

(1953) 07 BOM CK 0006

In the Bombay High Court

Case No : Special Civil Application No. 159 of 1953

Tukaram Piraji and Another

APPELLANT

Vs

Motilal Poona Mills Ltd.

RESPONDENT

Date of Decision : 02-07-1953

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 42, 84, 97, 97(1), 97(3)

Constitution of India, 1950 — Article 226, 227

Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 2, 7

Citation : AIR 1954 Bom 171 : (1953) 55 BOMLR 911 : (1954) ILR (Bom) 438

Hon'ble Judges : Chagla, C.J.;Dixit, J

Bench : Division Bench

Advocate : N.V. Phadke and M.V. Paranjpe, for the Appellant; N.K. Gamadia, Motichand and Devidas, for the Respondent

Judgement

Chagla, C.J.—This is an application made by the employees of the Raja Bahadur Motilal Poona Mills, Ltd., which is opponent No. 1, under Articles. 226 and 227 of the Constitution for a writ against the Labour Appellate Tribunal. It appears that on 29-8-1951, notice was given by opponent No. 1 Mills that weavers will be required to work on four looms instead of two looms. Pursuant to this notice, there was a cessation of work by the weavers from September 6. Opponent No. 1 Mills made an application to the Labour Court that the cessation of work by the weavers constituted an illegal strike, and the weavers on their part made an application to the Labour Court that the cessation of work constituted an illegal lock-out, and they also contended that no notice had been given of the change by the Mills as required by Section 42, Bombay Industrial Relations Act, and therefore the change made was an illegal change.

Petitioner No. 1 is a weaver and petitioner No. 2 is the Poona Girni Kamgar Union. The Labour Court held that there was neither an illegal strike nor an illegal lock-out, but there was an illegal change brought about by the Mills. From this decision an appeal was preferred to the Labour Appellate Tribunal of India and the Labour Appellate Tribunal came to the conclusion that the cessation of

work constituted an illegal strike. It is in respect of this order that this petition is preferred.

2. The first contention urged by Mr. Phadke is that the Labour Appellate Tribunal had no jurisdiction to hear this appeal. The jurisdiction of the Labour Appellate Tribunal is to be found in Section 7 of Article 48 of 1950. That section provides: ""Subject to the provisions of this section, an appeal shall lie to the Appellate Tribunal from any award or decision of an industrial tribunal if--..... and then various matters are set out which constitute the subject-matter of the appeal.

Therefore, u/s 7 two conditions have got to be satisfied in order to confer jurisdiction upon the Appellate Tribunal. The first condition must be that the appeal must be from an award or decision of an industrial tribunal, and the second condition is that the subject-matter of the appeal must fall in one of the clauses set out in Section 7. In this particular case the Appellate Tribunal entertained the appeal because it involved a substantial question of law, and there is no dispute before us that as far as the subject-matter was concerned the provisions of Section 7 were satisfied.

But what is urged by Mr. Phadke before us is that the appeal was not from an industrial tribunal as defined in Section 2(c), Article 43 of 1950. That Sub-section defines an industrial tribunal as "(i) any industrial tribunal constituted under the Industrial Disputes Act."

It is not the contention of opponent No. 1 Mills that this is an industrial tribunal as defined by clause (i) of Section 2(c). Clause (ii) of Section 2(c) constitutes all appellate tribunals, where appellate tribunals have been set up by State legislation and to which appeals can be preferred from tribunals of first instance, as industrial tribunals. Therefore, under this clause if a Labour Court in a State gave a decision and an appeal lay to an appellate authority within the State, then that appellate authority would be an industrial tribunal for the purpose of this Act.

Then comes clause (iii) which is the relevant clause which we have to consider:

"in relation to other cases, where no appeal lies under any law referred to in Sub-clause (ii), any court, board or other authority set up in any State under such law;....."

Therefore, clause (iii) deals with cases which do not fall in clause (ii), and clause (iii) specifically refers to cases where no appeal lies under a State law. In other words, the scheme of clauses (ii) and (iii) of Section 2(c) is fairly clear. The object of the Central Act was to give a further right of appeal from final labour authorities in the State. If the final authority was an appellate Court, then an appeal was allowed from that Court. If the final authority was the Court of first instance, then an appeal was allowed from the decision of that Court.

3. The ingenious argument advanced by Mr. Phadke is that clause (iii) of Section 2(c) only deals with those cases where there is no appellate authority at all under a State labour law. In other words, Mr. Phadke's contention is that if there

is an appellate authority, then a decision of that appellate authority is made appealable under this Sub-section, but if the State Legislature has not thought fit to constitute an appellate authority, then no appeal lies from the Court of first instance.

What is pointed out is that under the Bombay Industrial Relations Act, Section 84 deals with appeals and an appeal is provided to the Industrial Court from the decision of a Labour Court in respect of various matters, but a determination by the Labour Court whether a strike, lock-out, closure or stoppage was illegal or not is made appealable, and Mr. Phadke says that there was good reason, why finality should be given to this decision of the Labour Court. Mr. Phadke points out that u/s 97(3) a "locus poenitentiae" is given to the employees to resume work within 48 hours of a Labour Court declaring a strike to be illegal, and if they do not resume work within 48 hours, they are liable to incur penalties, and therefore according to Mr. Phadke it was the intention of the Legislature that the employees should know at the earliest opportunity whether the strike was illegal or not, and if it was so held to be illegal by the Labour Court, then the law gave them the opportunity of going back to work within 48 hours. Therefore, it was essential that finality should be given to this decision of the Labour Court, and it was precisely because of this that the Bombay Industrial Relations Act, 1946, did not provide for an appeal from this decision.

Mr. Phadke says that we should not read the definition of "industrial tribunal" in Section 2 of Act; 48 of 1950 so as to disturb this finality. Mr. Phadke's argument is that the Central Legislature could never have contemplated to have conferred a right of appeal in matters which the State Legislature thought it necessary to make final and advisedly did not provide for any appeals.

The answer to that contention is very simple. As we have already pointed out, the scheme of Section 2(c)(ii) and (iii) is to give a right of appeal where no right of appeal existed under the State legislation. Under the State legislation the decision of the Labour Court, whether a strike was illegal or not, was final and no appeal lay from that decision. The Central Act dealt with this very contingency and provided a right of appeal to the appellate tribunal. It is impossible to accept the contention of Mr. Phadke that the Central Legislature in clause (iii) was thinking of only those cases where the State legislation did not provide for any appellate authority. According to Mr. Phadke's contention, it was only if there was no Industrial Court which is an appellate tribunal under the Bombay Act that the decision of the Labour Court with regard to the legality of the strike would have been appealable to the appellate tribunal. In other words, the reasoning of Mr. Phadke is that there being an appellate tribunal under the Bombay Act and the Bombay Legislature advisedly having not provided an appeal to that tribunal, we must not construe the Central Act as providing for an appeal and undermining the principle of finality.

In our opinion, the language used in clause (iii) of Section 2(c) is much too clear for any other interpretation. The only test that clause (iii) lays down is that no

appeal should lie from a particular decision, and it cannot be disputed that no appeal lies from the decision of the Labour Court holding that the strike was not illegal. Therefore, in our opinion, the Appellate Tribunal had jurisdiction to hear this appeal.

4. The next contention urged by Mr. Phadke is that in hearing this appeal the Appellate Tribunal has also considered the question as to whether there was an illegal change brought about by the employers or not, and Mr. Phadke draws our attention to the provisions, of the Industrial Relations Act and says that under those provisions a decision of a Labour Court as to an illegal change is made appealable, and he rightly argues that if an appeal lies to the Industrial Court, then before the parties approach the Appellate Tribunal they must go to the Industrial Court.

But in this particular case the Appellate Tribunal was not hearing the appeal with regard to an illegal change. It was hearing an appeal with regard to an illegal strike, and in deciding the question as to whether the strike was illegal or not, it was open to that Court to consider the question of an illegal change and come to a conclusion on that question.

5. Then we come to the most substantial question which Mr. Phadke has raised. In the judgment the Appellate Tribunal has come to the conclusion that what the employers did in this case did not amount to rationalization or other efficient system of work as contemplated by entry 4 in schedule. II of the Bombay Industrial Relations Act. Having come to that conclusion they further came to the conclusion that it was not incumbent upon the employers to give a notice of a change as required by Section 42 of the Act. This necessarily led them to the conclusion that there was no illegal change in what the employers had done with regard to altering the arrangement in regard to the looms on which the weavers had to work. Having come to this conclusion, in their judgment in para. 7, they state that

"there is no doubt in our minds that the strike was illegal u/s 97(1)(c) of the Bombay Industrial Relations Act."

When we turn to that Sub-section, it provides: "A strike shall be illegal if it is commenced or continued only for the reason that the employer has not carried out the provisions of any standing order or has made an illegal change."

We are not concerned in this particular case with the question of standing order. We are only concerned with the question of an illegal change. Therefore, on their finding there was no illegal change brought about by the employer and therefore the strike was not commenced or continued for the reason that the employer had made an illegal change.

It is difficult to understand how in view of their own finding the Appellate Tribunal could ever have come to the conclusion that the strike was illegal because it fell u/s 97(1)(c). Later on in para. 7 they realise the difficulty of the situation and,

with respect to the Tribunal, they tried to get out of that difficulty by circumventing Section 97 of the Act and expressing the opinion that the scheme of the Bombay Industrial Relations Act is to provide against strikes and all possible contingencies have been considered by the Legislature.

In our opinion this is an entirely erroneous view to take of the Bombay Industrial Relations Act. Section 97 constitutes an inroad, if one may put it so, upon the common law right of an employee to strike. There is nothing inherently unlawful or illegal in a strike and the common law permitted an employee to stop work if he so desired. Before labour legislations were introduced and passed, complete freedom was given to contractual relations and the law of the market prevailed and employer and employee bargained according to their needs and requirements. But when the State introduced labour legislation, it rightly in the interest of industrial peace provided that in certain cases and in certain contingencies strikes were illegal, and Section 97 sets out all those contingencies.

Therefore, a strike is only illegal if it falls u/s 97. If it does not fall u/s 97, then, there is no law which makes a strike illegal. Therefore, in our opinion, it is not correct to say as the Appellate Tribunal has said, that all possible contingencies have been considered by the Legislature. The contingencies they have considered are the contingencies to be found in Section 97, and according to the Appellate Tribunal itself the particular contingency they were dealing with, viz., where the employees struck not because of an illegal change but because of a legal change which they did not like, is not a contingency which has been contemplated by Section 97. Then the Tribunal, again with respect, gives expression to a statement of the law which we find it rather difficult to understand or appreciate. This is what the Tribunal says:

"The concept of the right to strike for any act of the management which the employee may consider to be illegal is a negation of the relevant enactment."

Frankly we do not understand what really the Tribunal wishes to convey. But we are not concerned with the negation--high sounding as that expression is--of the relevant enactment. We are concerned to construe Section 97, and if the strike has been undertaken in contravention of Section 97, it is illegal; if it has been undertaken without contravening Section 97, it is not illegal. Therefore, if the Tribunal, instead of looking at the enactment as a whole and considering its scheme and the spirit underlying it, had applied its mind to the terms of Section 97 itself, there is no doubt that they would have come to the conclusion on their own finding that the provisions of Section 97 had not been contravened.

6. In our opinion, therefore, the decision of the Tribunal is clearly erroneous, and even if we were issuing a writ of "certiorari" under Article 226 we would have taken the view that this is a proper case for the issue of that writ. But this application is made not only under Article 226 but also under Article 227, and our powers under Article 227 of supervision are undoubtedly much wider than our

powers to issue a writ under Article 226.

7. In the result we must interfere with the decision of the Tribunal and hold that the decision is incorrect. We quash the order of the Tribunal and uphold the decision of the Labour Court that the strike was not illegal. Opponent No. 1 must pay the costs.

Order quashed.