

(2001) 12 BOM CK 0021
In the Bombay High Court
Case No : A.S. W.P. No. 6154 of 1995

Hindustan Composites Limited

APPELLANT

Vs

C.D. Konale and Others

RESPONDENT

Date of Decision : 06-12-2001

Acts Referred:

Citation : (2002) 4 LLJ 69

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Nishita Mhatre, J.—There was contract between the Petitioner and Respondent Nos. 3 and 4 for conducting a canteen in the Petitioner's factory at Ghatkopar. It is the case of the Petitioner that Respondent Nos. 3 and 4 who are the contractors employed by them conducted, the canteen with the help of their own employees. The supervision of the work of these employees was done by Respondent Nos. 3 and 4. Wages were paid by them. Provident Fund and bonus was also paid by Respondent Nos. 3 and 4. Respondent No. 3 is a Contractor registered under the provisions of the Contract Labour (Regulation & Abolition) Act, 1970. In 1991, the Petitioner terminated the contract with Respondent No. 3 and engaged another contractor. Apprehending termination of, services, the workmen employed with the canteen contractor, filed Complaint (ULP) No. 1520 of 1991 through the Respondent No. 2 Union before the Industrial Court under Item 9 of Schedule IV of the, Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the "MRTU & PULP Act"). A settlement was signed between the Petitioner and Respondent, Nos. 2, 3 and 4 including the Union representing the workmen on February 17, 1992. Under this settlement, Respondent Nos. 3 and 4 accepted the termination of the canteen contract with the Petitioner effective from December 1, 1991. Respondent Nos. 3 and 4 also undertook to pay all the legal dues including notice pay, retrenchment compensation and gratuity payable to the

workmen in three installments, first of which was payable on February 10, 1992. It appears that the first installment was paid by Respondent Nos. 3 and 4 to the workmen. However, the installments due and payable on March 10, 1992 and May 10, 1992 were not paid. Aggrieved by this, Respondent No. 2 herein filed Complaint(ULP)No. 1183 of 1992 under item 9 of Schedule IV of the MRTU & PULP Act complaining of non-implementation of the settlement dated February 17, 1992 entered between the parties. The Industrial Court on the basis of the record produced before it, came to the conclusion that the Petitioner as well as Respondent Nos. 3 and 4 had committed unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act by not paying the second and third installments as per the settlement of February 17, 1992. The Industrial Court directed Respondent Nos. 3 and 4 to comply with the same within one month from its order. The Petitioner as well as Respondent Nos. 3 and 4 were also directed to pay overtime wages to the workmen from October 1, 1990 to October 17, 1990 as also canteen allowance for the month of October 1990 to ten workmen who had actually worked for cleaning the canteen. The Industrial Court further awarded interest at the rate of 18% per annum on the installments payable under the said settlement dated February 17, 1992. Being aggrieved by this order, the Petitioner has approached this Court under Articles 226 and 227 of the Constitution of India.

2. Mr. Shastri, learned advocate for the Petitioner, contends that, under the settlement dated February 17, 1992, it is the contractor, namely, Respondent Nos. 3 and 4 herein, who are liable to pay all the legal dues to the workmen including notice pay, retrenchment compensation and gratuity. Respondent Nos. 3 and 4 having undertaken to pay this amount, it is not open for the Industrial Court to direct the Petitioner also to pay this amount to the workmen. This submission of Mr. Shastri deserves acceptance. Respondent No. 2 Union sought implementation of the settlement dated February 17, 1992 under which only the contractor i. e. Respondent Nos. 3 and 4 were liable for making payments to the workmen as the employer. There does not appear to be any relationship of master and servant between the workmen of Respondent Nos. 3 and 4 and the Petitioner. Further, under the settlement, Respondent No. 3 was to employ the workmen terminated on account of the contract between the Petitioner and Respondent Nos. 3 and 4 being terminated from 1991.

3. In view of this, the order of the Industrial Court dated June 7, 1995 in Complaint (ULP) Nos. 1183 of 1992 directed against the Petitioner herein is set aside. However, Respondent No. 2 is free to execute the order against Respondent Nos.3 and 4.

4. Rule made absolute accordingly. No order as to costs.