Textile Mills, Bombay State and Others Vs Their Employees, Nakshatra, etc. and Presses [Nagpur Press Kamgar Sangh and Others]

Court: Bombay High Court

Date of Decision: Oct. 29, 1958

Acts Referred: Central Provinces and Berar Industrial Disputes Settlement Act, 1947 â€" Section 22, 22(5), 38A
Evidence Act, 1872 â€" Section 42
States Reorganisation Act, 1956 â€" Section 122

Citation: (1959) 1 LLJ 308

Hon'ble Judges: M.R. Meher, J; Indrajit G. Thakore, J; G.W. Chiplonkar, J

Bench: Full Bench

Judgement

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1. The questions which have been referred to this Full Bench are : (1) Whether the State industrial court which entertained the present reference

applications was validly constituted and had jurisdiction to entertain them ? (a) Whether the present State industrial court is properly constituted

and in entitled to deal with these references ? (2) Whether no jurisdiction is conferred upon the State industrial court by enacting S. 38A of the Act

to entertain these references and proceed with them in the absence of expressly conferring jurisdiction by rules made or in any other manner ? (3)

Whether proceedings by way of conciliation are sine que non to a reference under S. 38A of the Act ? (a) Whether in the matter of references

before this Court mentioned above, there were valid and proper conciliation proceedings both as to the identity of the parties and as to the identity

of the subject-matter in dispute ? (b) If the reply to either or both is negative, what is the effect upon the present references ?

2. Before dealing with the questions, it is necessary to refer to one objection to the validity of this proceeding before this Full Bench by the non-

applicants in References Nos. 5 to 11 of 1957. The objection urged is that the Central Provinces and Berar Industrial Disputes Settlement Act,

1947, does not operate outside Vidarbha and so, the hearing of this reference at Bombay is not valid. An application raising this objection was

made by the non-applicants in References Nos. 5 to 11 of 1957 before Sri G. W. Chiplonkar, of us, who had endorsed on it that when the

matters were to be referred to the Full Bench he pointed out that early hearing of these references was possible in Bombay, for it might not be

possible for the Judges in Bombay to come to Nagpur early for the hearing of these references. Thereupon, the counsel for the non-applicants in

References Nos. 5 to 11 of 1957 agreed to a hearing in Bombay. Of course the agreement of the counsel to a hearing in Bombay would not cure

invalidity of the proceeding, if the hearing at Bombay is invalid. But we are of the opinion that the objection is without any substance. Section 22(5)

of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, lays down that the State industrial court shall hold its sittings at such

place or such places as the president may direct. The president and three of the members of the State industrial court, are also the president and

the members respectively of the industrial court constituted under the Bombay Industrial Relations Act, with headquarters at Bombay. In the

present case, having regard to the other work of the president and members of the Court, an early hearing could not be conveniently fixed at

Nagpur, and so a hearing was fixed at Bombay by order of the president. The fact that the Central Provinces and Berar Industrial Disputes

Settlement Act is applicable to Vidarbha only does not in law prevent the State industrial court from hearing a case at Bombay, which is the

headquarters of the State of which Vidarbha forms apart. It cannot be that if a court has jurisdiction in respect of an Act applicable only to a part

of the State, the Court must hold its sittings in that part of the State only. Section 22(5) of the Act is a complete answer to the objection.

3. The questions which have been referred to the Full Bench arise in the following way. The Nagpur Press Kamgar Sangh which is a recognized

union for the local area of Nagpur made a reference in respect of certain disputes against seven employers in the printing industry (hereinafter

referred to as the non-applicants), under S. 38A of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947 (hereinafter referred

to as the Act). The references arose out of notices of change given under S. 32(1) of the Act on the seven non-applicants as well as a number of

other employers in the printing industry. Conciliation proceedings which followed failed, and the union made these references. They came up for

hearing before Sri G. W. Chiplonkar, of us, and an objection was raised to his jurisdiction on the ground that the Court was not validly constituted.

A similar objection was raised before him in Industrial Reference No. 4 of 1955 which is a reference by the State Government under S. 39 of the

Act. The parties in that reference are the textile mills in Vidarbha and their employees and the same objection to the constitution of the Court, as

was urged by the press employees, was urged by the textile mills. 4. The objection to the constitution of the Court is based on various notifications

issued from time to time by the State of Madhya Pradesh before the reorganization of States and by the State of Bombay after the reorganization.

It is necessary to refer to Sub-secs. (1) and (2) of S. 22 of the Act which are as follows :- ""22. (1) The Provincial Government may constitute a

provincial industrial court for determining industrial disputes and for dealing with such other industrial matters under the provisions of this Act as

may be prescribed."" ""22. (2) The provincial industrial court shall consist of such odd number of members as the Provincial Government may

determine and the Provincial Government shall appoint one of them to be president :

Provided that if the Provincial Government thinks fit, it may constitute a single person to be the provincial industrial court.

4. A provincial industrial court was constituted under notification No. 73-1506-XXVI, dated 21 January 1948 and Sri K. T. Mangalmurti, I.C.S.,

was appointed to that Court. Sometime later, the services of Sri Mangalmurti having ceased to be available, the State Government issued a

notification No. 1875-2917-XXVI on 14 December 1943 constituting a provincial industrial court consisting of Sri V. B. Sarwate, for determining

industrial disputes and for dealing with other matters under the provisions of the Act. It is the contention of the non-applicants that the State

Government would not constitute more than one industrial court and so the act of the State Government constituting an industrial court consisting of

Sri V. B. Sarwate was ultra vires and invalid and constitution of subsequent courts in supersession of this Court is also invalid. Before dealing with

this point, it is necessary to deal with the subsequent notifications by the Madhya Pradesh Government and the Bombay Government. The State

Government by notification No. 43-2917-XXVI, dated 8 January 1949, cancelled the notification dated 21 January 1948 constituting Sri

Mangalmurti as the industrial court. By notification No. 173-108-XXVI, dated 27 January 1949, purported to act under S. 39 and in supersession

of this notification and in partial modification of notification No. 1875-2917-XXVI, dated 14 December 1948 referred an industrial dispute

between All India Reporter, Ltd., Nagpur and the employees to Sri Sarwate, the provincial industrial court, and further directed that the

proceedings pending before Sri Mangalmurti be continued before Sri Sarwate. A suit (No. 121-A of 1949) was filed by the All India Reporter,

Ltd., for a declaration that the provincial Industrial court consisting of Sri Sarwate had no power to decide the dispute between the All India

Reporter, Ltd., and its employees and for an injunction restraining Sri Sarwate from continuing with the reference. The suit was decreed. In that

suit the Civil Judge held that the Provincial Government could not constitute two industrial courts and that notification No. 43-2917-XXVI, dated

8 January 1949, cancelling notification No. 73-1506-XXVI, dated 21 January 1948, was ultra vires because the Provincial Government could not

abolish the State industrial court. The judgment was delivered on 24 November 1949. We were informed at the hearing that there was an appeal

from the decision and there was a compromise in the appeal. The compromise order has not been produced. So the judgment cannot operate so

as to preclude consideration on the merits of the points raised in this proceeding. In any case so far as the present proceeding is concerned the

judgment not being one falling under S. 41 of the Indian Evidence Act is not conclusive but is only relevant under S. 42 of the Indian Evidence Act.

5. On 23 February 1950, the Madhya Pradesh Government issued notification No. 442-292-XXVI, dated 23 February 1950, in supersession of

notification No. 1875-2917-XXVI, dated 14 December 1948, referred to above, by which it constituted a provincial industrial court consisting of

the District and Sessions Judge of Nagpur. On 19 July 1954, by notification No. 1496-2353-XXIII, the Madhya Pradesh Government

superseded the notification dated 23 February 1950 and constituted a State industrial court consisting of Sri N. H. Mujumdar, retired District and

Sessions Judge, Nagpur. On the reorganization of States, the Bombay Government, acting in exercise of the powers conferred by S. 122 of the

States Reorganization Act, 1956, issued a notification on 1 November 1956 specifying Sri S. H. Naik, member of the industrial court, Bombay, as

the authority competent to exercise the powers of the State industrial court under the Act. On 10 December 1956, the Bombay Government

modified this notification and constituted Sri N. H. Mujumdar to be the State industrial court. By notification dated 11 December 1957, the name

of Sri S. H. Naik was substituted for that of Sri N. H. Mujumdar. On 20 December 1957, the Bombay Government issued a notification

modifying this last notification and substituted the name of Sri I. G. Thakore for Sri S. H. Naik (who had died). On 26 May 1953, by another

notification the name of Sri G. W. Chiplonkar was substituted for that of Sri I. G. Thakore. Finally on 12 September 1958, the Bombay

Government issued the following notification :- ""No. ICE. 1158-I. - In exercise of the powers conferred by S. 22 of the Central Provinces and

Berar Industrial Disputes Settlement Act, 1947 (Central Provinces and Berar Act No. XXIII of 1947), and of all other powers enabling it in this

behalf and in supersession of Government notification, Labour and Social Welfare Department, No. ICE. 1156-I, dated 10 December 1956, as

amended from time to time, the Government of Bombay hereby - (a) constitutes on and with effect from 20 September 1958, a State industrial

court for determining Industrial disputes and for dealing with such matters under the provisions of the said Act as may be prescribed. (b) directs

that the State industrial court so constituted shall consist of the following five members, namely :- (1) Sri M. R. Meher, I.C.S. (Retd.), (2) Sri I. G.

Thakore, B.A., LL.B., Advocate (OS), (3) Sri Syed Taki Bilgrami, LL.B. (Leeds), Bar-at-Law, (4) Sri J. A. Baxi, B.A., LL.B., (5) Sri G. W.

Chiplonkar, M.A., LL.B., and

(c) appoints Sri M. R. Meher to be the president of that Court. 5. We shall now deal with the argument that as the notification constituting Sri

Sarwate as State industrial court on 14 December 1948 was invalid all subsequent notifications are invalid. The argument is that once the State

industrial court was constituted the Madhya Pradesh Government could only fill a vacancy if it occurred and could not constitute a fresh industrial

court, and therefore, the notification constituting Sri Mangalmurti as the State industrial Court on 21 January 1948 still survives. But it is not

disputed that Sri Mangalmurti''s services ceased to be available from 14 December 1948 and by reason of which Sri Sarwate was appointed. It is

not suggested that at any time two industrial courts simultaneously functioned. In substance, when the Madhya Pradesh Government issued fresh

notifications constituting the State industrial court it was filling in a vacancy and the form in which the order was passed was adopted probably to

conform with the letter of S. 22 of the Act. The notification constituting Sri Mangalmurti as State industrial court was cancelled on 8 January 1949

and it cannot be said that Sri Mangalmurti who ceased to function as State industrial court from 14 December 1948 still continues to be the State

industrial court. It may be conceded that the scheme of S. 22 of the Act is not that there should be more than one industrial court. The Act permits

more than one member to constitute the Court in which case one has to be appointed president. But in the present case what was done in

substance by the various notifications was to appoint successors to the office. We think that the argument that Sri Mangalmurti still continues to be

the industrial court and that all subsequent notifications reconstituting the State industrial court are invalid is unsustainable.

6. But whatever may be urged so far as the notifications issued by the Madhya Pradesh Government before the reorganization are concerned,

there can be no doubt that the notification issued by the Bombay Government on reorganization of the State on 1 November 1956 is perfectly

valid. Section 122 of the States Reorganization Act reads as under : ""Power to name authorities, etc., for exercising statutory functions. - The

Central Government, as respects any Part C State, and the State Government as respects any new state or any transferred territory may, by

notification in the official gazette, specify the authority, officer or person who, as from the appointed day, shall be competent to exercise such

functions exercisable under any law in force on that day as may be mentioned in that notification and such law shall have effect accordingly.

7. Under that section, the Bombay Government constituted Sri S. H. Naik, member, industrial court, Bombay, to exercise the functions which

ware exercisable by the State industrial court. The Bombay Government had the power and exercised the power under S. 122 of the States

Reorganization Act to appoint a person or an authority to exercise the functions of the State industrial court under the Central Provinces and Berar

Act. It was notnecessary for the Bombay Government to make researches into the history of the State industrial court or consider the validity of all

previous notifications, nor is it really necessary for the Court to do so. Even if the Madhya Pradesh Government had not constituted a State

industrial court, the Bombay Government could, under S. 122 of the States Reorganization Act, have appointed an officer or authority to perform

functions exercisable under S. 22 of the Central Provinces and Berar Industrial Disputes Settlement Act. It has however been urged that once

having constituted a State industrial court, the Bombay Government could only appoint additional Judges of that court and, therefore, the latest

notification constituting an industrial court with effect from 20 September 1958 and appointing five member is thereof and appointing one of us to

be president) is invalid. The objection is entirely without substance. Section 22(2) of the Act lays down that the State industrial court shall consist

of such odd number of persons as the Government may determine and the Government shall appoint one of them to be the president, but the

Government is empowered also to constitute a single person to be the industrial court. It cannot be said that if the power is exercised once by

appointing a single person to be the State industrial court the power under the section is exhausted forever and the State Government cannot

reconstitute the Court so as to conform with the first paragraph of Sub-section (2) of S. 22, but can only appoint additional Judges. The State

Government having once constituted a single person as the State industrial court, it seems it was considered more appropriate, having regard to the

terms of S. 22(2), to reconstitute the Court so as to consist of five persons rather than to appoint additional members of the Court. There has been

substantial compliance with S. 22 and no refringement of it. But if any doubt is raised by reason of the form in which the notification is worded, it is

dispelled by reason of the provisions of Ss. 13 and 20 of the Central Provinces and Berar General Clauses Act, 1914, which are as under :- ""13.

Where, by any Madhya Pradesh Act, any power is conferred then, unless a different intention appears, that power may be exercised from time to

time as occasion requires."" ""20. Where, by any Madhya Pradesh Act, a power to issue orders, rules, bylaws or notifications is conferred, then that

power includes a power exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind

any orders, rules, bylaws or notifications so issued.

8. Therefore, clearly the Bombay Government had power to modify notifications issued under S. 22 of the Act, and, as stated above, there has

been no infringement of the provisions of S. 22 of the Act. Before proceeding to the next point, we may mention that the counsel for the non-

applicants and the textile mills referred to two decisions in cases which arose under the Industrial Disputes Act, 1947, viz. Mangharam (J.B.) and

Co. Vs. Kher (K.B.) and Others, , and Minerva Mills Ltd. Vs. Their Workers, but since these decisions have no bearing on the question referred

to us we have not thought it necessary to refer to them. 7. We think, therefore, that the objection to the constitution of this Court, which is highly

technical, is without any substance and our answer to the first point referred to us is that the State industrial court is validly constituted and has

jurisdiction to deal with these references. 8. We now come to the second and third questions which arise only in References 5 to 11 of 1957. For

the decision of the second question, it is necessary to state what has been enacted by S. 38A of the Act. That section is as follows :- ""38A.

Reference of industrial dispute to arbitration of State industrial court on failure of conciliation proceedings :- (1) Notwithstanding anything contained

in this Act, where in a conciliation proceeding hold under Chap. IV by a conciliator no settlement is arrived at, either party to the proceeding may,

within three months of the completion thereof, refer the industrial dispute for arbitration to the State industrial court. (2) Without prejudice to the

provision contained in Sub-section (1), the State Government may, where no settlement is arrived at in a conciliation proceeding held by a board

of conciliation, within three months of the completion thereof, refer the industrial dispute for arbitration to the State industrial court.

9. Now Sri Bobde has urged that in spite of the provisions of S. 38A these references against the 7 non-applicants are not maintainable, as rules

37 and 36 under the Act which relate to the respective jurisdiction of the State industrial court and district industrial court do not provide for such

references. The substance of the argument is that there should have been an express amendment in rule 37 conferring jurisdiction upon the State

industrial court to hear a matter referred to the arbitration of the State industrial court under S. 38A. Section 22(1) lays down that the ""State

Government may constitute a State industrial court for determining industrial disputes and for dealing with such other industrial matters under the

provisions of this Act as may be prescribed.

10. Sri Bobde wants to stick to the letter of the words ""as may be prescribed"" and has urged that rules have not been made prescribing for

arbitration to the industrial court under S. 38A. But when S. 38A itself clearly and unequivocally lays down that in certain circumstances a party

may refer an industrial dispute to the arbitration of the State industrial court, the Court has power to determine it, and it is not necessary to look to

the rules at all for jurisdiction, nor could anything enacted by the Act be abridged by anything in the rules. Our answer to the second question is

that in view of the provisions of S. 38A the State industrial court has jurisdiction to entertain these references.

11. The last question referred to is : ""Whether proceedings by way of conciliation are sine qua non to a reference under S. 38A of the Act ?

(2) Whether in the matter of references before this Court mentioned above, there were valid and proper conciliation proceedings both as to the

identity of the parties and as to the identity of the subject-matter in dispute ?

(b) If the reply to either or both is negative what is the effect upon the present reference ?

12. Having regard to the provisions of S. 38A of the Act there can be no question that conciliation proceedings must precede a reference under S.

38A and only if no settlement is arrived at in a conciliation proceeding, then only either party to the proceeding may, within the period of three

months of the completion of the proceedings, refer the industrial dispute to the State industrial court. The point which requires consideration is

whether there wore in this case conciliation proceedings in which there was no settlement. In order to appreciate the objection it is necessary to

look into the pleadings. The union has in its reference stated that it gave a notice of change on 17 September 1956, as required by S. 32(1) of the

Act to the non-applicants and goes on to add :

. . . 2. The members of the Nagpur Mudrak Sangh elected representatives to meet the petitioner for negotiations, but no other employer or no

employer in his personal capacity negotiated with the petitioner as required by law.

... However, on 26 April 1957 the conciliator recorded that the conciliation had failed. Throughout these proceedings representatives of the

Nagpur Mudrak Sangh participated as representatives of the employers.

13. Now if these allegations are not traversed it is clear that conciliation proceedings were held and no settlement was reached in them and the

references under S. 38A are valid. There is on record a certificate by the conciliator dated 22 May 1957 which is as follows :-

This is to certify that the conciliation proceedings between the Nagpur Press Kamgar Sangh, the recognized union, and the Nagpur Mudrak

Sangh, the representative of employers, in respect of notice of change under S. 37(1) dated 17 December 1956 given by the former, have been

completed on 26 April 1957.

14. It appears from the record that the notice of change was in fact given on 17 September 1956 and a copy of it was sent on that day to the

Labour Commissioner, the date referred to in the conciliation certificate, viz., 17 December 1956, is the date on which the union informed the

Labour Commissioner about the failure to reach an agreement. In the written statement in reply the non-applicants have stated that the original

dispute related to the entire press industry in Nagpur and not between the union and the non-applicants; that only the Nagpur Mudrak Sangh could

be made a party to these references; that the references disclose a different dispute. Then the non-applicants go on to say :

Though a notice was given to the non-applicant in his individual capacity the applicant did not want to prosecute the dispute for negotiations and

conciliation in individual capacity as a dispute confined to non-applicant unit of the industry. And thus applicant did not give notice of conciliation to

the non-applicant. The notice of conciliation was given to the Nagpur Mudrak Sangh. It is therefore respectfully submitted that this Court has no

jurisdiction to call upon the non-applicant above to defend these proceedings."" The non-applicant further says that ""it is not and that it never was

legally open to the applicant to omit other listed employers from this reference to this Court. The applicant has chosen to divide the dispute in

respect of the employer parties acting through the Nagpur Mudrak and in respect of the items of demand. The applicant had chosen to submit to,

and want conciliation only with, the Nagpur Mudrak Sangh. The applicant cannot now either reduce or increase the dispute or alter its real

character for this reference. The selection of employers from those represented by the Nagpur Mudrak Sangh if permitted in this reference would

be a violation of Art. 14 of the Constitution of India in the hands of this Court.

15. Now it has to be noted that there is no specific denial of the averments of the union in the references, referred to above. The claim in the

references is the claim referred to in the notice of change and which was the subject-matter of the conciliation proceedings. Because the union has

thought it worthwhile to make references against only 7 employers, the dispute does not become different. So far as the non-applicants are

concerned, it is the same. It was admitted at the hearing of these references that the non-applicants are members of the ""Nagpur Mudrak Sangh,

but what is urged at the hearing of these references is that the conciliator did not issue notices to the non-applicants individually. But there is no

specific denial of the statement made by the union in the references that in the conciliation proceedings representatives of the Nagpur Mudrak

Sangh participated as representatives of the employers. The non-applicants have not alleged that the conciliation proceedings took place behind

their back or that they or their representatives were not heard. Rule 78 lays down, inter alia, that on receipt of a statement of the case under S.

37(1) the conciliator shall forthwith proceed to interview both the employers and the employees concerned with such dispute at such places and

such times as he may deem fit and that he shall endeavour to bring about a settlement of the dispute in question. Rule 79 is as under : ""79. The

authority directed to take conciliation proceedings may summon the representatives of each party to appear before it either singly or jointly at such

places and at such times as it may deem fit. The representatives of the employers concerned with the dispute who may be summoned for this

purpose shall not exceed five in number.

16. This is a section laying down a permissive mode of procedure. On reading the two sections it is seen that the issue of a formal notice to the

individual employers is not a sine quo non of the validity of conciliation proceedings. Section 37(1) of the Act is as under :-

Procedure in default of agreement. - (1) If no agreement is arrived at within fourteen days of the giving of the notice, the party which gave the

notice shall, if it still desires that the change should be effected, forward to the Labour Commissioner a full statement of the case, and thereupon an

industrial dispute shall be deemed to have occurred and conciliation proceedings to have commenced from the date of receipt of such statement by

the Labour Commissioner.

17. In his case the conciliation proceedings therefore undoubtedly commenced. The conciliator having interviewed the representatives of the

employers, there was no invalidity in the conciliation proceedings. It is however urged that the Nagpur Mudrak Sangh, though a registered society,

is not recognized as a combination of employers under S. 52(1) of the Act. Section 52(2) lays down that -

In any proceeding under this Act, a representative appointed by an association of employers shall be entitled to represent any employer who is a

member of the association.

18. Section 53 is as follows :- ""Representation of employees. - Save with the permission of the authority holding any proceedings under this Act,

no employee shall be allowed to appear in such proceeding except through the representative of employees :

Provided that where only a single employee is concerned he may appear personally.

19. The definition of employer in S. 2(11) includes an agent of the employer. If there is an association of employers which is recognized under S.

52(1), it has a legal right to appear before the conciliator, but the conciliator can permit an individual to represent the employer : and if he permits

an association not registered under S. 52 but which in fact is the agent of the employer, his action is not invalid. Assuming for argument that there

was some irregularity in the conciliation proceedings it would not affect the right of a party to make a reference under S. 38A if in fact conciliation

proceedings have been held and there is no settlement as is the case here. Our answer to question 3 is therefore as follows : 9. Proceedings by

way of conciliation must precede a reference under S. 38A of the Act. There were in this case valid conciliation proceedings in regard to the

dispute between the union and the non-applicants which is the subject-matter of these references.