
(1992) 11 BOM CK 0005
In the Bombay High Court
Case No : Writ Petition No. 887 of 1982

Promer Sales Private Limited

APPELLANT

Vs

Manohar Sondhur and others

RESPONDENT

Date of Decision : 12-11-1992

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 2(s), 25F

Citation : (1993) MhLj 537

Hon'ble Judges : H.H. Kantharia, J

Bench : Single Bench

Advocate : P. Ramaswami, for the Appellant; R.J. Kochar, for the Respondent

Final Decision : Dismissed

Judgement

H.H. Kantharia, J.—The first respondent-workman (hereinafter referred to as "the Complainant") was appointed by the Petitioners-Company (hereinafter referred to as "the Company") with effect from June 1, 1973 as a sales representative initially on temporary basis and was subsequently confirmed. The Company is a trading concern engaged in sale of radios, transistors, T.V. sets etc. and has its branch office at Bombay from where the business was carried on throughout the State of Maharashtra. The complainant filed a complaint of unfair labour practice covered by Item 1 (a)(b) and (f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the MRTU and PULP Act") in the Third Labour Court at Bombay against the Company on the grounds that although he was an efficient workman for which he was even given rewards, his services were terminated with effect from March 11, 1978 for no rhyme or reason and thus the Company engaged in unfair labour practice as the termination order was issued not in good faith but in colourable exercise of employer's right and in utter disregard to the principles of natural justice and had thus victimised him. He, therefore, prayed for reinstatement with full back wages and continuity of

services effective from March 11, 1978.

2. The complaint was resisted by the Company on various grounds. A preliminary objection was first of all raised that the complainant was not a workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the I. D. Act") and then contending that his services were not terminated effective from March 11, 1978 but from February 27, 1978. It was the case of the Company that the services of the complainant had to be terminated due to slump in the sales of radio receivers and it had become uneconomical for the Company to continue him. It was also contended on behalf of the Company that the Company being a wholesale dealer in Telerad radios and the manufacturer having discontinued the production of these radios since September 1977, there was not enough work for the workmen. The Company denied the allegations of the complainant that his services were terminated by way of victimisation and not in good faith but in colourable exercise of the employer's rights. It was also one of the contentions on behalf of the Company that the termination was not by way of punishment and, therefore, there was no question of holding a domestic enquiry against the complainant,

3. As stated above, a preliminary issue was raised by the Company that the complainant was not a "workman" within the meaning of section 2(s) of the I. D. Act and, therefore, the learned Labour Judge embarked upon deciding that issue first as a preliminary objection. The learned Labour Judge critically examined all the evidence, oral as well as documentary, adduced by both sides in this regard and came to the conclusion by an order dated December 22, 1981 that the complainant was a "workman" as defined u/s 2(s) of the I. D. Act and, therefore, the case should proceed further on merits.

4. Being aggrieved, the Company filed Writ Petition No. 887 of 1982 in this Court challenging the said order dated December 22, 1981. At the time of admission of the writ petition, the following order was passed:

Heard counsel on either side. The Third Labour Court, Bombay, will hear and decide Complaint (ULP) No. 97 of 1978 further on its own merits and in accordance with law by 31st July, 1982.

This petition to come up for admission on 9-8-1982.

5. In pursuance of the above direction given by this Court to the Labour Court, the Labour Court proceeded further to receive evidence on merits of the matter. The complainant does not appear to have adduced any oral evidence but relied upon a number of documents whereas the Company examined two more witnesses and also relied upon some documents. On appreciation of the evidence thus adduced before him, the learned Labour Judge came to the conclusion that the Company indulged in unfair labour practice complained against it but in the facts and circumstances of the case although the complainant was entitled to the relief of reinstatement, the complaint was partly allowed and the Company was directed to pay full back wages to the complainant from the date of his

termination to the end of December, 1980 and pay further amount of compensation equal to his salary for six months. The Company was also directed to pay cost of Rs. 100/- to the complainant by the judgment and order dated July 28, 1982. Thereafter the writ petition was appropriately amended and put-up for admission. It was admitted and stay was granted. That is how the two orders dated December 22, 1981 and July 28, 1982 are being challenged in this petition now.

6. In support of the petition, Mr. Ramaswami, learned counsel appearing on behalf of the Company, urged two points for my consideration viz. (i) the first respondent-complainant was not a "workman" within the meaning of section 2(s) of the I.D. Act and, therefore, the complaint as filed by him was not maintainable and (ii) even if he is held to be a workman, it cannot be said from the facts and circumstances of the case that the Company indulged in unfair labour practices covered by Item 1 (a)(b) and (f) of Schedule IV of the MRTU and PULP Act.

7. Canvassing his first contention that the first respondent-complainant was not a workman, Mr. Ramaswami took me through the entire evidence and submitted that the complainant was employed as a sales representative and his main job was promotion of the sales of radios etc. for which he was canvassing on behalf of the Company for which he was getting monthly salary and incentives on sales and he was not doing any clerical or some such work on account of which he could be termed as a "workman" within the meaning of section 2(s) of the I. D. Act. In support of his contention, Mr. Ramaswami relied upon a Supreme Court judgment in *Management of May and Baker (India) Ltd. Vs. Their Workmen*, , a judgment of a Division Bench of this Court in *All India Voltas and Volkart Employees' Federation Vs. Voltas Ltd. and Another*, as also another judgment of a Division Bench of this Court in *S.G. Pharmaceuticals Division of Ambala Sarabhai Enterprises Ltd. Vs. U.D. Pademwar and others*, and a judgment of a Single Judge of the Delhi High Court in *Shri Jugal Kishore Mittal Vs. The Management of Sasta Sahitya Mandal and others*, . In reply, Mr. Kochar, learned counsel appearing on behalf of the complainant-workman urged that the entire evidence adduced by both sides does not show that the complainant was doing the job of canvassing on behalf of the Company and on the contrary the same shows that his main job was selling radios etc. for which he was also doing lot of clerical work on account of which the learned Labour Judge was not wrong in coming to the conclusion that the complainant was a "workman" within the meaning of section 2(s) of the I. D. Act. Mr. Kochar also emphasised that the definition of the term "workman" has to be considered in its broad sweep and nothing should be done that would whittle down its meaning which will come in the way of advancing the object of the labour welfare legislation and the approach in such a case should be pragmatic and not pedantic. In support of his contention Mr. Kochar relied upon a judgment of the Supreme Court in *S.K. Verma Vs. Mahesh Chandra and Another*, as also two judgments of this Court delivered by a Single Judge (M. L. Pandse, J.) in *Krishana Charan Pramod Nath Chakraborti vs. Indian Textiles Company Ltd. and another*. Writ Petition No. 1049

of 1985 decided on 11th February, 1986 and Writ Petition No. 1055 of 1980 in case of Ilac Limited vs. C. U. Bora, Member, Industrial Tribunal, Maharashtra and another decided on October 12, 1983 and a judgment of the Single Judge of the Delhi High Court in Bharat Kala Kendra vs. R. K. Baweja, 1980 II LLJ 236 and a judgment of the Labour Appellate Tribunal of India in case of Muller and Phipps (India)Ltd., Calcutta vs. Their Workmen, 1954 6 F.J.R. 171.

8. Now, at the outset it may be stated that the judgments relied upon both by Mr. Ramaswami and Mr. Kochar are decided on the facts and circumstances obtaining in those cases and all that can be said is that everything depends upon facts and circumstances of an individual case whether or not a particular person working under any employer is or is not a "workman" within the meaning of section 2(s) of the I. D. Act. Therefore, from the facts obtaining in the instant case let us see whether the complainant here can be termed as a "workman" within the meaning of section 2(s) of the I. D. Act. As stated above, the whole evidence has been referred to and relied upon by both the learned counsel appearing on behalf of the respective parties. The entire evidence need not be scrutinised by me here while exercising supervisory writ jurisdiction of this Court under Article 227 of the Constitution. But a perusal of the evidence shows that the complainant was a full time employee of the Company working on a monthly salary of Rs. 400/- and in addition he was getting incentives for the sales of the radios and similar items effected by him. He was working in the Company as a salesman, although he has been described in the appointment letter as a sales representative, as per the directions and under the supervision of his superiors and he had not to take any initiative in the matter of discharge of his duties. He could not use his discretion save and except if he were to effect more sales he would be entitled to more amount of incentive and as a matter of fact he was told in so many words in writing that in addition to his monthly salary if he works hard he could earn about Rs. 400/- more per month. The terms and conditions of his services were no better than any other employee of the Company. The learned Labour Judge pointed out the letter of appointment of one Miss Jayshree P. Joshi and compared the same with the letter of appointment of the complainant and pointed out that there was similarity between the two appointment letters and the complainant could not be distinguished from the status of a "workman" as was the case with Miss Jayshree P. Joshi. The complainant was also liable for transfer to any other section or subsidiary of the Company managed by the same Directors, either on the basis of full-time or on the basis of part-time. He could not remain absent without prior permission and/or leave. He was entitled to contribute to the provident fund. He was also liable to disciplinary action like any other regular employee of the Company. There is no evidence to show that he had any managerial, administrative or supervisory function to perform. Therefore, it was not the designation of a "sales representative" which was given to the complainant which counts but the nature of his duties which shows that his main job was that of a salesman and in doing so he was not only doing some clerical work but also work of repairing radios etc.

His evidence shows that as a sales representative he was collecting accounts by copying the ledger of each dealer and was supposed to tally accounts so as to confirm the balance due on the date and take the existing stock of goods showing the conditions of the goods and also collect the due amounts by way of cheques, demand drafts, cash and book fresh orders and give receipts for the same. He used to give daily reports of his work to his employer and more specifically to the Area Sales Executive. He had also to check radios whether they were defective and if there were minor defects he used to repair them. Major defects were reported to the head office with necessary details. This evidence was not seriously challenged by the Company. The documents in the nature of Exhibits U-10, U-11 and U 13 substantially support his oral testimony. These reports also show that he was doing a great amount of clerical work in addition to manual and technical work. The learned Labour Judge also dealt with the evidence adduced by the Company and pointed out that there was nothing in their evidence to indicate that the complainant was doing any duties of canvassing. Therefore, from the facts and circumstances obtaining in this case I am more than satisfied that the learned Labour Judge was not wrong in coming to the conclusion that the complainant here was a "workman" within the meaning of section 2(s) of the I. D. Act. At any rate, the finding arrived at by the learned Labour Judge was based on facts and, therefore, I am not inclined to interfere with the said finding of fact while exercising supervisory writ jurisdiction of this Court under Article 227 of the Constitution. It cannot be said that the finding arrived at by the learned Labour Judge is in any way perverse so as to be interfered with. Therefore, there is no substance in the argument of Mr. Ramaswami that the complainant cannot be termed as a "Workman" as defined in section 2(s) of the I. D. Act.

9. Mr. Ramaswami brought to my notice the Sales Promotion Employees (Conditions of Service) Act, 1976 and submitted that by implication it can be construed that the complainant was not a "workman" within the meaning of section 2(s) of the I. D. Act. Mr. Ramaswami fairly stated that he is not relying upon this Act in order to canvass a point that as per this Act the complainant was not a workman but to strengthen his argument that the complainant could be termed as a "workman". A perusal of this Act does not show that an employee like the complainant was excluded from the definition of a "workman" under the Industrial Disputes Act. On the contrary, this Act applies only to pharmaceutical industry, and the evidence in this case shows that the complainant was not engaged in the work of promotion of sales but was a mere salesman and in addition to salary as a salesman he was getting some incentive for effecting more sales.

10. The next point is whether the order of termination of the complainant's services would amount to an act of unfair labour practice covered by any of the sub-items of Item I of Schedule IV of the MRTU and PULP Act. Admittedly, the services of the complainant were terminated without complying the provisions of section 25-F of the I. D. Act and, therefore, it goes without saying that the

termination was illegal. The evidence further shows that there were other sales representatives Kanabar, Saxena and Sondar working in the company like the complainant but their services were not terminated and the complainant was unfairly dealt with. The contention of the Company that his services had to be terminated because there was slump in the sale of radios, receivers etc. and it had become uneconomical for the Company to continue him does not seem to be correct inasmuch as in the same breath the Company contended that there was accumulation of radios to be disposed of and if that was so they would require more workmen and there was no necessity for terminating the services of the complainant. It appears that for some reason or the other the Company was not quite happy with the complainant and, therefore, to get rid of him he was thrown out of job on a specious ground that there was slump in the business. The services of the complainant were terminated without issuing a show cause notice or holding a domestic enquiry which shows that the termination was effected in utter disregard of the principles of natural justice and mala fide in the colourable exercise of the employer's right. The way in which he was hired and fired and unfairly treated indicates victimization. Mr. Ramaswami submitted that no domestic enquiry was held against the complainant because, according to the Company, he was not a "workman" and as such there was no necessity for holding a domestic enquiry against him. It is already held that the complainant was a "workman" and, therefore, he could not have been dealt with the way the Company did here. Therefore, the conclusion is inevitable that the petitioner-Company indulged in unfair labour practice covered by sub-items (a), (b) and (f) of Item I of Schedule IV of the MRTU and PULP Act.

11. Mr. Kochar is quite right in submitting that the impugned order granting relief to the complainant was equitable inasmuch as the learned Labour Judge considered all the pros and cons of the case and came to the conclusion that after he was thrown out of the job, the complainant did not try to find out an alternative employment and that thereafter the activities of the Company had been closed down and the other sales representatives were also dispensed with and as such although the complainant was entitled to reinstatement he was not granted that relief and instead was granted full back wages only for a certain period and compensation equal to the amount of six months salary. Such an equitable order need not be interfered with. In this view of the matter, no fault can be found with the impugned orders passed by the learned Labour Judge and, therefore, I find no substance in this writ petition.

12. The writ petition accordingly fails and the same is rejected with cost of Rs. 5,000/- .