

(2018) 07 BOM CK 0125

In the Bombay High Court

Case No : Writ petition no. 4065 of 2017

Orient Cement Limited Clinker Grinding Unit Through Its Vice
President Sunil Rattawa

APPELLANT

Vs

Ramesh Dhannu Baviskar And Another

RESPONDENT

Date of Decision : 24-07-2018

Acts Referred:

Maharashtra Recognition Of Trade Unions And Prevention Of Unfair Labour Practices Act, 1971 — Section 2(3), Industrial Disputes Act, 1947 — Section 2(a), 2(j), 10A, 10(1)(c), 39
Bombay General Clauses Act, 1904 — Section 7
Dock Workers (Regulation of Employment) Act, 1948 — Section 5A
Employees' State Insurance Act, 1948 — Section 3
Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 — Section 3A
Employees' Provident Fund and Miscellaneous Provisions Act, 1952 — Section 5A, 5B
Air Corporations Act, 1953 — Section 3
Life Insurance Corporation Act, 1956 — Section 3
Food Corporations Act, 1964 — Section 16
International Airports Authority of India Act, 1994 — Section 3

Citation : (2018) 07 BOM CK 0125

Hon'ble Judges : RAVINDRA V. GHUGE, J

Bench : Single Bench

Advocate : S. R. Patil, P. B. Salunke

Final Decision : Dismissed

Judgement

1. The petitioner is aggrieved by the order dated 12/04/2016 delivered by the Industrial Court, Jalgaon, by which, complaint (ULP) No. 107/2015 filed by the petitioner's establishment, has been held to be untenable under the MRTU and PULP Act, 1971 for the reason that the appropriate government for a controlled industry (cement) is not the State Government.
2. The learned Advocate for the petitioner has strenuously criticized the impugned order and has drawn my attention to the nine grounds formulated by

him in the memo of the petition. It is submitted that different unfair Labour Practices (ULP) have been defined in the Schedule II, III and IV of the 1971 Act. Schedule II pertains to unfair labour practices committed by the employers. Schedule III pertains to the unfair labour practices committed by the Trade Unions and Schedule IV pertains to general Unfair Labour Practices committed by the employers. Item 1 of Schedule IV falls under the jurisdiction of the Labour Court and all other items under Schedule II, III and Items 2 to 10 under Schedule IV are within the jurisdiction of the Industrial Court.

3. Grievance is that when the employer has complained about commission of Unfair Labour Practices before the Industrial Court, the Industrial Court has to entertain such a complaint specifically in the backdrop of the grievances voiced by the complainant. Once any complainant has invoked the jurisdiction of the labour or the Industrial Court under the 1971 Act, the concerned Court, depending on its jurisdiction to entertain a complaint as against a particular ULP, will have to adjudicate upon such a complaint.

4. Though the submissions of the learned Advocate for the petitioner appear to be forceful, Section 2(3) of the 1971 Act defines industries which would be covered under the said Act and who would be eligible to file an ULP complaint.

5. Section 2(3) alongwith its proviso reads as under :

"2(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 of 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 1904, shall apply to such cessor, as if this Act has been repealed in relation to such industry by a Maharashtra Act."

6. As such, an industry defined as such under Section 2(j) of the Industrial

Disputes Act, 1947 can approach the Court under the 1971 Act raising an industrial dispute in relation to which the State Government is the appropriate Government . The appropriate Government is defined under Section 2(a) of the I. D. Act, 1947, which reads as under :

"2 (a) "" appropriate Government"" means

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning, a Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956), or the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948 (34 of 1948) or the Board of Trustees constituted under section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under section 5A and section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the "" Indian Airlines"" and "" Air India"" Corporations established under section 3 of the Air Corporations Act, 1953 (27 of 1953), or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956),, or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under section 3, or a Board of Management established for two or more contiguous States under section 16, of the Food Corporations Act, 1964 (37 of 1964), or the International Airports Authority of India constituted under section 3 of the International Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural

Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the

Industrial Reconstruction Bank of India Limited, the National Housing Bank 1987, or established under section 3 of the National Housing Bank Act,

1987 (53 of 1987) or an air transport service, or a banking or an insurance company, a mine, an oil field , a Cantonment Board, or a major port, any

company in which not less than fifty per cent. of the paid up share capital is held by the Central Government, or any corporation, not being a

corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary

companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and]

(ii) in relation to any other industrial dispute, including the State public sector undertaking, subsidiary companies set up by the principal undertaking and

autonomous bodies owned or controlled by the State Government, the State Government :

Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where

such dispute first arose, the appropriate Government shall be the Central Government or the State Government, as the case may be, which has control

over such industrial establishment"

7. It is, therefore, obvious that the appropriate Government in relation to a controlled industry would be the Central Government.

8. In *Yovan India Cements Employees Union Versus Management of India Cements Limited*, 1994 AIR (SC) 558, the Honourable Apex Court has

concluded that the Central as well as the State Government are appropriate Governments and hence it concluded that the industrial dispute raised

under Section 10(1) (c) of the I.D. Act, 1947 was maintainable before the Labour Court at Madurai. It appears that the Honourable Apex Court

has relied upon a notification dated 08/12/1977 issued by the Government of India, by which, the Central as well as the State Government were

declared to be the appropriate Governments under the I.D. Act, 1947. Based on the same, the Government of Tamil Nadu issued a notification

dated 23/01/1987 thereby accepting the Government of India's Notification dated 08/12/1977.

9. The Honourable Apex Court in Yovan India (supra), has dealt with an issue as to whether, the Labour Court within the State of Tamil Nadu would

have the jurisdiction to entertain an industrial dispute regarding contract labour raised by an industry which is a controlled industry under the

Government of India.Â By the Notifications dated 08/11/1977 and 08/12/1977, the Government of India declared that the controlled industry engaged

in the manufacturing and production of cement, would be amenable to the jurisdiction of the Labour Court, except in the case of mines and quarries

and the State Government can also be the appropriate Government for such industries in view of the delegated powers.Â S.O. 826 (E) is one

notification issued by the Ministry of Labour dated 08/12/1977, by which, the powers under Section 39 of the Industrial Disputes Act, 1947 that were

exercised by the Central Government under the Act and the Rules made thereunder in relation to the cement industry, shall also be exercised by the

State Government subject to the condition that the Central Government shall continue to exercise all the powers under the I.D. Act and the Rules in

respect of the following :Â?

"(i) relating to mines and quarries even where such mines and quarries form part of the Cement Industry ; and

(ii) relating to the dispute between the employers who are members of the Cement Manufacturers Association, Express Building, Churchgate,

Bombay and their workmen represented by Indian National Cement and Allied Workers Federation, Mazdour Karyalaya, Congress House, Bombay,

which has been referred for arbitration in pursuance of Section 10A of the said Act, read with Notification No.S.O. 757ÂE dated 8th November, 1977

(No.S.11025/9/77/DI/ (A), in terms of the arbitration agreement published by the notification of the Government of India in the Ministry of Labour

Order No. L.29013/2/77Â?D.O. III(B) dated the 28th November, 1977".

10. The Honourable Apex Court, therefore, concluded that the G.R. issued by the Government of Tamil Nadu dated 23/01/1987 was a valid

notification and hence the Labour Court under the State Government can entertain an industrial dispute with regard to a controlled industry, under

delegated powers.

11. The learned Advocate for the petitioner fairly submits that he has not come across any notification issued by the State of Maharashtra thereby

adopting the notifications dated 08/11/1977 and 08/12/1977 issued by the Government of India. Even otherwise, delegation of the powers would not mean that the delegatee has been invested with inherent powers. It would not mean that a delegatee is exercising its own powers, aloof of the delegator, thereby assuming an inherent jurisdiction.

12. The judgment of the Honourable Apex Court in *Yovan India* (supra), was considered by this Court in Paragraph Nos. 8 to 12 in *UltraTech*

Cement Ltd. Versus Shrinivas Narayanrao Moharil, 2010(3) Mh.L.J. 637, which reads as under :

8. Thus, these conclusions show that even after delegation, Central Government continues to be appropriate Government and the delegate will be

exercising the powers of appropriate Government i.e. Central Government. In view of this finding, it is clear that mere delegation by Central

Government to State Government does not constitute State Government an appropriate Government. The issue before the Hon'ble Division Bench

was in relation to establishment of Mazgaon Dock Limited. There, the Industrial Court held that Central Government was the appropriate Government

but in view of the delegation by it to State Government, the State Government became appropriate Government and hence provision of MRTU &

PULP Act were applicable to Mazgaon Dock Ltd., and Complaint (ULP) against it was maintainable. The learned Single Judge of this Court upheld

that judgment. Thus, for this Court, this judgment of Division Bench clinches the issue.

9. However, in view of the contention that judgment of the Hon'ble Apex Court in *Yovan, India Cement Employees Union vs. Management of India*

Ltd., (supra) has not been considered by Division Bench, I am required to delve little more into the controversy. Before the Hon'ble Apex Court, the

issue was in relation to reference of a dispute regarding contract labour in cement industry. The reference was made by State Government to Labour

Court and employer preferred the preliminary objection and contended that reference by State of Tamil Nadu was bad as appropriate Government in

relation to cement industry was Central Government. This reference was made on 23.09.1987.

The employees as also Union of India relied upon Notification dated 08.12.1977 issued under Section 39 of the Industrial Disputes Act which

mentioned that powers exercisable by Central Government in relation to cement industry shall also be exercised by State Government. The question

before the Hon'ble Apex Court was which one was appropriate Government to make reference in the matter. The reference related to non

employment of 300 workers. The Labour Court had held that Central Government was appropriate Government and reference by State Government

was not competent. This order was challenged in Special Leave Petition. The Hon'ble Apex Court in para 8 found that both Central and State

Government were appropriate Governments under Industrial Disputes Act and hence reference by Government of Tamil Nadu was held to be valid.

In support, the Hon'ble Apex Court relied upon stand taken by Union of India in counter affidavit that both Central as also State Government are the

appropriate Governments in view of the Notification dated 08.12.1977. Thus, both the Governments were held to be appropriate Governments under

Industrial Disputes Act for cement industry in view of the Notification dated 08.12.1977. Very same notification is relied upon by present petitioner to

urge that the Central Government continues to be appropriate Government in relation to its establishment/ industry.

10. Thus judgment of the Hon'ble Apex Court is considered by Division Bench of Karnataka High Court in Workmen of Bagalkot Udyog Ltd. vs.

Bagalkot Udyog Ltd., (supra).Â The Hon'ble High Court found that provisions of Section 39 permitted Central Government to delegate its powers to

State Government and delegatee cannot acquire a status equivalent to that of delegator. The delegator is never denuded of its powers and can strip off

the powers of its delegatee. It has been, therefore, found in para 11 that even for the purposes of Industrial Disputes Act, State Government cannot be

treated as appropriate Government in relation to Industrial Dispute concerning cement industry. In para 12, Karnataka High Court considers the above

judgment of the Hon'ble Apex Court and observed that the conclusions of the Hon'ble Apex Court needed to be understood in the context in which

they were made and it cannot be taken as declaration of statutory statement of affairs devoid of the context. In para 13, other judgment of the Hon'ble

Apex Court laying down the principles for appreciation of precedence has been pointed out. In para 14, it has concluded thus :

Â Â Â ""14. Keeping in view the question raised before the Supreme Court, the only reasonable inference can be that the Supreme Court has held

that both the Central Government and the State Government can exercise the powers of an appropriate Government in relation to the cement industry

under the I.D. Act, the former being itself the appropriate Government under Section 2(a)(i) and the latter being its delegatee.

11. The observations above, therefore, clearly show that the State Government by itself is not an appropriate Government in relation to Industrial

Dispute concerning the industry of the petitioner. The Hon'ble Apex Court reached its findings because of stand in counter affidavit by Union of India

and that stand was in the light of non employment of 300 workers. The question of applicability of particular law did not depend upon it. In facts

before me, in view of the provisions of Section 2(3) of MRTU & PULP Act, if Central Government is appropriate Government for cement industry,

the provisions of MRTU & PULP Act cannot apply.

12. The Division Bench of this Court has already concluded the controversy. Even if it is presumed that Central Government as also State

Government are appropriate Government for cement industry, it becomes clear that provisions of MRTU & PULP Act cannot apply as Central

Government then continues to be and also remains an appropriate Government. In my humble opinion, State Government while acting as appropriate

Government discharges the role as an agent of Central Government and hence for the purpose of Section 2(3), it cannot be said that for cement

industry, State Government is appropriate Government. The provisions of MRTU & PULP Act, therefore, cannot apply to industry of the petitioner.

The impugned order is, therefore, unsustainable. The same is accordingly quashed and set aside. The application for dismissal of complaint filed by the

petitioner before Labour Court is allowed and Complaint (ULP) No. 186 of 1993 on the file of Labour Court, Chandrapur, instituted by present

respondent is dismissed".

13. In the light of above, I do not find that the impugned order of the Industrial Court dated 12/04/2016 can be termed as being perverse or erroneous.

14. This petition, being devoid of merit is, therefore, dismissed.

15. Needless to state, the petitioner would always be at liberty to raise an industrial dispute under the I.D. Act before the appropriate Conciliation

Officer (Central).