

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6844 OF 2013

M/s Metal Box India Ltd

Petitioner

Vs

Shri Arun Hari Lokhande

.. Respondent

Mr.Kiran Bapat i/b M/s Desai & Desai Associates, Advocate for
Petitioner.

Mr. N.M. Ganguli a/w Ms Karuna Yadav Advocate for Respondent.

CORAM : R.G.KETKAR,J.

DATE : 29/01/2015

PC:

1. Heard Mr. Kiran Bapat, learned counsel for the petitioner and Mr. N.M.Ganguli, learned counsel for the respondent at length.

2. Rule. Mr.Ganguli waives service for the respondents. At the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

3. By this Petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 8.11.2012 passed by the learned Member, Industrial Court, Mumbai in Complaint (ULP) No.275 of 2009 as also the Judgment and order dated 18.3.2013 in Restoration Application (ULP) No.11 of 2012. By order dated 8.11.2012, the Industrial Court allowed the complaint filed by the respondent and declared that the petitioner herein has engaged in unfair

labour practice covered by Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, "Act") and to cease and desist from the said unfair labour practice. The Industrial Court further directed the petitioner to implement the Award dated 15.9.2003 made in Reference (IDA) No. 23 of 1993 within one month from the date of the order. The petitioner filed application dated 4.12.2012 for restoration of the complaint on the ground that its Advocate was not heard while deciding the complaint on 8.11.2012. By order dated 18.3.2013, the Industrial Court dismissed the application. It is against these orders, the petitioner instituted the present petition.

4. In support of this petition, Mr Bapat submitted that the Advocate representing the petitioner was not well. He, therefore, could not remain present on 8.11.2012 when Complaint (ULP) No.275 of 2009 was decided. The said fact was set out in paragraph 3 of the application for restoration. He submitted that instead of dismissing the application for restoration, the Industrial Court should have imposed costs and restored the complaint. He submitted that the impugned Award dated 8.11.2012 is an *ex parte* Award. The impugned orders are, therefore, required to be set aside and the matter may be remitted for fresh decision according to law. In support of this submission, he relied upon a decision of this Court in the case of

Hindustan Motors Mfg C.V. Sadashiv Tuklaram Salunke and Ors, 2009 I C.L.R. 1065.

5. On the other hand, Mr Ganguli supported the impugned orders. He submitted that earlier Reference (IDA) No.23 of 1993 was decided on 15.9.2003. The petitioner, herein, was directed to reinstate the respondent with full back wages and continuity of service with effect from 25.3.1992. The petitioner did not implement that Award. The respondent approached the petitioner for reinstatement. He was not reinstated. The respondent, therefore, filed Complaint (ULP) No.28 of 2007 under section 28 read with Item 9 of Schedule IV of the Act for implementation of the Award dated 15.9.2003 in Reference (IDA) No.23 of 1993. Mr.Ganguli submitted that petitioner examined R.S.Srivastav. He deposed that he is not aware as to whether the said Award was challenged by the company (petitioner herein) before the High Court. In short, Mr Ganguli submitted that since 2003 the respondent is not reinstated by the petitioner. He further submitted that the respondent's Advocate was heard on 2.11.2012. On that day, the petitioner's Advocate was absent. In view thereof, hearing of the complaint was adjourned to 8.11.2012. Even on 8.11.2012, the petitioner's Advocate was absent and the Industrial Court decided the Complaint on 8.11.2012. For all these reasons, he submitted that no case is made out for interfering in the impugned orders in exercise of

powers under Articles 226 and 227 of the Constitution of India.

6. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the respondent had earlier succeeded before the Labour Court on 15.9.2003. The petitioner did not implement that Award. The respondent, therefor, filed Complaint (ULP) No.28 of 2007 which was re-numbered as Complaint (ULP) No.275 of 2009. From perusal of the order dated 8.11.2012 it also appears that arguments of the respondent's Advocate were heard on 2.11.2012. The petitioner's Advocate was not present. The Industrial Court, therefore, kept the matter for arguments of the petitioner on 8.11.2012. Even on that date, the petitioner's Advocate remained absent. The Industrial Court, thereafter proceeded to decide the complaint. The petitioner filed application for restoration on 4.12.2012. In paragraph 3 it is asserted as under :

“The applicant states that the matter was then posted to 8.11.2012. The applicant states that the Advocate on record was not available on 8.11.2012 due to his indifferent health and accordingly he had informed to the Officer of the Applicant Company to mention about the same before this Honourable court. The applicant states that the officer of the company was to attend the matter on 8.11.2012 but due to his personal difficulty could not attend the Court.”

After perusal of the impugned order dated 8.11.2012, it is apparent that the petitioner's Advocate was absent on 2.11.2012

and 8.11.2012 and without considering the argument of the petitioner, the Industrial Court decided the complaint. In my opinion, having regard to the reasons set out in paragraph 3 of the application for restoration, the Industrial Court should have restored the complaint by imposing costs. Instead of adopting that course, the Industrial Court proceeded to dismiss that application.

7. In view thereof, the impugned orders cannot be sustained and are liable to be quashed and set aside, thereby restoring Complaint (ULP) No.275 of 2009 to the file of the Industrial Court subject to payment of costs of Rs.15,000/- to the respondent within two weeks from today. The costs shall be either paid to the respondent or deposited in the Industrial Court. Payment/deposit of costs is a condition precedent.

8. It is made clear that within two weeks from today, if costs are not paid/deposited, the impugned orders shall stand revived without further reference to the Court.

9. Upon payment of the costs within two weeks from today, the parties shall appear before the Industrial Court on 16.2.2015. The Industrial Court is requested to decide the Complaint afresh within two weeks from the date of appearance of the parties. All contentions on merits of the complaint are expressly kept open.

10. Rule is made absolute in the aforesaid terms.

(R.G.KETKAR, J.)