
(2014) 03 BOM CK 0057
In the Bombay High Court
Case No : W.P. No. 5917 of 1998

Adarsh Janata Sahakari Bank Ltd.

APPELLANT

Vs

Anula Rajendra Nile

RESPONDENT

Date of Decision : 26-03-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(c)(1), 33-C(1)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 26, 27, 28, 3(iv), 30

Citation : (2014) 4 ALLMR 326 : (2014) 5 BomCR 662 : (2014) 2 LLJ 635 :
(2015) 1 LLN 332 : (2014) 4 MhLj 417

Hon'ble Judges : N.M. Jamdar, J

Bench : Single Bench

Advocate : V.P. Vaidya, Advocate for the Appellant; B.K. Barve, Sandeep Barve, Archana Lad, Manisha Mahavarkar, B.K. Barve and Co., Vinod Tayade and Piyush Shah, Advocate for the Respondent

Final Decision : Dismissed

Judgement

N.M. Jamdar, J.—The Petitioner challenges the order dated 16 October 1998 passed by the Industrial Court Member, Mumbai issuing a Recovery Certificate for Rs. 4,44,216/- in favour of Respondent No. 1 on an application filed by the Respondent No. 1 u/s 50 of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (The Act). The Respondent No. 1 was working with the Petitioner - Bank. A charge-sheet came to be issued to the Respondent No. 1 on 22 December 1993 and her services came to be terminated. The Respondent No. 1 filed a Complaint (ULP) No. 532 of 1994 in the Labour Court Mumbai. The complaint was u/s 28 read with Item - 1(a), (b), (c), (d), (e), (f) and (g) of Schedule IV of the "Act". Respondent No. 1 alleged that semblance of inquiry proceeding her termination was conducted, that too not in accordance with principles of natural justice. It was contended that without completing the inquiry as such, by way of victimisation, services of Respondent No. 1 were brought to an end. The Respondent No. 1 alleged Unfair labour

practices on the part of the Petitioner, and sought reinstatement with consequential benefits. The complaint was resisted by the Petitioners and the allegations of unfair labour practices were denied. The Labour Court framed issues regarding maintainability of the complaint and as regards Unfair labour practices. The Labour Court came to the conclusion that Petitioner had committed Unfair labour practices by putting an end to the services of the Respondent No. 1. The Labour Court disposed of the complaint by its order dated 5 October 1996 by directing that the Petitioner will pay lump sum compensation of Rs. 1,75,000/- to Respondent No. 1 and declined to grant relief of reinstatement with full back wages.

2. Since the Petitioner did not comply with the order of the Labour Court, the Respondent No. 1 filed a Criminal complaint. The Respondent No. 1 also filed Revision Application No. 156 of 1996 in the Industrial Court, Mumbai challenging the order of the Labour Court refusing to grant reinstatement. The Respondent No. 1 filed an application for interim relief in the Revision Application. By order dated 20 October 1997, the Industrial Court directed the Petitioner to pay 50% wages to the Respondent No. 1 from the date of the order of the Labour Court.

3. There were other proceedings between the parties. The Petitioner and the Respondent No. 1 decided to settle their dispute. A compromise was entered into between the parties on 17 December 1997, in the Industrial Court. The terms of compromise were as under:

Terms:

I. The Bank is ready and willing to pay the compensation awarded/wages by the VI Labour Court, Bombay in ULP. Comp. No. 532/1994, 533/1994, 20/55 to Anula Rajendra Nile, Nanda Ramchandra Kadam and Chandrakant Hiranman Salve with interest at rate of 9% per annum from the operation of the orders passed in respective case.

II. The Bank is ready and willing to pay the legal Gratuity encashment of leave balance and unpaid bonus and unpaid earn wages if any.

III. The parties in dispute are agreed that if any bank loan or any amount of bank outstanding in the name of complaints and his/her family members as guarantors as per the loan the same will be authorised to Bank to recover the said from the arrears which will be paid as per this agreement.

IV. The parties are agreed to withdraw their complaints, Revision Cri. Complaints, Application which are pending before this Court and applications level of the party before VI Labour Court and in Criminal Complaint the complaint the complainant will file the application from dispossessing the complaint.

4. After the revision was so disposed of on 17 December 1997, the Petitioner issued a letter to the Respondent No. 1 on 7 January 1998 giving summary of legal dues payable to the Respondent No. 1. The Petitioner quantified the same at Rs. 4,00,983.35, and after deducting some amount called upon to Respondent

No. 1 to collect Rs. 1,25,000/-. The Respondent No. 1 on 16 January 1998 informed the Petitioner that the calculations done by the Petitioner were not correct and the Respondent No. 1 was entitled to dues of Rs. 6,61,289/-. Further correspondence ensued between the parties. Ultimately the Respondent No. 1 filed an application u/s 50 of the Act in the Industrial Court in April 1998. In this application the applicant prayed for the recovery certificate in Rs. 5,28,424/-, along with interest.

5. The Petitioner appeared in the application and contended that the application is not maintainable because the entire amount as per consent terms has already been paid. It was also urged that the Respondent No. 1 is not a workman and that certain amounts are due from the family members of Respondent No. 1 which have been rightly deducted. It was also urged that since Respondent No. 1 is seeking interpretation of the order dated 17 December 1997, application u/s 50 is not maintainable. The Petitioner disputed the claim made by Respondent No. 1 and contested the calculations made. The Petitioner submitted it's own calculations and pointed out that entire amount has already been paid, as per the consent terms, and that nothing was payable.

6. The Industrial Court, by order dated 25 August 1998, appointed a Court Commissioner to verify the accounts and dues. The Court Commissioner was appointed to assist the Industrial Court for the purpose of arriving at calculations. The Court Commissioner submitted his report to the Industrial Court, on 15 September 1998. The Court Commissioner considered claim made under various heads and found that some calculations of the Respondent No. 1 was justified, and for others the matter needed to be adjudicated by the Industrial Court. The Industrial Court thereafter considered the application. The Industrial Court took into consideration the consent terms filed and proceeded to examine the various heads claimed by the Respondent No. 1. The Industrial Court noted that amount of Rs. 1,25,000/- has been admittedly received by the Respondent No. 1 then proceeded to consider Rs. 50,000/- adjusted towards loan amount by the Petitioner. The Industrial Court found that what was agreed in the consent terms that any loan outstanding in the name of Respondent No. 1 and her family members" as guarantors would be deducted. The Industrial Court found that the Bank deducted the amount standing in the name of the brother-in-law of the Applicant which the Industrial Court found was not the understanding between the parties. As regards the other deductions by the Bank the Industrial Court found them to be proper. As regards payment of Provident Fund, the Industrial Court found that this amount was paid. As regards gratuity the amount offered by the Petitioner Bank was found correct. The Industrial Court also accepted the calculations made by Respondent No. 1 for privilege leave, medical leave. Claim for bonus was quantified for one year. As regards 50% of the wages payable as per the order dated 16 September 1995, the Industrial Court found that this amount was not paid. The Industrial Court also found that calculation as regards deduction made in account outstanding against one Harbhajan admittedly, not a family member, was an error. The Industrial Court thus,

keeping in mind what was agreed between the parties in consent terms, calculated the amounts and found that the claim made by the Respondent No. 1 needs to be partially allowed and accordingly issued a recovery certificate by the impugned order.

7. This order was challenged by way of present petition and the petition was admitted and the order was stayed. The order of admission and grant of stay was challenged by the Respondent No. 1 by way of Letters Patent Appeal. The Division Bench by order dated 16 February 1999 directed that, without prejudice, the Petitioner will deposit an amount of Rs. 50,000/-. During the pendency of the petition a Liquidator has been appointed on the Petitioner Bank and by order dated 19 June 2009 all the liabilities have been taken over by Indian Overseas Bank and the Liquidator was appointed for completion of liquidation proceedings. By the order dated 26 June 2013, the Indian Overseas Bank has been made party Respondent in this petition.

8. I have heard Mr. Vaidya for the Petitioner, Mr. Barve, learned counsel for the Respondent No. 1 and Mr. Tayade learned counsel for the Respondent No. 3.

9. Mr. Vaidya firstly contended that recourse to Section 50 of the Act can only be made if an order on the basis of which money is sought to be recovered is passed by the Court under Chapter VI of the Act. According to Mr. Vaidya the proceedings were disposed of in revision by the Industrial Court exercising its powers u/s 44 of the Act and since the Section 44 does not fall in Chapter VI of the Act, recourse to Section 50 was not permissible. Reliance is placed on the decision of the learned Single Judge in the case of Maharashtra General Kamgar Mahasangh Vs. Mistry Prabhudas Manaji Engineering Pvt. Ltd. and Another, .

10. Mr. Vaidya further submitted that u/s 50 of the Act being pari-materia with Section 33(c)(1) of the Industrial Disputes Act, liability and claims cannot be adjudicated. According to him the jurisdiction of the Industrial court under Sec. 50 is limited only for carrying out arithmetic calculations. According to him perusal of the impugned order will show that the Industrial Court has gone beyond the scope of Section 50 and for several heads of claim the Industrial Court has adjudicated the entitlement of the Respondent No. 1. He submitted that the findings that brother-in-law not being a family member, the Provident Fund amount not paid, 50% of the wages not deposited, encashment of leave, are all disputed questions and therefore could not have been decided u/s 50 of the Act. Reliance is placed on the decision of the Division bench in the case of Ultra Drytech Engineering Ltd. and Another Vs. Vaibhav Laxman Suravkar and Another, The learned counsel submitted that the order being without jurisdiction has to be quashed and set aside. He also addressed on the merits of the calculations and submitted the deductions were justified and the amount were right paid.

11. Mr. Barve for the Respondents on the other hand submitted that the Respondent No. 1 is a poor widow who has been waiting for her dues since last

15 years and no amount is paid inspite of recovery certificate in her favour. He submitted that there is no adjudication done by the Industrial Court and all that the Industrial Court has done has given effect to the consent terms and has calculated the amounts. He submitted that parties agreed deduction will be from accounts of family members and the Industrial Court has kept aside the deduction made in favour of a non-family member and that cannot be called as an adjudication. The learned counsel submitted that the claim of Provident Fund and payment of 50% back wages was not accepted since the Petitioner did not produce any documents on record. The learned counsel submitted that the argument that for orders passed u/s 44 application cannot be made u/s 50 is untenable as the Industrial Court was only exercising revisional powers and the order was in fact passed by the Labour Court u/s 28 of the Act. The learned counsel for the Respondent No. 1 submitted that the decision of Division bench in the case of Ultra Drytech Engineering Ltd. and Another v. Vaibhav Laxman Suravkar and Another (supra) permits the course of action adopted by the Industrial Court. He submitted that the learned Single Judge of this Court in the case of Shri Vaibhav Laxman Suravkar and Shakeel Ahmed Farooqui Vs. Ultra Drytech Engineering Ltd. and Shri K.N. Mishra, Production Manager, Ultra Drytech Engg. Ltd., has also laid down parameters of Section 50, which permits the exercise carried out by the Industrial Court.

12. The first contention is that since the order passed by the Industrial Court in a Revision is u/s 44, no recourse to Section 50 is permissible. This argument is fallacious for the following reasons. The Section 50 of the Act states that where any money is due to an employee from an employer under an order passed by the Court under Chapter VI, an application u/s 50 is maintainable. Chapter VI of the Act deals with Unfair labour practices. This chapter has three sections. Section 26, 27 and 28. Section 26 defines Unfair labour practice as the practices listed under Schedule (ii), (iii) and (iv) appended to the Act. Section 27 prohibits an employer, Union or employees to engage in any Unfair labour practice. Section 28 lays down modalities of dealing with the Unfair labour practices. Section 28 empowers the Court to pass suitable orders to deal with unfair labour practices.

13. Section 3(iv) of the Act defines "Court", for the purpose of Chapter VI, to mean Industrial Court or as the case may be the Labour Court. Both Labour Court as well as Industrial Court thus can pass orders under Chapter VI. The Industrial Court can itself pass an order u/s 28. Section 44 of the Act confers revisional powers upon the Industrial Court to call for records and have power of superintendence over the Labour Courts. For the purpose of Section 50, when the Industrial Court either approves, sets aside or modifies an order passed by the Labour Court u/s 28 of the Act the effect will be to remedy an unfair labour practice. Thus, an order passed is Revision u/s 44, dealing with an order of the Labour Court u/s 28 in respect of an unfair labour practice, would fall in the ambit of Section 50, being under Chapter VI. The power to correct and remedy an unfair labour practice, is u/s 28 of the Act.

14. Furthermore, if the argument advanced by Mr. Vaidya is to be accepted, it will lead to anomalous position. It would mean recourse to Section 50 will be permissible only if the Labour Court allows the complaint of an employee u/s 28 but if the complaint is rejected and the order is reversed in favour of an employee by the Industrial Court then employee will have no recourse to Section 50. This will produce highly inequitable results, and it will be completely contrary to the intention of the legislature in enacting Section 50, beneficial piece of legislation.

15. The decision of the learned Single Judge of this Court in the case of Maharashtra General Kamgar Mahasangh v. Mistry Prabhudas Manaji Engineering Pvt. Ltd. and Another (supra) relied upon by Mr. Vaidya arose in different facts and circumstances. The learned Single Judge was considering an order passed u/s 30 of the Act, which is not part of Chapter VI but is under Chapter VII. The learned Single Judge held that Section 30 is an independent power and an order passed u/s 30 cannot be equated with an order passed u/s 28. Having found that powers u/s 30 and 28 are distinct and that section 30 does not fall in Chapter VI of the Act, the learned Single Judge applied the literal interpretation test and came to the conclusion that application u/s 50 would not be maintainable. In the present case, as held above the order passed by the Industrial Court is under Chapter VI of the Act.

16. The bare perusal of the consent order passed by the Industrial Court will show that what was agreed by the Petitioner was that the Respondent No. 1 will be paid the amounts as directed by the Labour Court, exercising powers u/s 28. Certain other modalities were worked out and the complaints filed by the Respondent No. 1 alleging Unfair labour practices were disposed of. Thus the Industrial Court in the revisional proceedings only consolidated all the complaints filed under the Act and disposed them by way of consent terms. The parties acknowledged the rights of the Respondent No. 1 to receive the amounts under the order passed by the Labour Court u/s 28 of the Act. Therefore, it was clear that the Industrial Court had passed the order under Chapter VI. The application therefore was maintainable.

17. There is one more aspect of the matter. The ground challenging jurisdiction of this court was not taken by the Petitioner in the reply to the application in the Industrial Court. It was not even argued before the tribunal. The learned counsel for the Petitioner submitted that this issue being question of jurisdiction and a pure question of law it can be considered for the first time in Writ proceeding. It is doubtful whether such ground can be taken for the first time in a Writ Petition having accepted the jurisdiction of the Industrial Tribunal. However, I have considered this ground on merits and have found no substance in it.

18. The next head of challenge is regarding scope of Section 50 of the Act. It was submitted that the Industrial Court by carrying out adjudication has stepped outside the ambit of Section 50 and has committed an jurisdictional error. Before this submission is dealt with the nature of the provision needs to be noticed.

Section 50 of the Act is a beneficial piece of legislation. It has been enacted to ensure that the monies due from an employer are speedily available to an employee. It is trite to state that financially an employer and an employee do not stand on equal footing. An employee, deprived of his dues has no financial ability to keep fighting a long drawn litigation only to get his rightful dues. An unscrupulous employer can, on the basis of its financial strength, keep an employee away from its dues by creating legal hurdles. This could further weaken an employee to a point that he may even give up his claim in despair. To prevent such social evil the legislature has incorporated a stringent provision in the form of Section 50 which deals with issuance of a recovery certificate, which can be enforced through Collector as arrears of land revenue.

19. The question therefore, that needs to be considered is whether while passing the impugned order the Industrial Court stepped outside its jurisdiction, and adopted a perverse approach for which equitable jurisdiction of this Court has to be exercised. It is settled that a writ is not issued for every infraction of procedure and irregularity.

20. The scope of Section 50 of the Act came for consideration before the decision of the learned Division bench of this Court in the case of Ultra Drytech Engineering Ltd. and Another v. Vaibhav Laxman Svravkar and Another (supra). The Division bench held as under:

15. The aforesaid three judgments of the Supreme Court of India though considers the provisions of Section 33-C(1) but as we have indicated above, the same are in pari materia with Section 50 of the M.R.T.U. and P.U.L.P. Act, 1971 and therefore the law laid down by the Supreme Court in the aforesaid cases will apply with equal force while construing the provision of Section 50 of the M.R.T.U. and P.U.L.P. Act, 1971. Apart therefrom, the aforesaid judgments, in the case of U.P. Electric Supply Co. Ltd., v. R. K. Shukla and Another, etc., the Supreme Court itself has compared the provisions of Section 33-C(1) and (2) with Section 6-H of the U.P. Industrial Disputes Act and has come to the conclusion that u/s 6-H of the U.P. Industrial Disputes Act an amount can be computed and the necessary relief can be granted by the Industrial Court. In our view thus the comparison of Section 50 of the M.R.T.U. and P.U.L.P. Act, 1971 with the provisions of Section 33-C(1) leaves no manner of doubt that the jurisdiction of the Industrial Court u/s 50 permits simple arithmetic calculation for the purpose of granting effective relief to the party. Undoubtedly, u/s 50 of the M.R.T.U. and P.U.L.P. Act, 1971 the authorities are not empowered to determine the rights between the parties but once the rights are determined by an adjudication then, it is open to the Industrial Court to grant relief u/s 50 of the M.R.T.U. and P.U.L.P. Act, 1971 even though under the said section it possess only executory jurisdiction. We are also of the view that Section 50 of M.R.T.U. and P.U.L.P. Act, 1971 is provided with a view to enable a party to have recourse to an expeditious remedy. We are therefore of the view that we must prefer an interpretation which advances the object of the Act rather than defeat the same.

Thus u/s 50 of the Act, once the rights of the parties are determined by an adjudication then it is open to the Industrial Court to grant relief u/s 50 of the Act by carrying out arithmetical calculations. The Division bench emphasized that since Section 50 provided expeditious remedy and interpretation which advances the object of the Act rather than defeats the same, needs to be adopted.

21. In the present case parties entered into consent terms and agreed to certain rights and liabilities. The Industrial Court appointed a Commissioner. Before the Commissioner the Petitioner participated and produced certain material. The Commissioner gave its report on some of the issues and for some of the issues, the Commissioner left it to the Court to decide. The Commissioner was not exercising the powers of the Industrial Court, but was merely assisting it. The ultimate decision as to whether the claims were in fact disputed or not was with the Industrial Court. Therefore the contention of the learned counsel for the Petitioner that because the Commissioner stated that some claims were disputed, the application automatically fell outside the scope of Section 50, cannot be accepted.

22. Now to the main issue as regards the exercise undertaken by the Industrial Court. Firstly, the consent terms need to be noticed. The Revision Application was disposed of in view of consent terms. The parties agreed in the Industrial Court that they will put an end to all their litigation. The Petitioner agreed that it will pay compensation and wages to the Respondent No. 1 as directed by the Labour Court, with 9% interest. The compensation and wages payable by the Labour Court was crystalised. The Petitioner agreed to pay gratuity, encashment of leave, bonus, unpaid bonus and unpaid wages. The parties agreed that if any bank loan or any amount of Petitioner, which is outstanding in the name of Respondent No. 1, or her family members, as guarantors, the said amount will be adjusted/recovered from Respondent No. 1. This was the basic understanding between the parties.

23. Therefore, the entitlement of the Respondent No. 1 to receive the amounts under consent terms stood adjudicated, and established. So also the Petitioner's entitlement to withdraw, adjust or recover loan amounts from family members. The parties exchanged their calculations but could not arrive at a common figure. The Labour Court had to undertake a task of carrying out the calculations. If the order of the Labour Court is perused and each head is considered, it will appear that there was no adjudication of the entitlement and all that was done were calculations. The order will have to be now analysed to find out if there was any adjudication of the entitlement.

24. The Industrial Court after reproducing the consent terms noted the admitted fact that compensation of Rs. 1,75,000/- with 9% interest was not in dispute and that Rs. 1,25,000/- has been paid to the Respondent No. 1 was not in dispute. Therefore there was no dispute as regards term No. 1 of the consent terms.

25. The Industrial Court thereafter examined the term No. 3 as regards

deduction from amount outstanding from family members. The Industrial Court found that Rs. 50,000/- was adjusted by Petitioner. The Industrial Court noted that one Vithal Nile was brother-in-law of the Respondent No. 1 and could not have been part of her family. This is a plain common approach and in consonance with the understanding between the parties. It cannot be said that by giving effect to the understanding between the parties of recovering amount only from family members the Industrial Court adjudicated the dispute. By excluding the amount deducted from a non-family member the Industrial Court only kept in mind the understanding between the parties to recover it from family member. The Industrial Court after deducting this amount of Rs. 18,328/- in respect of the position in law, accepted other deduction of the petitioner and carried out arithmetical calculations.

26. Next issue was as regards term No. 2. The parties had agreed in term No. 2 of the consent terms that Petitioner will pay Provident Fund. The Petitioner claimed to have paid Rs. 1,00,215/- but did not produce any documents. The Industrial Court therefore, directed that this amount of Rs. 1,00,215/- has been omitted from the account and needs to be calculated. The medical leave was accepted. As regards gratuity, the Petitioner had offered amount of Rs. 42,786/-. Respondent No. 1 claimed Rs. 54,458/-. However, the Industrial Court held that the calculation of the Petitioner was correct. As regards Casual leave the Industrial Court quantified held it to be Rs. 6,387/-. The claim of medical leave of Rs. 19,044/- made by the Petitioner for Respondent No. 1 was not accepted and only Rs. 6,000/- was granted, which was unclaimed as per the Petitioner's own record. Leave Travel allowance and medical aid was quantified at Rs. 4,200/-. As regards 50% wages directed to be paid as per the order of the Labour Court it was included, since the Petitioner did not produce any documents to show that this amount was paid. The Industrial Court also excluded an amount of Rs. 54,458/- claimed by the Petitioner Bank as against one Mr. Harbhajan, as he was admittedly not her family member, but a complete stranger. The Industrial Court noted that the Respondent No. 1 had withdrawn the amount of Rs. 79,705/- and did not include that amount in the calculations and accordingly partly allowed the application by granting recovery certificate for Rs. 4,44,216/-. The entire order thus proceeded on calculations and quantification of the amounts which were already agreed between the parties to be paid and while doing this quantification it carried out certain calculations.

27. When application u/s 50 is made and different calculations are asserted from both the sides there is bound to be some area of adjudication as regards the calculations to be made, but that does not mean that moment there is an element of slightest adjudication, the order of the Industrial Court needs to be set aside on the ground that the Court stepped aside outside its jurisdiction. It will depend on facts of each case to ascertain the extent of adjudication. In the present case I do not find that the Industrial Court has stepped outside the jurisdiction u/s 50 of the Act. The Industrial Court has only given effect to the understanding between the parties, and proceeded to calculate the amounts.

28. There is one more fact that needs to be kept in mind. The order of the Labour Court in favour of the Respondent No. 1 is of the year 1996. The Petitioner agreed to pay these amounts and compromised the matter in the year 1998. In spite of this position, the Respondent No. 1, a widow of advanced age, has been kept away from her rightful dues. At this stage, to hold that the Industrial Court stepped outside its jurisdiction and relegate the parties to another round of litigation will cause extreme hardship to the Respondent No. 1. Therefore apart from examining the aspect of jurisdiction, I have considered the merits of the calculations made. Both the learned counsel had advanced submissions to that effect. The deductions from non-family members was not proper. The payment of Provident fund and 50% wages as claimed by the Petitioner could not be proved. The quantification of encashment of leave was proper. Rest of the claims made by the Respondent No. 1 were rejected for which she has not filed any petition. Therefore, even the final outcome is just and proper and has not resulted in injustice.

29. The Petitioner Bank is no longer in existence and a Liquidator has been appointed. All the assets and liabilities have been taken over by Indian Overseas Bank. The Indian Overseas Bank has been joined as Respondent and is not pursuing the challenge to the recovery certificate. Considering all these facts and circumstances of the case, I do not find that the equitable jurisdiction of this Court needs to be extended to set aside the order passed by the Industrial Court. The petition is accordingly dismissed. Rule is discharged. The amount of Rs. 50,000/- deposited by the Petitioner shall stand adjusted as regards the amount payable. Considering the fact that in view of the fact that the Respondent No. 1 is waiting for these amounts since the year 1998, the Petitioner shall pay the amounts within a period of eight weeks from today.