
(1989) 04 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No. 2607 of 1988

The Div. Commissioner, M.S.R.T.C. Wardha Div.

APPELLANT

Vs

Presiding Officer Industrial Court and Others

RESPONDENT

Date of Decision : 27-04-1989

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 30

Citation : (1989) 59 FLR 499 : (1994) 3 LLJ 314 : (1989) MhLj 798

Hon'ble Judges : A.A. Desai, J

Bench : Single Bench

Advocate : V.G. Wankhede, for the Appellant; B.N. Khan, for the Respondent

Final Decision : Allowed

Judgement

A.A. Desai, J.—This petition raises a question as to whether a contemplated action for dismissal or discharge amounts to an Unfair Labour Practice, cognisable u/s 28 read with Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "The Act").

2. The petitioner Divisional Controller as a Competent authority held departmental enquiry into the conduct of respondent no. 2 leading to an accident on 8.7.1984 while driving State Transport Bus No. MHQ 8326 resulting in death of a Luna Moped driver. In departmental enquiry, the charges were held to have been proved. The petitioner, therefore, taking into account the previous record and seriousness of misconduct on 25.3.1988 issued show-cause notice proposing punishment of dismissal. The respondent No. 2 thereunder was called upon to submit his say within 3 days.

3. The respondent No. 2 instead of submitting his explanation to show-cause notice filed complaint u/s 28 of the Act. According to him, Discipline and Appeal Rules constitute an agreement between the parties as contemplated under Item

9 of Schedule IV. Clause 7 of the Rules provides for awarding of punishment for good and sufficient reasons. The respondent in the complaint has averred, the complainant is approaching this Hon'ble Court, mainly for the reason that there is a total absence of good and sufficient reasons for awarding punishment and, therefore, there is a failure to implement the terms of discipline and appeal procedure which is in the form of agreement between the Corporation and its workmen. The respondent, therefore, sought a declaration that the petitioner has engaged in and has been engaging in the unfair labour practice enumerated under Item 9 of Schedule IV. He further sought quashing of show-cause notice dt. 25.3.1988.

4. The respondent also filed application under Sub-section (2) of Section 30 claiming interim relief by directing the petitioner to desist from taking action in pursuance of the show-cause notice.

The learned Member of the Industrial Court on the same day i.e. on 8.4.88 passed the following ex-parte order:

"The applicant (Respondent) should first submit reply to the show-cause notice dated 25.3.88 to the non-applicant and the non-applicant shall consider it and come to a decision. However, the decision of non-applicant pursuant to the impugned show-cause notice shall not be implemented until further order".

The Industrial Court also issued notice to the non-applicant petitioner.

5. The petitioner thereupon filed a reply containing that the complaint is not maintainable u/s 28 read with Item 9 of Schedule IV of the Act. They prayed for setting aside the ex-parte order and permitting the petitioner to pass the final order.

The complaint was initially fixed for 20.4.1988 without hearing, it was adjourned from time to time and lastly it was posted on 28.4.88. The application order was not considered. The petitioner, therefore presented this petition raising the question as formulated.

6. Mr. Khan, the learned Counsel appearing for the respondent No. 2 original complaint tried to support the impugned order. He invited my attention to a decision of the Allahabad High Court reported in a case of Dharm Pal Kukrety v. Chief of the Army Staff 1978 LIC 9. The High Court while considering the scope of Article 226 of the Constitution, held that mere threat of damage is enough to cause injury so as to sustain the maintainability of writ petition. Mr. Khan then invited my attention to the observation of the Central Administrative Tribunal in case of A.V.S. Reddy v. State of Andhra Pradesh and Anr. reported in 1988 L.I.C. 1280. The Tribunal has observed that in view of the provisions laid down u/s 14 of the Administrative Tribunals Act, 1985, it is the substitute for the High Court so far as the jurisdiction under Article 226 of the Constitution and the employee can sustain the action if the order of framing charge suffers from any vices of constitutionality. In both these decisions, the authorities were dealing with the

scope of Article 226 of the Constitution. According to me, they are of no assistance to adjudicate the question involved in petition. Moreover, the Supreme Court in case ofAIR 1976 SC 206 held that the petitioner challenging show-cause notice is premature.

7. Mr. Khan then heavily placed reliance on the observation of the Full Bench of the Industrial Court of Maharashtra in a case of *Subha Plastics v. Nagendraprasad Dubey* reported in 1985 C.L.R. 81. The Full Bench has considered the phrase "to discharge or dismiss" appearing in Item 1 of Schedule IV taking into account the grammatical connotation of the phrase, the Full Bench has held that it includes even an intended, proposed or apprehended discharge or dismissal. In reaching this conclusion, the Full Bench has mainly placed reliance on the phrase "has engaged in and is engaging" appearing in Sections 28 and 30 of the Act. The Full Bench has further observed that the Act contemplates prevention of unfair labour practices and accordingly the prevention cannot have any meaning unless the Act contemplates law to stop it not only when the mischief is actually committed but also when it is apprehended to be committed. According to the Full Bench as per the policy of the Act, the prevention can only be before the object of unfair labour practice.

8. Section 28 of the Act provides for filing the complaint within 90 days of the occurrence of such unfair labour practice. It is thus explicit that the aggrieved person can invoke the provision only after occurrence of the specified unfair labour practice. It, therefore, follows that commission of unfair labour practice alone gives entitlement in favour of the aggrieved person to invoke Section 28. Such entitlement cannot be derived as against the proposed, contemplated, anticipated or apprehended unfair labour practice. Section 28 as considered by the Full Bench refers the phraseology "where any person is engaged or is engaging in unfair labour practice". "Has engaged", means the person has committed the unfair labour practice. Is engaging in unfair labour practice means, he is continuing with such practice which he has committed. For invoking Section 28, unfair labour practice must come into being. Section 28 does not contemplate such unfair labour practices which are in womb. The term "is engaging in unfair labour practice" does not mean "likely to engage" or going to engage".

9. Section 30 of the Act empowers the Court to prevent unfair labour practices. Where the Court decides any person has engaged or is engaging in unfair labour practice, as per Clause (b) such person can be directed to cease or desist from such unfair labour practice. The person cannot be directed to cease or desist from unfair labour practice unless he has engaged himself in such practices. Perpetuating, carrying or continuing such practices can be prevented by the Industrial or Labour Court by exercising jurisdiction u/s 30. Under Sub-section (2), the Court can by interim order direct the person to withdraw temporarily the practice complained of. As per the policy of the Act, the scheme for prevention of unfair labour practices are envisaged u/s 30. The Act further provides

punishment and prosecution against the persons who do not desist from the unfair labour practice as per the direction of the Court. The Act has thus introduced the devices from prevention of unfair labour practice. However, it is not the scheme of the Act to prevent such action which in all probability would lead to unfair labour practice. Such proposed action does not amount to an unfair labour practice as enumerated.

10. Section 26 of the Act defines unfair labour practices. Those are listed in the Schedules appended thereto. Schedules II and III enumerate the unfair labour practices on the part of the employer. Unfair labour practices relating to the dismissal or discharge have been enumerated vide Item Nos. 1(a), 4(a), (b) and (f) of Schedule II and Item I of Schedule IV. The threatened act of discharge or dismissal would be unfair labour practice only under Item 1(a) of Schedule II. Any other threatened action of dismissal other than enumerated under the said Item, therefore, cannot be said to be an unfair labour practice. Framing of charges, conducting enquiry, issuing show-cause notice and taking action enquiry are the various stages of continuous process of disciplinary proceedings. Disciplinary proceedings once initiated must reach the finality, culminating in imposing punishment or exonerating the delinquent. Testing each stage of the proceeding as to whether they are in conformity with the norms as laid down would be an unwarranted judicial interference in the domain of disciplinary authority. The act has very specially demarcated the unfair labour practices. Dismissal in absence of good or sufficient reasons could be covered vide Item (b) not, in good faith, (d) patently false reasons (g) without having regard to the nature of particular misconduct. The Labour Court alone is empowered to take cognisance of such unfair labour practice enumerated under Item 1 of Schedule IV.

11. Unfair labour practice in the matter of dismissal is cognisable only for the item specifically enumerated in the Schedules. The Act is semi- penal in nature. Entries in the Schedules and provision cannot be construed liberally. The Schedules have not specified any act or deed leading to dismissal in contravention of agreement, settlement or award as an unfair labour practice. Non-compliance of certain disciplinary rules before proposing action of dismissal cannot be comprehended as an unfair labour practice under Item 9 of Schedule IV. As such action of dismissal proposed under the show- cause notice even otherwise is outside the ambit and intend of Item 9 of Schedule IV.

12. To appreciate the argument, I presume that the set of rules relating to discipline and appeal constitute an agreement between the parties. Norms laid down thereunder are to be adhered to before imposing punishment. Adherence of such norms can be examined when the action finally taken. Examining the adherence of in advance, practically would lead to frustrate the process of disciplinary proceedings. It would as in the instant case promote abuse process of law.

Compliance of the norms laid down under the Disciplinary rules can be examined

when the process culminated in a penal action causing injury to the delinquent. Non-observance of norms at various stages may vitiate the ultimate action of dismissal. However, such act before taking the final action of punishment is without any civil consequence and not cognisable u/s 28 of the Act.

13. The petitioner by show-cause notice dated 25.3.88 called upon the respondent to submit his say. The respondent has avoided; and approached the Civil Court. Filing reply to the show-cause notice and consideration thereof and further taking decision are the mandate of disciplinary rules. The Industrial Court while passing impugned order on 8.4.88 acted completely without any propriety in issuing these directions. The Industrial Court further assumes the jurisdiction before hand to scrutinise the order of dismissal which may or may not be passed by the competent authority. The order as passed is patently illegal. The order of dismissal can be looked into as per Section 28 only after passing of such order in a complaint filed within 90 days thereafter. The Industrial Court lost sight that the complaint is ex-facie premature and cannot be taken cognisance of. The complaint as filed is, therefore, not maintainable.

14. In the result, the petition is allowed. The impugned order dated 8.4.88 is hereby set aside. The complaint filed by the complainant on 8.4.88 is hereby dismissed as not maintainable.