
(1989) 10 BOM CK 0031

In the Bombay High Court

Case No : Writ Petition No. 4633 of 1986

The Ichalkaranji Co-operative Spinning Mills Ltd.

APPELLANT

Vs

Deccan Co-operative Soot Girani Kamgar Sangh and Others

RESPONDENT

Date of Decision : 18-10-1989

Acts Referred:

Citation : (1995) 3 LLJ 405 : (1991) 1 LLJ 220

Hon'ble Judges : M.L. Dudhat, J

Bench : Single Bench

Advocate : Meena Doshi, for the Appellant; N.D. Buch and H.D. Buch, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Dudhat, J.—The present writ petition is filed against the order dated 3rd September 1986 passed by the Industrial Court at Kolhapur in Complaint (ULP) No. 68 of 1983.

2. Respondent No. 1 filed the aforesaid complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act of 1971" for the sake of brevity). The main contention of respondent No. 1 union was that a number of employees are employed as badlies and casuals by the petitioner-society for years together only with the idea to deprive them of the benefits of permanency and by doing this act the present petitioner-society has committed an act of unfair labour practice under Schedule IV item 6 and item 9. After going through the affidavits filed by both the sides, the Industrial Court came to the conclusion that out of 1500 employees employed by the petitioner - society only about 385 are permanent and the rest are badlies or casuals. The industrial Court also found that the standard complement for the petitioner-society will come to about 939 employees which the society will require for working the three shifts and the general shift. The statement given by the society showing therein employees employed departmentwise shows that out of 1517 employees 369 are

permanent, 15 are probationers, 834 are badlies and 299 are trainees. From the aforesaid figures the lower Court came to the conclusion that the number of permanent employees is far less than the standard compliments. On the contrary badlies and casuals are practically equal to the standard compliments. From this the lower Court concluded that this act of the petitioner-society of keeping large number of badlies without making them permanent was with a view to deprive these badlies or casual workers benefit of permanency and, therefore, the lower Court came to the conclusion that the same amounts to unfair labour practice under the Act of 1971, particularly under item 6 of Schedule IV. As regards the contention of respondent No. 1 union that the said act also amounts to violation or infringement of item 9 of Schedule IV of the Act of 1971, the lower Court rejected the contention of respondent No. 1 union. After giving these findings, the Industrial Court further ordered that the present petitioner-society should desist from such unfair labour practice and further directed the present petitioner-society to confirm all those badlies and casual employees who were on the roll of respondent No. 2 for more than two years on the date of filing the complaint i.e. with effect from 2nd September 1983 and further directed the present petitioner to confirm those badlies or casual employees who completed 240 days of uninterrupted service as badlies and casuals.

3. It is against this order the present petition is filed. It was strenuously argued on behalf of the petitioner-society that the direction given by the lower Court is vague and cannot be implemented. According to Smt. Meena Doshi, learned Counsel appearing on behalf of the petitioner-society, unless and until the complaint discloses the concerned badli employees in respect of whom the unfair labour practice is alleged to have been committed, the present direction given by the Industrial Court is in the realm of vagueness and it is impossible for the petitioner-society to implement the same. According to me there is no substance in this contention. Firstly, all these employees are the employees of the petitioner-society and they are maintaining the record and their rolls. Not only that, but now during the pendency of this writ petition learned Counsel on behalf of respondent No. 1 Kum. Buch has filed the affidavit after taking the inspection of the record of the petitioner-society and given the figures as to who are the badli employees who have completed 240 days uninterruptedly. The said statement prepared by respondent No. 1 from the record of the present petitioner is not challenged by the present petitioner and, therefore, on the basis of that statement the petitioner-society can comply with the order of the trial Court without any further difficulty. It is pertinent to note that if respondent No. 1 union can prepare the list of these badli employees who have completed 240 days" uninterrupted service, I do not understand as to how the petitioner-society, having all the documents in its possession, is not in a position to prepare the said list and implement the orders of the Industrial Court. According to me it is only an attempt to delay or protract the implementation of the order of the Industrial court.

4. If was argued on behalf of the petitioner-society that in the original complaint

respondent No. 1 union alleged violation in respect of two items i.e. item 6 in Schedule IV and item 9 in Schedule IV. Out of that the Industrial Court rejected the allegation under item 9 of Schedule IV of the Act of 1971. This being the position, according to Smt. Doshi, the learned Advocate appearing on behalf of the petitioner-society, since respondent No. 1 union has not filed any cross petition against the order of the Industrial Court, now respondent No. 1 union cannot rely on commission of breach on the part of the present petitioner-society of some provision under the Bombay Industrial Relations Act. In order to support her contention Smt. Doshi, learned Counsel appearing on behalf of the petitioner-society, cited the decision in *General Workers Union v. Sangli Municipal Council, Sangli and Ors.* 1984 (48) F.L.R. 211, wherein it has been decided that merely because an act committed by the employer is illegal, it cannot be unfair labour practice unless the act committed by the employer comes within any of the items of unfair labour practice in the Act of 1971. Therefore, applying this test, according to Smt. Doshi it cannot be inferred that the petitioner-society, by committing the breach of the standing order under the B.I.R. Act, has committed the act of unfair labour practice. According to me there is no substance in this argument. As I have already pointed out above, the Industrial Court has gone through certain statements prepared on the basis of facts and figures in fact supplied by the society and after going through the facts and figures, had come to the conclusion that the petitioner-society has in fact committed the act of unfair labour practice under item 6 of Schedule IV of the Act of 1971. After coming to the said conclusion, as a remedial measure the Industrial Court decided to give relief to those persons who have uninterruptedly completed the service for 240 days immediately two years behind from the date of the filing of the complaint. This being the position, the aforesaid case law and the principle decided in the said case law and the argument made by the learned Counsel for the petitioner-society are not applicable in the present case.

5. It was further strenuously argued by the learned Counsel for the petitioner-society Smt. Doshi that in order to see that the petitioner's case comes within the ambit of Schedule IV item 6, it must be proved by leading the evidence that not only the petitioner-society has employed casual or temporary employees but in fact the society continued to do so for years with the object of depriving them of the status and privilege of permanent employees. According to her respondent No. 1 union has led no evidence to that effect. According to me there is no substance in this argument. It is true that it is the complainant who has to lead the evidence to prove that his complaint comes within any of the items of unfair labour practice but in the present case the Industrial Court has relied on the facts and figures supplied by the petitioner-society to come to the conclusion that in fact the petitioner-society for number of years employed badlies and casual employees equal to the standard compliments and thereafter has come to the conclusion that this act of the petitioner-society was with a view to deprive these badlies and casual employees the benefits of permanency. This being the position, I do not think that the Industrial Court was wrong in coming to the said

conclusion after going through the facts and figures supplied by the petitioner-society. The contention of the petitioner-society that there is no wage difference whatsoever between the permanent employees and the employees employed as badlies in fact cannot be accepted. To this point also the learned Judge has applied his mind and has come to the conclusion that several benefits which the permanent employees otherwise get will not be available to the badli employees and this being the position, according to me this argument on the part of the petitioner-society is also without any substance.

6. Now in the affidavit filed by respondent No. 1 union dated 14th September 1989 respondent No. 1 union, relying on the documents supplied by the petitioner-society, has given certain figures about the number of employees who have completed 240 days' uninterrupted service. The petitioner-society has not challenged the aforesaid figures. Further relying on the said affidavit and the annexures to the said affidavit, Kum. Buch, learned Counsel on behalf of respondent No. 1 union, has also given a list showing therein the names of the employees who have completed 240 days' uninterrupted service. The petitioner-society is hereby directed to treat the aforesaid persons mentioned in the list as permanent employees. With this modification the Industrial Court's order is confirmed and the writ petition is dismissed with costs. Rule discharged.