

(2001) 10 BOM CK 0094

In the Bombay High Court

Case No : Writ Petition No. 4030 of 1994

Maharashtra State Electricity Board, Bombay

APPELLANT

Vs

Sunil More and others

RESPONDENT

Date of Decision : 04-10-2001

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 30

Citation : (2001) 10 BOM CK 0094

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : P.P. Chavan instructed by Little and Co, for the Appellant; K.S. Bapat, for the Respondent

Judgement

Dr. D.Y. Chandrachud, J.—The Maharashtra State Electricity Board challenges in these proceedings an order dated 29th June, 1994 passed by the Industrial Court. The order of the Industrial Court arises out of a complaint which was filed on 19th August, 1985. The workmen to whom the complaint relates have been pursuing for over 15 years their claim of being granted permanency in service by the MSEB. They belong to a class of hapless temporary employees called bill distributors whose duty is to distribute the electricity bills raised by the Board to the consumers. All that they are paid is 10 paise per bill for every bill distributed. The Electricity Board, it is common ground, has permanent workmen which are also doing identical work. There can be no dispute about the fact that the work which has been rendered by the workmen which forms the subject matter of these proceedings is a perennial in nature and incidental to the operations of the Board.

2. The complaint before the Industrial Court was on the ground that by keeping these workmen as temporaries for long years, the Board had committed an unfair labour practice under Items 5, 6, 9 and 10 at Schedule IV of the MRTU & PULP Act, 1971. Under Item 6 of Schedule IV to the Act the unfair labour practice

lies in engaging employees as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees.

3. The Industrial Court while granting permanency by its order dated 29th June, 1994, clarified that the workmen concerned would not be entitled to any back wages for the past period. The Board impugns the correctness of the order of the Industrial Court.

4. The administrative work of the MSEB is divided into various circles which are in turn comprised into separate divisions. Each division in turn is divided into several sub-divisions. Bhandup circle comprises of Bhandup, Mulund and Thane city. Until 26th September, 1977, electricity to the aforesaid area was supplied by the Thane Electricity Supply Co. Ltd. The licence of the aforesaid company was cancelled on or about 27th September, 1977. The workmen, to whom the present dispute relates, had initially been engaged by the Thane Electricity Supply Co. Ltd. as peon-cum-bill distributors for the purpose of distributing energy bills to the consumers. The pleadings before the Industrial Court are to the effect that after the above area for which electric supply was rendered by the Thane Electricity Supply Co. Ltd. came within the jurisdiction of the MSEB, the bill distributors who were working with the erstwhile company and whose services were terminated by the company upon cancellation of its licence, were given the work of bill distribution and continued to work as peon-cum-bill distributors, upon these persons having been found suitable on interview. According to the Board, this was going on until the work of further electrification and of improvement in the lines was continuing and the lines were gradually commissioned. At that stage, the Board could not decide upon the strength of the required permanent complement for the purpose of bill distribution. Since the work of bill distribution ought not to suffer, the bill distributors engaged by the erstwhile company were engaged for a temporary period, so as to enable the Board to decide in the meantime upon the permanent complement of staff required for bill distribution. Each of the bill distributors has admittedly been appointed on a temporary basis directly by the Board. These bill distributors are required to report every day to the concerned office of the Board which in turn hands over the bills to be distributed to each one of them. The bill distributor delivers the bills to the consumers and obtains the signatures of the consumers in token of having received the bill. Admittedly, the bill distributor, thus, appointed on a temporary basis has been paid an amount of 10 paise per bill distributed and this arrangement has been continued till today since 1984. There is no increase in their remuneration. The Board in its Written Statement before the Industrial Court admitted that it cannot continue with this arrangement and that it had to take steps by getting the posts sanctioned, as and when the Board comes to a conclusion in regard to the total number of bill distributors required for the purpose.

5. The complaint before the Industrial Court was filed on behalf of 11 workmen.

These 11 workmen were as follows:

- 1 Sunil More
2. Sunil Baliram Deshmukh
3. Dilip Namdev Majumale
4. Laxman Ganpat Shinde
5. Sunil Mansing Gaikwad
6. Gangaram Gopal Kadam
7. Suresh Dhaniram Padhariya
8. Narendra Maruti Shelar
9. Pravin Prabhakar Kulkarni
10. Ramshankar A. Upadhyay and
11. Shantilal A. Bhavasar

There is no dispute about the fact that the Board has regularised the services of the bill distributors referred to at items 5 and 10 above viz. Sunil Mansing Gaikwad and Ramshankar A. Upadhyay. The workmen whose names are listed out at Sr. Nos. 3, 5, 7, 9 and 11 above, it is stated on their behalf by the learned counsel appearing on behalf of the Respondents, have subsequently ceased to function as bill distributors and they have already left services. The Petition, therefore, now survives only in relation to four of the workmen viz. those at Sr. Nos. 1, 2, 4 and 8 above.

6. The complaint which was filed before the Industrial Court sets out the nature of the grievance. The grievance of the workmen was that the Board despite having vacancies had appointed only 21 workmen as bill distributors on a permanent basis. In fact, the case of the workmen was that there was work for absorbing 15 more employees. There was a large disparity between the emoluments which were paid to permanent workmen on the one hand and bill distributors on the other who were complainants to whom a payment of 10 paise per bill distributed was being made. The permanent workmen, who were discharging the very same duties were governed by a settlement of 1st April, 1980, the benefits of which were, however, being denied to the complainant workmen. The Board did not dispute the position that the bill distributors who are before the Court had been appointed by and were in fact working both with the erstwhile Thane Electricity Co. Ltd. as well as the Board. This was also not disputed before the Court by the learned counsel. All that the Board sought to contend was that the work of electrification of the Bhandup Circle was still in progress and the Board could not continue indefinitely with engaging temporaries. The Board stated that it will have to determine the complement of staff which was required for carrying out the work of bill distribution on a

permanent basis. Before the Industrial Court, evidence was adduced on behalf of the complainant workmen who deposed to the fact that apart from bill distributors engaged temporarily on a piece rate basis, the Board had regular bill distributors who are discharging work of the same nature and while the regular bill distributors were getting the benefit of Industrial Settlements, this was denied to the complainant workmen. The complainant workmen were further deprived of other service benefits such as bonus and over time. The Industrial Court has also recorded in the course of the Judgment that one of the witnesses for the workmen had deposed to the fact that there was full supervision and control by the Board on the nature of the work rendered by them. On the other hand, the only case which was sought to be advanced by the witness for the Board was that unless the Board passes a resolution, the complainant workmen could not be granted the benefit of permanency in service. It thus emerges from the record before the Industrial Court that the workmen had been kept temporaries for years together though the work of bill distribution had increased manifold. The complainant workmen were deprived of the benefit of service conditions admissible to their counterparts who were granted permanency. The Board had not produced before the Court the documents in its possession including the registers, payment vouchers and over time registers from which the extent of the difference in wages paid to the regular workmen and the complainant workmen on the other hand, and the increase in the work over a period of time could be scrutinised. The Industrial Court while allowing the complaint noted that the only case of the Board was that unless a resolution is passed, the workmen could not be regularised. In the present case, the Industrial Court was of the view that there was a clear relationship of master and servant and that the workmen had been deprived of the benefit of permanency and the consequential benefits which had been granted to similarly placed workmen.

7. Having heard the learned counsel appearing on behalf of the contesting parties, I am of the view that the decision of the Industrial Court is eminently correct and proper. The Industrial Court has despite awarding the prayer for permanency weighed the equities in denying the claim for back wages. The workmen concerned in the present case have all been appointed by the MSEB itself on a temporary basis. It must, therefore, be emphasized that this is not a case where the workmen were engaged as employees through an intermediary such as a contractor. There is a direct relationship of master and servant between the workmen and the Board. The workmen have continued to work on a temporary basis on a meager payment of 10 paise for bill distribution since 1984. The only defence of the Board was that it had still to determine the complement of permanent staff that it would require. Such a determination, to say the least, ought not to have taken 17 years. The Board, admittedly, has permanent workers to do exactly the same job. The benefits of the Industrial settlement which are extended to the permanent workmen are not granted to the complainant workmen. The work has increased just as the work of the Board has

increased manifold. Having regard to the facts and to the totality of the circumstances of the case, an unfair labour practice, under item 6 Schedule IV, was clearly established. The jurisdiction of the Labour Court u/s 30 of the M.R.T.U. & P.U.L.P. Act, 1971 is sufficiently wide to grant the relief which it has in the instant case upon a finding that an unfair labour practice had been committed.

8. The Board has regularised the services of two of the workmen whose names have already been adverted to in the earlier part of Judgment. Five of the workmen, whose names have been adverted to earlier have lost interest in the proceedings and have ceased to act as bill distributors. In view of the statement made on behalf of the Respondents, these five workmen will not have benefit of the order of the Industrial Court. In the circumstances, while dismissing the present Writ Petition it is clarified that the benefit of the order of the Industrial Court shall extend to the following workmen viz.

Sunil More, Sunil Baliram Deshmukh, Laxman Ganpat Shinde and Narendra Maruti Shelar. (Serial Nos. 1, 2, 4 and 8 in the list mentioned in the earlier part of this Judgment).

The workmen at Sr.No. 5 and 10 namely Sunil Mansing Gaikwad and Ramshankar A. Upadhyay, who have already been absorbed, will be paid the difference in emoluments with effect from the date mentioned in the order of the Industrial Court.

The Writ Petition is accordingly disposed of. No costs.

Civil Application No.3032 of 1999 is also disposed of.

Certified copy expedited.