(1995) 08 BOM CK 0047

Bombay High Court

Case No: Writ Petition No. 2212 of 1994

Bank Karmachari Sangh		APPELLANT
	Vs	
K. R. Pawar, Member, Industrial Court, Pune and Others		RESPONDENT

Date of Decision: Aug. 9, 1995

Acts Referred:

- Bombay Industrial Relations Act, 1946 - Section 13, 14, 27A, 30, 32
- Constitution of India, 1950 - Article 226, 227, 86CC, 86J

Citation: (1996) 1 BomCR 141 : (1996) 1 LLJ 955 : (1996) 1 MhLj 539

Hon'ble Judges: B.N. Srikrishna, J

Bench: Single Bench

Judgement

B. N. Shrikrishna, J.
This writ petition under Articles 226 and 227 of the Constitution of India impugns an order dated 3rd February 1994 passed by the Industrial Court, Pune in Revision Application (BIR) No. 2 of 1993 purportedly in exercise of its powers of superintendence u/s 86J of the Bombay Industrial Relations Act, 1946 (hereinafter referred to as "the Act").

2. The Petitioner is the representative and approved Union for the Banking Industry in the local area of Pune District and Cantonment. 3rd Respondent is an Undertaking in the Banking Industry in a co-operative sector.

3. For some reasons, the Petitioner Union, despite being a representative and approved Union and having the legal right to represent employees in every undertaking in the Co-operative Banking Industry in the co-operative sector in the concerned local area, appears to have neglected the employees of the 3rd respondent employer. Consequently, the employees and the employer assumed that they could settle their industrial disputes by direct negotiations without intervention of the representative Union. The long period of inactivity on the part of

the petitioner Union perhaps contributed to and reinforced the erroneous impression of the 3rd Respondent and its employees. On 2nd September 1988, the Management of the 3rd Respondent entered into what has been styled as a ''settlement'' with the individual employees. The said so-called settlement was to remain in operative from 1st July 1988 to 30th June 1991.

4. On 7th January 1992, the employees of the 3rd Respondent addressed a demand to the Chairman of the 3rd Respondent demanding revision of their wages. In the meanwhile, the Petitioner suddenly decided to act in the matter and gave a notice of change on 4th March 1991 u/s 42(2) of the Act. The 3rd Respondent employer ignored the said notice of change presumably under the erroneous impression that nothing need be done since none of its employees were members of the Petitioner Union. On 5th April 1991, the employees of the 3rd respondent - voluntarily or under inducement - addressed a letter to the 3rd respondent stating that they had no concern with the Petitioner Union and that the 3rd Respondent should directly negotiate with them and settle their wage demands.

5. The petitioner forwarded to the Conciliator of the area concerned a notice in Form D read with Section 54 of the Act seeking conciliation proceedings. The Conciliator issued notice to the 3rd Respondent to attend the conciliation proceedings. The 3rd Respondent, however, replied and stated that there was no point in attending the conciliation proceedings as the petitioner had no members in its undertaking. Correspondence in this fashion continued for some time and it is unnecessary to refer to them. Finally, on 10th July 1991, the 3rd Respondent again entered into what is called a ''settlement'' with its own employees without intervention of the Petitioner. In the meanwhile, the conciliator certified that the conciliation proceedings had ended in a failure. Armed with this certificate of failure of conciliation, the petitioner Union made a Reference of the Industrial dispute arising from its notice of change to the Wage Board u/s 86CC of the Act.

6. After receiving the notice from the Wage Board, the 3rd Respondent employer appeared before the Wage Board and raised a preliminary objection as to tenability of the Reference, which had been numbered as Reference No. 14 of 1991. The stand of the 3rd respondent employer before the Wage Board was that the petitioner Union was not entitled to give the notice of change, as none of its employees were members of the petitioner Union. The 3rd Respondent also contended that the dispute as to wages had been amicably settled between itself and its employees by the agreement dated 10th July 1991 and, therefore, the dispute having come to an end, the Reference itself was not maintainable. The Wage Board, in the first instance, declined to decide the said objection as a preliminary issue and decide to dispose of the Reference on all the issues of law and facts at one stroke. Being dissatisfied, the 3rd respondent moved the Industrial Court in exercise of its power u/s 86J of the Act. Surprisingly, an order was made by the Industrial Court on 4th August 1992 holding that it was necessary for the Wages Board to decide the

preliminary objection before embarking upon adjudication of the Reference before it. The Wage Board, therefore, heard the parties and, by its unanimous order dated 3rd September 1993, held that Reference was tenable despite the agreement between 3rd Respondent and its employees and held that the Wage Board had jurisdiction to entertain and adjudicate the reference on merits. It also held that, irrespective of whether the employees of the 3rd Respondent were members of the Petitioner Union, the Petitioner Union as a representative and approved union, was entitled to represent the employees of the 3rd Respondent before the Wage Board.

7. Being dissatisfied with the order of the Wage Board dated 3rd September 1993 rejecting the preliminary contentions, the 3rd Respondent employer moved the Industrial Court by Revision Application (BIR) No. 2 of 1993. The Industrial Court, by the impugned order dated 3rd February 1994, allowed the Revision Application, quashed and set aside the order of the Wage Board made on 3rd September 1993 and, strangely, made an order of "recall" of the notice of change given by the Petitioner Union. It is this order which is impugned in this writ petition.

8. Ms. N. D. Buch, learned Advocate appearing for the Petitioner-Union, vehemently criticised the order of the Industrial Court and urged that the Industrial Court had completely failed to apply its mind to the law laid down by the three judgments of the Supreme Court cited before it. She also made a grievance that, despite the three judgments having been cited, there is not even a reference to them in the impugned order, which indicates that there was total non-application of mind to the crucial question of law which arose in the case. She urges that, even though it may appear that the representative Union is flogging a dead horse in trying to pursue the Reference of the year 1992 before the Wage Board based on its notice of change dated 4th March 1991, it is essential that this Court consider the matter in depth and give a judgment as a pattern has developed in the Banking Industry in the Pune area of bypassing the representative Union by entering into individual settlements with the employees and, unfortunately, in several judgments of the Industrial Court, this pattern has been recognised as a valid mode of resolving the industrial dispute. She urges that it is necessary to decide this petition by a speaking judgment, so as to clearly re-state the law for the guidance of the Courts below.

9. Ms. Buch referred to the judgments of the Supreme Court in Santuram Khudai Vs. Kimatrai Printers and Processors Pvt. Ltd. and Others, , which in turn relied on the previous judgment of the Supreme Court in Girija Shankar Kashi Ram v. The Gujarat Spinning & Weaving Co. Ltd. 1962 Supp. (2) SCR 890, which overruled observations to the contrary made in a Division Bench judgment of this Court in Naik N.M. Vs. Colaba Land Mills, In Santuram"s case (supra), the Supreme Court considered the scheme of the Bombay Industrial Relations Act, 1946, particularly Sections 27-A, 32, 33 and 33-A and observed as follows :-

"12. Now a combined reading of Secs. 80, 27-A, 30, 32 and 33 of the Act leaves no room for doubt that consistent with its avowed policy of preventing the exploitation

of the workers and augmenting their bargaining power, the Legislature has clothed the representative union with plenary power to appear or act on behalf of the employees in any proceedings under the Act and has deprived the individual employees or workmen of the right to appear or act in any proceedings under the Act where the representatives Union enters appearance or acts as representative of employees. We are fortified in this view by a decision of this Court in Girija Shankar Kashi Ram v. The Gujarat Spinning and Weaving Co. Ltd. 1962 2 Supp SCR 890 : (1962) 2 Lab LJ 369 (SC) where Wanchoo, J. (as he then was) speaking for the Court observed as follows :-

It will be seen that S. 27-A provides that no employee shall be allowed to appear or act in any proceeding under the Act, except through the representative of employees, the only exception to this being the provisions of Sec. 32 and 33. Therefore, this section completely bans the appearance of an employee or of any one on his behalf in any proceeding after it has once commenced except through the representative of employees. The only exceptions to this complete ban are to be found in Sec. 32 and 33.''

It also reiterated the observations made in Girija Shankar'' case (supra) to the following effect :-

"14. The second contention raised by Mr. Dutta is also devoid of substance. Sections 32 and 33 of the Act no doubt engraft exceptions on the aforesaid general rule embodied in Section 27-A of the Act but they are not helpful to the appellant as the provisos appended thereto specifically preclude individual employees from appearing or acting in any proceedings under the Act where the representative Union enters appearance or acts as the representative of employees. It will be advantageous in this connection to refer to the following passage occurring in a decision of this Court in Girija Shankar Kashi Ram v. The Gujarat Spinning & Weaving Co. Ltd. (1962) 2 Supp. SCR 890 where Wanchoo, J. (as he then was) summarising the position observed as follows :-

"The result thereof of taking Secs. 27A, 32 and 33 together is that Sec. 27-A first places a complete ban on the appearance of an employee in proceedings under the Act once it has commenced except through the representative of employees. But there are two exceptions to this ban contained in Secs. 32 and 33. Section 32 is concerned with all proceedings before the authorities under the Act to permit an employee himself to appear even though a representative of employees may have appeared but this permission cannot be granted where the representative union has appeared, as a representative of employees. Section 33 which is the other exceptions allows an employee to appear through any person in certain proceedings only even though a representative of employees might have appeared, but here again it is subject to this that no one else, not even the employee who might have made the application, will have the right to appear if a Representative Union has put in appearance as the representative of employees. It is quite clear

therefore that the scheme of the Act is that where a Representative Union appears in any proceeding under the Act, no one else can be allowed to appear not even the employee at whose instance the proceedings might have begun u/s 42(4). But where the appearance is by any representative of employees other than a Representative Union authorities under Sec. 32 can permit the employee to appear himself in all proceedings before them and further the employee is entitled to appear by any person in certain proceedings specified in Section 33. But whenever the Representative Union has made an appearance, even the employee cannot appear in any proceeding under the Act and the representation must be confirmed only to the Representative Union. The complete ban therefore laid by S. 27-A on representative otherwise than through a representative of employees remains complete where the representative of employees is the Representative Union that has appeared; but if the representative of employees that has appeared is other than the Representative Union then Secs. 32 and 33 provide for exceptions with which we have already dealt. There can therefore be no escape from the conclusion that the Act plainly intends that where the Representative Union appears in any proceeding under the Act even though that proceeding might have commenced by an employee under S. 42(4) of the Act, the Representative Union alone can represent the employee and the employee cannot appear or act in such proceeding.''

Repelling the argument of mala fides on the part of the representative union, the Supreme Court pointed out that mala fides or bona fides of a representative union has no relevance while considering the provisions of Sections 27-A, 32 and 33 of the Act, which taken together impose a ban on the appearance of an individual employee where the representative union chooses to appear or as representative of the employee. It was also held that in case the employees find that representative union was acting in a manner prejudicial to their interest, the remedy is to invoke the aid of the Registrar under Chapter III and ask him to cancel the registration of the union. The following passage from Girija Shankar''s case (supra) was approvingly quoted by the Supreme Court in Santuram Khudai''s case (supra) :

"But is it clear that bona fides or mala fides of the representative of employees can have nothing to do with the ban placed by S. 27-A on the appearance of any one else except the representative of employees as defined in S. 30 and that if anyone else can appear in any proceeding we must find a provision in that behalf in either section 32 of Section 33, which are the only exceptions to Section 27-A. It may be noticed that there is no exception in S. 27-A in favour of the employee, who might have made an application under S. 42(4), to appear on his own behalf and the ban which is placed by S. 27-A will apply equally to such an employee. In order however to soften the rigour of the provisions of S. 27-A, for it may well be that the representative of employees may not choose to appear in many proceedings started by an employee under S. 42(4), exceptions are provided in Secs. 32 and 33. The scheme of these three provisions clearly is that if the Representative Union appears, no one else can appear and carry on a proceeding, even if it be begun on an

application under S. 42(4) but where the Representative Union does not choose to appear there are provisions in Secs. 32 and 33 which permit others to appear in proceedings under the Act."

10. In my view, the effect of the judgments of the Supreme Court and the observations in Girija Shankar''s cases should have left no doubt in the mind of the Industrial Court as to the position in law, if they had been perused carefully. From a perusal of the impugned order, it would appear that there is no reference to these judgments at all. The inference can be two-fold : (a) that these judgments were not cited before the Industrial Court, or (b) that there is total non-application of mind to the relevant judgments cited at the bar. Since learned Counsel appearing on both sides are unanimous that these judgments were quoted at the bar, the second hypothesis gets strengthened.

11. Ms. Buch also cited the judgment of a Division Bench of this Court in M. G. Jadhav v. W. M. Bapat & Ors. reported in 1993 Lab. I. C. 1044, particularly the observations in paragraphs 12 to the effect that when a representative union enters into a settlement, it is really a settlement arrived at by the employees themselves and that it was not open to the employees to claim that part to the settlement advantageous to them would be accepted while the other part detrimental to them would be rejected. She emphasised the observations of the Division Bench in paragraphs 7, 8 and 9 where the Division Bench, after analysing the scheme of the Act, and the observations of the Supreme Court in Santuram''s case (supra), was of the view that the representative union had the paramount right of acting on behalf of the employees in the industry in the local area for which it is the representative union.

12. Ms. Buch also highlighted similar observations, though under a different context, made by the Supreme Court in its judgment in Shramik Uttkarsh Sabha v. Raymond Woollen Mills Ltd. & Ors. reported in 1995 I CLR 607, in her support.

13. Section 30 of the Act prescribes the hierarchy of persons entitled to appear or "act" in the order of preference, on behalf of employees in an industry in any local area. Significantly, the representative union is the first in the hierarchical list enumerated in Section 30. Section 42(2) provides that an employee desiring a change in respect of an industrial matter not specified in Schedule I or III, shall give a notice in the prescribed form to the employer "through the representative of employees" who shall forward copy of the notice to the authorities prescribed therein. Under the Scheme of the Bombay Industrial Relations Act, any industrial dispute with regard to the industrial matters not specified in Schedules I and III can only be raised by employees by issuing a notice of change under sub-section (2) of Section 42, which can only be done through the representative of employees. Section 42 has been interpreted by judicial pronouncements taking the view that the representative union does not act merely as a Post Officer and has wide discretion in the matter. Under the scheme of the Bombay Industrial Relations Act, the

representation on behalf of the employees is, industry wise. So long as the union is qualified to act as a representative union by fulfilling the qualifications contained in Sections 13 and 14 of the Act, it is entitled to be registered as a representative union. It is important to notice that the membership criterion for a representative union u/s 13 is membership not less than 25% of the total number of employees employed in any industry and not in any industrial undertaking in the industry. As long as this criterion is ful-filled, the representative union is entitled to act on behalf of all employees in the industry as the representative union irrespective of individual memberships of employees in individual undertakings. The reason for this is not far to seek. As the preamble of the Act indicates, the Act is "An Act to regulate the relations of employers and employees, to make provision for settlement of industrial dispute... " Thus underlying philosophy of the Act appears to be to discourage mushrooming of unions and to encourage stable and healthy collective bargaining between the employer and the recognised Collective Bargaining Agent for the entire industry. It is this refrain which recurs throughout the scheme of the Act, reflecting itself in the several provisions of the Act, which were noticed by the Supreme Court in the three decisions referred to above.

14. In the face of this clear position in law, it is somewhat surprising that the Industrial Court struck a discordant note, without analysing the matter in such depth as it deserved. Ms. Buch is right on several counts. In the first place, the impugned order of the Industrial Court (It would have contributed to greater clarity of thought, it shorter and crisper sentence were used in the impugned order) was passed purportedly in exercise of the powers u/s 86J of the Act. Section 86J gives the power of superintendence over Wage Boards to the Industrial Court. Though, in terms, the Section does not say it, the judicial interpretation of the corresponding provision u/s 85 suggests that the power is also one of judicial superintendence in addition to administrative superintendence, somewhat akin to the powers of this Court under Article 227, though not as wide. While exercising such power, the Industrial Court was required to consider whether the Wage Board''s view on the preliminary objection was correct or erroneous. It was not permissible for the Industrial Court to adjudicate the fairness of the wage levels obtaining in the 3rd Respondent''s industrial establishment, while doing so. Again, I am at a loss to understand what the Industrial Court meant by the "propriety" of the notice of change issued by the Petitioner in Form L u/s 42(2) of the Bombay Industrial Relations Act. If, by the term "propriety", was meant, the absence of mala fides, then the said factor is wholly irrelevant. If the term suggested fairness of the demands raised by the notice of change, that was a matter for the adjudicator, namely, the Wage Board in the present instance, and not for the Industrial Court to consider in exercise of its powers u/s 86J of the Act.

15. Though the Industrial Court was eloquent on the incongruity of the situation, as perceived by its, it failed to notice that the situation was one precisely so intended by the Legislature and recognised as such by judgments of this Court and the

Supreme Court. Lastly, there is no power of superintendence over trade unions vested in the Industrial Court u/s 86J of the Act. The Industrial Court''s order ''recalling'' the notice of change issued by the petitioner, is not warranted by any provision of the Act as such power is not available to the Industrial Court under the Act. In my judgment, the Industrial Court - perhaps not having read carefully itself in law and embarked upon an exercise, which was wholly unwarranted and uncalled for. Considering the matter from all perspectives, I am satisfied that the impugned order of the Industrial Court needs to be quashed and set aside and the Reference needs to be restored to the file of the Wage Board for expeditious disposal in accordance with law.

16. Mr. Babu Marlapalle, learned Advocate appearing for the 3rd Respondent, faintly attempted to persuade me that the conditions of service as to wages granted by the 3rd Respondent to its employees were wholly fair and adequate and needed no change. If the 3rd Respondent satisfies the Wage Board that the existing conditions of service are just, fair and adequate, the Wage Board would decline to grant any relief to the Petitioner. In any event, this is not issue which can be agitated before this Court in the Writ Proceedings, nor am I inclined to go into the said controversy.

17. There is, however, one more aspect of the matter which needs consideration. I am informed at the bar by both counsel that the situation has drastically changed subsequently. The employees of the 3rd Respondent have now admittedly become the members of the Petitioner Union. Though, by the order in this writ petition, the Reference would be revived and remanded to the Wage Board for a proper adjudication, the Petitioner may reconsider whether it is worthwhile pursuing such an old notice of change, perhaps, it may be better to issue a fresh notice of change and negotiate it with the 3rd Respondent, in the interest of industrial relation. This, however, is a matter for the Petitioner Union to consider on its own merits.

18. In the result, writ petition is allowed. The impugned order of the Industrial Court dated 3rd February 1994 made in Revision Application (BIR) No. 2 of 1993 is hereby quashed and set aside. Reference No. 14 of 1991 is restored to the file of the 2nd Respondent, Wage Board, for disposal in accordance with law.

19. Rule is accordingly made absolute with no order as to costs.

20. Issuance of certified copy of this judgment is expedited.