BOMBAY HIGH COURT

N.M. Naik

Vs.

Colaba Land Mills

Special Civil Application No. 1064 of 1958

(Tambe and Vyas, JJ.)

05.08.1958

JUDGMENT

Tambe, J.

1. This is an application under Article 227 of the Constitution of India wherein the petitioners pray for quashing the orders made on 6 February, 1958, by the industrial court, Bombay (opponent 3 herein), dismissing the petitioners' appeal, as well as for setting aside the order made by the labor court on 11 December, 1957.

2. The facts and circumstances giving rise to this petition, in brief, are : The petitioners claim to be working as foremen in the Colaba Land Mills, opponent 1 hereto (hereinafter referred to as "the mills"). They say that there was an award made by the industrial court on 26 May, 1956, in the matter of pay scales for the technical and supervisory staff in the cotton textile mills in Bombay. The parties to this award were Rashtriya Mill Mazdoor Sangh reprinting the employees in the textile mills of Bombay (hereinafter referred to as "the sangh") and the Millowners' Association, Bombay, representing the millowners. According to the petitioners, this award is binding on opponent 1 mills. They further claim that according to this award they are entitled to a pay-scale per month of ₹ 215 - 15 - 260 - 20 - 340 as and from 1 May, 1955. They further say that Clause 1 of the award specifically provided that the existing technical and supervisory staff, including Assistant Engineering, shall be classified in the categories of

(a) assistant masters,
(b) department assistants,
(c) departmental assistants who are technical and engineering graduates, (d) foremen and assistant foremen, and
(e) apprentices.

3. They further say that this award, in terms, provides that it would not be open to the management to create a new category or a new cadre or a scale not envisaged by the agreement. According to the workmen, they were working as foremen in opponent 1 mills since 1948 and that it was not open to opponent 1 mills to designate them as electricians. It was also, on account of the terms of the award, not open to the sangh, the representative union of opponent 1 mills, or opponent 1 mills, to change their designation and create a new cadre or a new grade not envisaged in the award. They, therefore, submit that the action taken by opponent 1 mills and the sangh in changing their designation to "electricians" is mala fide and against the terms of the award. Therefore, opponent 1 mills were not justified in designating them as "electricians" and paying them at the rate of ₹ 78 per month. The petitioners, therefore, made an approach under Section 42 of the Bombay Industrial Relations Act, 1946, on 6 February, 1957, claiming that they should be paid the difference from 1 May, 1955 to the date of the notice. A reply thereto was sent by opponent 1 mills on 18 February, 1957, denying their liability to pay the same. Another approach was made by the petitioners under Section 42 of the said Act on 13 May, 1957. But as opponent 1 mills did not agree to the claim made by the petitioners, the petitioners ultimately, on 2 August, 1957, made an application under Section 78(1)A(c) of the Act, complaing against the illegal change effected by opponent 1 mills in not paying them the aforesaid pay-scale of a foreman awarded to them by the aforesaid award. In this application under Section 78(1)A(c) the petitioners prayed that they be designated as foremen and it be declared that they are entitled to the foremen's grade and pay-scale prescribed by the aforesaid award. They further prayed that opponent 1 mills be directed to pay them the difference.

4. It appears that during the pendency of this application opponent 1 mills made an application to the labor court that the sangh, which was the representative union of that particular mil, be joined as a party to the application. It further appears that, in pursuance of the notice issued by the labor court, the sangh appeared before the labor court, on 27 November, 1957, and made an application to the labor court that it had no desire to join as a party to the above application, but it showed its willingness to appear in its representative capacity under Section 27A of the Act. It therefore prayed that the necessary orders may be passed. The labor court thereupon made an order and permitted the sangh to appear in its representative capacity under Section 27A.

5. Thereafter on 11 December, 1957, Sri N. S. Deshpande, secretary of the sangh, made an application (Ex. 16 on the record of the labor court file) to the labor court, the material part whereof is as under :

> "After the award for technical and supervisory staff, certain disputes of employees of the opponent mill including those of Narayan Mukund Nail and Sayed Hussein were taken up for negotiation with the mill through the intervention of the Millowners' Association, Bombay, and the disputes including those of Narayan Mukund Naik and Sayed Hussein Sayed were settled and the settlements were also implemented by the opponent mill. The dispute, therefore, does not survive. In view of this, the sangh prays that the Court may be

pleased to dispose of the application."

6. On the same day the labor court made an order under Section 115A of the Act, the material part whereof is as under :

> "At the time of hearing today, the representative union and the opponent mill stated that the order should be passed in terms of the memorandum Ex. 16 filed in the Court. Under Section 115A of the Bombay Industrial Relations Act, I pass the order in terms of the memorandum Ex. 16, a copy of which is annexed herewith as annexure "A," and direct that the parties should abide by the terms of the same."

7. The petitioners feeling aggrieved by this order, made by the labor court on 11 December, 1957, took an appeal there from to the industrial court, Bombay.

8. The appellate court took the view that as the decision of the labor court was in accordance with the agreement between the representative union and the mills, it was not open to the petitioners to appeal against a consent order. It, therefore, dismissed the appeal summarily as not maintainable.

9. It is against the orders of the industrial court and the labor court that the petitioners have come to this court by a petition under Article 227 of the Constitution.

10. Sri Kavlekar, learned advocate for the petitioners, have raised before us two contentions. He contends that there was no agreement arrived at on 11 December, 1957 between the sangh and the millowners. The agreement, which was arrived at was some time prior to 2 August, 1957, the date on which the petitioners made an application to the labor court under Section 78(1)A(c) of the Act. Such an agreement, even if made, was not an agreement falling under Section 115A of the Act. The labor court was, therefore, in error in holding that there was a binding agreement under Section 115A of the Act and on that view of the matter disposing of the case in terms of the agreement. Sri Kavlekar, secondly, contends that the real question which was raised in the petition by his clients, namely, the validity and legality of the agreement between the sangh on the one hand and opponent 1 mills on the other changing the designation of the petitioners from foremen to electricians, has been completely lost sight of by the authorities below, and therefore, the petitioners' real grievance has not been investigated into at all.

11. In our opinion, both the contentions of the petitioners are well-founded. As regards the first contention, namely, as to whether there was any agreement between the sangh on the one hand and opponent 1 mills on the other within the meaning of Section 115A of the Act on 11 December, 1957, we have already reproduced above the material part of the application made by the sangh on 11 December, 1957. From that portion it is clear that there was really in fact no agreement at all on 11 December, 1957 between the sangh on the one hand and opponent 1 mills on the other. On the contrary, this application, in terms, refers to some prior agreement. And it is

the case of the sangh that, on account of this prior agreement between the sangh on the one hand and the Millowners' Association on the other, it was not open to the petitioners to raise any dispute as against opponent 1 mills, and, therefore, the application should be dismissed as no dispute survived. This prior agreement has not been placed on record. We, however, are informed by the learned counsel for opponent 1 mills, as well as for the sangh, that an agreement was arrived at sometime on or about 16 January, 1957. It is thus clear that this agreement, on the strength of which dismissal of the petitioner's application was claimed, was an agreement reached prior to the initiation of the proceedings before the labor court. As already stated, proceedings before the labor court were initiated by the petitioners on 2 August, 1957. The question that falls for consideration is whether an agreement, which is arrived at at a time when no dispute is pending before an arbitrator, wage board, labor court or industrial court, would fall under the terms of Section 115A of the Act.

12. Sri Pandya, learned counsel for opponent 1 mills, contends that even though an agreement was arrived at at a date prior to the initiation of proceedings before any of the authorities mentioned above, such an agreement would fall under the terms of Section 115A of the Act.

13. It is not possible for us to accept the contention of Mr. Pandya. Section 115A reads as follows :-

> "If any agreement is arrived at between an employer and a representative union who are parties to any industrial dispute, pending before an arbitrator, wage board, labor court or industrial court, the order, decision or award in such proceeding shall be made in terms of such agreement, unless the arbitrator, wage board, labor court or industrial court is satisfied that the agreement was in contravention of any of the provisions of this Act or the consent of either party to it was caused by mistake, misrepresentation, fraud, undue influence, coercion or threat."

14. Now, it will be seen that the material words are :

> "If any agreement is arrived at ... who are parties to any industrial dispute ..."

15. This shows that the section refers to an agreement arrived at between the persons who are already parties to a dispute before an arbitrator, wage board, labor court or industrial court and not an agreement which was arrived at at a prior stage between the persons who now are parties to the dispute. If really the intention of the legislature in framing Section 115A had been to include an agreement reached between the employer and the representative union at a stage prior to the commencement of a dispute before on arbitrator, wage board, labor court or industrial court, then, in our view, the phraseology used would have been –

> "If any agreement had already been arrived at or is arrived at between an employer and a representative union."

16. That is not the phraseology used and in our opinion, it would not be open for us without any adequate grounds to substitute words not used by the legislature in the section. In our view, therefore, the agreement referred to in Section 115A is an agreement arrived at between the employer and the representative union reached after the commencement of the industrial dispute before an arbitrator, wage board, labor court or industrial court.

17. The view taken by us finds support in other provisions of the Act, namely, Section 114. Section 114 refers to a registered agreement or a settlement or submission or award arrived at otherwise than in an industrial dispute before an arbitrator, wage board, labor court or industrial court. We are, therefore, of opinion that this clearly shows that in Section 115A such an agreement is not included.

18. Sri Buch, who appears for the sangh also, does not support the contention Sri Pandya.

19. Coming to the next contention which is raised by Sri Kavlekar, the real dispute, which is raised by the petitioner, is as regards the validity or legality of the agreement reached between the Millowners' Association and the sangh whereunder the designation of the petitioners was changed from that of foremen to electricians. This contention, we find, has been nowhere referred to either by the labor court in the appellate court, namely, the industrial court. It appears that this contention, which is the principal contention raised on behalf of the petitioner, has been completely lost sight of by the two authorities, namely, the labor court and the industrial court.

20. Sri Pandya, the learned counsel for opponent 1 mills, contends that the petitioners have no locus standi at all under the Act to challenge the validity or legality of the aforesaid agreement reached on 16 January, 1957. He says that in this industry there is a representative union and on true construction of Ss. 78, 79, and 27A it is only the representative union, namely, the sangh, which can agitate any matter before a labor court on behalf of he petitioners.

21. It is not possible for us to accept this contention of Mr. Pandya also. As already stated, the petition is made under Section 78(1)A(c). Section 78(1)A(c) provides :

> "A labor court shall have power to –

A. decide -

> (a) * * *
> (b) * * *
> (c) whether ... any change is illegal under this Act."

22. The material part of Section 79 provides :

> "(1) Proceedings before a labor court in respect of disputes falling under Clause (a) of Para. A of S. (1) of Section 78 shall be commenced on an application made by any of the parties to the dispute a special application under Sub-section (3) of Section 52 or an application by the labor officer or a representative union and proceedings in respect of a matter falling under Clause (a) of the said Para. A on an application made by any employer or employee directly affected or the laborofficer or a representative union."

23. It is not in dispute that the application made by the petitioners in under Section 78(1)A(c) of the Act. Section 79, in terms, confers a right to initiate proceedings under Section 78(1)A(c) on the employee directly affected. The petitioners, if their grievance is really correct, undoubtedly are the employees directly affected by the alleged change. True, that the section confers a right on the labor officer of a representative union also to initiate proceedings under Section 78(1)A(c). But the section nowhere says that where in any industry there is a representative union, then in that even the representative union alone has a right to initiate proceedings and not the employees directly affected by the alleged change. To accept the contention of Sri Pandya, we will have to read into the section the following words, "Where there is no representative union," after the words "employees directly affected." It is well settled that unless it is absolutely necessary the Courts would not read into the statutes words which are not used by the legislature.

24. Sri Pandya next contends that even though the words "employees directly affected" are not qualified by a clause "where there is no representative union," the same results would follow on reading Section 27A of the Act which confers on the representative union alone the right to appear and act on behalf of the employees.

25. Section 27A reads as follows :-

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

26. Now, "representative of employees" has been defined in Section 2, Clause (32. It reads :-

> "'Representative union' means a representative of employees entitled to appear or act as such under Section 30."

27. This brings us to the provisions of Section 30, and when we look to the provisions of Section 30, a representative union for such industry is first in order of preference entitled to act as a representative of employees in that industry.

28. Reading the provisions of Ss. 27A, 3(32) and 30, undoubtedly a representative union in an industry is the representative of the employees within the meaning of Section 27A. But the

question is whether a representative union alone would have a right to appear and act on behalf of an employee to his exclusion. It is not possible for us to so hold on reading those three sections. It will be seen that the provisions of Section 27A are made subject to the provisions of Ss. 32 and 33. Section 32 provides :

> "Conciliator, a board, an arbitrator, a wage board, a labor court and the industrial court may, if he or it considers it expedient for the ends of justice, permit an individual, whether an employee or not, to appear in any proceeding before him or it."

29. The provisions of Section 32 would show that it would be a matter of exercising discretion on the facts of each case for the various authorities mentioned therein the decide whether it would permit an individual employee to appear in any proceeding before that authority, and that would depend upon the facts of a particular case. Sri Pandya, however, contends that no such discretion exists where a representative union has appeared in the case. He relied on the proviso to Section 32. The proviso reads :

> "Provided that no such individual shall be permitted to appear in any proceedings in which a representative union has appeared as the representative of the employees."

30. The proviso no doubt indicates that where a representative union has chosen to appear as a representative of the employees, the employee would not have a right to appear in the proceedings. But the mere appearance of a representative union in a case would not necessarily amount to an appearance of the representative union as a representative of that particular employee in that particular dispute. It again will have to be seen as to whether in fact the representative union is choosing to appear, as undoubtedly it has a right to do so, as a representative of that particular employee, or employees whose grievance is being ventilated before the authorities concerned.

31. We have already pointed out that in the instant case the application was made under Section 78(1)A(c). Section 79, in terms, confers a right on an employee directly affected to initiate proceedings. It has to be seen whether the right conferred on the petitioners under Section 79 is in the instant case taken away on account of the appearance of the representative union in the case. In other words, it is to be seen whether the representative union, namely, the sangh, has chosen to appear in the instant case as a representative of the employees, namely, the petitioners. Sri Buch, learned counsel for the sangh, frankly concedes that the sangh has not chosen to appear as a representative of the present petitioners. What he says is that the sangh has chosen to appear in this case as a representative of the employees in the industry in general and to support the agreement which they have entered into with the Millowners' Association on or about 16 January, 1957. According to Sri Buch that agreement is a valid and legal agreement and under the provisions of Section 114 of the Act that agreement is binding on the petitioners.

32. Now, the contention raised, as already stated, by the petitioners is that that agreement entered into by the sangh on the one hand and the Millowners' Association on the other, on or about 16 January, 1957, is not a legal and valid agreement binding on them. From the nature of the dispute raised the sangh cannot represent the present petitioners in this dispute. The position then that emerges is that the petitioners, who claim to have a grievance and who have a right under Section 79 of the Act to ventilate that grievance before the labor court, are not being represented by the representative union, as the representative union does not claim to represent them. The petitioners must, therefore, have an opportunity to establish their grievance before the labor court and opponent 1 cannot be heard to say that they have no locus standi at all in the case to conduct their case and ventilate their grievance on account of the provisions of Section 27A of the Act.

33. Sri Pandya also referred us to the following observations of the learned Chief Justice in *Gambhirji Odharji v. Bind Basni Prasad*[1]:-

> "... Reading Ss. 27A, 32 and 33 together, the scheme is that whenever a representative union appears in any proceedings, that union alone can be heard by any labor tribunal. But if a representative union does not appear, there is nothing to prevent an employee from appearing or from authorizing any person to appear for him. Therefore, it is perfectly true that even when an application is made by an employee under Section 42(4), if the representative union puts in an appearance, then the representative union alone can appear or act for the employee. It is therefore pointed out that no useful purpose would be served if the labor court is asked to consider the application of the employee under Section 42(4), when only the representative union can be heard on behalf of the employee. In the first place, it is not necessary to assume that the representative union will appear when this

[1][1955 - II L.L.J. 202 at 206]

> application is considered by the labor court. In the second place, even assuming the representative union does appear, the representative union will appear on behalf of the individual employees, and the application that will be considered and decided by the labor court would be the application of the employee and not the application of the representative union."

34. In our opinion, these observations are not of much assistance to opponent 1 mills. But, on the contrary, these observations lend support to the view taken by us. The rule deducible from the aforesaid observations, in our opinion, is that on a true construction of Ss. 27A, 32 and 33 the right of an individual employee to appear and conduct the proceedings initiated by him is not destroyed unless and until the representative union appears in the case on behalf of that employee. As already stated, such is not the case here. On the other hand, Sri Buch has made the position clear that the sangh is not appearing as a representative of two petitioners in this case.

35. A reference was made by Sri Pandya to a decision in *Raja Kulkarni v. State of Bombay*[2] In

our view, that judgment has hardly any relevance to the question which we have to consider in this case.

36. As already stated, in our view, there was no agreement reached between the sangh and opponent 1 mills on 11 December, 1957. The agreement reached, according to the sangh, was one between the mills and/or Millowners' Association on the one hand and the sangh on the other sometime on or about 16 January, 1957. This agreement was arrived at prior to the commencement of the proceedings before the labor court which were in fact commenced on 2 August, 1957. The agreement, therefore, was not one falling under Section 115A of the Act.

37. The order of the labor court disposing of the application under Section 115A is clearly erroneous in law on the fact of the record.

38. We have already stated that, in our view, on the facts and circumstances of the case, it cannot be said that the petitioners have no right to appear and conduct their case, inasmuch as the union does not claim to represent them. The application made by the petitioners was under Section 78(1)A(c). That application was dismissed by the labor court. Section 84(1)(c) confers a right of appeal against the decision of a labor court in respect of matters falling under C. (a) or Clause (c) of Para. A of Sub-section (1) of Section 78. The petitioners, therefore, clearly had a right of appeal under Section 84. The appeal Court was, therefore, clearly in error in not entertaining the appeal.

39. Normally, we would have remanded the matter to the appellate Court for a fresh decision of the appeal. But, in our view, no useful purpose will be served by remanding this case to the appellate Court, inasmuch as the principal dispute raised by the petitioners, namely, the validity and the legality of the agreement of 16 January, 1957, has not been considered by the labor court and that is the principal contention which ought to have been considered and decided by the labor court. It will, therefore, in our opinion, be necessary to remand this case back to the labor court to have a fresh decision with advertence to the observations made herein.

[2]1954 - I L.L.J. 1

40. In the result, for the reasons stated above, this petition is allowed, the order made by the industrial court, Bombay, on 6 February, 1958, and the order made by the labor court on 11 December, 1957, are quashed, and it is ordered that the case be sent back to the labor court for a fresh decision with advertence to the aforesaid remarks. Costs of this petition will abide the result.

Vyas J.

41. I agree entirely with the conclusions reached by my learned Brother.

42. This application raises two important questions. The first questions raised in this : Where

there is a representative union, is there a right available under the Act to individual employees to complain before the labor court that a certain change is an illegal change ? This question, in its turn, raises a question of construction of Ss. 27A, 32, 33 and 78(1)A(c) of the Act. The next question raised is as to the construction of Section 115A. Section 115A speaks of an agreement and the question is : Must it be an agreement reached during the pendency of a dispute or might it also be an agreement which might precede the dispute ? These questions have arisen in this way :

> The petitioners' case is that they were working as foremen in the Colaba Land and Mills Company, Ltd. They filed an application, being Application No. 468 of 1957, before the first labor court at Bombay, contending that they were entitled to the wages fixed for foremen in the award of the industrial court made in Reference No. 91 of 1954. This award was passed on 26 May, 1956. Thereafter it would appear that on 16 January, 1957 an agreement took place between the Colaba Land and Mills Company, Ltd., and the Rashtriya Mills Mazdoor Sangh, Bombay, pursuant to which, say the petitioners, their category was changed from that of foremen to that of electricians and their wages were fixed at ₹ 78 per month. After the award was passed, the petitioners made an application to the manager of the mills, requesting the manager that they should be paid according to the revised pay-scales and grades. It may be noted that the revision of the pay-scales and grades was ordered by this award. To the aforesaid application of the petitioners the manager of the mills gave no reply. The petitioners learnt later on that the manager, contrary to the terms of the award, had altered their category from that of foremen to that of electricians. It may be noted that during the pendency of Application No. 468 of 1957, which was made by the petitioners before the first labor court at Bombay, the mills made an application to the Court, and pursuant to the application a notice was issued to the Rashtriya Mill Mazdoor Sangh. In response to that notice, the Rashtriya Mill Mazdoor Sangh, to whom I shall hereafter refer as "the sangh," remained present in Court. The sangh stated to the Court that it wanted to appear in its representative capacity under Section 27A of the Act. It was allowed to do so. When the matter came up for hearing, the representative union and the mills both submitted to the Court that an order should be passed in terms of the agreement dated 16 January, 1957. The learned judge of the first labor court accordingly passed an order in terms of the said agreement and the order was passed by him under Section 116A of the Act. From that order of the first labor court the petitioners filed an appeal before the industrial court at Bombay. The industrial court observed :
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> "Now the position is that the representative union having appeared in the lower Court and as an appeal is a continuation of the proceeding of the original Cort, only the representative union can file an appeal ... It is not open to individual employees to appeal against such a consent order."

43. Consistently with this view of the matter, the learned president of the industrial court

dismissed the appeal of the petitioners. It is from the aforesaid orders of the president of the industrial court and the judge of the first labor court that this application has been filed by the petitioners under Art. 227 of the Constitution of India.

44. It is the petitioners' case that the change which was brought about in consequence of the agreement dated 16 January, 1957 in their category was an illegal change. The petitioners contend that once an award was made by the industrial court, it was not open to the employers or the Rashtriya Mill Mazdoor Sangh to alter the categories which were fixed under the award. The petitioners, feeling aggrieved by the change, which they considered was an illegal change, made an application before the first labor court and there is no doubt that under Section 78 of the Act the labor court had jurisdiction to entertain and decide that application. The application clearly fell within the purview of Clause (c) of Section 78, Sub-section (1) A. Section 78(1)A(c) provides that the labor court shall have power to decide whether a strike, lookout, closure, stoppage, or any change is illegal under the Act. As I have mentioned above, it was the petitioners who commenced a proceeding under the Act to ventilate their grievance against the illegal change-illegal according to the contention of the petitioners - introduced as a result of the agreement dated 16 January, 1957. The proceeding was commenced under Sub-section (1) of Section 79. This sub-section provides :

> "Proceedings before a labor court in respect of disputes falling under Clause (a) of Para. A of Sub-section (1) of Section 78 shall be commenced on an application made by any of the parties to the dispute, a special application under Sub-section (3) of Section 52 or an application by the labor officer or a representative union and proceedings is respect of a matter falling under Clause (c) of the said Para. A on an application made by any employer or employee directly affected or the labor officer or a representative union."

45. The petitioners, who were employees directly affected by the change that was introduced as a result of the agreement dated 16 January, 1957, commenced a proceeding in respect of a matter falling under Clause (c) of Section 78(1)A and this they did under Section 79(1) of the Act.

46. As I have stated above, at a certain stage the mills made an application to the labor court to the effect that the Rashtriya Mill Mazdoor Sangh be made a party to the application made by the petitioners. Upon that application, a notice was issued by the labor court to the sangh and the sangh put in an appearance in the Court.

47. Mr. Pandya, the learned advocate appearing for the mills, contends that once the union came on the scene of the dispute, the existence of the individual employees, for the purposes of the proceeding under the Act, came to an end and the petitioners in their character of individual employees were effaced from the scene. Mr. Pandya says that after the union came on the scene, it was not open to the petitioners under the Act to appear or act in any proceeding under the Act

48. Mr. Pandya has invited our attention to Section 27A of the Act and he says that the word "act" occurring in this section would include "even the initiation of a proceeding under Sub-section (1) of Section 79." In other words, Mr. Pandya's contention is that it is not open to the petitioners, in a case where a representative union is in existence to even intiate a proceeding in respect of any of the matters referred to in Section 78(1)A of the Act.

49. Mr. Pandya has next invited our attention to the provisions of Ss. 32 and 33. It may be noted that the provisions of Section 27A have been made subject to the provisions of Ss. 32 and 33. Section 27A provides :

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

50. Thus the provisions of Section 27A are to be read subject to the provisions of Ss. 32 and 33.

51. Section 32 provides –

> "A conciliator, a board, an arbitrator, a wage board, a labor court and the industrial court may, if he or it considers it expedient for the ends of justice, permit an individual, whether an employee or not, to appear in any proceeding before him or it :
> Provided that no such individual shall be permitted to appear in any proceeding in which a representative union has appeared as the representative of employees."

52. Then, there is Section 33 and I shall quote the material portion of that section. It provides :

> "Notwithstanding anything contained in any other provision of this Act, an employee or a representative union shall be entitled to appear through any person.
> (a) * * *
> (b) * * *
> Provided that ...
> Provided further that no employee shall be entitled to appear through any person in any proceeding under this Act in which a representative union has appeared as the representative of the employees."

53. Mr. Pandya relies upon the abovementioned provisions of Ss. 27A, 32 and 33 in support of his contention that once the representative union had put in its appearance in this case, it was not open to the petitioners as individual employees either to appear in the case or act in the case. An appeal from an order of the labor court being a continuation of the application itself, Mr. Pandya says that the view taken by the president of the industrial court that the petitioners had not right to file an appeal from the order of the first labor court was a correct view.

54. We have carefully considered the provisions of Ss. 27A, 32 and 33, but we find ourselves

unable to accept the contention which Mr. Pandya has made upon the basis of these sections. Section 27A provides that subject to the provisions of Ss. 32 and 33 no employee shall be allowed to appear or act in any proceeding under the Act except through the representative of employees. It is perfectly true that under this section no employee shall be allowed to appear in any proceeding under the Act or act in any proceeding under the Act, except through the representative of employees. But there is no doubt, in our view, that the representative of the employees must appear and act for the individual employees who might have initiated a proceeding under Section 79(1) read with Section 78(1)A(c) but who might themselves not be allowed to appear or act pursuant to Section 27A. The appearance has to be made through the representative of employees. But it must be the appearance for and on behalf of individual employees. Section 27A does not contemplate an appearance of the representative of employees which might be contrary to the interests of the individual employees who might have initiated a proceeding under the Act. All that the section (S. 27A) lays down is that although a proceeding might have been initiated by the individual employees directly concerned by the change which the said employees might consider an illegal change, they would not be permitted to appear in the proceeding or act in the proceeding. The appearance or acting in the proceeding would have to be done for them and on their behalf by the representative of the employees. This, in our view, is the natural construction of Section 27A of the Act.

55. If we turn to Section 32, the proviso to the section says that no individual shall be permitted to appear in any proceeding in which a representative union has appeared as the representative of employees. It has to be remembered, however, that the union must appear for the individual employees. It is true that an individual employee is not permitted to appear in any proceeding in which a representative union has put in its appearance. But then the point to be noted is that while appearing as a representative union, the union must appear for and on behalf of the individual employee who might have commenced a proceeding in respect of a matter covered by Sub-section (1) of Section 79 read with Clause (c) of Section 78(1)A.

56. Then there is Section 33, which is subject to two provisos. In this case we are concerned with the second proviso and the second proviso says that no employee shall be entitled to appear through any person in any proceeding under this Act in which a representative union has appeared as the representative of the employees. The language of this proviso is perfectly clear. It admits of no ambiguity. By enacting this proviso the legislature has laid down that so far as the appearance in the Court is concerned, the appearance shall be the appearance of the representative union. But the said appearance must be an appearance for individual employees. When the legislature says that no employee shall be entitled to appear himself, but that he shall appear through a representative union, we cannot possibly attach any other intention to the legislature except the intention that the union shall put in its appearance on behalf of the employee and not in a manner contrary to or subversive of the interest of the employee. In other words, if the union puts in its appearance in a proceeding initiated by the individual employees, it will be the duty, in our opinion, of the union to press the contentions which might have been put

forward by the individual employees in an application made by them under Sub-section (1) of Section 79 read with Section 78(1)A(c).

57. Mr. Pandya says that the intention of the legislature in enacting Section 79(1) was to provide that where there is no representative union, then only an application may be made by an employee directly concerned. We regret we are unable to agree with Mr. Pandya. If the legislature had any such intention as is contended for by Mr. Pandya, it would have used the words to that effect. It would in that case have said "on an application made by any employee or employees directly affected where there is no representative union." The legislature always uses appropriate words to express its intention. In order to make its intention clear, the legislature has in the body of the Act enacted several provisos to several sections and sub-sections. For instance, if we turn to Section 27, Sub-section (1), Cls. (a) and (b), there is a proviso to those clauses. If we turn to Section 32, we find a proviso to that section. Similar is the case with Section 33. Indeed to Section 33 there are two provisos enacted by the legislature. If we turn to Sub-section (1) of Section 35, we find that that section is subject to a proviso. Sub-section (1) of Section 36 and Sub-section (1) of Section 37 are also made subject to the provisos. Similarly Sub-section (4) of Section 42 and Sub-section (1) of Section 44 are also made subject to the provisos. Clearly, therefore, whenever the legislature has intended to make the provisions of certain sections subject to certain provisos or subject to the provisions of another section, it has always found appropriate language to give effect to that intention. For instance, the legislature intended to make the provisions of Section 27A subject to Ss. 32 and 33 and they clearly stated so in the body of Section 27A. Therefore, if the legislature had intended that an employee directly concerned would have a right to apply under Section 79, Sub-section (1), only when there is no representative union, it would have doubtless said "on an application made by any employee or employees directly affected where there is no representative union." But we do not find any such words in Section 79, Sub-section (1). In these circumstances, we must hold that the petitioners have a right to initiate proceedings in respect of matters referred to in Sub-section (1) of Section 79 read with Section 78(1)A(c).

58. While on the point of S. 27A and 79(1) Mr. Pandya has contended that the provisions of Section 79(1), must be read subject to Section 27A. Mr. Pandya says that by reading Section 79, Sub-section (1) subject to Section 27A, it would follow that an individual employee has no right even to initiate a proceeding under the Act. For making this contention, Mr. Pandya relies upon the word "act" in Section 27A. In our view, the construction which Mr. Pandya seeks to put upon Section 79, Sub-section (1), is clearly opposed to the language of Section 79, Sub-section (1). Section 79, Sub-section (1), expressly confers a right upon an employer or an employee or the laborofficer or a representative union to make an application in respect of matters falling under Clause (c) of Section 78(1) A. It is clear, therefore, that if a representative union does not chose to initiate a proceeding in respect of a matter falling under Clause (c) of Section 78(1)A, the employee directly concerned could do so. Once the employee directly concerned does so, his cause is to be taken up by the union and the union has to appear and act for him in the application

made by him (individual employee directly concerned) and it is but clear and natural that when the union appears and acts for and on behalf of the individual employee who is directly concerned in an application made by the latter, it must fight the battle for the said employee. If the union does not do so, it cannot be said to represent the employee whom it purports to represent.

59. In this connexion it would be appropriate to refer to *Gambhirji Odharji v. Bind Basni Prasad*[1] to which my learned Brother has also referred in the course of his judgment. In this case the learned Chief Justice, who delivered the judgment of the Bench, observed :

> "... even assuming the representative union does appear, the representative union will appear on behalf of the individual employees, and the application that will be considered and decided by the labor court would be the application of the employee and not the application of the representative union."

60. Thus, we are fortified in the view which we have taken in this application, namely, that once the union puts in its appearance in a case where a proceeding is initiated by an individual employee directly concerned, the union must fight the battle for the employee.

61. I now proceed to deal with the next important question which has arisen in this case and that question is one of construction of Section 115A. Section 115A provides :

> "If any agreement is arrived at between an employer and a representative union who are parties to any industrial dispute pending before an arbitrator, wage board, labor court or industrial court, the order, decision or award in such proceeding shall be made in terms of such agreement, unless the arbitrator, wage board, labor court or industrial court is satisfied that the agreement was in contravention of any of the provisions of this Act or the consent of either party to it was caused by mistake, misrepresentation, fraud, undue influence, coercion or threat."

62. Now, a point has arisen whether the agreement referred to in this section must be an agreement arrived at during the pendency of the dispute or whether it might also be an agreement which might have preceded the dispute. Mr. Kavlekar contends that the agreement, to be enforceable under Section 115A must be an agreement which takes place during the pendency of the dispute. Mr. Pandya, on the other hand, contends that the agreement might also be an agreement which might have preceded the dispute. In our view, Mr. Kavlekar's contention is right. It is cledr that there can be no question of an agreement unless there is a dispute in the first place. An agreement presupposes a state of affairs, where but for the agreement or settlement, the matters settled by an agreement would not be settled and the dispute would continue. Therefore, in our view, an agreement to be enforceable under Section 115A must be an agreement arrived at between the parties during the pendency of the dispute.

63. We are fortified in this construction by the fact that the legislature has used the word "is" in

the opening portion of Section 115A. The section opens with the words "If any agreement is arrived at between an employer and a representative union ..." The intention of the legislature is always to be gathered from the language used by the legislature. When the legislature intends to convey a certain thing, it chooses words appropriate for the purpose. If the intention of the legislature had been to lay down a law that a dispute subsequently arising between the parties shall be settled in terms of the prior agreement, it would have used the words "If any agreement has been arrived at between an employer and a representative union." But it is significant to note that the word used in this context by the legislature is "is" and the words are not "has been."
[1][1955 - II L.L.J. 202]
64. Than, again, the important words in this section on the point of construction of the section are "who are parties to any industrial dispute pending before an arbitrator, wage board, labor court or industrial court."

65. If the legislature had intended that an agreement spoken of by Section 115A might precede a dispute, it would have used the words "who might be parties to any industrial dispute."

66. Then again, if we turn to Sub-section (3) of Section 114 of the Act, the sub-section provides :

> "A registered agreement entered into by the representative of the majority of the employees affected or deemed to be affected under Section 43 by the change shall bind all the the employees so affected or deemed to be affected."

67. It is, therefore, clear that the agreement referred to in Section 114, Sub-section (3), and Section 115A postulates a change and the representative of the majority of the employees being affected by that change. In other words, it postulates the existence of a dispute. It is clear, therefore, that the agreement contemplated by Ss. 15A of the Act is an agreement arrived at between the parties during the pendency of the dispute between them.

68. In the result, I agree with the order of remand proposed by learned Brother.
Case remanded.