
(2000) 02 BOM CK 0075

In the Bombay High Court

Case No : O.O.C.J. W.P. No. 1007 of 1995

Maharashtra General Kamgar Union and Others

APPELLANT

Vs

Empire Industries Ltd. and Another

RESPONDENT

Date of Decision : 15-02-2000

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 21, 28

Citation : (2000) 86 FLR 189 : (2000) 3 LLJ 1036

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Judgement

F.I. Rebello, J.—Petitioner No. 1 is a Trade Union which has filed a complaint before the Industrial Court, which complaint was numbered as Complaint No. 1384 of 1988. The petitioner Nos. 2 and 3 are two of the workers who were sought to be impeded/added as complainants in the complaint. The application for addition of parties was by petitioner No. 1.

2. The Industrial Court by Judgment dated April 18, 1995 dismissed the application for amendment below Exhibit U-27. The Complaint filed by the petitioner was also dismissed by judgment dated April 18, 1995 below Exh. C-43. Aggrieved by the said order the petitioners have approached this Court impugning the judgment dated April 18, 1995 passed in complaint No. 915 of 1988 as also in complaint No. 1384 of 1988.

3. Insofar as complaint No. 915 of 1988 is concerned the prayers sought were to hold and declare that the respondent No. 1 herein had engaged in unfair labour practice under Items 9 and 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971. The said complainant was based on certain events that took place between July 21, 1988 and August 1, 1988. The complainant alleged that they apprehended that the respondent No. 1 would close down their business without following the procedure prescribed u/s 25-O of the I.D. Act, 1947.

4. Complaint No. 1384 of 1988 is also filed by the petitioners herein. In the said

complaint it is alleged by the petitioners that the respondent No. 1 has engaged in unfair labour practice under Item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971 as also some other reliefs. This complaint is based on the fact that the wages of the workmen employed with the respondent No. 1 company represented by the petitioners were not paid on specified dates and that there was unreasonable and unjustified delay in payment of wages. With the above background the reliefs sought for in the petition may be considered.

5. Insofar as order below Exh. C-43 is concerned, the Industrial Tribunal has held that the complaint as filed was not maintainable and consequently was liable to be dismissed. I do not propose to discuss the impugned order at length as to my mind the order passed thereon would be covered by the judgment of the Apex Court in the case of *Shramik Uttarsh Sabha Vs. Raymond Woolen Mills Ltd. and others*, . In the instant case the establishment is covered by the provisions of the Bombay Industrial Relations Act. The petitioner No. 1 herein is admittedly not a recognised union. The very issue which has arisen here was also in issue before the Apex Court as set out in para 3 of that Judgment. That being the case in my opinion the issue is no longer *res integra*. However, learned Counsel for the petitioners contends that the judgment in the case of *Shramik Utkarsha Sabha (supra)* is *per incuriam*. For that purpose the learned counsel contends that the Apex Court did not take into consideration its earlier judgment in *Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi*, . My attention is invited to the observation of the Apex Court in para 6 of the judgment where the Apex Court has observed that in the absence of recognised Union a member could maintain a complaint. The said observation need not detain us for long. In so far as Section 21(1) is concerned there is a proviso which permits a member to maintain a complaint in the absence of a recognised Union. That is not the case in so far as Section 21(2) is concerned to which there is no proviso. What was in issue before the Apex Court in the case of *Crescent Dyes & Chemicals Ltd. (supra)* was the right of representation. It is in that context that the Apex Court was considering the matter before it.

6. The next contention in support of the submission is placing reliance in para 14 of the Judgment in *Shramik Utkarsha Sabha (supra)*. It is contended that the Apex Court did not take note of Section 21(2) of the M.R.T.U. & P.U.L.P. Act. Even here mere non-reference to Sub-section (2) of Section 21 to my mind would make no difference as at the highest it may amount to mere omission. Reliance placed on Section 21(1) wherein the Apex Court has observed that Section refers to an Undertaking to which Industrial Disputes Act applies and not to the Undertaking to which the B.I.R. Act applies. At the most that may be necessary for the purpose of considering the language of the proviso to Section 21(1) and the absence of the proviso to Section 21(2). In my opinion it cannot be said that the judgment of the Apex Court can be held to be *per incuriam* both on general principles as well as on contention urged before this Court. The finding of the Industrial Court on that count, therefore, cannot be faulted.

7. The second contention which is urged is that the Industrial Court was wrong in not allowing the amendment of the complaint by addition of the workers. It is contended that the workmen would have a right in maintaining the complaint independently. It is contended that this is the view taken by this Court in the case of Rama Bala Kate and Others Vs. Walchandnagar Industries Ltd. and Others, ; in the case of Akhil Maharashtra Kamgar Union Vs. Warden and Co. Ltd. and others, in the case of P. K. Patel v. Maharashtra State Co-op. Bank Ltd. and Anr. 1996 LLR 1137 and in the case of Tata Hydro Electric Power Supply Co. Ltd. and others Vs. Shri Narendra L. Mansukhani and others, . It is further contended that, therefore, the workmen would have a right to be imp leaded, as the petitioner No. 1 was a Union representing the workmen, of which the parties sought to be added were members. Learned Counsel contends that it is permissible even in the cases where there was a sole plaintiff or complainant to add or substitute as plaintiff or complainant as parties who were before it. For that purpose reliance is placed on the judgment in the case of Hughes v. The Pump House Hotel Co. Ltd. . At the o 1902 (2). KBD 485utset it may be pointed out that was a judgment based upon English procedure under Order 16 Rule 2. The Court therein held that when there was a doubt as to who could bring the action and if it was possible to point out that the action was brought on the claim of a wrong person based a doubt that would be a bona fide doubt and it was permissible for the Court to permit both substitution and addition of the parties.

8. On the other hand on behalf of the respondents their learned Counsel contends that considering the authority of the Apex Court in the case of Shramik Utkarsha Sabha (supra) and the judgment of the Division Bench of this Court in the case of Maharashtra General Kamgar Union, Bombay Vs. Solid Containers Ltd. and others, and a subsequent judgment of LODHA, J which has considered both the judgments in the case of Shramik Utkarsha Sabha (supra) and Maharashtra General Kamgar Union (supra) a view has been taken that an individual member cannot maintain the complaint. I had an occasion to consider all the judgments including the judgment of LODHA, J. in the case of Ambika Silk Mills Co. Ltd. and another Vs. Maharashtra General Kamgar Union and others, . In the unreported judgment in the case of Suresh B. Kadam and Ors. v. Parle Products Ltd. and Ors. being Writ Petition No. 535 of 1998 and other petitions decided on April 22, 1998. After considering the judgment in Shramik Utkarsha Sabha (supra), Maharashtra General Kamgar Union (supra) and the judgments of other learned single Judges referred to earlier I have held that the complaint by an individual member is permissible.

9. I, therefore, do not propose to further address myself to that question. Suffice it to add that on a reading of the provisions of Section 27(A) read with Sections 32 and 33A of the B.I.R. Act it is not possible to say that under the B.I.R. Act representation by an individual is excluded. Those are Sections which do permit representation by individuals in certain circumstances. Secondly, it must also be borne in mind that complaints are to be filed u/s 28 of M.R.T.U. & P.U.L.P. Act. What Section 20(2)(b) has done is to amend the Central Act i.e. the Industrial

Disputes Act, by amendment as brought into Sub-section (2)(b) and Schedule I. Pursuant to the amendments to the Industrial Disputes Act, 1947 the right to representation under that Act in the State of Maharashtra is restricted to certain recognised Unions. Section 21 on an ex-facie perusal bars any person except the recognised union in maintaining a complaint under Items 2 and 6 of Schedule IV. The proviso to Section 21(1) provides that where there is no recognised Union even so far as these unfair labour practices are concerned even an individual workman is entitled to appear. However, appearance by an individual is not permitted in case of an industry covered by the B.I.R. Act. Unfair practices have been included in Schedules II, III and IV for the first time by virtue of the M.R.T.U. & P.U.L.P. Act These were neither forming a part of the B.I.R. Act and for that matter the Industrial Disputes Act. It is no doubt true that subsequently the I.D. Act has been amended to include certain unfair labour practice. It is Section 28 which confers a right on a party to file a complaint. Section 20 refers to the rights a recognised Union and Section 21 to the rights in respect of certain unfair labour practices. If a literal construction is given to Section 20(2)(b) and the exclusionary provision as contained in Section 21, it is possible to contend that in so far as unfair labour practices are concerned, prima facie there is a right of representation by a person or union categorised u/s 28 unless it is excluded by any provision of the Act. The only other view is that if you have no right to represent under B. I. R. Act or under the I.D. Act then the same must be read into also the M.R.T.U. & P.U.L.P. Act. However, in view of the law laid down in the case of *Shramik Utkarsha Sabha v. Raymond Woollen Mills Ltd.* (supra) and in so far as B.I.R. Act is concerned and *Maharashtra General Kamgar Union v. Solid Containers Ltd.* (supra) in so far as I.D. Act is concerned, I do not propose to consider the matter further. It may, however, be mentioned that the view taken in *Solid Containers* (supra) merely follows the decision of the Apex Court in *Shramik Utkarsha Sabha v. Raymond Woollen Mills Ltd.* No independent conclusions are discernible as to why the view should be followed in case of I.D. Act.

10. Having said so the question still arises whether the application of the petitioner No. 1 for addition of parties is permissible. It is no doubt true in the case of *Hughes* (supra) the English Courts have taken the view that it is permissible for either addition or substitution of a party. Under Order I Rule 10 a power is conferred on the Court in case the suit has been instituted in the name of wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just. The language under the English procedure and our C.P.C. is similar. The purpose seems to be to avoid procedural wrangles in the maintainability of the suit and to avoid a suit being dismissed in such cases of bona fide disputes. u/s 28 of, the M.R.T.U. & P.U.L.P. Act a complaint has to be

filed in terms of Sub-section (1) within 90 days. Under the proviso the Court may entertain a complaint after the period of 90 days from the date of the alleged occurrence if made and sufficient reasons are shown by the complainant for the late filing of the complaint. In other words there is a power in the Court to condone the delay in filing the complaint. In the instant case the complaint by the petitioner No. 1 was filed in the year 1988, The judgment in the case of Shramik Utkarsha Sabha (supra) of this Court came to be pronounced on December 13, 1991. In other words the complaint was much before the law declared by this Court in the case of Shramik Utkarsha Sabha (supra) which thereafter has been confirmed by the Apex Court to which reference is already made. From the discussion above the following emerges:

- (i) An individual member has a right to file a complaint in respect of the unfair labour practices under items as set out in the present complaint;
- (ii) Under Order 1 Rule 10 of the C.P.C. a Court has power for substitution of a plaintiff in case of a bona fide mistake where it was instituted in the name of wrong plaintiff;
- (iii) Proviso to Section 28(1) permits the Court to condone the delay in filing the complaint;
- (iv) In the instant case the complaint by an unrecognised Union of which the petitioners sought to be joined were admittedly members was before the law was declared by the Apex Court in the case of Shramik Utkarsha Sabha.

Considering these circumstances is it possible to hold that the application for amendment as applied for by the petitioner herein was not maintainable. Procedural law is hand-maid of justice. Procedure must further the cause of justice and not result in injustice. In the instant case for twelve long years the petitioner No. 1 bona fide was prosecuting the complaint which was instituted on the basis that the complaint by an unrecognised Union in respect of items other than Item Nos. 2 and 6 of Schedule IV was maintainable. Individual members themselves can maintain the complaint as filed. Order 1 Rule 10 of C.P.C. confers a power on the Court in so far as Civil Suits. Under Clause (3) of Section 30 of C.P.C. certain powers as vested in the Courts are also conferred on the Courts under the Act. There is no exclusion of the provisions of the CPC by the M.R.T.U. & P.U.L.P. Act. Section 32 provides that notwithstanding anything contained in the Act the Court shall have the power to decide all matters arising out of any application or complaint referred to for decision under any provisions of this Act. Once it is held that a member could maintain a complaint even if the provisions of this Act. Order I Rule 10 are strictly not made applicable, nevertheless as provisions of the CPC are not excluded and the Tribunal has all the trappings of a Civil Court, in the larger interest of justice it will be permissible to hold that there is power in the Industrial Court for substitution/addition of parties. In the instant case it is clear that the petition filed by the original petitioner No. 1 was bona fide. Once it is so held it is my considered view and

further as there is a power in the Court to condone the delay in filing the complaint, it was permissible for the Industrial Court to consider the application both for substitution and/or addition of parties.

11. On the facts of the present case set out the application made was by the petitioner No. 1. Ultimately it must be remembered that the petitioner No. 1 is a Trade Union representing the parties sought to be imp leded who are its members. It is no doubt true that under the Trade Unions Act petitioner No. 1 is a person at law. However, in Industrial Jurisprudence it is always possible for the Courts to strike a larger balance so as to achieve the purpose for which the Act was enacted. In the instant case the Act has been enacted for the purpose of finding out whether there was unfair labour practice either on the part of the petitioner union and/or respondent and for redressal. That being the objective of the Act to my mind it will be permissible for the Industrial Court or Labour Court to consider an application for substitution or addition of parties. On the facts of this case the Industrial Court was wrong in not allowing the application for amendment.

12. Though the complaints as filed by itself could not have been filed by the Union, as the application for amendment was moved before the decision on the main complaint the issue of addition/substitution of parties was at large before the Industrial Court. The Industrial Court was wrong in dismissing the application for substitution/addition. The order of the Industrial Court dated April 18, 1995 below Exh. U-27 is, therefore, liable to be quashed and set aside. Once that be so, though in so far as the conclusion arrived at below order Exh. C- 43 the Industrial Court was right in view of setting aside the order at Exh. 21-27, the order in Exh. C-43 will have also to be set aside. The complaint will now be held to be maintainable.

13. Rule made absolute accordingly.

In the circumstances of the case there shall be no order as to costs.

14. The Industrial Court to permit the amendment of the complaint and thereafter to dispose of the complaint expeditiously after hearing both parties.

15. The learned counsel for the Respondents states that the operation of the order be stayed for some time. On behalf of the petitioner learned Counsel states that they will take no steps for a further period of 5 weeks from today. In the light of that no further orders are required.

16. Personal Assistant to issue ordinary copy of this order to the parties.