

Santuram Khudai

Vs

Kimatrai Printers And Processors Pvt. Ltd. and Others

Civil Appeal No. 2111 of 1977

(Jaswamt Singh, N. L. Untwalia JJ)

09.12.1977

JUDGMENT

JASWANT SINGH, J. -

1. This appeal by special leave which is directed against the order dated November 16, 1976 of the High Court of Gujarat at Ahmedabad summarily dismissing Special Civil Application 1845 of 1976 filed by the appellant and another under Article 227 of the Constitution raises an interesting question regarding the right of individual employees to appear or act in a proceeding under the Bombay Industrial Relations Act, 1946 (Bombay Act No. XI of 1947) (hereinafter referred to as 'the Act') where a representative union has entered appearance as the representative of the employees.

2. The facts and circumstances giving raise to this appeal, in brief, are :

2A. Respondent 1 herein, viz. The Kimatrai Printers and Processors Pvt. Ltd., Ahmedabad is an undertaking in the Textile Processing Industry which was recognised as such vide Notification KH-SHMC/2724/RU dated September 13, 1974 issued by the Assistant Registrar, Bombay Industrial Relations Act in exercise of the powers conferred on him under Section 11(1) of the Act. Respondent 2 viz. the General Workers Union, Bhadra, Ahmedabad is a representative union of all the employees of the various undertakings registered by the Registrar as undertaking in the Textile Processing Industry in the local area of Ahmedabad City and city Taluka irrespective of the fact that the employees of any of the aforesaid undertakings may or may not be members of the representative union and is registered and recognised as such under the provision of the Act. In 1975, the said union raised demands regarding wages, dearness allowance, washing allowance, supply of shoes, uniforms and casual holidays. As the demands were not agreed to the dispute was taken in conciliation which culminated in an amicable settlement between the parties on the basis whereof an award was made by the Industrial Court on September 29, 1975. On December 22, 1975, respondent No. 2 gave a notice under sub-section (2) of Section 42 of the Act intimating thereby its desire for a change in respect of classification, pay scales, dearness allowance, casual leave, festival holidays and certain other industrial matters. The notice was followed by two other notice dated March 22, 1976 and March 27, 1976 under the same provision of the Act. The dispute not having been settled by the parties amicably, the same was taken in conciliation which failed. Consequently on July 27, 1976 a reference, being Reference 176 of 1976, was made to the Industrial Court at Ahmedabad under Section 73A of the Act, wherein as a result of negotiations, an interim settlement appears to have been arrived at on

November 17, 1977. Meanwhile, the workers of respondent struck work with effect from September 24, 1976 whereupon an application 145 of 1976 was made on the following day by the respondent to the Third Labour Court at Ahmedabad under Section 79(1) and (4) read with Section 78(1) A(c) and Section 97(1) of the Act for a declaration that the aforesaid action of the workers mentioned in Annexures 'A' and 'B' to the application amounted to an illegal strike. A public notice regarding the filing of the application was given in 'Gujarat Samachar' on September 27, 1976 and a copy thereof was also fixed on the notice board of respondent 1. In the proceedings taken upon the said application of respondent 1, respondent 2 appeared as the representative and approved union for the processing industry in the local area where the mills of respondent 1 are situated, and filed written statement admitting that the strike resorted to by the workmen was illegal. Without meaning to burden the record unnecessarily but with a view to complete the narrative it may be stated that in May, 1976, a new union of workers employed in concern of respondent 1 was formed under the name and style of 'New Labour General Trade Union' Ahmedabad which was registered under the Trade Unions Act, on June 3, 1976. Vide its letter dated June 8, 1976, the new union raised demands regarding issue of permanent entry passes, casual leave, festival holidays, Provident fund, Employees' State Insurance, bonus, dearness allowance, etc., which were not heeded to by respondent 1 on the ground that the union could not be treated as a representative union under the Act. The reminders sent by the new union on June 21, 1976, June 29, 1976 and July 2, 1976 were also ignored by respondent 1. On July 6, 1976, the new union suggested a few names of its members to respondent 1 for the purposes of negotiation and requested it to fix a date for that purpose before July 10, 1976. As the attempt at negotiation also failed to evoke a favourable response from respondent No. 1, the new union made a representation to Labour Commissioner on July 10, 1976. A further representation made by the workman to the Management of respondent 1 on August 15, 1976 which was followed by representations to the Governor of Gujarat on August 18, 1976 and August 25, 1976 also failed to elicit any response from respondent 1. Thereupon, the union gave a strike notice on September 2, 1976 pursuant whereunto 131 employees of respondent 1 went on strike on September 24, 1976, as already stated.

3. On October 4, 1976, the appellant and five other employees of respondent 1 made an application to the Labour Court praying that they may be impleaded as parties to the aforesaid proceedings initiated by respondent 1 and allowed to appear and defend the same. By means of another application of the even date the appellant and fifteen other employees of the respondent requested the Labour Court to declare the strike as legal. The former application was rejected by the Labour Court vide order dated October 6, 1976. On October 12, 1976, the Labour Court allowed the aforesaid application of respondent 1 under Section 79(1) and (4) read with Section 78(1) A(C) and Section 97(1) of the Act and declared that the employees mentioned in Annexures 'A' and 'B' to the application resorted to an illegal strike with effect from September 24, 1976 and the continuation thereof was also illegal as it had been resorted to during the pendency of the aforesaid Reference 176 of 1976. Aggrieved by these orders, the appellant and Kamalgiri, two of the aforesaid six employees filed, as already stated, Special Civil Application 1845 of 1976 in the High Court of Gujarat at Ahmedabad under Article 227 of the Constitution praying that the aforesaid orders dated October 6, 1976 and October 12, 1976 passed by the Labour Court be quashed. They also asked for a declaration that the strike resorted to by the employees of respondent 1 pursuant to the aforesaid

notice of strike given by their new union was just, proper and legal and that the employees who resorted to the strike continued to be in service of respondent 1 without any break or interruption. The said employees further prayed that respondent 1 be directed to award full wages to the employees who went on strike for the period commencing from September 24, 1976 (when they initially went on strike) to the date of resumption of work by them. Vide its order dated November 16, 1976, the High Court summarily dismissed the petition and declined to give leave to appeal to this Court. The appellant thereupon made an application to this Court for Special Leave which was granted. This is how the matter is before us.

4. Appearing on behalf of the appellant, Mr. B. Dutta has contended that the order of the High Court dated November 16, 1976 dismissing in limine the aforesaid Petition No. 1845 of 1976 submitted by the appellant and his co-employees, Kamalgiri, under Article 227 of the Constitution thereby upholding the aforesaid orders of the Labour Court and dismissing the application of the appellant and his five co-employees for being impleaded as parties to the aforesaid application of respondent 1 under Section 79(1) and (4) read with Section 78(1) 4(C) and Section 97(1) of the Act is erroneous and cannot be sustained on a true interpretation of Section 80 of the Act which confers a right on every individual employee to appear before the Labour Court and contest an application under Section 79 of the Act which may threaten to adversely affect his rights and interests. Mr. Dutta has also urged that the application could not have been rejected in view of the two exceptions engrafted on Section 27 of the Act. Mr. Dutta has finally urged that in any event the application ought to have been allowed and the individual employees permitted to appear and contest the aforesaid application of respondent 1 as the stand taken by the representative union in regard thereto was mala fide against their interests.

5. Mr. Tarkunde and Mr. Chitale have, on the other hand, contended that it was respondent 2 alone, which was the representative union, and not the appellant or any other individual employee who had a right to appear and the act in the aforesaid proceedings initiated by respondent 1 before the Labour Court.

6. For a proper appreciation of the rival contentions advanced by Counsel for the parties, it is necessary to refer to Section 80 and other relevant provisions of the Act. Before doing so, it is necessary to bear in mind that the legislative intent underlying the scheme of the Act being to inculcate and encourage the practice of collective bargaining so that the labour is neither exploited nor victimized and industrial peace and harmony is ensued, the provisions of the Act are designed to emphasize that if labour in an industry is organised under the Act, then it is that union which can appear and do all acts and agitate matters in its representative capacity for the labour and if it does choose to appear or act then no individual employee is competent to appear and present his point of view. With these prefatory observations, we proceed to advert to the relevant provisions of the Act.

7. Section 80 of the Act provides; "on receipt of an application under Section 79, the Labour Court shall issue a notice to all parties affected by the dispute in the manner provided by rules under Section 85. Subject to the provisions of Chapter V, the Labour Court may permit the parties so affected to appear in the manner provided by the provisions of Sections 80A to 80C. The Labour Court shall then hold an inquiry".

8. A plain reading of the above section which was substituted for the original Section 80 by the Bombay Act 49 of 1955 makes it clear that the Labour Court can permit the parties affected by the dispute to appear in the manner provided by Section 80A to 80C of the Act but the discretion conferred on the Labour Court has specifically been made subject to the provisions of Chapter V

which deals with "representation of employees and employers and appearance on their behalf" and contains amongst other provisions Section 27A which is in the following terms :

27A. Save as provided in Sections 32, 33 and 33A, no employee shall be allowed to appear or act in any proceeding under this Act except through the representative of employees.

9. This section, it would be noted, consists of two parts. While the second part contains the general rule prohibiting the grant of permission to an individual employee to appear or act in any proceeding under the Act except through the representative of employees, the first part carves out three exceptions to the said general rule which are mentioned in Sections 32, 33 and 33A of the Act. Whereas the last exception, i.e., the one carved out by Section 33A of the Act relates to proceedings where the dispute is between employers and employees the other two exceptions Sections 32 and 33 of the Act relate to proceedings in respect of certain other disputes.

10. The term 'representative of employees' as used in the above quoted Section 27A of the Act is defined in Section 3(32) of the Act as meaning "a representative of employees entitled to appear or act as such under Section 30".

11. This takes us to Section 30 of the Act. This section which sets out in preferential order the persons who are entitled to appear or act as representative of employees in any industries in local area assigns the foremost position to the representative union.

12. Now a combined reading of Sections 80, 27A, 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 proceeding under the Act where the representative union enters appearance or acts as representative of employees. We are fortified in this view by a decision of this Court in *Girja Shankar Kashi Ram v. The Gujarat Spinning and Weaving Co. Ltd* (1962 Supp 2 SCR 890 : (1962) 1 LJ 369). where Wanchoo, J. (as he then was) speaking for the Court observed as follows :

It will be seen that Section 27A 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 exceptions to this being the provisions of Sections 32 and 33. Therefore, this section completely bans the appearance of an employee or of any one on his behalf in any proceedings after it has once commenced except through the representative of employees. The only exceptions to this complete ban are to be found in Sections 32 and 33.

13. The first contention advanced by Mr. Dutta is, therefore, overruled.

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 embodied in Section 27A 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 proceeding 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 the decision of this Court in *Girja Shankar Kashi Ram v. The Gujarat Spinning and Weaving Co. Ltd.*, (supra), where Wanchoo, J., (as he then was) summarising the position observed as follows :

The result therefore of taking Sections 27A, 32 and 33 together is that Section 27A 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 Sections 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 order exception 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 under Section 42(4). But where the appearance is by any representative of employees other than a representative union authorities under Section 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 proceedings under the Act and the representation must be confined only to the representative union. The complete ban, therefore, laid by Section 27A on representation 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 Section 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 Section 42(4) of the Act, the representative union alone can represent the employee and the employee cannot appear or act in such proceeding.

15. The following observations made by Hidayatullah, C.J., in *Textile Labour Association Bhadra, Ahmedabad v. Ahmedabad Mill Owners Association, Ahmedabad* ((1970) 3 SCC 890, 891) is also pertinent :

Reading these two Sections (Sections 32 and 33 of the Act), we find that it is quite clearly stated in the provisos to the two sections that no individual is allowed to appear in any proceeding in which the representative union has appeared as the representative of the employees.

16. The second contention raised by Mr. Dutta is also, therefore, repelled.

17. The last contention of Mr. Dutta that in view of the fact that while appearing as the representative union in respondent 1's aforesaid application 1455 of 1976, respondent 2 was not acting for and on behalf of the employees but was acting mala fide and against their interests, the appellant and his five other co-employees should have been allowed to be added as parties to the application and permitted to appear and act therein has also no force. It has to be remembered that mala fides or bona fides of a representative union has no relevance while considering the provisions of Section 27A and Sections 33 of the Act which taken together impose an absolute ban on the appearance of any individual employee in any proceeding under the Act where the representative union chooses to appear or act as representative of the employees. In case, the employees find that the representative union is acting in a manner which is prejudicial to their interest, their remedy lies

in invoking the aid of the Registrar under Chapter III of the Act and asking him to cancel the registration of the union. The following observations made in *Girja Shankar Kashi Ram v. The Gujarat Spinning & Weaving Co. Ltd.* (supra) are opposite in this connection :

But it is clear that bona fides or mala fides of the representative of employees can have nothing to do with the ban placed by Section 27A on the appearance of any one else except the representative of employees as defined in Section 30 and that if anyone else can appear in any proceeding we must find a provision in that behalf in either Section 32 or Section 33, which are the only exceptions to Section 27A. It may be noticed that there is no exception in Section 27A in favour of the employee, who might have made an application under Section 42(4), to appear on his own behalf and the ban which is placed by Section 27A will apply equally to such an employee. In order, however, to soften the rigour of the provisions of Section 27A, for it may well be that the representative of employees may not choose to appear in many proceedings started by an employee under Section 42(4), exceptions are provided in Sections 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 Section 42(4) but where the representative union does not choose to appear there are provisions in Sections 32 and 33 which permits others to appear in proceedings under the Act.

18. In view of the above quoted categoric and unequivocal observations, the contrary observations made in *N. M. Naik v. Colaba Land Mills* ((1960) 1 Lab 448 (Bom HC)) on which strong reliance has been placed by Mr. Dutta must be treated as overruled.

19. We have, therefore, no hesitation in agreeing with the view expressed by the Labour Court and the High Court and holding that neither the appellant nor his other co-employees had any locus standi to appear or act as individual employees in the aforesaid proceedings initiated by respondent 1 in which respondent 2 which the representative union in the industry in the local area had the right to appear and act as their representative of the employees in the industry and did appear or act as such. We may observe here in passing that even the new union to which the appellant and some of his co-employees belonged would have no right to appear or act on behalf of the appellant or his co-employees in the aforesaid proceedings initiated by respondent No. 1 as it had not been registered and recognised as the representative union of employees under the Act.

20. In conclusion, we wish to make it clear that as learned counsel for the parties have abstained from addressing us regarding the legality or otherwise of the aforesaid strike in view of the fact that it was not open to the appellant to agitate that question because the Labour Court had refused to add him as a party to respondent No. 1's aforesaid application 1455 of 1976, we have refrained from making any observation in regard thereto.

21. In the result, the appeal fails and is hereby dismissed but in circumstances of the case without any order as to costs.

</html