
(1965) 09 BOM CK 0003

In the Bombay High Court

Case No : Special Civil Application No. 1363 of 1964

Sitaram Bapu Rane

APPELLANT

Vs

Municipal Corporation and Another

RESPONDENT

Date of Decision : 27-09-1965

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 78, 79, 80C
Constitution of India, 1950 — Article 227

Citation : (1966) 1 LLJ 588

Hon'ble Judges : H.K. Chainani, C.J;S.P. Kotval, J

Bench : Division Bench

Judgement

Chainani, C.J.—This application arises out of a dispute in regard to promotions between the bus-conductors and the former tram-conductors, who were subsequently absorbed as bus-conductors by the Bombay Electric supply and Transport Undertaking, respondent 2. Respondent 4 is representative union of the workers employed by respondent 2. It appears that an arrangement or understanding was arrived at between respondents 2 and 4, by which it was agreed that future promotions should be in the ratio of four from bus-conductors to two from former tram-conductors. The petitioners, who are some of the former tram conductors, did not like this formula, as they felt that it prejudicially affected the interests of the tram-conductors. They therefore made an application to the labour court under Ss. 78 and 79 read with S. 80C of the Bombay Industrial Relations Act. The substantial prayer made in this application was that the seniority of all workers should be fixed from the dates on which they originally joined service of respondent 2 and that promotions should be made on that basis. Respondent 2 appeared in this application and opposed it. They referred to the understanding which had been arrived at with respondent 4 and contended that respondent 4 as the representative union was a necessary party to the application. The union was then joined as a respondent to the application. Thereafter respondent 4 made an application stating that it was appearing as a representative union for the workers employed by respondent 2

and prayed that it should be joined as applicant party to enable it to make a true representation of facts connected with the issue and to represent in its capacity as the representative union in the transport industry the interest of all the employees concerned. This application of respondent 4 for being joined as the applicant to the original application made by the petitioners was opposed by the petitioners. The labour court, however, granted the application and directed that the union should be transposed as applicant in the application. Against that order the petitioners appealed to the industrial court, but their appeal was dismissed. Thereafter the present application was filed.

2. Sri Singhvi, who appears on behalf of the petitioners, has referred to the provisions of Ss. 27A, 30, 32 and 33 of the Act and has contended that as the arrangement agreed to by the union with the employers, respondent 2, affects prejudicially the interest of the petitioners, the union cannot appear and should not have been allowed to appear on behalf of the petitioners. He has relied on the decision of this Court in Naik N.M. Vs. Colaba Land Mills, in which it was held that under Ss. 27A, 32 and 33 of the Act, the right of an individual employee to appear and conduct the proceedings initiated by him is not destroyed unless and until the representative union appears in the case on behalf of that employee whose grievance is being ventilated before the authorities concerned and that S. 27A does not contemplate an appearance of the representative of the employees which might be contrary to the interests of the individual employees who might have initiated a proceeding under the Act. In fairness Sri Singhvi has also drawn our attention to the decision of the Supreme court in Girja Shankar Kashi Ram Vs. The Gujarat Spinning and Weaving Co. Ltd., . In that case a settlement was arrived at between the representative union and the company in regard to payment of bonus. In consideration of this settlement the union agreed not to press for any compensation for the discharge of the workers by reason of the company being closed. This settlement was arrived at in March 1955. In July 1956, 376 persons who had been in the employ of the company gave a notice claiming compensation from the company. As no settlement could be arrived at between the parties, an application was made under S. 42(4) of the Act before the labour court. In January, 1957 the union made an appearance before the labour court and contended that the application should be dismissed in view of the compromise which had been arrived at with the company. The labour court accepted this contention and dismissed the application. The workers' appeal to the industrial court was dismissed. Thereafter they filed a petition to the High Court under Art. 227 of the Constitution, but this was summarily rejected. Against this decision of the High Court they were granted special leave to appeal to the Supreme Court. The Supreme Court held that the Act plainly intends that where a representative union appears in any proceeding under the Act, even though that proceeding might have been commenced by an employee under S. 42(4) of the Act the representative union alone can represent the employee and the employee cannot appear or act in such proceeding. The appeal against the decision of the High Court was accordingly dismissed. In view of this decision of

the Supreme Court, we are unable to accept Sri Singhvi's contention that the representative union, respondent 4, could not appear on behalf of the petitioners.

3. Sri Singhvi has also contended that the labour court had no power to transpose the union, which had been joined as a respondent in the application, as the applicant. The union, had, however, appeared in its representative capacity. Consequently, it alone could appear on behalf of the petitioners in the application made by them. As the union alone could appear on behalf of the petitioners and as the petitioners could not appear in the application after the union had appeared, the labour court had necessarily to transpose the union as the applicant in the application.

4. The application therefore fails. Rule discharged. No order as to costs.