
(2006) 03 BOM CK 0071

In the Bombay High Court

Case No : Writ Petition No. 7852 of 2005

D.G.P. Windsor (India) Ltd.

APPELLANT

Vs

Pradeep Shivram Thakurdesai and Others

RESPONDENT

Date of Decision : 31-03-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1
Constitution of India, 1950 — Article 136, 226, 32
Industrial Disputes Act, 1947 — Section 10, 25F, 9A
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

Citation : (2006) 3 ALLMR 291 : (2006) 4 BomCR 327 : (2006) 110 FLR 1050 : (2006) 3 MhLj 620

Hon'ble Judges : V.C. Daga, J

Bench : Single Bench

Advocate : C.U. Singh, P.N. Anaokar and A.K. Jalisatgi, for the Appellant; Naina Buch and S.K. More, for the Respondent

Final Decision : Dismissed

Judgement

V.C. Daga, J.—This petition is directed against the order dated 22nd September, 2005 passed by the Industrial Court, Thane in Complaint (ULP) No. 414/2001 directing the petitioner- Company to pay full back wages, retrenchment allowance, compensation and other legal dues to the respondents- workmen.

Factual Matrix :

2. The factual matrix reveals that the factories of the said Company are located at Thane, Vatwa and Chhatral whereas various sales and service outlets are spread all over India. According to the petitioner, the market cap of the petitioner's product went on deteriorating during the period 1990 to 1997; due to the economic policy of the Government. The petitioner- Company, thus, could not compete in a domestic as well as international markets. Consequently, the petitioner-company suffered huge losses resulting in severe financial crunch. It

could not gainfully employ even 100 to 125 employees. That it had taken several measures for its revival but could not succeed. After discussion with the Union, Voluntary Retirement Scheme (VRS) was introduced. However, the said scheme being non-lucrative, it did not get any response from the workmen. Ultimately, the petitioner-company realised that it was not in a position to gainfully deploy its employees.

3. The petitioner-Company claims to have displayed on notice-board a notice dated 16th November, 2000, informing some of their employees that it was not in a position to offer work as such the workers need not report on duty and that they would be paid full wages.

4. According to the petitioner-Company, during the period from 5th December, 2000 to 14th December, 2000, they could not deploy some of their workers as such they were required to sit idle at home. The petitioner- Company was required to pay their wages without getting any work done from them. That with a view to see that employees do not lose their skill and with a view to gainfully employ them, the petitioner transferred them to their various establishments located at different locations. According to the petitioner-Company, the workmen did not accept transfer orders issued to them. They refused to report and join at their transferred places. Consequently, their services were terminated by various separate orders all dated 8th January, 2001.

5. The General Kamgar Union (Red Flag) (hereinafter referred to as the "Union") filed Complaint (ULP) No. 70 of 2001 before the Industrial Court, Thane under items 3, 9 and 10 of Schedule-IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 ("MRTU & PULP Act" for short) seeking reliefs, inter alia; restraining the petitioner-Company from shifting its operations to chhatral and Vatwa and transferring its employees from the Thane plant to their any other units and also challenged termination of 63 employees.

6. The petitioner company appeared and filed its affidavit in reply on 16th February, 2001 and made application stating therein that substantive cause of action being within the sweep of item 1 of Schedule IV of the MRTU & PULP Act; falling within the jurisdiction of the Labour Court; as such complaint would not lie before the Industrial Court. Consequently, the Union by an application dated 9th August, 2001 sought withdrawal of the complaint with liberty to file fresh complaint before the Labour Court. The said application was allowed with liberty to approach Labour Court on or before 18th August, 2001.

7. On 18th August, 2001, the Union filed complaint before the Labour Court being Complaint No. 368 of 2001 seeking reinstatement with full back wages of 63 employees including the 30 employees i.e. present respondents- original complainants.

8. The above 30 workmen out of 63, on 13th August, 2001, filed another complaint before the Industrial Court, Thane being Complaint (ULP) No.

414/2001 the maintainability of which was objected by the petitioner- Company contending that the services of the workmen having been terminated; the complaint would not be maintainable. That it could only be filed under Item 1 of Schedule IV of the MRTU & PULP Act, which would fall within the exclusive jurisdiction of the Labour Court.

9. The petitioner-Company also filed its written statement, inter alia; contending that the complaint was barred by principles of res judicata since no prior leave was obtained from the Court to file complaint in question.

10. It was further contended that since the employees did not report for work at the transferred placed, their services were rightly terminated. According to the petitioner, departmental enquiry was not necessary since it was not in dispute that the employees did not report at their transferred places.

11. The Industrial Court was pleased to record evidence of the parties. The petitioner-Company examined Shri R.R.Nagrajan, Director of the Company. The respondents- workmen examined themselves.

12. The Industrial Court by its order dated 22nd September, 2005 was pleased to hold that the petitioner was guilty of unfair labour practices under items 3, 9 and 10 of Schedule IV of the Act and directed it to pay full back wages from the date of the order with simple interest thereon " 12% per annum. The Industrial Court, finding reinstatement of the employees not feasible directed payment of retrenchment compensation u/s 25F of the Industrial Disputes Act, 1947 ("I.D.Act" for short) treating them as retrenched on the date of the impugned order.

13. The aforesaid order of the Industrial Court dated 22nd September, 2005 is a subject matter of challenge in the instant petition filed under Article 226 of the Constitution of India.Rival Submissions :

14. Mr. C.U. Singh, learned senior counsel, appearing for the petitioner submits as under:

(a) That the complaint filed before the Industrial court challenging termination of employees was not maintainable;

(b) That the complaint ought to have been filed under item 1 of Schedule IV of the MRTU and PULP Act.

(c) That the Labour Court alone has a jurisdiction under item 1 of the MRTU and PULP Act to try and entertain such type of complaint involving termination. Reliance is placed on several judgments of the Apex Court as well as this Court in support of the submission, viz., Dilip Wawande Vs. Industrial Court, Nagpur and Others, ; A.Z.(Indl.) Premises Co-op.Socy.Ltd. v. A.T.Utekar and Ors. 1997 2 CLR 1033; Pepsico India Holdings Pvt.Ltd. v. Noshir Elavia 2002 II LLJ 721; Abhyudaya Co-op.Bank Ltd. v. S.L. Mehendale and Ors. 2003 1 CLR 1025; Manoj A. Ingle and Ors. v. Member, Industrial Court, Nagpur 2004 2 CLR 952 and M/s.

(d) That only 3 employees have filed complaint before the Labour Court for themselves, however, they cannot represent interest of other 27 employees. A complaint can be filed by an employee; or union; or by an investigating officer u/s 28 of the MRTU and PULP Act read with Industrial Court Regulations. But some employees coming together cannot file complaint on behalf of other employees as such complaint was not tenable.

(e) That the complaint having been withdrawn from the Industrial Court with liberty to file it before the Labour Court and another complaint having been factually filed by the Union before the Labour court, it was not permissible for the respondents workmen to file instant complaint before the Industrial Court, especially, when, the respondents herein continued to be the members of the said Union. That the principles analogues to the provisions of Order 23 Rule 1 of Code of Civil Procedure, 1908 would get attracted. Reliance is placed on the judgments of the Apex Court in the case of Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, and M/s. Upadhyay and Co. Vs. State of U.P. and Others, .

(f) That in the case in hand, the employees were transferred from one place to other in good faith. Item 3 of Schedule IV can only get attracted if malafides are alleged and proved. That no evidence was led by the respondents to show that the action of the petitioner-Company in issuing transfer orders was malafide. That it was obligatory on the part of the Industrial Court to come to a conclusion that the transfers were malafide. No such finding was recorded. The employees, who did not report at their transferred place, their services were liable to be terminated, the transfer being an incidence of service or employment. Reliance is placed upon Apex Court judgments in the case of M/s.Pearlite Liners Pvt.Ltd. V. Manorama Sirsi 2004 100 FLR 797 and Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani, . Mr. Singh, thus, prayed for setting aside impugned order.

Per Contra :

15. Ms.Nayana Buch, learned counsel for the respondents urged as under:

(i) That the present complaint i.e. Complaint (ULP) No. 414 of 2001 is not barred by principles of res judicata. In her submission, earlier complaint filed by the Union was withdrawn. It was not decided on merits. The withdrawal was with liberty to file another complaint as such in absence of any adjudication on merits, doctrine of res judicata does not come in picture. Reliance is placed upon the judgment of the Apex Court in the case of Management of M/s.Sonepat Co-operative Sugar Mills Ltd. v. Ajit Singh 2005 (5) All Mah. (SC) 427.

(ii) That termination of services of the employees was a reaction of the various chain of illegal actions taken by the employer.

(iii) That, admittedly, the transfer and subsequent termination of services of the

employees were the direct results of shifting of manufacturing activities of the petitioner- Company from one State to another. According to her, illegal change resulting in shifting and restructuring of manufacturing activities are well within the sweep of item 10 of Schedule IV of the MRTU and PULP Act. The act of rationalisation has, ultimately, led to retrenchment and/or termination of services of the employees for which a notice u/s 9A, was mandatory, which was never issued.

16. The illegal change has resulted in transfer of employees and consequent refusal to accept transfer by them has resulted in termination of their services. Thus, the change effected by the petitioner-Company by effecting transfers was a change in conditions of service falling within the purview of item 9 of Schedule IV of the MRTU and PULP Act.

17. That the complaint filed was well within the sweep of items 3, 9 and 10 of Schedule IV of the MRTU and PULP Act as such it was rightly allowed by the Industrial Court. Ms.Buch urged that the petition deserves to be dismissed with costs. The Issues :

18. The substantive issues on the basis of the rival submissions are as follows:

(1) Whether the order of termination amounted to commission of unfair labour practice by the employer under clauses (a), (b) and (d) of item 1 of Schedule IV of the MRTU and PULP Act?

(2) Whether the impugned order is in accordance with law?

Consideration :

19. Having heard rival parties, the first issue with regard to maintainability of the complaint in question needs to be examined in detail. The facts of the case narrated in paras-4 and 5 (supra) are also not in dispute. It is not in dispute that the respondent- workmen were sitting idle and the petitioner- Company was required to pay their wages without taking any work from them. The petitioner-Company, therefore, was required to reorganise its business, which is a right of every employer. It is not in dispute that with a view to gainfully re-deploy the employees, they were transferred. Ultimately, when the workmen refused to join at the transferred places, their services were terminated.

20. In the above backdrop, one has to examine whether the termination order would fall under either of the clauses of item 1 of Schedule IV of the MRTU and PULP Act.

21. In the light of the undisputed material available on record, it becomes clear that employees did not report at their transferred places; consequently, they were treated as surplus employees and their services were terminated. This action on the part of the petitioner- employer, by no stretch of imagination, can be said to be by way of victimisation. The order of termination is an outcome of genuine and bonafide exercise of power. It is not in dispute that there was no

work for the respondent-employees in the industrial unit at Thane. The impugned orders, thus, cannot be said to be based on extraneous consideration or for non-germane reasons. Hence clause (a) of item 1 of Schedule IV of the MRTU and PULP Act would not get attracted in the facts and circumstance of the present case.

22. Similarly, clause (b) contemplates order of discharge which is not in good faith, but in the colourable exercise of the employer's powers. Thus, the employer may have merely a pretext to put an end to the service of the employee who may not have misconducted himself at all. Therefore, there will be no occasion to have any disciplinary action against him as no charge could be levelled against him. Still, if such undesired employee is to be removed from service, then, though simplicitor discharge order is passed and, if it is shown that it is not in good faith but as a result of malafide intention on the part of the employer, then such discharge order can also be brought within the sweep of unfair labour practice categorised in clauses (a) and (b) of item 1 of Schedule IV of the MRTU and PULP Act. In this case, it is difficult to say that the action of the employer was not in good faith but in the colourable exercise of employer's rights. The transfer orders cannot be said to be in bad faith as the petitioner-employer tried to provide alternative job to the respondents-employees at Vatwa and Chhatral but the said offer was not accepted by the respondents-employees which, ultimately, resulted in termination of their services. If that be so, clause (b) of item 1 of Schedule IV of the MRTU and PULP Act would hardly get attracted in the facts and circumstances of the present case.

23. Similar legislature scheme is discernible from clause (c) of item No. 1 which deals within order of discharge or dismissal by falsely implicating an employee in a criminal case on false evidence or on concocted evidence. In such a situation, discharge order may operate as a penal order, however, this contingency does not exist in this case.

24. So far as the next clause (d) is concerned, it contemplates an order of discharge by way of penalty as well as discharge simplicitor based on patently false reasons. By no stretch of imagination, the termination of services of the respondents-employees involved herein can be said to be for patently false reasons. The reasons, in fact, do exist.

25. So far as next clause (e) of item No. 1 is concerned, it contemplates order of discharge on untrue or trumped up allegations of absence without leave. Even this clause would not get attracted to the impugned action in the facts and circumstances of the present case.

26. So far as clause (f) is concerned, the first part squarely covers a case of dismissal or discharge by way of penalty as it deals with such orders passed after conducting domestic enquiry about the alleged misconduct of the employee but in utter disregard of the principles of natural justice. So far as second part of this clause is concerned, it contemplates action with undue haste. In this case, by no

means the impugned order of discharge would be said to be within the sweep of clause (f) of item 1 of Schedule IV of the Act.

27. So far as clause (g) is concerned, obviously, refers only to the discharge or dismissal orders which are penal in nature as they have direct linkage with misconduct committed by the employee, which would hardly get attracted to the impugned action.

28. Having taken detailed survey of all the clauses; viz. (a) to (g) of item 1 of Schedule IV of the MRTU and PULP Act, it would be clear that none of the clauses would get attracted to the impugned action against which the complaint was filed by the complainants. Therefore, by no stretch of imagination it can be said that the complaint could fall within the jurisdiction of the Labour Court.

29. At this juncture, it would be profitable to refer to the Apex Court judgment in the case of Lokmat Newspapers (supra); wherein the Apex Court was called upon to decide question: whether the action of termination in that case constituted unfair labour practice under clauses (a), (b) and (d) of item 1 of Schedule IV of the MRTU and PULP Act. The factual scenario in that case was more or less similar to the case in hand. The facts reveal that respondent-employee one Shri Shankarprasad was working as Foreman in the Composing department of the Lokmat Newspapers (employer) at Nagpur. In the year 1976, the employer decided to start publication of Jalgaon Edition of the said newspaper and for that purpose set up an establishment at Jalgaon. The Jalgaon edition was composed and printed at Nagpur and was taken to Jalgaon. The composing of both the editions was done by hand composing and printing was done on rotary printing machine. In 1978, the employer decided to have composed and printed part of the Jalgaon edition at Jalgaon. since then the Jalgaon edition was composed and printed partly at Jalgaon and partly at Nagpur. Then in 1981, the employer installed two photo type composing machines at Nagpur. According to the employer, it was a new technique of rationalisation, standardisation and improvement of plant or technique. Initially, the said machine was operated on experimental basis for sometime but from October, 1981 it became fully operative. Consequently, the workman (respondent therein) with 24 other employees, who were working in the hand composing department, became redundant. Therefore, they were transferred to Jalgaon where another establishment of the employer was located.

30. The aforesaid orders of transfer were challenged by the respondent and other employees before the Industrial Court under the provisions of the MRTU and PULP Act. The Industrial Court after hearing the parties, vide its order dated 12th February, 1982 took the view that the said transfer orders amounted to change in the conditions of service of the employees which resulted in unfair labour practice on the part of the employer. This order became final for want of further challenge.

31. Having realised that the employees could not be transferred out of Nagpur

even though they had become surplus on account of introduction of the aforesaid photo composing machine, the employer issued a notice on 25th March, 1982 u/s 9A of the I.D.Act, inter alia; stating that as a result of the installation of photo composing machine, there was no work available with the employer so as to provide the same to those employees. It resulted in conciliation. Conciliation proceedings, ultimately, failed. The Conciliation Officer closed the proceedings, and, submitted failure report to the State Government.

32. The State Government received the aforesaid report on 13th August, 1982. In the meantime, considering closure of the conciliation proceedings, the employer issued discharge order dated 22nd June, 1982 terminating the services of the workman. As a consequence thereof, services of the respondent therein along with other employees were terminated u/s 25-F of the I.D.Act.

33. Immediately after service of discharge order the respondent employee filed a complaint on 25th June, 1982 before the Labour court u/s 28 of the MRTU and PULP Act alleging that the employer committed unfair labour practice falling under Schedule IV item No. 1(a), (b), (d) and (f) of the MRTU and PULP Act.

34. The employer resisted the aforesaid complaint contending that it had not resorted to any unfair labour practice against the respondent therein. During pendency of the complaint, the State Government acting on the failure report of the Conciliation Officer, made a reference to the industrial dispute u/s 10 of the I.D.Act, which, ultimately, came to be disposed of as not tenable in view of the prior complaint under the M.R.T.U & P.U.L.P. Act giving rise to the bar u/s 59 of the said Act.

35. The complaint filed by the employee was dismissed by the Labour Court by its order dated 30th January, 1990 holding that the impugned retrenchment order did not attract any of the provisions of Schedule IV, item No. 1 of the MRTU and PULP Act and that the employer was not guilty of any unfair labour practice when it passed the impugned retrenchment order against the employee (respondent therein).

36. The employee filed a revision petition before the Industrial Tribunal. The said revision petition was dismissed by the tribunal on 22nd November, 1990 upholding the findings of the Labour Court that the employer had not engaged in any unfair labour practice.

37. The employee then filed Writ Petition No. 70/1991 before Nagpur Bench of this Court challenging the decisions rendered by the Courts below. The said writ petition came to be rejected by the learned single Judge on 25th April, 1991. The employee thereafter, preferred Letters Patent Appeal No. 24/1991 before the Division Bench under clause 15 of the Letters Patent. The Division Bench, by its order dated 6th November, 1996, held that the employer had engaged in unfair labour practice under item 1(a), (b), (d) and (f) of Schedule IV of the MRTU and PULP Act. This order of the Division Bench was challenged by the employer before the Apex Court by way of appeal on special leave under Article 136 of the

Constitution.

38. The Apex Court was required to consider one of the contentions similar to the contention raised herein with regard to maintainability of the complaint under item 1(a), (b), (d) and (f) of Schedule IV of the MRTU and PULP Act. While considering maintainability of the complaint, the Apex Court was required to consider the length and breadth of each clause of item No. 1 of Schedule IV of the MRTU and PULP Act in detail. Ultimately, the Apex Court reached to the conclusion that clauses (a), (b), (d) of item 1 of Schedule IV of the MRTU and PULP Act were not attracted in the facts and circumstances of the case. The Apex Court, at the verge of dismissal of the complaint, found that since termination was brought about without waiting for termination of the conciliation proceedings, the order of termination was passed with undue haste; as such the complaint was held to be maintainable under last part of clause (f) of item No. 1 of Schedule IV of the MRTU and PULP Act. The Apex Court sustained the complaint, in the case of Lokmat Newspapers (supra), under last part of clause (f) of item 1. In my considered view, none of the clauses of item 1 of Schedule IV gets attracted in the facts and circumstances of the case in hand.

39. Having said so, it was the positive submission of the employer before the Industrial Court that the employees were sitting idle. The employer was required to pay their wages without taking work from them. Therefore, the employer had to reorganise his business which, according to the employer, was his right. The employer, therefore, wanted to gainfully re-deploy his employees. To attain this object transfer orders were issued; with an avowed object to provide employment to the employees; with a view to avoid termination of their services. The object was to protect their employment. No malafides were involved in the decision taken. If the length and breadth of the argument advanced by the leaned counsel for the employer before the Industrial Court is taken into account, then, it would not be difficult to say that the complaint filed before the Industrial Court was well within the sweep of items 3, 9 and 10 of Schedule IV of the MRTU and PULP Act and it was, thus, maintainable.

40. Having held that the complaint was maintainable, the other submissions raising following questions need consideration:

(a) Whether or not the complainants were entitled to file complaint in question, especially, when the withdrawal of earlier complaint from the Industrial Court was with liberty to file fresh complaint before the Labour Court?

(b) Whether the complaint under consideration without approaching the Labour Court is tenable?

(c) Whether complaint before the Industrial Court was maintainable?

41. I do not see any illegality in filing complaint before the Industrial Court. As held by me above, complaint before the Labour Court was not tenable. The complainants cannot be non-suited on the principles of Order XXIII Rule 1 of

Code of Civil Procedure, 1908 ("C.P.C." for short) which strictly does not apply to the industrial or labour disputes. The proceedings in question cannot be equated with the suit proceedings or civil proceedings. Even otherwise, reliance placed by the petitioner on the Apex Court judgment in the case of *Sarguja Transport Service v. State Transport* (supra) is misplaced. In that very case, in para (2), the Apex Court has observed as under:-

... While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to *res judicata*, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission....

42. On the basis of the above observations, one can say that, the remedy before the Industrial Court was abandoned by the complainants. They could not have filed fresh complaint before the same court i.e. the Industrial Court; on the same cause of action; in the same subject matter since the earlier complaint filed before it was withdrawn without permission to file fresh complaint before it. However, the said bar was not applicable to file complaint before any other Court. It was open for the complainants to file fresh complaint before any other court; other than the Industrial Court without prior permission or leave to file such complaint. The submission that doctrine of *res judicata* is attracted is also devoid of any substance.

43. So far as another submission advanced by Mr. Singh about filing of complaint by three persons on behalf of other 27 persons, the same also does not hold water. The complaint in the array of parties, specifically, mentions "other 27". Their names are mentioned in the body of the complaint. Complaint is signed and verified by three complainants for themselves and for and behalf of other complainants. No contention appears to have been raised at the earliest opportunity before the Industrial Court on this count. The subject complaint was entertained by the Industrial court. The delay in filing this complaint was condoned by order dated 9th January, 2002. It was tried on merits. The petitioner participated in the trial of complaint without raising any objection in this behalf. If at all it was a defect, it was procedural and curable.

44. The order condoning delay was challenged before this Court in Writ Petition No. 938/2002. The contention of locus of three complainants to file subject complaint; in the form in which it was filed; was never raised before this Court in the earlier round of litigation. Writ petition came to be dismissed by a speaking order dated 25th February, 2002. This order became final and conclusive. When any matter which might and ought to have been made a ground of attack or a defence in the former proceeding but was not made, then such matter in the eye of law, to avoid multiplicity of litigation and to bring about finality in it is deemed to have been constructively in issue and, therefore, taken to be decided. (see

Workmen of Cochin Port Trust Vs. Board of Trustees of The Cochin Port Trust and Another,)

45. It is needless to mention that the Apex Court in the case of Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another, held that the doctrine of *res judicata* applies also between two stages of the same litigation. No court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. As such the petitioner, in my view, is precluded from raising contention sought to be raised in this behalf.

46. So far as item Nos. 3, 9 and 10 of Schedule IV of the MRTU and PULP Act are concerned, *prima facie*; pleadings are to be found in the complaint so as to make the complaint tenable before the Industrial Court. In order to examine whether complaint is tenable or not one has to see and examine pleadings in the complaint and not the defence. Ultimately, complaint may fail on merits. Tenability of the complaint cannot be decided on the basis of defence (see AIR 1964 SC 1368). It is a well settled law that jurisdiction depends upon allegations in the plaint and not upon what may, ultimately, be found (see 1995(2) SCC 54; Govindram Salamatrai and Another Vs. Dharampal Amarnath and Another, ; Bai Radhabai Vasudeo Jethabhoy Vs. Nandlal Laxmichand Chanana,). A party seeking to oust the jurisdiction of the court must establish his right to do so. The action was well within the scope of item No. 3 of Schedule IV.

47. At any rate, on the admitted facts, item No. 9 of Schedule IV of the MRTU & PULP Act was very much attracted to the facts of the present case. The detailed reasons are to be found in that behalf in the impugned order. The case of rationalisation, reorganisation resulting in workforce in surplus was, specifically, put in to service by the petitioner to defeat the prayer for interim relief, as such application of item No. 9 cannot be ruled out on admitted facts. The view taken by the Court below was a reasonable and possible view. No case can be said to have been made out by the petitioner for entertaining this petition. I concur with the view taken by the Court below. Since I concur with the view taken by the Court below, I do not feel it necessary to reiterate the same reasons once again. No other contentions other than those dealt with herein were raised.

48. The petition is, thus, dismissed in limine for the reasons recorded herein as well as for the reasons recorded by the Court below, with no order as to costs.