

**(1991) 04 BOM CK 0018**  
**In the Bombay High Court**  
**Case No : C.W.P. No. 272 of 1990**

Satish J. Mehta and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

**Date of Decision :** 11-04-1991

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Industrial Disputes Act, 1947 — Section 32  
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 3(18), 32, 39, 48(1)

**Citation :** (1991) 63 FLR 908 : (1995) 3 LLJ 820

**Hon'ble Judges :** N.P. Chapalgaonkar, J

**Bench :** Single Bench

**Advocate :** Babu Marlapalle, for the Appellant; S.K. Barlota, Assistant Public Prosecutor for R-1 and T.K. Prabhakaran, for R-2, for the Respondent

**Final Decision :** Dismissed

## Judgement

N.P. Chapalgaonkar, J.—This is a writ petition praying for the exercise of powers u/s 482 of the Code of Criminal Procedure, 1973 to quash proceedings instituted against petitioners for an offence u/s 48(1) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter called "Prevention of Unfair Labour Practices Act" for the purpose of brevity). It is alleged that they had not obeyed interim order passed by Industrial Court, Aurangabad.

2. Gleitlager (India) Limited is a Public Limited Company having its Industrial Unit in the Industrial Area, Chikalthana, Aurangabad and it is alleged that about 12 persons employed for some work in the Industrial Unit run by this company through M/s. Shivaji Enterprises, Aurangabad filed a complaint bearing Complaint (ULP) No. 164 of 1989 under the Prevention of Unfair Labour Practices Act before the Industrial Court at Aurangabad for alleged denial of benefit of permanency to these employees. It was alleged in the complaint that though workers doing similar duty are paid Rs. 31/- by the Company, complainants are getting Rs. 8/-

per day only. They are not getting pay slips, attendance card, benefits of leave, bonus, etc.

3. In this complaint, an application for interim relief was also moved and the learned Member of the Industrial Court was pleased to order both the respondents, namely, Gleitlager (India) Limited and M/s. Shivaji Enterprises to maintain status quo in respect of the employment of the complainant until further orders. This order came to be modified on 18.6.1989 and Respondent No. 2 i.e. M/s. Shivaji Enterprises were directed not to change the service conditions or effect transfers of any of the 12 complainants and since it was alleged that respondent No. 2 is a Labour Contractor, it was directed that the contract between respondent No. 1 and 2 shall not be terminated without prior intimation to the Court.

4. It appears that on 28th July 1989 M/s. Shivaji Enterprises intimated M/s. Gleitlager (India) Limited that they wish to terminate contract with effect from 31st July 1989 and Company would be free to make alternative arrangements. On 1st August 1989 M/s. Shivaji Enterprises transferred all 12 complainants who were working in M/s. Gleitlager (India) Limited in pursuance of this termination of the contract and directed them to join duties at different industrial establishment to whom the workers were being supplied by M/s. Shivaji Enterprises. On 1st August 1989, a further order was passed by the learned Member of the Industrial Court directing respondent No. 1 M/s. Gleitlager (India) Limited to continue employment of the complainants until further orders. On 2nd August 1989 after hearing employer Company, it was further ordered by the learned Member that respondent No. 1 M/s. Gleitlager (India) Limited should reinstate complainants in service on usual terms and conditions and he was also pleased to expedite the hearing of the application.

5. One of the original complainants, namely Shri Garje filed Misc. Criminal Complaint bearing No. 31/90 before the Labour Court at Aurangabad alleging that though Industrial Court had directed to continue these employees until further orders by order, dated 1.8.1989, respondents (petitioners in this case) and other Directors who are responsible to implement the orders of the Court are not complying with the said orders and, therefore, a prayer was made that respondents (petitioners in this petition) be directed to implement the orders and they be punished for committing offence within the meaning of Section 55 of the said Act. This complaint was filed against Shri Satish Mehta, Personnel Manager, Shri A.J. Desai; General Manager and Shri Rajesh N. Kapadia, Director, Gleitlager (India) Limited, Industrial Area, Chikalthana, Aurangabad. It was alleged in the complaint that these persons and other Directors whose details are not known, are responsible for non-implementation of the interim orders passed by the Industrial Court. A Writ Petition bearing Writ Petition No. 2063/1989 was also filed by the Company in this Court challenging the order dated 2.8.1989 but was later withdrawn.

6. Shri Marlapalle, learned counsel for the petitioners, challenges the issue of

process and the criminal proceedings u/s 48(1) against the present petitioners firstly on the count that Misc. Criminal Application No. 31. of 1990 filed on 21.1.1989 by the respondent No. 2 in this petition is not a proper complaint within the meaning of Section 39 of the Prevention of Unfair Labour Practices Act and, therefore, the Labour Court should not have taken any cognizance of this complaint.. Next submission of Shri Marlapalle is that the original order of which the breach is complained of was directed against the Company and not against any individual. Unless a person is specifically directed to obey a particular order, it cannot be said that he is guilty of its disobedience and since petitioners were not parties to the Original Complaint (ULP) No. 164 of 1989 they cannot be held to be guilty of disobedience of any order passed therein.

7. Shri Prabhakaran, learned counsel for the respondent No. 2, defended the issue of the process and initiation of the proceedings submitting that if the Company has not obeyed interim orders u/s 30(2) of the Prevention of Unfair Labour Practices Act, petitioners who are either Managers or Directors of the Company, can be presumed to have committed the offence and in support of this submission of Shri Prabhakaran relied on the provisions of Section 32 of the Industrial Disputes Act, 1947 and submitted that since Unfair Labour Practices Act is a supplementary legislation, provisions of the Industrial Disputes Act can act as a guide in the matter under this Act also. Shri Prabhakaran further submitted that this writ petition is not maintainable in the presence of alternate remedies which are provided by Sections 42 and 44 of the Prevention of Unfair Labour Practices Act, 1971. Section 42 provides for an appeal against the order of the Labour Court and Section 44 gives Industrial Court power of superintendence over the Labour Courts. It is the submission of Shri Prabhakaran that petitioner should have filed either an appeal or an application before the Industrial Court if they are aggrieved by the issue of the process in this case.

8. I shall first deal with the submission of Shri Prabhakaran in respect of existence of the alternate remedy. Sub-section (1) of Section 42 of the Act, 1971 reads as under-

(1) Notwithstanding anything contained in Section 40, an appeal shall lie to the Industrial Court,--

(a) against a conviction by a Labour Court, by the person convicted;

(b) against an acquittal by a Labour Court in its special jurisdiction, by the complainant;

(c) for enhancement of a sentence awarded by a Labour Court in its special jurisdiction, by the State Government.

9. Thus, it is clear that unless there is final order of conviction or acquittal or an order of enhancement of sentence by the Government, no appeal is maintainable before the Industrial Court. Hence, no appeal would lie before the Industrial Court if a person is aggrieved by issuance of process for an offence u/s 48(1) of

the Act. It is true that Section 44 of the Act of 1971 gives Industrial Court power of superintendence over the Labour Court. But this is enabling power and not a remedy for the party. Therefore, submission of Shri Prabhakaran that the writ petition is not maintainable will have to be rejected.

10. Section 39 of the Act of 1971 lays down that no Labour Court shall take cognizance of any offence except on a complaint of acts constituting such offence made by person affected thereby or a recognised Union or on report in writing by the Investigating Officer. In the instant case, respondent No. 2 herein himself was affected by non-compliance of the interim orders of the Industrial Court and, therefore, was very much competent to file a complaint u/s 39. If we see Misc. Criminal Complaint No. 31 of 1990, it points out that an interim order was passed by the Industrial Court which has not been complied with and it has not been disputed that petitioner was one of the persons affected by such non-compliance. It requested the Court to punish respondent for this defiance. The only objection appears to be that in this application Section 9 has not been mentioned. But it is not necessary that the relevant provision should be mentioned by person who approached the Court for a relief. If the Court had jurisdiction to entertain that prayer, it can be presumed that the application is moved under that provision. Contention of Shri Marlapalle that this is not a complaint u/s 39 is devoid of any merit.

11. Shri Marlapalle then submitted that petitioners herein, against whom criminal prosecution has been launched, were not the parties to the original complaint under the Unfair Labour Practice Act bearing Complaint (ULP) No. 104 of 1989 and, therefore, they cannot be held guilty for any contravention of any order passed in that complaint. An injunction in civil suit is an order passed against the party to the civil suit and, therefore, breach of that injunction would be actionable against the party who disobeys it. But Section 48 of the Act of 1971 is wide enough to cover the persons who are not parties to the complaint. Section 48(1) reads as under-

"48. Any person who fails to comply with any order of the Court under Clause (b) of Sub-section (1) of Sub-section (2) of Section 30 of the Act shall, on conviction, be punished with imprisonment which may extend to three months or with fine which may extend to five thousand rupees".

Therefore, if any person who is bound to comply an order and fails to comply, it is not necessary that he should be a party to the original complaint and it would be quite proper for the Court to punish him if it is found that he was bound to obey the order and he has disobeyed it.

12. Shri Marlapalle then submitted that it has not been sufficiently alleged and proved that petitioners were responsible for obedience of the interim orders of the Industrial Court. Shri T.K. Prabhakaran, learned Counsel for the respondent, submits that Section 32 of the Industrial Disputes Act can be read to fasten criminal liability on the present petitioners. It was his submission that Section

3(18) allows aid of the provisions of Industrial Disputes Act in matters under the Act of 1971. But this aid is limited to understand meaning of words and expressions used in the Act and not for any other purpose. Therefore, merely because of the provision contained in Section 3(18) of the Act, 1971, Section 32 of the Industrial Disputes Act cannot be brought into play to raise a presumption as is permissible under that provision. Section 32 of the Industrial Disputes Act raises presumption and, therefore, is a substantive provision and merely because the definition of another Act can be looked into when some words or expression have not been defined in the Act of 1971, it does not follow that presumptions permissible under another Act can be raised under this Act also. However, evidence can be laid that a particular officer is responsible for disobeying the order and if it is shown that he is so responsible, he should be punished for disobeying the order of the Court. All this can be done at the time of the trial when a person is a Director or Manager of a Company and if the Company does not obey the order of the Court. Prima facie, for the issue of the process the contentions raised in the complaint in this respect can be looked into by the Court. In the complaint it has been alleged that the respondents (accused-petitioners) are responsible to implement the orders of the Court. Therefore, there was nothing wrong for the learned Judge, Labour Court to issue process against the petitioners if he was satisfied that interim order passed under Sub-section 2 of Section 30 was not obeyed by the Company. Complainant in this case will have to prove that the petitioners were really responsible for its obedience and the petitioners shall be at liberty to prove that they were not responsible for the obedience of the order in question. This would be a question to be decided at the trial.

13. Shri Marlapalle further submitted that the present complaint is not maintainable in view of the fact that interim orders were directed to the Company and it would be offence in case it is found that these orders were not obeyed. Therefore, he submitted that unless M/s. Gleitlager (India) Limited is prosecuted, prosecution would not lie against the present petitioners. In support of this contention, Shri Marlapalle relied on a judgment of Andhra Pradesh High Court in V.R. Sivalingam Cheittiar, Managing Director, Abirami Cotton Mills Ltd., Sullurpet v. State 1980 (II) LLJ P. 104. In this case, prosecution was launched against the petitioner-Managing Director of company u/s 20A and 26 of the Payment of Bonus Act read with Rule 40. Section 27(2) of the Payment of Bonus Act raises a presumption that every person who at the time the offence was committed, was incharge of and was responsible to the Company for the conduct of business of the company as well as the Company shall be deemed to be guilty of the offence unless shown by that person that the offence was committed without his knowledge and that he exercised all due diligence to prevent commission of such offences. Question before the Andhra Pradesh High Court was whether the presumption of the Company was proper. The learned Judge observed as-

"To my mind, it appears, that without there being a prosecution against the

Company itself who is the employer no prosecution against one of the Director is permissible. It is only when the principal offender i.e. the Company is found guilty then the person who is in-charge of and was responsible for the Company for the conduct of business can also be proceeded against. Section 29 does not authorise the prosecution being launched only against the Directors of the Company. A Company is a corporate body. It has a legal existence of its own. A Director cannot be equated to a Company."

14. In the case of State of West Bengal v. United Rubber Works Ltd. and Ors. AIR 1959 Cal 750, it was observed by the learned Judges of the Division Bench of Calcutta High Court that -

"The Company is a juristic person. The provision of Section 32 makes it clear that an offence is primarily committed by a company for which not only the company but every director, manager or person concerned with the management of the company are responsible."

15. In the instant case, it is true that interim orders of the Industrial Court were directed against company and in all fairness, the company should have been prosecuted as one of the accused. But Section 48 can cover cases wherein not the company but an individual may be guilty of non-compliance of an order of the Court, and therefore, a blanket proposition that in each and every case, company is must in the array of the accused need not be accepted. Shri Prabhakaran submitted that he would make application to move learned Labour Judge for adding company as one of the accused in this case.

16. No ground has been made out by the petitioners for the exercise of the power u/s 482 of the Code of Criminal Procedure for quashing proceedings instituted in the Labour Court against them. In the result, Criminal Writ Petition stands rejected. Rule is discharged. However, the learned Judge is directed to dispose of the case as expeditiously as possible. There will be no order as to the costs.