

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3140 OF 2003

Shrigonda Sahakari Sakhar Karkhana
Ltd., Shrigonda Factory,
Taluka Shrigonda, Dist.Ahmednagar,
Through its Managing Director,
Shri Vinayak Sahebrao Bhoite,
Age-55 years, Occu-Service,
R/o Shrigonda Factory,
Taluka Shrigonda, Dist.Ahmednagar -- PETITIONER

VERSUS

Shrigonda Taluka Sakhar Kamgar Union,
"Shramik" Tilak Road, Ahmednagar,
Through its General Secretary -- RESPONDENT

WITH
WRIT PETITION NO.2199 OF 2004

Shrigonda Sahakari Sakhar Karkhana
Ltd., Shrigonda Factory,
Taluka Shrigonda, Dist.Ahmednagar,
Through its Managing Director,
Shri Vinayak Sahebrao Bhoite,
Age-55 years, Occu-Service,
R/o Shrigonda Factory,
Taluka Shrigonda, Dist.Ahmednagar -- PETITIONER

VERSUS

1. Dadasaheb Babasaheb Barguje,
Age-50 years,
2. Dnyandeo Genuji Girankar,
Age-48 years,
3. Balwant Nivrutti Chor,
Age-52 years,

4. Appasaheb Baburao Shende,
Age-54 years,
5. Jalindar Appasaheb Dhaygude,
Age-47 years,
6. Gajanan Namdeo Kothimbire,
Age-55 years,
7. Chandrakant Gangadhar Gaikwad,
Age-46 years,
8. Raghunath Jyotiba Nalawade,
Age-51 years,
9. Rajaram Pandurang Kale,
Age-53 years,
10. Maruti Dagadu Khamkar,
Age-45 years,
11. Ramchandra Dhondiba Sarode,
Age-52 years,
12. Baban Dasharath Mhaske,
Age-47 years,
13. Shivaji Parvatrao Zende,
Age-53 years,
14. Pandharinath Kisanrao Mohite,
Age-46 years,
15. Balasaheb Vitthal Unde,
Age-44 years,
16. Gena Nagu Mande,
Age-50 years,
17. Narayan Dattu Shitole,
Age-46 years,

All Occu-Service,

R/o Shrigonda Sahakari Sakhar
Karkhana Ltd., Shrigonda Factory,
Tal.Shrigonda, Dist.Ahmednagar

-- RESPONDENTS

Mr.V.D.Hon, Sr.Counsel h/f Mr.A.V.Hon, Advocate for the petitioner.
Mr.A.S.Shelke, Advocate for the respondent in WP No.3140/2003.
Mr.P.L.Shahane, Advocate for respondent Nos. 1 to17 in WP
No.2199/2004.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 21/10/2016

ORAL JUDGMENT :

1. The petitioner/Sugar Factory is aggrieved by the judgment and order dated 16/10/2002 delivered by the Industrial Court, Ahmednagar by which Complaint (ULP) Nos.171/1990 and 35/1990 have been allowed.

2. The second petition arises from the same impugned judgments filed by a small group of 17 employees, who are said to be already covered by the judgment of the Industrial Court in the Complaint filed by the respondent/Union herein. The second petition is not on board and has been taken on board by the consent of the parties considering that the first petition, which is being heard today, would cover all the employees of the petitioner/sugar factory represented by the respondent/approved union.

3. Mr.Hon has strenuously criticized the impugned judgment by placing reliance upon his pleadings in the memo of the petition and the grounds raised below paragraph Nos.8(i) to (xii).

4. I find that this Court had heard the learned Advocates for the respective sides and has passed a speaking order dated 16/06/2004 by which the petition was admitted only in the light of the contention that Section 21 of the MRTU and PULP Act, 1971 would render the complaint untenable in law. Interim relief has been specifically refused to the petitioner. The order of this Court dated 16/06/2004 reads as under :-

“It is admitted that the respondent No.1 is registered as representative union and the employees of the petitioner are covered by the said representation. On the face of the provisions of Section 21 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, Complaint (ULP) No.35 of 1990 was not tenable.

2. Hence, Rule.

3. Rule is expedited.

4. Shri A.S.Shelke, learned Advocate, waives service for the respondent no.1 Union.

5. Interim relief refused.”

5. About 14 years have passed by from the date of the impugned

judgment of the Industrial Court. It is informed that all these employees involved in these two petitions have attained the age of superannuation and have retired from service.

6. Section 21 of the MRTU and PULP Act, 1971 reads as under :-

“21. Right to appear or act in proceedings relating to certain unfair labour practices :

(1) No employee in an undertaking to which the provisions of the Central Act for the time being apply, shall be allowed to appear or act or allowed to be represented in any proceedings relating to unfair labour practices specified in items 2 and 6 of Schedule IV of this Act except through the recognized union:

Provided that, where there is no recognized union to appear, the employee may himself appear or act in any proceeding relating to any such unfair labour practices.

(2) Notwithstanding anything contained in the Bombay Act, no employee in any industry to which the provisions of the Bombay Act, for the time being apply, shall be allowed to appear or act or allowed to be represented in any proceeding relating to unfair labour practices specified in Items 2 and 6 of Schedule IV of this Act except through the representative of employees entitled to appear under section 30 of the Bombay Act.”

7. It is trite law that a recognized Union having obtained recognition u/s 12 of the Act of 1971, becomes the sole bargaining

agent on behalf of all the workers working in the establishment for which the recognition has been granted. In so far as a representative union is concerned, this issue has been dealt with by the Hon'ble Apex Court in the matter of Shramik Utkarsh Sabha Vs. Raymond Woolen Mills Ltd., 1995(1) CLR 600 = AIR 1995 SC 1137 = 1995(3) SCC 78, by which it has been concluded that the representative union becomes the sole bargaining agent for all the employees working in the said establishment and covered by the Bombay Industrial Relations act, 1946. It needs no mention that the recognized union and the representative union have the right to represent all the workers, notwithstanding their union affiliations.

8. Considering the above, I find that the complaints filed by the respondent/Union were maintainable and have rightly been adjudicated upon by the Industrial Court. As such, the first Complaint (ULP) No.171/1990 filed by the respondent/ representative union was maintainable. Complaint (ULP) No.35/1990 filed by the 17 workers who were covered by the complaint No.171/1990, would therefore be rendered untenable as their grievance is already voiced by the representative Union.

9. In the light of the above, the first petition stands dismissed.

Rule is discharged. The evidence adduced by one of the employees in Complaint (ULP) No. 35/1990 has been referred to by the Industrial Court in paragraph No.17 of the impugned judgment, which indicates that these employees admitted that they are members of the representative union. Complaint (ULP) No.171/1990 was filed subsequently and therefore these employees should have withdrawn Complaint (ULP) No.35/1990 as their grievance and interests were espoused by the representative union. Though the said objection to the maintainability of the complaint was not raised by the petitioner, being a jurisdictional issue, can be entertained by this Court even at this stage and more so in the light of the fact that this Court has admitted these petitions only on that solitary ground.

10. As such, the second petition is allowed and Complaint (ULP) No.35/1990 stands dismissed. Rule is made absolute. Needless to state, as these 17 workers from Complaint (ULP) No.35/1990 are covered in Complaint (ULP) No.171/1990, they would stand entitled to the benefits that have been granted by the Industrial Court vide the impugned judgment.

11. At this stage, the learned Advocates for the respective sides submit that there is some apprehension as to whether these benefits

have been extended or not during the pendency of these proceedings. It requires no mention that these benefits, as granted by the Industrial Court, are to be extended to these employees and if have still not been extended, the petitioner/factory shall initiate prompt steps to do so within a period of 12 weeks from today.

(RAVINDRA V. GHUGE, J.)