
(2001) 04 BOM CK 0043
In the Bombay High Court
Case No : Writ Petition No. 1384 of 1998

V. Ramanathan

APPELLANT

Vs

Hindustan Lever Limited and Another

RESPONDENT

Date of Decision : 27-04-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 33
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 50

Citation : (2002) 2 ALLMR 401 : (2001) 4 BomCR 441 : (2001) 4 BOMLR 722 : (2002) 92 FLR 265 : (2001) 4 MhLj 448

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : Meena Doshi, for the Appellant; P.K. Rele, for the Respondent

Final Decision : Dismissed

Judgement

R. J. Kochar, J.—The petition is filed by the petitioner claiming to be the General Secretary of his Union viz., Hindustan Lever Mazdoor Sabha, Mumbai. He claims to have been authorised to file this petition on behalf of the two employees of the respondent Company. It was the petitioner himself who had filed an application u/s 50 of the M.R.T.U. & P.U.L.P. Act, 1971 on behalf of the two employees viz., Shri K. N. Nagesha Rao and Shri Shamnandan Pande who appear to have authorised the petitioner to present the said application before the Industrial Court to pray for a recovery certificate against the respondent Company to receive the money on behalf of the aforesaid two employees. The petitioner has prayed for a certificate for Rs. 1,56,901 /- for Shri Pande and for Rs. 1,55,961 /- for Shri Rao as money due and payable by the respondent Company to the aforesaid employees, who appeared to have been retired and who are not presently in Mumbai within the jurisdiction of this Court.

2. In nutshell, the facts relevant for our purpose are summarised as under :-

The petitioner has based the claim of both the aforesaid field force employees on

the order dated 27th July, 1997 passed by the Industrial Court in Complaint U.L.P. No. 751 of 1984 which appear to have been confirmed in the Supreme Court. According to the Industrial Court (Shri G. S. Baj), the respondent Company had committed unfair labour practice under Item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act and it was, therefore, directed to cease and desist from engaging in unfair labour practice under Item 9 of Schedule IV of the Act and that the Company was directed to take such affirmative action as to implement the provisions of the agreement of 1957 and settlement of 1971 and pay all the arrears of amount due and payable within the period of 3 months to the members of field force. The operative order of the Industrial Court has been correctly reproduced by the learned Member of the Industrial Court (C. J. Shaikh) in his para 11, page 191 of the paper book in the presently impugned order.

3. The respondents objected to the Jurisdiction of the Industrial Court to Issue such certificate in exercise of its powers u/s 50 of the Act, mainly on the following three grounds :-

(i) the concerned employees were employed outside the Jurisdiction of the Industrial Court viz., at Madras and Madhya Pradesh at Bhillai. They were never employed at Mumbai and therefore, the Industrial Court had no Jurisdiction to issue such recovery certificate;

(ii) Though the question of entitlement was decided by the Industrial Court, no exact amount was determined as payable to the said employees and, therefore, no recovery certificate can be issued u/s 50 of the Act. There was no final determination of the exact amount of sums due and payable by the respondent Company to the said employees. This question would require final determination or adjudication which cannot be done u/s 50 of the Act. The petitioner who had filed the said application had no locus to file such an application on behalf of said two employees.

(iii) The Industrial Court upheld the contentions of the Company and dismissed the application filed by the petitioner. In the opinion of the learned Member of the Industrial Court there were some triable issues raised by the Company which require adjudication. According to the Industrial Court, the amounts were disputed and they require to be determined and computed as contemplated u/s 50 read with regulation 140(a) and Form 24.

4. The Industrial Court has held that u/s 50 of the Act, a recovery certificate can be issued only if the amount due and payable is finally determined and computed by some authority and the person who is liable to pay has not obeyed the said order. Shri Rele has supported the reasoning given by the learned Member of the Industrial Court. He has further pointed out that most of the employees had settled their dues, including Shri Pande one of the employees. Shri Rele further pointed out that almost all the employees who were entitled to get the payment have been paid and, therefore, there was no question of issuing any recovery

certificate u/s 50 of the Act. According to Shri Rele, the scope and ambit of Section 50 is very limited, restricted or narrow. The final amount claimed by the applicant must have been determined without which Section 50 cannot be brought in operation. Shri Rele has submitted that the entitlement of the employees was determined by the Industrial Court (Shri Baj). However, he did not determine and compute the amount in figures and, therefore, there was no power vested u/s 50 to determine and compute the amount and, therefore, to issue a recovery certificate.

5. Shri Rele has further pointed out that if any triable issue is raised and if it requires adjudication, it cannot be done u/s 50 of the Act. He further pointed out that according to the Company the employees were paid their dues and they had accepted the settlement and nothing was due and payable. Shri Rele has pointed out that it is significant to note that the petitioner has given up two claims even from this petition. Those claims which are not given up are disturbance allowance dues and terminal leave dues. According to Shri Rele, this very fact would indicate that the claims have not been finally determined and computed.

6. Ms. Meena Doshi, for the petitioner, on the other hand has submitted that the Industrial Court of Shri Baj had already determined the entitlement of the employees and there was nothing to be done by the said Industrial Court. According to her, the amounts can be determined and computed u/s 50 of the Act. She has submitted that the said section cannot be interpreted narrowly. According to her, as a desperate measure the petitioner has given up the aforesaid two claims so that whatever admitted amount could be paid to the employees. Ms. Doshi submitted that there was no question of adjudication of the claims. The Industrial Court u/s 50 has to merely find out on the basis of the entitlement of the amount due and payable.

7. I do not find any illegality or infirmity in the impugned order of the Industrial Court. The Industrial Court of Shri Baj had not determined the amounts or arrears. He had determined the question of entitlement of the employees under settlement of 1971 and he had left at that end by saying that to pay out all arrears of amounts due and payable. If he were to determine and compute this arrears, in that case, the provisions of Section 50 would have been instantly attracted. Shri Baj had left the arrears to be computed. Whether such arrears are due and payable has to be decided by appropriate Court on computation. The provisions of Section 50 is to execute the final order passed by a Court of law and not to determine the amounts and not to find out whether arrears were due and payable. The purpose of Section 50 is to assist a claim for recovery of his determined dues and not to adjudicate or determine such dues whether they are payable or not. It is significant to read Form 24 which specifically mentions as under: -

"2. This Court has ordered that a sum of Rs. ... should be paid by Opponent No. to the employee in Application (U.L.P.) No. decided by this Court on"

The Legislature has provided a form u/s 50 and in the said form the applicant is required to give the exact sum recoverable as per the order of the Court. What is the exact sum due and payable must be determined before resorting to Section 50 of the Act. It is not the function of the Court u/s 50 to investigate what are the amounts due and payable. The Court u/s 50 must be told that the arrears were already determined and they were a particular amount. Such Court cannot be called upon to determine and adjudicate any other question or any other triable issues. In the present case the authority of the petitioner was questioned, jurisdiction of the Industrial Court at Mumbai was challenged and thirdly, it was averred by the Company that the amounts were already paid and that the employees had settled their dues. It was also averred that the petitioner had no authority from one of the employees to file such an application. All these contentions are to be properly decided by an appropriate forum and not a forum u/s 50 of the Act.

8. Considering from any angle in my opinion, the order of the Industrial Court cannot be faulted with. According to me, there is no illegality or infirmity in the impugned order of the Industrial Court. The petition fails and the same is dismissed with no order as to costs. Rule is discharged.

9. It is needless to clarify that the employees will be at liberty to file appropriate proceedings under appropriate provisions of law such as Section 33(c)(2) of the Industrial Disputes Act to get their arrears determined and computed on the basis of the order of the Industrial Court of Shri Baj.