
(2010) 02 BOM CK 0040
In the Bombay High Court
Case No : Writ Petition No. 144 of 2010

Ultra-Tech Cement Ltd.

APPELLANT

Vs

Shrinivas Narayanrao Moharil

RESPONDENT

Date of Decision : 15-02-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 2, 2(3), 39

Citation : (2010) 112 BOMLR 872 : (2010) 125 FLR 200

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : M.R. Pillai, for the Appellant; H.V. Thakur, for the Respondent

Final Decision : Allowed

Judgement

B.P. Dharmadhikari, J.—By this petition filed under Articles 226 and 227 of Constitution of India, the petitioner - employer has challenged the order dated 04.01.2010 passed by the Labour Court, Chandrapur, below Exh. 86 in Complaint (ULP) No. 186 of 1993 by which its application for dismissal of Complaint (ULP) has been rejected. M/s. Larsen & Toubro Limited - employer is the party respondent in that complaint and the petitioner before this Court is its successor company. The contention of the petitioner was, being "controlled industry" as contemplated u/s 2(ee) of Industrial Disputes Act, 1947 (hereinafter referred to as the Act), the appropriate Government for it is Central Government and hence provisions of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act (hereinafter referred to as MRTU & PULP Act), are not applicable to it. The present respondent had earlier filed a petition vide Writ Petition No. 2558 of 1986 challenging the order on preliminary issue and that writ petition was disposed of by this Court on 12th March 2009. The proceedings in Complaint ULP were expedited.

2. Looking to the nature of controversy, with the consent of Shri Pillai, learned Counsel for the petitioner and Shri Thakur, learned Counsel for the respondent,

the matter has been heard finally by making rule returnable forthwith.

3. It is not in dispute that vide Notification dated 08.11.1977, for the purposes of Section 2(a)(i) of the Act, the industry engaged in manufacture and production of cement has been declared as "controlled industry". In this back ground, the petitioner contends that merely because of delegation u/s 39 by Central Government of its power as appropriate Government to State Government, State Government cannot become appropriate Government. He points out that as per provisions of Section 2(3) of MRTU & PULP Act, the provisions thereof apply in relation to any industry, if State Government is appropriate government for it. As for the petitioner industry, the Central Government is appropriate Government, Labour Court has no jurisdiction. He relies upon the judgment of Division Bench of this Court in the case of Mazgaon Dock Ltd. v. Shivbrat Jagroop Mishra and Anr. reported at 2008 III CLR 755 and the judgment of Division Bench of Karnataka High Court in the case of Workmen of Bagalkot Udyog Ltd. v. Bagalkot Udyog Ltd. reported at 2000 Lab. I.C. 3219, to support his contention. He argues that the reliance upon judgment of the Hon"ble Apex Court in the case of Shri Yovan, India Cements Employees Union and another Vs. Mangement of India Cements Ltd. and others, , for this purpose by Labour Court is misconceived. He points out that the finding of Labour Court that objection has been raised belatedly is misconceived because stay orders were operating in Writ Petition No. 2558 of 1996 till 12.03.2009.

4. Shri Thakur, learned Counsel for the respondent, on the other hand, states that all proceedings and disputes concerning the establishment of the petitioner have been taken care of under provisions of MRTU & PULP Act. He states that in this background, challenge as raised is totally misconceived and also malafide. He points out that the petitioner had filed Complaint ULP No. 280 of 1985 under MRTU & PULP Act before the Industrial Court at Nagpur. By way of illustration, he also points out that in Complaint (ULP) No. 35 of 2007, filed by present petitioners before the Industrial Court at Chandrapur, where the Industrial Court refused to grant interim relief on 23.05.2007. According to him, therefore, the petitioner has no locus to contend that provisions of MRTU & PULP Act, are not applicable to it. On merits, he relies upon the judgment of the Hon"ble Apex Court in the case of Yovan, India Cements Employees Union v. Management of India Ltd., (supra) to urge that it squarely covers the issue. According to him, its consideration by Division Bench of Karnataka High Court is not proper and attention of Division Bench of this Court was not invited to said judgment.

5. In brief reply, Shri Pillai, learned Counsel, points out that in reply to Writ Petition No. 5129 of 2007, State of Maharashtra has on affidavit stated that it was exercising delegated powers of Central Government and as establishment of the petitioner is "controlled industry", Central Government was appropriate Government. He points out that this being a question of law going to the root of the matter, there cannot be any estoppel.

6. Thus, before me, fact that the petitioner is controlled industry and Central

Government is appropriate government in relation to it, is not in dispute. The fact that provisions of MRTU & PULP Act apply only if State Government is appropriate government is also not in dispute. The question is whether because of delegation of its power u/s 39 of the Act by Central Government to State Government, the provisions of MRTU & PULP Act can become applicable to the petitioner - establishment.

7. The question itself shows that any acquiescence or consent of parties cannot confer jurisdiction upon Labour Court or Labour Court functioning under MRTU & PULP Act, if the Act itself is found to be not applicable. The issue was answered by learned Single Judge of this Court in two matters in favour of present respondent holding that as after such delegation u/s 39 of Industrial Disputes Act, State Government became appropriate Government, the provisions of MRTU & PULP Act were applicable. However, in appeals from it, the Division Bench of this Court has reversed that finding. This judgment of Division Bench is reported in *Mazgaon Dock Ltd. v. Shivbrat Jagroop Mishra and Anr.* After considering the entire controversy, in para 12, the Division Bench has observed thus:

12. Perusal of Section 39 shows that it empowers the appropriate Government, if it is the Central Government to delegate its powers to the subordinate officers and also to the State Government and if the appropriate Government is the State Government to delegate its powers to the officer subordinate to it. By Section 39 powers of the appropriate Government are conferred on the authorities mentioned in Section 39. Section 39 does not designate those officers or government as appropriate Government. It is clear that even if the Central Government is the appropriate Government, even after delegating its powers to the officers subordinate to it, the Central Government will continue to be the appropriate Government and the officer to whom the powers are delegated will not become the appropriate Government. The officer will be merely exercising the power of the appropriate Government. Same is the case, if the powers are delegated by the Central Government to the State Government. The appropriate Government will continue to be the Central Government though the State Government will be authorized as a delegate of the appropriate Government to exercise the powers of the Central Government.

8. Thus, these conclusions show that even after delegation, Central Government continues to be appropriate Government and the delegate will be exercising the powers of appropriate Government i.e. Central Government. In view of this finding, it is clear that mere delegation by Central Government to State Government does not constitute State Government an appropriate Government. The issue before the Hon''ble Division Bench was in relation to establishment of Mazgaon Dock Limited. There, the Industrial Court held that Central Government was the appropriate Government but in view of the delegation by it to State Government, the State Government became appropriate Government and hence provision of MRTU & PULP Act were applicable to Mazgaon Dock Ltd., and Complaint (ULP) against it was maintainable. The learned Single Judge of this

Court upheld that judgment. Thus, for this Court, this judgment of Division Bench clinches the issue.

9. However, in view of the contention that judgment of the Hon''ble Apex Court in *Yovan, India Cement Employees Union v. Management of India Ltd.*, (supra) has not been considered by Division Bench, I am required to delve little more into the controversy. Before the Hon''ble Apex Court, the issue was in relation to reference of a dispute regarding contract labour in cement industry. The reference was made by State Government to Labour Court and employer preferred the preliminary objection and contended that reference by State of Tamil Nadu was bad as appropriate Government in relation to cement industry was Central Government. This reference was made on 23.09.1987. The employees as also Union of India relied upon Notification dated 08.12.1977 issued u/s 39 of the Industrial Disputes Act which mentioned that powers exercisable by Central Government in relation to cement industry shall also be exercised by State Government. The question before the Hon''ble Apex Court was which one was appropriate Government to make reference in the matter. The reference related to non employment of 300 workers. The Labour Court had held that Central Government was appropriate Government and reference by State Government was not competent. This order was challenged in Special Leave Petition. The Hon''ble Apex Court in para 8 found that both Central and State Government were appropriate Governments under Industrial Disputes Act and hence reference by Government of Tamil Nadu was held to be valid. In support, the Hon''ble Apex Court relied upon stand taken by Union of India in counter affidavit that both Central as also State Government are the appropriate Governments in view of the Notification dated 08.12.1977. Thus, both the Governments were held to be appropriate Governments under Industrial Disputes Act for cement industry in view of the Notification dated 08.12.1977. Very same notification is relied upon by present petitioner to urge that the Central Government continues to be appropriate Government in relation to its establishment/ industry.

10. Thus judgment of the Hon''ble Apex Court is considered by Division Bench of Karnataka High Court in *Workmen of Bagalkot Udyog Ltd. v. Bagalkot Udyog Ltd.*, (supra). The Hon''ble High Court found that provisions of Section 39 permitted Central Government to delegate its powers to State Government and delegatee cannot acquire a status equivalent to that of delegator. The delegator is never denuded of its powers and can strip off the powers of its delegatee. It has been, therefore, found in para 11 that even for the purposes of Industrial Disputes Act, State Government cannot be treated as appropriate Government in relation to Industrial Dispute concerning cement industry. In para 12, Karnataka High Court considers the above judgment of the Hon''ble Apex Court and observed that the conclusions of the Hon''ble Apex Court needed to be understood in the context in which they were made and it cannot be taken as declaration of statutory statement of affairs devoid of the context. In para 13, other judgment of the Hon''ble Apex Court laying down the principles for appreciation of precedence has

been pointed out. In para 14, it has concluded thus:

14. Keeping in view the question raised before the Supreme Court, the only reasonable inference can be that the Supreme Court has held that both the Central Government and the State Government can exercise the powers of an appropriate Government in relation to the cement industry under the I.D. Act, the former being itself the appropriate Government u/s 2(a)(i) and the latter being its delegatee.

11. The observations above, therefore, clearly show that the State Government by itself is not an appropriate Government in relation to Industrial Dispute concerning the industry of the petitioner. The Hon'ble Apex Court reached its findings because of stand in counter affidavit by Union of India and that stand was in the light of non employment of 300 workers. The question of applicability of particular law did not depend upon it. In facts before me, in view of the provisions of Section 2(3) of MRTU & PULP Act, if Central Government is appropriate Government for cement industry, the provisions of MRTU & PULP Act cannot apply.

12. The Division Bench of this Court has already concluded the controversy. Even if it is presumed that Central Government as also State Government are appropriate Government for cement industry, it becomes clear that provisions of MRTU & PULP Act cannot apply as Central Government then continues to be and also remains an appropriate Government. In my humble opinion, State Government while acting as appropriate Government discharges the role as an agent of Central Government and hence for the purpose of Section 2(3), it cannot be said that for cement industry, State Government is appropriate Government. The provisions of MRTU & PULP Act, therefore, cannot apply to industry of the petitioner. The impugned order is, therefore, unsustainable. The same is accordingly quashed and set aside. The application for dismissal of complaint filed by the petitioner before Labour Court is allowed and Complaint (ULP) No. 186 of 1993 on the file of Labour Court, Chandrapur, instituted by present respondent is dismissed.

13. Writ Petition is allowed. Rule is made absolute in above terms. However, in the facts and circumstances of the case, there shall be no order as to costs.