

(1995) 04 BOM CK 0039

In the Bombay High Court

Case No : Writ Petition No. 3595 of 1989

Rama Bala Kate and Others

APPELLANT

Vs

Walchandnagar Industries Ltd. and Others

RESPONDENT

Date of Decision : 24-04-1995

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 3(13), 3(14)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 21, 28

Citation : (1995) 4 BomCR 249 : (1996) 73 FLR 1390 : (1996) 1 LLJ 713

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : N.M. Ganguli, for the Appellant; P. Ramaswami, for S.A. Sawant and Anr., for the Respondent

Final Decision : Allowed

Judgement

B.N. Srikrishna, J.—This writ petition under Article 226 of the Constitution of India is directed against an order of the Industrial Court dated April 21, 1988, made in complaint (ULP) Nos. 204 to 224 of 1985, dismissing the complaints under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the "Act").

2. The material facts for disposing of this writ petition are : The first respondent is a company engaged in the manufacture of sugar. At the material time, petitioners 1 to 17, 19 and 20 were engaged as Hamals doing the work of loading and unloading of sugar bags in the factory of the first respondent, ostensibly through petitioner No. 18 and respondent No. 5. Though actually employed by the first respondent, petitioner No. 18 and respondent No. 5 were shown as contractors, carrying out the work of loading and unloading on contract. There were regular contracts entered into between the first respondent and petitioner No. 18 and respondent No. 5 which were registered under the

provisions of the Contract Labour (Regulation and Abolition) Act, 1970. The first respondent was registered as a principal employer and the two contractors were issued licenses for engaging contract labour. It was the grievance of the petitioner that they were discriminated against in the matter of wages and other benefits as the wages and other benefits available to the employees directly employed by the first respondent were very much higher. The petitioners filed Complaints (ULP) Nos. 204 to 224 of 1985 before the Industrial Court at Pune alleging unfair labour practice within the meaning of Items 5,6 and 9 of Schedule IV of the Act. The industrial Court after recording evidence and hearing the parties raised the following issues, answered them in the negative and dismissed the complaints by its common order which is impugned in this writ petition.

"Issues:

1. Whether the complainants prove that respondent I has threatened them with discharge or dismissal, if they join a union, viz. Rashtriya Sakhar Kamgar Sangh?
2. Whether they further prove the respondent 1 has shown favouritism or partiality to one set of workers, regardless of merits?
3. Whether they further prove that respondent 1 has failed to implement award, settlement or agreement?
4. Whether they further prove that respondent 1 has indulged in any act of force or violence?"

Being aggrieved, the petitioners are before this Court by the present writ petition.

3. At the out set, in view of the preliminary objection raised on behalf of the respondents about the maintainability of the writ petition based on certain observations made by the Supreme Court in *Shramik Uttarsh Sabha Vs. Raymond Woolen Mills Ltd. and others*, , Mr. Ganguli for the petitioners stated that he was not pressing the allegation of unfair labour practice within the meaning of Item 6 of Schedule IV of the Act and that he was only pressing the allegations of unfair labour practices under Item 5 and 9 of Schedule IV of the Act. 4. Mr. Ramaswami, learned Advocate appearing for the first respondent, contends that the industrial establishments of the first respondent in which the petitioners were engaged as, contract labourers was sold to the second respondent some time in 1988 and as such the first respondent has no liability in the matter. Though this fact occurred during the pendency of the complaints and the Industrial Court had adverted to this fact, no attempt was made to place on record the agreement between the first and third respondents so as to ascertain the exact liability of the two respondents by ascertaining the terms of the said agreement. Mr. Ramaswami urged that, under the judgment of the Supreme Court, the complaints and the writ petition would be barred and both would have to be dismissed. It is true that in the judgment in *Raymond Woolen Mills case (supra)* the Supreme Court has held that the provisions of Section 21, of the Act did not lead to the conclusion that a union other than a representative union can

appear in proceedings relating to all unfair labour practices, other than those specified in Items 2 and 6 of Schedule IV of the Act. In the entire judgment of the Supreme Court nothing has been said to the effect that the concerned employees, directly affected, could not maintain such a complaint. In any case, the provisions of Section 28, of the Act are clear and they give to the affected employees the right of moving the complaint against the employer. Such right can only be taken away by an express provision in the Act. There is no such provision in the Act. In these circumstances, I am unable to accept the contention of Mr. Ramaswami that the complaints by the employees affected invoking the provisions of Items 5 and 9 of Schedule IV of the Act were not maintainable. I, therefore, overrule the preliminary contention urged by the respondents as to the maintainability of the complaints and the writ petition.

5. This then takes us to the merit of the case. To put it succinctly, the petitioners made out a straightforward case. It was urged that, u/s 3(13) of the Bombay Industrial Relations Act the definition of the expression "employee" includes a person employed by a contractor to do any work for him in the execution of a contract with an employer, or the whole or any part of any work, which is ordinarily part of undertaking, and the owner of the undertaking becomes employer within the meaning of Section 3(14) of the Bombay Industrial Relations Act. It is urged that by virtue of the combined effect of Section 3(13) and (14) of the Bombay Industrial Relations Act, notwithstanding the existence of a contractual relationship, the petitioners were entitled to be treated as employees of the first Respondent, at least in so far as the question of monetary benefits were concerned. In my view, there is merit in this contention. Unfortunately, the Industrial Court does not seem to have adverted its mind to this contention at all and appears to have been overly impressed by the fact that the contract was registered and a license was procured under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970.

6. Mr. Ganguli, for the petitioners, urged that once it is held that the petitioners are the employees of the first respondent, then they would be entitled to the same benefits as are available to the direct employees carrying on the work of loading or unloading or other unskilled work such as coolies. That even such benefits have not been made available to the petitioners, is the grievance of Mr. Ganguli. Unfortunately, the Industrial Court misdirected itself in assuming that, because there was no direct relationship, the petitioner employees could not get benefits of the settlement/award/agreement which operated between the first respondent and its employees. This is an error and infirmity in the order which calls for interference.

7. Though I am of the view that the petitioners were entitled to be treated as employees of the first respondent and entitled to the benefits of all the awards/agreements/settlements applicable to the direct employees of the first respondent, it is not possible to make a final order in this writ petition, as the record before me does not give the necessary factual details to decide the

question. In these circumstances, though reluctantly, I have to remand the matter to the Industrial Court for deciding the final reliefs, if any, to be granted to the petitioners.

8. In the result, the impugned order of the Industrial Court is hereby quashed and set aside. Complaints (ULP) Nos. 204 to 224 of 1985 are restored and remanded to the file of the Industrial Court, Pune, for hearing and disposal in accordance with law and the observations made in this judgment.

9. The Industrial Court shall permit the complainants to implead third respondent as a party respondent to the complaint, call for copies of Settlements, Awards or Agreements binding between the first respondent and its employees and also the third respondent and its employees, the agreement of sale between the first and third respondents, ascertain the actual amounts, if any, due to the petitioners and determine by whom they are payable. For this purpose, the Industrial Court may direct both sides to file their respective calculations and decide the actual amounts due.

10. Considering that the complaints are pending for considerable time, the Industrial Court shall try and fit these complaints into its otherwise crowded calendar and dispose them of as expeditiously as possible.

11. The rule is accordingly made absolute. There shall, however, be no order as costs.