

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.4469 OF 2012

- 1 Bhausahab Dada Mulay,
Age : 53 years,
- 2 Gangadhar Sacchinanand Kulkarni,
Age : 65 yrs,
- 3 Madhukar Keshav Gore,
Age : 69 years.
- 4 Keshav Rammanna Ankarapul,
Age : 55 years.
- 5 Aanna Sakharam Dhirde,
Age : 52 years.
- 6 Ganpat s/o Dhondiba Shirsath
(Deceased through his L.Rs.)
- 6-A Valubai W/o Ganpat Shirsath,
Age : 65 years, Occu : Household
- 6-B Vimal W/o Vilas Damodhar,
Age : 50 years, Occu : Household
Both R/o Haregaon Tq. Shrirampur,
Dist. Ahmednagar.
- 6-C Aruna W/o Prakash Salve,
Age : 45 years, Occu : Household,
All R/o Ulhas Nagar, Ramabai Nagar,
Camp. No. 2. Dist. Thane.
- 6-D Gautam s/o Ganpat Shirsath,
Age : 40 years, Occu : Service,
- 6-E Sanjay s/o Ganpat Shirsath,
Age : 35 years, Occu : Labour.
Both R/o Haregaon, Tal. Shrirampur,
Dist. Ahmednagar.

6-F Sheela w/o Shimant Teldhune,
Age : 32 years, Occu : Household,
R/o Kusgaon, Tal & Dist. Ahmednagar.

6-G Archana w/o Anil Dandge,
Age : 30 years, Occu : Household,
R/o Wadi No. 3. Haregaon,
Tal. Shrirampur, Dist. Ahmednagar.

6-H Dhammapal S/o Ganpat Shirsath,
Age : 28 years, Occu : Service,
R/o Near Military Area,
Banglore.

7 Niklas Shantwan Alhat,
Age : 65 years.

8 Bhagchand Gavaji Lihinar,
Age : 45 years.

9 Martin Ganpat Bodhak
Age : 60 years.

10 Shravan Tukaram Ubale,
Age : 60 years,
All Occupation : Nil,
All R/o Residential Quarters,
At. Haregaon, Tq. Shrirampur,
Dist. Ahmednagar.

...Petitioners

Versus

1 Belapur Sugar & Allied Industries
Ltd., At Post. Haregaon,
Tq. Shrirampur, Dist. Ahmednagar.
(Through Managing Director).

2 Belapur Industries Ltd.,
At Post. Haregaon, Tq. Shrirampur,
Dist. Ahmednagar.
(Through Managing Director).

...Respondents

Mr.N.C.Garud, Advocate for the petitioners.
Mr.R.N.Dhorde h/f Mr.V.R.Dhorde, Advocate for respondent Nos. 1
and 2.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 25/01/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2. I have heard the learned Advocates for the respective sides for
quite some time.

3. Mr.Garud, learned Advocate has taken me through the prayer
clauses set out in Complaint (ULP) No.155/1999 which has been
dismissed by the Industrial Court by its judgment dated 11/01/2012.

4. He further submits that the complaint has been dismissed by
the Industrial Court only on the ground that a recognized Union by
the name Rashtriya Mill Majdoor Sangh is in existence. He
contradicts the said conclusion drawn by the Industrial Court on the
ground that the Industrial Court has observed in line No.7 on
internal page no.19 of paragraph No.8 of the impugned judgment that
“admittedly, Rashtriya Mill Majdoor Sangh was functioning as

approved and representative union under the Act“ He, therefore, submits that when the complainant had not admitted this aspect, the Industrial Court could not have drawn the said conclusion.

5. He further submits that the Industrial Court has held that since an earlier complaint (ULP) No.2/1996 to 5/1996 and connected matters are subjudice before this Court in a pending Writ Petition No.3138/1997 and connected matters, the complaint deserves to be dismissed.

6. Mr.Kute, learned Advocate for the respondent employer submits that the petitioner has filed the complaint only after a notice to vacate the quarters was served upon them. Despite the concerned employees having been paid closure compensation and all retiral benefits, they are clinging on to the quarters and are occupying the quarters so as to exert pressure on the Management and extract more amount from the Management.

7. He relies upon the judgment of this Court in the case of Prakash Rupchand Gangarde, State of Maharashtra and others, 2008(2) Mh.L.J., 38, to support his contention that once the work comes to an end and the employee is no longer in employment, the

facility of residential accommodation granted as a part of service conditions ceases and the said accommodation has to be vacated.

8. I have considered the submissions of the learned Advocates.

9. It is trite law that a complaint under Item 2 and 6 may not be maintained in the presence of a recognized Union and an existing settlement. In the instant case, the petitioner/Union has not invoked Item 2 and 6 of Schedule IV of the MRTU and PULP Act. The issue of prohibition on the petitioner/Union to file a complaint, therefore, would not arise before the Industrial Court.

10. The Industrial Court has declined to consider the complaint on the ground that there are no specific pleadings. The complaint could not have been filed because there was a recognized Union. In my view, since the issue of recognized Union would not affect the complaint filed under Item 5 and 9 of Schedule IV, the Industrial Court should have considered the complaint on its own merits and based on the pleadings available. On the one hand, the Industrial Court concludes that the complaint could not have been filed as the complainant has no locus standi and on the other hand it has gone into the complaint half heartedly and dismissed the same.

11. In the light of the above, Complaint (ULP) No.155/1999 deserves to be remitted to the Industrial Court for adjudication on its own merits.

12. However, one thing needs to be clarified in the light of the judgment of this Court in the case of Prakash (supra) and Rohidas Waraji Nisargandh Vs. Precision Pattern Works, 2009 B.C.I. 241. This Court in the Rohidas judgment (supra) has observed in paragraph Nos. 9 and 10 as under :-

“9. In (Ultra Drytech Engineering Ltd., and another Vs. Vaibhav Laxman Suravkar and another) 2, 2005(1) Bom.C.R. 939 : 2005(1) Mh.L.J. 279, a Division Bench of this Court held that if the rights of the parties are already determined, the Industrial Court can undertake an exercise of simple arithmetic calculation under section 50 of the M.R.T.U. And P.U.L.P. Act. The plain reading of section 50 would make it amply clear that the Industrial Court is required to issue certificate if it is specified with any particular sum is due and the recovery thereof may be made by the Collector as if the amount due is an arrears of land revenue. The Industrial Court may take into account minimum wages payable during the relevant period. In (Pioneer Embroideries Ltd., Vs. Prithvi Singh and others)3, 2009(2) Bom.C.R. 697, it has been held that vide Section 33-C(2) of the Industrial Disputes Act, the entitlement of the workers can be computed in terms of money even though the right or the benefit

on which their claim is based, is disputed by their employers. The jurisdiction of the Industrial Court is not ousted only because of dispute is raised by the employer in relation to the amount sought to be recovered. Though indepth enquiry may not be necessary, yet computation of the money due can be done by the Industrial Court in view of the rates of minimum wages payable to the employee. The Industrial Court may also enquire about the market rate of the rent payable to the premises which are in possession of the petitioner so as to cause appropriate deduction of the amount of such rent for the period from which the petitioner is not in service till final adjudication of the sum. Considering these aspects, the impugned judgment of the Industrial Court is unsustainable. For, the learned Member of the Industrial Court abdicated the jurisdiction only because a dispute was raised by the employer regarding the quantum of minimum wages payable.

10. In the result, the petition is allowed. The impugned judgment is quashed. The matter is remanded to the Industrial Court with direction to restore the Misc.(ULP) No.2 of 2005 to its original position and to decide the same afresh in accordance with law and in the light of the observations made hereinabove."

13. As such, in the event the employees covered by the complaint desire to retain the quarter / residential accommodation, the said employees will have to pay rent from the date of their non-employment till they vacate the quarters. For a single room

accommodation, this Court in the case of Rohidas (supra) has directed the employee to pay an amount of Rs.500/- p.m. in 2009. The Industrial Court while deciding the complaint shall consider the size of the accommodation, amenities provided if any, whether the employees themselves pay for amenities separately and shall accordingly quantify the amount of rent that the said employees will have to pay to the respondent/Management from the date of their non-employment till the vacating of the quarters.

14. Needless to state, to avoid further liability, the employees are at liberty to vacate the quarters notwithstanding the pendency or the result in the complaint which is remitted to the Industrial Court.

15. In the light of the above, this petition is partly allowed. The impugned judgment and order of the Industrial Court dated 11/01/2012 is quashed and set aside. The litigating sides shall appear before the Industrial Court on 06/02/2016. The Industrial Court shall decide the complaint on its merits considering the pleadings of the parties and the observations in this judgment.

16. The litigating sides are at liberty to adduce additional evidence, if so advised. The issue of quantifying rent as observed above, shall

be considered by the Industrial Court while deciding the complaint.

17. Rule is made partly absolute accordingly.

(RAVINDRA V. GHUGE, J.)