
(1956) 12 MP CK 0006

In the Madhya Pradesh High Court

Case No : Criminal Miscellaneous Appli. No. 13 of 1966

Pyarelal

APPELLANT

Vs

Secretary, Indore Malwa Mill Mazdoor Sangh

RESPONDENT

Date of Decision : 27-12-1956

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1957) JLJ 119

Hon'ble Judges : Samvatsar, J;Dixit, J

Bench : Division Bench

Advocate : G.M. Chaphekar, for the Appellant; Jal D. Patel, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, J.—By this petition under Art. 227 of the Constitution of India directed against a common decision of the Industrial Court, Madhya Bharat, disposing of three revision-petitions, the petitioners challenge the jurisdiction of the Labour Court to entertain three separate complaints filed by the opponent against the petitioners in respect of offences under S. 106(1) of the Bombay Industrial Relations Act as adapted in Madhya Bharat.

2. The matter arises thus. In that part of Madhya Pradesh which was formerly Madhya Bharat, the relations of employers and employees in certain industries and the settlement of industrial disputes is regulated by the Bombay Industrial Relations Act, 1947, as adapted by Madhya Bharat Act No. 31 of 1949. Almost all industrial disputes are the outcome of a desire of change in the existing state of things as regards wages, hours of work; amenities etc. The object of the Bombay Industrial Relations Act is peaceful settlement of industrial disputes and avoidance of strikes and lockouts as means to enforce changes in industrial matters as far as possible. With this purpose in view, the Act provides that an employer wishing to make a change in specified industrial matters or an employee desiring to effect a change in such matters should give notice to the other party of the proposed change and make an effort to arrive at a settlement.

If no settlement is reached, then conciliation proceedings will be instituted and the Government Conciliator will attempt to bring about a settlement as regards the proposed change. In the event of the conciliation proceedings failing, the employer would be entitled to make the change or to declare a lockout to enforce it and the employees will also be at liberty to resort to strike to enforce or resist the change, as the case may be. The Act also gives recognition to the principle that as now labour is organized in many industries, the redress of grievances should not be individual but should be collective through its Union. A "change" under the Act means an alteration in an industrial matter as defined in S. 3(18) of the Act. S. 3(32) defines a "representative of employees" as meaning a representative of employees entitled to appear or act as such under S.30. S.3(33) defines "representative union" as meaning a Union for the time being registered as a Representative Union under the Act. S. 30 of the Act prescribes the order of preference in which representatives of employees are entitled to appear or to act, and the first preference is given to a Representative Union. S. 42(1) lays down that an employer intending to effect any change in respect of an industrial matter specified in Schedule II shall give notice of such intention in the prescribed form to the representative of employees, who shall then send a copy of the notice to the Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed. Any change made by an employer without any such notice is under S. 46 an illegal change, S. 106(1) provides the penalty for an illegal change and says that any employer who makes an illegal change shall, on conviction, be punishable with fine which may extend to Rs. 5,000. The jurisdiction of the Labour Court to take cognizance of any offence arises under S. 82. It provides that no Labour Court shall take cognizance of any offence except on a complaint of facts constituting such offence made by the person affected thereby or on a report in writing by the Labour Officer. On 8th and 9th December, 1955, the Secretary, Indore Mill Mazdoor Sangh, a representative Union filed in the Labour Court three separate complaints against the petitioners who are the Directors and Managers of the Indore Malwa United Mills Ltd., Indore, complaining that the petitioners had without giving a notice as required by S. 42 reduced the number of permanent employees in certain departments of the Mills and had thus committed offences u/s 106 of the Bombay Industrial Relations Act. Each of these complaints related to separate departments, to wit, Cotton Godowns Department, Cloth Godown Department, and Guarding Department. Before the Labour Court the petitioners raised the preliminary objection in each case that as the opponent was not a person affected by any of the alleged offences he had no locus standi to file the complaints and that the Labour Court could not take cognizance of the alleged offences on complaints filed by the opponent. The Judge of the Labour Court following a decision of the Industrial Court overruled this objection. The petitioners then preferred three separate revision-petitions before the Industrial Court raising the contention that the Labour Court had no jurisdiction to entertain the three complaints. These revision petitions were dismissed. The learned Industrial Judge took the view that as the

Representative Union was entitled to receive a notice under S. 42(1) of the Act as regards the intended change, and as no notice of the changes effected was given to the representative of the employees, the opponent, who is the Secretary of the Representative Union, was a person affected within the meaning of Section 82. The petitioners have now filed this application under Art 227 of the Constitution of India challenging the correctness of the decision of the Industrial Court.

3. The question raised in this petition turns on the meaning of the expression "on a complaint of facts constituting such offence made by the person affected thereby" occurring in Section 82. Mr. Chaphekar, learned counsel for the petitioners, urged that the Representative Union was not a person and that in any case it was not a person affected by any change made by the petitioners, which is said to constitute an offence under the Act, and that the person affected by the alleged offence was in each case the person retrenched or reduced and not the Representative Union. Learned counsel compared Section 79 and Section 82 and submitted that whereas Section 79 by using expressly the words "Representative Union" gave to a Representative Union the right to commence proceedings under that section, no such words were to be found in Section 82; and that formerly Section 79 also did not contain the words "Representative Union" which were added subsequently by an amending Act and that no such amendment was made in Section 82. It was said that the absence of the words "Representative Union" in Section 82 and their addition in Section 79 only support the construction that u/s 82, the Representative Union was not competent to make a report or complaint of any offence under the Act. Learned counsel also referred to Section 106(3) as confirming the construction. In reply, Mr. Patel contended that a Representative Union was a person affected by the alleged offences as the Union was entitled to a notice u/s 42(1) of the proposed changes.

4. To my mind, the plain meaning of the expression "on a complaint of facts constituting such offence made by the person affected thereby" is on a complaint of facts constituting such offence made by a person whose position in respect of any of the rights, benefits or privileges conferred by the Act has been altered or injuriously varied by the alleged offence. The question whether a person is or is not affected must be determined by the nature of the offence, the rights and privileges of the person and the special circumstances of each case. Now, for the purposes of the Bombay Industrial Relations Act, the Representative Union can have no powers or rights except those expressly or impliedly granted to it under the Act. The scheme of the Act makes it perfectly clear that the main and the only purpose of the incorporation of Unions and their recognition is the representation of large bodies of employees before the tribunals under the Act. For this purpose the Union is entitled to appear or act as the representative of employees and to safeguard their interests before the tribunal. The Union itself has no rights with regard to employment, hours of work, wages etc. or in regard to any of the matters specified in Schedule II except the withdrawal of

recognition to Union of employees. When, therefore, the number of permanent or semi-permanent employees in any department of any industry to which the Act applies is reduced, the persons affected by the reduction are the employees actually retrenched or the persons retained whose workload has increased consequent to the retrenchment and not the Representative Union. No doubt u/s 42(1) a Representative Union is entitled to receive a notice with regard to an intended reduction by an employer in the strength of permanent or semi-permanent employees in any department of the concern and if a reduction is made by the employer without such notice the Union's right to receive a notice is violated. But the change made in the form of the reduction of the number of employees does not in any way alter the position of the Union which after the reduction remains the same as before it. The Union's right to appear and act on behalf of the employees before the tribunal is in no way varied or destroyed by the change even though it may be illegal. The word "thereby" which follows the word "affected" in S. 82 is very significant. It shows that the person competent to make a complaint under S. 82 must be a person affected by the result of the alleged offence and not by the manner in which it has been committed. The omission to give a notice as required by S, 42(1) which renders a change an illegal change is merely the mode in which an illegal change has been made. It is not the result of the illegal change, that is of the offence alleged. The argument that the Representative Union is a person affected within the meaning of S. 82 when the alleged offense consists in the reduction of the number of employees in a department without notice cannot, therefore, be accepted.

5. I do not think S. 79(1) or S. 106(3) throw any light on the construction of S. 82. It is important to observe the distinction between the language of S. 79(1) and S. 82. Whereas S. 79(1) inter alia says that proceedings in respect of a matter falling under clause (c) of paragraph A of sub section (1) of S. 78 can be commenced on an application made by any employer or employee directly affected or the Labour Officer or a Representative Union. Section 82 requires that the complaint of facts constituting an offence must be by the person effected thereby. Now no doubt, when S. 79(1) uses the expressions "employee directly affected" and "Representative Union", it emphasizes the fact that a Representative Union is not an employee directly affected. But from this it does not follow that a Representative Union is an employee indirectly affected by the matters referred to in S. 78(1) or that a Representative Union can never be said to be a person affected by an offence or that it is always so affected. As has been said before, the question whether a Representative Union is a person affected by an offence depends solely on the nature of the offence alleged and the rights and privileges conferred on the Union under the Act. To illustrate, when an illegal change is in respect of withdrawal of recognition to a Union of employees the Union would clearly be a person affected by the offence constituted by the illegal change, If on the other hand the illegal change is in regard to wages, hours of work, and reduction of employees, where the only right the Union has, is of appearing or acting before the Labour Court or Industrial Court as the

representative of employees and of safeguarding their interest, a registered Union is not affected as a result of the offence constituted by the illegal change, any the more counsel appearing in an action on behalf of a party is affected by the decision therein. S. 106(3) provides for the payment of compensation to any employee directly and adversely affected by the change in issue when a Court convicts an employer under S. 106(1). The fact that compensation is payable only to an employee directly and adversely affected cannot on any reasoning justify reading the expression "the person affected thereby" as "employee directly and adversely affected". I am clearly of opinion that in the instant case the opponent registered Union cannot be said to be a person affected in any way by the offences alleged to have been committed by the petitioners by reducing the number of employees in certain departments of their Mills.

6. The opponent himself realised that the Union was not a person affected by the offences alleged in the complaints filed by him, when in the complaints he did not say that by the offences any right of the Union itself had been affected. He made the consequential increase in the workload of the retained employees as the basis of his competency to file the complaints. There was some discussion at the bar as to whether the complaints filed fulfilled the requirements of S. 82 as to the facts of the alleged offences. In each of these complaints it was simply alleged that the petitioners had in a certain month reduced the number of permanent employees without giving notice as required by S. 42 and that as a result of this reduction the workload of the retained employees had increased. No details as to how and when precisely the reduction was made and whether the reduction was intended to be of permanent or semi-permanent character in the number of persons employed have been given in any complaint. These details were necessary as Schedule II, Item 1, of the Bombay Industrial Relations Act speaks not of mere reduction but of reduction intended to be of permanent or semi-permanent character in the number of persons employed. The learned Industrial Judge held that the complaints disclosed all the facts constituting the offence, without considering the effect and significance of the words "complaint of facts constituting such offence" occurring in S. 82. The object of S. 82 is to protect the employers from being needlessly harassed by rash, baseless or vexatious prosecution at the instance of private persons, for taking cognizance of any offence punishable under the Act on a complaint by a person, the sine qua non is a complaint in substantial compliance with the requirements of S. 82. It would be observed that, S. 82 uses the expression "a complaint of facts constituting such offences" and not the expression "a complaint of such offence. A complaint must state all the facts which constitute the offence. This is a requisite of fundamental importance. Mere assertion or a vague allegation that an offence has been committed cannot be regarded as compliance with the letter or spirit of S. 82. The concrete facts which constitute the alleged offence must be before the Court so as to enable the Court to apply its mind to the suspected commission of the offence and to take the decision whether cognizance of the offence should or should not be taken. Here, the complaints are lacking

altogether in the facts indicating that the reduction complained against is intended to be of permanent or semi-permanent character and do not fulfill the requirements of S. 82. On such complaints the Labour Court had no power to take cognizance of the alleged offences. In this connection, I need only refer to the decisions in *Kanhaiyalal vs. State* (1952 M.B. Law Journal 285); *Emperor Vs. Purshottam Devji Patel*, *Emperor vs. Jayantilal* (AIR 1941 Bom 139); *Dr. N.G. Chatterji and Another Vs. Emperor*, and *Rachpal Singh vs. Rex* (AIR 1949 Oudh 66) where the meaning of the expression "on a report in writing of the facts constituting such offence" in S. 11 of the Essential Supplies Act and the expression "a report in writing of the facts constituting such contravention" as used in Rule 130 of the Defence of India Rules was explained and it was pointed out that the jurisdiction of a Court taking cognizance of an offence under those provisions depended upon a report by the competent authority stating all the concrete facts constituting the alleged offence.

7. For these reasons, I am of the view that the opponent Representative Union is not a person affected by the offences alleged here and that, I therefore, the Labour Court could not take cognizance of those offences on the complaints filed by the Union. The decisions of the Industrial Court and the Labour Court are, therefore, set aside and the complaints filed by the opponent are rejected,

Samvatsar J.

8. I agree.