

JPP

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

CIVIL WRIT PETITION NO. 7899 OF 2015

M/s. Thermax Limited.

... Petitioner.

V/s.

Mr. Keshav H. Golave & Ors.

... Respondents.

Mr. K.S. Bapat i/b. Avinash Fatangare for the Petitioner.

Mr. Mihir Desai, Sr. Advocate i/b. Swaraj Jadhav for Respondents
1 & 2.

CORAM : N.M. JAMDAR, J.

DATE : 29 SEPTEMBER, 2015.

ORAL ORDER :-

Heard learned Counsel for the parties. Rule. Rule made returnable forthwith. Respondents waive service. By consent, taken up for final disposal.

2. By this Petition, the Petitioner challenges the order passed by the Industrial Court, Pune dated 8 July 2015, permitting the Respondents to be represented through a defence representative of their choice to defend themselves in the inquiry instituted by the Petitioner.

3. The Respondents filed a Complaint (ULP) No. 195 of 2015 in the Industrial Court, Pune under Items 5,7,9 and 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971. In the complaint the Respondents sought a declaration that the Petitioner is engaged in unfair labour practice and to quash and set aside the charge-sheet on the ground that it is vague. An application for interim relief was also taken out, in which one of the prayer, was to permit the Respondents to appoint a defence representative of their own choice and not to permit one Mr. B.B. Pawar, who is representing the Petitioner – Management in the enquiry.

4. The Industrial Court after considering the contentions and the decisions cited, concluded as under :-

“ 19. Now coming to the facts in hand, it can be seen that Respondent – Company has engaged services of Shri B.B. Pawar, who is Masters in Personnel Management & Consultant, and thus is trained person, and therefore, in order to have parity the complainants are also necessary to be permitted to have a trained person to defend they themselves in the domestic enquiry. Under the circumstances, I am of the opinion that if the complainants are not permitted to engage the services of trained persons there is likelihood of unfair result. Consequently, in order to have a fair opportunity to defend they themselves they are necessary to be allowed to have trained defence representative.”

5. Accordingly, the Industrial Court permitted the Respondents to engage a legally trained person to represent them in the enquiry. In view of this order, the Industrial Court did not consider the question as to whether Mr. B.B. Pawar should be prevented from appearing. Thus, the foundation of the impugned order is that since Mr. B.B. Pawar is a legally trained person, in fairness, the Respondents should be permitted to be represented through a representative of their choice, who is also legally trained.

6. The learned Counsel for the Petitioner submitted that the Model Standing Orders applicable to the Petitioner – Management do not permit a delinquent to be represented through a legal professional. He submitted that however, considering the facts and circumstances and the stage at which the proceedings are and without prejudice to the rights and contentions in other appropriate cases, the Petitioners are not insisting upon appointment of Mr. B.B. Pawar as their representative. He also submitted, on instructions, that the Petitioner will engage a Management representative from the employment of the Company without qualifications in law or personnel management. The statements made by the learned Counsel for the Petitioner, on instructions, are accepted. In view of this statements made by the learned Counsel for the Petitioner on instructions, the foundation upon which the impugned order is

based, does not survive. In view of the statement made by the learned Counsel for the Petitioner that they will engage only a person within the management, the Respondents will also not engage any outsider except a member of the trade union operating in the Petitioner's establishment.

7. The Writ Petition is accordingly disposed off as under :-

(i) The Petitioner will appoint any officer in the employment of the Petitioner – Company without qualifications in law and/or personnel management, as their representative in the enquiry.

(ii) The impugned order accordingly stands modified and Clauses (2) and (3) are quashed and set aside.

(iii) It will be open to the Respondents to appoint a defence representative of their own choice from the employees of the Petitioner – Company or a representative of a trade union operating in the Petitioner - management.

8. Rule made absolute in the above terms. No order as to costs.

(N.M. JAMDAR, J.)

C E R T I F I C A T E

Certified to be true and correct copy
of the original signed Order.