

(1997) 07 BOM CK 0118

In the Bombay High Court

Case No : Writ Petition No. 2648 of 1997

Shri P.D. Siddhaye

APPELLANT

Vs

G.N. Patwardhan and others

RESPONDENT

Date of Decision : 30-07-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, Order 39 Rule 1
Constitution of India, 1950 — Article 19
Evidence Act, 1872 — Section 58
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 32

Citation : (1998) 2 BomCR 663 : (1998) 1 MhLj 162

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : J.P. Cama and K.P. Anilkumar, for the Appellant; Colin Gonsalves, for the Respondent

Judgement

F.I. Rebello, J.—Rule. By consent Rule heard forthwith.

2. The order of the Industrial Court, Pune, below Exhibit U-16 and UA-10 dated 30th April, 1997 is the subject matter of this petition. The petition arises from a complaint filed by the respondent No. 1 as the General Secretary of the Alias Copco Employees Federation. Atlas Copco India Limited, the respondent No. 2 herein was respondent No. 1 in the complaint and the present petitioner is the respondent No. 2 in the complaint.

The substance of the complaint filed by the respondent is that though the complainant was duly elected General Secretary of the Atlas Copco Employees Union the Company refused to negotiate and act upon the Charter of Demand served by the Union on the respondent No. 2 Company. It was, therefore, alleged that the respondent No. 2 had committed an act of unfair labour practice falling under Item 5 of Schedule II and Items 9 and 10 of Schedule IV of the M.R.T.U. & P.U.L.R Act, 1971. An application for interim relief was also moved to direct the Company to negotiate with the Union through the respondent No. 1 herein. The

Industrial Court by order dated 28th November, 1996 was pleased to direct the company to commence negotiations and allowed the application in terms of prayer (a) of paragraph 3 of the application dated 28th November, 1996.

2. The petitioner herein thereafter filed his reply and pleaded that he was the duly elected President of the Union and that the respondent No. 1 was not even a member of the Union. The Annual General Body Meeting of the Atlas Copco Employees Federation for the year 1993 was held on 8th January, 1993 and thereafter it is alleged that in the Annual General Meetings elections have been conducted from the year 1994 onwards and the last annual general meeting was held on 30th May, 1995 including elections to posts of office bearers. It was contended that there was a dispute pertaining to the elections held in Pune on 22nd July, 1993. The Industrial Court, Pune, held against the respondent No. 1 and in respect thereto a petition is pending before this Court. It was also pointed out that the registered office of the Union was transferred from Mumbai to Pune. In a complaint lodged by the petitioner the act of the Registrar of Trade Unions and/or his nominee has been set aside and the respondent No. 1 has challenged the same by way of a writ petition and the same is pending. In paragraph 14 of the complaint it is contended that the settlement dated 6th June, 1994 is still subsisting and will expire on 31st December, 1996 and that new wage revision/settlement obviously can be signed from the period 1st January, 1997 onwards. It is pointed out that the petitioner as President of the Union has terminated the settlement by notice dated 1st November, 1996. Various other allegations have been made against the respondent No. 1 and rival members who are claiming to be the duly elected office bearers of the Union.

3. During the pendency of the complaint the respondent No. 2 Company has entered into a settlement with the Union represented by office bearers of which the respondent No. 1 is the General Secretary. There are altogether 425 employees working with the company out of which 400 have accepted the settlement.

4. It may also be relevant to note that the subsequent to the initial order on hearing the parties by order dated 13th February, 1997 the Industrial Court directed the respondent Company to commence negotiations with Shri G.N. Patwardhan and Shri D.R Pradhan and other office bearers of the complainant Union and to act upon the Charter of Demands. It was subsequent to this order that the settlement has been arrived at between the Union and the respondent No. 2 Company.

5. During the pendency of the complaint the term of the office bearers came to an end. As already pointed out the elections to the office bearers are to be held annually. In these circumstance on 25th March 1997 the complainant-respondent No. 1 herein moved an application before the Industrial Court that it has decided to hold the annual general meeting on 10th April, 1997 as per the Schedule attached to the application. For years together it is contended that there are disputes as to the leadership of the Union and in these circumstances if the

election are held under the directions of the Honourable Court and if the same are conducted by the I.O. or Commissioner of the Court then the issues are likely to be resolved through the legal process. It was further pointed out that the subject being incidental and connected with the complaint the Industrial Court could exercise the powers u/s 32 of the M.R.T.U. & P.U.L.P. Act.

6. The respondent No. 1 herein filed written statement and opposed the application of the petitioner. Various objections have been raised including contentions like *res judicata*, the matter being *subjudice* and in those circumstances the Court should not interfere in the matter. It is also contended that the Court had no authority or power to entertain the present application and that no such powers could be traced to u/s 32 of the M.R.T.U. & P.U.L.P. Act. Reliance was placed on some authorities. The Industrial Court on hearing the parties by its order, which is impugned herein, had directed the Deputy Registrar of Trade Unions, Pune, to hold the elections of the Atlas Copco Employees Federation as per the Constitution of A.C.E. Federation and submit reports along with results on or before 30th June, 1997. This Court is given to understand that this date has subsequently been extended upto 30th August, 1997. In the said order the Industrial Court has also directed that wage increase and other benefits granted under the settlement dated 2nd December, 1996 to all the employees including the petitioner and other office bearers after deleting first para of Annexure "I" to the settlement and that the respondent No. 2 shall take undertaking which paras 2 and 3 has been inserted. This part of the order is also under challenge in this petition.

7. The learned Counsel for the petitioner contends that the members represented by the petitioner are willing to give an undertaking without prejudice to their rights and contentions and that the benefits given to the other employees should forthwith be extended also to these members. This matter will be dealt with subsequently.

8. On behalf of the petitioner it is principally contended as under:

(i) The power to hold elections is not a power incidental to deciding the complaint filed for unfair labour practise and no such power can be traced to section 32 of the M.R.T.U. & P.U.L.P. Act.

(ii) In the absence of pleadings in the complaint the Industrial Court could not have gone into the issue of holding of elections as that was not the subject matter of the complaint.

(iii) The Court even as benevolent despot cannot travel outside its jurisdiction in matters not in issue merely with the pious hope of bringing peace between the warring parties.

(iv) Even in the application for interim relief as initially filed there were no reliefs sought and merely because the subsequent application is moved for holding the elections the Industrial Court would have no authority to grant the relief it has

granted.

(v) The complaint could not have been considered as the complainant was not even a member of the Union.

(vi) It is also contended that the Industrial Court has failed to arrive at a prima facie conclusion that there was unfair labour practice committed by the respondent No. 2 and as such the question of granting interim relief as prayed for did not arise.

9. On behalf of the respondent No. 1 it is contended that such a power to hold elections is a power incidental in the Industrial Court. All that the Court is doing by the exercise of that power is in furtherance of deciding the act of unfair labour practice at the instance of a person competent to file a complaint. It is further pointed out from various documents on record that the petitioner himself had accepted the respondent No. 1 as an office bearer of the Union pursuant to a settlement arrived at between the parties. It is further pointed out that the fees of the Union membership is directly being deducted by the Company and being deposited in the Bank and on the face of this the petitioner could not contend that the respondent No. 1 is not a member of the Union. It is further pointed out that the respondent No. 1 was one of the parties to the settlement between the company and the Union entered into on 6th June, 1994. It is pointed out that the petitioner himself in his reply to the complaint in paragraph 14 has referred to the settlement. The said settlement was to be in force and would expire on 31st December, 1996. The petitioner has terminated the said settlement and submitted a fresh Charter of Demand. Incidentally it may be pointed out that when this fact was brought to the notice of the Counsel for the petitioner it was argued that the said settlement is also the subject matter of a complaint before the Industrial Court. The Counsel for the respondent No. 2 has produced a copy of the complaint before the Industrial Court. That complaint does not show that there is any prayer to challenge the said settlement of 6th June, 1994 and on the contrary the averments in paragraph 14 of the reply to the present complaint by itself will be sufficient to hold that the petitioner himself has accepted the existence of settlement dated 6th June, 1994. The petitioner has taken the benefits under the said settlement and as per averments has now also terminated the said settlement and served a fresh Charter of Demands.

10. The respondent No. 2 contends that in so far as the said respondent is concerned is, industrial peace in its establishment. On account of warring groups it is the respondent No. 2 who ultimately has to suffer and that it is in the interest of justice, industrial peace and in the larger interest of the working class itself that the dispute should be resolved through a recognised mode which is by holding elections.

11. With this background the issues that have to be discussed and determined are as under:---

In the first instance the issue of locus standi of respondent No. 1 to maintain the

complaint and whether in the absence of pleadings and/or averments reliefs will be granted will be initially dealt with.

For several years there have been disputes amongst the members of the Union for various reasons. The group of respondent No. 1 contends that the petitioner has siphoned off monies belonging to the Union, whereas the contention of the petitioner is that some workers headed by the respondent No. 1 are acting as tools of the management of respondent No. 2. Be that as it may. That is not essential for deciding the issue in controversy, which arise in this matter. What is however important, is that on 20th January, 1993 the petitioner filed before the Registrar of Trade Unions the number of members of the Union. Therein, it was contended that there are only 118 members and that about 460 members had left the membership of the Union on account of non-payment of membership subscription. Thereafter there is a notice dated February 15, 1997 issued by Shri S.L. Karkera, an important office bearer i.e. founder and Convener of the Union who called a meeting to discuss and resolve the disputes through informal arbitration/good offices of 3 members mentioned in the notice. The notice contains list of several invitees of which the respondent No. 1 is one of such invitees. Thereafter there is an award of the Arbitrators dated 7-3-1993. In the said award the petitioner is shown as the General Secretary along with the respondent No. 1. What is more important is that subsequent to this arbitration award a revised annual report was filed before the Registrar of Trade Unions. Though in this return the name of the respondent No. 1 is not shown as an office bearer nevertheless the number of members is shown as 576 of which 546 male members and 30 female members. The petitioner himself as such has accepted the respondent No. 1 as an office bearer of the Union and apart from that pursuant to the award a revised annual return was filed before the Registrar of Trade Unions. Subsequent to that, there is a settlement dated 6th June 1994 to which the respondent No. 1 is a party being shown as a member of the Executive Committee. This settlement has been accepted by the petitioner. Apart from that pursuant to the latest settlement entered into with the respondent No. 2 the respondent No. 1 is shown as a party to the settlement. The benefits of the said settlement have been accepted by an over-whelming majority of the members numbering approximately 400. In the teeth and light of this fact, it is impossible to conceive or hold that the respondent No. 1 had prima facie no authority in law to represent or file a complaint on behalf of the Union. This contention of the petitioner must therefore, be rejected.

12. The second contention is that there are no pleadings either in the complaint or in the original application for interim relief in so far as the issue pertaining to holding of elections is concerned and in the absence of such pleadings the Industrial Court could not have gone into the issue as it has done. There are averments in the complaint that the respondent No. 1 is a duly elected office bearer. There are also averments that the petitioner is claiming also to be an office bearer. The grounds in so far as the dispute as to who are the office bearer as can be seen from the pleadings has been laid. Reliance is sought to be placed

on the judgment of the Apex Court in the case of Shankar Chakravarti v. Britannia Biscuit Co. Ltd. and another, reported in 1979 L. I.C. 1192. In that judgment the issue was as to whether after enquiry was found to be in violation of principles of natural justice an employer who had not sought opportunity to lead evidence to prove the charges could be permitted by the Tribunal suo motu to adduce evidence. It is in context that while disposing of the matter the Apex Court in paragraph 31 of the judgment noted as under :--

"A contention to substantiate which evidence is necessary has to be pleaded. If there is no pleading raising a contention there is no question of substantiating such a non-existing contention by evidence."

As already pointed out the basic ground was to show that there is a dispute between two sets of office bearers is already set out in the main complaint. The judgement therefore, will be of no assistance in deciding the issue in controversy. Apart from that in so far as the Industrial Law is concerned, it is an accepted principle that pleadings cannot be placed on the same pedestal as requirement of pleadings before a Civil Court. All that the Court requires is that there must be a basis before it for raising the issue. Therefore, the said contention of the learned Counsel has to be rejected more so in the teeth of the fact that the Application in which the order is passed the issue has been raised and finds support in the original pleadings and the complaint itself.

13. Before dealing with the main issue, I may also consider some other incidental and supplementary issues which were raised as set out in the earlier part of the judgment. One such issue is that the Court should not go beyond what is in issue before it. It is contended that what is in issue is the question of unfair labour practice in the matter of failure by respondent No. 2 to discuss the Charter of Demands. Reliance for that purpose was placed on the judgment of the Apex Court in the case of (Pottery Mazdoor Panchayat and The Perfect Pottery Company Limited and another), reported in 1983 L.C.J. 232. In the Pottery Mazdoor Panchayat's matter what had been referred to the Industrial Court was whether the closure was proper and justified. The Industrial Court went on to enquire into the question whether the business was in fact closed down by the management. It is in that context that the Apex Court stated that the Industrial Court could not go beyond the terms of the reference. This judgement is, therefore of no assistance.

14. Another judgment cited is in the case of J.K. Iron and Steel Company Ltd. v. Iron and Steel Mazdoor Union and others, reported in 1956 (I) L.L.J. 227. There also the Apex Court was deciding the same question namely the procedure being followed in the Industrial Court in framing issues arising out of the pleadings before the Tribunal. While discussing the same, the Apex Court observed that though the Courts cannot act as benevolent despots and base their conclusions on irrelevant observations and ignore the real question that arise out of the pleadings of the parties. It was further observed that it is not open to the Tribunals to fly off at a tangent disregarding the pleadings and reach any

conclusions that they think are just and proper. These observations would be of no assistance in deciding the issue and as such the submissions on behalf of the petitioner on this count also deserve to be rejected.

15. The real question which emerges in this petition is whether the Industrial Court has power to direct the holding of elections when there is a dispute between two sets of workers as to who can represent the Union and whether section 32 of the M.R.T.U. & P.U.L.P. Act enables the Tribunal to exercise such a power. It is admitted position which cannot be denied, that such an exercise of power must be incidental to determine the real issue in controversy and must necessarily be decided for the purpose of deciding the issue in controversy. If these tests are not met then the tribunal would have no jurisdiction. In fact such a view has been taken by a Single Judge in the case of *The Premier Automobiles Ltd. v. The Engineering Mazdoor Sabha and others*, reported in 1982 L.L.C. 1759. The Court has observed as under :---

"As regards section 32, it was intended to enable the Court to decide matters which might be incidental to the main complaint of an unfair labour practice alleged by the complainant before Industrial Court. But if the Industrial Court found that no unfair labour practice had been proved, it was not possible to find any power in the Court to make an order of an anticipatory nature based on any apprehension that in future any unfair labour practice was likely to be committed."

In the present case on hearing the parties the Industrial Court directed the respondent No. 2 to negotiate with the respondent No. 2 sic 1 in respect of the Charter of Demands. The complaint was filed by the respondent No. 1 on the ground that though he was a duly elected office bearer and was representing the majority of the workers the respondent No. 2 was not entering into the negotiations with the Union represented by respondent No. 1 as an office bearer. The Industrial Court on consideration of the material and on hearing the parties passed a speaking order that the respondent No. 2 should initiate negotiations with the respondent No. 1. If this is not prima facie holding that the complaint filed by he respondent had merit, one cannot understand in what other cases it be said that prima facie, an unfair labour practice had been committed.

16. The issue still remains as to whether directing the holding of elections is available to the Industrial Court. The M.R.T.U. & P.U.L.P. Act under which the Industrial Court is set up provides for recognised Unions. The legislature has not thought it fit to decide the majority of the unions or as to who can be recognised Union by directing holding of elections. When the legislature itself has not provided for that mechanism can it be said that the Industrial Court could exercise such a power. What is the course open to the Industrial Court when laced with such situation namely, that there is a recognised Union but there is a dispute amongst as to who are the office bearers entitled to represent the union. In the face of such a situation can the interest of the majority of the workers be allowed to suffer on the specious plea that on account of the dispute the

management would refuse to bargain with either of the groups.

It is true that the Trade Unions Act would not bar in such an event the aggrieved persons filing a civil suit and getting redressal of their grievances including a temporary injunction to restrain one set of office bearers from acting as the office bearers of the Union. The question is when a complaint is pending before the Industrial Court and the Industrial Court is faced with such a situation can the Industrial Court direct the parties to get an order from the Civil Court and in the meantime stay its hands. This would be the most simple thing which the Industrial Court could do. However, life is not so simple nor are the needs of the workers, nor for that matter can industry be left at the mercy of warring factions of workers when all it is interested in is that the wheels of production must not be halted. The world today is changing Production costs have to be minimised to be competitive. Industry must compete with global Industries and sell their products at competitive prices. In this background, can it be said that the Industrial Court would have no jurisdiction to direct the parties or appoint a person to hold elections to decide as to who can in fact represent the Union. Can the interest of workers in respect of their Charter of Demand be allowed to go a begging because of the internal dispute and must Industry face the consequences of industrial unrest.

17. The issue as to whether elections should be held to decide the representative character of the Union or whether it should be dealt with by process of verification has been going on for a long time. The dispute is election or nomination. The National Commission on Labour in one of its report, has itself considered the issue in depth. It has considered the conflicting views of labour on this aspect, but has been unable to come to any concrete suggestion in that respect. Reference has been made to this to point out that the issue of holding elections is very much alive and considering fundamental right of citizens which includes the workers to organise in terms of Article 19 of the Constitution, what should prevail. Must not the general democratic principle be accepted that those in majority must have the right to represent the members organized into society or a Trade Union.

18. When we gave unto ourselves a Constitution the preamble set out that we have resolved to constitute India into a Sovereign Secular Democratic Republic. Democracy therefore is the corner stone of the Republic. Democracy is one of the basic features of our Constitution. We have adopted Parliamentary Democracy. One of the essentials of Parliamentary Democracy are elections based on adult franchise and one person one vote. This has percolated in all over institutions whether it be Parliament, State Legislature or Local bodies or Private Organisations. For fifty years since independence we have chosen elections to decide as to who can represent us. The ballot box is as familiar to us as ourselves why cannot this method of choosing our representative be considered to decide as to who can represent the Union. Normally the Constitution of various Unions themselves provide for election of office bearers by secret ballot,

whenever it cannot be decided by show of hands. Trade Unions represent the collective interest of the workers. Workers, therefore, must have a right to decide whom they elect to represent them. In our democratic set up they are an important pillar being organised, economically advanced compared to large sections of our people who are deprived of basic necessities and may at times be represented by leaders, who shape the destiny of the nation. Should such a vibrant organisation be allowed to be throttled on account of internal disputes of its members and be not in a position to bargain because of internal disputes.

Otto Kahn-Freund in Labour and the Law Hamlyn Lecture Series considering the role of the unions and the intervention of the courts in Chapter 7 - Trade Unions and the Law has observed as under :---

"In view of the role the unions play in the Constitution, what happens inside each of them has the same public importance as what happens inside an administrative authority. Hence, the courts are right in applying to internal union decisions the principles governing the review of discretionary decision in public administration, whether the matter in issue is the regularity and revocability of an election to a union office. The admission of a member to nomination as a candidate for membership of an executive council or for the office of union president, the voting procedure at a national committee, the decision of a district committee on personal grounds to refuse credentials to a member elected to be a shop steward or the disciplinary dismissal of a full time officer who is also a union member."

19. In an unreported judgment, a Division Bench of this Court in the case of M/s. Goa Shipyard Limited & another v. Shipyard Employees' Union, was faced with a somewhat similar situation where there was one Union, but dispute between two groups of warring employees each claiming to represent the Union. The Company Government of India Undertaking was affected by these disputes between the two group of workers and as a result was suffering production losses. A petition came to be filed directing the Registrar of Trade Unions to hold elections amongst the members to decide as to who can represent the Union. In so answering the Division Bench noted as follows :---

"Problems generated by the Trade Union, are not all that new. Developed industrial countries have had its taste even earlier. The faction fights of the Trade Union have been even taken to courts. Lord Denning and Megarry V.C. had to deal with many such sensitive problems. One such decision dealing with Trade Union is reported in (1981) 1 AII.E.R. 139."

Thereafter the Division Bench noted as under :---

"The 8th Respondent is the Registrar of Trade Unions. He is a statutory functionary. It is his duty under the Trade Unions Act, 1928 (hereinafter referred to as the Act), to maintain a register indicating the elected representatives of the Trade Union in an industry. It would then follow that he has also a duty to keep the register up-to date and accurate. The scheme of the enactment would justify

his exercise of subsidiary and ancillary powers to subserve the main purpose."

The Division Bench in that case thereafter upheld the elections of office bearers which were conducted by the Registrar of Trade Unions.

19A. This judgment has been cited to show that the Registrar of Trade Unions can intervene to resolve the trade unions conflict amongst the workers as to who can represent the members. True, that judgment was in a petition under Article 226 of the Constitution. That however, would mean that if a power can be traced in section 32 the Industrial Court in a like manner can direct the holding of the elections.

20. Section 32 of the M.R.T.U, & P.U.L.R Act reads as under:---

"Notwithstanding anything contained in this Act, the Court shall have the power to decide all matters arising out any application or complaint for the decision under any of the provisions of this Act."

A plain reading of the said section would show that notwithstanding anything contained in any other provision or section in the Act, the Court shall have power to decide all matters arising out of an application or complaint referred to for its decision under any of the provisions of the Act. In the instant case there is a complaint filed by respondent No. 1 that the complainant No. 2 was not negotiating on the Charter of Demands. The respondent No. 2 may have its own reason not to have negotiated including the question that there was a dispute between the office bearers represented by the petitioner on the one hand and the respondent No. 1 on the other. The respondent No. 1 filed a complaint setting out the items of the Schedules under which the complaint would be filed. Can it be said that the power directing holding of elections as to who is the office bearers would not be a power ancillary or incidental to deciding the main complaint of unfair labour practice itself.

Under the CPC when there is a dispute between the parties as to who is in possession there is a power in the Court to appoint a Receiver to protect the property if neither party can prove possession. In the main suit there may be no prayer to appoint a Receiver, but for the purpose of preserving and protecting the property the Court can exercise such a power. Can it be said that because a Receiver has been appointed such an appointment cannot be sustained as such a relief has not been prayed for in the main suit itself or such a relief cannot be finally granted. Order 39, Rule 1 of C.P.C. permits not only the plaintiff in the suit but also the defendant to move application for temporary injunction to protect the property from waste and damage pending the disposal of the suit. The defendant to the suit may not get any relief in the absence of filing a counter-claim. Can it be said that the defendant because he is not entitled for any final relief from the Court is barred from moving an application under Order 39, Rule 1 of the CPC to protect the property from waste and damage during the pendency of the suit. Powers are conferred on the Court so as to enable the Court to grant appropriate relief at the final stage and during the pendency of the proceedings

to protect the property and/or to preserve it to decide the real issues in controversy.

In the instant case petty quarrels between two groups of members both contending that they are representing the Union as office bearers cannot stand in the way of the workers for asserting their legitimate right of getting benefits by way of settlement of their Charter of Demands. The very essence of a Trade Union movement is collective bargaining on behalf of its members. If because of some minor disputes the bargaining power itself is taken away the concept of trade union will be negated. Considering all these aspects there is no doubt that there would be a power in the Industrial Court as a part of its power of deciding the main dispute to decide such incidental issue as to who can represent the Union and in that process to issue such directions including the holding of elections. I am, therefore, of the opinion that the power to hold elections can be located in section 32 of the M.R.T.U. & P.U.L.P. Act.

21. In the light of the discussion above, there is no reason whatsoever to interfere with the order of the Industrial Court in so far as this part of the order is concerned.

22. In so far as the benefits to the other workmen who have not received the same it has been contended that the workers are willing to accept the benefits without prejudice to their rights and contentions. In the circumstances I see no reason why the remaining workers should not be allowed to avail of the benefits of the said settlement. Those members who have not given undertaking to file an undertaking as required by the Industrial Court and the company to accept the same, of course, without prejudice to the rights and contentions of these members that, the office bearers, who have signed the settlement had no authority in law to sign the settlement and consequently the said settlement is not binding on them.

23. In view of the above discussions. Rule discharged. There shall be no order as to costs.

24. At this stage Counsel seeks status quo. The application is to hold elections. That can always be subject to the decision of the Tribunal or Higher Court. Hence, rejected.

25. Petition dismissed.