

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.7651 OF 2014

Akhil Bharatiya General Kamgar UnionPetitioner

V/s.

1.M/s. Sneha Apparels and Ors.Respondents.

Mr. N. M. Ganguli, Advocate for the petitioner.

Mr. Arshad Shaikh I/b S. M. Shettiyar, Advocate for the respondent nos.4 and 5.

CORAM : Smt. R. P. SondurBaldota, J.

DATE : 30th July, 2015.

P.C.:

1. This petition arises out of the award dated 19th September, 2013 by which the Industrial Tribunal rejected the demand of 19 workmen for reinstatement with full back wages and continuity of service. The petitioner is a union representing the 19 workmen. Respondents no.1 to 4 are described as the employers and respondent no.5 is described as a partner. The 19 workmen claimed to be employed with respondents no.1 to 4 who were alleged to be sister concerns carrying on the same manufacturing activities. According to the petitioner the management of all the concerns was same and the 19 workmen were working in all the concerns. Their services were transferable from one concern to another. The statement of claim in the Reference does not specify which of the 19 workmen was working with which concern. The Tribunal dismissed the Reference against

respondent nos.1 to 3 for want of service of notice by the petitioner upon them. The Reference was contested only by respondent nos.4 and 5.

2. In its statement of claim the petitioner alleged that services of the 19 workmen were orally terminated with effect from 10th October, 2003. The termination was illegal since the workmen were not served with notice of termination, they were not paid or offered any notice pay or retrenchment compensation, no seniority list was displayed on the notice board and the principle of last come first go was not followed. Also according to the petitioner there was sufficient work available with the respondents and as such they could have continued the 19 workmen in service. Therefore the petitioner served demand notice dated 9th December, 2003 upon the respondents alleging that dismissal from service of the workmen was in contravention of section 25(F) (G) (H) of the Industrial Disputes Act. The notice culminated into Reference (IT) No.42 of 2003.

3. Respondent nos.4 and 5 on receipt of notice appeared in the Reference and filed their written statement. They claimed that respondent nos.1 to 3 were three contractors who were specialized in stitching of ready-made garments. They used to stitch garments for respondent no.4 as well as other companies. The first respondent M/s. Sneha Apparels was owned by one Binu Abraham, the second respondent M/s. Noah Garments was owned

by one Mathew Joseph and third respondent M/s. Hi-Tech Fashions was owned by one John. Kunnel. The three contractors at the end of the month depending upon the work done by them used to raise bills against respondent no.4 and were paid accordingly. Respondents no.4 and 5 stated that there was no functional integrality or nexus between respondent no.4 and respondents no.1 to 3. The 19 workmen were in fact working with respondents no.1 to 3. In the month of July, 2003 they became members of Amar Bavta Kamgar Union which on their behalf filed Complaint (ULP) No.469 of 2003, inter alia, for restraint order against respondents no.1 to 3 from termination of services of the workmen. Later settlement under section 18(3) r/w. rule 62 of the Industrial Disputes Act and Rules was arrived at between the workmen and respondents no.1 to 3 after which the Union withdrew the complaint from the Industrial Tribunal on 7th November, 2003. Under the settlement the workmen were to resign from services after accepting their retrenchment dues. Accordingly all the employees resigned and collected their dues on 10th October, 2003. Soon thereafter respondents no.1 to 3 closed down their businesses. They were closed down on 25th October, 2003, 31st October, 2003 and 20th October, 2003 respectively. Thereafter respondent no.4 received letter dated 9th December, 2003 from Akhil Bharatiya General Kamgar Union claiming that some of its employees had become its owners and demanded their reinstatement in service. Respondent no.4 by its Advocate's letter dated 16th December, 2003 denied the contention and disputed the

claim.

4. The Industrial Court, by the impugned award, has held that the petitioner failed to establish that respondents no.1 to 4 are sister concerns and that the termination of the workmen was illegal in anyway. Therefore it dismissed the reference.

5. The allegations of illegal termination were made against respondents no.1 to 4 jointly. As such the reference could not have been maintained in the absence of any one of them. The petitioner was unable to serve the reference upon respondents no.1 to 3 and hence the reference was dismissed against them. With the dismissal against respondent nos.1 to 3 the reference could not have been maintained against respondent no.4. Next as noted by the Industrial Court neither the statement of claim nor the evidence led by the petitioner disclosed as to who terminated the services of the workmen. Respondents no.4 to 5 in their written statement stated details of the ownership of respondents no.1 to 3 and produced documents relating to the work given to them by respondent no.4. The documentary evidence produced by respondent no.4 and 5, was held by the Industrial Court, to indicate that respondent nos.1 to 3 had independent businesses who were taking contract of work from respondent no.4. As such there was no functional integrality between respondents no.1 to 3 and respondent no.4. The next clinching evidence to reject the claim of the petitioner was the settlement arrived at between the

very workmen through another union by name Amar Bavta Kamgar Union and respondents no.1 to 3 in complaint (ULP) No.469 of 2003 relating to termination of their services. The settlement was suppressed by the petitioner in its statement of claim and a false dispute raised. In the circumstances there can be no infirmity in the impugned award. Therefore the petition is dismissed with costs.

(SMT. R. P SONDURBALDOTA, J.)