

(1991) 12 BOM CK 0040

In the Bombay High Court

Case No : Letters Patent Appeal No. 63 of 1991 in Writ Petition No. 1772 of 1991

Shramik Utkarsha Sabha

APPELLANT

Vs

Raymond Woollen Mills Ltd. and Others

RESPONDENT

Date of Decision : 13-12-1991

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 21(1), 21(2), 27A

Citation : (1995) 3 LLJ 263 : (1992) MhLj 1650

Hon'ble Judges : P.S. Patankar, J;H.D. Patel, J

Bench : Division Bench

Advocate : S.J. Deshmukh and S.S. Pakale, for the Appellant; K.K. Singvi and Meena H. Doshi for R. 1 and Sawant, C.J. and R.J. Kochar, for R. 2, for the Respondent

Final Decision : Dismissed

Judgement

1. H.D. Patel, J: This appeal is directed against the order passed by the learned single judge of this Court on 19th June, 1991 refusing to grant interim relief at the time of issuance of the "Rule". Instead an order seems to have been passed as "expedited". In the absence of any order passed on interim relief it is presumed by the appellant that the relief has been rejected and hence this appeal came to be filed.

2. In order to decide the points involved in this appeal, it is incumbent upon this Court to probe deeper also on merits of the Writ Petition. Virtually by deciding the appeal on interim relief the Writ Petition itself would stand decided. Realizing the situation the parties to this appeal very fairly consented to dispose of the writ petition itself which this Court has undertaken to do. Accordingly we have heard the parties even on merits with a view to dispose of the writ petition as well.

3. The appellant who had filed the writ petition, is a Trade Union duly registered under the relevant provisions of the Trade Union Act. Feeling aggrieved by the order passed by the Industrial Court on 27th February, 1991 in complaint

proceedings bearing No. 22 of 1991, rejecting the application filed by the appellants for impleading them as a party respondent in the original complaint, a writ petition bearing No. 1772 of 1991 came to be filed. Simultaneously, they have also impugned the interim orders passed by the learned Industrial Court on 23rd January, 1991 in the said complaint proceedings, under provisions of Sub-clause (2) of Section 30 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, hereinafter referred to as "the Act No. 1 of 1972". The facts leading to the filing of the Writ Petition are briefly stated hereinbelow.

4. The Original Complaint (ULP) No. 22 of 1991 is filed by respondent No. 1, M/s. Raymond Woollen Mills Ltd., against respondent No. 2, Kamgar Utkarsha Sabha, a recognised and an approved Trade Union under relevant provisions of the Bombay Industrial Relations Act, hereinafter referred to as "the B.I.R. Act", alleging therein that the agitating employees along with other suspended or dismissed employees have engaged in or are engaging in unfair labour practices listed in Items 5 and 6 of Schedule III of the Act No. 1 of 1972 on and from 11th December, 1990. The Schedule III of the Act enumerates the various types of unfair labour practices indulged in by the Trade Unions and Item 5 thereof is to stage, encourage or instigate such forms of coercive actions as wilful "go slow", squatting on the work premises after working hours or "gherao" of any of the members of the managerial or other staff. Similarly Item 6 refers to unfair labour practices of staging demonstration at the residence of the employers or the managerial staff members. Various instances of the employees having indulged in such unfair labour practices is disclosed in the complaint on specific dates. Initially ad-interim orders restraining the respondent No. 2 union was passed by the learned Industrial Court from indulging in unfair labour practices complained of by the employer respondent No. 1. That order was made absolute in terms of all the prayers made in the complaint vide order passed on 23rd January, 1991.

5. The appellant viz. Kamgar Utkarsha Sabha moved an application in the aforesaid complaint proceedings for impleading the said Union as a party respondent in the original complaint. The reason disclosed was that several workmen of the respondent No. 1 company had approached the appellant recently requesting to enroll them as members of the Union. It is further alleged that these workmen were disgusted with the manner of functioning of the respondent No. 2 Union and, therefore, they had decided to take such a step. A further allegation is also made that the management of the respondent No. 1 company were to support the respondent No. 2 Union despite the fact that the said union had lost the hold on the workmen. In this context it is also stated in the application that the respondent No. 1 company wanted to make deductions from the salaries of the employees towards subscription payable to the respondent No. 2 Union without authorization, and against their wishes, a complaint came to be filed by the applicant union before the Industrial Court, Thane. A restraint order came to be passed whereunder the respondent No. 1 company, was directed not to hand over the deducted sum of membership

subscription to respondent No. 2 union. The said order as can be seen was ex parte. It is then alleged that the respondent No. 2 union realising the fact that they have lost the majority membership is now trying to reestablish itself with the help and assistance of the respondent No. 1 company. The complaint is filed by the respondent No. 1 company in collusion with respondent No. 2 union.

6. The appellant then alleged that the ad-interim order was obtained by the respondent No. 1 company misrepresenting the learned Industrial Court in order to curb the legitimate trade union activities of the employees who are now the members of the appellant union. In this connection, it is stated in the application that the Secretary of appellant union wanted to address meeting on 24th January, 1991 but he could not do so because of the ad-interim order passed by the learned Industrial Court. The said order being detrimental to the appellant-union, they desire to intervene by joining as a party to the complaint proceedings.

7. The respondent No. 1 company opposed the application on various grounds. Initially it was contended that application is not tenable because the ad-interim order dated 9th January, 1991 came to be confirmed on 23rd January, 1991. The locus standi of the appellant union to be joined as party was next challenged. In this regard it was pointed out that the respondent No. 1 company is a unit in Woollen Textile Industry in the local area of Thane Municipal Corporation and is governed by the provisions of the Bombay Industrial Relations Act, 1946 that is, B.I.R. Act. The respondent No. 2 is the representative and a recognised union for the industry in question. The said Union is, therefore, a proper party to represent the employees employed in the undertaking. No other Union can claim that status or have a right to insist upon being joined as a party for representing the employees on the assumed ground that some of the employees have joined the appellant Union. A further plea is also raised that the forum to establish that the appellant union has a right to represent the employees employed in the Undertaking is totally different. The B.I.R. Act provides for getting de-recognition of the representative union and obtaining of recognition as registered representative union by the appellant for employees in Woollen Textile Industry in the local area of Thane Municipal Corporation. Unless the steps required to be taken are adopted the appellant union is not entitled to represent the employees.

8. Apart from the aforesaid legal pleas it was also contended in the reply that respondent No. 2 is a proper party to the complaint capable of representing all the employees who are engaged in unfair labour practices. The appellant union cannot avail of the right to get control of the employees by such means on back-door methods. It is also alleged that the respondent No. 1 is being made a scapegoat because of the intra-union rivalry.

9. The respondent No. 2 union also came forward to resist the application vehemently. It was contended that the union being a recognised and a representative one it enjoys several privileges. It can collect the subscription for which written authority has been obtained. Along with the application the names

of those employees who have joined the appellant union is not disclosed by them. The respondent No. 2 further asserts that none of the employees who are its members have left the union to join the appellant union. Being a representative union the respondent No. 2 believed in settling all disputes across the table without disturbing industrial peace. The respondent No. 2 also emphasised that the appellant union had individual right to file a complaint if, according to them, the management was indulging in unfair labour practices of the type alleged in the application. The respondent No. 2 further made it clear that they have no intention of indulging in or have indulged in unfair labour practices detailed in Items 5 and 6 of Schedule III of Act No. 1 of 1972. It is for this reason they did not oppose the grant of interim relief.

10. For the reasons elaborated in the order dated 27th February, 1991, the learned Industrial Court rejected the application. Hence the writ petition came to be filed.

11. The sole basis for moving the application was that several employees of respondent No. 1 company had approached the appellant union with the intention to become members. Except the vague allegation there is no basis to support this contention. The number of employees who approached the appellant is not mentioned. No documentary evidence is available on record. With a view to support the contention, reliance is heavily placed on an order obtained from the Industrial Court in Complaint (ULP) No. 7 of 1991 on 5.1.1991. The said order is passed without issuance of notice to the respondent and in particular respondent No. 2 who has come forward to state that the deductions were made under the written authority of the employees who are members of the Union. It is, therefore, premature to draw any conclusions" from the interim order passed by the learned Industrial Court. In any event the respondent No. 2 enjoys the special privilege of getting their annual membership subscription deducted directly from the salary of the employees who are members of that Union and such a privilege cannot be curtailed even by the Court unless the employee himself applies to the employer not to do so or revoked the authority granted to the representative union. Such deductions are permissible deductions not liable to be questioned at least by an unrecognised union. We hence cannot accept that the appellant union has substantial membership and that they have a right to defend such employees.

12. A legal right was still sought to be established on behalf of the appellant union by referring to certain provisions of the B.I.R. Act, as well as Act No. 1 of 1972. We are dealing with this point notwithstanding our finding given above. "It was contended that merely because the respondent No. 2 is a recognised and representative union it cannot deprive other Trade Unions from representing the employees who are its members under Act No. 1 of 1972. In this context reliance was heavily placed upon sub-section (2) of Section 21 of the Act No. 1 of 1972 and Section 27A of the B.I.R. Act. It was urged that the two provisions read together the recognised union like respondent No. 2 have a right to represent the

employees only to the extent specified therein. In particular it was submitted that the right of a recognised union to represent employees under the B.I.R. Act was unlimited but it is not so under the Act No. 1 of 1972. We will shortly point out that the submissions are devoid of any merits and must be rejected.

13. It is not in dispute that the respondent No. 2 is a recognised and an approved union under the provisions of Chapter IV of the B.I.R. Act and they have been conferred a right to be the representative of employees to appear or act on their behalf, first in the order of the preference u/s 30 of the B.I.R. Act except for one exception and that is as provided in Section 33-A. It deals with the appearance of person in proceedings in which the dispute is between the employees and employers. Therefore, no doubt is left that a recognised and an approved union has every right to appear and act in every proceeding irrespective of the fact whether those employees are members of the Union or not with certain exceptions as carved out also u/s 27-A of the B.I.R. Act. That section specifically provides that no employee shall be allowed to appear and act in any proceeding under the B.I.R. Act except through the representative of employees and the representative of employees is provided for in Section 30 of the Act. A representative union is first in the order of preference. No doubt, Section 27-A also provides for some exceptions because the Section begins by the words "Save as provided in Sections 32, 33 and 33A" with which we are not presently concerned. An unequivocal right is hence established that the representative union have the sole privilege of representing employees in an industry and that right is not taken away or in any manner affected in proceedings under Act No. 1 of 1972. For all purposes a recognised union continues to be a representative union and shall remain as such till the recognition is lost or revoked.

14 Sub-section (2) of Section 21 on which reliance is heavily placed on behalf of the appellant is quoted below:

"21(1)"

21(2) Notwithstanding anything contained in the Bombay Act, no employee in any industry to which the provisions of the Bombay Act for the time being apply, shall be allowed to appear or act or allowed to be represented in any proceeding relating to unfair labour practices specified in items 2 and 6 of Schedule IV of this Act except through the representative of employees entitled to appear u/s 30 of the Bombay Act."

A representative union has been given a special right to appear and act on behalf of an employee in proceedings in relation to unfair labour practices specified in Items 2 and 6 of Schedule IV of the Act No. 1 of 1972, the reason being that some other employee or employees not appearing in the proceeding can upon adjudication of the complaint be adversely affected. Item 2 deals with the abolition of work of regular nature being done by the employees and to give such work to contractors as a measure of breaking strike. Similarly Item 6 relates to

employment of badlis, casual or temporaries and to continue to employ as such for years together the object of depriving such employees the status and privileges of permanent employees. It is not necessary to elaborate on these items as either of them are self-explanatory. The section authorises only the representative union to appear and act in such proceedings. But simply because such power has been specifically conferred no inference can be drawn that in proceedings other than those relating to unfair labour practices specified in Items 2 and 6 of Schedule IV, the representative union cannot represent the employees. Such an interpretation as sought to be put forth cannot be accepted. The right of the employees working in the industry to which the provisions of B.I.R. Act apply to be represented by the representative union remains unfettered and it does not change for the reason that the proceedings are under Act No. 1 of 1972. The status and privilege of the representative union remain unchanged. The supremacy of the representative and approved union is well recognised in *Balmer Lawrie Workers Union, Bombay and Anr. v. Balmer Lawrie & Co. Ltd. and Ors.* 1985-I Lab LJ 314. The respondent No. 1 Company was hence justified in filing the Complaint (ULP) No. 22 of 1991 against the representative Union. It is also made clear that nothing prevented the said Company to file such a complaint even against other Trade Unions provided they are satisfied that those unions were responsible for engaging in or have engaged in such unfair labour practices complained of by them.

15. We may also add that Sub-section (2) of Section 21 of the Act No. 1 of 1972 curtails not only the right of an employee to appear and act or allowed to be represented in proceeding of unfair labour practices stipulated therein but also prohibits the right of Trade Unions other than the representative union. It is difficult for us to draw the conclusion that the proceedings other than that stipulated in Sub-section (2) of 21, the representative union has no legal right to appear and act on behalf of the employees and that right could be exercised by other trade unions in the field.

16. Having held that the representative union has a right to represent the employees it is necessary now to consider whether the appellant Union spells out any other right to be joined as a party respondent. We have already pointed out that there is no material on record to come to the conclusion that some of the employees of the respondent No. 1 Company have become the members of the appellant union. It appears that the appellant union with the intention to establish the fact that they also have a hold on the employees have adopted a backdoor method to make an entry as a rival union in the industry. If the appellant union is so sure of having substantial membership it should not have hesitated to take steps of getting themselves recognised as a representative union by taking recourse to relevant provisions under the B.I.R. Act. The appellant not having adopted that procedure is a clear pointer to the fact that they cannot establish their claim of having large membership with them. Actually the aim of the appellant union appears to be to somehow gain entry in the industry of respondent No. 1 company so that it could create chaos in already

charged atmosphere and also achieve the object of propagating membership which presently they have none or is very meagre. By this we however do not desire to lay down that the trade unions other than the representative one cannot carry out the trade union activities by propagating for membership by legal, just and constitutional means.

17. In the application filed by the appellant-union it was also contended that the ad-interim order passed by the Industrial Court in the original complaint is detrimental to the appellant because it tends to curb their legitimate right to carry on the trade union activities. In this connection it is alleged that the Secretary of the appellant union could not address the meeting near the Company on 24.1.1991. It appears from the averments made in the application that the appellant learnt about the order through police authorities which perhaps led them to abandon the idea of holding the meeting. With these contentions it was urged on behalf of the appellant that their right to carry on trade union activities was seriously impaired and, therefore, the interim order passed deserves to be struck down being unconstitutional and violative of fundamental rights.

18. We find absolutely no substance in the contention raised and canvassed. An ingenious mode is found out by the appellant to attack the interim order which right they do not have since having failed to establish their locus standi to appear and defend the proceedings. The appellants, therefore, cannot challenge the interim orders judicially passed by such indirect means. In any event, the appellant union could have held the meeting which they had really proposed to hold, a little distance away from the restrained limits specified in the interim order in case they were certain of their following. A slight curb or the restriction imposed in disturbed circumstances cannot be taken advantage of to contend that their constitutional rights to carry on trade union activities is infringed. If the contentions raised and canvassed were to be accepted it would make the Courts below impossible to function. We say so because it would always be open for a trade union more so by a rival union to impose itself in a pending proceeding and stall the same with the result that the purpose for which the proceeding was initiated should stand frustrated. We hence do not agree that the appellant right to carry on the trade union activities is in any manner infringed.

19. It was then urged that the learned Industrial Court had granted reliefs without properly perusing the complaint which is absolutely vague, lacking in material particulars and without joining proper parties. According to the appellant no prima facie case is made out to grant interim relief as prayed for by the respondent No. 1 company. For this purpose the appellant relied upon Sections 27 and 28 of Act No. 1 of 1972 and Regulation 100 of the Industrial Court Regulations, 1975. Since we have already held that the appellant has no locus standi to appear and act as a party respondent, we refrain from deciding this question. Even otherwise, it is for the learned Court below to find out whether the allegations in the complaint constitute unfair labour practices within the

ambit of Items 5 and 6 of Schedule III of the Act No. 1 of 1972 at the appropriate stage. In case the learned Court finds that the allegations are factually vague, lacking in material particular and want of proper parties, the complaint would be dismissed. The final order would, however, depend upon the pleadings of both the parties. For the time being the learned Court below has passed the order by way of interim reliefs in the circumstances then prevailing. We do not find any ground to interfere with it more so while exercising writ jurisdiction. It may be relevant to observe here the ad-interim order was confirmed by the learned Court below even before the application was moved by the appellant to join them as party respondent.

20. In the aforesaid circumstances, we find no merit in the writ petition and it is accordingly dismissed. Consequently even the Letters Patent Appeal is also dismissed but without any order as to costs.