

(2007) 06 BOM CK 0042

In the Bombay High Court

Case No : Writ Petition No. 6290 of 2006

Alpa Bhaskar Jagdhane and Others

APPELLANT

Vs

Saras Plastic Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 14-06-2007

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 30, 30(2), 31, 31(1)

Citation : (2007) 5 ALLMR 696 : (2008) 2 BomCR 382 : (2007) 6 MhLj 249

Hon'ble Judges : S.B. Deshmukh, J

Bench : Single Bench

Advocate : P.V. Barde, for the Appellant; V.N. Upadhye and B.V. Changde for Respondent Nos. 1 to 4 and Renuka Ghule, for the Respondent

Final Decision : Allowed

Judgement

S.B. Deshmukh, J.—Heard learned Counsel for the parties.

2. At the risk and request of learned Counsel Mr. Barde, for the petitioners, respondent Nos. 6 to 12 are permitted to be deleted. Deletion to be carried out forthwith.

3. Rule. Rule is made returnable forthwith, by consent of parties, and heard finally.

4. This petition is directed against the judgment and order passed by the learned Member, Industrial Court, Ahmednagar in Complaint (ULP) No. 273 of 1998 on 31st March, 2006.

5. Facts, necessary for consideration of this writ petition, may be enlisted, as follows:

(a) Petitioners had filed Complaint (ULP) No. 273 of 1998 in the Court of learned Member, Industrial Court, Ahmednagar. Copy of the said complaint is annexed with this petition as Annexure-A. The complaint was pending before the learned

Member and was on the cause list of Industrial Court on 9th August, 2004. The learned Member passed an order below Exhibit U-J holding that, in the light of the judgment of the Apex Court, the complaint is not maintainable. He, therefore, dismissed the complainant, however, made it clear that the complainants are at liberty to approach to the appropriate forum for redressal of their grievances. The said order was challenged by original complainants by filing Misc. Application (ULP) No. 7 of 2004 before the same Court. Notice, in this application, was issued to the respondents, who are also respondents in this writ petition. It appears that they did not appear before the Industrial Court, despite service of notice. This application ultimately is allowed by the learned Member by order passed on 28th March, 2005. By the said order, the application is allowed and the order passed on 9th August, 2004 in the complaint is quashed and set aside and the complaint (ULP) No. 273 of 1998 is restored on the file. Notices were issued to the opponents in the complaint, returnable on 30th April, 2005.

(b) The respondents/opponents, on receipt of notice, after restoration of the complaint, filed an application at Exhibit-32 before the same Court i.e. learned Member, Industrial Court, Ahmednagar. This application seems to have been filed on 2nd December, 2005. It was prayed that the order passed in Misc. Application (ULP) No. 7 of 2004 dated 28th March, 2005 be set aside and the earlier order passed on 9th August, 2004 be maintained. The petitioners/ complainants were directed to file their reply. They filed their reply on 25th December, 2005, copy of which is annexed at Exhibit-I to the Petition.

(c) Learned Member, Industrial Court passed an order below Application Exhibit C-32 on 31st March, 2006 and allowed the said application and quashed and set aside the order passed in Misc. Application (ULP) No. 7 of 2004 and dismissed the complaint. This order is impugned in this writ petition.

6. Learned Counsel Mr. Barde has filed Civil Application (presented in Court) today when the writ petition was called out for hearing. Copy of the application is received by the other side. Registry to register the civil application. After hearing learned Counsel for the parties, the civil application is allowed and the petitioner is permitted to carry out the amendment during the course of the day.

7. The learned Counsel for the respondent Mr. Changde has tendered copy of the Roznama on the proceeding. The said certified copy of Roznama is obtained from the Court of learned Member, Industrial Court, Ahmednagar. It is marked by letter "X" for identification, and taken on record. Mr. Barde, learned Counsel for the petitioner, has also produced ordinary copy of the issues framed in Complaint (ULP) No. 273 of 1998, it is marked by letter "Y", and taken on record. He has also produced one more ordinary copy of the application for production (Exhibit C-33) filed in Complaint (ULP) No. 273 of 1998. It is marked by letter "Z" and these two copies are taken on record.

8. Learned Counsel Mr. Changde submitted that the order passed by the learned Member in Complaint (ULP) No. 273 of 1998 dated 9th August, 2005 is not an

order dismissing the complaint in default. According to him, this order is on merits and, therefore, the application for restoration, filed u/s 31 of the M.R.T.U. and P.U.L.P. Act, 1973 is not maintainable. Per contra, learned Counsel Mr. Barde submits that this application is very well maintainable and justifiably allowed by the learned Member. According to him, subsequent application filed by the respondents Exhibit-C/32 on 2nd December, 2005, was not maintainable and ought to have been rejected.

9. It is apposite to refer to the provisions of Section 31 of the M.R.T.U. and P.U.L.P. Act. It reads, thus :

31. (1) Where in any proceeding before the Court, if either party, in spite of notice of hearing having been duly served on it, does not appear, when the matter is called on for hearing the Court may either adjourn the hearing of the matter to a subsequent day, or proceed ex parte, and make such order as it thinks fit.

(2) Where any order is made ex parte under Sub-section (1), the aggrieved party may, within thirty days of the receipt of the copy thereof, make an application to the Court to set aside such order. If the Court is satisfied that there was sufficient cause for non-appearance of the aggrieved party, it may set aside the order so made, and shall appoint a date for proceeding with the matter:

Provided that, no order shall be set aside on any such application as aforesaid, unless notice thereof has been served on the opposite party.

10. Undisputedly, Complaint (ULP) No. 273 of 1998 was u/s 28 of the M.R.T.U. and P.U.L.P. Act, 1971. From the material, which is available on record, it appears that the Investigating Officer was appointed by the learned Member with some directions. Report of the said investigating officer is produced on record, page 23. This report is dated 27th July, 1998. From the documents, taken on record today, it appears that the issues were framed in the complaint on 28th April, 2004. These issues are about ten in number. Application Exhibit U-3 i.e. document marked by letter "Z" is also on record. This application seems to have been filed on 5th December, 2000, seeking production of certain documents. Along with these documents, I am also benefited by the certified copy of Roznama. From this certified copy of Roznama, it appears that on 9th August, 2004 the learned Judge recorded that "Complainant absent his counsel present. Application granted, order passed below Exh. U-1. Complaint stands dismissed. Proceeding is closed." From this, it appears that the application means the application Exhibit C-29. To understand this Roznama in its proper perspective, it is reproduced herein below:

9-8-2004

C-29

Complainant absent his counsel present. application granted. order passed below Exh. U-1 Complaint stands dismissed, proceeding is closed.

9-8-2004

Sd/- M.I.C.A.

11. It appears that, this order is consisting of two parts, however, passed on the same date i.e. on 9th August, 2004. The first part states that the complainant absent, his counsel is present. Second part, though not separately shown, speaks about application Exhibit C-29, to the effect that the application is granted order passed below Exhibit U-I, complaint stands dismissed, proceeding is closed. The learned Counsel Mr. Changde, who was present before the learned Member, Industrial Court, on 9th August, 2004, fairly concedes before this Court that such an application was filed on behalf of the present respondents, who were opponent in the complaint (ULP) No. 273 of 1998. Copy of that application is not available here, however, Advocate Mr. Changde, author of the said application, fairly admits that the prayer seeking dismissal of the complaint, since the complainant was/ were absent, was made. This prayer is granted by the learned Member and that is reflected from the second part of the Roznama dated 9th August, 2004. Therefore, it appears that the learned Member did dismiss the complaint in default and, therefore, allowed the application Exhibit C-29. However, the first part of this Roznama dated 9th August, 2004 refers the absence of the complainant but records presence of the learned Counsel for the complainant. The order passed by the learned Member, on 9th August, 2004, is also available at page 68. From this order, it appears that the learned Member dismissed the complaint, referring to judgment of the Apex Court. Reading these orders together i.e. the order passed on Roznama dated 9th August, 2004 and the order passed by the learned Member on 9th August, 2004, below Exhibit U-I in Complaint (ULP) No. 273 of 1998, are order passed on Exhibit C-29 it is very difficult to accept the submission of the learned Counsel for the respondents that the said order is passed by the learned Member on merits of the case. In case such order is to be considered as an order passed on merits, in that circumstances, the course open for the learned Member was to recall the order passed on Exhibit C-29 i.e. granting the application seeking dismissal of the complaint in default. These two orders i.e. the order passed on 9th August, 2004 below Exhibit U-I in the complaint and order passed below Exhibit C-29 granting the application seeking dismissal of the complaint, in default, cannot go hand in hand. Both these orders are in contrast so far as the nature of the proceeding as to whether these orders are on merits of the case and/or in default of appearance of the complainant despite the fact that their lawyer was present before the Court. Such an order cannot be permitted to operate against the petitioner/complainant. In my considered view, this order, therefore, has to be considered and accepted as order dismissing the complaint in default, in the peculiar facts and circumstances of this case.

12. Since, in my view, the order passed on 9th August, 2004 below Exhibit U-I in Complaint (ULP) No. 273 of 1998 is passed by the learned Member, in default of the appearance of the complainant, and is ex parte order, application filed by the

petitioners/complainants for restoration of the said complaint, u/s 31 of the Act of 1971, is maintainable.

13. I have also perused the order passed by the learned Member in Misc. Application (ULP) No. 7 of 2004, filed u/s 31 of the Act of 1971. From para 3 of the said judgment, it is clear that the present respondents, despite service and various opportunities given by the learned Member, had not filed their reply and, therefore, the learned Member was required to proceed with the matter without reply of the present respondent Nos. 1 to 4. The learned Member, thereafter, allowed the said application by the order passed on 28th March, 2005.

14. On this premise, application Exhibit-32 was filed by the respondents/opponents on 2nd December, 2005. These two dates are required to be noted. The learned Member allowed the Misc. Application (ULP) No. 7 of 2004 by the order passed on 28th March, 2005 and seeking review of this order. This application seems to have been filed in the same proceeding i.e. Complaint (ULP) No. 273 of 1998 on 2nd December, 2005. On my pointed query to Advocate Mr. Changde, as to whether any plea is raised in this application Exhibit-32 as to why this application is filed after about 8/9 months of the date of passing of the earlier order i.e. 28th March, 2005, in Misc. Application (ULP) No. 7 of 2004, his reply is in negative. From this application Exhibit-32, it appears that no such explanation is tendered, why this date 2nd December, 2005 was chosen by the respondents for seeking review.

15. Mr. Changde, learned Counsel for the respondents relies on a judgment of Single Bench of this Court in the matter of Association of Engineering Workers, Mumbai Vs. A.T.V. Limited, Mumbai and Another, for the proposition that review of the final order passed u/s 28 of the Act of 1971 is maintainable. I have gone through the judgment of the learned Single Bench of this Court. Facts are distinguishable. In this judgment, the complaint was finally decided and disposed of and allowed by the learned Judge. Thereafter, it seems that the review application, u/s 30(2) of the Act of 1971 was filed. Said review application was entertained and reopening of the case was ordered by the learned Judge on 7th April, 1995. Objection was raised regarding maintainability of the said review application. However, after hearing the parties, it was turned down by the Industrial Court by the order passed on 5th July, 1995. Thereafter, matter proceeded further, amendment was sought, parties have participated in that review application and ultimately that review application was decided and the original complaint was dismissed by the learned Industrial Court by the order dated 19th June, 1998. Said order was under challenge before this Court in writ petition. This Court, considering this circumstance observed that "...record shows, the review order was granted by the order dated 11-10-1996. There is no answer to the question as to why at this stage the petitioner complainant did not file the writ petition raising the objections which are now being pressed into service. It is also seen that the petitioner not only participated in adjudication at all stages but submitted to the jurisdiction of the Industrial Court when the

matter was heard afresh and, therefore, in my view, the review order which was passed properly, cannot be challenged...." Here, in this case, factually the review order passed by the learned Member below application Exhibit-32 dated 31st March, 2006 is challenged in this writ petition. The jurisdiction of the review, apart from Section 30 of the Act of 1971, cannot be resorted to by the present opponents. Even for the sake of argument, if it is considered that the review application Exhibit-32, which was filed, undisputedly after about 8/9 months from the date of passing of the earlier order dated 28th March, 2005, even on merits, this order is not sustainable in law. The learned Judge, while allowing this review application, made the following observations, in para 8:

8) It is worthwhile to mention here that, after framing the issues on 30-4-2004 the matter was posted for evidence and thereafter at one occasion i.e. on 26-7-2004 the complaint was adjourned on the context of the complainant and as the complainants were not present on 9-8-2004. the complaint was dismissed in default of the complainants. However, it has sufficiently come on record that, the services of the applicants were already terminated by the opponents and they were not in employment of the opponents, their financial condition was not good and due to that they could not remained present before the court when the matter was fixed for evidence. This fact is corroborated by the contents of the Affidavit and in absence of reply there is no denial to these contentions of the applicant therefore it can be safely said that the applicants were prevented because of their financial conditions to appear before the court when the matter was fixed for evidence.

From this paragraph 8, it clearly appears that it is a case of non-application of mind on the part of the learned Member. In my view, therefore, even on merits the order passed by the learned Member, Industrial Court, below Exhibit-32 is not sustainable in law. It is to be noted that record was available for the learned Member while deciding application Exhibit-32. If the learned Member could have made reference to the Roznama dated 9th August, 2004 and the application Exhibit C-29 he could have realised the fact situation happened in the proceeding. There is no reference of this Roznama dated 9th August, 2004 and the application Exhibit C-29 as well as the order passed by the learned Member granting the said application Exhibit C-29, in the order passed on 31st March, 2006. This is also important circumstance for turning down the order passed by the learned Member, Industrial Court, which is impugned in this writ petition.

16. Mr. Barde, the learned Counsel, has also relied on a judgment of Single Bench of this Court in the matter of Kalavati Bharsingh Thapa Vs. Maharashtra Plastic Industries, . From the facts discernible in the matter of Kalavati (supra) it appears that the workman had filed a complaint under the Act of 1971 in the Court of learned Judge, Labour Court and by the order dated 20th April, 1994 learned Judge, Labour Court had directed reinstatement of the workman with continuity in service and full backwages from 6th December, 1984. The respondents therein had filed an application for review of the said order being

Misc. Civil Application (ULP) No, 10 of 1994. The same was allowed by the Labour Court by its order dated 15th July, 1994. The workman filed Revision Application (ULP) No. 1000 of 1994 before the Industrial Court which came to be rejected by the order dated 27th October, 1999. The workman, thereafter, filed review application (ULP) No. 26 of 1999 before the Industrial Court. However, the same came to be dismissed on 1st March, 2001. During the pendency of the review application, the workman expired on 7th March, 2000 and, thereafter, the petitioner was brought on record as the legal representative of the deceased workman. Learned Single Judge of this Court quashed and set aside the order of review holding that the review is a creature of the statute and unless it is specifically provided for it cannot be exercised. I am in respectful agreement with the view taken by the learned Single Bench of this Court.

17. In the result, the petition needs to be allowed in terms of prayer Clause (A). The order passed by the learned Member, Industrial Court, Ahmednagar, below Exhibit-32 in Complaint (ULP) No. 273 of 1998, therefore, is quashed and set aside. The learned Member, Industrial Court, Ahmednagar shall decide the complaint (ULP) No. 273 of 1998, in accordance with the provisions of law, after hearing the parties and expeditiously, as far as possible on or before 31st December, 2007. Parties to appear before the learned Member, Industrial Court, Ahmednagar on 2nd July, 2007. Both the learned Counsel assure that they would co-operate the learned Member for disposal of the complaint. Rule is made absolute in the above terms. No costs.