

(1974) 01 BOM CK 0003

In the Bombay High Court

Case No : Special Civil Application No. 2645 of 1969

Prabhakar Shamrao Marathe and Others

APPELLANT

Vs

Maharashtra State Electricity Board and Others

RESPONDENT

Date of Decision : 08-01-1974

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10A, 17, 17A, 20

Citation : (1974) 76 BOMLR 711 : (1975) 30 FLR 225 : (1975) 1 LLJ 326 : (1975) MhLj 47

Hon'ble Judges : P.B. Sawant, J;Desai, J

Bench : Division Bench

Judgement

S.K. Desai, J.—In this petition the petitioners have sought a writ of certiorari or an appropriate writ, order of direction for quashing them orders passed by respondent No. 2 in Complaints (IT) Nos. 82 to 88 of 1969 References (IT) Nos. 317 and 394 of 1966. The order of respondent No. 2, which is impugned, has been published in the Maharashtra Government Gazette, dated August 28, 1969 (exhibit "G" to the petition). The petitioners have also sought a direction against respondent No. 1 to reinstate the petitioners; but this part of prayer (a) has not been pressed before us and it has been very fairly submitted that if the impugned order is quashed, the matter must go back to respondent No. 2 or his successor.

2. In order to appreciate the rival contentions the following facts may be stated : The seven petitioners before us were the employees of respondent No. 1, viz., the Maharashtra Electricity Board, a Board constituted under the Indian Electricity Act, 1948. At the relevant time the petitioners were residents of Sangli and working in various capacities as employees of respondent No. 1, It appears that all of them were members of a trade union known as the "Maharashtra Rajya Vij Mandal Nekar Sangh".

3. On February 6, 1967, a number of employees of respondent No. 1 went on strike, and this strike continued for some period. On March 3, 1967 about 200

workmen of respondent No. 1 had gathered at the Vishram Baug Sub-station in Sangli. At about 5-30 p.m. when some engineers of respondent No. 1 wanted to go a place called Budhgaon for repairs to the electric line, the strikers, who had gathered on the road, began shouting slogans and attempted to prevent the officers of respondent No. 1 from proceeding to Budhgaon. There was also considerable damage caused to the jeep in which the engineers were to travel to Budhgaon. On these allegation the seven petitioners along with other were prosecuted before the Judicial Magistrate, First Class, Sangli, in Criminal Case No. 229 of 1969. The learned Judicial Magistrate convicted at the thirteen accused before him under S. 341 read with S. 149 of the Indian Penal Code and sentenced each of them to pay a fine of Rs. 51, in default to suffer simple imprisonment for two weeks. The thirteen accused thereafter preferred appeal to the Sessions Court at Sangli, which was heard by the learned Additional Sessions Judge, Sangli. That learned Additional Sessions Judge in Criminal Appeal No. 126 of 1968, acquitted five of the appellants before him, viz., original accused Nos. 5, 6, 8, 12 and 13, and confirmed the convictions and the sentences passed on the others. It appears that thereafter the eight accused, whose convictions were confirmed and sentences maintained by the learned Additional Sessions Judge, came to this Court in revision; and in the said revision application, being Criminal Revision Application No. 144 of 1969, five of the eight accused (whose convictions had been maintained by the lower appellate Court) were acquitted. These five accused who were acquitted by the judgment and order of P. S. Desai, J. (in Criminal Revision Application No. 144 of 1969) were petitioners Nos. 1, 5, 6, and 7. The High Court declined to interfere with the convictions and the sentences imposed on petitioners Nos. 2 and 4 who were original accused Nos. 7 and 10. The conviction of original accused No. 9 was also sustained by the High Court; he is, however, not a party to the present proceeding before us.

4. It appears that a dispute regarding the gratuity, casual leave, earned leave, half-pay leave and other matters pertaining to the employees of respondent No. 1 had been referred for adjudication to respondent No. 2 as the Industrial Tribunal by the Government of Maharashtra by an order dated October 24, 1966. Similarly, another dispute in respect of the claim for bonus for the years 1963-64 and 1964-65 had also been referred for adjudication to respondent No. 2 by another order dated December 3, 1966. Reference (IT) No. 317 of 1966 was disposed of by respondent No. 2 by an award published on January 23, 1969, and similarly Reference (IT) No. 394 of 1966 was disposed of by an award published on January 16, 1969. According to the petitioners, taking advantage of the order of conviction passed against the petitioners, respondent No. 1 during the pendency of the above-mentioned references terminated their services. Similar separate orders appear to have been passed in case of each of the petitioners. Thereafter, one of the petitioners seems to have moved the Chairman of respondent No. 1, but the appeal proved to be of no avail. It appears that thereafter on March 30, 1969, seven complaints were lodged with respondent No. 2 under S. 33A of the Industrial Disputes Act, 1947 (hereinafter

referred to as the said Act,) complaining of alleged contravention of the provisions of S. 33(2) of the said Act. Respondent No. 1 thereafter filed a reply dated June 26, 1969, contending, inter alia, that respondent No. 2 had no jurisdiction to entertain and try the said complaints, in view of the fact that the complaints had been preferred after the proceedings had come to an end and that the Tribunal had thus become functus officio. It appears that respondent No. 2 thereafter considered this as a preliminary issue, and by his award published on August 28, 1969, upheld the said contention, holding that he had become functus officio and that in that view of the matter the complaints must fail. Rather surprisingly, after deciding the preliminary point in favour of the Maharashtra State Electricity Board and although the case was not argued on merits before him by either party, respondent No. 2 chose to make observations on the merits of the contentions in the complaints, holding that in his view Regulation 89 of the Regulations framed by respondent No. 1 under S. 79(e) of the Electricity (Supply) Act, 1948, was applicable and accordingly there was no contravention of the provisions of S. 33 of the Industrial Disputes Act, 1947. It is this award made by respondent No. 2 which has been challenged in this petitioner, and the challenge has been mainly centered on the view taken by respondent No. 2 that he had become functus officio. The learned advocates are agreed that if, in our opinion, that view is erroneous and liable to be quashed and set aside, the observations on the merit of the controversy should not be regarded as binding and that both sides should be free to argue the respective merits at the appropriate stage before the appropriate authority.

5. In order to appreciate the conclusion of respondent No. 2, it is necessary to set out the relevant portions of Ss. 33A and 33A of the Industrial Disputes Act, 1947 :

"33. Conditions of service, etc., to remain uncharged under certain circumstances during pendency of proceedings. - (1) During the pendency of any conciliation proceeding before a Conciliation Officer or a Board or any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial disputes, no employer shall, -

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceedings in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied

between him and the workman, -

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceedings; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman :

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceedings is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in sub-s. (2), no employer shall, during the pendency of any such proceeding in respect of an industrial disputes, take any action against any protected workman concerned in such dispute -

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharge or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceedings is pending.

* * * *

(5) Where an employer makes an applications to a Conciliation Officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal under the proviso to sub-s. (2) for approval of the action taken by him, the authority concerned shall, without delay, here such applications and pass, as expeditiously as possible, such order in relation thereto as it deems fit."

"33A. Special proviso for adjudication as to whether conditions of service, etc., changed during pendency of proceedings - Where an employer contravenes the provisions of S. 33A during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal, any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner to such Labour Court, Tribunal or National Tribunal and on receipt of such complaint that Labour Court, Tribunal or National Tribunal shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit its award to the appropriate Government and the provisions of this Act shall apply accordingly."

6. Before respondent No. 2 it was contended by the learned counsel for respondent No. 1 that the complaints which were filed on March 30, 1969, were not maintainable inasmuch as those complaints had been filed on a date after both the proceedings, viz., Reference (IT) Nos. 317 and 394 of 1966 had been completed the former having been deemed to have been completed on February

22, 1969 and the latter on February 15, 1969. In the view of respondent No. 2 the words "such Labour Court, Tribunal or National Tribunal" in S. 33A referred to the Tribunal before whom the proceedings are pending, and he rejected the contention advanced on behalf of the petitioners that such Tribunal can be one also before whom the proceedings were pending. In the view of respondent No. 2 since the two reference had been disposed of, the Tribunal had become functus officio. Accordingly to respondent No. 2 when the complaints were lodged, no proceedings were pending and the Tribunal had ceased to exist; accordingly the complaints were not maintainable.

7. Sub-sections (1), (2) and (3) of S. 33A of the Industrial Disputes Act, 1947, provide for different and distinct classes of cases. In respect of Sub-section. (1) and (3) an express previous permission in writing of the authority before which the proceeding is pending is required; but the said sub-sections make it clear that this requirement, which is in a way a fetter or restriction on the power of the employer, is to operate during the pendency of a conciliation proceeding before a Conciliation Officer, or any proceedings before an arbitrator or a Labour Court or Tribunal or National Tribunal. These provisions came to be considered by the Supreme Court in *P. D. Sharma v. State Bank of India*, (1968) 34. F.J.R 223 from which decision respondent No. 2 derives considerable support. We will have occasion to refer to that judgment a little later on. The provisions of S. 33(2)(b) are somewhat different, and in a case falling under that sub-section the discharge or dismissal is, in point of time, previous to the approval which is also to be obtained from the authority before which the proceeding is pending. In Sub-section (1) and (3) there is a requirement previous express written permission, whereas Sub-section. (2) postulates a post facto approval.

8. The Industrial Disputes (Appellate Tribunal) Act, 1950, contained provisions which were analogous to the provisions under consideration in the present proceedings, and Ss 22 and 23 of the said Act are almost identical with Ss. 33A and 33A of the Industrial Disputes Act, 1947. In *Equitable Coal Co. Ltd. Vs. Algu Singh and Another*, , the Supreme Court had occasion to consider these two sections of the 1950 Act. It was observed by Gajendragadkar, J. (as he then was), speaking for the Court, that the right given under S. 23 of that Act to the workman to move the Authority by lodging a complaint is a distinct benefit given to him. The Court went on to say (at page 187) :

"... If the employer contravenes the provisions of S. 22, the employee is entitled to make a complaint in writing in the prescribed manner to the Appellate Tribunal and, on receiving such complaint, the Appellate Tribunal has to decide the complaint as if it is as appeal pending before it. The breach of the provisions of S. 22 by the employer is in a sense a condition precedent for the exercise of the jurisdiction conferred on the Labour Appellate Tribunal by S. 23. As soon as this condition precedent is satisfied the employee is given an additional right to making the employer's conduct the subject-matter of an industrial disputes without having to follow the normal procedure laid down in the Industrial

Disputes Act."

Thus, in the view of Supreme Court as soon as the condition precedent, viz, the contravention of the provisions of S. 22 was satisfied, the employee obtained the additional right of making the employer's conduct the subject matter of an industrial dispute without having to follow the normal procedure laid down in the said Act.

9. Section 33(2) of the said Act came to be considered specifically by the Supreme Court in *Tata Iron & Steel Co. Ltd. v. S. N. Modak* (1965) 28 F.J.R. 328. The Court had then occasion also to refer to the provisions of S. 33A with which we are directly concerned in the present petition. It was observed that S. 33A imposes a ban on the employer exercising his common law, statutory, or contractual right to terminate the services of his employees according to the contract or the provisions of Law governing such services. The applications for approval under S. 33(2)(b), and this would seem to apply also to application for permission prescribed in the other two sub-sections, were described as having the character of interlocutory proceedings, but nevertheless separate and independent proceedings. The question arising for decision before the Court was posed as follows (at page 330) :

"... If, as a result of the pendency of an industrial dispute between an employer and his employees, the employer is required to apply for approval of the dismissal of his employee under S. 33(2)(b), does such an application survive if the main industrial dispute is meanwhile finally decided and an award pronounced on it ?" According to the Supreme Court, the application would survive; and it was observed that an application properly made under S. 33(2) (b) must run its own course and must be dealt with in accordance with law irrespective of the fact that the decision on the main dispute referred to the Tribunal had in the meantime been given. The Court had occasion in the said decision to consider the provisions of S. 33A and this is what Gajendragadkar, J., speaking for the Court, observes (at pages 335-336) :

"There is another aspect of this matter to which reference must be made. Section 33A makes a special provision for adjudication as to whether any employer has contravened the provisions of S. 33A. This section has conferred on industrial employees a very valuable right of seeking the protection of the Industrial Tribunal in case their rights have been violated contrary to the provisions of S. 33A. Section 33A provides that wherever an employee has a grievance that he has been dismissed by his employer in contravention of S. 33A, he may make a complaint to the specified authorities and such a complaint would be tried as if it was an industrial dispute referred to the Tribunal under S. 10 of the Act. In other words, the complaint is treated as an independent industrial proceeding and an award has to be proceeding and an award has to be pronounced on it by the Tribunal concerned."

10. The third decision of the Supreme Court which is required to be referred to

and upon which considerable reliance was placed by respondent No. 2 is in *P. D. Sharma v. State Bank of India*, (1968) 34 F.J.R. 223. In that case an application for permission under S. 33(3) of the Act was made at a time. When the industrial dispute was pending. Thereafter, the award was made by the National Tribunal and the main dispute accordingly came to an end. Subsequently, at the time of dealing with the respondent's application under S. 33(3), the authority to whom that application had been transferred held that in view of the fact that the award in the reference in question had already been given, it had no competence to deal with that application. That view was approved by the Supreme Court which also observed that the Tribunal had no competence to consider the application (at page 231.). The basis of that conclusion reached by the Supreme Court, however, is not that the Tribunal had become functus officio but that a ban is imposed by the relevant sub-sections of S. 33 and once the industrial dispute was decided the ban stood removed-the fetter on the employer ceased to exist and he was free to exercise his rights. In view of the disappearance of the limitation placed on the employer's said right, there was no need to take anybody's permission for taking action against any employee and, therefore, the lower Tribunal was right in the view that it would not proceed with the application for permission.

11. Our attention was drawn by the learned advocate for respondent No. 1 to Ss. 10, 10A, 17, 17A and 20 of the Industrial Disputes Act. These Sections deal with what may be conveniently designated as the main industrial dispute between the parties which may be referred by the Government under S. 10 or voluntarily under S. 10A. As earlier stated, an application for permission in writing under S. 33(1) and 33(3) or for approval to an interlocutory but nevertheless an independent proceeding; and in the same way, and perhaps more so, a complaint under S. 33A. That the main dispute has come to an end by an award and that the proceedings are deemed to have been concluded as provided under S. 20(3), can have no bearing upon the position as to the point of time when proceedings under any of the sub-sections of S. 33A or a complaint under S. 33A has to be initiated. Such limits, if any, have to be specifically sought for and found in the provisions of these sections.

12. As far as S. 33A is concerned, there seems to be no difficulty whatever regarding any of the three sub-sections which are relevant for our purpose. Both Sub-section. (1) and (3) provide clearly that permission in writing has to be sought for during the pendency of the proceeding therein made. Similarly, the proviso to sub-s. (2)(b) makes it clear that an application has to be made by the employer to the authority before which the proceeding is pending, which would clearly indicate that such application for approval cannot be made after the proceedings have concluded before that authority.

13. The question which we have now to consider is whether there are any such express provisions in S. 33A or is the limitation sought for by respondent No. 1 to be found by necessary implication in any phraseology employed by that

section ? In this connection Mr. Ramaswamy on behalf of respondent No. 1 emphasised the use of the word "such" occurring in the said section before the words "Labour Court, Tribunal or National Tribunal." The submission was that the two sections, i.e. Ss. 33A and 33A, have to be read together and the use of this word "such" would clearly indicate that the dispute must be pending in present before the Tribunal at the time when a complaint is filed.

14. It must be said that an argument based on the usage of such words does appear more attractive than an argument based on a consideration of the Tribunal having been *functus officio*. The latter concept, i.e. the concept of *functus officio* appears to have been based on a confusion between the jurisdiction of the Tribunal to deal with the referred (main) disputes and the incidental and separate matters under Ss. 33A and 33A

15. The express words of S. 33A do not appear to help Mr. Ramaswamy. The only condition precedent prescribed by the section is that the employer must have contravened the provisions of S. 33A during the pendency of the proceedings before the Labour Court, Tribunal or National Tribunal. A cursory reading of the opening part of the section might suggest that the words "during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal" are redundant; but if Ss. 33A and 33A are carefully read together, the necessity for this provision will be immediately perceived. Contravention of S. 33A might take place also during the pendency of conciliation proceedings before a conciliation officer or a Board. If the employer has contravened the provisions of S. 33A during the pendency of conciliation proceedings, then the remedy under S. 33A is available to the employee.

16. To revert back to S. 33A, the only condition precedent prescribed is that contravention of the provisions of S. 33A must have taken place and that too during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal. In the event of such contravention, an employee is given the right to make a complaint in writing in a prescribed manner to such Labour Court, Tribunal or National Tribunal. It is important to note in this connection that the expression "during the pendency of proceedings" governs the verb "contravenes", and no such governing clause is to be found after the words "complaint in writing". Similarly, the requirement contained in the proviso to S. 33(2)(b), viz., that the application has to be made by the employer "to the authority before which the proceeding is pending" is also, it is to be noted, not to be found in S. 33A. The only question which remains to be considered is whether by the use of the word "such" it is, by necessary implication, intended that the proceeding must be one pending in *praesenti* before a Labour Court, Tribunal or National Tribunal.

17. As a general proposition it must be observed that a modification or restriction of the rights of a party otherwise absolutely conferred or a period of limitation ought not to be lightly inferred in any statutory provision. The word "such" in our opinion clearly refers to the Tribunal which had seisin of the main dispute, i.e.,

the dispute which was referred to its adjudication. It has in our opinion no reference to the pendency of the main dispute. The learned advocate for respondent No. 1 urged that such a construction would enable a complaint under S. 33A to be filed at anytime after the disposal of the main dispute, and it was submitted that if such complaint could be filed, say after two years or even more, after the award was given in the main dispute, it would amount to great hardship for the employers. In the first place, a period of limitation not to be found either expressly or by necessary implication in a statutory provision cannot be read within that provision merely on account of any consideration of hardship. If there is any real hardship, it is for the Legislature to correct that hardship. Then again, we are not sure that there would be any genuine hardship inasmuch as if an aggrieved workman files such a complaint after an unduly long interval of time, that surely would be a factor which the Tribunal hearing the complaint would consider at the time of giving its award on the complaint. In other words, that is a factor to be considered on the merits of the complaint and on the question of ultimate relief to be given and cannot be a factor which would result in the aggrieved party being disentitled to prefer any complaint whatever.

18. Thus, in our view, the use of the word "such" in S. 33A does not imply that at the time when a complaint is preferred by the aggrieved workmen, the main dispute must be pending before the Tribunal to which the complaint is preferred. In this view of the matter the decision of respondent No. 2 on the preliminary contention urged by respondent No. 1 upholding the said contention cannot be sustained.

19. It may be mentioned in passing that Mr. Shetye, the learned advocate for the petitioners, had drawn our attention to *Bisra Stone Lime Co. Ltd. v. Industrial Tribunal, Orissa*, (1967) 35 F.J.R. 263, where it was observed that the Industrial Tribunal does not become functus officious by reason of the termination of the original dispute. It may, however, be pointed out that this was a concession made at the Bar and further that the observation was made with reference to an application for approval under S. 33(2)(b) and such application had in fact been made at the time when the main dispute was pending. That the Court or Tribunal must go on with the application for approval even after it had disposed of the main dispute had already been decided by the Supreme Court in the *Tata Iron & Steel Co.'s case* (1965) 28 F.J.R. 328.

20. Similarly, on behalf of respondent No. 1, Mr. Ramaswamy referred us to the decision of the Supreme Court in *Syndicate Bank Ltd. v. R. V. Bhat* (1967) 32 F.J.R. 490. The point involved in that case was totally different and in our opinion that decision affords us no guidance.

21. In the result, it must be held that the view of respondent No. 2 that he could not take cognizance of the complaints which were filed before him was erroneous, and to that extent the rule sought for by the petitioners will have to be made absolute.

22. As far as the observations to be found in para. 6 of the award published on August 28, 1969, are concerned, the parties are agreed that no arguments on merits were advanced before respondent No. 2 and that in this state of affairs the Tribunal, which would now go into the complaints, should ignore those observations and/or conclusions. It also appears to be the position that respondent No. 1 had not filed any written statement dealing with the merits of the complaints, which they would be required now to do, after which the matter will proceed before respondent No. 2 or his successor (as may be notified). As has been earlier mentioned, the relief of reinstatement sought for has not been pressed before us and cannot obviously be granted in this application.

23. The rule is made absolute to the extent indicated above. In the circumstances of the case the parties will bear their own costs.