
(1986) 01 BOM CK 0039
In the Bombay High Court
Case No : Writ Petition No. 276 of 1983

M. Laxminarayan

APPELLANT

Vs

S.P. Singh and Others

RESPONDENT

Date of Decision : 13-01-1986

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 3(42), 39, 48

Citation : (1994) 3 LLJ 1004

Hon'ble Judges : Pendse, J

Bench : Single Bench

Advocate : Narayan Shetye and Pankaj M. Patel, for the Appellant; NEMO., for the Respondent

Final Decision : Allowed

Judgement

Pendse, J.—The petitioner is the Vice President of General Employees' Union which is a Trade Union registered Under the Trade Unions Act. M/s. Narang Motels (Private) Limited has employed about 350 workmen and majority of them are members of the General Employees' Union. The respondent No. 1 is a Personnel Manager, while respondent No. 2 is a Director of Narang Motels (Private) Limited. The management had issued charge-sheets to 41 workmen who claim to be the members of the Union. The General Employees' Union thereupon filed Complaint (ULP) No. 501 of 1982 against M/s. Narang Motels (Private) Limited and respondent No. 1 who had signed the charge-sheets alleging commission of unfair labour practices under Item 1 (a) and 4(a) and (b) of Schedule II of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the "Act"). The Union also filed an application for interim relief and the Industrial Court passed an ex parte order restraining the management from taking any action on the basis of the alleged ex parte inquiries against the workmen and from discharging or dismissing and of the 41 workmen against whom charge-sheets were issued. According to the petitioner, ex parte order was served upon the respondents on

July 8, 1982 through the bailiff as the respondents declined to accept it on July 7, 1982. It is the claim of the petitioner that inspite of the injunction order, respondents Nos. 1 and 2 flouted the same and issued dismissal orders against the workmen by forwarding the letters of dismissal.

2. The petitioner thereupon instituted Miscellaneous Criminal Complaint (ULP) No. 72 of 1982 before the Labour Court, Bombay, u/s 48 of the Act complaining that the respondents have violated the interim order passed by the Industrial Court under Sub-section (2) of Section 30 of the Act and are, therefore, liable to punishment u/s 48 of the Act. The complaint was filed before the Labour Court on November 12, 1982 and the Labour Court issued process against the respondents. The respondents filed their say raising the objection to the maintainability of the complaint. The respondents claimed that the petitioner is not an employee of the Company and Union of which he is Vice-president is not recognised Union under the provisions of the Act and, therefore, u/s 39 of the Act, the Labour Court cannot take cognizance of the complaint. The objection raised by the respondents prevailed and the Labour Court by order dated October 17, 1984 dismissed the complaint holding that it is not open for the Labour Court to take cognizance of the same as the complaint is instituted by the petitioner, who had no authority to launch prosecution. The impugned order of the Labour Court is under challenge.

3. Shri Shetye, learned counsel appearing on behalf of the petitioner, submitted that the view taken by the Labour Court about the maintainability of the complaint is entirely misconceived and requires to be set aside. The learned counsel urged that the Labour Court has given a restrictive meaning to the word "person" appearing in Section 39 of the Act and has overlooked that any Union, whether recognised or unrecognised, or any person can institute the complaint u/s 28(1) of the Act in respect of any unfair labour practice. Shri Shetye submits that if the complaint of unfair labour practice can be filed by any unrecognised Union, then there is no rational to construe the expression "person" in Section 39 in restrictive manner, so as to exclude the institution of the complaint by unrecognised Union. I find considerable merit in the submission of the learned counsel.

4. Section 38 of the Act provides that the Labour Court shall have powers to try offences punishable under this Act, while Section 39 of the Act prescribes that no Labour Court shall take cognizance of any offence except on a complaint of facts constituting such offence made by the person affected thereby or a recognised Union or on report in writing by the Investigating Officer. The plain reading of the Section makes it clear that the institution of the complaint must be either by a recognised Union or on a report of the Investigating Officer or by the person affected. It is not in dispute that the General Employees Union is not a recognised Union under the Act and, therefore, the question which falls for determination is whether the Vice-President of that Union can be considered as a person affected by the act constituting the offence. The expression "person" is

not defined under the Act and, therefore, one has to turn to the definition of "person" under the Act and, therefore, one has to turn to the definition of "person" under the General Clauses Act. Section 3(42) of the General Clauses Act prescribes that the expression "persons" shall include any company or association or body of individuals whether incorporated or not. It is obvious that the expression includes not only a natural person but also a juristic person. The expression also includes a body of individuals and that would certainly bring in its ambit an unrecognised trade Union. In my judgment, the expression "person" u/s 39 is required to be given a wider meaning as contemplated under the General Clauses Act and the Labour Court was clearly in error in putting restrictive meaning on that expression. The Labour Court observed in the impugned order that holding the expression "person" to include unrecognised Union would make the provisions of Section 39 of the Act redundant. It is, not possible to accede to this reasoning because the intention of the Legislature is very clear and that could be easily gathered by reference to Section 28 of the Act. The Legislature has conferred right upon any Union or any employee to institute proceedings if any person is engaged in unfair labour practice and it is clear that the Legislature has made, no distinction between recognised and un-recognised Union. The Legislature intended that the complaint about unfair labour practice should be investigated by the Industrial Court and it is wholly irrelevant whether the complaint is made by a recognised Union or otherwise. The intention of the Legislature is to prevent commission of unfair labour practices and the importance must be given to the achievement of that object and therefore it is wholly incorrect to give restrictive meaning to the expression "person". In my judgment, if the complaint about the unfair labour practice can be instituted in the Industrial Court by an unrecognised Union, there is no rational why such unrecognised Union should not be permitted to institute the proceedings for violation of interim orders passed by the Industrial Court under Sub-section (2) of Section 30 of the Act. The Labour Court, in my judgment, by the impugned order has failed to give proper effect to the intention of the Legislature by erroneous construction of expression "person" in Section 39 of the Act.

The Labour Court suggested that the persons affected by violation of interim order passed by the Industrial Court are 41 employees and it is those employees alone who are entitled to institute the complaint. The reasoning of the Labour Court, if accepted, would mean that each of the workmen affected by the violation of the interim order has a separate cause of action and will have to institute a separate complaint before the Labour Court. Surely that could not have been the intention of the Legislature and the Labour Court failed to realise that aspect. In my judgment, the whole concept of representation by the Trade Union whether recognised or not is to avoid hardship to individual employees and once that aspect is borne in mind, then it is obvious that the expression "person affected" u/s 39 must include unrecognised Trade Union. In my judgment, the order passed by the Labour Court is wholly misconceived and deserves to be set aside.

5. Accordingly, the petition succeeds and the rule is made absolute and the order dated October 17, 1984 passed by the Presiding Officer, 6th Labour Court, Bombay is set aside and Miscellaneous Criminal Complaint (ULP) No. 72 of 1982 is restored to file and remitted back to the Labour Court for disposal on merits. In the circumstances of the case, there will be no order as to costs.