Bombay High Court
R.A. Yadav And Ors. vs Special Steels Ltd. And Anr. on 18 October, 2002
Equivalent citations: 2003 (3) BomCR 96, 2003 (97) FLR 542
Author: R S.
Bench: S Radhakrishnan
JUDGMENT Radhakrishnan S., J.

1. By this petition the petitioners employees are challenging the order dated 8-7-1997 passed by the Industrial Court in Revision application on (DLP) No. 117 of 1995 whereby the Industrial Court had allowed the revision application and had set aside the order dated 28-6-1995 passed by the III Labour Court, Thane in a complaint under the Maharashtra Recognition of Trade Union & Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as, "The Act, 1971") and the Industrial Court has held that the petitioners herein are not workmen within the meaning of section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as, "The Act, 1947") and also within the meaning of section 3(5) of the Act, 1971.

2. The petitioners herein have joined the services of respondent No. 1 as scrap inspectors during the years, 1980-81. It is the contention of the petitioners that they are "workmen" within the meaning of section 2(s) of the Act, 1947 and also "employee" within the meaning of section 3(5) of the Act, 1971. It appears that the respondent No. 1 company manufactures steel bars and blades since the year, 1971 and there are about 400 workmen working in the said factory. All the aforesaid three petitioners who had joined in the year, 1980-81 as scrap inspectors were duly confirmed in the post of scrap inspector on 24-8-1982.

3. It is the case of the petitioners that they were all pressurised and asked to resign by the Deputy General Manager as well as the Divisional Manager of the respondent No. 1 and on their refusal to comply with the same, the petitioners services came to be terminated on 7-12-1993. The petitioners, aggrieved thereby, had approached their union, namely, Association of Engineering Workers which immediately on 9-12-1993 questioned the unfair labour practice adopted by the respondent No. 1 employer. To the above, the respondent company had replied by its letter dated 13-12-1993 contending that the petitioners were engaged in various acts of cheating and in view of the loss of confidence, their services were terminated.

4. All the above three petitioners had filed three different complaints viz., Complaint (ULP) No. 52 of 1994, Complaint (ULP) No. 53 of 1994 and Complaint (ULP) No. 54 of 1994 under Items 1(a), (b), (d), (e), (f) and (g) of Schedule IV of the Act, 1971. To the above complaints, the respondent employer had filed its written statement contending that the petitioners herein are not workmen within the meaning of section 2(s) of the Act, 1947 as well as employee within the meaning of section 3(5) of the Act, 1971.

5. The Labour Court, after recording the evidence of the complainants in each of the complaints and also the evidence of the employer, finally came to the conclusion by its common judgment dated 28-6-1995 wherein the Labour Court has held that the respondents herein are workmen within the meaning of section 2(s) of the Act, 1947.

6. Aggrieved thereby, the respondent No. 1 employer moved the Industrial Court by way of revision, three revision applications under section 44 of the Act, 1971. In the said revision applications, the Industrial Court passed a common order dated 8-7-1997 dealing with aforesaid three revision applications, had set aside the order dated 28-6-1995 and held that the petitioners herein are not workmen within the meaning of section 2(s) of the Act, 1947 and employee within the meaning of section 3(5) of the Act, 1971.

7. Aggrieved thereby the petitioners herein have filed this petition contending that they are workmen within the meaning of section 2(s) of the Act, 1947 as well as employee within the meaning of section 3(5) of the Act, 1971. Shri Naidu, the learned Counsel appearing on behalf of the petitioners broadly made the following four submissions:--

i) the Industrial Court in exercise of its revisional jurisdiction under section 44 of the Act, 1971 has a limited jurisdiction to interfere with regard to: (a) finding an error apparent on the face of the record; and (b) an impugned order which is perverse;

ii) under section 44 of the Act, 1971 the Industrial Court cannot appreciate evidence afresh and substitute another finding in place of the Labour Court's finding;

iii) the onus of proof, namely, burden to prove that the petitioners are not workmen under the Act, 1947 and employees under the Act, 1971 is on the respondent No. 1 employer; and

iv) the material on record clearly indicates that the impugned order passed by the Industrial Court dated 8-7-1997 is patently perverse.

8. With regard to the first submission regarding the scope of the Industrial Court's power to interfere in revision under section 44 of the Act, 1971, Shri Naidu, the learned Counsel for the petitioners first strongly referred to and relied upon a judgment of the Division Bench of our High Court in Vithal Gatlu Marathe v. M.S.R.T.C. & others, 995(I) C.L.R. 854, wherein the Division Bench has interpreted section 44 of the Act, 1971 holding that the provisions of section 44 are almost in pari materia with the provisions of Article 227 of the Constitution of India. The learned Judges of the Division Bench have also observed that this is not so much a revisional jurisdiction, but that of jurisdictional superintendence.

9. Shri Naidu, the learned Counsel for the petitioners also referred to and relied upon another judgment of the Division Bench of our High Court in Mahila Griha Udyog Lijiat Papad v. Kamgar Congress & others, 1983(46) F.L.R. 244, wherein the Division Bench has held that the power of judicial superintendence under section 44 could be exercised only in cases where errors apparent on the face of the record are evident from the orders passed by the Labour Court and not in the findings of fact recorded by the Labour Court. The Division Bench has also in no uncertain terms has held that the Industrial Court cannot embark upon a fresh reappreciation of evidence with regard to a finding of fact given by the Labour Court.

10. Shri Naidu, the learned Counsel for the petitioners, thereafter referred to a judgment of the Hon'ble Supreme Court in Mohd. Yunus v. Mohd. Mustaqim, , wherein the Hon'ble Supreme Court has clearly held that while exercising powers under Article 227 of the Constitution of India, the High Court does not Act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence. Shri Naidu thereafter referred to another judgment of Division Bench of our High Court in Shree Talkies Kamptee v. The Industrial Court, Maharashtra Nagpur Bench, Nagpur & others, 1970 L.A.B. I. C. 1354 (Vol. 3, C. No. 296). In the said judgment, the Division Bench was dealing with the powers of superintendence over Labour Court by the Industrial Court under section 85 of the Bombay Industrial Relations Act, 1947 wherein the Division Bench has clearly held that said jurisdiction can be exercised only when there are errors apparent on the face of the record but the Industrial Court cannot interfere with the findings of facts recorded by the Labour Court. Shri Naidu also referred to another judgment of the learned Single Judge of our High Court in M.S.R.T.C. v. R.D. Toplewar, Ex. Conductor Pusad & another, , wherein the Court has held that provisions though under section 44 of the Act, 1971 are described as revisional superintendence, however, powers exercised therein will only be power of superintendence conferred upon Industrial Court over all the Labour Courts.

11. Shri Naidu thereafter referred to another judgment of our High Court of the learned Single Judge in Hindustan Prachar Sabha & others v. Dr. (Miss) Rama Sen Gupta & another, 1986(I) C.L.R. 77, wherein also our High Court has taken a view that the power of superintendence under section 44 of the Act, 1947 is pari materia similar to Article 227 of the Constitution of India and such a power of superintendence does not include power to review evidence on record and such a power of superintendence can only be to interference with an order which is perverse. Shri Naidu thereafter referred to another judgment of Division Bench of our High Court in Vikas Textiles v. Sarva Shramik Sangh, 1990(I) C.L.R. 257. In the above judgment, the Hon'ble Division Bench has held that Industrial Court has a limited jurisdiction to interfere only when it finds that if the evidence on record is read, is unequivocal of supporting an order of the Labour Court. Thereafter, Shri Naidu referred to another judgment of our High Court of the learned Single Judge in Janata Sahakari Bank Limited v. Dilipkumar H. Chhatbar & others, 1991(II) C.L.R. 574, wherein the learned Judge has clearly held that the revisional jurisdiction of the Industrial Court under section 44 of the Act, 1971 to interfere with the finding of facts is extremely limited and arose only if the findings are totally perverse. The Industrial Court cannot exercise appellate power under section 44 of the Act. Shri Naidu thereafter referred to another Division Bench judgment of Gandhidham Nagarpalika, Adipur v. R. C. Irani, 1992 Lab.I.C. 2236, and finally the learned Counsel for the petitioner referred to another judgment of our High Court in Gajanand Thakare v. M.S.R.T.C., 2000(III) C.L.R. 99, wherein also the learned Single Judge has held that the jurisdiction of Industrial Court is extremely narrow and restricted and that the Industrial Court has no power to re-assess the evidence.

12. Shri Naidu thereafter pointed out that all the petitioners herein are workmen under section 2(s) of the Act in as much as they are not rendering any supervisory work or they are also not functioning in any managerial capacity. Shri Naidu contended that basically the function for the petitioners is to prepare charge as per the instructions given by the production manager or any other superior, prepare reports of the unloaded scrap and check the material loaded and unloaded; verify the mixing of scrap and whether the vehicle loaded with the scrap was weighed or not. Similarly, they have also to make record about the physical condition of the scrap dealing with moisture and other

factors. It appears that after preparing the inspection report, they informed the superior and the superior used to approve the instructions and the reports prepared by the scrap inspector. Shri Naidu contended that one of the main functions of the scrap inspector is to mix charges which contained various materials such as, M.S., Heavy, H.P. 1, Magnetic. The learned Counsel contended that while preparing the charges, the scrap inspectors are assisted by crane operators who physically lift ingredients from the well and place it into a bucket in a trolly. With regard to the quantity which will be necessary while preparing the charge, the scrap inspector will inform the crane operator by hand signals quantity required to put in the charge while the charge is being prepared. Therefore, the contention of the learned Counsel for the petitioners is that one of the main functions of the scrap inspector, apart from weighing and preparing challans etc., is to prepare charge wherein he takes assistance of crane operator for the purpose of preparing the charge. Shri Naidu therefore contended that the scrap inspectors are basically involved in manual work and clerical work with regard to preparing of challans etc., They also do not have any supervisory control over the crane operators. Scrap inspectors only take the assistance of crane operator for the purpose of preparing the mix as the scrap inspectors cannot lift such huge quantity of material. In this context, they take assistance of crane operator. Therefore, the contention of the learned Counsel for the petitioner is that the evidence on record before the Labour Court is clear and therefore the Labour Court had rightly come to a conclusion that the petitioners are workman within the meaning of section 2(s) of the Act, 1947 and employee within the meaning of section 3(5) of the Act, 1971.

13. Shri Naidu thereafter referred to a Division Bench judgment of our High Court in W.G. Raut v. Cadbury-Fry (India) Pvt. Ltd., 1980(41) F.L.R. 156, to contend that the burden of proof is always on the employer who challenges as to whether a particular person is a workman or not. In the said judgment, the Division Bench has in unequivocal terms has stated that the company has to adduce evidence oral or documentary at the first instance in order to make good the preliminary objection raised by it. Burden thereafter may shift to the workman.

14. Shri Naidu thereafter referred to another Division Bench judgment of our High Court in Bombay Dyeing & Manufacturing Company Limited, Bombay v. R.A. Bidoo and another, , wherein the Division Bench has interpreted the word, "supervision" under the Bombay Industrial Relations Act, 1947 in the following manner in paragraph 9:

"9. Supervision as correctly understood does not extend to supervision of plant or machinery. A person may check whether a machine is working properly or not, but that does not by any stretch of imagination make him a supervisor. He is only finding out whether the machine is in working condition. If it is not in a working condition, to see that it is put in a working condition. This cannot be called supervision at all. To repeat, supervision means, supervision over men and not over machines. The evidence in the instant case, does not show in the slightest degree that the respondent had any subordinate below him over whom he could or did not exercise supervisory powers."

In the instant case, the learned Counsel for the petitioners contends that the petitioners are only seeking the assistance of crane operators for preparing charge by giving manually hand signals with regard to the quantity of charge to be kept in the bucket. Shri Naidu thereafter referred to another

judgment of the learned Single Judge in Union Carbide (India) Ltd. v. Ramesh Kumbha & others, 1991(I) C.L.R. 193 to determine whether a particular person would be a workman or not and the test laid down therein in paragraph 12 of the said judgment reads as under:

"12. Before dealing with the findings and the evidence on record, I will refer to some of the decisions, to which my attention has been invited by both the learned Counsel. Broadly speaking the tests that have emerged from the ratio of the decisions can be summed up as under:

(i) It is the dominant purpose of the employment that is relevant and not some additional duties which may be performed by the employee.

(ii) It is not the designation of the post held by the employee which is relevant, but what is relevant is the nature of duties performed by the employee.

(iii) The Court has to find out whether the employee can bind the company in the matter of some decision taken on behalf of the company.

(iv) What is the nature of the supervisory duties performed by the employee? Do they include directing the subordinate to do their work and/or to oversee their performance?

(v) Does the employee have power either to recommend or sanction leave of the workman working under him?

(vi) Does he have the power to take any disciplinary action against the workmen working under him?

(vii) Does he have power to assign duties and distribute the work?

(viii) Does the employee have the authority to indent material and to distribute the same amongst the workmen?

(ix) Does the employee have power to supervise the work of men or does he supervise only machines and not the work of men?

(x) Does the employee have any workmen working under him and does he write their confidential reports?"

15. Shri Naidu thereafter referred to another judgment of this Court in the case of Aloysius Nunes v. Thomas Cook India Ltd., , wherein it is held that to find out whether a person is doing administrative duty or indulging in supervisory work certain tests are required to be applied. Shri Naidu thereafter referred to another judgment of the Hon'ble Supreme Court in Lloyds Bank Ltd. v. Panna Lal Gupta & others, 1961(I) L.L.J. 18 wherein the Hon'ble Supreme Court has held that various clerical works involved by way of checking and reconciliation etc., would not amount to a supervisory work.

16. The learned Counsel took me through the evidence as well as the Labour Court judgment and the Industrial Court judgment. In the evidence of the petitioners, the petitioners have clearly stated that as soon as scrap materials arrive in the company, the petitioners have to get the material unloaded and prepare inspection reports and get them approved by his supervisor. The Labour Court in paragraph 5 has appreciated the evidence on record by analysing the evidence in depth and also further examined the documentary evidence and has come to a clear conclusion that the petitioners were doing the work of charge mixing, performing of scrap inspection was of clerical in nature and also of preparing charge. The Labour Court has held that though in preparing the charge there is an element of supervisory duty but the predominent duty of the petitioner was incidential to the scrap inspection and the predominent work appears to be scrap inspection. In view thereof, the Labour Court has given a finding that the petitioners are workmen within the meaning of Industrial Disputes Act. Therefore, the learned Counsel for the petitioner contends that from all the material on record and from perusal of the Labour Court's judgment, it is clear that the petitioners are workmen and the Industrial Court in its revisional jurisdiction ought not to have interfered especially when the evidence is clear.

17. Shri Naidu thereafter took me through the judgment of the Industrial Court dated 8-7-1997 wherein the Industrial Court has again re-appreciated the evidence on record and has held that the Labour Court Judge has observed that there are two views possible i.e., duties of scrap inspector to be clerical in nature or could be supervisory in nature over crane operators. However, the Industrial Court finds that the predominent work of the petitioners is supervising the workers---crane operators while preparing charge mixing. Under these circumstances, the Industrial Court has come to a conclusion that the petitioners are rendering a supervisory work and as such are not workmen as defined under section 2(s) of the Act, 1947.

18. The learned Counsel for the petitioner also brought to my notice the record as filed before the Labour Court especially the settlement dated 16-8-1984 wherein at page 24, there is a mention of grade "D-2" which includes a scrap inspector. Clause 1(i) of the said terms of settlement in no uncertain terms mentions category D-2 to be a workman. Therefore, the learned Counsel for the petitioner contends that even the employer while entering into a settlement dated 16-8-1984 had clearly accepted and described the petitioners who fall under Clause D-2 to be workman as per the said Clause 1(i).

19. Under these circumstances, the learned Counsel for the petitioner contends that the Industrial Court having very limited jurisdiction in its power under section 44 of the Act, 1947 could not have re-appreciated the evidence and given a different finding and all the more the record is clear as pointed out by the aforesaid settlement wherein the employer themselves have accepted the petitioners to be belonging to a workman category.

20. Shri Kuldeep Singh, the learned Counsel appearing for respondent No. 1 employer strongly refuted the arguments of the petitioner and contended that the petitioners are primarily supervising crane operators while mixing the charge and as such, they are not workmen and as such the order of the Industrial Court was absolutely right and this Court ought not to interfere in the same. In support of his contention, the learned Counsel for the respondent No. 1 referred to a judgment in the

case of H.R. Adyanthaya etc. etc. v. Sandoz (India) Ltd. etc. etc., 1994(II) C.L.R. 552, wherein the Hon'ble Supreme Court has held as under:

"Hence the position in law as it obtains today is that a person to be a workman under the I. D. Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition."

To say that a person to be a workman under the Act, 1947 must be of any of the categories such as manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the said exceptions to the definition by referring to the said interpretation i.e., to say a supervisor merely earning about Rs. 1600/- would be cease to be a workman.

21. Shri Singh, the learned Counsel thereafter referred to a judgment of the learned Single Judge of our High Court in the case of Ramesh Ramrao Wase v. The Commissioner, Revenu Division, Amravati, 1994 Mh.L.J. 55. In the facts of the said case, the Court found that sectional Engineer to be not a workman. The above case may not be of any assistance to the learned Counsel for the respondent No. 1 as the facts and circumstances in that case were totally different from the present one. Thereafter, Shri Singh referred to another judgment of the Hon'ble Supreme Court in the case of Hussan Mithu Mhasvadkar v. Bombay Iron & Steel Labour Board and another, 2001(91) F.L.R. 232, which judgment actually deals with the inspector appointed under the Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969. The said judgment will also be of no assistance in view of the special provisions under the said Act. Shri Singh thereafter referred to another judgment of our High Court in the case of Vinayak Baburao Shinde v. S.R. Shinde & Two others, 1985(I) C.L.R. 318, wherein the word, "supervisor" wherein it is clearly held that a supervisor is distinguished from a manager in as much as he has no powers to command others to do a particular work. His function is to see that the work is done in accordance with the norms laid down by the management. In the facts of the present case, the said judgment will be of no assistance to the learned Counsel for the respondent. The learned Counsel for the respondent thereafter referred to a judgment in the case of Burmah Shell Oil Storage & Distribution Company of India Ltd. v. The Burmah Shell Management Staff Association & others, 1970(II) L.L.J. 590. He referred to a category of foreman who was involved in getting the wagon loaded etc., within the meaning of supervisor and the present scrap inspector should also be construed as a workman within the meaning of the Act, 1947. In the instant case accepting while preparing charge and that too limited instructions by giving hand signals which would not render the scrap inspector to be belonging to the supervisor category.

22. Shri Singh, the learned Counsel, thereafter another judgment of our High Court in Vikas Textiles v. Sarva Shramik Sangh 1990(I) C.L.R. 257. While dealing with the scope of section 44 of the Act, 1971, the Court has held that in revision, if the evidence on record reasonably read, is incapable of supporting the order, the Industrial Court may, in exercise of powers under section 44, overrule the order when its conclusion on evidence is perverse. In the instant case, it cannot be said that based on the evidence on record, the conclusion of the Labour Court that the petitioners are workmen cannot be construed as perverse. Shri Singh thereafter referred to another judgment of the Hon'ble

Supreme Court in Savita Chemicals P. Ltd. v. Dyes & Chemical Workers Union & another, 1999(2) Bom.C.R. (S.C.)664 : 1999(I) C.L.R. 379, wherein the Hon'ble Supreme Court has interpreted scope of High Court's jurisdiction under Article 227 of the Constitution of India and in that case the Hon'ble Supreme Court has held that the High Court could not have set aside any finding reached by the lower authorities where two views were possible and unless those findings were found to be patently bad and suffering from clear errors of law. Shri Singh therefore contended that from the material on record, the Industrial Court had rightly exercised its powers of superintendence under section 44 of the Act, 1971 and had overturned the judgment of the Lower Court in the light of the evidence on record. Shri Singh therefore contended that the Labour Court had committed a patent error while appreciating the evidence on record and thereof the Industrial Court had rightly interfered with the same. Under these circumstances, the learned Counsel for the respondent No. 1 contends that the order of the Industrial Court is absolutely right and proper and this Court while exercising the writ jurisdiction should not interfere with the same as there is no error apparent on the face of the record and that there is no perversity in the same.

23. After having heard both the learned Counsel at length and considering the material on record and also various judgments cited before me, as far as with regard to the scope of the Industrial Court under section 44 of the Act, 1971 is concerned, law is very clear that the scope of revision under section 44 is very limited in the sense that the Industrial Court can intervene only if there is an error apparent on the face of the record or that the impugned order is clearly perverse. To put it in other words, the Industrial Court must ex facie show that the Labour Court has committed a patent error or that the order is perverse and Industrial Court has no jurisdiction to reappreciate the evidence.

24. In the facts and circumstances of this Case, as clearly indicated hereinabove, apart from the oral evidence on record of the parties the parties also relied upon documentary evidence, namely, settlement dated 16-8-1984 entered upon between the union on one hand and the respondent on the other hand wherein the petitioners are members in no uncertain terms stated in Clause 1(i) that the workman includes "D-2" category apart from other categories and D-2 category also clearly indicates scrap inspector as the workman. Therefore, the employer has clearly accepted the petitioners also to be in the workman category. Over and above, the evidence on record clearly indicates the type of work rendered by the petitioners of preparing of charge mix wherein the petitioners seek the assistance of crane operator and while seeking assistance of crane operator, the petitioners give them hand signals to indicate the quantity of material for the purpose of mixing the charge. By indicating the hand signals to the crane operator, the scrap inspector does not become a supervisor as contemplated under the Act, 1947. Under the aforesaid facts and circumstances, the Industrial Court ought not to have reappreciated the evidence on record and given a different finding when a clear detailed finding is given by the Labour Court which is based on evidence and which cannot be said to be perverse and the Industrial Court ought not to have exercised its jurisdiction under section 44 of the Act, 1971 and interferred with the same. Under the aforesaid facts and circumstances, the impugned order passed by the Industrial Court dated 8-7-1997 cannot be sustained in law at all, hence liable to be quashed and set aside. Accordingly, rule is made absolute in terms of prayer Clauses (a) and (b) with costs. Writ to go forthwith to the III Labour Court at Thane.

25. The learned Counsel for the parties point out that the complaint has been pending before the III Labour Court at Thane for the last nearly 8 years. Under the aforesaid facts and circumstances , the III Labour Court at Thane is directed to dispose of Complaint (U.L.P.) No. 52 of 1994, 53 of 1994 and 54 of 1994 as expeditiously as possible preferably on or before 30th June, 2003.

26. Parties and the Registrar, High Court Appellate Side, Bombay including the III Labour Court at Thane to act on a true copy of this order duly authenticated by the Court Shiristedar.