

(2014) 11 BOM CK 0058
In the Bombay High Court
Case No : Writ Petition No. 4626 of 2012

Popat Anaji Rautray

APPELLANT

Vs

Zilla Parishad

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 28A
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 30, 31, 31(2)

Citation : (2014) 11 BOM CK 0058

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : P.V. Barde, Advocate for the Appellant; S.T. Shelke, Advocate for the Respondent

Judgement

R.V. Ghuge, J.—Heard the learned Advocates for the respective parties.

2. Rule. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

3. Issue raised for the consideration of this Court is as regards computation of 30 days under Section 31(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the State Act") read with Regulation 118 and 119 of the Industrial Court Regulations, 1975 ("the said Regulations").

4. The relevant dates and events are as follows:-

(a) The petitioner had filed Complaint (ULP) No.234 of 2000 ("the complaint") before the Industrial Court, Ahmednagar.

(b) The said complaint was dismissed, in default, on 31.3.2009.

(c) The petitioner moved an application for seeking a certified copy of the said order on 29.4.2009.

(d) He received the certified copy on the same day i.e. 29.4.2009.

(e) 1st May, 2009 was a public Holiday.

(f) He preferred Misc. Application (ULP) No.2 of 2009 ("the Misc. Application") seeking restoration of the complaint on 2.5.2009.

(g) By judgment and order dated 3.4.2012, said Misc. Application was rejected on the ground that the Industrial Court does not have jurisdiction to entertain an application for condonation of delay in an application for restoration of a dismissed in default complaint.

(h) In short, the Industrial Court concluded that an application for restoration cannot be entertained after thirty days from the date of the dismissal of the complaint.

5. The petitioner submits that there was no delay at all in filing of his Misc. Application for seeking restoration of the complaint. According to him, since the complaint was dismissed on 31.3.2009, the said date has to be excluded while computing thirty days. He received the certified copy of the order on 29.4.2009 and in his submissions, the date of receipt of the certified copy is also to be excluded while computing thirty days in the light of the judgment of this Court in the case of Babaji alias Baban Keru Phapale Vs. State of Maharashtra and Another, .

6. He further submits that he has filed the Misc. Application for restoration of the complaint on 2.5.2009. 1.5.2009 was a public holiday in the State of Maharashtra. He, therefore, submits that thirty days will have to be calculated from 1.4.2009 till 2.5.2009, which according to him was the 30th day, 1.5.2009 being a public holiday. He, therefore, submits that the Industrial Court, while dealing with the Misc. Application has lost sight of these calculations and has proceeded on the footing of considering the calendar month. So also the Industrial Court has included 31.3.2009 in calculating the 30 days and has, therefore, concluded that the Misc. Application should have been filed on 29.4.2009. He, therefore, submits that the impugned judgment is erroneous and perverse.

7. Shri Shelke, learned Advocate appearing on behalf of the respondent submits that the impugned judgment is neither perverse nor erroneous. He points out from paragraph Nos.8 and 9 of the said judgment to support his contention that thirty days have to be calculated from 1.4.2009 and 30.4.2009 was the 30th day, on which the petitioner ought to have filed his application. According to him, it is inconsequential that 1.5.2009 was a public holiday. He placed reliance upon the following judgments:-

(i) Dilip Vithalrao Jogdand Vs. Vaidyanath Urban -2007 II CLR 78,

(ii) Baban Raosaheb Dongre Vs. Pravara Medical Trust -Writ Petition No.122 of 2013, dated 18.3.2014,

(iii) Fairgrowth Investments Ltd. Vs. The Custodian, and

(iv) Union of India Vs. M/s Popular Construction Co., .

8. He further submits that the Limitation Act cannot be made applicable in the instant case since the State Act specifically prohibits an application to be filed after thirty days from the date of the dismissal order. He further submits that thirty days have to be calculated in a plain and simple manner and the petitioner cannot be given the benefit of one additional day, on which he obtained the certified copy for filing his Misc. Application. He further submits that that the petitioner could have filed his Misc. Application on the basis of a simple copy of the order and need not have waited for obtaining a certified copy.

9. Section 31 of the State Act reads as under:-

"31. Consequences of Non-appearance of Parties. -

(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. The phraseology in Section 31(2) indicates that 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. (emphasis supplied).

11. Regulation 118(i) of the said Regulations mandates that an application under Section 31(2) of the State Act shall be accompanied with an affidavit in support of the grounds for getting the ex-parte order set aside. Regulations 118 and 119 read as under:-

"118.(i) Along with application under Section 31(2) of the Act the applicant shall file affidavit in support of the grounds for getting the ex parte order set aside.

(ii) A notice of hearing of the application for setting aside the ex parte order shall be served on the party who is entitled to be heard. Such notice shall be in Form 22.

119. The Court may under Section 31(2) of the Act set aside ex parte order on such terms as to costs and other conditions as it considers necessary."

12. In my view, "a receipt of the copy thereof" shall mean a "certified copy thereof". There can be instances, when in a given case a litigating party may wait for months or years and may make an application for obtaining a certified copy and then take shelter of Section 31(2) of the State Act to suggest that the restoration application is filed within 30 days from the date of receipt of the certified copy. If Section 31(2) is interpreted to mean that any litigating party may rise at any point of time after months or years and make an application for obtaining the certified copy in order to canvass that the entire period from the date of the order till the receipt of the certified copy should be excluded while calculating thirty days, it would lead to an absurdity. It would amount to an abuse of Section 31(2). There would be no finality to the litigation.

13. Section 31(2) of the State Act is aimed at being of assistance to a litigant who approaches the Court with promptitude for seeking a certified copy of the order and for filing a Misc. Application for restoration. Said provision, therefore, shall not be of assistance to the litigant, who, by his conduct, can be seen to be in deep slumber and has approached the Court after months or years to file a restoration application.

14. This aspect has been dealt with by the learned Division Bench of this Court in its order dated 5.1.2004 passed in LPA No.3 of 2004 in Writ Petition No.631 of 2003. In the said case, the complaint was dismissed in default by the Industrial Court on 4.8.1995 and the original complainant approached the Industrial Court for restoration of the matter under Section 31 of the State Act in 1997. The Industrial Court held that it had no jurisdiction to deal with a restoration application beyond 30 days of dismissing the complaint in default. In Writ Petition No.631 of 2003, this Court upheld the order of the Industrial Court and dismissed the Writ Petition.

15. The original complainant came before the learned Division Bench of this Court in LPA No.3 of 2004. The learned Division Bench held as under:-

"We have considered the scheme of Section 31 of the M.R.T.U. and P.U.L.P.Act, 1971. Sub-section (2) therein enables aggrieved party to file an application for restoration within a period of 30 days. There is no power with the Court concerned to condone the delay on the lines of such a power as has been provided under Section 30 of the Act. The learned Member of the Industrial Court, therefore, held that the application for restoration, filed beyond a period of 30 days, cannot be entertained and in addition there was no sufficient reason put forth by the Applicant to condone the delay of over two years in filing such an application. This finding, regarding sufficient reasons was based on the assessment of the evidence, which was recorded by the Industrial Court before the said application was decided.

The view taken by the Industrial Court has been rightly upheld by this Court and the order rejecting Writ Petition No.631 of 2003 does not call for any corrections in this intra court appeal. The appeal, therefore, fails and the same is hereby

dismissed in limine"

16. The learned Single Judge Bench of this Court has followed the view of the learned Division Bench in the case of Dilip Jogdand (supra). In the said case, the complaint was dismissed on 13.8.1998 and after five years, the employee filed an application for restoration. The Industrial Court had concluded that such an application was not maintainable. This Court upheld the judgment of the Industrial Court.

17. In the case of Baban Raosaheb Dongre (supra), this Court has delivered a judgment holding that the application preferred on 29.9.2010 for seeking restoration of a complaint dismissed in default on 21.7.2004, left the Industrial Court without jurisdiction to entertain such a complaint.

18. The case in hand has a peculiarity. Strictly speaking, thirty calendar days from the date of dismissal of the complaint would have expired after 30.4.2009. However, the petitioner applied for a certified copy on 29.4.2009 and by the end of the day, he had received the certified copy of the order dated 31.3.2009.

19. In the case of Babaji @ Baban Keru (supra), this Court has concluded in paragraph No.10 as under:-

"10. Turning to the instant matter, an application for certified copy was moved on 11-7-1986 and the copy was received by the applicant on 4-10-1986. It is to be noted at this stage that although the civil court had while delivering the copy has fixed the date of readiness of the certified copy as 30-8-1986, however, on the given date the copy was not ready and therefore the period spent until the date of delivery of the copy shall have to be reckoned for the purpose of exclusion. The judgment of the reference court in LAR no. 172/79 was delivered on 21-4-1986. In accordance with the mandate of the Apex court while computing the period of limitation if the time requisite for obtaining the copy is added to the period of statutory limitation provided under the Act, in the instant matter, the application which is tendered by the petitioner on 10-10-1986 falls within the period of limitation. Time requisite for obtaining the copy shall have to be reckoned from 11-7-1986 till 4-10-1986 which comes to 86 days. Considering this factual aspect, the contention of the petitioner shall have to be accepted that the application tendered by him on 10-10-1986 under section 28-A of the Land Acquisition Act is well within limitation."

20. The petitioner contends that in the light of the view taken by the learned Single Judge of this Court in the case of Babaji @ Baban Keru (supra), the benefit of at least one day will have to be given to the petitioner herein, by excluding that day of receipt of the certified copy. Since the petitioner has approached the Industrial Court within 30 days of the "dismissed in default" order and has obtained the certified copy within the said period of 30 days and in the light of the ratio laid down in Babaji @ Baban Keru case (supra), I find that Section 31(2) of the State Act could be interpreted to exclude this period which is the date on which the certified copy was applied for and was received.

21. It is not pointed out to this Court that there has been a judicial pronouncement on the aspect of "within 30 days of the receipt of the copy thereof" under Section 31(2) of the State Act. In my view, the period in which the petitioner applied for the certified copy and the date on which he received the certified copy i.e. 29.4.2009, all of which is within 30 days from the dismissed in default order, deserves to be excluded in light of the ratio laid down in the case of Babaji @ Baban Keru (supra). The Misc. Application, therefore, filed by the petitioner on 2.5.2009 can be said to have been filed on the 30th day since 1.5.2009 was a public holiday.

22. The proviso to Section 31(2) of the State Act empowers the Industrial Court to set aside the ex-parte order and restore the proceedings provided it is convinced by the reasons in support of the application. Regulation 118(ii) of the said Regulations mandates a proper hearing by serving a notice on the opponent. Regulation 119 enables the Industrial Court to set aside the ex-parte order on such terms as to costs and other conditions as it considers necessary. These aspects of the matter are yet to be dealt with by the Industrial Court. The Misc. Application has been rejected primarily on the issue of calculation of thirty days. Since the said issue is now put to rest, ends of justice would be met by the restoration of the Misc. Application before the Industrial Court for adjudication in the light of the provisions of Section 31(2) of the State Act and Regulation 118(ii) and 119 of the said Regulations.

23. In the light of the above, the impugned judgment dated 3.4.2012 delivered by the Industrial Court in the Misc. Application is rendered erroneous. The impugned judgment is, therefore, quashed and set aside. As such, Misc. Application (ULP) No.2 of 2009 is held to have been filed on the 30th day and is restored to the file of the Industrial Court.

24. The litigating parties shall appear before the Industrial Court at Ahmednagar on 8.12.2014. Separate notices, therefore, need not be issued. The Industrial Court shall deal with the said Misc. Application (ULP) No.2 of 2009 in accordance with Section 31(2) and Regulation No.119 and shall endeavour to decide the same as expeditiously as possible and preferably on/or before 31.3.2015.

25. In the result, Rule is made partly absolute in the above terms. No order as to costs.