
(1993) 06 BOM CK 0022
In the Bombay High Court
Case No : Writ Petition No. 674 of 1992

Maharashtra State Road Transport Corpn.	APPELLANT
Vs	
Conciliation Officer and Others	RESPONDENT

Date of Decision : 09-06-1993

Acts Referred:

Industrial Disputes (Bombay) Rules, 1957 — Rule 66, 66(3)
Industrial Disputes Act, 1947 — Section 33(4)

Citation : (1994) 68 FLR 275 : (1994) 2 LLJ 41 : (1993) MhLj 1252

Hon'ble Judges : V.S. Sirpurkar, J

Bench : Single Bench

Advocate : V.G. Wankhede, for the Appellant; P.C. Marpakwar, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, J.—In the instant petition, the order passed by the respondent No. 1 dated July 9, 1991 declaring the respondent No. 2 as the "protected worker" is under challenge. This order has been passed under the provisions of Section 33(4) of the Industrial Disputes Act read with Rule 66(4) of the Industrial Disputes (Bombay) Rules, 1957.

2. Few facts would help to understand the controversy. The Respondent No. 2 filed an application in the nature of a dispute before the Assistant Labour Commissioner, Akola under the provisions of Section 33(4) of the Industrial Disputes Act and more particularly under Rule 66(4) of the Industrial Disputes (Bombay) Rules, 1957 (for short, "the Act" and "the Rules").

3. Rule 66 of the Rules provides that when there is a dispute regarding grant of status as a protected worker, the dispute could be referred to the Conciliation Officer. It seems that the said dispute has been filed at the instance of the respondent No. 2 who was not accorded the said status of a protected worker by the petitioner though, according to him, he had complied with all conditions and had made an application as far back as on July 31, 1989 for such recognition.

The petitioner Corporation disputed the status and the list. They wrote back on August 26, 1989 that the said list could not be honoured and such status as per that list could not be conferred on the respondent No. 2, because he had not sent any list regarding the number of members of his union. It is to be noted that in that application it was only one name that was forwarded. From the annexures to the petition, it seems that there was one more application wherein the names of the respondent No. 2 and one Shri Kadam were included for being given the status of protected workers. The only dispute which seems to have been raised by the petitioner-Corporation regarding this list is that the said application was not accompanied with by the list of workers and members of that union so as to decide upon the exact number of protected workers. It will be necessary at this juncture to reproduce Section 33(4) of the Act:-

"33(4). In every establishment, the number of workmen to be recognised as protected workmen for the purposes of Sub-section (3) shall be one per cent of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for this aforesaid purpose the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen".

It is clear from this provision that every union would be given a representation and the members of every union as per the list sent by that union would be declared as the protected workmen subject to the condition that minimum number shall be five while the maximum number shall be hundred. Where there are more than one union in operation, there would be a rateable distribution depending upon the number of members of that union, but in any case the minimum number will have to be atleast one, because every union will have to be given the representation. Amongst the annexures, there is a communication dated April 9, 1990 at the instance of the petitioner-Corporation wherein the Corporation has made a grievance that while in the application dated July 31, 1989, two names i.e., of the respondent No. 2 and Shri Kadam were informed in the letter dated January 23, 1990, only one name has been given. Now it is obvious that once the lists are given by the unions, the Corporation was perfectly justified in raising the objections, but the only objection which seems to have been raised by the Corporation is that in the application made by the respondent No. 2 dated July 31, 1989, which was admittedly an application within time, the respondent No. 2 had not supplied the list of members of his union. There was no other objection raised on behalf of the Corporation.

4. Be that as it may, it seems that thereafter disciplinary proceedings were taken against the respondent No. 2 and he was dismissed from the service with effect from February 28, 1990. The respondent No. 2 filed an application before the Labour Commissioner as has already been stated, on March 8, 1990 and prayed that he be declared to be the protected worker as the Corporation had failed to

do so. He also pointed out that in complete violation of Section 33(4) he was dismissed. Now, if the application given by the respondent No. 2 to the Corporation had been accepted, the respondent No. 2 would have automatically got the status of a protected worker and under such circumstances, he could not have been dismissed. Be that as it may, once the application was filed by the respondent No. 2 before the Labour Commissioner, Nagpur, the Labour Commissioner from time to time sent notices to the parties. The order-sheet of those proceedings is on record and it clearly shows that atleast on June 24, 1991 the applicant as well as non-applicant were present. The next date was on June 26, 1991 on which date both the parties were called on July 9, 1991. On July 9, 1991 while the respondent No. 2 was present, the petitioner-Corporation was absent. In fact, on the earlier occasion Shri Gupta on behalf of the Corporation was present and he was afforded with the copy of the High Court decision on which the respondent No. 2 had relied. In spite of this, on the last date i.e., on July 9, 1991, the representative of the petitioner-Corporation remained absent. In view of this there was no alternative left for the Assistant Labour Commissioner but to accept the contention of the respondent No. 2. Even otherwise, from the record it seems that the attitude of the petitioner-Corporation was extremely relaxed inasmuch as the representative failed to attend the proceedings from time to time and was present before the authority concerned only by way of an exception.

5. Shri Wankhede, the learned counsel appearing for the petitioner, strongly urged that in fact this order came to be passed on July 9, 1991 and by such order, the status of a protected workman could not be conferred ex-post facto on the respondent No. 2. He also contended that the respondent No. 2 was not in service of the Corporation from February 28, 1990 when he was dismissed and as such there was no question of declaring him to be a protected worker afterwards for that period.

6. It is seen from the record that the application was already given well within time i.e., before September 30th wherein the respondent No. 2 was named by the union to be declared as a protected worker. The petitioner-Corporation did not take any action and surprisingly enough, the application which reached them on July 31, 1989 was chosen to be replied to for the first time almost after one month i.e., on August 26, 1989 without any proper justification. When the second application was given on March 21, 1989 by the respondent No. 2 wherein it was pointed out that there would be only one name to be declared as protected workman, there appears to be no response to this application. The list of workers of the union is admittedly appended to the application dated January 23, 1990 whereby the respondent No. 2 prayed to be declared as a protected workman. This letter is at Annexure-B to the petition and if there was only one name sent on behalf of the union, there was no question of any waiting and the name of the respondent No. 2 was bound to be accepted straightway without there being any further deliberation. In this behalf proviso to Section 66(3) of the Rules is relevant provision, which runs as under: -

"Provided that, where there is more than one trade union in the establishment the maximum number shall be so distributed by the employer among the unions that the numbers of recognised protected workmen in individual union bear roughly the same proportion to one another as the membership figures of the unions. The employer shall in that case intimate in writing to the President or the Secretary of each union the number of protected workmen allotted to it".

From the plain reading of this proviso one thing is certain that while the maximum number of protected workers may differ, but in any case every union must be represented i.e., at least one of its members would be the protected workman. Taking this view of the matter, there was no justification on the part of the petitioner-Corporation not to recognise the respondent No. 2 as the protected workman. He was, therefore, bound to be declared as the protected workman and if he was the protected worker, he could not have been dismissed thereafter as was done on February 28, 1990 and on that count, therefore, the declaration could not be stalled. At any rate, the whole attitude on the part of the petitioner-Corporation has been extremely relaxed inasmuch as when the hearings were fixed, the officers concerned remained absent and, therefore, the Assistant Labour Commissioner was perfectly justified in granting status of the protected workman. The contention of Shri Wankhede that ex-post facto sanction cannot be given, is not correct, for the application was already made much earlier and when the application was made, the respondent No. 2 was bound to be declared as the protected workman. Once the application was given and that application contained only one name, necessary consequence was to follow and there was no question of dilly-dealing that application by the Corporation.

7. In the result, the order impugned is perfectly legal and the Assistant Labour Commissioner was perfectly justified in law in declaring the status of protected workman of the respondent No. 2. The petition, therefore, must be dismissed.

8. The Court invited Shri P.C. Marpakwar, Advocate as an amicus-curia and the Court appreciates his services.

9. Petition is dismissed with costs. Rule discharged.