

**(2013) 01 BOM CK 0129**

**In the Bombay High Court**

**Case No : Writ Petition No. 7267 of 2012**

M/s. Century Enka Ltd., Post Box No. 17, Bhosari, Pune-26

**APPELLANT**

**Vs**

Kishan Sambhaji Biradra

**RESPONDENT**

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**Date of Decision : 08-01-2013**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 44

**Citation :** (2013) 2 ALLMR 520 : (2013) 3 BomCR 432 : (2013) 137 FLR 170 : (2013) 2 MhLj 173

**Hon'ble Judges :** R.M. Savant, J

**Bench :** Single Bench

**Advocate :** Anjali P. Purav, for the Appellant; Nitin Kulkarni, for the Respondent

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## **Judgement**

R.M. Savant, J.—Rule, with the consent of the parties made returnable forthwith and heard. The Writ Jurisdiction of this Court under Articles 226 and 227 of the Constitution of India is invoked against the Judgment and order both dated 15-2-2012 passed by the Learned Member of the Industrial Court, Pune, by which the Revision Applications filed by the Respondent in each of the above Petitions, came to be allowed and resultantly the Judgment and Order dated 2-2-2011 passed by the Labour Court in Complaint ULP No. 22 of 2002 and Complaint ULP No. 34 of 2002 filed by each of the Respondent in the above Petitions, came to be allowed and the Judgment and Order dated 2-2-2011 came to be set aside. Whilst allowing the said Revision Applications, the Industrial Court has also set aside the order dated 30-10-2009 by which order the Applications dated 19-3-2009 filed by the Respondent in each of the Petitions for production of documents relating to the inquiry proceedings in respect of some other workmen who were similarly charged, was rejected.

2. The facts necessary to be cited for adjudication of the above Petitions can be stated thus:

The Respondent in each of the Petitions were working with the Petitioner company as operators (For the sake of convenience they would be referred to as the Respondents). Both the Respondents were issued a charge sheet by the company and the gravamen of the allegations against the Respondents was that they were not giving the required production as per the practice. It seems that the Respondents were amongst the 8 workmen against whom an identical charge was leveled. An inquiry was conducted against the Respondents in respect of the said charge. Pursuant to the said inquiry and on receipt of the report of the inquiry officer, the Petitioner dismissed the Respondents from service. This resulted in the Respondents filing Complaints under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 by invoking item 1(a),(b), (d), (f) and (g) of Schedule IV of the said Act. In the said complaints a preliminary issue as regards the legality and fairness of the inquiry was framed, by orders dated 28-8-2008 the Labour Court held that the inquiry held against the Respondents was fair and proper. It seems that thereafter the Respondents filed an Application dated 19-3-2009 by which they sought the production through the management, of the documents relating to the inquiry proceedings against the 6 workmen namely E.P. Devkar, A.A. Palav, Ghadge, Rawat, Ramkaran, R.P. Pithale and Kolhe. The said Application was replied to by the Petitioner. The Labour Court by order dated 30-10-2009 rejected the said Application inter alia on the ground that the said documents were not relevant for adjudication of the complaints. The matter was thereafter carried in Revision. The Revisional Court did not deem it fit to interfere with the order passed by the Labour Court on the ground that the same was an interlocutory order. The Revisional Court accordingly dismissed the Revision by order dated 24-6-2010.

3. The complaints thereafter proceeded to trial. The Labour Court on consideration of the material on record reached a conclusion that the charge of not giving production as per practice was proved against the complainants and therefore there was no warrant to interfere with the punishment imposed by the Petitioner. The Labour Court as can be seen has also considered the relevancy of the documents in respect of which the Respondents had filed an application for directing the Petitioner company to produce the same. The Labour Court adverted to the evidence which had come on record on behalf of the management wherein the witness of the management had deposed that the other workmen in respect of whom the Respondents have sought production of the inquiry proceedings had tendered their apology in the midst of the inquiry proceedings. It is upon such consideration that the Labour Court recorded a finding that the said documents were not relevant in so far as the consideration of punishment which was imposed upon the Respondents was concerned. As indicated above the Labour Court on a consideration of the material on record as regards the charges which were leveled against the Respondents and the inquiry proceedings, came to a conclusion that the Respondents i.e. Complainants have not proved the unfair labour practice that they had alleged in the complaints. The Labour Court has by the Judgment and Order both dated 2-2-2011 accordingly

dismissed both the complaints.

4. The aggrieved Respondents i.e. the workmen invoked the revisionary jurisdiction u/s 44 of the said Act against the said Judgment and Orders dated 2-2-2011 of the Labour Court. Since the earlier Revision Application filed by the Respondents against the order passed by the Industrial Court refusing production was dismissed on the ground that it was directed against an interlocutory order, the Respondents in the substantive Revision which was filed against the Judgment and orders passed by the Labour Court dated 2-2-2011 questioned the correctness of the order dated 30-10-2009. The Industrial Court as can be seen from the finding recorded in paragraphs 11 and 12 reached a conclusion that since the complaints were one filed invoking Item 1(g) of Schedule IV of the said Act and since it was the case of the Respondents i.e. the original Complainants that they have been discriminated in the matter of imposition of punishment as other employees who were similarly charged have been lightly punished, the Industrial Court reached a conclusion that the production of the said documents was material. The Industrial Court has further observed that the Labour Court has not considered the impact that the said documents would have on the challenge raised in the complaints and the relief sought by the Respondents in respect of their termination. The Industrial Court therefore reached a conclusion that the Labour Court had erred in rejecting the application for production of documents by the said order dated 30-10-2009. The Industrial Court therefore by the impugned Judgment and Order both dated 15-2-2012 has set aside the orders dated 30-10-2009 as well as the Judgment and Order dated 2-2-2011 passed by the Labour Court and remanded the matter back to the Labour Court for a de novo consideration of the Complaints by directing the Petitioner Company to produce the documents in question. As indicated above, it is the said order passed by the Industrial Court in Revision which is the subject matter of the above Petition.

5. The Learned Counsel appearing for the Petitioner and the learned Counsel appearing for the Respondents would seek to make submissions in support and against the remand which has been ordered by the Industrial Court. The Learned Counsel appearing for the Petitioner would contend that the said documents are not relevant and cannot further the case of the Respondents in so far as the discrimination in the matter of meeting out punishment is concerned. The Learned Counsel would contend that the case of the other workmen stands on different footing in view of the fact that the said workmen had apologised during the course of the inquiry on the basis of which apology they had been continued in service.

6. Per contra it is submitted by Mr. Kulkarni the Learned Counsel appearing for the Respondents in each of the above Petitions that the said documents are relevant as it is the case of the Respondents that they had been discriminated against them and have therefore filed the Complaint under Item 1(a) of the said Act. The Learned Counsel would alternatively contend that the matter requires to

be remanded back to the Industrial Court in view of the fact that the Industrial Court has not considered the other aspects which had arisen in the Revision which is as regards whether the misconduct was proved and as regards the proportionality of punishment.

7. Having heard the learned Counsel for the parties, I have bestowed my anxious consideration to the rival contentions. The first question which is required to be addressed is whether the Application filed by the Respondents for production of the documents mentioned in the said Applications dated 19-3-2009 is required to be allowed which has been so done by the Industrial Court. The Complaints filed by the Respondents have been filed invoking item 1(a) of the said Act. The case of the Respondents in the Complaint therefore is of they have been victimised or discriminated in the matter of imposition of punishment as according to them workmen who are similarly situated having been charged of not giving adequate production have been let off lightly. In so far as the said aspect is concerned, no doubt, the inquiry proceedings in respect of the other workmen would have been relevant if after the completion of the inquiry a punishment had been imposed on the other workmen which the Respondents seek to rely upon. But such is not the case as the other workmen it seems tendered an apology for the misconduct and on such tendering of apology that they have been continued in service. Therefore it is not a case where after the completion of inquiry a punishment was imposed on the said workmen and that the Respondents herein were discriminated in the matter of punishment. The fact of the matter as mentioned earlier is that the said workmen apologised and on tendering the said apology they have been continued in service. The documents therefore which the Respondents had sought to be produced through the management can hardly further the case of the Respondents in the matter of their case of victimisation / discrimination. The Labour Court had therefore by the order dated 30-10-2009 had rightly rejected the said Application. It is required to be noted that in the trial it has come in the deposition of the witness of the Petitioner company that the said other workmen had apologised which apology had been accepted and on the basis of which the said other workmen were continued in service. The Industrial Court as can be seen has glossed over the said evidence and has by merely observing that the Labour Court has not considered the impact of the said documents, has set aside the Judgments and Orders of the Labour Court dated 2-2-2011 and has also set aside the order dated 30-10-2009 and allowed the production of the documents. It is the Industrial Court in fact in Revision who has not considered the relevancy of the said documents visa-a-vis the subject matter of the complaint.

8. As the Industrial Court set aside the Judgments and Orders of the Labour Court on the ground that the said documents were material it has not considered the other aspects namely whether the misconduct was proved and also as regards the proportionality of the punishment. It is the submission of the Learned Counsel appearing for the Respondent that the proportionality of the punishment in the light of the charge of not giving production would be one of the aspects that the Industrial Court in Revision would have to consider. In my

view, therefore the impugned orders passed by the Industrial Court both dated 15-2-2012 are not sustainable and are required to be quashed and set aside and are accordingly quashed and set aside. However, in view of the fact that the Industrial Court considered the Revision only from the angle of the aspect of production of the documents in question, it would be just and proper to relegate the Revision Applications being Revision ULP Nos. 76 of 2011 and 75 of 2011 back to the Industrial Court for a de novo consideration in respect of the other aspects. Hence, the following directions.

(i) The Judgment and Order dated 15-2-2012 in Revision ULP Nos. 76 of 2011 and 75 of 2011 is quashed and set aside and the matter is relegated back to the Industrial Court for a denovo consideration.

(ii) The remand is only for the purpose of considering the Revision Application in so far as the aspect as to whether the misconduct is proved and the proportionality of the punishment. It is made clear that the order of the Industrial Court setting aside the order dated 30-10-2009 is quashed and set aside and consequently the order dated 30-10-2009 passed by the Labour Court is confirmed.

(iii) On remand, the Industrial Court to decide the Revision Applications within the outer limit of 6 months, of the parties appearing before it. The parties to appear before the Industrial Court on 28th January, 2013. In so far as the said two aspects as regards whether the misconduct is proved and the proportionality of the punishment, the contentions of the parties are explicitly kept open for being urged before the Industrial Court in Revision.

Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs.