

(1995) 07 BOM CK 0068

In the Bombay High Court

Case No : Writ Petition No. 3024 of 1989

Sangali Dist. Central Co-operative Bank Ltd.

APPELLANT

Vs

Tukaram Atmaram Jadhav and others.

RESPONDENT

Date of Decision : 27-07-1995

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 78, 79

Citation : (1997) 3 LLJ 1247

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

Bench : Single Bench

Advocate : Prashant Naik, for the Appellant; Ms. Lata S. Desai, for the Respondent

Judgement

1. This Writ Petition, though formidable in size, raises a question of law, which is no longer res integra and settled by a judgment of this Court.
2. The Petition invokes Articles 226 and 227 of the Constitution of India and impugns an Order of the Industrial Court, Kolhapur, dated March 20, 1989, made in Appeal (IC) No. 11 of 1988 u/s 84 of the Bombay Industrial Relations Act, 1946 (hereinafter referred to as Act").
3. The Petitioner is a co-operative society registered under the Maharashtra Co-operative Societies Act, 1960. The First Respondent was working as a Cashier in the Ranjani Branch of the Petitioner. He was served with a Charge-sheet dated November 15, 1985, by which several allegations of fraud and dishonesty in connection with the business and property of the employer were alleged against him. We are, however, not concerned with the details of the charge. A domestic enquiry was commenced into the charges levelled against the First Respondent. It is an admitted position that there is no representative union of employees in the local area of Sangli in the cooperative banking industry. One union, known as General Workers Union, Sangli, represents some of the employees in the Co-operative Banking industry. The First Respondent is a member thereof. The First Respondent applied to the Enquiry Officer that he should be permitted to be

represented in the domestic enquiry by an authorised office bearer of then General Workers Union. The application made by the First Respondent was not allowed and the First Respondent was issued a letter on January 24, 1986 informing him that he could defend himself or be represented by an employee of the Petitioner Bank or by an office bearer of the representative union under the Act and by none else. The domestic enquiry thereafter proceeded and concluded. The First Respondent was found guilty of the charges and removed from service. The First Respondent gave an approach letter u/s 42(4) of the Act and, having failed to obtain satisfaction, followed it up by Application (BIR) No. 13 of 1986 under Sections 78 and 79 of the Act before the Labour Court at Sangli. The Petitioner contested the application by, its Written Statement filed on August 18, 1986. Curiously, the Petitioner did not make any application, either in the Written Statement or otherwise contemporaneously, requesting the Labour Court to try the issue of legality and validity of the domestic enquiry as a preliminary issue, nor did the Petitioner seek to reserve its right to lead evidence on the merits of the charges, in case the domestic enquiry was declared to be illegal and invalid. The Labour Court tried the application and, by Order dated September 20, 1988, dismissed the application. The Labour Court framed as many as 15 issues and Issue No. 10 was :

"10. Whether Opponent (present Petitioner) proves that the domestic enquiry was legal and proper ?

This issue was answered in the affirmative and in favour of the Petitioner.

4. The First Respondent challenged the Order of the Labour Court by its Appeal (IC) No. 11 of 1986 before the Industrial Court at Kolhapur. The Industrial Court allowed the Appeal on two grounds. Firstly, it was of the view that the Labour Court ought to have framed a preliminary issue as to the legality and validity of the domestic enquiry and ought not to have tried the said issue simultaneously with other issues. According to the Industrial Court, this constituted an infirmity in the Order of the Labour Court, which called for interference. Secondly, going a step further, even on the assumption that the Order of the Labour Court was not vitiated for not framing the preliminary issue as to the validity of the domestic enquiry, the Industrial Court was of the view that the refusal of the Petitioner-employer to permit the First Respondent to be represented in the domestic enquiry by an authorised office-bearer of the General Workers Union was a contravention of the right u/s 22(ii) of the MRTU & PULP Act, 1971 and, therefore, the enquiry was bad in law. Having arrived at this conclusion, though the Industrial Court could have straightaway reinstated the First Respondent with full back-wages and continuity of service, it decided to remand the case to the Labour Court for trying the merits of the charges after giving opportunity to both sides to lead evidence. It is this order of the Industrial Court which is impugned in the present Writ Petition.

5. On the first issue decided by the Industrial Court, I am of the view that the Labour Court's impugned order could not be said to be vitiated merely because it

failed to frame the issue as to the validity of the domestic enquiry as a preliminary issue. In fact, such practice has been uniformly deprecated by a catena of judgments of the Supreme Court as well as of different High Courts and the consensus of judicial opinion is that it would be appropriate to decide all issues by one order, so that the necessity of a remand is avoided. Turning to the second issue on which the Appeal was allowed by the Industrial Court, in my opinion, the Industrial Court is right. The learned Judge of the Industrial Court has placed reliance on the judgment of a Division Bench of this Court in *Bombay Electric Supply & Transport Undertaking and Another v. BEST Kamgar Union and Others* 1986 Lab I.C. 672. The said judgment in terms lays down that the right conferred by Section 22(ii) of MRTU & PULP Act, 1971 on unrecognised unions is not expressly limited to the industries to which the B.I.R. Act does not apply, nor is there anything in the MRTU & PULP Act which would lead to such a conclusion by way of necessary implication. The Division Bench pointed out that a perusal of Section 21(2) in Chapter IV of the MRTU & PULP Act shows that sub-section (ii) of Section 22 was intended to apply notwithstanding anything contained in the B.I.R. Act. In my view, the judgment of the Division Bench clearly supports the Proposition relied upon by the Industrial Court and, therefore, the Industrial Court was right in holding that the domestic enquiry held against the First Respondent was contrary to the express provisions of the MRTU & PULP Act, particularly Section 22(ii) of the Act. It is not disputed that the B.I.R. Act applies to the Petitioner Bank. Once the B.I.R. Act applies to the Petitioner Bank, Chapter III of the MRTU & PULP Act could not apply to the undertaking of the Petitioner. Thus, there can be no "recognised union" within the meaning of Chapter III of the said Act. Consequently, all unions, including the representative union under B.I.R. Act, would be unions "other than recognized unions" as far as the industrial undertaking of the Petitioner is concerned. Consequently, the First Respondent had the right to be represented by General Workers Union by virtue of Section 22(ii) of the MRTU & PULP Act and the Enquiry Officer and the Petitioner acted contrary to the terms of the said Statute in declining permission to be represented by an office-bearer of the First Respondent. The domestic enquiry, being contrary to the provisions of the Statute, was illegal. It is doubtful whether, in the absence of an application reserving leave to lead evidence on the merits of the charges in the Written Statement or contemporaneously therewith, the Industrial Court could have granted such liberty to the Petitioner at the late stage when the Appeal was heard before it. In any case, since the First Respondent has not challenged that part of the order, I need not interfere therewith.

6. In the result, I see no reason to interfere with the impugned Order of the Industrial Court dated March 20, 1989. The Petition fails and is hereby dismissed. Rule discharged. There shall be no order as to costs.

7. The Labour Court to dispose of the Application as expeditiously as possible.

8. Certified copy expedited.