
(1982) 03 BOM CK 0061
In the Bombay High Court
Case No : O.S. Writ Petition No. 37 of 1982

Mumbai Mazdoor Sabha

APPELLANT

Vs

Bombay Dyeing and Mfg. Co. Ltd.

RESPONDENT

Date of Decision : 04-03-1982

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 10, 20, 23, 24, 26

Citation : (1982) 84 BOMLR 161 : (1982) MhLj 617

Hon'ble Judges : Dharmadhikari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dharmadhikari, J.—In this writ petition petitioner Mumbai Mazdoor Sabha, a trade union, has challenged the order passed by the Industrial Court, Bombay dated January 7, 1982 refusing to grant ad interim relief pending the hearing and final disposal of the original complaint.

2. The petitioner union filed a complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, hereinafter referred to as the Act, against the respondents alleging that they have committed unfair labour practices enumerated in the complaint. The first unfair labour practice alleged is that the petitioner union which is representing majority of the workmen in the head office of the first respondent company had started negotiations with the respondents on the charter of demands. These negotiations went on for some time and while the union was endeavouring to bring about the settlement, the respondent company adopted the policy which ultimately resulted in refusal to negotiate in a bona fide manner with the union. In view of this, the complainant union gave a fresh notice of strike dated August 31, 1981. Even in spite of this notice the respondent did not attempt to negotiate settlement with the complainant union and, therefore, the employees were

constrained to go on strike on September 15, 1981 and the same is continuing. Even during this period of strike the complainant union made efforts by meeting the president Shri H.R. Thanawala of the respondent company to bring about conciliation. In the meeting held on September 7, 1981 certain terms were offered by the said Shri Thanawala, The said terms were confirmed by the complainant union vide their letter dated September 7, 1981, but Shri Thanawala failed to confirm it as agreed. Smt. Bhattacharjee, Deputy Labour Commissioner of Labour also made certain suggestions to the respondent company for coming to amicable settlement, but the representatives of the respondents declined to accept the said reasonable offer and refused to settle the dispute. The union offered to refer the whole dispute to the arbitration of Shri Guzdar, one of the directors of the respondent company, but that was also declined. It is further alleged by the complainant Union in the complaint that the respondents have not only failed or refused to bargain collectively but the said refusal is also mala fide and therefore this refusal amounts to unfair labour practice within the meaning of item 5 of schedule II of the Act.

3. The second unfair labour practice alleged is that the company has abolished the regular structure of work by giving work to outside contractors or agents during the period of strike. It is alleged in the complaint that clerical work has been abolished since the beginning of the strike and the said work is being carried out by the executive and security staff under compulsion. It is then alleged that whatever work remained, after it is done by the executive and security staff, is being got done through the contractors referred to in the schedule. It is also alleged in the complaint that the respondents have engaged employees of the Spring Mill and are getting it done through them. According to the complainant union this is an unfair labour practice within the meaning of item 2 and 8 of schedule IV of the Act.

4. Various allegations made in the complaint are denied by the respondents. According to them they have been negotiating with the union with a view to settle the outstanding demands of the employees, but the negotiations have failed because of the complainant union's attitude and as they wanted the respondent company to sign on a dotted line and accept the settlement on their own terms. According to the respondent though in the meeting held on September 7, 1981 certain offer was made, it was not one which is referred to by the complainant union in their letter of the same date. In this meeting Shri Guzdar was present. According to the respondents whatever transpired in that meeting has been put on record by Shri Thanawala in his letter dated September 8, 1981 addressed to the complainant union and the version given by the complainant union in their letter dated September 7, 1981 is wholly untrue and incorrect. The respondent denied that any suggestion was made by Smt. Bhattacharjee, Deputy Labour Commissioner as alleged. It is the case of the respondents that the negotiations failed because of the attitude of the complainant union and not because of the refusal of the respondents to collectively bargain with the complainant union. According to them there is no

question of the respondents agreeing to the arbitration of Shri Guzdar as Shri Guzdar had already taken part in the negotiations and the result was not likely to be otherwise, even if he was appointed as arbitrator. The respondents contended that the strike notice dated August 31, 1981 is illegal. It is also their case that the strike resorted to is also illegal. According to the respondents as the complainant union is not a recognised union, the question of committing an unfair labour practice by refusing to bargain collectively with the recognised union within the meaning of item 5 of schedule II did not arise. The respondents have denied the allegation that they have abolished regular nature of work with a view to either break the strike or reduce the union membership. According to them they are getting the work done through their executive officers and the employees who are not on strike and in law they are entitled to do so. They also denied that they have committed any unfair labour practice within the meaning of items 2 or 8 of schedule IV of the Act. The respondents denied that they have introduced Spring Mill staff or that they are getting the normal work done by them, Spring Mill employees.

5. In support of their respective pleas, the parties have filed affidavits and certain documents. The trial Court while deciding the question as to whether an ad-interim injunction should be granted as prayed for by the petitioners, after hearing both sides came to the conclusion that the complainant union failed to prove, *prime facie*, that the respondents have committed any unfair labour practice. In this view of the matter, the application filed for ad-interim injunction was rejected. As already observed, it is this order, vacating the ex-parte injunction already granted and refusing to grant ad-interim injunction which is challenged in the present writ petition.

6. Shri Cama, learned Counsel appearing for the petitioner union contended before me that the learned Member of the Industrial Tribunal has committed an error in placing a very narrow construction upon item 5 of schedule II of the Act. According to Shri Cama, the term "unfair labour practice" is denned by Sub-section (15) of Section 3 read with Section 26 of the Act. The enumeration given in the schedule is merely illustrative and not exhaustive and, therefore, refusal to bargain collectively in good faith with the union of which majority of employees are members amounts to unfair labour practice within the meaning of the said item of Schedule II. Shri Cama also contended that the entries in the Schedule are not exhaustive and are merely illustrative. He further contended that in the present case complainant union represents majority of workmen. Therefore refusal to bargain with it is, is an unfair labour practice within the meaning of item 5 of schedule II or Section 26 of the Act itself. Shri Cama also contended that the entries in the schedule should be construed with the object sought to be achieved by the legislature. One of the objects sought to be achieved is to facilitate collective bargaining between the workmen and the employer. Conciliation, negotiation and settlement of the industrial dispute is in interest of both and if there is only one union having the majority of the employees as its members, then only because the said union does not have the label or stamp of

a recognised union, the employer cannot refuse to negotiate with it. Such a Union for all practical purposes is the only negotiating machinery available and, therefore, refusal to negotiate with such a union will amount to unfair labour practice. Shri Cama also contended that the learned Member of the Industrial Tribunal has also not properly construed items 2 and 8 of schedule IV. When regular employees are on strike and if the work carried out by them is not done by somebody else, then obviously it amounts to abolition of work which is regular in nature. It is contended by Shri Cama that the words "abolish" and "contractor" should be given a liberal meaning to achieve the object of the legislation. In the present case time keeper's work is being got done by the employees of the sister concern and other work is being carried out by the executive and security staff. This clearly amounts to getting work done by the contractors,

7. On the other hand it is contended by Shri Shrikrishna, learned Counsel appearing for the respondents that in view of the provisions of Section 26 read with the schedule the enumeration of categories of unfair labour practice is exhaustive. Whenever Legislature wanted that what is enumerated should be illustrative, then, a different phraseology is used, such as "that is to say" etc. So far as item No. 1 of schedule II or item Nos. 2 and 8 of schedule IV are concerned, they are exhaustive in nature and nothing could be added to the said items. The learned Counsel further contended that the present legislation was brought on the statute book to achieve dual object viz. to provide for recognition of trade union for facilitating the collective bargaining and making provision relating to ? unfair labour practice. Recognition of a union is *sine qua non* for item 5 of schedule II. Admittedly the complainant union is not a recognised union and, therefore, apart from the fact that there is no refusal to negotiate or bargain, even if it is assumed that there is any such refusal to bargain, still it will not amount to unfair labour practice within the meaning of. item 5 of schedule II. So far as entries 2 and 8 in schedule IV are concerned, it is contended by Shri Shrikrishna that there is no abolition of work of regular nature nor it is being got done by any contractor. According to Shri Shrikrishna the word "contractor" has a well defined meaning in industrial law, which means independent contractor, who is not a workman. Item 8 of schedule IV deals with recruitment of new employees and from the findings recorded by the tribunal it is quite clear that there is no recruitment of new employees during the period of strike. Hence the learned Member of the tribunal was quite justified in dismissing the application filed by the complainant union for interim relief. He also contended that the strike itself is illegal. He also contended that as the findings of facts recorded by the tribunal are based on the material on record, no interference is called for in the extra-ordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India. In support of his contention Shri Shrikrishna has also placed strong reliance upon the report of the Committee on unfair labour practices.

8. In order to properly understand the controversy raised before me, it will be

worthwhile if a reference is made to Sub-sections (13) and (16) of Section 3 and Section 26 of the Act. The said provisions read as under:-

2 Definition,-In this Act unless the context requires otherwise-

(18) "recognised union" means a union which has been issued a certificate of recognition under Chapter III;

(16) "Unfair labour practices" means unfair labour practices as defined in Section 26;

"26 Unfair Labour Practices-In this Act unless the context requires otherwise, "unfair labour practices" mean any of the practices listed in schedule II, III and IV.

Unfair labour practices listed in the schedules are enumerated as part of the legislative process by the legislature itself, though a power is conferred upon the State Government u/s 53 of the Act to make any addition or alteration in the schedules II, III and IV of the Act. I had an occasion to consider the scope and object of this legislation in *Nichani Hotels Corporation v. Bombay Labour Union* 1981 L I.C. 1235 : 1981 Mh. L.J. 711 where it is observed (at p. 717);

In Sub-section (1C) of Section 8 while defining the term "unfair labour practices" the Legislature has used the word "means" In Section 20 also the word used is "mean", which normally connotes that the Legislature intended to make the definition exhaustive. However, for defining the said expression the Legislature has followed a method of enumerating the practices in the schedule attached to the Act. Schedule III with which we are concerned in this appeal deals with unfair labour practices on the part of trade unions. As already observed the intention of the legislature seems to be to have a complete code qua matters covered by the enactment. This enactment primarily deals with the disputes arising between the trade union and the employer. Such disputes normally stand on a different footing. It is not the form of the suit or the allegations which will decide the question, as to whether civil Court has jurisdiction, but it is the substance of the matter which must prevail. In this enactment by Chapt. VI special procedure is laid down for dealing with complaints relating to unfair labour practices. Section 28 provides for an assistance to the Court for deciding the dispute raised in the complaint. Apart from the fact that Section 28(2) lays down that such a complaint should be decided as far as possible within the period of six months from the date of the receipt, Sub-section (3) thereof confers discretion upon the Court. If it so considers necessary, first to cause an investigation, to be made into such a complaint to be carried out by an Investigating Officer who is obliged to make efforts to promote settlement of the complaint and submit a report. Therefore, the legislature has provided for a somewhat different procedure for settlement of these complaints than the one which is normally followed by the ordinary civil Courts," "In the ultimate analysis settlement of just demands is the only solution to the industrial dispute and court litigation. The development of strong, independent and responsible trade unions

and an. orderly, rational environment free from unfair labour practices are the two pre-requisites for effective collective bargaining as well as for the industrial peace. Though apparently there are only two sides to an industrial dispute namely, employer and employee, it is the common man or the consumer who is the ultimate sufferer. It may be a go slow or an illegal strike or lock-out. It is the poor consumer or common citizen who is the silent sufferer. It is the public peace or public order which is adversely affected by the unfair labour practices. Therefore it was thought necessary that the rights conferred upon the union in the matter of effective bargaining should carry with it corresponding obligations. For this purpose Tripartite Committee was constituted, and as per the recommendations of this Committee this Act has been enacted, for fulfilling the dual purpose, namely according recognitions to the unions and for enforcing provisions relating to unfair labour practices, through an independent machinery. Therefore, to protect healthy trade unionism from being polluted by unfair labour practices this piece of legislation is enacted in the interest of general public. Apart from ensuring healthy trade-union activity, this enactment also serves a social purpose. With this avowed intention the legislature has enacted the complete code by defining the expression "unfair labour practices" and also providing for an independent and speedy machinery for dealing with the complaints in that behalf. It is in this background that the entries in the schedule will have to be construed and interpreted.

It is in this background that the entries will have to be construed and interpreted. In this context a reference could also be usefully made to certain observations in the reports of the Committee on Unfair Labour Practices and this is what the Committee has observed (at p. 56 of the report):

It is our considered view that only the majority unions should qualify for bargaining and for the protections mentioned above. The fact that, in the Indian trade union movement, there is fragmentation and inter-union rivalries emphasises the need for only majority unions acquiring the qualification to be accredited with the right of the sole bargaining agency. In multiple union situation, care must be taken in placing limitations on the activities of trade unions, excepting the most representative union in a unit of industry. The recent Code of Discipline moved a step in the direction. It provides that to qualify for an employer's recognition, a union must have membership of at least 15 per cent of his workers; that to qualify for recognition as the representative union throughout an industry in a local area, a union must have at least 25 per cent of the work force in the membership and that, where two or more unions exist in an establishment, the employer should recognise the largest. But these units are only voluntary standards, having no legal sanction. As a matter of fact, the legal rights and responsibilities of the parties are still governed by the Industrial Disputes Act, which places no limit at all on minority unions. It would thus be clear that there is a conflict between the provisions of the Code of Discipline, which has only a moral basis, and the provisions of the Industrial Disputes Act, which are enforceable. It is necessary to note that the Industrial Disputes

Act .permits a union of any size to make demands on an employer, carry the resulting dispute in conciliation and, at Government discretion, have it adjudicated by a Labour Court or Tribunal. The only remedy for the situation is to amend the Industrial Disputes Act to deny industrial relations rights to all unions that do not represent more than the required minimum of the workers in their respective units.

We feel that a large number of small and weak unions would be weeded out, if bargaining rights are given to the majority unions. These unions, some of whom may be paper organisations are kept going either at the sufferance of the employers or because of the present conciliation and adjudication system. One possible objection to limiting the rights of minority unions is that many workers could be deprived of an opportunity of representation and for getting their grievances redressed. The reply is that there need not be any restrictions on the existences of the minority unions as such, but these minority unions should not have the right of participation in decision making and bargaining. Just consider the plight of an employer who has to deal with a number of rival unions. The employer who negotiates with one union cannot, in good conscience, refuse to deal with the second union, a third and so on. The two or more unions are rivals trying to gain the better of each other or to drive each other out of the unit. Each wants to win the best terms of the biggest victory from the employer. The employer cannot afford to grant terms to one union that he will not give the other. And yet the employer and each union are afraid to close a bargain for fear of what the other union may do. The Indian experience clearly proves that bargaining between the employer or group of employers and two or more rival unions in the same bargaining unit is not workable.

While dealing with the question as to what activities should constitute unfair labour practice in chap. IV of the report, the committee has observed:-

After a careful scrutiny we have selected only a few of them because we are of the view that the net of unfair labour practice should not be cast too wide.

9. Then at p. 48 of the report, the committee has observed:

It would appear from the above discussion that the law relating to unfair labour practice in India has grown out of the exigencies of the situation and the circumstances in specific cases and is, therefore, necessarily unsystematic. Time has, therefore, now come to systematic the law relating to unfair labour practice on sound and scientific lines and in the context of the conditions prevailing in this country, at the same time it must be stated that it is not possible to define the expression "unfair labour practice" with logical precision for the simple reason that it covers a large category of cases under its umbrella. Even so it is necessary to give a workable description of the expression "unfair labour practice" and to illustrate the same by giving examples. Since we are expected to make proposals for curbing the unfair labour practices and to suggest steps for remedying the circumstances created by such practices, it is necessary to

describe as clearly as possible the scope of unfair labour practices and to give specific illustrations for that purpose. As observed by Butler in "Labour Economics and Institutions" (Macmillan & Co. New York, page 270) "Unfair Labour Practices aid and must be written in a very broad language since they deal with such a dynamic area of human activity.

Then in the report on Unfair Labour Practices a list of unfair labour practices is given. So far as the present item 5 in schedule II is concerned, entry proposed by the committee in the report as under:-

6. To refuse to bargain collectively in good faith with the union certified as a collective bargaining agent.

However, the legislature in its wisdom has incorporated the said entry i.e. entry No. 6 in schedule IV in the following words:-

To refuse to bargain collectively in good faith with a recognised union.

In schedule III item 3 is the corresponding entry so far as the trade union is concerned, which reads:-

3. For a recognised union to refuse to bargain collectively in good faith with the employer.

Therefore, the intention of the legislature is very clear from the words and expression used in the entry itself. As already observed the present legislation had a dual object in mind viz. to provide for recognition of the trade union for facilitating collective bargaining and to provide for machinery to deal with unfair labour practice. Chapter III of the Act deals with the recognition of union and provides for procedure for obtaining recognition and its cancellation. By Section 10(2) of the Act it is made clear that the provisions of this chapter shall not apply to undertakings in industries to which the provisions of the Bombay Industrial Relations Act for the time being, apply, though for the purpose of Section 23 by adding an explanation it is clarified that for the purpose of the said section a recognised union includes representative union under the Bombay Act. Then by various other provisions of the Act certain rights are conferred upon the recognised union, which are coupled with duties or obligations. Section 24 deals with the obligations of the recognised union in the matter of strike. Section 52 enjoins upon the recognised union a duty to submit periodical returns to the Industrial and Labour Courts. Schedule III lays down unfair labour practice on the part of the trade union, Therefore, it is clear that separate and independent machinery is provided for the grant of recognition to unions. On recognition special status is conferred upon such a recognised union. In view of this it cannot be said that the expression used in item 5 of schedule II viz. "recognised union" is wholly redundant. If this is so, then refusal to bargain collectively with any union cannot constitute unfair labour practice. If the intention of legislature was otherwise, then it was not necessary to use the words "recognised union" in the said entry. It is well settled that none of the words and expressions used by the

legislature could be treated as redundant or surplusage and the presumption is that each and every word is used by the legislature with some object. While interpreting the statutes, the Courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. Therefore, if the various provisions of the Act are read together and harmoniously with the aims and objects of the legislature as incorporated in the preamble, then it is clear that to refuse to bargain collectively in good faith, with the recognised union alone will constitute unfair labour practice under entry 5 of schedule II. Therefore it cannot be said that the view taken by the learned member of the Industrial Tribunal is in any way wrong.

10. It is no doubt true that in the present petition it is alleged that the petitioner union is the only union in the field, so far as the employees in the head office are concerned. It is also alleged that the overwhelming majority of the employees are members of this union and therefore this union is the only effective agent to collectively bargain with the employer. In this view of the matter a contention is raised before me by Shri Cama that in the present case it practically amounts to refusal to negotiate with the only collective agent or the representative of the employees. According to Shri Cama collective bargaining being one of the aims and objects of the legislature, refusal to bargain collectively with such effective representative of the employees must amount to un-fair labour practice. It is also contended by Shri Cama, that it is not possible for any union to get recognition as soon as union is formed, in view of the provisions of chap, III which requires some time lag, before an application could be filed for recognition. It is not the intention of legislature that during this period, the employer can refuse to bargain collectively with impunity. However it is not possible for me to accept this contention in view of words and expressions used by the legislature, which make the intention of legislature very clear. However if in the ultimate analysis at the end of the trial, Industrial Tribunal think it fit, it can take action under regulation 147 of the Industrial Court Regulation. Even otherwise the trade union is not without any remedy, because for settlement of the industrial dispute it can take steps under the appropriate industrial law. Therefore, as the law and the entries in the schedule stand today, it is not possible for me to accept the broad proposition as put forward by Shri Cama, If the interpretation put forward by Shri Cama is accepted, it will amount to redrafting the entry in the schedule, which is not permissible.

11. This question can be looked into from another point of view also. Schedule III of the Act deals with unfair labour practice on the part of the trade union. Corresponding entry in this behalf is entry 3 in schedule III. It lays down that if a recognised union refuses to bargain collectively in good faith with the employer, it will amount to unfair labour practice. In the said entry also the expression used is "recognised union" and not any trade union. Schedule II deals with unfair labour practices on the part of the employers. Schedule III deals with unfair labour practices on the part of the trade unions. Both these schedules will have to be read together and harmoniously to understand the intention of the

legislature. If they are so read, then it is difficult to accept the contention of Shri Cama that the entry 5 and II schedule must include in its import any effective collective bargaining agency even if it is not a recognised union.

12. It cannot be forgotten that an employer is not expected to negotiate with each and every union irrespective of its strength or membership. If the construction suggested by Shri Cama is accepted, then in spite of the existence of a recognised union in an industry, employer might elect or choose to negotiate with his own favourite union. Under the B.I.R. Act special status is conferred upon a recognised union and under the said union which is a representative of the employees. As observed by the Supreme Court in *Santuram Khudai Vs. Kimatrai Printers and Processors Pvt. Ltd. and Others*, that a combined reading of the various provisions of the Act leaves no room for doubt, that consistent with the avowed policy of preventing exploitation of workers and augmenting their bargaining power, the legislature has clothed the representative union with plenary power to appear and act on behalf of the employees.

13. It is also clear that for facilitating collective bargaining, the provisions for recognition of union are made in the present Act also. It is in conformity with the avowed policy of "one industry, one union". For achieving this status of bargaining agency, registration of the union as recognised union is contemplated. Such recognition confers certain rights which are also subject to certain obligations and duties. An obligation is cast upon the recognised union to negotiate with the employer and the union's mala fide refusal to do so is declared as unfair labour practice. A status of recognised union cannot be conferred on an unrecognised union also because in that case no union will bother to get recognition. This is more so if both recognised and unrecognised unions are treated equally in the matter of collective bargaining. Further, commission of unfair labour practice carried with it certain punishment. Thus, the provisions of the Act are to some extent penal in nature and therefore the said penal provisions will have to be construed strictly in conformity with the specific language used by the legislature itself.

14. So far as the allegations based on entries 2 and 8 in schedule IV are concerned, on the basis of the material placed before it the tribunal has come to the conclusion that there is nothing to show that the company has abolished work of regular nature and given it to the contractors as a measure of breaking the strike. The learned member has further observed that ample material is produced on record on behalf of the respondent to show that whatever work was being done by the contractors was done by these contractors who were already working for the company long before the commencement of the strike and therefore there is no question of attracting item 2 of schedule IV. The learned member of the tribunal has further held that after examining the material on record and the rival contentions, he does not find that the complainant union has prima facie established ingredients of item 2 of schedule IV. In para. 10 of his judgment the learned member has also made a reference to notice of

prosecution by the municipal corporation of Bombay if they do not clean sanitary blocks or toilets. It is also held that prima facie it appears that the said cleaning work was got done by the loyal workers who are not on strike in the interest of public health and hygiene.

15. So far as the allegations based on item 8 of schedule IV are concerned, the learned member has prima facie come to the conclusion that there is no credible evidence at this stage to show that the respondents have recruited workers during continuance of the strike. The learned member has further observed that whatever staff is working is either of the respondents or of their sister concern, and there is no positive evidence to show that any employees have been recruited as such, during the strike period. In the same para, the learned member further came to the conclusion that there is nothing to show that in the earlier notice dated September 21, 1981 any allegation was made by the union about recruitment of employees during continuance of the strike. Before me it is contended by Shri Cama that asking the workmen from the sister concern viz. Spring Mill to do the work of the employees on strike, will amount to unfair labour practice within the meaning of entry 2 and 8 of schedule IV. In my opinion, in view of the finding recorded by the tribunal that prima facie there is no evidence to show this, it will not be fair at this stage to enter into the said controversy and decide it one way or other.

16. In my opinion at this interlocutory stage while deciding the question of interim relief it is not necessary to probe into this question any further and therefore I will prefer to keep the said question open to be decided at later stage after the parties are given opportunity to adduce evidence in that behalf. In the view which I have taken therefore, there is no substance in this writ petition. The writ petition fails and it is dismissed. Rule is discharged. However, in the circumstances of the cause, there will be no order as to costs.

17. As I am informed, that the strike is still continuing, the Industrial Tribunal is directed to hear the complaint on merits and decide it as expeditiously as possible by giving it a priority. Status quo to continue for one week, I am also informed by Shri Shrikrishna that necessary arrangements have already been made by the respondent company for cleaning the sanitary blocks. If that is so, the status-quo will include this arrangement. If the petitioner intends to take any further proceeding in this matter, it shall do so after giving 24 hours' notice to the employers.