
(1953) 11 SC CK 0007

In the Supreme Court Of India

Case No : Criminal Appeals No's. 87, 88 and 89 of 1951

Raja Kulkarni and Others

APPELLANT

Vs

The State of Bombay

RESPONDENT

Date of Decision : 24-11-1953

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 42
Civil Procedure Code, 1908 (CPC) — Section 100
Constitution of India, 1950 — Article 14, 19(1)
Industrial Disputes (Appellate Tribunal) Act, 1950 — Sect

Citation : AIR 1954 SC 73 : (1954) 56 BOMLR 459 : (1954) 1 LLJ 1 : (1954) 1 MLJ 83 : (1954) 1 SCR 384

Hon'ble Judges : Sastri, C.J;Mahajan, J;Ghulam Hasan, J;Das, J;Bose, J

Bench : Full Bench

Advocate : N. Bharucha, Dara Vania and Rajinder Narain, for the Appellant; M.C. Setalvad, Attorney-General, G.N. Joshi, Porus A. Mehta and G.H. Rajadyaksha, for the Respondent

Final Decision : Dismissed

Judgement

Ghulam Hasan, J.—These consolidated appeals by the three Appellants arise out of the judgment and order of the High Court of Judicature at Bombay (Bavdekar and Dixit, JJ.), whereby the High Court confirmed the convictions of the Appellants recorded by the Presidency Magistrate, Fifth Court, Greater Bombay, u/s 27 of the Industrial Disputes (Appellate Tribunal) Act (No. XLVIII of 1950) but reduced their sentences from six months' rigorous imprisonment to three months' simple imprisonment and set aside against each of the Appellants the sentence of fine of Rs. 1,000. The Appellants are the President and the Secretaries of the Mill Mazdoor Sabha, a Union of Textile Workers in Bombay registered under the Indian Trade Unions Act. It appears that there are about 2,10,000 Textile workers working in Bombay and about 35 per cent, of them belong to three different labour Unions. The first is called 'Rashtriya Mill Mazdoor Sangh' which is recognised as a "representative Union" under the Bombay

Industrial Relations Act, 1946, on the ground that it represents not less than 15 per cent, of such Textile workers. The second is called 'the Mill Mazdoor Sabha,' of which the Appellants are the office bearers, but this Union represents less than 15 per cent.; and the third is 'Girni Kamgar Union' representing the least percentage of workers. It is common ground that apart from the members of the above three Unions, a large number of workers representing about 65 per cent, are unorganized and do not belong to any Union.

2. On 9th December, 1949, the representative Union gave a notice of change u/s 42 of the Bombay Industrial Relations Act, 1946, hereinafter called the Act to the Mill Owners Association in Bombay claiming bonus for that year. On 23rd December, the dispute was referred by the Government of Bombay to the Industrial Court u/s 23 of the said Act. While this dispute was pending, the Industrial Disputes (Appellate Tribunal) Act (No. XLVIII of 1950) hereinafter called the Appellate Tribunal Act, came into force on 20th May, 1950. On 7th July, the Industrial Court made the award and the same was published on 13th July. On 9th August, the Mill Owners Association, which was dissatisfied with the award, filed an appeal before the Appellate Tribunal and an ad-interim order was passed on 10th August, directing how the bonus should be paid. The Appellants made speeches on 14th, 15th and 16th August, exhorting the workers of the Textile Industrial to go on strike. The Labour Commissioner, thereupon filed complaints before the Presidency Magistrate on 28th August, charging the Appellants with an offence u/s 27 of the Appellate Tribunal Act. The Mill Mazdoor Sabha applied to be made a party to the appeal, but the application was rejected. As already stated, the Appellants were convicted by the Presidency Magistrate, but their sentences were reduced on appeal by the High Court.

3. Two main contentions were raised on behalf of the Appellants, firstly that the conviction u/s 27 of the Appellate Tribunal Act was illegal, because there was no competent and valid appeal against the award before the Appellate Tribunal and secondly that Section 27 of the Act is void as being opposed to the fundamental rights of the Appellants under Articles 19(1)(a) and (c), and 14 of the Constitution. Both the contentions were repelled by the two learned Judges who delivered separate but concurrent judgments. The contentions have been reiterated before us.

4. In order to deal with the first contention, it will be necessary to refer to certain provisions of the Appellate Tribunal Act. Section 7 of that Act provides an appeal to the Appellate Tribunal from any award or decision of an industrial Tribunal:

- (a) if the appeal involves any substantial question of law; or
- (b) the award or decision is in respect of any of the following matters, namely:
 - (i) wages,
 - (ii) bonus or travelling allow

* * * *

5. Section 24(b) prohibits (sic) who is employed in any and (sic) lishment, from going on (sic) the pendency of an appeal before the Appellate Tribunal and Section 25 renders a strike and a lock-out as illegal if it is declared, commenced or continued in contravention of the provisions of Section 24. Then follows the penalty provided for in Section 27 which says:

Any person, who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lockout, which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

6. The question is whether the Appellants rendered themselves liable to prosecution u/s 27, because they instigated the strike while the appeal was pending before the Appellate Tribunal.

7. It is contended that Section 24 contemplates the pendency of a valid and competent appeal, but as no valid or competent appeal under the law was pending, the Appellants committed no offence u/s 27. We are unable to accept this contention. Section 24 on a plain and natural construction requires for its application no more than that an appeal should be pending and there is nothing in the language to justify the introduction of the qualification that it should be valid or competent. Whether the appeal is valid or competent is a question entirely for the Appellate Court before whom the appeal is filed to determine, and this determination is possible only after the appeal is heard, but there is nothing to prevent a party from filing an appeal which may ultimately be found to be incompetent, e.g, when it is held to be barred by limitation or that it does not lie before that court or is concluded by a finding of fact u/s 100 of the CPC Code. From the mere fact that such an appeal is held to be unmaintainable on any ground whatsoever, it does not follow that there was no appeal pending before the Court. Article 182(2) of the Indian Limitation Act, prescribes three, years' period of limitation for the execution of a decree or order to run from the date of the final decree or order of the Appellate Court "when there has been an appeal". The Privy Council construed the latter phrase to mean that any application by a party to the Appellate Court to set aside or revise a decree or order of a Court subordinate thereto is an 'appeal' within the meaning of the above provision, even though it is irregular or incompetent, or the persons affected by the application to execute were not parties, or it did not imperil the whole decree to order. They refused to read into the words any qualification either as to the character of the appeal, or as to the parties to it. [Nagendra Nath Dey and Ors. v. Suresh Chandraey and Ors. 1932 63 MLJ. 329 : L.R. 59 IndAp 283 (P.C) We consider that the word 'appeal' must be construed in its plain and natural sense without the insertion of any qualifying words such as are intended to be introduced by the contention raised before us. There is yet another reason for not construing the word 'appeal' in the manner suggested by the Appellants and that is that the Legislature in introducing this provision contemplated that industrial peace should not be disturbed so long as the matter was pending in

the Court of appeal irrespective of the fact whether such an appeal was competent in law. If this were not the case, the parties could easily defeat the object of the Legislature by arrogating to themselves the right to decide about the competency of the appeal without reference to the Court, commit a breach of the peace and escape the penalty imposed by Section 27. There was no jurisdiction for the Appellants to instigate the workers in the so-called bona fide belief that Section 27 does not apply to an appeal which they thought was incompetent. In this view of the matter it is not necessary to consider whether the conferment of a right of appeal during the pendency of a proceeding can affect the rights of the parties to the proceedings and make the order in the pending proceeding appealable.

8. The second contention relates to the alleged infringement of the rights of the Appellant under Article 19(1)(a) and (c), read with Article 14 of the Constitution. In order to understand this contention, a reference to the provisions of the Bombay Industrial Relations Act, 1946, will be necessary.

9. Section 3, Sub-Section 32, defines "Representative of Employees" as one entitled to act as such u/s 33, and "Representative Union," is defined as a Union for the time being registered as a Representative Union under the Act (Sub-S. 33).

10. Section 12 enjoins upon the Registrar of Unions appointed under the Act to maintain:

- (a) a register of Unions registered by him under the provisions of the Act, and
- (b) a list of approved Unions.

11. Section 13 deals with the registration of Unions by the Registrar. By the first subsection, a Union can be registered as a "Representative Union" for an Industry in a local area if it has for the whole of the period of three months next preceding the date of its application, a membership of not less than 15 per cent, of the total number of employees employed in any industry in any local area. If a Union does not satisfy that condition, and has a membership of not less than five per cent., it can be registered as a "qualified Union". If neither of these Unions has been registered in respect of an industry, then a Union having a membership of not less than 15 per cent, of the total number of employees employed in any undertaking in such industry can by an application to the Registrar be registered as a "Primary Union". It is common ground that the Rashtriya Mill Mazdoor Sangh comes under the first category and the Union of which the Appellants are office-bearers comes under the second, namely that it is a qualified Union. This registration can be cancelled u/s 15, if it has been procured by mistake, misrepresentation or fraud or if the membership has fallen below the minimum required u/s 13 for its registration.

12. It is argued that the right of the Appellants to freedom of speech and expression and to form associations or Unions under Art 19(1)(a) and (c) read

with Article 14, conferring the right of equality before the law or the equal protection of the laws is infringed by the Act, inasmuch as it gives preference to a trade Union upon the artificial test of having the greater percentage of membership, namely, not less than 15 per cent, We see little merit in this contention. It is obvious that the Act imposes no restriction either upon the freedom of speech and expression of the Textile workers or their right to form associations or Unions; indeed it is not denied that the workers have already formed as many as three Unions, though they do not exhaust the number of workers in Bombay, for it leaves as many as 65 per cent, of workers unorganized who do not belong to any trade Union. The statute lays down the minimum qualification of 15 per cent, of membership to enable the Union to be called a "Representative Union" so as to represent the interests of the entire body of workers in their relations with the employers. After laying down the test of not less than 15 per cent., it was perfectly reasonable not to allow any other Union such as the Appellants to interpose in a dispute on behalf of the Textile workers when they did not command the minimum percentage or when their membership fell below the prescribed percentage. It is perfectly open to the Appellants to enlist that percentage or even a higher one and claim precedence over the Rashtriya Mill Mazdoor Sangh so as to be able to represent the interests of all the workers. The right to freedom of speech and expression is not denied to the Appellants, nor are they prohibited from forming associations or Unions. The Act makes no discrimination between Textile workers as a class but lays down a reasonable classification to the effect that a certain percentage of membership possessed by a Union will be allowed to represent the workers as a class to the exclusion of others, but there is nothing to prevent the other Unions or other workers from forming a fresh Union and enrolling a higher percentage so as to acquire the sole right of representation. The Appellants challenge the validity of the Act as infringing their fundamental rights and yet they base their case of discrimination on the provisions of the same Act. This position is not in accord with reason or principle.

13. We hold, therefore, that the Appellants have made out no case for interference with the orders of the Courts below. We uphold the convictions and sentences and dismiss the appeal.