
(1992) 02 BOM CK 0059

In the Bombay High Court

Case No : Civil Rev. Application No. 735 of 1991

Regional Manager M.S.R.T.C.

APPELLANT

Vs

Civil Judge, Senior Division and Others

RESPONDENT

Date of Decision : 04-02-1992

Acts Referred:

Trade Unions Act, 1926 — Section 28(1), 28(1A)(4), 28(2), 28(3)

Citation : (1994) 1 LLJ 140

Hon'ble Judges : A.A. Desai, J

Bench : Single Bench

Advocate : V.G. Wankhede, for the Appellant; V.C. Daga, for Non-applicant No. 2, for the Respondent

Final Decision : Allowed

Judgement

A.A. Desai, J.—This revision application is directed against order dated 20th June, 1991 passed by the non-applicant No. 1 the Civil Judge, rejecting the objection, u/s 9 of the Code of Civil Procedure, as regards the jurisdiction of the Court to try a matter relating to a member of the Trade Union.

2. The non-applicant No. 2 is an Union of the employees engaged in the applicant's establishment. The Union is registered under the provisions of the Trade Unions Act, 1926 (hereinafter referred to "the Act of 1926"), and was affiliated as a member to the non-applicant No.3 Federation which is also a registered Union. The non-applicant No.2 filed a Civil suit claiming a declaration that it being a member of the Federation, has the exclusive rights to enjoy the privileges and claimed that the Corporation be restrained from acting on a letter dated 2nd December, 1990 issued by the Federation whereunder it accepted the membership of non-applicant No. 4 Union. The trial Court granted the temporary injunction. The matter is pending in appeal.

3. The applicant raised an objection to the maintainability of the suit in view of Section 28(1-A) of the Act of 1926 which confers the jurisdiction on the

Industrial Court to try the dispute, amongst others, relating to the membership of a Trade Union. The trial Court by the impugned order dated 20th June, 1991 rejected the objection holding that the jurisdiction of the Civil Court is barred only as regards to those disputes which are referred to the Industrial Court, u/s 28(1-A) of the Act, 1926.

4. Section 28(1-A) came on the statute by State amendment vide Maharashtra Act No.3 of 1969 with effect from 1st February, 1969. The trial Court reproduced this section in paragraph 10 of the impugned order, which reads as thus:-

"28.(1-A) Power of Industrial Court to decide certain disputes:

1) Where there is a dispute as respects whether or not any person is an office bearer or member of a registered Trade Union (including any dispute relating to wrongful expulsion of any such office-bearer or member), or where there is any dispute relating to the property (including the account books) of any registered Trade Union, any member of such registered Trade Union, for a period of not less than six months, may, with the consent of Registrar and in such manner as may be prescribed, refer the dispute to the Industrial Court constituted under the Bombay Industrial Relations Act, 1946, for decision.

2) The Industrial Court shall, after hearing the parties to the dispute, decide the dispute; and may require an office-bearer or member of the registered Trade Union to be appointed whether by election or otherwise under the supervision of such person as the Industrial Court may appoint in this behalf or removed, in accordance with the rules of the Trade Union:

Provided that the Industrial Court may, pending the decision of the dispute, make an interim order specifying or appointing any person or appointing a Committee of Administration for any purposes under the Act including the purpose of taking possession or control of the property in dispute and managing it for the purpose of the Union pending the decision.

3) The decision of the Industrial Court shall be final and binding on the parties, and shall not be called in question in any Civil Court.

4) No Civil Court shall entertain any suit or other proceedings in relation to the dispute referred to the Industrial Court as aforesaid, and if any suit or proceeding is pending, in any such Court, the Civil Court, shall, on receipt of an intimation from the Industrial Court that it is seized of the question, cease to exercise jurisdiction in respect thereof.

5. Mr. Daga, the learned counsel appearing for the non-applicant No.2 original plaintiff, made a submission that the dispute and the relief as claimed in the suit relate to the privileges of the affiliated Unions. The applicant establishment in reply since admitted the membership of the non-applicant No.2 with the Federation, there is no dispute as regards the membership. The matter is thus not covered by Section 28(1-A) and hence the Civil Court is competent to adjudicate the subject-matter.

6. The specific case of the plaintiff is that it was admitted as a member of the Federation since long. The Federation cannot admit more than one Union as a member for the same Unit (Akola Division). The non-applicant is not eligible to be a member of the Federation. However, the so called President and General Secretary of the Federation by their letter dated 2nd October, 1990 informed the establishment that they have accepted the non-applicant No. 4 as its member and the rights and facility as such be given to it.

6-A. The averments thus make it explicit that plaintiff is raising a dispute as regards membership of the Federation. The privileges or rights to be given by the establishment are the incidents of and attached to such membership. As such, the dispute is clearly covered by Section 28(1-A) of the Act of 1926. The admission rendered by the establishment does not change the characteristic of the dispute as pleaded.

7. Mr. Daga then made submission that the Civil Court is the repository of the power. The jurisdiction in the Civil Court is ordinarily to be presumed. The ouster cannot readily be inferred, unless it is express, unequivocal or with a definite and necessary implication. There could hardly be nay debate on the proposition. Mr. Daga invited my attention to a decision reported in *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, . It is observed that if the dispute is neither an industrial dispute nor does it relate to enforcement of any right under the Act, the remedy lies in the Civil Court. In *Janata Janardhan Shikshan Sanstha v. Dr. Vasant P. Satpute*, 1986 M.L.J. 260 , this Court has observed that Section 12 of the School Tribunal Act does not oust jurisdiction of the Civil Court. Both these authorities have no applicability to the instant case.

8. Whether the particular statute ousts the jurisdiction of a Civil Court predominantly depends on the object as propagated, scheme as framed and phraseology as engaged. These aspects convey the intention of the legislature.

8-A. Mr. Daga particularly gave a stress on the phraseology, "the dispute referred to the Industrial Court as aforesaid" as deployed in Sub-section (4) of Section 28(1-A). It is contended that the bar as provided is not of an universal application. It is contingent and operates only when the actual reference of the dispute is made to the Industrial Court, in pursuance to Sub-section (1). He further emphasized on the term "the dispute", as engaged in Sub-section 4 of Section 28(1-A). It means, according to the counsel, not any dispute but a particular dispute between the parties referred to the Industrial Court. The counsel tried to seek support from the phraseology as engaged in Section 91 of the Maharashtra Cooperative Societies Act, 1960. It is asserted that Sub-section (4) of Section 28(1-A) provides ouster to the jurisdiction of Civil Court as regards the dispute for which reference is made to the Industrial Court. Since in the instant case, no dispute has been referred to the Industrial Court, the Civil Court can exercise the jurisdiction.

9. The legislature for the matters covered by the Industrial adjudication

invariably provided the bar to the jurisdiction of the Civil Court.

9-A. The Act of 1926 as per the preamble came into being to provide registration and in certain respects to define the law, as regards the Trade Unions. It provides the "authority for registration, effect of registration, right to property of the registered Union, immunity from civil and criminal liabilities, etc." Section 11 provides for an appeal against the order of the Registrar refusing or cancellation of registration, to the Industrial Court. However, the Act did not provide any forum for redressal of grievance as regards the dispute relating to Office-bearer, the member of the Union or their wrongful expulsion or relating to property including the registers of accounts. The parties, therefore, occasionally took resort to the Civil Court. Such a measure however could not be in consonance with an Industrial jurisprudence. It also could not promote the object of the Act. The State Legislature, it appears, therefore, thought it expedient to incorporate Section 28(1-A) in the Act of 1926.

10. For such a dispute as described therein, Section 28-1-A has provided a forum and also prescribed the procedure. As per Sub-section (2) the Industrial Court being the forum is invested with a power to decide the dispute and further to pass any interim order during the pendency of the proceedings. Sub-section (3) attaches the finality to the order of the Industrial Court. It specifically grants immunity to the order from being questioned in any proceedings before the Civil Court. To suggest such a dispute could however be looked into by the Civil Court earlier to reference to the Industrial Court would completely be irrational and fallacious. The scheme creates bar to the jurisdiction of the Civil Court by necessary implication to entertain any dispute covered by Sub-section (1) at any stage.

11. The term "the dispute referred to the Industrial Court as aforesaid" as appeared in Sub-section (4) of Section 28(1-A), cannot acquire a meaning of the dispute actually referred to the Industrial Court in pursuance of Sub-section (1) as suggested by the Counsel. It definitely conveys the dispute which is required to be referred to Industrial Court in terms of Sub-section (1). Moreover, the term "the dispute" in Sub-section (4) connotes a particular dispute as described in Sub-section (1). To mean it otherwise as canvassed would bring very serious anomaly and at any rate would defeat the purpose and object of the Act. It would further permit the parties to the dispute to choose their forum according to their personal vagaries. I, therefore, record that Sub-section (4) of Section 28(1-A) expressly and unequivocally provides complete ouster to the jurisdiction of a Civil Court to entertain a dispute, which is covered by Sub-section (1) of Section 28(1-A).

12. I am fortified in my conclusion, by second part of the provisions in Sub-section (4) of Section 28(1-A). This part deals with the suit proceedings as pending on the date when the amendment came into force. Such pending proceedings as provided were not affected in view of the amendment so long intimation as regards initiation of proceedings in that behalf from the Industrial

Court was not received by the Civil Court. However, on receipt of such intimation, the Civil Court ceases to hold the seisin over the matter. The legislature is thus explicit in their intention and object that after incorporation of Section 28(1-A) the Civil Court is completely precluded from exercising its jurisdiction as regards the dispute which carries the description as provided under Sub-section (1) of Section 28(1-A) of the Act.

13. Mr. Daga lastly tried to urge to form a Union is a right to the citizen which is fundamental in nature as recognised by the Constitution of India. For violation or breach of such right, there must be an expeditious, efficacious and effective remedy. The remedy in the submission of Mr. Daga as prescribed u/s 28(1-A) is not expeditious. The parties to the dispute cannot avail the remedy as a matter of right. It mainly depends on volition of the Registrar. As such, the parties to the dispute can take resort to the civil jurisdiction. The learned counsel tried to place reliance on a decision reported in Asst. Personnel Officer, Southern Railway Vs. K.T. Antony, and Sarjoo Prasad v. State Bank of India 1979 LIC 990. It is held that forum u/s 10 of the Industrial Disputes Act is not alternative as a remedy to Article 226 of the Constitution. The proposition laid down therein has no application to the question involved herein.

13-A. The right to form an Union might be a privilege of Indian citizen which is fundamental in nature. However, this right is regulated by the law. The Union or its member by obtaining registration submitted to the mandate of that particular law for the purposes of benefit and privileges and also for obligation. Such members or Union for the purposes of redressal of their grievances cannot look beyond that particular law which has conferred a status and privilege on them. The members or Union cannot legally and successfully canvass that the forum or remedy as prescribed by the statute is not palatable to their taste, expediency or efficacy. Section 28(1-A) of the Act has specified a forum with a specialised and well equipped machinery.

The members or Union has to submit to the jurisdiction created by that statute.

13-B. Mr. Daga tried to suggest that in view of the scheme of Section 28(1-A) two interpretations as regards the jurisdiction are possible. As such in a revisional jurisdiction, this Court need not interfere with the interim order passed by the trial Court. In view of my discussion, I am unable to agree with the submission.

13-C. The revision application is allowed. Impugned order dated 20th June, 1991 is hereby set aside. The objection as raised by the applicant by application dated 30th April, 1991 is upheld. The suit is, therefore, hereby dismissed. No order as to costs.