
(1991) 07 BOM CK 0044
In the Bombay High Court
Case No : Writ Petition No. 2715 of 1983

Ram Naresh Tripathi

APPELLANT

Vs

S.D. Rane and others

RESPONDENT

Date of Decision : 10-07-1991

Acts Referred:

Constitution of India, 1950 — Article 227
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 22

Citation : (1991) 63 FLR 646 : (1992) 2 LLJ 519 : (1991) 1 MhLj 1159

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

Bench : Single Bench

Judgement

1. In this writ petition under Article 227 of the Constitution what falls for my consideration is an important question of law as to the interpretation of the provisions of Section 22(ii) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971 (hereinafter referred to as "the MRTU and PULP Act")

2. The petitioner workman was an employee of the third respondent company. He was charge-sheeted on November 29, 1980 on certain allegations of misconduct. A domestic inquiry was ordered to inquire into his alleged acts of misconduct, which was fixed for hearing on December 2, 1980 and adjourned to December 6, 1980. It is the case of the petitioner that he requested the Inquiry Officer to allow him to be defended by one Talreja who claimed to be an office-bearer of the Bombay Mazdoor Union of which the petitioner was a member. It was also the case of the petitioner that the said Talreja was authorized to defend the members of his union at the domestic inquiries. The Inquiry Officer did not grant the request of the petitioner to allow him to be defended by the said Talreja. On consideration of the report submitted by the Inquiry Officer, the company dismissed the petitioner on January 28, 1981.

3. Feeling aggrieved by the dismissal order, the petitioner filed Complaint (ULP)

No. 33 of 1981 in the Labour Court at Bombay presided over by the second respondent. He alleged in the complaint that by not allowing him to be defended by Talreja the principles of natural justice were violated and thus dismissing him, the third respondent committed unfair labour practice covered by Item 1 of Schedule IV of the MRTU and PULP Act. The learned Labour Judge was of the view that regard being had to be provisions of Section 22(ii) of the MRTU and PULP Act, the petitioner was not entitled to be defended by Talreja at the domestic inquiry who was not a member of either a recognised union or a non-recognised union functioning in the undertaking of the third respondent. He accordingly held that the respondent did not commit an act of unfair labour practice covered by Item 1 of Schedule IV of the MRTU and PULP Act, more especially because of petitioner was given an opportunity by the Inquiry Officer to be defended by any co-workman or a member of the union functioning in the undertaking of the third respondent. The learned Labour Judge accordingly, by his judgment and order dated June 30, 1982 dismissed the petitioner's complaint of unfair labour practice.

4. Therefore, the petitioner filed Revision Application (ULP) No. 28 of 1982 in the Industrial Court at Bombay. The Learned Member of the Industrial Court (first respondent) found no merits in the revision application on the same basis on which the learned Labour Judge had dismissed the unfair labour practice complaint of the petitioner and consequently dismissed the revision application by his judgment and order dated June 14, 1983.

5. Hence the petitioner invoked the supervisory writ jurisdiction of this Court under Article 227 of the Constitution by filing the present writ petition.

6. Dr. Kulkarni appearing on behalf of the petitioner-workman, submitted that in not allowing the petitioner to be defended by Talreja, at the domestic inquiry, who was an officer-bearer of an union of which the petitioner was a member, principles of natural justice were violated in the conduct of the domestic inquiry and that is how the third respondent committed unfair labour practice covered by Item 1(f) of the Schedule IV of the MRTU and PULP Act. The submission of the learned Counsel is that u/s 22(ii) of the MRTU and PULP Act, the petitioner had a right to be represented by a member of an unrecognized union at the domestic inquiry, the said union not functioning in the Undertaking of the company notwithstanding.

7. Controverting these arguments Mr. Rele, learned Counsel appearing on behalf of the third respondent-company, submitted that u/s 22(ii) of the MRTU and PULP Act, the petitioner had no right to be represented by Talreja at the domestic inquiry as he was an outsider vis-a-vis the understating of the third respondent and the said Talreja was not even a member of an unrecognised union functioning in the undertaking of the company. The submission of the learned Counsel is that the correct interpretation of the provisions of Section 22(ii) of the MRTU and PULP Act is that at the domestic inquiry, a workman should be represented only by an office-bearer, member of the officer staff and member of

any union (other than the recognised union) who may be authorised by or under the rules made in this behalf by the State Government and by nobody else and since Talreja was neither an office-bearer or a member of unrecognised union operating in the undertaking of the third respondent and was not authorised by or under any rules made in that behalf by the State Government, he was rightly not allowed to represent the petitioner at the domestic inquiry. Thus, Mr. Rele submitted that neither the judgment and order passed by the learned Labour Judge nor the one passed by the learned Member of the Industrial Court suffer from error apparent on the face of the record and this Court while exercising supervisory writ jurisdiction under Article 227 of the Constitution need not interfere with those judgments and orders.

8. Now, in order to appreciate the rival contentions raised on behalf of the parties, it would be appropriate to incorporate here the provisions of Section 22 of the MRTU and PULP Act. It reads as under :

"22. Rights of unrecognized unions. Such officers, members of the office staff and members of any union (other than a recognised union) as may be authorised by or under the rules made in this behalf by the State Government shall, in any such manner and subject to such conditions as may be prescribed, have a right -

(i) to meet and discuss with an employer or any person appointed by him in that behalf, the grievances of any individual member relating to his discharge, removal, retrenchment, termination of service and suspension;

(iii) to appear on behalf of any of its members employed in the undertaking in any domestic or departmental inquiry held by the employer."

Thus Section 22 of the MRTU and PULP Act gives rights to an unrecognised union viz. (1) to meet and discuss with an employer or any person appointed by him in that behalf the grievance of any individual member relating to his discharge, removal, retrenchment, termination of service and suspension and (ii) to appear on behalf of any of its members employed in the undertaking in any domestic or departmental inquiry. These are the rights given to an unrecognised union, but that is not say that a particular employee of an undertaking has no right to be defended by a person of his choice at the domestic inquiry. As rightly tended by Mr. Rele such a right of an employee could be had from the provisions of the certified or Model Standing Orders and admittedly in this case, as per the certified Standing Orders, the petitioner could be represented by a co-workmen at the domestic inquiry. But that, however is not to say that he could be represented as the domestic inquiry by a co-workmen and co-workmen alone and nobody else. A co-workmen may be as incompetent as the delinquent workman himself and in that case if the delinquent workmen is not permitted to be represented by a competent person at the domestic inquiry, the interests of justice may suffer. Of course it is not the case of the petitioner here that the third respondent was represented by a person much more qualified and competent than any of his co-workmen and, therefore, he should be allowed to be

represented by Talreja who was according to him, as complement as the representative of the Company. But as was held by a Division Bench of this Court in Ghatge Patil Transport Pvt. Ltd. Vs. B.K. Etale and others, apart from the provisions of law (Standing orders in our case) if it one of the basic principles of natural justice that the inquiry should be fair and impartial. And for the purpose of the domestic inquiry to be fair and impartial, it is very much necessary that the delinquent workman be allowed to be represented by a person of his choice and if an employee is refused such a fair opportunity of putting forward his case by a representative of his choice, even if the representative is an outsider, it could be well said that the principles of natural justice were violated. There is nothing in Section 22 of the MRTU and PULP Act to deny such a basic and fundamental right to a workman. Section 22 of only provides for the rights of an unrecognised union. The Inquiry Officer in our case therefore, violated the principles of natural justice in not allowing the petitioner to be defended by Talreja. If he was allowed to be defended by Talreja, no prejudice would have been caused to the third respondent.

9. Now, it is a general unfair labour practice on the part of an employer to discharge or dismiss an employee in utter disregard of the principles of natural justice in the conduct of domestic inquiry under Item 1(f) of Schedule IV of the MRTU and PULP Act. Thus, in not allowing the petitioner to be defended by Talreja at the domestic inquiry and dismissing him on the report of the Inquiry Officer, the third respondent committed unfair labour practice covered by Item 1(f) of the Schedule IV of the MRTU and PULP Act. The learned Labour Judge and the learned Member of the Industrial Court were, therefore, not correct in coming to the conclusion that in not allowing the petitioner to be defended by Talreja at the domestic inquiry, principles of natural justice were not violated and the third respondent is not commit any unfair labour practice. The imagined judgments and orders passed by the learned Judge of the Labour Court and the learned Member of the Industrial Court, therefore, suffer from this grave legal error which is apparent on the face of the record.

10. In this view of the matter, the writ petition succeeds and the same is allowed. The impugned orders passed by the learned Labour Judge and the learned Member of the Industrial Court are quashed and set aside.

11. At this stage, Mr. Rele brings to my notice two judgments of this Court viz. (i) Amaravati District Central Co-operative Bank Limited v. Shamrao Tanbaji Ladavikar and others 1982 Mh. L.J. 434 and (ii) Cosmos India Rubber (Pvt.) Ltd. v. Mumbai Mazdoor Sabha and others 1980 I CLR-432 and submits that since now it has been held that the domestic inquiry conducted against the petitioner was in violation of principles of natural justice, the third respondent may be given an opportunity to adduce evidence in the Labour Court to establishment charges leveled against the petitioner. The first judgment is that of a Single Judge and the second on is of a Division Bench of this Court. In both these judgments it has been clearly laid down that if it is held by the Labour Court that

the domestic inquiry conducted against the workman was not fair, proper and legal, the Labour Judge would not be incorrect in law to allow the company to adduce necessary evidence to establish the charges leveled against the workman. In view of these judgments, I am persuaded to agree with the submission of Mr. Rele that this is a fit case in which the third respondent should be allowed to adduce evidence in the Labour Court to prove charges leveled against the petitioner.

12. Hence, the impugned judgments and orders are quashed and set aside and the matter is remanded back to the Court of the second respondent - Labour judge with a direction that he shall allow the third respondent-company to adduce evidence in proof of the charges leveled against the petitioner-workman and it goes without saying that the petitioner-workman shall also be entitled to adduce evidence in rebuttal of the evidence that may be adduced against him. Thus both parties are allowed to adduce whatever evidence they want to in the Labour Court and on considering the same, the Labour Court shall come to an appropriate conclusion whether or not the charges leveled against the petitioner-workmen were proved by the third respondent-company and accordingly dispose of the unfair labour practice complaint in accordance with law as early as possible but latest by the end of December, 1991.

13. The writ petition stands disposed of in the terms aforesaid and Rule is made absolute accordingly. There shall, however, be no order as to costs.

14. Before parting with the judgment. I would like to put in on record that since an important question of law was involved in this writ petition, I requested Mr. S. M. Dharap and Mr. R. J. Kochar who were present here to address the Court on the true and correct interpretation of Section 22(ii) of the MRTU and PULP Act. Mr. Dharap and Mr. Kochar accordingly addressed and assisted the Court in quite an able manner. The Court records its gratitude to both of them.

15. At this stage, Mr. Rele applies for leave to appeal to Supreme Court. In view of the fact that his earlier prayer for remanding the matter back to the Labour Court is granted, leave refused.