

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4496 OF 2002
WITH
CIVIL APPLICATION NO.4936 OF 2006

The Ahmednagar Municipal Council
Ahmednagar – Through its Chief
Officer, Shri Pravin Shriram Ashtikar
Age-36 years, Occu-Service,
R/o Ahmednagar

PETITIONER

VERSUS

1. Pandit Rambhau Ausarkar,
Age-39 years, Occu-Service,
R/o Ausarkar Mala, Burudgaon Road,
Ahmednagar,
2. Anil Vasantrao Londhe, (Deleted)
Age-36 years, Occu-Service,
R/o 7462, Maliwada, Shinde Galli,
Ahmednagar,
3. Hirabai Shivaji Sapate, (Deleted)
Age-42 years, Occu-Service,
R/o 5033, Maliwada, Gondhale
Galli, Ahmednagar,
4. Suman Suresh Berad, (Deleted)
Age-46 years, Occu-Service,
R/o 950, Berad Galli, Bhingar,
Dist. Ahmednagar,
5. Kailas Eknath Fulsaundar, (Deleted)
Age-49 years, Occu-Service,
R/o Burudgaon Road,
Ahmednagar

RESPONDENTS

WITH
WRIT PETITION NO.489 of 2003
WITH
CIVIL APPLICATION NO.4935 OF 2006

The Ahmednagar Municipal Council
Ahmednagar – Through its Chief
Officer, Shri Manohar S/o Narsingrao Hire,
Age-38 years, Occu-Service,
R/o Ahmednagar

PETITIONER

VERSUS

Hirabai Shivaji Sapate,
Age-42 years, Occu-Service,
R/o 5033, Maliwada, Gondhale
Galli, Ahmednagar,

RESPONDENT

WITH
WRIT PETITION NO.490 OF 2003
WITH
CIVIL APPLICATION NO.4939 OF 2006

The Ahmednagar Municipal Council
Ahmednagar – Through its Chief
Officer, Shri Manohar S/o Narsingrao Hire,
Age-38 years, Occu-Service,
R/o Ahmednagar

PETITIONER

VERSUS

Suman Suresh Berad,
Age-46 years, Occu-Service,
R/o 950, Berad Galli, Bhingar,
Dist. Ahmednagar,

RESPONDENT

WITH
WRIT PETITION NO.491 OF 2003
WITH
CIVIL APPLICATION NO.4938 OF 2006

The Ahmednagar Municipal Council
Ahmednagar – Through its Chief
Officer, Shri Manohar S/o Narsingrao Hire,
Age-38 years, Occu-Service, PETITIONER
R/o Ahmednagar

VERSUS

Kailas Eknath Fulsaundar,
Age-50 years, Occu-Service,
R/o Burudgaon Road,
Dist. Ahmednagar, RESPONDENT

WITH
WRIT PETITION NO.492 OF 2003
WITH
CIVIL APPLICATION NO.4937 OF 2006

The Ahmednagar Municipal Council
Ahmednagar – Through its Chief
Officer, Shri Manohar S/o Narsingrao Hire,
Age-38 years, Occu-Service, PETITIONER
R/o Ahmednagar

VERSUS

Anil Vasantrao Londhe,
Age-36 years, Occu-Service,
R/o 7462, Maliwada, Shinde Galli,
Dist. Ahmednagar, RESPONDENT

Mr.Mobin Shaikh h/f Mr.V.R.Dhorde, Advocate for the petitioner.
Mr.A.S.Shelke, Advocate for the respondents.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 09/07/2015

ORAL JUDGMENT :

1. All these petitions have been Admitted by an order passed by this Court on 18/02/2003 which reads as under :-

“ Heard Shri S.B.Deshmukh, learned Advocate for the petitioners and Shri Shelke, for respondents 1, 2 and 5.

2. *The only point which is raised in these petitions is, whether the Industrial Court can review its final order, by exercising powers under section 30 sub-section (2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.*

3. *The Industrial Court, on December 30, 1994 disposed of five complaints filed by the employees working with the petitioner-Municipal Council. After dismissal of the complaints i.e. after lapse of two years i.e. on July 10, 1996, the respondents filed Review Application, seeking review of the orders dated 30th December, 1994 on the ground that while passing of the order, the Industrial Court has not considered the effect of the Standing Orders and the settlement arrived at between the employees and the Municipal Council and ignoring those provisions, relief has been granted from the date of the order and not from the date on which the respective employees*

completed 180 or 240 days continuous work respectively. The learned Member of the Industrial Court reviewed its earlier order by modification that the respondents are entitled to get the benefit of permanency for the purpose of seniority w.e.f. Completion of 180 or 240 days service in the respective years. The review application came to be allowed on 30th November, 2001. The order passed by the Industrial Court is the subject-matter of these petitions.

4. *Shri S.K. Shelke, learned Advocate has invited my attention to the judgment of the learned Single Judge of this Court reported in **2002 Vol.2 CLR page 387 in the matter of Association of Engineering Workers Mumbai Vs. A.T.V. Ltd., Mumbai**, where the learned Judge has taken a view that final order also can be reviewed.*

5. *Though in a given case, the Court or the Tribunal can review its order in the interest of justice, but while reviewing the order, ground for review must be present. Generally the Review Applications are allowed or entertained on the backdrop of the provisions contained in O 47 R 1 of the Civil Procedure Code. In the present case, the review was sought on the ground that while passing the original order, the Industrial Court has not considered the Standing Orders, which has a force of law and the settlement between the Union and the Municipal Council. These facts were well within the knowledge of the parties and having not brought to the notice of the Industrial Court at the*

time of passing of the orders, this cannot come within the purview of the review jurisdiction. This question is required to be considered at a later stage by this Court.

6. *Hence, Rule.*

7. *Hearing expedited.*

8. *Mr.Deshmukh, seeks permission to delete the names of respondent 2 to 5 in Writ Petition No.4496/2002. Permission granted.*

9. *All petitions to be heard together.*

10. *Mr.Shelke, waives service for those respondents for whom he has filed appearance.”*

2. Since the brief facts of this case have been reproduced in the above order, I do not wish to repeat the said facts. Issue is as regards whether a litigating party could prefer a review petition under the M.R.T.U. And P.U.L.P. Act, 1971, seeking review of the final judgment delivered by the Industrial and Labour Court. This issue is no longer *Res-integra*.

3. Suffice it to say that there was a difference of opinion in

between the two learned judges of this Court.

4. The learned Single Judge of this court (P.V.Kakade, J.) had held in Association of Engineering Workers Case Vs. ATV Limited, 2002 II CLR 387 that as like a review of the order passed u/s 30(2) of the M.R.T.P. And P.U.L.P. Act, 1971 was permissible, a similar power to review needs to be read into the provision even while dealing with a final judgment of the Labour Court or Industrial Court u/s 28(1) of the said Act.

5. The learned Single Judge of this Court (B.H.Marlapalle, J.), while hearing the matter in between Trimbakrao Shahurao Deshmukh and others Vs. Ahmednagar District Central Co-operative Bank Ltd., Ahmednagar, WP No.5699/2005, relied upon the judgment of the Apex Court in the case of Patel Narshi Thakarshi Vs. Pradyumansinghji Arjunsinghji, AIR 1970 SC 1273 had concluded that the power of review has to be specifically conferred in the Court by the Act. The learned Single Judge, therefore concluded that no such power was specifically conferred in the Court to review the final judgment under the M.R.T.U. And P.U.L.P. Act, 1971 akin to the provisions of review regarding an interim order provided under Section 30(2) of the said Act.

6. In the above backdrop, the learned single Judge (B.H.Marlapalle, J.), by his order dated 11/06/2004, referred the petition to the learned Division Bench of this Court for framing an issue as to whether the Industrial / Labour Court has the power to entertain the review application against the final decision in a complaint of unfair labour practices.

7. The Division Bench of this Court, by its judgment dated 21/08/2006, has distinguished between a procedural review and review on merits. It would be apposite to reproduce paragraph No.8 to 13 hereunder :-

“8. One judgment, which we must refer to in this behalf and which holds the field, is in the case of Grindlays Bank V. Central Government Industrial Tribunal – AIR 1981 SC 606. That was a case where the Tribunal made an ex parte award. The Respondents had applied for setting aside the ex parte award on the ground that they were prevented by sufficient cause from appearing when the reference was called for hearing. The Tribunal set aside the ex parte order on being satisfied that there was sufficient cause within the meaning of Order 9 Rule 13 of Civil Procedure Code and accordingly set aside the ex parte award. That award was upheld by the High Court and thereafter by the Supreme Court. It is the observations of the Apex Court in para 13 which are relevant for our purpose. The

Court specifically referred to the judgment in Nashi Thakershi's case (supra) in this para. It noted the proposition that the power of review is not an inherent power, but it must be conferred either specifically or by necessary implication. The Court held that the Tribunal does not become functus officio once the exparte award is passed. An application, so long as it is filed within 30 days of the publication of the award, would be maintainable. Then it observed in this paragraph making a distinction between a procedural review and a review on merits. The pertinent observations are as follows :-

“13. Furthermore, different considerations arise on review. The expression “review” is used in two distinct senses, namely, (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in Narshi Thakershi's case held that no review lies on merits unless a statute specifically provides for it, obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito justitiae* to prevent the abuse of its process, and such power inheres in every Court or Tribunal.”

9. *This distinction between a procedural review and review on*

merits has been maintained by the Apex Court in the subsequent judgments. Thus, in (Sangham Tape Co. Vs. Hans Raj – (2005) 9 SCC 331, the judgment in Grindlays Bank has been referred to with approval and has been explained. That was also a matter wherein an application was made for setting aside the exparte award made by the Industrial Court. The Apex court held that so long as such an application is made before the expiry of 30 days, which is the period provided for commencement of the award under section 17A of the Act, it would be maintainable. We find the same proposition reiterated later on in Kapra Mazdoor Ekta Union Vs. Birla Cotton Spinning and Weaving Mills Ltd. - (2005) 13 SCC 777. In para 19 of this judgment, the Apex Court has pointed out some of the circumstances which could be said to be those which will justify a power of review in the event of procedural errors. Undoubtedly, a review where a substantive right is not created, specifically or by implication, would not be available. Para 19 of this judgment reads as follows :-

“19. Applying these principles it is apparent that where a court or quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits (sic ascertains whether it has

committed) a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, in as much as the opposite party concerned was not heard for no fault of his, that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but

because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In *Grindlays Bank Ltd., V. Central Govt. Industrial Tribunal* it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be reheard and decided again.”

10. *In view of what is stated above, it is clear that there is a distinction between the procedural review and the review on merits. As far as the review on merits is concerned, it has got to be either specifically provided or will have to be read into the provision by implication. In our view, the provision of section 30 is very clear. A power of review has been conferred with respect to interim order under sub-section (2) of that section, but it does not so specifically provide when it comes to final order to be passed under that section. It is also for the reason that finality has been conferred on the orders passed by the Industrial Court and/or the Labour Court under section 28(7) of the MRTU and PULP Act. It is also material to note that the complaints are required to be decided as far as possible within a period of 6 months from the date of receipt of the complaint which is also to be filed within 90 days from the occurrence of the unfair labour practice. These are the provisions in section 28(1) and (2) of the MRTU and PULP Act. The implication is that the unfair labour complaints, when filed, are required to be decided expeditiously*

and they have to have finality. Obviously, if on a substantive decision a review was implied, that would lead to a further delay in the decision making process and therefore by any such implication, we cannot read that the substantive review was available under section 30 of the MRTU and PULP Act.

11. In the circumstances, we allow this petition and hold that the Labour/Industrial Courts do not have the power to entertain a review application against a final decision in a complaint of unfair labour practice unless it suffers from a procedural defect as pointed out in para 19 of the judgment in Kapra Mazdoor Ekta Union's case (supra). We therefore hold that the view taken by the learned Single Judge (Kakade J.) in Association of Engineering Workers case (supra) is not the correct one. In the facts of the present case, there was no occasion for any such procedural review. What is canvassed by Mr.Thorat, learned counsel appearing for the Respondent Bank, to point out the contradiction between para 20 of the order and the operative part, cannot be said to be a procedural error which can justify a review application.

12. In the circumstances, we allow this writ petition and set aside the order passed by the Industrial Court holding that the review application was maintainable. The order dated 16th June 2000 will accordingly stand quashed and set aside. The stay granted earlier will also stand vacated.

13. Although the petition is disposed of, we record the statement of Mr.Thorat that out of 21 employees, who had filed the complaints, 15 have withdraw the complaints and have been deleted from the proceedings and others have retired. He further

makes a statement that the Bank may decide to challenge the order passed by the Industrial Court on the original complaint on 13th April 1999. His only submission is that in such an eventuality, the time, which has gone in the meanwhile, should not be read against the Bank. We note the submission of Mr.Thorat. It will be for the Bank to take the decision and if so advised, it can file a writ petition. If the petition is so filed, the Court concerned will definitely consider the explanation with respect to delay.”

8. It is, therefore, settled that in relation to a judgment of the Labour Court or the Industrial Court delivered u/s 28(1) of the M.R.T.U. and P.U.L.P. Act, 1971, a review could be maintained in the event it is restricted to indicating a procedural lapse or procedural error, leading to the judgment.

9. As regards a review on merits, the Division Bench dealt with this aspect as to whether such power of review, touching the merits of the judgment, needs to be specifically provided or whether it could be read into the provision by implication. Considering that the power to review an interim order u/s 30(2), was specifically provided, it was noted that the Act did not provide for reviewing the final judgment on its merits.

10. It was, in these circumstances, that the Division Bench concluded that the Labour / Industrial Courts do not have the power to entertain a review application against a final decision in a Complaint of unfair labour practices touching the merit of the judgment unless it indicates that the judgment suffers from a procedural defect as is held in paragraph No.19 of the judgment in the Kapra Majdoor Ekta Union Vs. Birla Cotton Spinning and Weaving Mills Ltd., (2005) 13 SCC 777. It was thus concluded that the view taken by the learned Single Judge (P.V.Kakade , J.) in the Association of Engineering case (supra) was not the correct view.

11. With the Law being settled as above, I have heard Mr.R.N.Dhorde, the learned Senior Advocate for the petitioners and Mr.A.S.Shelke alongwith Mr.S.K.Shelke, learned Advocates for the respondents.

12. After considering their submissions, it is apparent that the review applications filed by the Respondents before the Industrial Court, seeking review of the judgment dated 30/12/1994, allowing the complaints, was a review application touching the merits of the judgment. The permanency granted w.e.f. 30/12/1994 was sought to be reviewed in the light of the claim that the effect of such

permanency should have been granted immediately upon completion of 240 days in the continuous and uninterrupted service of the employee under Standing Order 4(C) of the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946. It is evident that the said review judgment dated 30/11/2001 is a result of the Industrial Court having exercised power of review on the merits of the judgment. The review application did not make out a case as to fall within 'procedural review' as is held by the Division Bench in the case of Trimbakrao Shahurao Deshmukh (supra).

13. As such, the impugned judgment dated 30/11/2001 in Review Application Nos. 13 to 17 of 1996 are quashed and set aside. The review applications are, therefore, dismissed.

14. It is not disputed that the judgment dated 30/12/1994 delivered in Complaint (ULP) Nos. 184/1990, 182/1990, 77/1990, 242/1990, 181/1990 and 182/1990 was subject matter of review. Now that the review judgment has been set aside, the aggrieved workers are likely to be rendered remediless due to passage of time as a writ petition before this Court for challenging the said judgment dated 30/12/1994 could be barred on the ground of delay.

15. As such, the pendency of the review petitions from 1996 and the pendency of these petitions from February 2002 till the delivering of this judgment today, shall be a good ground for condonation of delay in the event the aggrieved workmen challenge the said judgment dated 30/12/1994 before this Court.

16. In so far as the criminal writ petitions preferred by the petitioners herein that are pending before this Court and the criminal (ULP) complaints preferred by the workmen that are pending before the Labour Court, Ahmednagar are concerned, they can be disposed of after the litigating sides make a request before the respective Courts in the light of the impugned review judgments having been set aside today.

17. In the light of the above, these petitions are allowed and Rule is made absolute in the above terms. Pending civil applications, do not survive and are disposed of.

(RAVINDRA V. GHUGE, J.)