(1995) 08 BOM CK 0053

Bombay High Court

Case No: Writ Petition No. 711 of 1995

Akhil Maharashtra Kamgar Union		APPELLANT
	Vs	
Warden And Co. Ltd. and Others		RESPONDENT

Date of Decision: Aug. 11, 1995

Acts Referred:

- Industrial Disputes Act, 1947 - Section 10A, 18, 18(1), 20(2), 21
- Trade Unions Act, 1926 - Section 21

Citation: (1998) 3 LLJ 578

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

Bench: Single Bench

Judgement

B.N. Srikrishna, J.

This writ petition under Article 226 of the Constitution of India is directed against an interlocutory order of the Industrial Court, Thane, dated 23rd September, 1994 made in Complaint (ULP) No. 166 of 1993 under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act").

2. The Petitioner is a registered Trade Union which represents some of the workmen working in the industrial establishment of the First Respondent at Wagle Estate, Thane. The petitioner filed Complaint (ULP) No. 166 of 1993 before the Industrial Court at Thane alleging, inter alia, therein that the workmen of the First Respondent had not been paid their wages from February 1992, though their services had not been terminated by following any procedure in law. It was also pointed that, right from February 1992, neither was any manufacturing activity going on in the industrial establishment of the First Respondent, nor was any attempt made to terminate the services of the concerned workmen. This act of non-payment of the wages of the workmen from February 1992 till the date of the Complaint, was

alleged to be unfair labour practice, inter alia, under Item 9 of Schedule IV of the Act. An Application for interim relief was made to the Industrial Court on 29th March, 1993. By an order made on 29th March, 1993, the Industrial Court granted ad interim relief in terms of the following prayers :

"2(a) That pending the hearing and disposal of this case, this Honourable Court may be pleased to restrain the Respondents from terminating the services of the workmen listed at Annexure ''A'' to the Complaint :

2(b) That pending the hearing and final disposal of this case, this Honourable Court may be pleased to direct the Respondents to deposit in this Honourable Court on the seventh day of each month the due wages of the workmen listed in Annexure ''A'' for the preceding month and the said workmen be granted liberty to withdraw the same".

The Industrial Court issued show cause notices to the Respondents returnable on 19th April, 1993. On 9th June, 1993, the Respondents appears and filed their reply to the interim relief application in the form of an affidavit of one Parasuraman Senior Executive, dated 9th June, 1993, in which reference was made to a settlement dated 15th March, 1993. Thereafter, the matter was not immediately heard by the Industrial Court for confirmation or vacation of the ad interim order. For one reason or the other, the hearing of the interim relief application appears to have been adjourned for a period of about one year, upto 6th July, 1994. On that day the First Respondent filed a copy of an alleged Settlement dated 15th March, 1993, between the First Respondent and the Secretary of a Trade Union, by name, Rashtriya General Kamgar Union. Relying on the terms of the said Settlement, it was contended by the Respondents that under the Settlement 65 workmen had voluntarily resigned from the service of the Company and that the other workmen in the industrial establishment of the First Respondent had, in a spirit of sacrifice, agreed to forego their wages and other emoluments upto the date of the settlement and also made certain concessions with a view to improve the viability of the First Respondent''s industrial establishment. It was further contended by the Respondents that the settlement acted as a bar to the claim of the workmen for wages from February 1992, onwards and that it also estopped them from claiming any wages thereafter. These contentions were accepted by the Industrial Court, which, by the impugned order dated 23rd September, 1994, running into about 41 pages, vacated the ex parte ad interim order and dismissed the application for interim relief. Hence, this writ petition.

3. Before I consider the contentions urged by Mr. Singhvi in support of the petition, it would be necessary to consider two contentions urged by Mr. Kochar, learned Advocate for the First Respondent, both of which are in the nature of preliminary objections. First that the complaint is not maintainable because there was already a recognised Union by name Bombay Labour Union in existence and, therefore, no complaint under items 9 and 10 of Schedule IV of the Act could have been filed by

the petitioner as such a complaint would be barred by provision of Section 21, sub-section (1) of the Act. Second, that it is averred in the complaint that the cause of action of non-payment of wages occurred in February 1992 while the complaint itself has been filed in March 1993 and, therefore, the complaint is barred by limitation. There being no application for condonation of delay, the complaint ought to have been straightaway dismissed by the Industrial Court on this ground. Mr. Kochar invited my attention to paragraphs 2(a) and 2(b) of the affidavit of Parasuraman dated 9th June, 1993 filed in reply to the application for the interim relief moved by the petitioner before the Industrial Court. The said paragraphs read as under :

"2(a) The Complainant has no capacity to filed the complaint in the representative character nor the complainant has obtained leave of this Honourable Court to file this Complaint in a representative character nor the alleged authorisation is an authorisation in law.

2(b) The complaint is barred by Limitation and no application for consideration of delay has been filed by the complainant. I pray this issue to be tried as preliminary issue".

Upon these contentions raised before the Trial Court, Mr. Kochar urged that through the contention as to tenability and limitation had already been pleaded in the affidavit in reply to the interlocutory application, the Industrial Court erred in not deciding the said issue before embarking upon the merits of the application. In the first place, it is difficult to accept that the contentions raised in paragraphs 2(a) and 2(b) of the affidavit of Parasuraman, are the same as sought to be urged by Mr. Kochar now. Assuming for a moment that the contentions urged in paragraphs 2(a) and 2(b) of the said affidavit were the same, albeit, in a garbled form, the contentions have no validity.

4. Mr. Kochar relied very heavily on a recent judgment of the Supreme Court in Shramik Utkarsh Sabha v. Raymond Woollen Mills Ltd. & Ors. 1995 I. C.L.R. 607 to contend that the Supreme Court in this case has categorically held that when a recognised Union exists in an Undertaking, no other Union could file any complaint under the provisions of the Act. With the assistance of Mr. Kochar I have anxiously perused the judgment in Shramik Utkarsh Sabha and I am unable to accept the view that the Supreme Court has laid down such a proposition of law, for more than one reason. In the first place, the Supreme Court in paragraph 3 of the judgment has formulated the question which was under consideration as :

"The question for consideration in this appeal is : does a representative union under the Bombay Industrial Relations Act, 1946 (BIR Act) have the exclusive right to represent the employees of the concerned industry in complaints relation to unfair labour practices under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act) other than those

specified in items 2 and 6 of Schedule IV thereof?"

At once it is obvious that the Supreme Court was concerned with an undertaking covered by the provisions of the Bombay Industrial Relations Act (BIR Act) and not by the provisions of the Industrial Disputes Act. That there is a world of difference between the provisions of said two Acts, as far as Industrial Relations are concerned, is clear from the schemes of the two Acts. The Supreme Court considered the scheme of the Bombay Industrial Relations Act and the scheme of the Industrial Disputes Act and placed reliance upon its earlier judgments in Girja Shankar Kashi Ram v. The Gujarat Spinning and Weaving Co. Ltd. 1962 Supp. (2) SCR 890 and in Santuram Khudai Vs. Kimatrai Printers and Processors Pvt. Ltd. and Others, , both of which are the judgments rendered under the provisions of the Bombay Industrial Relations Act about the paramount character of the representative Union under the said Act. Paragraph 11 of the judgment of Shramik Utkarsh Sabha reproduces the contention of the learned counsel for the Appellant to the effect that the BIR Act and the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Acts operate in different fields. Paragraph 12 reproduces the contention of the respondent. In paragraph 13 the Supreme Court pointed out that as a result of section 10(2) of the MRTU & PULP Act, Chapter III of the Act, dealing with recognised Union undertakings, does not apply to undertakings covered by the BIR Act. Then, the Supreme Court observes :
"The B. I. R. was enacted to provide for the regulation of the relation to employers and employees in certain matters 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 recognitions of trade unions for facilitating collective bargaining for certain undertakings; to state their rights and obligations; to confer certain powers on unrecognised unions; and to define on unrecognised unions; 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 M. R. T. U. and P. U. L. P. Act operate in different fields. There is communality in their objects and their provisions the obvious intent of the legislature which enacted them was that they should operate in 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".

Finally come the observations in paragraph 14 which have been emphasised by Mr. Kochar as supporting his first contention. The relevant observations in paragraph 14 are :

"Section 21 of the 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 the provisions of the Industrial Dispute 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 a union other than the recognised union, to so appear. The provisions of section 21 do not, therefore, 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".

In my judgment, these observation cannot be read out of context. These observations were made while considering the impact of section 21 of the Act in an undertaking to which B. I. R. Act applies. The observation of the Supreme Court towards the end of paragraph 14 is that the provisions of section 21 do not, therefore, 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. Obviously, this observation is made with reference to the industrial undertakings to which the B. I. R. Act applies. It is well known that there is nothing like a ''representative union'' under the provisions of the Industrial Disputes Act. The Supreme Court was pointing out the exclusive right of the ''representative union'' to appear in proceedings relating to all unfair labour practices falling under Items 2 and 6 of Schedule IV of the Act prescribed in sub-section (2) of section 21 of the Act. I am unable to accept the contention of Mr. Kochar that the emphasised observations in paragraph 14 are general in nature and meant to apply even to undertakings not covered by BIR Act. I must assume that their Lordships of the Supreme Court were well aware of the provisions of section 21 of the Act and the contradistinction between the provisions of sub-sections (1) and (2) of section 21 of the Act. The observations in paragraph 14 were, obviously, made in connection with industrial undertakings to which the provisions of BIR Act apply. It is only by reading the observations out of context that the misconceived argument is urged. In my judgment, therefore, the first contention has no substance and must fail.

5. Turning next to the other contention as to limitation, I am of the view that there is no substance in that either. The complaint pertained to a situation where the First Respondent Employer, without terminating the services of the workmen, had kept them in limbo without paying them wages from month to month. Such situation developed from February 1992 and, as a consequence, wages were not paid from February 1992 till the date of filing of the complaint on 29th March, 1993. It is not disputed that the right to receive wages is a recurring cause of action arises from month to month. In these circumstance, to urge that because of the period of limitation of 90 days, the complaint was barred or that the complaint should have been dismissed as barred by limitation, is misconceived. It is true that the impugned order of the Industrial Court does not refer to the contention as to the limitation. It is possible that though the contention was raised in the affidavit in reply, it might have been canvassed at the Bar. In any event, it is possible to take the view that the

Industrial Court was not in agreement with the contention that the complaint was liable to be dismissed as barred by limitation in view of the fact that the cause of action was of a recurring nature. In these circumstances, I am unable to accept the contention of Mr. Kochar that the complaint was completely barred by limitation and ought to have been dismissed without any further ado.

6. Mr. Sanjay Singhvi, learned counsel appearing for the Petitioner union, raised two contentions, both of which deserve acceptance.

7. Firstly, it is contended by Mr. Singhvi that it was admitted on both sides that at the material point of time, a registered Trade Union by the name, Bombay Labour Union, was the Union recognised Union of the workmen in the industrial establishment of the First Respondent. (This position appears to have been accepted by both the sides as seen from the contents of paragraphs 18 and 19 of the impugned order wherein the learned Judge has summarised the stands taken by the respective Advocates and the contentions urged by them.) Mr. Singhvi urged that in the face of the existence of a recognised Union under Chapter 3 of the Act, it was not legally permissible for any other Union to represent the workmen of the First Respondent''s establishment and enter into a settlement with the employer so as to bind the workmen.

8. Section 18 of the Industrial Disputes Act, 1947, was amended as a result of Section 20(2)(b) read with Schedule I of the Act. As a result of the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, coming into force from 15th September 1975, a proviso came to be added to sub-section (1) of section 18 of the Industrial Disputes Act, 1947. The amended Section 18(1) of the Industrial Disputes Act, 1947, read as under :

"18. Persons on whom settlements and awards are binding - (1) A settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

Provided that, where there is a recognised union for any undertaking under any law for the time being in force than such agreement (not being an agreement in respect of dismissal, discharge, removal, retrenchment, termination of service or suspension of an employee) shall be arrived at between the employer and the recognised union only; and such agreement shall be binding on all persons referred to in clause (c) and clause (d) of sub-section (3) of this section.

(2) Subject to the provisions of sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3-A) of Section 10-A or an arbitration award in case where there is a

recognised union for any undertaking under any law for the time being in force or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on

(a) all parties to the industrial disputes;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, Arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in clause (a) of clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) Where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who are employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part".

The net effect of the amendment is that, where there is a recognised Union for any undertaking under the provisions of the Act, any settlement (other than in respect of the special subjects mentioned in the section) is required to be arrived at between the employer and the recognised Union only, and, when arrived at, such settlement shall be binding on the employer and the workmen employed in the said undertaking. Mr. Singhvi is, therefore, right in his contention that Industrial Disputes Act does not recognise as binding on workmen any settlement other than a settlement entered into with a recognised Union, if one exists. To that extent the settlement dated 15th March, 1993, on which the First Respondent placed reliance before the Industrial Court, was incapable of binding the workmen of the First Respondent or of barring adjudication of their claims to wages.

9. The next contention of Mr. Singhvi is that, in any event, assuming the settlement was a binding settlement in law and thereby it prevented the workmen from claiming wages, the settlement, as a matter of fact does not preclude the claim to wages from the date of the settlement. He has drawn my attention to Clause 6 of the settlement, the relevant portion of which reads as under :

"6. Since virtually no work was performed for the period commencing 1-2-1992 till the date of signing of this settlement, the workmen and the Union have voluntarily relinquished all their rights, if any, for the above period. The Company in consideration has agreed to pay a maximum amount of Rs. 4,000/- (Rupees four thousand only) as an ex gratia on pro-rata basis for the above period to be computed on the number of days attended and on the clocking-in and clocking-out time of the daily attendance. To the extent leave was available as on 1st February 1992, the absence from 1st February 1992 shall be treated as leave. Pro-rata deductions shall be made for the balance number of days the workmen were

absence without leave. No other statutory benefit or contributions will be paid on the above ex-gratia amount nor any benefits or allowance of any kind shall be paid or accrue to the workmen for the above period. However, of those of the workmen still in the employment of the company, the company shall without creating any precedent credit the account on each such workman with 7 days leave as an ex-gratia grant".

Under this Clause, what has been voluntarily relinquished is the right of the workmen, if any for the period commencing 1st February, 1992 till the date of the signing of the settlement, i.e., 15th March, 1993. It is not possible to read this clause as meaning that the workmen have given up their right to claim wages even from the date of signing of the said settlement i.e., on and from 15th March, 1993. The Industrial Court, therefore, was clearly in error in completely vacating the ad interim order and dismissing the application for interim relief. In any event, the claim for wages for the period subsequent to 15th March, 1993, could not have been considered, even prima facie, barred as a result of the settlement. Mr. Singhvi, however, points out that, on and from 23rd December, 1993, there was a lock-out in the establishment and the question as to whether the workmen are entitled to wages for the period of the lock-out, is an issue which the workmen would separately raise for adjudication by the appropriate forum. For the present, he urges that the direction of the Industrial Court contained in the ad interim order dated 29th March, 1993, at least for the period between 15th March, 1993 to 22nd December 1993, could not have been vacated by the Industrial Court by placing reliance on this settlement. This contention is also sound and needs to be upheld.

10. Mr. Kochar made an earnest and moving plea that there may be order for deposit of wages from March 1993 to December 1993, but that liberty may not be given to the workmen to withdraw the amount without security. Under normal circumstances, it might have been possible to consider such a plea. The facts of such a case are, however, gross. The workmen of the First Respondent were kept out without work, without wages and without termination of their services from February 1992 till the date of the complaint. When the complaint was filed and application was made for payment of wages, the First Respondent put forward a settlement said to have been signed with some other Union as a defence to defeat the claims of wages of the workmen for the entire period. For reasons which are already pointed out, even for the purposes of interlocutory order also, the settlement does not bar the claim of the workmen for the period between March 1992 to December 1993. Thus, we have a situation where, without offering work or payment of wages to them, the workmen are kept dangling from February 1992 till today for no fault of theirs. I am informed at the Bar by both learned Advocates that the lock-out which was imposed in December 1993 is still continued. To accede to the prayer of Mr. Kochar, that only an order for deposit of monies be made without permitting the workmen to withdraw the monies, would mean that the workmen would have to face the prospect of continued litigation on empty stomachs and

empty promises. I am, therefore, unable to accede to the prayer of Mr. Kochar that the workmen should not be permitted to withdraw monies at this stage. In my view, it would be sufficient if the Industrial Court, before disbursement of money, takes an undertaking from each individual workmen to the effect that in case the complaint fails and it is held by the Industrial Court that no wages are due for the period in question, then the workmen shall forthwith refund the money disbursed to the First Respondent.

11. In the result, the impugned order of the Industrial Court is hereby modified and it is ordered as under :

(a) The first Respondent shall deposit before the Industrial Court the amount of wages due to the workmen listed in Annexure ''A'' to the Complaint, for the period commencing from 16th March, 1993 upto and including 22nd December, 1993 and the concerned workmen shall be at liberty to withdraw the same on the undertaking, that in case the Complaint of the Petitioner Union fails and it is declared by the Industrial Court that the workmen are not entitled to wages at the final determination of the Complaint, the workmen concerned shall refund to the Employer the amount paid to them as wages for the aforesaid period.

(b) The First Respondent shall deposit the amount of wages as ordered within a period of six weeks from today.

(c) Considering the nature of the claim involved in the Complaint, the Industrial Court shall give precedent to the hearing of the Complaint and dispose it of as expeditiously as possible.

12. Rule made absolute accordingly. The First Respondent to pay the costs of this writ petition quantified at Rs. 500/- (Rupees five hundred only).

13. Certified copy expedited.