

(2002) 06 BOM CK 0095
In the Bombay High Court
Case No : O.O.C.J. W.P. No. 2049 of 1997

Mazagaon Dock Limited

APPELLANT

Vs

Engineering Workers Union

RESPONDENT

Date of Decision : 04-06-2002

Acts Referred:

Citation : (2002) 95 FLR 1005 : (2002) 3 LLJ 815

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : P.K. Rele, Rajesh P. Rele and Vinod Tayade, for the Appellant;

Judgement

R.J. Kochar, J.—The Petitioner, a Government of India Undertaking under the Ministry of Defence, is a Company registered under the Companies Act, 1956. It is engaged in Ship Building and Ship Repairing activities. It has about 8000 employees under its employment. There is a recognised Union functioning in the organisation. The Respondent Union is not a recognised union. The Respondent union had filed a Complaint of Unfair Labour Practice under Items 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short MRTU & PULP Act) against the petitioner Company complaining of the aforesaid unfair labour practices being engaged in by the Petitioner Company and it sought such declaration from the Industrial Court in the complaint of unfair labour practice. The grievance of the said Complainant Union (Respondent No. 1 herein) was in respect of Outdoor fitters of the Outdoor Fitting Shop who were said to be 105 in number. According to the Union, there was another category of workmen who were known as diesel shop workmen. The said Union complained of favouritism and discrimination on the ground that though the job of both the categories was the same/similar the diesel shop workmen were getting two additional increments while the outdoor fitters were not paid equal wages for the equal work done by them. According to the said Union, as the duties and job performed by the outdoor fitters was of the same/similar nature as compared with the diesel shop workmen, there was no

ground for discrimination to pay lesser wages to the outdoor fitters than those of the diesel shop workmen. According to the Union, the payment of two additional increments to the diesel shop workmen amounted to an act of favouritism regardless of merits as contemplated under Item 5 of Schedule IV of the Act. The Union therefore prayed for wages on par with the diesel shop workmen.

2. The petitioner company contested the complaint by filing a written statement. It denied that it had engaged in any unfair labour practice as alleged by the complainant union. It was the case of the Petitioner Company before the Industrial Court that the nature of work done by both the categories was different and was not even similar. It categorically denied the allegation that the work of both the categories was of the same nature. The company set out the nature of work of both the categories to justify its contention that the work was neither same nor similar, and therefore, there was no question of there being either favouritism or discrimination in the wages paid to the workmen of both these categories. The Petitioner Company further stressed the point that the diesel shop workmen were getting two additional increments on account of a settlement dated September 4, 1985 with the recognised Union. It was pointed out that under the said settlement the nature of work done by the diesel shop workmen was narrated to justify its original demand for four additional increments. It appears finally that as a result of negotiations both the parties agreed to grant two additional increments to the diesel shop workmen for the reasons stated in the said settlement. According to the Petitioner Company there was no question of favouritism or discrimination as the diesel shop workmen were being paid two additional increments on account of a settlement with the recognised Union. There was no such settlement with the recognised Union or with any other union in respect of payment of additional increments in respect of the outdoor fitters, and therefore, there was no question of showing favouritism or making any discrimination in making payment to the said two categories of the workmen. The petitioner company further pointed out that since there was no other settlement in respect of Outdoor fitters there was no question of unfair labour practice under Item 9 of Schedule IV of the Act i. e. failure to implement award, settlement or agreement. The settlement with the recognised Union was in respect of the diesel shop workmen only and it did not cover the outdoor fitters, therefore, there was no failure on the part of the Petitioner Company to implement any settlement, award or agreement qua the outdoor fitters. The Petitioner Company had also raised an issue of limitation, as the Union had filed the Complaint of unfair labour practice on December 17, 1990 to claim the benefits of the settlement dated September 4, 1985. According to the Company, the complaint was totally barred by limitation. It was further vehemently pleaded and submitted on behalf of the company that the question of job evaluation was not the function of the Industrial Court which is called upon to decide the specific question of unfair labour practice under the Act. According to the Petitioner Company, it was a case for adjudication wherein the Industrial Tribunal would have decided the demand raised by the outdoor fitters for claiming additional

increments which could have been considered on several technical aspects. The Industrial Court sitting under the MRTU & PULP Act had no powers and jurisdiction to evaluate the jobs of both the categories and determine the wage scales of both the categories and even to consider whether the jobs of both the categories were same or similar. The Petitioner Company on the aforesaid amongst other grounds prayed for dismissal of the complaint.

3. Both the parties produced their documents and also adduced oral evidence before the Industrial Court in support of their pleadings. The Industrial Court framed the points for determination and decided the same against the Petitioner Company and in favour of the Union by the impugned Order. It held and declared that the petitioner company had engaged in the unfair labour practice under Items 5 and 9 of Schedule IV of the Act and directed the petitioner company to grant two special increments to the outdoor fitters as were given to the diesel shop workmen in the year 1985.

4. Shri Rele the learned counsel for the Petitioners made a serious grievance against the impugned Judgment and Order of the Industrial Court that the Industrial Court had crossed its jurisdictional limits and has taken over the adjudicatory duty to enter into the job evaluation of the two categories. According to Shri Rele the Industrial Court constituted under the MRTU & PULP Act had no powers and jurisdiction to adjudicate the dispute but has to decide whether the unfair labour practice complained of was engaged in or not. Shri Rele further pointed out that the Industrial Court had not framed the issue of limitation and had not decided the same though it was specifically pleaded by the Petitioner in its written statement. According to Shri Rele the Complainant Union was claiming benefits of two additional increments under the settlement with the recognised union entered into on September 4, 1985 by filing the complaint of unfair labour practice in December, 1990. Shri Rele pointed out that ex facie the complaint was barred by limitation as under the Act the limitation for filing such complaint was 90 days from the occurrence of the unfair labour practice. Shri Rele further pointed out that even on the basis of evidence and material on record the Union had not proved that the nature of the work done by the outdoor fitters was the same or similar. Shri Rele pointed out that even the Industrial Court has observed that there was no material placed on record to establish that the outdoor fitters were performing the same duties as that of the diesel shop workmen. From the evidence Shri Rele pointed out that the Union had filed to prove that the work done by the outdoor fitters was of the same or similar nature. Shri Rele pointed out the distinction or difference between the responsibilities and the duties of both the categories. According to him, the work done by both the categories was different. He further pointed out that the diesel shop workmen were granted two special increments under the aforesaid settlement with the recognised union and he pointed out that they were granted two special increments in view of the additional work which was required to be done by them. According to the learned counsel, there was no case of showing any favouritism or indulging in any discrimination against the outdoor filters who

were getting their pay in accordance with the agreed pay scale. He pointed out that there was no settlement or agreement with the recognised union to grant any extra or additional increments to the outdoor fitters to attract the charge of unfair labour practice under Item 9 of Schedule IV of the Act. Shri Rele vehemently submitted that the subject matter of the complaint could not be decided in the complaint of unfair labour practice as it involved the question of job evaluation which was the special job of an expert body. Shri Rele further submitted that the issue involved was that of an adjudication of an industrial dispute and was certainly not the subject matter of unfair labour practice.

5. It is a fact that the complainant Union had claimed the benefits of the settlement of September 4, 1985 by filing a complaint of unfair labour practice in December, 1990. Ex facie the complaint was barred by limitation. There was no application for condonation of delay nor was issue of limitation framed and decided by the Industrial Court though it was specifically pleaded. I therefore, agree with the submissions of the learned counsel that the Industrial Court erred and failed in not deciding the question of limitation which goes to the root of the complaint as the complaint itself was not maintainable if it was filed beyond the prescribed limitation period.

6. Even assuming that the cause of action could be said to be of recurring or continuous nature as the workmen were getting two additional increments every month. I am satisfied that even on merits the Union had failed to prove the case of unfair labour practice under Items 5 and 9 of Schedule IV of the Act. Whether the duties or the work done by the outdoor fitters and the diesel workmen was of the same or similar nature could not be decided in a complaint of unfair labour practice u/s 28 and Section 30 of the MRTU & PULP Act. The nature of the duties and the job done by the workmen is certainly the job of technical experts particularly in the engineering industry. In the present case the distinction and the difference between the work and the job done by both the categories is clear. In the settlement itself the recognised union has made out its case for two additional increments on the ground that the workmen of the diesel shop were performing additional and extra work. It is also made clear in the said settlement that the nature of the work performed by them was different. It was the duty of the complainant union to have placed material on record to justify its demand that the work or the job done by both the categories was of the same or similar nature. The union has not proved that the work done by both the categories was of the same or similar nature. Whether the job done by the two categories was of similar nature also required adjudication and even on the basis of similar work I am afraid the charge of unfair labour practice cannot be levelled. Even the Industrial Court in paragraph 9 of its Judgment and Order has observed as under:

"9. Issue No. 3

Admittedly there is no difference between the work performed by the workmen of diesel shop and outdoor fitters. Principally equal pay required to be given for equal work only. But here job performed by the two categories not specifically

brought to the notice of the Court by either parties but considering the material available on record it appears that outdoor fitters are also working the same work which the workmen of diesel shop requires to perform. In view of this fact the outdoor fitters are entitled for equal pay for equal work. Hence this issue is answered accordingly.

The Industrial Court has also found that there was no material available on record to show that the duties and the responsibilities of the outdoor fitters was of the same or similar nature in comparison with the diesel shop workmen. After observing the same, curiously enough the Industrial Court has merely observed that the outdoor fitters were entitled for equal pay for equal work. If there was no material on record I fail to understand how the Industrial Court could have rushed to the conclusion that the outdoor fitters were entitled to get equal pay for equal work in comparison with the diesel shop workmen. The order is self contradictory."

7. I agree with the submissions of the learned counsel that the subject matter of the complaint could not be decided by the Industrial Court in a complaint of unfair labour practice. The nature of duties or work done by the workmen is to be closely examined by the technical experts to evaluate the job and to fix the pay scales. Whether the duties of the outdoor fitters was of the same or similar nature could not be determined or decided in a complaint of unfair labour practice where charge of favouritism and discrimination was levelled against the company. There was no foundation or basis for such a charge as whether the work done by both the categories was of the same or similar nature could not be decided in a complaint of unfair labour practice and the same was the job of adjudicatory machinery. The proper process for the Union or the workmen was to raise an industrial dispute to claim higher wages and to justify such demand they could have pointed out the work done by them in comparison with the work done by the diesel shop workmen. In such process of adjudication the Tribunal would have considered and appreciated the evidence to come to its own conclusion whether the workmen were entitled to get any increment or higher wages. Certainly this could not be done in a complaint of unfair labour practice, it is not the case of favouritism or discrimination as the petitioner company is making payment of two additional increments under a settlement with the recognised union. The charge of favouritism is therefore totally baseless and uncalled for. They cannot be charged of discrimination also as the diesel shop workmen were getting two additional increments under the settlement with the recognised union. The Petitioner Company has granted two additional increments to the diesel shop workmen under the settlement with the Recognised Union and it has not given the same to the Outdoor fitters considering the work and responsibilities of that category of workmen. The Industrial Court has no powers and jurisdiction to interfere with the discretion of the Petitioner Company. The law on the point of equal pay for equal work is again reiterated by the Supreme Court in the recent judgment reported in *State Bank of India and Another Vs. M.R. Ganesh Babu and Others*, . The Supreme Court has observed as under at

p.p. 833, 834: & 835 of LLJ:

"16. The principle of equal pay for equal work has been considered and applied in many reported decisions of this Court. The principle has been adequately explained and crystallised and sufficiently reiterated in a catena of decisions of this Court. It is well settled that equal pay must depend upon the nature of work done, it cannot be judged by the mere volume of work, there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgment is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. The principle is not always easy to apply as there are inherent difficulties in comparing and evaluating the work done by different persons in different organisations, or even in the same organisation, differentiation in pay scales of persons holding same posts and performing similar work on the basis of difference in the degree of responsibility, reliability and confidentiality would be a valid differentiation. The judgment of administrative authorities concerning the responsibilities which attach to the post, and the degree of reliability expected of an incumbent, would be a value judgment of the authorities concerned which, if arrived at bona fide, reasonably and rationally, was not open to interference by the Court."

The Court has further observed in para as under:

"..... The Bank has considered the nature of duties and responsibilities of the various categories of officers and has reached bona fide decision that while generalist officers take all crucial decisions in banking operations with which they are directly linked, and are exposed to operational work and risk since the decisions that they take have significant effect on the functioning of the bank and quality of its performance, the specialist officers are not exposed to such risks nor are they required to take decisions as vital as those to be taken by the generalist officers. They at best render advice in their specialised field, the degree of reliability and responsibility is not the same. It cannot be said that the value judgment of the Bank in this regard is either unreasonable, arbitrary or irrational. Having regard to the settled principles and the parameters of judicial interference, we are of the considered view that the decision taken by the bank cannot be faulted on the ground of its being either unreasonable, arbitrary or discriminatory and therefore judicial interference is inappropriate."

Applying the above principles to the facts of the present case, it cannot be said that the decision of the Petitioner Company in not giving equal pay to the category of the outdoor -fitters can be assailed as an unfair labour practice,

8. In the aforesaid circumstances the impugned Judgment and Order of the

Industrial Court cannot be sustained. There is no merit in the complaint filed by the Respondent Union and the same deserved to be dismissed even on merits. The impugned Judgment and Order of the Industrial Court is hereby quashed and set aside. The Petition succeeds. Rule is made absolute with no order as to costs.

9. It is needless to mention that it would be open for the outdoor fitters to raise an industrial dispute to claim higher wages and justify the same before the adjudicatory machinery.

10. Shri Rele points out that the Petitioner company had deposited the amount arising out of the impugned judgment and order of the Industrial Court in this Court. He prays for permission to withdraw the same. The Petitioner company is permitted to withdraw the amount with interest, if any.