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**(1954) 07 BOM CK 0012**

**In the Bombay High Court**

**Case No :** Special Civil Application No's. 870 to 873 of 1954

Usman Habib

APPELLANT

Vs

State of Bombay and Others

RESPONDENT

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**Date of Decision :** 30-07-1954

**Acts Referred:**

Bombay Industrial Relations Act, 1946 — Section 1, 15, 27, 27A, 3

**Citation :** AIR 1955 Bom 177 : (1954) 56 BOMLR 1124 : (1955) ILR (Bom) 251 : (1955) 2 LLJ 494

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

**Bench :** Division Bench

**Advocate :** M.P. Amin, General and Little and Co., Rajani Patel and Vithalbhai B. Patel, for the Appellant; D.H. Buch, A.A. Rizvi, N.A. Palkhivala, B.A. Palkhivala, F. Kaka, Vakil, Dadabhoy and Bharucha, for the Respondent

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## **Judgement**

Chagla, C.J.—A very important question as to the proper construction to be placed upon Section 43(2), Bombay Industrial Relations Act, 1946, arises on this petition, and the few facts which are necessary for the decision of that question may be stated.

2. The petitioner is the employee of opponent No. 3, which is a weaving factory, and in June 1952 opponent No. 3 gave notice of a change u/s 42(1). Pursuant to that notice, conciliation proceedings were started and the Conciliator reported the failure of conciliation proceedings on 4-12-1952. An application was made by the petitioner and others to Government for a reference u/s 73 and the Government declined to make the reference. A notice of change was then given by the petitioner and others on 2-9-1953, u/s 42(2). On 29-9-1953, the petitioner sent a statement of the case as required by the Act to the Conciliator and on 2-10-1953, the Conciliator replied that he could not proceed with the conciliation as the notice was not in the prescribed form.

Thereupon the petitioner sent a second notice of change on 2-11-1953. This notice was addressed to the manager of the employer's factory and at the foot

of the notice it was stated that a copy had been sent to the Chief Conciliator, Bombay, the Conciliator, Industrial Relations Act, Ahmedabad, the Government Labour Officer, Earoda, the Registrar, Industrial Relations Act, Bombay, and the Textile Labour Union, Bombay, and it was further stated "Submitted to the Secretary, Textile Union, Cambay", which is opponent No. 4 and which is the Representative Union of the petitioner and other employees recognised under the Act with a request to forward the above notice to the manager of opponent No. 3 at Cambay, u/s 42(2), Industrial Relations Act, "without any delay on his account".

On 16-11-1953, the petitioner submitted a report with regard to the notice of change. On 23-2-1954, the Conciliator informed the petitioner that he refused to initiate the conciliation proceedings. Thereupon the petitioner filed this petition claiming two reliefs: (1) a mandamus against the Conciliator to initiate the conciliation, proceedings, and (2) a mandamus against the State of Bombay for a reference u/s 73 of the Act.

3. The Bombay Industrial Relations Act, 1946, has often come up for consideration before this Court, and before we turn to consider the various provisions it is necessary to state that the under-lying principle of the Act is collective bargaining. The conception upon which this law is based is that redress of grievances should not be individual, but should be collective. Recognition is given to the fact that in most industries labour is organised, and if labour is organised through its own union, then that union acts and appears for labour in its representative capacity. Now, if one were to look at the different sections which fall for consideration, bearing in mind this basic principle, it is easier to come to a conclusion on the question raised in this petition.

4. Section 3, Sub-clause (32), defines a "representative of employees" as meaning "a representative of employees entitled to appear or act as such u/s 30"; and Section 30 lays down the priority in which representatives of employees are entitled to appear or to act, and at the top of this, hierarchy stands "a Representative Union". Then one might also refer to a section which has been recently embodied in the Act, namely, Section 27a, which provides that, save as provided in Sections 32 and 33, no employee shall be allowed to appear or act in any proceeding under this Act except through the representative of employees. Section 32 provides for persons who may appear in proceedings and the section lays down that

"A Conciliator, a Board, an Arbitrator, a Wage Board, a Labour Court and the Industrial Court may, if he or it considers it expedient for the ends of justice, permit an individual, whether an employee or not, to appear in any proceeding before him or it."

Therefore, a discretion is conferred upon the various tribunals to permit an employee to appear in the interests of justice. There is a proviso to this section and that proviso is important; it says:

"Provided that no such individual shall be permitted to appear in any proceedings in which a Representative Union has appeared as the representative of employees."

Therefore, the discretion conferred u/s 32 is limited and fettered by the fact that a Labour Tribunal cannot permit an individual employee to appear where a Representative Union has appeared as representing the employees. In other words, if u/s 30 representatives of employees other than a Representative Union appear before any Labour Tribunal, the Labour Tribunal may permit an individual employee to appear if the Tribunal thinks that the ends of justice require it. But if the employees are represented by the Representative Union, so great is the importance which the law attaches to the Representative Union that the point of view of the individual employee can only be presented through the Representative Union and not through any other authority.

5. Then we come to Section 42; which is the material section. Sub-section (1) deals with a notice of change to be given by an employer and Sub-section (2) deals with a notice of change to be given by an employee, and the section provides that an employee desiring a change in respect of an industrial matter not specified in Schedule I or III shall give notice in the prescribed form to the employer through the representative of employees, who shall forward a copy of the notice to the Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed. Now, in this case, admittedly the notice of change given is not with regard to an industrial matter specified in Schedule I or III. Therefore, a proper notice could have been given under Sub-section (2).

Now, two interpretations are possible of this subsection, one is that the notice must be given by the employee himself and the Representative Union merely acts as a post-office and forwards the notice to the employer. The other interpretation that is possible is that the notice is to be given by the employee in the name of the Representative Union; the notice is to be forwarded to the employer by the Representative Union itself and it is made incumbent upon the Representative Union also to forward a copy of the notice to the various authorities mentioned in the sub-section.

In our opinion, the second construction suggested is the more reasonable construction. Because a distinction is made in the section between the notice itself and a copy of the notice which has got to be forwarded: It may be said that whereas the sub-section casts a duty upon the Representative Union merely to forward a copy of the notice, the notice itself is to be sent by the employee. In our opinion, that construction is not a reasonable construction looking to the whole scheme of the Act. If this suggestion were the proper suggestion, then it would result in this, that the Representative Union, would have no discretion left in the sending of the notice. As soon as a notice is sent, its only duty -- a statutory duty -- would be to send that notice to the employer. However much the Representative Union may feel that the notice given by the employee was

unjustified or unsustainable, even so, it would not be in a position to take a different view from the view put forward by the individual employee.

Now, when we turn to the form which has been prescribed in this sub-section, that form is not consistent with this construction. But Mr. Patel is right when he contends that, if the form does not conform to the section, the form must be declared to be bad and the form must be brought into line with the section itself. Now, the form which has been prescribed is Form L and the form requires that the name of the representative of employees has to be given, that the notice of change has to be addressed to the employer whose name has got to be given, and -- this is most material -- it has got to be signed by the representative of employees. It is not to be sent By the employee himself and what has been urged by Mr. Buch on behalf of the Representative Union is that it would indeed be a curious state of affairs if the Representative Union is required to sign a notice of change with which it is not in agreement.

Mr. Buch says, that if the form is a proper form, then it clearly shows that, it is for the Representative Union to decide ultimately whether the notice of change should be given or not. Now, it is urged by Mr. Patel -- with some force -- that Section 42, Sub-section (2), confers a substantive right upon every individual employee to give notice of change and that right cannot be taken away even if the Representative Union does not agree with the point of view of the individual employee. It may be pointed out that the petitioner is not a member of opponent No. 4 Union (the Representative Union), but is a member of another rival Union; and Mr. Patel says that a Representative Union cannot shut out the presentation of grievances before the conciliator because an employee does not belong to that Union, but belongs to another Union.

Prima facie this argument has considerable force and must be seriously considered, because this Court would be most reluctant to deprive any employee of any substantive right if the law confers that right upon him. But various considerations arising out of the provisions of the Act itself make it clear to us that the only right that Sub-section (2) of Section 42 confers, upon the employee is to submit to the Representative Union his grievances and it is ultimately for the Representative Union alone to decide whether a notice of change should be given, and having so decided it is for the Representative Union to give the notice.

In the first place, Section 27A itself makes it clear that all acts and appearances under this Act have to be made through the representative of employees and not by any individual employee. We are unable to agree with Mr. Patel when he says that the giving of a notice is not a proceeding & that a, conciliation proceeding only starts as laid down u/s 55 of the Act and till the conciliation proceeding has started this is not an act or an appearance in any proceeding. Now, Section 27A does not refer only to conciliation proceedings; it refers to any proceeding, and if a proceeding is required under the Act at all, that proceeding can only be taken by an employee "through his representative. It is difficult to accept the contention that a formal notice to be given u/s 42(2) of the Act is not a

proceeding under the Act. If it is a proceeding under the Act, the proceeding can only be taken through a Representative Union.

Indeed, for a moment we felt rather surprised why the Legislature should have mentioned in Sub-section (2) of Section 42 that the employee shall give notice in the prescribed form to the employer through the representative of employees: But the reason is clear, because Section 27A formed part of the Act subsequent to Section 42(2), and as Section 27A was not there, the Legislature had to make It clear that this particular proceeding cannot be taken by the employee himself, but that it can only be taken through his representative. In view of the presence now in the Act of Section 27A, perhaps this provision would be unnecessary.

6. But the matter does not stop there. u/s 44, if an agreement is arrived at within seven days of the date of service of the notice u/s 42, a memorandum of such agreement may be signed by the employer as well as by the representative of the employee and can be forwarded to the Chief Conciliator, and on such an agreement being arrived at the conciliation proceedings need not commence as provided in the Act. Therefore, if we assume, as Mr. Patel wants us to assume, that the employee has a substantive right to give a notice whether the Representative Union agrees With him or not, this rather extraordinary result would ensue, that the employee having given a notice the Representative Union can make it completely nugatory and block as it were the conciliation proceedings by agreeing with the employer and submitting the memorandum of agreement to the officer concerned.

Therefore, the result would be that the law would not permit the Representative Union to prevent a notice being sent to the Conciliator with which it did not agree; and yet the law would permit that very authority to prevent the adjudication of the grievance of the employee embodied in the notice by means of conciliation proceedings. Further, if we turn to Section 58, even in the course of conciliation proceedings a settlement of the industrial dispute may be arrived at; but this settlement can only be between the employer and the representative of employees as provided in terms by Section 58.

Therefore, even if conciliation proceedings are launched, the individual employee is not in control of the proceedings because it is open to the Representative Union, over the head of the individual employee to arrive at a settlement of the industrial dispute with the employer and that settlement is binding and the conciliation proceedings must stop. Both these sections, in our opinion, conclusively show that the right to give a notice of change u/s 42(2) was not conferred upon the individual employee, but was conferred upon the Representative Union. If is for the employees to place before their Union what their grievances are, and ultimately it is for the Union, if it is satisfied that the grievances are justified, to give the necessary notice of change u/s 42.

7. Now, it is necessary just to cast a glance at Chapter X which deals with conciliation proceedings. Section 54(1) provides that, after a notice of change is

given and it is objected to by the employer or the employee as the case may be the party who gave such notice shall, if he still desires that a change should be effected, forward to the Registrar, the Chief Conciliator and the Conciliator for the local area a full statement of the case in the prescribed form. The Explanation to this sub-section provides that a change shall be deemed to be objected to by the employer or the employee, as the case may be, if within seven days from the date of service of such notice, intimation or special notice arriving at an agreement, a memorandum of agreement has not been forwarded to the Registrar under the said sub-section.

As in this case no intimation was given, by reason of this Explanation the employer objected to the notice of change and, therefore, it became incumbent upon the party giving notice of change to submit a report as required by Section 54(1). Now, the report is submitted by the party who gave the notice, and in deciding who should submit this report the same considerations apply as we applied to Section 42. If we are right in the view that we take, that the party who has to give notice u/s 42(2) is the Representative union, then the party that has got to make a report of the dispute is also the Representative Union. Section 55 makes it obligatory upon the Conciliator to enter the dispute in the register kept for the purpose on his receiving the report of the dispute, and thereupon the conciliation proceedings shall be deemed to have commenced.

In this case, as we have already pointed out, the petitioner gave a notice of change u/s 42(2). That itself was irregular because the notice of change should have been given in the prescribed form by the Representative Union. In the affidavit, the Representative Union took up the attitude that it had never received this notice of change from the petitioner. At the bar, Mr. Buch has fairly admitted that the notice of change was received, but that it was not forwarded to the Conciliator. The report of the dispute was also similarly forwarded by the petitioner and that also is not in the prescribed form because Form N requires that that has also got to be signed by the representative of employees.

Therefore, as far as the Conciliator is concerned, no blame whatsoever can be ascribed to him for not initiating conciliation proceedings under Sections 55 and 56. Not only the, notice of change and the report of the dispute were not in proper form, but they were never submitted to him, and unless both the notice and the report are submitted to him in the prescribed form, there is no obligation upon him to initiate the conciliation proceedings. As far as the Representative Union is concerned, it is unfortunate that it should first have taken up the attitude that it did not receive the notice of change at all. But even if it did receive the notice of change, we have now taken the view that it was not incumbent upon the Representative Union to forward that notice of change. The law gives it the discretion to decide whether the notice should be sent or not; and if in its opinion such a notice should not be sent, the Union cannot be compelled to forward the notice of change given by the individual employee.

8. We should like to say a word about Government's refusal to refer the matter

u/s 73. Section 73 gives the widest power to Government to refer an industrial dispute to the arbitration of the Industrial Court, either on the report made by the Labour Officer or otherwise, and it can refer the dispute provided it is satisfied as to any of the grounds mentioned in the section; and the most important ground is that it is necessary in the public interest to do so. We wish to make it clear that the attitude taken up by Government in refusing to refer this dispute u/s 73 was entirely erroneous. The answer given by Government to the application of the petitioner for reference was as follows:

".....I am directed to say that the request made by you to refer the disputes to the arbitration of the Industrial Court, Bombay, cannot be considered unless it comes from the "Representative of the Employees" of the Factories concerned."

Now, Section 73 permits any and every employee to have access to the State Government. There is nothing in Section 73 which suggests that an employee can approach his own Government only through a Representative Union. It is open to the employee to satisfy the State Government that the public interest requires that the dispute that he wants to raise should be settled by arbitration; and Government were not correctly advised when they took the view that it could only consider whether an industrial dispute should be referred or not u/s 73 provided an application was made through a Representative Union. The Advocate General very fairly concedes that the Government's approach to this question was not a proper approach.

In this case, we would have had no hesitation in issuing a mandamus against the State Government and directing the State Government to consider the application of the petitioner on merits u/s 73. But, unfortunately for the petitioner, the answer of the State Government was given as far back as 3-2-1953, and the petition has been filed almost a year after that date. But it would be open to the petitioner again to approach the State Government with a request to refer the matter to arbitration u/s 73, and if such application is made, we have no doubt that the Government would consider it on merits and decide whether it does or does not fall under any of the grounds mentioned in that section.

9. Mr. Patel has strongly urged upon us that the view we are taking may lead to an oppression by the majority of a minority section in the industries. Mr. Patel says that, however justifiable the grievance of an individual employee may be, or even of a large section of employees, those grievances may never be heard and never be adjudicated upon if the Representative Union, for reasons best known to it, refuses to take up the cudgels on behalf of these employees.

The answer to this difficulty is two-fold. The first is that underlying the Act is the clear assumption that a Representative Union acts in the interests of employees, that it acts bona fide, and that it exists to do its best for the cause of labour. If a Representative Union does not conform to those high standards expected of it, the employees are not without redress, because Section 15 permits the Registrar

to cancel the registration of a Union on various grounds mentioned in that section, and one of the important grounds is that the registered Union is not being conducted bona fide in the Interests of employees, but in the interests of employers, to the prejudice of the interests of employees.

Mr. Patel says that it may not always be possible to establish what this section requires, and even though a Representative Union may not be lacking in bona fides, legitimately there may be two opinions with regard to the interests of the employees, and if a section of the employees bands together and forms another Union having a different point of view with regard to the interests of labour, the employees in that other Union have no rights whatever. It seems to us that that grievance is legitimate. Mr. Patel says that the Central Act has permitted more than one Union the right to voice the grievances of employees and has even given the right to individual employees to present their grievances otherwise than through the official channel. Mr. Patel says that we must interpret the Bombay Act so as to bring it into line with the Central legislation.

Now, the function of a Court is not to legislate. It is true that, in one sense, judges do make laws. But that is only in the sense that sections have to be interpreted and the interpretation has got to be in conformity with the object the Legislature has in mind in passing the law. It is true that the outlook or the approach of the Court may place an impress upon the legislation which it is interpreting. But when the law is clear and only one interpretation is possible, it is not the function of the Court to construe the section in the light of its own predilections in order to do what it thinks is justice. When the law is clear, the matter is beyond the powers and competence of the Court, and it is only the Legislature that can alter the law in order to bring it into conformity with modern and more advanced views on the subject.

Therefore, while we agree with Mr. Patel that justice can only be done to dissident and minority opinion by adopting the provisions laid down in the Central Act, it is for our State Legislature to consider whether the local law should not be amended on the lines of the Central law.

10. Mr. Patel has also drawn our attention to a judgment of this Court in -- Ranchhod Ravji Mota Vs. State of Bombay and Others, Where we took the view that a person who is not a member of the Union is not bound by an award or agreement u/s 114. and we also held that Section 30 is a procedural section and not a section conferring substantive rights. We do not think that the decision that we have given to day is in any way in conflict with the view taken in the above case. Notwithstanding the position given to the Representative Union, we construed Section 114 as we did because of the clear explicit language used by the Legislature. Whatever the rights of the petitioner may be, if a settlement or agreement is arrived at or an award is passed, what we are now concerned with is the narrow question as to under what circumstances he becomes entitled to conciliation proceedings.

Mr. Palkhivala has very rightly emphasized the rather anomalous situation that would arise if we were to construe Section 42(2) as meaning that every individual employee has the right to give a notice of change, that the Representative Union is merely the post-office which should convey this notice, and that, when the notice is given and is followed by a report of the dispute, it is obligatory upon the Conciliator to initiate conciliation proceedings. Mr. Palkhivala says that such art interpretation would make it possible for each and every employee in an industry separately and individually to send notices of change and would compel the Conciliator in each case to initiate conciliation proceedings.

Now, surely It could never have been intended that the services of a public machinery and a public officer should be availed of in a manner which could only lead to the waste of public time and not result in any tangible good to any section of the public as we have pointed out, if once it is conceded that the Representative Union can make conciliation proceedings nugatory by intervening either at the early stage by arriving at an agreement with the employer or at a later stage by arriving at a settlement, it would be futile for us to construe Section 42(2) in the manner suggested by Mr. Patel in order to confer a right upon the individual employee, which in effect and in substance is no right at all. We do not see what useful purpose would be served by the employee feeling that he has a right when that right is totally illusory and can be defeated at every stage by the Representative Union.

11. The result is, the petition fails and must be dismissed. No order as to costs. Same order in the other petitions.

12. Petition dismissed.