

PETITIONER:
M.R. PATIL & ANR.

Vs.

RESPONDENT:
THE MEMBER, INDUSTRIAL COURT & ANR.

DATE OF JUDGMENT: 01/04/1997

BENCH:
M.K. MUKHERJEE, B.N. KIRPAL

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M.K. MUKHERJEE, J.
Leave granted.

This appeal is directed against the judgment and order dated April 26, 1996 of the Bombay High Court (Nagpur Bench) in W.P. (Crl.) No. 167 of 1995 whereby it rejected the writ petition filed by the two appellants before us. Facts leading to this appeal and relevant for its disposal are as under.

At all material times the appellant No.1, who is an Officer of the Indian Administrative Service, was holding the post of the Vice Chairman-cum-Managing Director of Maharashtra State Road Transport Corporation ('Corporation' for short) on deputation and appellant No. 2 was the Manager of its Nagpur retion. On or about April 1, 1992 two recognised Workers' Unions of the Corporation gave a joint notice terminating their earlier settlement with the Corporation and submitted their fresh charter of demands. On the failure of the management of the Corporation to attend to their demands the Unions served a notice upon the former intimating that the workers would go on strike from the midnight of April 12/13, 1993. A similar notice was also given by The Maharashtra S.T. Chalak Wahak Sanghatna, the respondent No. 2 herein, (hereinafter referred to as the 'Union'). In view of the threatened strike the Chief Minister of Maharashtra intervened into the matter; and on April 9, 1993 declared an interim relief of Rs. 25 crores to the workers and asked the Corporation to work out the modalities of its payment. Accordingly, the Corporation held discussions with recognised Unions and decided upon the mode of payment of the interim relief, pending final settlement. After obtaining approval of the State Government to the same the Corporation issued a circular on June 25, 1993 and started making payments in terms thereof.

Assailing the above circular on the ground that payment in terms thereof would be unjust and more favorable to the workers affiliated to the other Unions, the Union filed a complaint before the Industrial Court, Amaravati under Section 28(1) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ('Act'

for short) and, along with it, filed a petition seeking temporary relief. On that complaint, which was registered as ULP Case No. 397/93 and the petition, the Industrial Court passed the following order on June 29, 1993 :

"In view of the facts pleaded in the main complaint and this petition the effect of the operation of the impugned circular No. 3679 dated June 25, 1993 is hereby stayed until July 15, 1993. Issue notice to the respondents to file their reply accordingly by the said date."

Thereafter, on July 22, 1993, the Union, through its General Secretary Shri N.M. Verma, filed a complaint before the Labour Court, Akola under Section 48(1) of the Act alleging that even after service of the above stay order on the day it was made, that is, on June 29, 1993, the Secretary of State Transport Authority, and the who appellants had made payments in terms of the circular and sought the following reliefs :

"The Hon'ble Labour Court may please declare that the accused 1, 2 & 3 have wilfully disobeyed the order of the Hon'ble Industrial Court interim order dated 29.6.1993 in the U.L.P. case No. 397/93.

2. The Hon'ble Court may please order against the accused No. 1, 2 & 3 to issue processes u/s 48(1) of MRTU and PULP Act and award punishment under the Act.

3. Any suitable order which the Court may deem fit be passed in the interest of justice."

On receipt of the complaint, the Labour Court issued a notice directing the three accused, including the two appellants, to show cause why processes should not be issued against them. In showing cause the appellants did not give any specific reply to the allegations made against them in the complaint but raised a preliminary objection as to its maintainability on the ground that without a sanction under Section 197 Cr.P.C. they could not be prosecuted. The other accused however contended that he was wrongly arraigned in the proceeding. After hearing the parties the Labour Court passed an order on February 11, 1994, whereby it discharged the Secretary with a finding that there was nothing on record to show that he was in any way responsible for willful disobedience of the order of the Industrial Court but, issued processes against the two appellants, after rejecting their contention based on 197 Cr.P.C..

In the mean time, the Industrial Court had, by its order dated August 14, 1993, vacated the ex-parte interim stay granted by it on June 29, 1993 and dismissed the petition filed by the Union for temporary relief.

The appellants then filed two applications before the Labor Court praying for their discharge on the grounds, that they were not party to the proceedings before the Industrial Court and hence its order dated June 29, 1993 was not binding upon them and that the interim stay granted thereby had since been vacated. By its order dated December 17, 1994 the Labour Court rejected those applications and aggrieved thereby Court rejected those applications and aggrieved thereby the appellants preferred a revision petition before the Industrial Court (Amravati Bench) under Section 44 of

the Act which was dismissed. Thereafter they moved the High Court in its writ jurisdiction but without success. Hence this appeal.

To answer the questions raised in this appeal it will be pertinent to refer, at the outset, to the preamble of the Act and its material provisions. The Act was brought on the statute book

"to provide for the recognition of trade Unions for facilitating collective bargaining for certain undertakings, to state their rights and obligations; to confer certain powers on unrecognised unions; to provide for declaring certain strikers and lock-outs as illegal strikes and lock-outs; to define and provide for the prevention of certain unfair labour practices; to constitute courts (as independent machinery) for carrying out the purposes of according recognition to trade unions for enforcing the provisions relating to unfair practices; and to provide for matters connected with the purposes aforesaid."

'Recognised Union' is defined by sub-section (13) of Section 3 of the Act to mean a Union which has been issued a certificate of recognition under Chapter III thereof and 'unfair labour practices' by sub-section (16) thereof to mean unfair labour practices as defined in Section 26. Chapter II specifies Industrial Courts, Labour Courts and Investigating Officers as the authorities under the Act and in its various sections details the modes of their constitution and appointments, and their duties. Chapter III deals with the recognition of Unions and, while Section 11(1) thereof specifies the conditions to be complied with by a Union to gain recognition under the Act, Section 12(3) empowers an Industrial Court to grant recognition and issue a certificate of such recognition in the prescribed form. Unfair labour practices are dealt with by Chapter VI and Section 26 defines them to mean the practices listed in Schedules II, III and IV. Section 27 debars employers, Unions and employees from engaging in any unfair labour practice and Section 28 of the said Chapter sets out the procedure the Industrial Court or the Labour Court, has to follow for dealing with complaints relating to unfair labour practices. According to the procedure laid down in Section 28, any Union or any employee or any employer or any Investigating Officer may file a complaint against a person who has engaged in or is engaging in any unfair labour practice before the Court competent to deal with such complaint either under Section 5, or as the case may be, under Section 7. On such complaint the Court may, of its own take a decision, which would be in the form of an order; or if it so considers necessary, may first cause an investigation into the said complaint to be made by the Investigating Officer and direct that a report be submitted by him to enable it to take such a decision. Sub-section (7) of the above Section forbids the civil or criminal court from quashing the order so made. In view of Section 29 the above order of the Court shall be binding on, inter alia, all parties to the complaint and those summoned to appear in Court. Section 30 of the Act formulates the nature of orders

the Industrial Court and Labour Court can pass pursuant to their decisions and so far as it is relevant for our purposes it reads as under :

"(1) Where a Court decides that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice, it may in its order -

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(b) direct all such persons to cease and desist from such unfair labour practice, and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without backwages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate the policy of the Act;

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(2) In any proceeding before it under this Act, the Court may pass such interim order (including any temporary relief or restraining order) as it deems just and proper (including directions to the person to withdraw temporarily the practice complained of, which is an issue in such proceeding), pending final decision:

Provided that, the Court may, on an application in that behalf, review any interim order passed by it.

Section 48 (1) of the Act, with which we are primarily concerned in this appeal, provides that any person who fails to comply with any order of the Court in clause (b) of sub-section (1) or sub-section (2) of section 30 of the Act shall, on conviction, be punished with imprisonment which may extend to three months or with fine which may extend to five thousand rupees.

Chapter VIII of the Act relates to the powers of Industrial Court and Labour Court to try offences under the Act and Section 38 specifically empowers a Labour Court to try offences punishable under the Act within the limits of whose jurisdiction it is committed. Section 39 relates to cognizance of the offences committed under the Act and it reads as under:

"No Labour Court shall take cognizance of any offence except on a complaint of facts constituting such offence made by the person affected thereby or a recognised union or on report in writing by the Investigating Officer."

The powers of and procedure to be followed by the Labour Court for trial of such offences is laid down in Section 40, which is extracted below:

"In respect of offences punishable under this Act, a Labour Court shall have all the powers under the Code of Criminal procedure, 1898, V

of 1898, of a Presidency Magistrate in Greater Bombay and a Magistrate of the First Class elsewhere, and in the trial of every such offence, shall follow the procedure laid down for in Chapter XXII of the said Code of summary trial in which an appeal lies; and the rest of the provisions of the code shall so far as may be, apply to such trial."

Section 42 provides that notwithstanding anything contained in Section 40, and appeal shall lie to the Industrial Court against an order of conviction or acquittal recorded by the Labour Court as also for enhancement of sentences awarded by the Labour Court. The other section to which reference is required to be made is Section 44, which empowers the Industrial Court to exercise superintendence over all Labour Courts.

From a conspectus of the provisions of the Act it is manifest that if on a complaint filed in accordance with Section 28, the Labour Court or the Industrial Court, as the case may be, arrives at a decision that a person has engaged in or is engaging in any unfair labour practice it may issue a direction in terms of clause (b) of sub-section (1) of Section 30 and pending final decision grant interim relief in terms of sub-section (2) thereof. Failure on the part of a person, who is bound by such order or direction, to comply with it amounts to an offence for which he is liable to be convicted and sentenced as envisaged under Section 48(1) by a Labour Court. Cognizance of such offence, besides other offences under the Act, cannot however be taken by the Labour Court unless a complaint disclosing facts constituting the offence is filed by the person affected thereby or a recognised Union. (emphasis supplied) The only other mode left open to the Labour Court to take such cognizance is on the basis of a report in writing by the Investigating Officer. Once cognizance of the offence is taken on such complaint or report, as the case may be, the Labour Court would have to follow the procedure laid down by the Code of Criminal Procedure, 1973 (which now replaces the Code of Criminal procedure, 1898).

That brings us to the merits of the appeal. Mr. Salve, the learned Counsel appearing for the appellant, contended that the impugned prosecution was void ab initio as the Union was not a 'recognised Union' within the meaning of the Act and hence, was not legally competent to file the complaint before the Industrial Court under Section 28 of the Act which ultimately gave rise to the complaint before the Labour Court under Section 48(1). According to Mr. Salve the scheme of the Act and its various provisions clearly envisage that complaints under Section 28 regarding unfair labour practices can be made only by recognised Unions - or by an employee individually if he is solely affected thereby - and since, admittedly, the Union was not a recognised Union it could not invoke the provisions of Section 28. In support of his contention he drew our attention to Section 21 of the Act and relied on the judgments of this Court in *Crescent Dyes Chemicals Ltd. vs. Ramnaresh Tripathi* (1993) 2 SCC 115 and *Sharamik Uttarsh Sabha vs. Raymond Woolen Mills Ltd.* (1995) 3 SCC 78. In repelling the above contention Shri N.M. Verma, General Secretary of the Union, who argued the case himself submitted that question whether Union was recognised or not was not material in view of the limited scope of Section 21 and of right of 'any Union' as appearing in section 28 to lodge a complaint of unfair labour

practice. to buttress his submission Mr. Verma drew our attention to the judgment of the Bombay High Court in Akhil Maharashtra Kamgar Union vs. Warden and Co. Ltd. (1996) 1 CLR 212 which has distinguished the judgment of this Court in Shramik Uttarsh Sabha (supra). We need not however delve into this aspect of the matter as in our opinion the prosecution launched against the appellants is liable to be quashed for the simple reason that the cognizance of the offence under Section 48(1) allegedly committed by the appellants was taken by the Labour court in utter breach of Section 39 of the Act.

As discussed earlier cognizance of an offence punishable under the Act can be taken on a 'complaint' of facts constituting such offence only if it is made by a person affected thereby or a recognised Union. Admittedly, the complaint in the instant case was filed by a Union - and not by an individual with the interim direction/order of the Industrial Court. Undisputedly again, the Union is not a recognised Union within the meaning of the Act. Indeed, in the counter affidavit filed by it before this Court, the Union has not denied the specific averment made by the appellants in the Special Leave Petition, out of which the present appeal arises, that the Union was not a recognised Union as per the Act {Paragraph 4(b)} and its only reply thereto was that allegation was mentioned to support its various contentions and repel those of the appellants, it has not produced any document - much less a certificate issued under Section 12 - to indicate that it was granted recognition under the Act to entitle it to file a complaint of facts constituting the offence under Section 48(1) and, for that matter, to enable the Labour Court to take cognizance thereupon under Section 39. Since the provisions of this Section are mandatory and the Labour Court has no jurisdiction to take cognizance of any of the offences mentioned in the Act unless there is a complaint/report in terms thereof the cognizance in the instant case on the complaint of the Union must be said to be without jurisdiction.

As the above discussion of ours is sufficient to quash the impugned prosecution we need not discuss the other patent infirmities relating to the procedure adopted by the Labour Court in dealing with the complaint and to the rejection of the indefensible contention raised on behalf of the appellant No.1 about the maintainability of the prosecution in view of Section 197 Cr.P.C.

On the conclusion as above, we allow this appeal and quash the impugned prosecution.