

(1993) 03 BOM CK 0078

In the Bombay High Court

Case No : Writ Petition No. 3089 of 1988

The General Secretary

APPELLANT

Vs

Mrs. N.A. Kadam and Others

RESPONDENT

Date of Decision : 05-03-1993

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 3(17), 3(18), 3(35A), 3(36)
Constitution of India, 1950 — Article 226

Citation : (1993) 3 BomCR 506

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Advocate : S.D. Puri and R.V. Paranjape, for the Appellant; S.K. Talsania and K.K. Singhvi, instructed by . Crawford Bayley and Co., for the Respondent

Final Decision : Dismissed

Judgement

D.R. Dhanuka, J.—The petitioner is a representative and approved Union for Transport Industry. The respondent No. 3 is a registered Undertaking engaged in the transport industry. The respondent No. 3 runs "B.E.S.T. Undertaking" and carries on transport business.

2. On 26th December, 1983, the respondent No. 3 made an application to the Labour Court, being Application (L.C.B.) No. 709 of 1983, for a declaration that the strike or stoppage of work resorted to by the employees of the undertaking of respondent No. 3 herein represented by the petitioner Union on 4th October, 1983, was illegal strike under the provisions of the Bombay Industrial Relations Act, 1946. The respondent No. 3 made the said application under sections 97(1) (b) and 97(A) read with section 78(1)(A)(C) and section 79 of the Bombay Industrial Relations Act, 1946. It was averred in the said application that the employees of the 3rd respondent Undertaking had indulged in illegal strike or stoppage of work on the 4th October, 1983, on investigation of the petitioner Union. In para 4 of the said application, the respondent No. 3 averred that prior to 4th October, 1983, the petitioner Union had held gate meetings of the

employees of the said Undertaking, instigated and/or exhorted the concerned employees to go on strike on the 4th October, 1983 without serving any notice on respondent No. 3 as required by law. In para 4 of the said application, the respondent No. 3 set out details in respect of the said gate meetings held at Central Depot, Goregaon Depot, Ghatkopar Depot, Kurla Depot and Marol Depot. The respondent No. 3 averred that Shri Arjun Panchmuckh, Shri Natekar, Shri Asgar, Shri Yelve, Shri Daya Seelam and Shri Narayan Phenany, General Secretary and Office bearers and Members of the petitioner Union had addressed various gate meetings at various Depots. It was further averred in para 4 of the said application that the activists, workers and members of the petitioner Union had proposed that the members of the Undertaking must resort to strike on the 4th October, 1983 in support of the demands by the said Union regarding re-graduation and other industrial matters in dispute which were under consideration of the B.E.S.T. Management. At or about the same time, Shri George Fernandes, Leader and President of the B.E.S.T. workers' Union had also given a call for token general strike and addressed several meetings held by the B.E.S.T. active Committees. It was averred in para 5 of the said application that the petitioner Union and their active workers had instigated and/or exhorted the workers to go on strike on the 4th October, 1983, with a view to give strong support to the call given by Shri Fernandes and also to impress upon the management to consider and accept the demands of the B.E.S.T. Union for regraduation etc. In para 6 of the said application the respondent No. 3 referred to the fact that Shri George Fernandes had addressed meetings outside the Kurla Depot on 1-10-1983. In para 7 of the said application, it was averred that in all 2,778 Bus Conductors, 1,839 Bus Drivers, 1,010 Cleaners and various other employees of the transport industry resorted to cessation of work acting in combination or concerted refusal under a common understanding of employees not to work on the 4th October, 1983. In para 8 of the said application, it was averred that some of the striking workmen indulged in stone throwing on loyal workers and 7 persons were arrested. It was further averred that as a result of the said strike, about 561 buses could not be turned out and great inconvenience was caused to the travelling public. The buses were damaged. It was averred in para 8 of the said application that the approximate cost of the repairs of the damaged buses came to Rs. 19,000/- and loss of revenue to the undertaking came to Rs. 6,48,680/-. It was further averred in para 9 of the said application that the procedure prescribed under the Bombay Industrial Relations Act like issue of notice etc. was not followed by the petitioner Union before resorting to the said strike. The petitioner Union was Opponent No. 2 in the said application. The petitioner Union had already submitted its charter of demands to respondent No. 3. The President of the petitioner Union had referred this fact at the gate meeting held on the 1st October, 1983 and appealed to workers to go on strike. This fact is specifically referred to in the order of the Industrial Court (Exhibit 'F' to the petition) and is not disputable. The petitioner Union filed its written statement in reply to the said application. In para 3 of the said written statement, the petitioner Union averred that the abstention of the employees of

the said Undertaking was like a normal absenteeism in Transport and Supply Industry. Relevant factual statements regarding particulars of the gate meetings and the pending demands with which the strike had linkage were not even dealt with in the said written statement. It was not averred in the said written statement as now contended at the bar that the said strike or stoppage of work had no nexus with the industrial matters or the industrial disputes raised by the petitioner Union and that the said stoppage of work was merely for the purpose of giving support to the call for "BHARAT BANDH" unconnected with the demands of the Union.

3. At the hearing of the said application, the management examined three witnesses. Shri Prabhakar Vasudev Shroff, Personnel Officer of the Undertaking, stated on oath that no strike notice was served on the Undertaking and the Charter of Demands submitted by the recognised Union was pending. During the course of his deposition, the said witness referred to gate meetings addressed by the activists of the petitioner Union. It was admitted during the course of cross-examination of the said witness that the call for strike was given by the B.E.S.T. Workers' Action Committee for strike. It was, however, emphasised on behalf of the respondent No. 3 herein throughout that the B.E.S.T. Workers' Action Committee was acting at the behest of the petitioner Union and the petitioner Union could not, therefore, escape from its responsibility for the said illegal strike. In a technical sense it is perhaps possible to state that the B.E.S.T. Workers' Action Committee cannot be equated to the petitioner Union. It cannot be reasonably disputed that the above referred Action Committee was manned by the office bearers and the activists of the said Union and the exhortation or instigation for the said strike was given by the B.E.S.T. Workers' Action Committee as well as by the petitioner Union. Thus, for all practical purposes, the differentiation sought to be made by the learned Counsel for the petitioner is meaningless. Shri Gopinath Vaman Joshi, Assistant Security Officer of the respondent No. 3 Undertaking also supported the case of the 3rd respondent. Shri Sayeed A.S.M. Sayeed also supported the case of the 3rd respondent as pleaded in the said application. No one was examined as a witness on behalf of the petitioner Union. The petitioner Union did not set out relevant facts in the written statement. The petitioner Union did not lead any defence evidence. The activists and office bearers of the union ought to have led defence evidence. The petitioner withheld relevant evidence. Thus the petitioner indirectly accepted the testimony of witnesses of respondent as correct. In any event, the writ Court cannot interfere with finding of fact based on relevant evidence as aforesaid.

4. By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the order dated 26th February, 1988, passed by the Labour Court in Application (LCB) No. 709 of 1983 and the Order dated 29th August, 1988, passed by the Industrial Court in Revision Application No. 8 of 1988. Both the courts decided the matter against the petitioner.

5. The Labour Court held that prior to 4th October, 1983, the members of the

petitioner Union as well as the persons representing the Opponent No. 1 had addressed gate meetings at which the workers were exhorted to go on strike. The said gate meetings had definite nexus with the pending demands of the employees and industrial disputes. The Labour Court recorded a finding to the effect that the petitioner Union had given a call for stoppage of work on 4th October, 1983, and the said stoppage of work in the circumstances of the case amounted to a strike. The Labour Court recorded its conclusion to the effect that the impugned strike resorted to from 4-10-1983 by the workmen at the instance of and due to exhortation of the petitioner Union without service of any notice on the Employer as required by law and the said strike was, therefore, illegal. Merely because the employees of the said Undertaking had resorted to the said illegal strike on a day when there was also a general strike at the instance of certain political leaders, referred to by the parties as "BHARAT BANDH", it does not follow that the strike resorted to by the employees of the 3rd respondent at the instigation of the petitioner was not a strike in consequence of industrial dispute. The respondent No. 3 had clearly averred in the application that the employees concerned had resorted to strike on instigation of the petitioner in consequence of pending demands concerning regraduation as well as other matters for which charter of demands was pending consideration before the Management. The Labour Court after careful consideration of the relevant material on record declared that the Opponents No. 1 and 2 had resorted to illegal strike on 4-10-1983. Merely because the said strike was also in support of the Bandh, referred to hereinabove, it did not follow that the said strike was not in consequence of industrial dispute between the parties. In the revisional order, the Industrial Court specifically recorded its conclusion in the following words :

"As the President of the applicant himself had asked the workers to go on strike, the learned Labour Judge was right in concluding that the B.E.S.T. Workers' Union had given the call and its members had participated in the strike commenced from 4-10-1983. As it is seen from the evidence that the Applicant had submitted a charter of demands and as the Applicant's President had referred to that fact when he addressed the gate meeting held on 1-10-1983 and appealed to the workers to go on strike, inference shall be that he had given a call to go on strike in support of the demands submitted by the applicant."

In my opinion, the inference drawn by the Industrial Court is correct. In my opinion, the findings recorded by the two courts below are correct. In my opinion, there is no merit in the petition. I confirm the orders passed by the two courts below for further reasons indicated hereinafter.

6. Shri S.D. Puri, the learned Counsel for the petitioner invited attention of the Court to the definition of the word "strike" given in section 3(36) of the Bombay Industrial Relations Act, 1946. The expression "strike" as defined under the said provision is as under :

"Strike" means a total or partial cessation of work by the employees in an industry acting in combination or a concerted refusal or a refusal under a

common understanding of employees to continue to work or to accept work, where such cessation or refusal is in consequence of an industrial dispute;"

The learned Counsel for the petitioner also relied on the definition of the expression "stoppage" as set out in section 3(35A) of the Act and the definition of the expression "industrial dispute" provided by section 3(17) of the Act. The learned Counsel for the petitioner also relied on the definition of the expression "industrial matter" as set out in section 3(18) of the Act. The said definitions of the expressions "stoppage", "industrial dispute" and "industrial matter" are extracted hereinafter for ready reference:

"(35A) "stoppage" means a total or partial cessation of work by the employees in an industry acting in combination or a concerted refusal or a refusal under a common understanding of employees to continue to work or to accept work, whether such cessation or refusal is or is not in consequence of an industrial dispute;"

"(17) "industrial dispute" means any dispute or difference between an employer and employee or between employers and employees or between employees and employees and which is connected with any industrial matter;"

.....

"(18) "industrial matter" means any matter relating to employment, work, wages, hours of work, privileges, rights or duties of employers or employees, or the mode, terms and conditions of employment, and includes

(a)

(b)

(c)

(d)"

The learned Counsel for the petitioner submitted that it was an essential ingredient of the definition of the word "strike" as defined under the provisions of the said Act that stoppage of work must be not merely in concert but must also in consequence of an industrial dispute. The learned Counsel for the petitioner submitted that in this case the employees of the respondent No. 3 had resorted to stoppage of work in concert to support the call of the leaders for "BHARAT BANDH", it followed that the said stoppage of work was not in consequence of an industrial dispute. The learned Counsel for the petitioner submitted that in such a situation the Court could not declare that the employees of the respondent No. 3 amounted to "strike" within the meaning of the said expression as defined under the Bombay Industrial Relations Act, 1946, and accordingly the Court could not declare that the said stoppage of work amounted to an illegal strike. The writ Court is, therefore, required to consider as to whether there was material before the two courts below to hold that the stoppage of work resorted to by the employees of the respondent No. 3 was in consequence of an industrial dispute.

The expression "industrial dispute" is defined by the Act to mean any dispute or difference between an employer and employee or between employers and employees or between employees and employees and which is connected with any industrial matter. The expression "industrial matter" takes within its sweep all matters pertaining to the relationship between employers and employees. In the written statement filed by the petitioner Union before the Labour Court the petitioner did not controvert the factual statements made in the application before the Labour Court filed by and on behalf of the 3rd respondent-Employer. The defence of "normal absenteeism" raised in para 3 of the said written statement was obviously untrue. The several gate meetings were held prior to 4-10-1983 as per details set out in para 4 of the application before the Labour Court. Each of the said gate meetings was addressed by the activist of the petitioner Union. Each of the said gate meetings was in support of the demand made by the Union regarding regraduation and other industrial matters like charter of demands. It is not disputed and it cannot be disputed that the charter of demands submitted by the petitioner was also pending consideration. Merely because the day on which there was a general strike known as "BHARAT BANDH", it does not follow that the strike resorted to by the employees by the 3rd respondent Union was not in consonance of an industrial dispute. The petitioner utilised the occasion to serve the purpose. If the case of the petitioner really was that the said stoppage of work had nothing to do whatsoever with the industrial disputes or industrial matters, the petitioner Union ought to have led some substantial evidence in support of such a contention. The petitioner Union decided not to lead any evidence in rebuttal. Having regard to the material before the Labour Court and the Industrial Court, the findings recorded by the two courts below to the effect that the stoppage of work in this case by large number of employees of the 3rd respondent on 4-10-1983, amounted to an illegal strike cannot be faulted with. The learned Counsel for the petitioner submits that the Labour Court has not recorded a clear finding on the issue as to whether the said strike was in consequence of an industrial dispute. According to the learned Counsel, the Labour Court in fact has held that the said strike was stoppage of work and was to support the "BANDH" on 4-10-1983. Assuming for the sake of argument that the said strike was resorted to also in support of "BANDH" announced on 5-10-1983, it does not follow therefrom that the said strike was not in consequence of an industrial dispute. The stoppage of work resorted to by the employees of the 3rd respondent was in consequence of the industrial disputes pending between the parties. The finding of the Labour Court is very clear on this aspect. The President of the petitioner Union had himself given a call to the employees of the 3rd respondent Undertaking to join the strikes/stoppage of work. The President of the petitioner Union had addressed a gate meeting held on 1-10-1983 and had appealed to the workmen to go on strike. In the context of totality of facts and circumstances, it cannot be said that the inference drawn by the Industrial Court to the effect that the President of the petitioner Union had given a call to the employees of the 3rd respondent to go on strike in support of the demands submitted by the petitioner Union is incorrect. It

is not possible to hold that this was a case of mere stoppage of work not amounting to strike.

7. The learned Counsel for the petitioner submits that in any event there was enough material on record to show that the call for the strike was given by the B.E.S.T. Workers" Action Committee and not by the petitioner Union and that the petitioner Union and the B.E.S.T. Workers" Action Committee were two separate entities. In my opinion, the strike in question was held at the instance of the petitioner Union and the B.E.S.T. Active Committee acted at the instance of and on behalf of the petitioner.

8. The learned Counsel for the petitioner requests the Court to remand the matter to the Labour Court for recording fresh findings on the issues involved. To my mind, there is no merit in this submission also. It is true that the B.E.S.T. Workers" Action Committee, and the petitioner Union, are two separate legal entities. It is, however, not true that the call for the strike was given by the B.E.S.T. Workers" Action Committee de hors the Union. The petitioner Union as well as the B.E.S.T. Workers" Action Committee worked for a common cause. Thus, in substance, the call for the illegal strike was given or is deemed to have been given by the petitioner Union as well as by the B.E.S.T. Workers" Action Committee. It will not be incorrect to say that the B.E.S.T. Workers" Action Committee was the limb of the petitioner Union and the Committee was acting for and on behalf of and at the instance of the petitioner Union itself.

8A. The writ jurisdiction under Article 226 of the Constitution of India is discretionary. The findings of facts recorded by the two courts below are correct and based on evidence. The learned Counsel for the petitioner submits that the impugned orders suffer from error of law and non-application of mind. I am not satisfied that the impugned orders suffer from any error of law or from the vice of non-application of mind. I am not prepared to allow the petitioner to urge all sorts of technical contentions which were not urged before the two courts below, or, urge contentions which were not set out in the written statement of the petitioner Union. Even on merits, there is no substance in any of the contentions urged on behalf of the petitioner union.

9. After taking an overall view of the matter, I have reached to the conclusion that the petition deserves to be dismissed. The petition fails. The petition is dismissed. However, having regard to the facts and circumstances of the case, there shall be no order as to costs.

10. The learned Counsel for the petitioner applies for stay of the operation of the orders passed by the Labour Court and by the Industrial Court. The application for stay is refused.

11 Certified copy to be issued expeditiously.