
(1999) 06 BOM CK 0046
In the Bombay High Court
Case No : Writ Petition No. 318 of 1996

Tata Consulting Engineers	Vs	APPELLANT
A.C. Doshi and another		RESPONDENT

Date of Decision : 15-06-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 10(1), 12(5), 20, 27, 28

Citation : (1999) 4 ALLMR 93 : (1999) 4 BomCR 470 : (1999) 3 BOMLR 421 : (2000) 1 LLJ 318 : (1999) 3 MhLj 344 : (1999) 3 MhLj 334

Hon'ble Judges : A.P. Shah, J

Bench : Single Bench

Advocate : K.M. Naik, instructed by Salgaonkar and Co, for the Appellant; S.G. Deshmukh and N.M. Ganguli, for the Respondent

Judgement

A.P. Shah, J.—This writ petition under Article 226 of the Constitution challenges the order of the Industrial Court, Mumbai, dated 24th August, 1995, made in Complaint U.L.P. No. 76 of 1986, a proceedings under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act").

2. The petitioner is a company which is engaged in the business of providing engineering services. Prior to 1984, there was only one union functioning in the company i.e., Tata Consulting Employees' Union. It seems that the said union was functioning from 1972 and was recognised as the only bargain able union of the employees in the workmen category. The respondent No. 2 union came on the scene in 1984. The respondent No. 2 represents mainly draughtsman and clerks working in the company. On 27th January, 1986 respondent No. 2 filed Complaint U.L.P. No. 76 of 1986, inter alia, alleging that the company was engaged in unfair labour practices under Items 2(a) and 2(b) of Schedule II and Items 9 and 10 of Schedule IV of the Act. It was alleged by respondent No. 2 that there are two unions operating in the field namely (i) respondent No. 2

union and (ii) Tata Consulting Employees" Union. It was further alleged that neither of the unions is recognised under the Act. Hence, both of them enjoyed equal status and were accordingly entitled to equal rights, facilities and treatment at least till such time one of them is duly recognised in accordance with the provisions of the Act. In the complaint, respondent No. 2 has given examples of the attitude of the management in showing special favours and partiality to the rival union. It was pointed out that after the formation of respondent No. 2 union, number of letters were addressed to the management in respect of the grievances of those employees who were their members. But the management has not cared to reply to those letters. It was also pointed out that the other union is permitted to affix notices on the notice board of the establishment and hold meetings in the company premises, whereas respondent No. 2 is denied such facility to its great disadvantage. It was also submitted that while attending the matters pertaining to their members before the authorities and the forums, the General Secretary of respondent No. 2 union used to inform the head of the department and used to make entry in the register. The company, however, acted in a discriminatory manner against the representatives of respondent No. 2 and deductions were unauthorisedly made from their wages for the absence when the representatives had attended cases of their members before the authorities or the forums after due notice to the head of the department. It was submitted that by these acts of the management, respondent No. 2 is experiencing great difficulty in carrying out their organisational work on account of partisan attitude adopted by the management. Thus the management of the company is guilty of showing partiality and favouritism to the rival union attempting to organise their employees, although the said union is not recognised under the Act. A direction was therefore, sought against the company not to indulge in any act of supporting the Tata Consulting Employees" Union. In particular, a direction was also sought against the company to permit the office bearers of the union to attend proceeding before various authorities and to refund the wages deducted from the salary of the representatives of respondent No. 2 on account of their absence when they attended the matters of their members before the authorities or forums. The complaint came to be tried and allowed by the Industrial Court's order which is under challenge in the present writ petition.

3. A reading of the impugned order of the Industrial Court shows that the Industrial Court has accepted the evidence of respondent No. 2 that their representatives used to attend the proceedings before the authority or the forum after informing the head of the department and therefore the Industrial Court held that the deduction of wages was not justified. The Industrial Court also found that respondent No. 2 union was not permitted to display the notice on the notice board of the company and to hold meetings in the company's premises and that only the office bearers of respondent No. 2 were not permitted to see the officers in connection with their grievances. Similarly, the company had not held any talks with the union in respect of their various problems including their

charter of demands. In view of these findings, the Industrial Court came to the conclusion that the company has committed unfair labour practice under Items 2(a) and 2(b) of Schedule II and Items 9 and 10 of Schedule IV of the Act.

4. Mr. Naik, learned Counsel appearing for the company strenuously contended that the Industrial Court lost sight of the fact that Items 2(a) and 2(b) of Schedule II are not attracted because Tata Consulting Employees' Union has been functioning in the company since 1972 and the said union was well established and was the only union functioning in the company upto 1984. Mr. Naik submitted that there have been a number of settlements signed between the petitioner and the said union in respect of the wage revision of the employees and other terms and conditions of service since 1972 till date and the said union is recognised as the sole bargaining agent for all workmen in the company for the company's establishments throughout India. According to Mr. Naik, Items 2(a) and 2(b) would be attracted only when the union is in the stage of organising and if the employer supports and takes active interest in organising the union and shows favours or partiality at the time of organising the said union but, when the union is already framed and well established, the question of showing partiality or granting favours to the said union does not arise Mr. Naik submitted that there is no obligation cast upon the employer to negotiate in respect of charter of demands with all or any of the unions who submit the same unless it is a recognised union. In support of his submission, he placed reliance on an unreported decision of the Division Bench in Writ Petition No. 2002 of 1984 All India Reserve Bank Workers' Organisation v. The Governor, Reserve Bank of India. & others, dated 15th December, 1988. Mr. Naik submitted that if the company is directed to deal with the union which is not a recognised union or a majority union, then it will lead to chaos in the company since there cannot be different service conditions in the company for same cadres of workmen. Mr. Naik also submitted that the office bearers of respondent No. 2 union have not followed Regulation 90 to 94 of the Industrial Court Regulations. They did not take prior permission of the departmental head and hence the company was compelled to deduct wages of those office bearers.

5. From the respective contentions of the parties before the Industrial Court, it is certain that neither of the unions operating in the establishment of the company is recognised under the provisions of Chapter III of the Act and rules and regulations framed thereunder, though the said Act was brought into force on 8th September, 1975. The main issue involved in the present case is whether the employer has indulged in unfair labour practice within the meaning of Items 2(a) and 2(b) of Schedule II of the Act by showing favouritism to the other union which is Tata Consulting Employees' Union. A Division Bench of this Court in M.S.R.T. Corporation v. M.M.K. Federation 1986(1) L.L.N. 95 has exhaustively considered the interpretation of Items 2(a) and 2(b). In that case, two of the several unions in the field had been recognised prior to coming into force of the Act under the Code of Discipline. After the coming into force of the Act also, the employer invited the said two unions to participate in collective bargaining, but

did not extend the invitation to another union which was also in the field, but which had not been so recognised earlier. As a matter of fact, none of the unions had been recognised under the Act. The Division Bench pointed out that while no fault could be attributed to the employer for inviting the representatives of the two unions, which had been earlier recognised under the Code of Discipline, with the enforcement of the Act from 8th September, 1975, the position had obviously changed. The Division Bench pointed out that after coming into force of the Act all the unions/federations have been brought to an equal position and status irrespective of the quantitative strength of membership and enjoyment of equal protection from the management so long as one of them is not recognised under the Act. It pointed out that even the unions which had hitherto enjoyed the privileged status under the Code of Discipline as recognised unions, were brought on par with all other unions operating in the field upon the coming into force of the Act. The Division Bench observed.

"..... The status under the Act is no better than the one of the unrecognised union. Impliedly "the Code of Discipline" has lost its value wherever the Act is brought into force."

The Division Bench then considered the provisions of Item 2(b) of Schedule II of the Act, and pointed out:

"The prohibition to indulge in the aforesaid unfair labour practice is apparent from section 27 of the Act. Item 2(b) envisages that the employer shall not dominate, interfere with, or contribute, support to any union by show of partiality or favouritism attempting to organise its membership where such a union is not a recognised union. The emphasis is on the words "where such a union is not a recognised union". It clearly suggests that unless the union is recognised under the Act, the employer is strictly prohibited from interfering with or supporting to any of the unions either by show of partiality or favouritism, the whole idea being that the employer should treat all unions equally with the view that the unions in the field can organise themselves, and one who satisfied the conditions for being recognised under the Act would move in that direction. Showing of partiality or favouritism at such a juncture would be disadvantageous to the other unions also functioning in the undertaking or industry. With this end in view provision has been made to avoid unhealthy competition among the unions, when they are still at organisational stage."

The argument on behalf of the employer as also the intervening unions that there will be mushroom growth of unions if representation is required to be given to all of them, which happens to be the argument of Mr. Naik in the present case, was ultimately rejected by the Division Bench with the following observations :

"An anxiety was shown on behalf of the employer as also the intervening unions that there will be mushroom growth of unions and if representation is required to be given to all of them on the negotiating table, it would frustrate the very purpose of collective bargaining resulting in chaos in the undertaking or industry.

No doubt the fears expressed are genuine, but the solution lies in getting the union with largest membership recognised under the Act. Sufficient time has elapsed after the Act has come into force, and if steps are not taken in that direction, the inevitable result is bound to follow. We are informed that the proceedings for recognition are already initiated in Bombay and are pending investigation. The parties must accelerate the process so as to avoid future inconvenience that may eventually arise. The Supreme Court has accepted the principle of sole bargaining agent, namely, the recognised union, in the case of *Balmer Lawrie Workers' Union, Bombay, and another v. Balmer Lawrie & Co. Ltd. and others* 1985(I) L.L.N. 564."

6. The above, decision of the Division Bench was followed by Srikrishna, J., in the case of *Association of Chemical Workers v. N.A. Kadam & others* 1993(I) C.L.R. 367. There the management had recognised the 7th respondent union under the Code of Discipline prior to the introduction of the Act. The management continued to give facility to the 7th respondent union but not to the petitioner even after the commencement of the Act. Relying upon the Division Bench judgment", the learned Single Judge observed that, with the emphatic statement of the law by the Division Bench as above, it is not possible to accept the contention of the company that it could have extended and continued to extend such privileged facilities only to the 7th respondent after the coming into force of the Act on the footing that the 7th respondent was recognised as a recognised union under the Code of Discipline. The learned Judge observed that, apart from the view expressed by the Division Bench that whatever might have been the recognition under the Code of Discipline, it would cease to exist upon the coming into force of the Act. Paragraph 18 in Chapter IX of the Code of Discipline itself provides that the recognition under the Code would be subject to and overridden by legal provisions on the subject of recognition of trade unions, wherever such provision exist. Therefore, the learned Judge held that as from the date of the coming into force of the Act, the special status enjoyed by the 7th respondent union ceased to exist and the management ought to have treated the petitioner union and the 7th respondent union on the same footing irrespective of their numerical strength of membership.

7. As far as the decision in *All India Reserve Bank Workers' Organisation v. The Governor, Reserve Bank of India & others* (supra) is concerned, in my view, it hardly lends any assistance to Mr. Naik. That was a case where an unrecognised union had filed a writ petition seeking a direction to the Reserve Bank of India not to commit unfair labour -practice by excluding the petitioner union from the talks being held by it with the other union with respect to the conditions of service of the employees. The Division Bench dismissed the petition primarily on the ground that a petition under Article 226 for such a relief would not be maintainable. The Division Bench observed that under the Industrial Disputes Act, there is no obligation cast upon the employer to negotiate in respect of charter of demands with all or any of the unions who submit the same. If the employer refuses to negotiate, it is open to the trade unions to raise an industrial

dispute and, if the employer does not participate in the conciliation proceedings initiated after the industrial dispute is raised, the conciliation proceedings would result in failure as a result of which it would be open to the Government to refer the industrial dispute for adjudication by the Industrial Court u/s 10(1) or 12(5) of the Act. Thus the petition came to be dismissed mainly on the ground of maintainability of such a petition under Article 226 of the Constitution.

8. Items 2(a) and (b), which are relevant for the purpose of this petition read as under:

"2. To dominate, interfere with, or contribute, support-financial or otherwise- to any union, that is to say-

(a) an employer taking an active interest in organising a union of his employees; and

(b) an employer showing partiality or granting favour to one of several unions attempting to organise his employees or to its members where such a union is not a recognised union."

The prohibition contained in Item 2(b) against showing partiality or granting favour to one of several unions, where such a union is not a recognised union, is an absolute prohibition and operates irrespective of the fact whether such a union is at the formative stage or has been established and functioning for some time. Section 20 confers rights on the union which is recognised under the Act. Since neither of the unions operating in the establishment of the company is recognised as such, the rights conferred by that section cannot be enjoyed by any of the unions. It seems that during the period from 1972 to 1984 Tata Consulting Employees" Union was the only Union functioning in the establishment and enjoyed the status of recognised union. However, after formation of respondent No. 2 union in 1984, the continuance of enjoyment by the Tata Consulting Employees" Union of the obligations and rights specified for the recognised union amounts to an interference or support given by the employer and smacks of partiality and favouritism to the said union in comparison to the other union in the field. The denial of such right to the other union clearly falls within the mischief of Item 2(b) of Schedule II of the Act. It is seen from the record that only the Tata Consulting Employees" Union was permitted to display their notices, and to hold meetings in the premises of the company whereas such facility was denied to the complainant union. Only the office bearers of the Tata Consulting Employees" Union were permitted to see the officers in connection with their grievances. It was also found by the Industrial Court that when the complainant union sent letters to the company informing the names of the members who were treated as protected in the provisions of the Act, the company has not referred the matter to the Commissioner of Labour for verification of the membership of the respective unions. The Industrial Court has also found that the management of the company refused to meet any representatives of the complainant union in spite of repeated requests and even

after receipt of the letters from the complainant union, the company did not hold talks with the union in respect of their various problems including charter of demands. The Industrial Court has also found that the company adopted discriminatory attitude by deducting wages of the representatives of the complainant union when they attended matters pertaining to their members before the various authorities and forums. This activity of the company clearly falls within the mischief of Item 2(b) of Schedule II of the Act. I may hasten to add that as regards the right of the office bearers of the complainant union to attend the matters before the various authorities and forums, Mr. Naik, Counsel for the company, very fairly stated that the company has decided to accept the arrangement as per the interim order passed by the Division Bench dated 11th October, 1996. Mr. Deshmukh, Counsel appearing for the respondent No. 2 union is also agreeable to this arrangement. In view of this agreement between the parties. I am not inclined to sustain the order of the Industrial Court for refund of the deducted wages. Thus the controversy raised by respondent No. 2 union under Items 9 and 10 does not survive. The direction of the Industrial Court granting refund of deducted wages is set aside. Subject to the above, the order of the Industrial Court is confirmed. Writ petition is dismissed with no order as to costs.

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9. Writ petition dismissed.