
(2001) 04 BOM CK 0024

In the Bombay High Court

Case No : Writ Petition No's. 2040 and 2187 of 1998

Mazgaon Dock Ltd., Mumbai

APPELLANT

Vs

Shivbrat Jagroop Mishra and Another

RESPONDENT

Date of Decision : 30-04-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 39
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 2, 28, 30

Citation : (2002) 3 BOMLR 485 : (2001) 90 FLR 220 : (2002) 2 MhLj 219

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

Bench : Single Bench

Advocate : R.S. Pai and P.M. Palshikar, instructed by Sanjay Udeshi, in W.P. No. 2040 of 1998 and Colin Gonsalvis, instructed by Aditi Shelke, in W.P. No. 2187 of 1998, for the Appellant; R.S. Pai and P.M. Palshikar, instructed by S. Udeshi, in W.P. No. 2187 of 1998 and Colin Gonsalvis in W.P. No. 2040 of 1998, for the Respondent

Judgement

R.J. Kochar, J.—The petitioner is a Central Government Company and its shares are held by the President of India. It is engaged in the business of construction of warships, submarines and ship repairs. It employs about 10,000 employees.

2. The respondent workman has filed a Complaint of Unfair Labour Practice under Item 9 of Schedule IV under Sections 28 and 30 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, the State Enactment, The Complaint is still pending before the Industrial Court, Maharashtra at Mumbai. We are not concerned with the facts and the merits of the complaint, and therefore, I am not referring to the factual aspect of the Complaint.

3. The petitioner Company filed an application before the Industrial Court praying for dismissal of the Complaint on the ground of lack of jurisdiction of the Industrial Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act to entertain and try such complaint in

view of the Judgment of the Supreme Court in the case of Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], . The petitioner company being a public sector undertaking is controlled by the Government of India and therefore the appropriate government for the said company is the Central Government and not the State Government. It was, therefore, contended on behalf of the petitioners that the Central Government being the appropriate government for the industrial disputes between its workmen and the company the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act does not apply to the petitioner company and therefore the present complaint filed by the respondent workman was not maintainable as the Industrial Court had no jurisdiction to entertain and try the said complaint.

The Industrial Court, after hearing the parties by its reasoned order dismissed the application filed by the petitioner company praying for dismissal of the Complaint on the issue of jurisdiction of the Industrial Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Industrial Court held that in view of the notification dated 3-7-1998 issued u/s 39 of the Industrial Disputes Act, 1947 the State Government was also the appropriate government in respect of the petitioner Company, and therefore, the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 was applicable to the petitioner Company and that the Complaint was maintainable before the Industrial Court under the said Act. The Industrial Court also relied on a letter addressed by the petitioner Company on 15-7-1998 to the Commissioner of Labour, Maharashtra informing that the appropriate government in respect of the petitioner Company was the State Government i.e. the Government of Maharashtra. The petitioners are aggrieved by the said order of the Industrial Court and have challenged the said Order under Article 226 of the Constitution of India before this Court.

4. It appears that in the second Writ Petition being Writ Petition No. 2187 of 1998 another learned Member of the Industrial Court has taken a view that the State Government was not the appropriate government for the industry of the petitioner Company and has upheld the objection raised by the petitioner Company by its order dated 24-8-1998 and dismissed the complaint filed by two workmen as not maintainable under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act. The workmen in this petition are aggrieved by the said order and have filed this petition to question the legality and validity of the said order of the Industrial Court.

5. I have heard both the above petitions together as point involved therein is the same, that is, whether the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 is applicable to the industry of the petitioner Company? There is no dispute that in view of the Judgment of the Supreme Court in the case of Air India Statutory Corporation v. United Labour Unions and Ors. (supra) the Central Government is appropriate government for

all the Central Public Undertakings. To overcome the difficulties arising from the said judgment and to facilitate the smooth working, the Central Government has issued a notification on 3-7-1998, which reads as under:--

"S.O.n. : In exercise of the powers conferred by Section 39 of the Industrial Disputes Act, 1947 (14 of the 1947), the Central Government hereby directs that all the powers exercisable by it under that Act and the rules made thereunder shall, in relation to all the Central Public Sector Undertakings and their subsidiaries, Corporations and autonomous bodies specified in Schedule annexed to this Notification be exercisable also by the State Governments subject to the condition that the Central Government shall exercise, all the powers under the said Act and Rules made thereunder as and when it considers necessary to do so."

In the Schedule given along with the Notification there are 129 industries for which the Central Government is the appropriate government. By the said notification in exercise of powers u/s 39 of the Industrial Disputes Act, 1947 the Central Government has delegated all the powers exercisable by it under the Industrial Disputes Act and Rules to the State Governments retaining simultaneously its own powers as the appropriate government. It is therefore, clear that for the industry of the petitioner Company situated in Mumbai, the State of Maharashtra has become the appropriate government. By the aforesaid notification issued u/s 39 of the Industrial Disputes Act both the Central as well as State Governments have become the appropriate governments for the industry of the petitioner Company.

6. Shri Pai, the learned Counsel for the petitioner company submits that he had no quarrel with the notification and the delegation of powers by the Central Government to the State Government but according to him, such delegation of power was confined only to the Industrial Disputes under the Industrial Disputes Act, 1947 and that the State Government had no powers under Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Shri Pai has submitted that there was no doubt about the exercise of powers u/s 39 of the Industrial Disputes Act by the Central Government and simultaneously to point the State Government as the appropriate Government for the industry of the petitioner Company but the delegated powers of the State Government were restricted to the Industrial Disputes Act, 1947 only and thereby it did not become appropriate Government under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act. Shri Pai has relied on the observations of the Supreme Court in the case of Roop Chand Vs. State of Punjab, . Paragraph 11 needs to be reproduced, which reads as under:

"11. The question then arises, when the Government delegates its power, for example, to entertain and decide an appeal u/s 21(4), to an officer and the officer pursuant to such delegation hears the appeal and makes an order, is the order an order of the officer or of the Government? We think it must be the order of the Government. The order is made under a statutory power. It is the statute

which creates that power. The power can, therefore, be exercised only in terms of the statute and not otherwise. In this case the power is created by Section 21(4). That Section gives a power to the Government. It would follow that an order made in exercise of that power will be the order of the Government for no one else has the right under the statute to exercise the power. No doubt the Act enables the Government to delegate its power but such a power when delegated remains the power of the Government, for the Government can only delegate the power given to it by the statute and cannot create an independent power in the officer. When the delegate exercises the power, he does so for the Government. It is of interest to observe here that Wills J. said in *Huth v. Clarke*, (1890) 25 Q.B.D. 391 that "the word delegate means little more than an agent". An agent of course exercises no powers of his own but only the powers of his principal. Therefore, an order passed by an officer on delegation to him u/s 21(4), is for the purpose of the Act, an order of the Government. If it were not so and it were to be held that the order had been made by the officer himself and was not an order of the Government -- and of course it had to be one or the other than we would have an order made by a person on whom the Act did not confer any power to make it. That would be an impossible situation. There can be no order except as authorised by the Act. What is true of Section 21(4) would be true of all other provisions in the Act conferring powers on the Government which can be delegated to an officer u/s 41(1). If we are wrong in the view that we have taken, then in the case of an order made by an officer as delegate of the Government's power u/s 21(4) we would have an appeal entertained and decided by one who had no power himself under the Act to do either. Plainly, none of these things could be done."

Shri Pai has also relied on the following Judgments :

(1) *Ram Bai Vs. Commissioner of Income Tax*, , *Ram Bai v. Commissioner of Income Tax*. (2) 1987 (II) LLJ. 217 *Goa Sampling Employees' Association v. General Superintendence Co. of India Ltd. and Ors.*. (3) 7999 (7) LLJ. 19 *Cotton Corporation of India Ltd. v. Odusmath G. C. and Ors.*, (4) 2007 (I) LLJ. 621 *Workmen of Bagalkot Udyog Ltd. v. Bagalkot Udyog Ltd. and Ors.*. (5) (1997) 2 CLR 1025 *National Building Construction Corporation Ltd. v. Shri Ram Pal Singh and another*.

Shri Pai has placed heavy reliance on the judgment in the case of *Workmen of Bagalkot Udyog Ltd. v. Bagalkot Udyog Ltd. and another* (supra) of the Division Bench of the Karnataka High Court, as according to him, the Division Bench was dealing with the delegation of powers by the Central Government through the State Government u/s 39 of the Industrial Disputes Act. Paragraph 11 from the said judgment needs to be reproduced below :

"11. It is amply clear from Section 39 of (he Industrial Disputes Act and the above notification issued by the Central Government that the State Government has been delegated with certain powers exercised by the Central Government under the Industrial Disputes Act and nothing beyond. Pursuance to the above

provisions, the State Government's status as relating to the cement industry remains that of a delegatee of the Central Government being the appropriate Government. It is well established that a delegatee cannot acquire a status equivalent to that of delegator because despite delegating its powers the delegator is never denuded of the same. On the other hand, it has an unrestricted right to strip off the powers of its delegatee. Consequently, it has to be held that even for the purpose of the Industrial Disputes Act, the State Government cannot be treated as an appropriate Government in relation to an industrial dispute concerning cement industry in terms of the definition of appropriate Government as set out in Clause (a) of Section 2 of the Industrial Disputes Act."

7. I have considered the case law cited before me. There is no quarrel with the ratio laid down in the above judgments, which had different facts situation under the different enactments with which the courts were concerned. There is also no quarrel with the observations of the Division Bench of the Karnataka High Court in the case of *Workmen of Bagalkot Udyog Ltd. v. Bagalkot Udyog Ltd. and Ors.* (supra) that delegatee cannot acquire status equal to delegator. In the present case the controversy is not whether the delegatee has acquired status of the delegator. There is no dispute that by virtue of the delegation of powers of the Central Government in exercise" of its powers u/s 39 of the Industrial Disputes Act the State Government has become appropriate Government for the industry of the petitioner Company. There is no dispute or quarrel between the two for exercise of the powers. As far as the industrial disputes under the Industrial Disputes Act, 1947 are concerned the Central Government as well as the State Government both are appropriate Governments for the industry of the petitioner Company. By virtue of the notification the State of Maharashtra has also become appropriate Government after the judgment of the Supreme Court in the case of *Air India Statutory Corporation v. United Labour Unions and Ors.* (supra). It would be significant to note that the State Government has always been the appropriate Government for the industry of the petitioner Company since its inception and there have been a large number of Industrial Disputes as well as the complaints of unfair labour practices decided and pending before the forums under both the Acts. It was only after the aforesaid judgment of the Supreme Court the position required to be restored and reiterated that the State Government was the appropriate Government for the industry of the petitioner Company.

8. In our case the question is whether the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act would apply to the industry of the petitioner Company. Till before the aforesaid judgment of the Supreme Court in the case of *Air India Statutory Corporation v. United Labour Unions and Ors.* (supra), the said Act continued to apply. The petitioner Company has now taken a stand that the said Act is not applicable as the State Government ceased to be an appropriate Government for the industry of the petitioner Company. It has been judicially accepted that the Maharashtra Recognition of Trade Unions

and Prevention of Unfair Labour Practices Act is in aid and supplemental to the Industrial Disputes Act, 1947. Both the Acts have overlapping jurisdiction, that is to say, both the Acts simultaneously apply to the industry to which the Industrial Disputes Act, 1947 is applicable. It is further pertinent to note that there are mutual amendments in both the Acts after the enactment of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, Schedule I of the Act amends the Industrial Disputes Act, 1947 so that there are no contradictions between the two Acts. Similar consequential amendments have also been made in the Industrial Disputes Act to give effect to the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, within the State of Maharashtra. It is further significant to note that an additional schedule i.e. 5th Schedule has been inserted by way of amendment in the year 1984 wherein the unfair labour practices enumerated in the Schedules of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act are inserted. The concept of unfair labour practice has been introduced by answering a definition of an unfair labour practice in Section 2. There has been thus a mutual merger of the Central as well as the State enactments in the interest of the industries in the State of Maharashtra for which the appropriate Government is the State Government. In my opinion reading the following Section 2 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act carefully, the misconception created by the petitioner Company can be removed :

2. Extent, Commencement and Application, -- (1) This Act extends to the whole of the State of Maharashtra.

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different areas and for different provisions of this Act.

(3) Except as otherwise hereinafter provided, this Act shall apply to the industries to which the Bombay Industrial Relations Act, 1946, Bom. XI of 1947, for the time being applies, and also to any industry as defined in Clause (j) of Section 2 of the Industrial Disputes Act, 1947, XIV of 1947, and the State Government in relation to any industrial dispute concerning such industry is the appropriate Government under that Act: Provided that, the State Government may, by notification in the Official Gazette, direct that the provisions of this Act shall cease to apply to any such industry from such date as may be specified in the notification; and from that date, the provisions of this Act shall cease to apply to that industry and, thereupon, Section 7 of the Bombay General Clauses Act, 1904, Bom. I of 1944 shall apply to such cess, or as if this Act has been repealed in relation to such industry by a Maharashtra Act.

9. There is no dispute that the petitioner Company is an industry within the meaning of Section 2(j) of the Industrial Disputes Act. The situs of the company is within the State of Maharashtra. In view of the Air India Statutory Corporation Judgment the Central Government has become the appropriate Government and

there cannot be any dispute over this aspect also. Section 2 of the State Government is very clear that "this act shall apply..... also to any industry as defined in Clause (j) of Section 2 of the Industrial Disputes Act, 1947, and the State Government in relation to any industrial dispute concerning such industry is the appropriate Government under that Act, " What it means is that if the State Government is the appropriate Government for an industrial dispute in the industry the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act would apply to such industry. In our case originally the State Government was the appropriate Government for the petitioner industry and subsequently the Central Government has become the appropriate Government and thereafter the Central Government has issued a notification u/s 39 of the Industrial Disputes Act appointing the State Government also as the appropriate Government for the petitioner Industry. Whether by delegation or by any other mode if the State Government is the appropriate Government for the industry of the petitioner Company in that case the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act would apply. It is not the competition/race or quarrel of exercise of the powers between the two authorities. It is only a fact situation to be found out as a condition precedent of application of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 to the industry of the petitioner Company. By virtue of the notification issued by the Central Government u/s 39 of the Industrial Disputes Act the State Government has become the appropriate Government for the industry of the petitioner. As the State Government is the appropriate Government for the industrial disputes of the petitioners industry the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act would be attracted. In the absence of the notification appointing the State Government as the appropriate Government for the industries for which the Central Government is the appropriate Government the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 would not have applied. By virtue of the said notification the State of Maharashtra has become an appropriate Government for the industrial disputes of the industry of the petitioner Company, I repeat and reiterate that there is no question of exercise of additional or excessive powers of the delegator by the delegatee. The legislature has decided and determined the scope and extent of application of this Act. In the present case there is absolutely no dispute that the State Government has become the appropriate Government of the industry owned by petitioner company situated within the State of Maharashtra. Such a condition precedent having been satisfied there is absolutely no doubt in my mind that the provision of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act would be attracted.

10. I am further fortified in my view held above by the following observations of my learned brother Rebello, J. in his judgment in Writ Petition No. 3562 of 1997 delivered on 2-3-2001. He was considering the issue of appropriate government in the context of the judgment of the Supreme Court in the case of the Air India

Corporation (supra) for the Public Sector Undertakings of the Central Government. The learned Judge has discussed the whole case law and has observed as under :

"Insofar as Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act is concerned, even if Notification of 3rd July, 1998 is considered, considering the earlier discussion, the Appropriate Government would be the same as before the Judgment in Air India Statutory Corporation (supra). The Courts under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act would have jurisdiction to decide all dispute irrespective of the Notification of 3rd July, 1998, wherein the appropriate Government is the State Government, as was the position, until the Judgment in Air India Statutory Corporation (supra) in spite of the Notification dated 3rd July, 1998, the Notification of 3rd July, 1998 cannot override the provisions of Section 2(a) of the Industrial Disputes Act. The Notification would have to be read in consonance with Section 2(a) of the Industrial Disputes Act. So read, it is only in those cases where the appropriate Government is the Central Government that powers can be exercised. Otherwise it will be State Government that will be the appropriate Government."

11. I, therefore, find no infirmity in the conclusion of the learned member of the Industrial Court in Complaint ULP No. 278/97. He has rightly dismissed the application filed by the petitioner company for praying dismissal of the complaint for want of jurisdiction under the Act. The complaint to proceed further in accordance with law to be disposed of as expeditiously as possible being the Complaint of the year 1997. The petition is dismissed. Rule is discharged. No order as to costs.

11-A. For the reasons recorded by me in the above paragraphs the order dated 24-8-1998 which is impugned in Writ Petition No. 2187 of 1978 of the learned Member of the Industrial Court in Complaint ULP Nos. 197 of 1992, 191/95, 380/95 and 428 of 1995 is hereby quashed and set aside. The Complaints are restored to the file with a direction to the concerned learned Member of the Industrial Court to hear and dispose of the complaints as expeditiously as possible giving top priority to all those complaints as they are pending from 1992 onwards. Writ Petition is allowed. Rule is made absolute in terms of prayer Clauses (a), (b) and (c). No order as to costs.