# Raja Kulkarni And Others vs The State Of Bombay on 24 November, 1953

## Equivalent citations: 1954 AIR 73, 1954 SCR 384, AIR 1954 SUPREME COURT 73, 1956 BOM LR 459

## Author: Ghulam Hasan

## Bench: Ghulam Hasan, M. Patanjali Sastri, Mehr Chand Mahajan, Vivian Bose

PETITIONER:
RAJA KULKARNI AND OTHERS

Vs.

RESPONDENT:
THE STATE OF BOMBAY.

DATE OF JUDGMENT:
24/11/1953

BENCH:
HASAN, GHULAM
BENCH:
HASAN, GHULAM
SASTRI, M. PATANJALI (CJ)
MAHAJAN, MEHR CHAND
DAS, S.K.
BOSE, VIVIAN

CITATION:
1954 AIR 73 1954 SCR 384
CITATOR INFO :
R 1956 SC 367 (9)
R 1982 SC1397 (4)
E 1985 SC 311 (19)

ACT:
Constitution of India, arts. 19(1)(a) and (c)-Bombay Industrial Relations Act, 1946, ss. 3(32), 12, 13- Industrial Disputes (Appellate Tribunal) Act, 1950, ss. 24, 27-Strike pending appealIllegality-Classification of union as "representative" and "qualified" "cording to percentage of membershi--Infringement of fundmental right to freedom of speech and to form associations.

HEADNOTE:

A strike during the pendency of an appeal would be an illegal strike under ss. 24 and 25 of the industrial Disputes (Appellate Tribunal) Act, 1950, even though the appeal is not a valid or competent one.

The Bombay Industrial Relations Act, 1946, provided that a union may be registered as a "representative union" if it had a membership of not less than 15 per cent. of the total number of employees employed in any industry in any local area and if a union had a membership of less than 15 per cent and not less than 5 per cent. it can be registered only as "qualified union" :

Held, that the above provisions did not infringe the fundamental right of the workers to freedom of speech and expression and to form associations or unions under article 19(1) (a) and (c) of the Constitution. The classification of unions as "representative and "qualified" according to the percentage of membership and giving the right to unions with a membership of not, less than 15 per cent. alone to represent the workers was a reasonable classification, and did not infringe the rule of equality before the law.

JUDGMENT:

CRIMlNAL APPELATE . JURISDICTION : Cases Nos. 87, 88 and 89 of 1951.

Appeals under article , 132(1) of die Constitution of India from the judgment and Order dated 8th January, 1951, of the High Court of judicature at Bombay (Bavdekar and Dixit JJ.) in Criminal Appeals Nos. 675, 676 and 677 of 1950.

N. Bharucha and Dara Vania for the appellants. M. C. Setalvad, Attorney General for India (G. N.J.oshi and Porus A. Mehta, with him) for the respondent. 1953. November 24. The judgment of the Court was delivered by GHULAM HASAN J.-These consolidated appeals by the three appellants arise out of the judgment and order of the High Court of judicature at Bombay (Bavdekar and Dixit JJ.), whereby the High Court confirmed the convictions of the appellants recorded by the Presidency Magistrate, Fifth Court, Greater Bombay, under section 27 of the Industrial Disputes (Appellate Tribunal) Act (No. XLVIII of 1950) but reduced their sentences from six months' rigorous imprisonment to three months' simple imprisonment and set aside against each of the appellants the sentence of fine of Rs. 1,000. The appellants are the President and the Secretaries of the Mill Mazdoor Sabha, a union of textile workers in Bombay registered under, the Indian Trade Unions Act. It appears that there are about 2,10,000 textile workers working in Bombay and about 35 per cent. of them belong to three different labour unions. The first is called "Rashtriya Mill Mazdoor. Sangh" which is recognized as a "representative union under the Bombay Industrial Relations Act, 1946, on the ground that it represents notless than 15 per cent. of such textile workers. The second is called"the Mill Mazdoor Sabha", of which the appellants are the office bearers, but this union represents less than15 per cent.; and the third is "Girni Kamgar,Union"

representing the least percentage of workers. It is common ground that apart from the members of the above three unions, a large number of workers representing about 65 per cent. arc unorganized and do not belong to any union. On December 9, 1949, the representative, union gave a notice of change under section 442 Of the Bombay Industrial Relations Act, 1946, herein after called the Act, to the Mill Owners Association in Bombay claiming bonus for that year. On December 23, the dispute was referred by the Government of Bombay to the Industrial Court under section 23 of the said Act. While this dispute was pending, the Industrial Disputes (Appellate Tribunal) Act (No. XLVIII of 1950) hereinafter called the Appellate 'Tribunal Act, came into force on May 20, 1950. On July 7, the Industrial Court made the award and the same was published on July 13. On August 9, the Mill Owners Association, which was dissatisfied with the award, filed an appeal before the Appellate Tribunal and an ad interim order was passed on August 10, directing how the bonus should be paid. The. appellants made speeches on August 14, 15 and 16, exhorting the workers of the textile industry to go on strike. I The Labour Commissioner thereupon filed complaints before the Presidency Magistrate on August 28, charging the appellants with an offence under section 27 of the Appellate Tribunal Act. The Mill Mazdoor Sabha applied to be made a party to the appeal, but the application was rejected. As already stated, the appellants were convicted by the Presidency Magistrate, but their sentences were reduced on appeal by the High Court.

Two main contentions were raised on behalf of the appellants, firstly that the conviction under section 27 of the Appellate Tribunal Act was illegal, because there was no competent and valid appeal against the award before the Appellate Tribunal and secondly that 'section 27 of the Act is void as being opposed to the fundamental rights of the appellants under articles 19 (1) (a) and (c) and 14 of the Constitution. Both the contentions were repelled by the two learned judges who delivered separate but concurrent judg- ments. The contentions have been reiterated before us. In order to deal with the first contention, it will be, necessary to refer to certain provisions of the Appellate Tribunal Act. Section 7 of that Act provides an appeal to the Appellate Tribunal from any award or decision of an Industrial Tribunal

(a) if the appeal involves any substantial question of law;or

(b) the award or decision is in respect of any of the following matters, namely:(i) wages,

(i) Wages

(ii) bonus or travelling allowance, * * * * Section 24(b) prohibits a workman, who is employed in any industrial establishment, from going on strike during the pendency of an appeal before the Appellate Tribunal and section 25 renders a strike and a lock-out as illegal if it is declared, commenced or continued in contravention of the provisions of section 24. Then follows the penalty provided for in section 27 which

says : "Any person, who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out, which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may ex-

tend to one thousand rupees, or with both." The question is whether the appellants rendered themselves liable to prosecution under section 27, because they instigated the strike while the appeal was pending before the Appellate Tribunal.

It is contended that section 24 contemplates the pendency of a valid and competent appeal, but as no valid or competent appeal under the law was pending, the appellants committed no offence under section 27. We are unable to accept this contention. Section 24 on a plain and natural construction requires for its application no more than that an appealshould be pending and there is nothing in the languageto justify the introduction of the qualification that itshould be valid or competent. Whether the appeal is valid or competent is a question entirely for the appellate court before whom the appeal is filed to determine, and this determination is possible only after the appeal is heard, but there is nothing to prevent a party from filing an appeal which may ultimately be found to be, incompetent, e. g., when it is held to be barred by, limitation or that it does not lie before that court or is concluded by a finding of fact under section 100 of the Civil Procedure Code. From the mere fact that' such an appeal is held to be unmaintainable on any ground whatsoever, it does not follow that there was no appeal pending before the court. Article 182(2) of the Indian Limitation Act prescribes three years period of limitation for the execution of a decree or order to run from the date of the final decree or order of the Appellate Court "when there has been an appeal." The Privy Council construed the latter phrase to mean that any application by a party to the appellate court to set aside or revise a decree, or order of a court subordinate thereto is an "appear, within the meaning of the above provision, even though it is irregular or incompetent, or the persons affected by the application to execute were not parties, or it did not imperil the whole decree or order. They refused, to read into the words any qualification either as to the character of the appeal, or as to the parties to it. [Nagendra Nath Dey and Another v. Suresh Chandra Dey and Others (1)]. We consider that the word "appeal must be construed in its plain and natural sense without the insertion of any qualifying words' such as are intended to be introduced by the, contention raised before us. There is yet another reason for not construing the word "appeal" in the manner suggested by the appellants and that is that the legislature in introducing this provision contemplated that industrial peace should not be disturbed so long as, the matter was pending in the court of appeal, irrespective of the fact whether such an appeal was competent in: law. If this were not the case, the parties could easily, defeat the object of the legislature by arrogating to, themselves the right to decide about' the competency of the appeal without reference to the court, commit a breach of the peace and escape the penalty imposed by section 27. There was no justification for the appellants to instigate the, workers in the so-called bow flde belief that section 27 did not apply to an appeal which they thought was incompetent. In this, view of the matter it is not necessary to consider (1) 59 I. A. 283.

whether the conferment of a right of appeal during the pendency of a proceeding can affect the rights of the parties to those proceedings and make the order in the pending proceeding appealable.

The second contention relates to the alleged infringement of the rights Of the appellants under article 19(I) (a) and

(c), read with article 14 of the Constitution. In order to understand this contention, a reference to the provisions of the Bombay Industrial Relations Act, 1946, will be necessary.

Section 3, sub-section (32), defines "representative of employees" as one entitled to act as such under section 30, and "representative union," is defined as a union for the time being registered as a representative union under the Act [subsection (33)].

Section 12 enjoins upon the Registrar of Unions appointed under the Act to maintain :

(a) a register of unions registered by him under the provisions of the Act, and

(b) a list of approved unions.

Section 13 deals with the registration of unions by the Registrar. By the first sub-section a union can be registered as a "representative union" for an industry in a local area if it has for the whole of the period of the three months next preceding the date of its application, a membership of not less than 15 per cent. of the total number of employees employed in any industry in any local area. If a union does not satisfy that condition, and has a membership of not less than 15 per cent., it can be registered as a "qualified union."If neither of these unions has been registered in respect of an industry, then a union having a membership of not less than 15 per cent. of the total number of employees employed in any undertaking in such industry can by an application to the Registrar be registered as a "primary union." It is common ground that the Rashtriya Mill Mazdoor Sangh comes under the first category and the union of which the appellants are officebearers comes under the second namely that it is a qualified union. This registration can be cancelled under section 15 if it has 393 S. C. India/59 been procured by mistake, misrepresentation or fraud or if the membership has fallen below the minimum required under section 13 for its registration.

It is argued that the right of the appellants to freedom of speech and expression and to form associations or unions under article 19(I) (a) and (c), read with article 14, conferring the right of equality before the law or the equal protection of the laws is infringed by the Act, inasmuch as it gives preference to a trade union upon the artificial test of having the greater percentage of membership, namely, not less than 15per cent. We see little merit in this contention. It is obvious that the Act imposes no restriction either upon the freedom of speech and expression of the textile workers or their right to form associations or unions indeed it is not denied that the workers have already formed as many as three unions, though they do not exhaust the number of workers in Bombay, for it leaves as many as 65 per cent. of workers unorganized who do not belong to any trade union. The statute lays down the minimum qualification of 15 per cent of membership to enable the Union to be called a "representative union" so as to represent the interests of the entir body of workers in their relations with the employers. After laying down the test of not less than 15 per cent. it was perfectly reasonable not to allow any other union such as the appellants to interpose in a dispute on behalf of the textile workers when they did not command the minimum percentage or

when their membership fell below the prescribed percentage. It is perfectly open to the appellants to enlist that percentage or even a higher one and claim precedence over the Rashtriya Mill Mazdoor Sangh so as to be able to represent the interests of all the workers. The right to freedom of speech and expression is not denied to the appellants, nor are they prohibited from forming associations or unions. The Act makes no discrimination between textile workers as a class but lays down a reasonable' classification to the effect that a certain percentage of membership possessed by a union will be allowed to represent the workers as a class to the exclusion of others, but there is nothing to prevent the other unions or other workers from forming a fresh union and enrolling a higher percent-age so as to acquire the sole right of representation. The appellants challenge the validity of the Act as infringing their fundamental rights and yet they base their case of discrimination on the provisions of the same Act. This position is not in accord with reason ,or principle. We hold, therefore, that the appellants have made ,out no case for interference with the orders of the courts below. We uphold the convictions and sentences and dismiss the appeal.

Appeal dismissed.

Agent for the appellant : Raiinder Narain. Agent for the respondent: G. H. Rajadhyaksha.