

BOROSIL GLASSWORKS LTD. EMPLOYEES' UNION

v.

D.D. BAMBODE AND ORS.

NOVEMBER 30, 2000

[S. RAJENDRA BABU AND S.N. VARIAVA, JJ.]

Labour Laws:

Trade Unions Act, 1926:

Section 28-IA—Invoking of—Held: Can only be invoked by a person who had been a member of a registered trade union for a period of not less than 6 months— A person whose application for membership is neither allowed nor considered is not a member for six months, and cannot invoke S.28-IA—Trade union—Disputes—Civil Court—Jurisdiction of—Held: is barred only in respect of matters which have been referred to an Industrial Court under S.28-IA—If a dispute does not fall under S.28-IA civil court has jurisdiction—Whether a person should or should not be admitted as a member is a dispute within the competence of civil court.

Interpretation of Statutes:

Harmonious construction—Rule of—Held: If two interpretations of a provision are possible then the one which leads of a harmonious reading of the entire provision is to be preferred to the one which renders a portion nugatory.

The appellant was a trader union registered under the Trade Unions Act, 1926. The 4th respondent made an application for membership of the appellant-union, which was rejected. Therefore, the 4th respondent filed a complaint under Section 28-IA of the Act before the Registrar of Trade Unions for grant of a certificate. The Registrar held that since the 4th respondent was not a member of the appellant-union for six months prior to the date of the application no certificate under Section 28-IA of the Act could be granted to him. However, the High Court held that even a person who had applied to become a member could apply under Section 28-1A of the Act. Hence, this appeal.

Allowing the appeal, the Court,

A HELD: 1.1. Section 28-IA of the Trade Unions Act, 1926 has been incorporated to ensure that internal disputes in a trade union get decided. The Section specifically provides that it can be invoked only by a person who has been a member of a registered trade union for a period of not less than 6 months. The words “where there is a dispute as respects whether or not any person is an office-bearer or member of a registered trade union” have to be read along with the words “any member of such registered trade union for a period of not less than six months”. A person whose application for membership has not been considered or allowed would not have been a member for six months. [191-D]

B

C 1.2. It is a cardinal rule of interpretation that if two interpretations are possible, one of which leads to a harmonious reading of the entire provision and another, which renders a portion nugatory, then the former interpretation has to be accepted. The interpretation given by High Court leads to the requirement of a person being a member for six months being rendered nugatory. However, if it is held that the dispute “as to whether a person is a member or not” is necessarily a dispute in respect of a person who was already a member for a period of not less than six months, but whose membership is being disputed, then no portion of the Section gets rendered nugatory. Thus it will have to be held that dispute between persons who are not members and the Union would not be covered by Section 28-IA. Further a dispute between a person who is not yet a member and a union would not be an internal dispute of the union. [191-E-G]

D

E 2. Under Section 28-IA of the Act the Jurisdiction of the Civil Court is barred only in respect of matters, which have been referred to an Industrial Court under Section 28-IA. If a dispute does not fall under Section 28-IA then that dispute can always be taken to a civil court. As a dispute whether a person should or should not be admitted as a member is not a dispute falling within Section 28-IA, it would always be open to such persons to approach a civil court for resolution of their disputes. [191-H; 192-A]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3409 of 1995.

G From the Judgment and Order dated 29.9.94 of the Bombay High Court in W.P. No. 1758 of 1993.

S.J. Deshmukh, Farrukh Rashid, Ms.Pramila S. Kumar and Ashok Kumar Gupta for the Appellant.

H C.S. Vaidyanathan (A.C.) Jitendra Acharya and Shankar Anand for the

Respondents.

The Judgment of the Court was delivered by

S.N. VARIAVA, J. This Appeal is against a Judgment dated 29th September, 1994.

Briefly stated the facts are as follows:

The Appellant is a trade union registered under the Trade Unions Act, 1926 and a recognised union of Borosil Glass Works Ltd. The 4th Respondent and certain other persons made a joint application for membership of the Appellant Union. As the application was not according to the procedure of the Appellant Union no action was taken on the said application. All those persons were asked to apply individually by filling in the prescribed form and make payment of requisite fee and membership subscription.

The Appellant received a notice dated 15th April, 1993 from the Registrar of Trade Unions under Section 10(b) of the Trade Unions Act threatening to cancel the registration of the Appellant Union. The Appellant Union then learnt that this was pursuant to a complaint filed by 4th Respondent under Section 28(1A) of the Trade Unions Act. The Appellant then represented their case before the Registrar. The Registrar of Trade Unions thereafter informed the 4th Respondent that since he was not a member of the Appellant Union for six months prior to the date of the application no certificate under Section 28(1A) of the Trade Unions Act could be granted to him.

The 4th Respondent filed a Writ Petition in the Bombay High Court seeking direction to the Registrar of the Trade Unions to issue a consent certificate. That Petition came to be disposed off by the impugned Judgement dated 29th September, 1994. The High Court has given a wide interpretation to Section 28(1A) of the Trade Unions Act. It has been held that even a person who has applied to become a member can apply under Section 28(1A) of the Trade Unions Act. This interpretation of Section 28(1A) has been assailed before us in this Appeal.

For a consideration of this question it will be appropriate to set out Section 28(1A) of the Trade Unions Act. It reads as follows:

“28(1A). Power of Industrial Court to decide certain disputes.- (1) Where there is a dispute as respects whether or not any person is an office-bearer or member of a registered trade union (including any dispute relating to wrongful expulsion of any such office-bearer or

A member) or where there is any dispute relating to the property (including the account books) of any registered trade union, any member of such registered trade union for a period of not less than six months may, with the consent of the Registrar, and in such manner as may be prescribed, refer the dispute to the Industrial Court constituted under the Bombay Industrial Relations Act, 1956 for decision.

(2) The Industrial Court shall after hearing the parties to the dispute decide the dispute; and may require an office-bearer or member of the registered trade union, to be appointed whether by election or otherwise under the supervision of such person as the Industrial Court may appoint in this behalf or removed, in accordance with the rules of the trade union: Provided that, the Industrial Court may pending the decision of the dispute, make an interim order specifying or appointing any person or appointing a Committee of Administration for any purpose under the Act including the purpose of taking possession or control of the property in dispute and managing it for the purposes of the union pending the decision.

(3) The decision of the Industrial Court shall be final and binding on the parties, and shall not be called in question in any civil court.

(4) No civil court shall entertain any suit or other proceedings in relation to the dispute referred to the Industrial Court as aforesaid and if any suit or proceeding is pending in any such Court, the Civil Court shall, on receipt of an intimation from the Industrial Court that it is seized of the question, cease to exercise jurisdiction in respect thereof.

(5) Save as aforesaid, the Industrial Tribunal may, in deciding disputes under this section, exercise the same powers and follows the same procedure as it exercises or follows for the purpose of deciding industrial disputes under the Bombay Industrial Relations Act, 1946."

The Statement of Objects and Reasons for incorporating Section 28(1A)

is also relevant. It reads as follows:

"STATEMENT OF OBJECTS AND REASONS.

The Indian Trade Unions Act, 1926, provides for the registration of Trade Unions, and in certain respects defines the law relating to registered Trade Unions. The Act, however, does not contain any

provision for deciding internal disputes in a registered Trade Union. A
 These disputes, which are at present decided by civil courts take a
 long time to decide with the result, that pending the decision of the
 dispute, the work of the registered Trade Union, which cannot function,
 is paralysed. To tide over this difficulty, it is proposed to take power
 to members of Trade Unions with the consent of the Registrar of B
 Trade Unions to refer such disputes to the Industrial Court constituted
 under the Bombay Industrial Relations Act, 1946, and to bar the
 jurisdiction of civil courts from entertaining such disputes. It is also
 proposed to empower the Industrial Court to pass interim orders, and
 its decisions are to be made final and binding on parties.”

In our view, on a plain reading of Section 28(1A), the interpretation C
 given by the High Court cannot be sustained. Section 28(1A) has been
 incorporated to ensure that internal disputes in a trade union get decided. The
 Section specifically provides that it can be only invoked by a person who has
 been a member of such registered trade union for a period of not less than
 6 months. The words “where there is a dispute as respects whether or not D
 any person is an office-bearer or member of a registered trade union” has to
 be read along with the words “any member of such registered union for a
 period not less than six months”. A person whose application for membership
 has not been considered or allowed would not have been a member for six
 months. It is a cardinal rule of interpretation that if two interpretations are E
 possible, one of which leads to a harmonious reading of the entire provision
 and another which renders a portion nugatory then the former interpretation
 has to be accepted. The interpretation given by the High Court leads to the
 requirement of a person being a member for six months being rendered
 nugatory. However if it is held that the dispute “as to whether a person is F
 a member or not” is necessarily a dispute in respect of a person who was
 already a member for a period of not less than six months, but whose
 membership is being disputed then no portion of the Section gets rendered
 nugatory. Thus it will have to be held that dispute between persons who are
 not members and the Union would not be covered by Section 28(1A). Further
 a dispute between a person who is not yet a member and a union would not G
 be an internal dispute of the union.

Under Section 28(1A) the jurisdiction of the Civil Court is barred only
 in respect of matters which have been referred to an Industrial Court under
 Section 28(1A). If a dispute does not fall under Section 28(1A) then that
 dispute can always be taken to a Civil Court. As a dispute whether a person H

A should or should not be admitted as a member is not a dispute falling within Section 28(1A), it would always be open to such persons to approach a Civil Court for resolution of their dispute. Needless to say that if the law permits they may also raise an industrial dispute before the Industrial Court in that behalf.

B In our view, therefore, the Judgment of the High Court cannot be sustained and is set aside. Accordingly the Appeal is allowed. There will be no order as to costs.

V.S.S.

Appeal allowed.