Bajirao Rajaram Patil Vs Maharashtra State Co-operative Bank Ltd. and Another

Court: Bombay High Court

Date of Decision: Oct. 29, 1996

Acts Referred: Trade Unions Act, 1926 â€" Section 2, 20, 21, 26, 28

Citation: (1997) 2 BomCR 577 : (1996) 98 BOMLR 702 : (1997) 75 FLR 320 : (1997) 1 LLJ 781 : (1997) 1 MhLj 526

Hon'ble Judges: R.M. Lodha, J

Bench: Single Bench

Judgement

R.M. Lodha, J.
Rule. Returnable forthwith. Mr. Shetty waives service for Respondent No. 1.

2. The learned counsel for the parties submit that Respondent No. 2 is formal party and service on Respondent No. 2 may be dispensed with.

Order accordingly.

3. By consent writ petition is heard finally at this stage.

4. The important question that arises in this writ petition filed under Articles 226 and 227 of Constitution of India is whether the complaint filed by

an affected employee relating to his transfer from one place to another covered under them 3, of Schedule IV of the Maharashtra Recognition of

Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, "M.R.T.U. and P.U.L.P. Act, 1971") could be filed by such

affected employee or has to be filed by recognised union ?

5. The aforesaid question arises in the following manner. The petitioner (for short, "employee") was appointed in the Maharashtra State Co-

operative Bank Ltd. (for short, "employer") on the post of Junior Officer. The petitioner has been transferred from time to time. On 22.2.1991 the

employer ordered transfer of the employee from Nasik to Bombay in the accounts department of the employer bank. The employee was aggrieved

by the transfer order dated 22.2.1991 and he filed a complaint of unfair labour practice under the M.R.T.U. and P.U.L.P. Act, 1971, particularly

under items 3, 5, 6, 9 and 10 of Schedule IV of that Act. It appears that the employee also made an application for interim relief in the said

complaint and though initially interim relief was granted by the Industrial Court but, it was later on vacated by the order dated 22.7.1991. The said

order passed by the Industrial Court dated 22.7.1991 vacating the interim relief was challenged before the Court by the employee in Writ petition

no. 3287 of 1991. The said writ petition was ultimately disposed of by this Court by the order dated 24th March, 1995 by consent of the parties

and accordingly the operation of the transfer order remained stayed during pendency of the complaint. The employer made an application before

the industrial Court on 18.9.1996 raising the preliminary issue about the maintainability of the complaint on the ground that the said complaint filed

by the employee was not maintainable in view of the judgment of the Apex Court in Shramik Uttarsh Sabha v. Raymond Woollen Mills Ltd. &

Ors. 1995 1 CLR 607. The Industrial Court heard the parties on the preliminary objection raised by the employer about the maintainability of the

complaint and Industrial Court upheld the objection raised by the employer that complaint is not maintainable and by the order dated 1.10.1996

dismissed the complaint as not maintainable. The order passed by the Industrial Court, Nasik dated 1.10.1996 is impugned in the present writ

petition.

6. Mr. Kochar, learned counsel appearing for the petitioner submits that principally the complaint filed by the employee is under Item 3 Schedule

IV of the M.R.T.U. and P.U.L.P. Act, 1971 and under none of the provisions of the said Act the complaint filed by the employee u/s 28 was not

maintainable. According to him the judgment of the Apex Court in Shramik Uttarsh Sabha, (supra) has no application to the complaint filed under

the items other than 2 and 6 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971. The learned counsel for the petitioner would urge that

Industrial Court has misapplied the aforesaid judgment of the Apex Court and failed to consider the relevant provisions of the M.R.T.U. and

P.U.L.P. Act, 1971 which otherwise would show that complaint filled by the employee was maintainable. Mr. Kochar also relied upon the

decision of this Court in Rama Bala Kate and Others Vs. Walchandnagar Industries Ltd. and Others, . Mr. Kochar submitted in the alternative that

even otherwise then judgment of the Apex Court is Shramik Uttarsh Sabha v. Raymond Woollen Mills, (supra) shall not be applicable to the

complaints filed prior to the pronouncement of that judgment. Thus according to the learned counsel for the petitioner the order passed by the

Industrial Court rejecting the application as not maintainable deserves to be quashed and set aside. During the course of arguments Mr. Kochar

submitted that complaint filed by the employee before the Industrial Court be treated confined to the unfair labour practices under item 3 read with

Item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971.

7. On the other hand Mr. Shetty, learned counsel appearing for Respondent No. 1 employer strenuously contended that an order of transfer

concerns large number of employees if an establishment and, therefore, keeping in view the scheme of the provisions of the M.R.T.U. and

P.U.L.P. Act, 1971; the provisions of Bombay Industrial Relations Act, 1946; and, Industrial Disputes Act, 1947, except an individual dispute

relating to dismissal, discharge, termination and retrenchment; all other disputes have to be espoused by recognised union and, therefore the

Industrial Court did not commit any error in rejecting the complaint filed by an individual employee as not maintainable. Mr. Shetty would thus

submit that the complaint has rightly been rejected by the Industrial Court the case is covered by the judgment of the Apex Court in Shramik

Uttarsh Sabha v. Raymond Woollen Mills, (cited supra). The learned counsel for Respondent No. 1 also referred to paragraphs 9 and 10 of the

impugned order to show that before the industrial Court the counsel appearing for the employee-complainant did not distinguish the judgment of

the Apex Court cited supra and the distinction now sought to be urged by Mr. Kochar is afterthought and petitioner is now estopped from

contending that the judgment of the Apex Court cited supra has no application.

8. I have bestowed my thoughtful consideration to the rival contentions raised by the learned counsel for the parties and also perused the impugned

order in the light of relevant provisions of the M.R.T.U. and P.U.L.P. Act, 1971, Bombay Industrial Relations Act, 1946 and Industrial Disputes

Act, 1947.

9. In Shramik Uttarsh Sabha v. Raymond Woollen Mills, cited supra, the Apex Court considered the scope and applicability of Bombay Industrial

Relations Act and the M.R.T.U. and P.U.L.P. Act, 1971.

In paragraphs 13, 14 and 15 the Apex Court held thus :

13. The M.R.T.U. and P.U.L.P. Act, takes note of the provision of the B.I.R. Act. Many of its definitions are stated to be those contained in the

B.I.R. Act. Chapter II, which deals with the recognition of unions, states, in section 10(2), that its provisions do not apply to undertakings in

industries to which the provisions of the B.I.R. Act apply. The B.I.R. Act was enacted to provide for the regulation of the relation of employers

and employees in certain matter and to consolidate and amend the law in relation to the settlement of industrial disputes. The M.R.T.U. and

P.U.L.P. Act was enacted to provide for the recognition of trade unions for facilitating collective bargaining for certain undertakings; to state their

rights and obligations; to confer certain powers on unrecognised union; and to define and provide for the prevention of unfair labour practices; and

to constitute courts in this behalf. It cannot, therefore, be said that the B.I.R. Act and the M.R.T.U. and P.U.L.P. Act operate in different fields.

There is commonality in their objects and their provisions. The obvious intent of the legislature which enacted them was that they should operate in

tandem (tandem) and complement each other in respect of industries to which the B.I.R. Act had been made applicable. The two statutes must be

read together.

14. Section 21 of M.R.T.U. and P.U.L.P. Act, upon which emphasis was laid on behalf of the appellants, states that no employee in an

undertaking to which provisions of the Industrial Disputes Act applies shall be allowed to appear or act or be allowed to be represented in any

proceeding relating to the unfair labour practices specified in items 2 and 6 of Schedule IV except through the recognised union. It is important to

note that the reference is to employees in an undertaking to which the Industrial Disputes Act applies and not to employees in an undertaking to

which the B.I.R. Act applies. Apart therefrom, the section permits an employee, not an union other than the recognised union, to so appear. The

provisions of Section 21 do not, therefore, lead to the conclusion that an union other than a representative union can appear in proceedings relating

to all unfair labour practices other than those specified in items 2 and 6 of Schedule IV.

15. It is true that an order of the Industrial Court in the concerned proceedings would bind all employees of the first respondent even though there

may be some among them who owe allegiance not to the representative union but to the appellant. The objective of the provisions of the B.I.R.

Act and the M.R.T.U. and P.U.L.P. Act, read together, and the embargo placed upon representation by anyone other than the representative of

the employees, who, for the most part, is the representative union, except in matters pertaining to an individual dispute between an employee and

the employer, is to facilitate collective bargaining. The rationale is that it is in the interest of industrial peace and in the public and national interest

that the employer should have to deal, in matters which concern all or most of its employees, only with a union which is representative of them. It

may be that a union which was representative of the employees may have in the course of time lost that representative character; it is then open,

under the provisions of the B.I.R. Act, for a rival union to seek to replace it"".

10. Present is a case where complaint has been filed by an employee of undertaking to which B.I.R. Act applies and the complaint is filed under

Items 3, 5, 6, 9 and 10 of Schedule IV of the M.R.T.U. and P.U.L.P. Act challenging his transfer order since he is affected by that order. During

the course of arguments, the learned counsel for petitioner employee, however, has confined the complaint under Items 3 and 9 of Schedule IV of

the M.R.T.U. and P.U.L.P. Act, 1971. Therefore, the answerable question is whether a complaint filed by an employee of an undertaking to which

B.I.R. Act is applicable challenging unfair labour practice covered under Items 3 and 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act is

maintainable at the instance of such individual affected employee or has to be filed by representative union.

11. Certain relevant provisions in this connection may be referred to. Section 3 of the M.R.T.U. and P.U.L.P. Act defines Bombay Act as the

Bombay Industrial Relations Act, 1946, and, Central Act as Industrial Disputes Act, 1947. An employee in relation to an industry to which

Bombay Act for the time being applies means an ''employee'' as defined in Clause (13) of Section 3 of the Bombay Act and in any other case

means a ''workman'' as defined in clause (s) of Section 2 of the Central Act, and, employer in relation to an industry to which Bombay Act applies

means an employer as defined in clause (14) of Section 3 of the Bombay Act and in any other case means an ''employer'' as defined in clause (g)

of Section 2 of the Central Act. u/s 3(16) unfair labour practices means unfair labour practices as defined in Section 26, and, u/s 3(13) recognised

union means a union which has been issued a certificate of recognition under Chapter III. Clause 18 of Section 3 provides that words and

expressions used in this Act and not defined therein but defined in the Bombay Act, shall, in relation to an industry to which the provisions of the

Bombay Act apply, have the meaning assigned to them by the Bombay Act; and in any other case, shall have the meaning assigned to them by the

Central Act. Obligations and rights of recognised union are covered in Chapter IV of the M.R.T.U. and P.U.L.P. Act, 1971.

12. Sections 20 and 21 of the M.R.T.U. and P.U.L.P. Act, 1971 read thus, -

Section 20. Rights of recognised union :- 1(1) Such Officers, members of the office staff and members of a recognised union as may be authorised

by or under rules made in this behalf by the State Government shall, in such manner and subject to such conditions as may be prescribed have a

right, -

(a) to collect sums payable by members to the union on the premises, where wages are paid to them;

(b) to put up or cause to be put up a notice board on the premises of the undertaking in which its members are employed and affix or cause to be

affixed notice thereon;

(c) for the purpose of the prevention or settlement of an industrial disputes, -

(i) to hold discussion on the premises of the undertaking with the employees concerned, who are the members of the unions but so as not to

interfere with the due working of the undertaking;

(ii) to meet and discuss, with an employer or any person appointed by him in that behalf, the grievances of employees employed in his undertaking;

(iii) to inspect, if necessary, in an undertaking any place where any employee of the undertaking is employed;

(1) to appear on behalf of any employee or employees in any domestic or departmental inquiry held by the employer.

(2) Where there is recognised union for any undertaking, -

(a) that union alone shall have the right to appoint its nominees its nominees to represent workmen on the Works Committee constituted u/s 3 of

the Central Act;

(b) no employees shall be allowed to appear or act or be allowed to be represented in any proceedings under the Central Act (not being

proceeding in which the legality of propriety of an order or dismissal, discharge, removal, retrenchment, termination of service, or suspension of an

employee is under consideration), except through recognised union and the decision arrived at, or order made, in such proceeding shall be binding

on all the employees in such undertaking;

and accordingly, the provisions of the Central Act, that is to say, the Industrial Disputes Act, 1947, (XIV of 1947), shall stand amended in the

manner and to the extent specified in Schedule I"".

Section 21. - Right to appear or act in proceedings relating to certain unfair labour practices :-

(1) No employee in an undertaking to which the provisions of the Central Act for the time being apply, shall be allowed to appear or act or

allowed to be represented in any proceeding relating to unfair labour practices specified in items 2 and 6 of Schedule IV of this Act except through

the recognised union :

Provided that where there is no recognised union to appear, the employee may himself appear or act in any proceeding relating to any such unfair

labour practices.

(2) Notwithstanding anything contained in the Bombay Act, no employee in any industry to which the provisions of the Bombay Act, for the time

being apply, shall be allowed to appear or act or allowed to be represented in any proceeding relating to unfair labour practices specified in items 2

and 6 of Schedule IV of this Act except through the representative of employees entitled to appear u/s 3 of the Bombay Act"".

13. It is provided thus u/s 20(2) that where there is a recognised union for any undertaking then no employee shall be allowed to appear or act or

to be allowed to be represented in any proceedings under the Industrial Disputes Act other than the proceedings in which the legality or propriety

of an order of dismissal, discharge, removal, retrenchment, termination of service or suspension of an employee is under consideration except

through recognised union and the decision arrived at or order made in such proceedings shall be binding on all the employees in such undertaking.

In other words, in the matters relating to dismissal, discharge, removal, retrenchment, termination of service or suspension of an employee in any

undertaking even where there is a recognised union, the affected employee may take up his cause, appear and act under the Industrial Disputes

Act and for all other matters, it is a recognised union alone who can espouse the cause of employee/employees.

14. Section 21(1) makes a provision that in an undertaking to which the provisions of the Industrial Disputes Act are applicable no employee shall

be allowed to appear or act or allow to be represented in any proceedings relating to unfair labour practice specified in items 2 and 6 of Schedule

IV of the M.R.T.U. and P.U.L.P. Act, 1971 except through the recognised union. But where there is no recognised union to appear, the employee

may himself appear or act in any proceeding relating to any such unfair labour practices. That means and as has been rules by the Apex Court that

in an undertaking to which the provisions of the Industrial Disputes Act, 1947 are applicable and the matter relates to an unfair labour practice

specified in item 2 and 6 of Schedule IV, it is the recognised union alone who can appear or act or allowed to be represented and none else. Sub-

section (2) of section 21 starts with non-obstante clause. Accordingly, no employee in an industry to which the provisions of the Bombay Industrial

Relations Act are applicable is allowed to appear or act to allowed to be represented in any proceeding relating to unfair labour practices specified

in items 2 and 6 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971 except through the representative of employees entitled to appear u/s 30

of the Bombay Act. This position is well concluded by the judgment of the Apex Court in Shramik Uttarsh Sabha v. Raymond Woollen Mills.

However, in complaint filed by an employee of undertaking to which Bombay Act applies alleging unfair labour practices other than items 2 and 6

of Schedule IV, it cannot be said nor can it be read in the provisions of the M.R.T.U. and P.U.L.P. Act or in the judgment of the Apex Court cited

supra that such complaint filed by affected employee cannot be entertained or maintained and has to be filed through representative union. Section

21(2) is confined to unfair labour practices specified in items 2 and 6 of Schedule IV and to no other items of Schedule IV.

15. Section 28 of the M.R.T.U. and P.U.L.P. Act deals with the procedure for dealing with complaints relating to unfair labour practices, and, it

reads thus :-

Section 28 : Procedure for dealing with complaints relating to unfair labour practices :-

(1) Where any person has engaged in or is engaging in any unfair labour practice, then any union or any employee or any Investigating Officer may,

within ninety days of occurrence of such unfair labour practice, file a complaint before the Court competent to deal with such complaint either u/s

5, or as the case may be, u/s 7, of this Act :

Provided that, the Court may entertain a complaint after the period of ninety days from the fate of the alleged occurrence, if good and sufficient

reasons are shown by the complainant for the later filing of the complaint"".

16. A plain reading of sub-section (1) of Section 28 would show that any union or any employee or any employer or any Investigating Officer

aggrieved by act of any person who is engaged in or is engaging in any unfair labour practice may file a complaint within 90 days of occurrence of

such unfair labour practice before the competent Court. Section 28 of course has to be read with other provisions of M.R.T.U. and P.U.L.P. Act

including Sections 20 and 21, but where the alleged unfair labour practice in the complaint is not covered by Sections 20 and 21, it is clear that any

affected employee in an undertaking to which Industrial Disputes Act applies or in an undertaking to which Bombay Industrial Relations Act, as the

case may be may file complaint aggrieved by an unfair labour practice and it cannot be said that such complaint has to be filed by a recognised

union or representative union. As already indicated above, in the present case the employee belongs to an undertaking to which Bombay Industrial

Relations Act applies and he has challenged his transfer order whereby he has been transferred by the employer from Nasik to Bombay, and,

according to the employee such transfer order is unfair labour practice under Items 3 and 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act.

Obviously and apparently such complaint is not covered by Section 21(2) of the Act and, therefore, there being no other bar under M.R.T.U. and

P.U.L.P. Act in filing such complaint by an affected employee, it cannot be said that such complaint was not maintainable having not been filed by

representative union. How can an order of transfer of any individual employee affect the general employees of an industrial establishment. Besides

that when M.R.T.U. and P.U.L.P. Act does not put any embargo in filing complaint by affected employee challenging his transfer, such right cannot

be taken away or restricted by holding that it has to be espoused by recognised or representative union. Such proposition would definitely

tantamount in distorting Section 28, which in my view is not permissible. The argument of the learned counsel for Respondent no. 1 that any

individual dispute save dismissal, discharge, removal and retrenchment has to be espoused by recognised union is not supported by any of the

provisions of the M.R.T.U. and P.U.L.P. Act or the provisions of the Bombay Industrial Disputes Act.

17. I am fortified in may view from the judgment of this Court in Rama Bala Kate & Ors. v. Walchandnagar Industries Ltd. & Ors. (cited supra)

wherein the learned single Judge of this Court held thus :

4. Mr. Ramaswami, learned Advocates appearing for the first respondent, contends that the industrial establishment of the first respondent in

which the petitioners were engaged as contract labourers was sole to the second respondent some time in 1988 and as such the first respondent

has no liability in the matter. Though this fact occurred during the pendency of the complaints and the Industrial Court had adverted to his fact, no

attempt was made to place on record the agreement between the first and third respondents so as to ascertain the exact liability of the two

respondents by ascertaining the terms of the said agreement. Mr. Ramaswami urged that, under the judgment of the Supreme Court, the

complaints and the writ petition would be barred and both would have to be dismissed. It is true that in the judgment in Raymond Woollen Mills

case (supra) the Supreme Court has held that the provisions of Section 21, of the Act did not lead to the conclusion that a union other than a

representative union can appear in proceedings relating to all unfair labour practices, other than those specified in Items 2 and 6 of Schedule IV of

the Act. In the entire judgment of the Supreme Court nothing has been said to the effect that the concerned employees, directly affected, could not

maintain such a complaint. In any case, the provisions of Section 28, of the Act are clear and they give to the affected employees the right of

moving the complaint against the employer. Such right can only be taken away by an express provision in the Act. There is no such provision in the

Act. In these circumstances, I am unable to accept the contention of Mr. Ramaswami that the complaints by the employees affected invoking the

provisions of Items 5 and 9 of Schedule IV of the Act were not maintainable. I, therefore, overrule the preliminary contention urged by the

respondents as to the maintainability of the complaints and the writ petition"".

18. I am, therefore, of the view that the Industrial Court erred in dismissing the complaint as not maintainable.

19. In view of my discussion aforesaid, the second contention raised by learned counsel for the petitioner that the judgment of the Apex Court in

Shramik Uttarsh Sabha, (supra) is not applicable to the complaints already filed prior to the pronouncement of that judgment does not require any

scrutiny. Before I close I would like to note the objection raised by learned counsel for Respondent No. 1 with reference to paragraphs 9 and 10

of the order wherein it is recorded that counsel for complainant employee could not distinguish the judgment of the Apex Court in Shramik Uttarsh

Sabha v. Raymond Woollen Mills, and therefore, complainant employee is now estopped from urging that the said judgment has no application.

The argument is noted only to be brushed aside. Suffice it to observe that there is no estoppel against law and if the counsel for a party is not able

to distinguish a judgment before the Court or Tribunal below, it cannot be said that it is not open to such party to raise a plea before the superior

Court that such provision of law or such judgment has no application in the fact and circumstances of the case.

20. Upshot of aforesaid discussion is that the impugned order passed by the Industrial Court on 1.10.1996 cannot be sustained and has to be set

aside which I hereby do. The Industrial Court is now directed to hear and decide Complaint (ULP) No. 423 of 1991 on merits expeditiously and

in no case later than 3 months from the date of receipt of the order or the writ whichever is earlier. Rule is made absolute in aforesaid terms. No

costs.