

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8291 OF 2015

- 1 General Manager/Manager,
Atul Electro Formers Ltd.
B7, MIDC, Ahmednagar.
- 2 Shri. Nitin P. Kibe,
Managing Director,
Atul Electro Formers Ltd.,
11, Kubera Estate, 408/14, CTS 10,
Gulekdi Road, Pune 411 037.

PETITIONERS

VERSUS

- 1 Shri. Gajanan Rambhau Ambhore,
A/p Vadgaon Gupta, MIDC,
Ahmednagar.
- 2 Shri Bhaskar Jaywant Thube,
R/o Dhawan Wasti, Tal &
Dist. Ahmednagar.
- 3 Shri. Babasaheb Madhukar Pandkar,
R/o Akash Ganga Apptt.
Near Bharat Gas Godown,
Pipeline Road, Ahmednagar.
- 4 Shri Sharad Abaji Deshpande,
R/o Ganesh Chowk Savedi Gaon,
Tal & Dist. Ahmednagar.
- 5 Shri Shriram Anant Vizile,
R/o Gajanan Colony Nav Nagapur,
MIDC, Tal & Dist. Ahmednagar.
- 6 Shri. Rajendra Gopinath Pawar,
R/o Ganesh Chowk, Bolegaon Phata,
MIDC, Tal & Dist Ahmednagar.
- 7 Shri. Jaidev Ramesh Satpute,

- R/o Ganesh Chowk, Savedi Gaon,
Tal & Dist. Ahmednagar.
- 8 Shri. Premgir Bhekagir Gasavi,
C/o Mohan Shewale,
A/p Wadgaon Gupta,
Tal & Dist. Ahmednagar.
- 9 Shri. Vinayak Harinarayan Kshirsagar,
R/o Rucha Row Housing Society,
Ganesh Chowk, Bolegaon, MIDC,
Tal & Dist. Ahmednagar.
- 10 Shri. Anjankumar Dattatray Raut,
A/p Bramhani, Tal Rahuri,
Dist. Ahmednagar.
- 11 Shri. Bhimraj Laxminarayan Nikam,
A/p Vadgaon Gupta,
Tal & Dist. Ahmednagar.
- 12 Shri. Govind Dada Ghorpade,
R/o Plot No. 174, Gandhinagar,
Bolhegaon, MIDC,
Tal & Dist. Ahmednagar.
- 13 Shri. Anil Dada Ghorpade,
R/o Plot No. 174, Gandhinagar,
Bolhegaon, MIDC,
Tal & Dist. Ahmednagar.
- 14 Shri. Gajanan Balkrishna Chavan,
R/o Renuka Nagar, Near Mahadev Mandir,
Bolhegaon Phata, MIDC,
Tal & Dist. Ahmednagar.
- 15 Shri. Dattatray Tryambak Bhabad,
R/o Near Mahadev Mandir,
Bhagwan Baba Chowk, Nirmalnagar,
Tal & Dist. Ahmednagar.
- 16 Shri. Dharmendra Vasantao Surve,
R/o House No. 5, Pragatinagar Navnagapur,

Gajanan Colony, MIDC,
Tal & Dist. Ahmednagar.

- 17 Managing Director,
Atul Sugar Screens Pvt. Ltd.
House No. 657, S.No. 81, Hissa No. 3/1
Village Shivne, Pune-411 023.

RESPONDENTS

WITH
WRIT PETITION NO. 8302 OF 2015

- 1 General Manager/Manager,
Atul Electro Formers Ltd.,
B7, MIDC, Ahmednagar.
- 2 Shri. Nitin P. Kibe,
Managing Director
Atul Electro Formers Ltd.,
11, Kubera Estate, 408/14, CTS 10,
Gulekdi Road, Pune 411 037.

PETITIONERS

VERSUS

- 1 Shri. Prashant Sudhakar Sonawane,
R/o Bhistbag Naka,
Shivpark Colony,
Savedi, Ahmednagar.
- 2 Shri. Gahininath Shankar Bade,
R/o Chaitanya, Navnathnagar,
Raghwendra Swaminagar,
Bolhegaon, Ahmednagar.
- 3 Shri. Deepak Janrao Thakare,
R/o 11 Panchavati Colony/Nagar,
Bhistbag, Pipeline Road,
Ahmednagar.
- 4 Shri. Bhalchandra Prakash Kale,
R/o A/p Pimpalgaon, Malvi,
Tal & Dist. Ahmednagar.

5 Shri Nitin D. Kote
R/o At and Post Wadi, Tq. Rahata,
Dist. Ahmednagar.

6 Managing Director.
Atul Sugar Screens Pvt. Ltd.
House No. 657, S. No. 81,
Hissa No. 3/1, Village Shivne,
Pune – 411 023.

RESPONDENTS

Mr.V.N.Upadhye, Advocate for the petitioners.

Mr.Ashok Patil h/f Mr.A.R.Joshi, Advocate for respondent Nos. 1 to 16 (Respondent Nos.1 to 5 in WP No.8302/2015)

Mr.Varun R.Joshi, Advocate for respondent No.17 (Respondent No.6 in WP No.8302/2015)

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 12/08/2015

ORAL JUDGMENT :

1. Rule. Learned Advocates waive service on rule for the respective parties. Rule is made returnable forthwith and heard finally by the consent of the parties.

2. The first petition is filed by an Establishment, which is respondent No.1 in Complaint (ULP) No.8/2015 before the Labour Court at Ahmednagar.

3. The second petition is filed by the same Establishment which is respondent No.3 in Complaint (ULP) No.7/2015.

4. Both the petitioners are aggrieved by the same judgment and order dated 30/06/2015 delivered by the Industrial Court, Ahmednagar in Revision (ULP) No.25/2015.

5. Since the petitioners in these two petitions are party respondents to the said two complaints and the respondent employees in these two petitions are the complainants in the said complaints, I have taken up both these petitions for final hearing together.

6. In view of the order that I intend to pass, I am not adverting to the lengthy submissions of the litigating sides, in their entirety.

7. Mr.A.V.Patil alongwith Mr.A.R.Joshi appearing for the respondents employees have placed reliance upon the judgment of the Division Bench of this Court in the matter of MSRTC Vs.Yadao and others, 1985(II) LLN 322.

8. Mr.V.R.Joshi, learned Advocate appears on behalf of respondent No. 17 Establishment in the first petition and respondent No.6 Establishment in the second petition. He relies upon the following judgments :-

- a. *Vividh Kamgar Sabha Vs. Kalyani Steels Limited, 2001(1) CLR 532*
- b. *Cipla Limited Vs. Maharashtra General Kamgar Union, 2001 LLR 305*
- c. *Raigad Mazdoor Sangh Vs. Vikram Ispat and others, 2001(90) FLR 568*
- d. *India Seamless Metal Tubes Ltd., (Tubes Division) Ahmednagar Vs. Sunil Rambhau Iwale and others, 2001(iii) CLR 728*
- e. *Hindustan Coca-cola Bottling S/W Pvt.Ltd., Vs. Bhatiya Kamgar Sena and others, 2001(iii) CLR 1025*
- f. *Hydroflex (India) Vs. A.D.Shelar and others, 2005(I) CLR 48*
- g. *Mumbai Girni Kamgar Union Vs. General Manager, Mumbai Textile Mills, 1992(II) CLR 314*
- h. *Association of Engineering Workers Vs. Crompton Greaves Ltd., 2001(II) CLR 64*
- i. *Kirloskar Oil Engines Ltd., Vs. U.B.Dharurkar, 1986 (II) LLN 1009*
- j. *Premier Automobiles Ltd., Vs. Eng.Mazdoor Sabha, 1982 Vol.II LLJ 73.*

9. Having considered their submissions, I have gone through the petition paper book with their assistance. It is not disputed that Complaint (ULP) No.7 and 8/2015 are pending before the Labour Court at the stage of framing of issues. An interlocutory order below Exh.U-2 under section 30(2) of the MRTU and PULP Act, 1971 was delivered by the Labour Court on 18/05/2015 in both the complaints. The applications for interim relief were rejected and the status-quo

granted earlier has been vacated.

10. The original complainants, who are employee respondents herein, preferred Revision (ULP) Nos.22/2015 and 25/2015 respectively, which has led to the impugned judgment dated 30/06/2015 by which the interim order passed by the Labour Court dated 18/05/2015 were quashed and set aside and the Labour Court was directed to hear the applications Exh.U-2 afresh. The same was directed to be decided within 3 months from the date of the impugned order.

11. The petitioner in the first petition claims of having resorted to a legal closure. It contends that the factum of closure and the justifiability in resorting to the closure cannot be gone into by the Labour Court under the MRTU and PULP Act, 1971.

12. The contention of respondent No.17 in the first petition and respondent No.6 in the second petition is that it has no relationship with the original complainants. (Complaint (ULP) Nos.7/2015 and 8/2015 pending before the Labour Court.) There is no employer and employee relationship between the original complainants and the said respondent which is respondent No.3 in both the complaints.

13. Mr.V.R.Joshi, learned Advocate, has therefore placed reliance upon the above referred judgments in the light of the contentions and averments set out in the written statement to fortify his contention that both the complaints are not maintainable before the Labour Court in the light of the ratio laid down by the Apex Court. He hastens to add that the said complaints would not be maintainable against the said respondent No.3 in the said complaints. At best, it may be tenable against the petitioners.

14. Mr.A.V.Patil has strenuously submitted that if the closure could be proved to be in non-observance of the Law applicable, the complainants would be entitled to all incidental and consequential benefits, which could either be reinstatement with continuity and full back wages or compensation in lieu of the said reliefs.

15. The litigating sides before the Labour Court as well as before this Court have produced voluminous documents in support of their contentions. Complaint (ULP) Nos. 7/2015 and 8/2015 are pending final adjudication. Oral and documentary evidence is yet to be recorded. Disputed questions and contentious issues in this backdrop cannot be decided by this Court in its writ jurisdiction and more so while considering a challenge to an interlocutory order.

16. It is noteworthy that the Industrial Court has directed the rehearing of the applications Exh.U-2 in both these pending complaints.

17. The grievance of the petitioner in both these petitions is that the Industrial Court, while directing the Labour Court to rehear the application for interim relief within 3 months, has created an embargo upon the petitioners from shifting/alienating their plant, machineries and raw material elsewhere.

18. Mr.Upadhye, learned Advocate has contended that pursuant to the closure resorted to by the petitioner and when the legal requirements as provided under Chapter V-A of the I.D.Act, 1947 have been complied with, such a direction could not have been issued in the light of the judgment of this Court in the case of Bhor Industries Ltd., Vs.State of Maharashtra and others, 2001 Vol.1 LLJ 106 and also Mumbai Girni Kamgar Union Vs. General Manager, Mumbai Textile Mills, 1992(II) CLR 314.

19. In contra distinction to the submissions of Mr.Upadhye, Mr.Patil submits for the employees that equities have to be balanced

and it should not so happen that after the complaints are allowed, the Labour Court is handicapped from passing any consequential order and granting incidental reliefs only because the plant and machinery have been disposed of by the employer. He, therefore, submits that no harm would be caused to the petitioners if the said direction issued by the Industrial Court in the impugned judgment is maintained.

20. Considering the rival submissions, the issue turns upon whether the closure could be said to be legal, whether the Labour Court could consider the justifiability of the closure under the MRTU and PULP Act, 1971 and as to whether the Labour Court could direct the petitioner/employer to lift the closure and restart the factory. So also, the issue would be as to whether the original complainants are entitled for any compensation in the event the retrenchment compensation and legal dues paid to the said employees falls short of the payable amounts under the provisions of the Law. The complaints therefore will have to be finally decided.

21. The Industrial Court has imposed a condition by way of an embargo upon the petitioner vide Clause No.4 in the impugned order dated 30/06/2015. Said clause No.4 reads as under :-

“4. Ad-interim granted by this court on 2.6.2015 regarding shifting of plant machineries and raw material elsewhere from Ahmednagar plant shall continue till disposal of interim relief application by Labour Court.”

22. In the light of the ratio laid down by this Court in the Bhor Industries case (supra) and in the light of the fact that Rs.50,00,000/- have been disbursed to the employees as discharge compensation under Chapter V-A of the Industrial Disputes Act, 1947, as also gratuity amount, the said embargo is rendered unsustainable. Ends of justice would be met by directing the petitioners to deposit an amount of Rs.50,00,000/- (Rs. Fifty lac) before the Labour Court or furnish a Nationalized Bank Guarantee for the said amount, which shall be retained and shall not be released until disposal of both the complaints and thereafter till the Labour Court passes a specific order to release the same.

23. To the extent of the second petition, the direction of the Industrial Court in Clause IV is quashed and set aside.

24. Mr.Upadhye and Mr.Patil are in unison in making a request that the main complaints be decided by the Labour Court as

expeditiously as possible and preferably within a period of 1 year. Mr.V.R.Joshi, learned Advocate submits that after the issues are cast, the issue as regards whether both the complaints are maintainable against the Establishment / Respondent No.17 in the first petition and respondent No.6 in the second petition, be decided peremptorily since the said Establishment has been unnecessarily dragged into the litigation.

25. Considering the above request and which I find to be proper and acceptable, both the impugned judgments of the Industrial Court dated 30/06/2015 in Revision (ULP) No.25/2015 and 22/2015 are quashed and set aside. Both these petitions are, therefore, partly allowed.

26. The Labour Court shall endeavour to decide both the complaints, as expeditiously as possible, and preferably on or before the 31/08/2016. Respondent No.3 / Establishment in both these complaints will be at liberty to seek damages in the event it is concluded that the said Establishment has been unnecessarily dragged into litigation.

27. Needless to state, considering the ratio laid down by this Court

in paragraph No.12 of the Permanent Magnets Vs.Vinod Vishnu Wani and others, 2002(3) Mh.L.J. 413, the Labour Court shall frame issues in accordance with the contentions and pleadings of the complainants and the respondents and shall deal with all the issues together in the light of the time frame ordered by this Court.

28. The Labour Court shall not be influenced by any of the observations set out in this judgment, while deciding the complaints. The litigating sides are precluded from seeking adjournments on trivial and unreasonable grounds and shall co-operate for the disposal of the two complaints as per the time frame.

29. In the light of the order passed and in the light of the ratio laid down in the case of Bhor Industries (supra), the original petitioners or their Union shall not cause an interference in the activities of the petitioners concerning the petitioner factory.

30. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)