Mr. Dharap, it should be held that the provision of Rule 6 is mandatory and no discretion is left in the Industrial Court to entertain objections after the expiry of the period. It is not possible to accept this submission.

6. The main question for determination being whether the provision of Rule 6 mandatory or directory, to ascertain the real intention of the legislature it is necessary to find out the content of the statute, the purpose of the prescription, the public injury in the event of neglect of the rule, and the conspectus of circumstances bearing on the importance of condition. It is well-settled that mere use of word "shall" is not sufficient to treat the provision as mandatory and the proper perspective in which the provision should be appreciated is laid down by the Supreme Court in the case of *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, . The Supreme Court observed (p. 765) :

The relevant rules of interpretation may be briefly stated thus ; When a statute

uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered.

7. Section 11 (2) of the Act provides that the Industrial Court shall dispose of application for recognition, "as far as possible within three months". The use of the words, "as far as possible", clearly indicates that Legislature never intended to lay down a rigid rule, ignoring the genuine circumstances which may require carrying over the proceedings beyond the period of three months. It is obvious that Section 11 (2) provides for period, with a view to indicate the urgency in disposing of the proceedings and not to oust the jurisdiction of Industrial Court after the expiry of that period. Rule 6 is enacted as an aid to achieve the goal of early disposal and viewed in this context, it is manifestly clear that Rule 6 governing procedure is merely directory. The provision of Section 11 (2) enables the Industrial Court to decide the application beyond period of three months, and therefore it would be futile to contend that Legislature intended to shut out the objections of employer or employees affected by the proposal, merely because the same were not lodged within time prescribed by Rule 6.

8. It was urged on behalf of the petitioner that neither Section 12 (7) nor Rule 6 provides for contingency for non-compliance, nor such non-compliance is visited by penalty and therefore provision of Rule 6 should be treated as merely directory. Our attention was invited in this connection to a decision of the Supreme Court reported in the case of State of U.P. Vs. Manbodhan Lal Srivastava, , and the counsel urged that in the absence of a contingency Rule 6 should not be treated as mandatory and non-compliance fatal. The contention of the learned counsel is sound and deserves acceptance. Mr. Dharap and Mr. Deshmukh, the learned advocates who canvassed the opposite view, relied upon provisions of Sections 28 and 42 and argued that whenever thought fit, the Legislature has specifically authorised the Industrial Court to extend the period prescribed and therefore in the absence of such specific provision in 12 (7) or Rule 6, it should be presumed that Rule 6 is mandatory. It is not possible to accept this submission, as both Sections 28 and 42 deal with substantial rights, while Rule 6 is enacted to regulate the procedure to determine a right. Section 28 enables any union, employer or employee to file a complaint seeking redress against any unfair labour practice, within a period of ninety days of occurrence of such practice, and proviso to Sub-section (1) of Section 28 empowers the Court to entertain the complaint after the expiry of ninety days, if good and sufficient

reasons are shown. Section 42 confers right of an appeal against orders passed by the Labour Court in trials of offences under the Act and Sub-section (2) prescribes that such an appeal is to be filed within thirty days from the date of order. The proviso to Sub-section (2) enables the Industrial Court, for sufficient reasons, to entertain an appeal after the expiry of said period. There could not be any valid comparison of these sections with Rule 6, as those sections occupy a different field. The Rules of procedure are normally only directory and more so, when non-compliance in no way affects the substantial rights of parties.

9. In this connection it is worthwhile to reproduce the observations made by the Supreme Court in *The State of Punjab and Another Vs. Shamlal Murari and Another*, . The Supreme Court while considering the interpretation of Rule 3 of the Punjab and Haryana High Court Rules, requiring filing of three copies of memorandum of appeal, judgment appealed from and paperbook for valid presentation of Letters Patent appeal, observed in para. 8 of the judgment (p. 1179) :

...We must always remember that procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the hand-maid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance though, procedural, will thwart fair hearing or prejudice doing of justice to parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum. After all courts are to do justice, not to wreck this end product on technicalities. Viewed in this perspective, even what is regarded as mandatory traditionally may, perhaps, have to be moderated into wholesome directions to be complied with in time or in extended time.

10. Taking into consideration the real intention of the Legislature and applying the test laid down by the Supreme Court, in our judgment, Rule 6 is clearly directory and violation of rule cannot be condemned as fatal in every case. Mere non-compliance in filing written-objections within eight days of publication of notice on notice board is not so fatal as to deprive the objector from lodging the objections and taking part in the proceedings, the decision whereof would affect his substantial rights. In our judgment, the view taken by the Industrial Court that there is no jurisdiction to entertain the objections after the stipulated period is erroneous and requires to be quashed. The apprehension of Mr. Dharap and Mr. Deshmukh, that our interpretation would enable the interested party to delay the decision of application for recognition is ill-founded, as we have no doubt that the Industrial Court will exercise the discretion judicially, considering the facts and circumstances of each case.

11. Mr. Buch invited our attention to regulations Nos. 23 and 78 of the Industrial Court Regulations, 1975. Regulation 23 provides that notice under Sections 11 and 12 of the Act should be given as per the prescribed forms, while reg. 78

requires the parties to whom notices are issued to file written-statement at least eight days before the date of hearing. Regulation 78A, added in the year 1977, enables the party to file it at a later stage but only with special permission of the Court. It was urged that regulations supersede Rule 6 and therefore the Industrial Court was in error. The contention is not sound. Regulation has been framed by the Industrial Court in exercise of the powers conferred u/s 33 of the Act, and that section expressly provides that the Industrial Court can make regulations consistent with the provisions of the Act and Rules. In our judgment, reg. 78 is clearly inconsistent with Rule 6 and therefore invalid.

12. Turning to the facts of special civil application No. 2298 of 1977 we find that the petitioner did appear before the Industrial Court on the first date of hearing and sought time to file objections. The ground given by the petitioner for extension, it is not disputed, was genuine and the Industrial Court did adjourn the hearing. The petitioner has filed objections before the next date of hearing and also application for condonation of delay. The Industrial Court passed the order on application long after on June 29, 1977 and the order does not disclose any ground for refusal to consider the objection, save and except that Rule 6 is mandatory. The order cannot be sustained and in our judgment the petitioner is entitled to hearing, as there is a substantial compliance of the rule.

13. [The rest of the judgment is not material to this report.]