

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.8419 OF 2016

KSPG Automotive India Private Ltd.,
(Bearing Unit), Ahmednagar, Plot No.A-3,
MIDC, Ahmednagar 414111, a Company duly
incorporated and registered under the
Companies Act, 1956, and an existing
company within the meaning of Section 2
of the Companies Act, 2013 and
Having its Registered Office at
“Gate No.380, village Takwebudruk,
Tal.Maval, Dist.Pune 412106,
Through its Authorised Representative,
M.V.Raosaheb
Designation, Factory Manager
Age-37 years, Occu-Service,
O/At C/o KSPG Automotive India Private
Limited, A-3, MIDC, Ahmednagar

-- PETITIONER

VERSUS

1. Appasaheb Devrao Hapse,
Age-58 years, Occu-Nil,
R/o Gokul Nagar, Bhistbag Road,
Savedi, Ahmednagar - 414 003,
2. Shankar Kisan Jadhav,
Age-63, Occu-Nil,
R/o Suresh Niwas, Jijamata Colony,
Bhistbag, Pipeline Road, Savedi,
Ahmednagar - 414003
3. Pramod Dattatraya Deshpande,
Age-62 years, Occu-Nil,
R/o 10-"A", Shreyas Colony,
Near Shramik Nagar,
Bhistbag Road,
Ahmednagar - 414003.
4. Laxman Sonaji Dahinde (Dead)
through legal heirs,

[4a] Vimal Laxman Dahinde,
Age-57 years, Occu-Household,
R/o Parash Khunt, 3229,
Kalu Bhagvan Galli,
Tal. and Dist. Ahmednagar,

[4b] Umesh Laxman Dahinde,
Age-32 years, Occu-Business,
R/o Parash Khunt, 3229,
Kalu Bhagvan Galli,
Tal. and Dist. Ahmednagar,

-- RESPONDENTS

WITH
WRIT PETITION NO.8420 OF 2016

KSPG Automotive India Private Ltd.,
(Bearing Unit), Ahmednagar, Plot No.A-3,
MIDC, Ahmednagar 414111, a Company duly
incorporated and registered under the
Companies Act, 1956, and an existing
company within the meaning of Section 2
of the Companies Act, 2013 and
Having its Registered Office at
"Gate No.380, village Takwebudruk,
Tal.Maval, Dist.Pune 412106,
Through its Authorised Representative,
M.V.Raosaheb
Designation, Factory Manager
Age-37 years, Occu-Service,
O/At C/o KSPG Automotive India Private
Limited, A-3, MIDC, Ahmednagar

-- PETITIONER

VERSUS

1. Ramesh Digambar Chikte,
Age-58 years, Occu-Nil,
R/o Giriraj Bunglow, Ganesh Colony,
Vaiduwadi,
Near Yashodhan Apartment,
Savedi, Ahmednagar,

2. Sahdeo Gangaram Aher,
Age-55 years, Occu-Nil,

R/o Gurukul Society, D-2,
Behind Durgadewi School,
Namdeo Nagar, Savedi,
Ahmednagar,

3. Shivaji Eknath Gadekar,
Age - 56 years, Occu-Nil,
R/o Kharekharjune,
Near Primary School,
Tal. and Dist. Ahmednagar,

4. Deoram Yadav Adhav,
Age-55 years, Occu-Nil,
R/o Pimpalgaon Ujjaini, Post Shendi,
Adhav Vasti, Tal. and Dist.Ahmednagar,

5. Baburao Laxman Waghmare,
Age-56 years, Occu-Nil,
R/o Nagapur, Near Primary School,
Tal. and Dist. Ahmednagar,

6. Kisan Ranu Kohak,
Age-54 years, Occu-Nil,
R/o At Jamb, Post Kaudgaon,
Tal. and Dist. Ahmednagar

-- RESPONDENTS

Mr.Varun Joshi h/f Mr.P.P.Kothari, Advocate for the petitioner.
Mr.P.V.Barde, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 23/09/2016

ORAL JUDGMENT :

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

2. While issuing notice on 05/08/2016, this court had passed the

following order :-

“1. The learned Advocate for the petitioner does not have any objection if this Court hears this matter.

2. The petitioner is challenging the orders dated 5.5.2016 passed by the Industrial Court, Ahmednagar, below application Exhibits U/7 and U/10 in Complaint (ULP) Nos.4 of 2015 and 20 of 2015.

3. It is submitted is that the petitioner has taken over the establishment from another company by name, Kirloskar Oil Engine, which had it's plant at Ahmednagar. Thereafter, owing to change in management, the employees who were adopted by the petitioner are covered by a settlement dated 14.10.2014 signed under Section 2(p) of the Industrial Disputes Act, 1947.

4. On account of the settlement, existing workmen as well as some workmen who may have retired prior to the signing of the settlement, would stand to gain the benefits flowing from the settlement. Some employees who retired before the signing of the settlement, are not covered and those who are held entitled for the benefits, are covered by the clauses mentioned in the settlement.

5. By applications Exhibit U/7 and U/10 filed in the two ULP complaints, the complainants are seeking documents. The petitioner is aggrieved by the direction to produce the Business Transfer Agreement, which is a confidential document pertaining

to the business activity, in between the petitioner and Kirloskar Oil Engine.

6. *So also, the document pertaining to the benefits made available to late Vishnu Shedale, who met with an accident and passed away just before the signing of the settlement, are directed to be produced. Similarly, the petitioner have a grievance with regard to the document directed to be produced in relation to Shri Dattatray Shankar Kathar, which pertains to the benefits given to him under the settlement, though he had retired.*

7. *It is strenuously submitted that the Business Transfer Agreement is not connected with the causes of action in the two complaints. The said document is not required for deciding any issue in the said complaints.*

8. *Issue notice before admission to the respondents, returnable on 2.9.2016. The petitioner is at liberty to serve the respondents even by private service, besides Court notice.*

9. *Till the next date of hearing in this matter, the petitioner need not produce the Business Transfer Agreement before the Industrial Court. However, all the other documents, barring the Business Transfer Agreement, that have been directed to be produced by the Industrial Court, shall be so produced in that Court within the period of three weeks from today, failing which, the protection granted today to the extent of the Business*

Transfer Agreement, shall stand vacated without reference to this Court.”

3. On 02/09/2016, considering that respondent No.4 namely Laxman Sonaji Dahihande in the first petition had passed away, this Court had observed in its order as under :-

“1. Respondent No.4 is said to have passed away.

2. *Learned Advocate for the respondents submits that he would make the list of legal heirs of deceased respondent No.4 available to the Advocate for the petitioner within one week. Consequentially, the petitioner is granted the liberty to add the names of legal heirs in the cause title of the petitioner.*

3. *Learned Advocate for the respondents waives notice for the legal heirs of deceased respondent No.4..*

4. *It is submitted by Shri Joshi, learned Advocate for the petitioner that the petitioner has taken a stand that the documents in relation to Shri Dattatray Shankar Kasar are not in the custody of the petitioner since they are in the custody of the predecessor company. Consequentially, the order of this Court dated 5.8.2016 has been complied with by the petitioner and the documents, as directed, have been produced, except in the case of Shri Kasar. A purshis to that effect has been submitted before the Industrial Court.*

5. *Considering the above and by the consent of the parties, S.O. to 23.9.2016. The issue with regard to the documents to be produced in relation to Shri Kasar shall be considered by this Court upon hearing all the sides on the next date of hearing.*

6. *Copy of this order be placed before the Industrial Court in the pending complaint."*

4. I have heard Mr.Joshi, learned Advocates for the petitioners and Mr.Barde on behalf of all the respondents in both these petitions.

5. Mr.Barde submits on instructions that the respondents do not have objection if this Court hears these matters. Since an identical issue is involved in both these matters in connection with Complaint (ULP) Nos. 4/2015 and 20/2015, I have heard both these matters together by the consent of the parties. By the order of the Industrial Court application Exhibit U-7 has been partly allowed and application Exh.U-10 is allowed in its totality and the petitioner is directed to produce documents.

6. The contested issue is only as regards the Business Transfer Agreement dated 20/05/2011 and the documents in connection with the late Vishnu Govind Shedale and Mr.Dattatraya Shankar Kasar.

The documents pertaining to late Mr.Shedale have already been produced before the Industrial Court in the pending complaints. In so far as the document pertaining to Mr.Kasar is concerned, the petitioner has taken a stand that the said document is not in its custody as the earlier company namely Kirloskar Oil Engine Ltd.,has the custody of the said document.

7. Mr.Barde submits that if the defence of the petitioner is that it does not have the custody of the concerned document in relation to Mr.Dattatraya Kasar, the respondents / original complainants would take recourse to available legal remedies for procuring the said document from the earlier company or would lead secondary evidence. In the light of the said statement, the impugned orders directing the production of documents by the petitioner in relation to Mr.Kasar are set aside.

8. In so far as the Business Transfer Agreement dated 20/05/2011 is concerned, Mr.Joshi submits that the said agreement is not restricted only to the short issue of accepting the services of the existing workmen on the date of signing of the agreement so as to continue them in employment by virtue of Section 25-F of the I.D.Act. There is no dispute considering that the petitioner has itself declared

that all the workmen, who were working in the erstwhile company prior to 20/05/2011, have been accepted as the employees of the petitioner by virtue of Section 25-FF and their service conditions and salary structure have been protected. He, therefore, submits that the Business Transfer Agreement is neither relevant nor germane to the cause of action pending before the Industrial Court.

9. With the assistance of the learned Advocates, I have perused Complaint (ULP) Nos. 4/2015 and 20/2015. There are 3 complainants and legal heirs of the 4th complainant in ULP NO.4/2015 and 6 complainants in ULP complaint No.20/2015. Their specific contention before the Industrial Court is that the benefits of the settlement dated 14/10/2014 signed by the petitioner with the Union, entitles these complainants to the benefits flowing thereunder since the said settlement has been made effective from 01/07/2013. It is also the grievance of the complainants that Mr.Shedale and Mr.Kasar have been given the benefits of the said settlement by the petitioner/establishment.

10. The settlement dated 14/10/2014 indicates that those workers, who are in employment on the date of signing of the settlement, would be entitled to the benefits flowing thereunder w.e.f.

01/07/2013. As such, the case of the petitioner is that only those workers, who are in employment on 14/10/2014, would be eligible to receive the benefits subject to the conditions set out in the settlement.

11. It is apparent that the original complainants claimed that some former workers have been shown favouritism in extending the benefits of the settlement though they were not entitled to the same and if such cases are established, the original complainants would stand to gain the benefits of the said settlement.

12. It is not disputed that the petitioner would be liable to extend the benefits of the settlement dated 14/10/2014 to all eligible workers subject to the terms and conditions of the settlement and such liability is not to be foisted upon the earlier employer namely Kirloskar Oil Engine Ltd.

13. Upon considering the submissions of the learned Advocates in relation to the B.T.A., I have gone through the impugned orders. Neither is it the case of the original complainants that the B.T.A. would have an impact on the settlement dated 14/10/2014 nor is it the conclusion of the Industrial Court that the clauses under the

B.T.A. would have a direct nexus with the settlement dated 14/10/2014 and therefore needs to be produced before the Industrial Court.

14. It is settled law in the matter of 20th Century-Fox Corp. (India) (P.) Ltd. Vs. F.H.Lala and others [1974(2) LLJ 156], U.B.S. Publishers and Distributors Ltd.,Vs. Industrial Workers Union and another. [1997(1) CLR 1155] and in the matter of Mackinon Mackenzie Ltd., Vs. G.S.Baj and others, 2006(4) Mh.L.J.492. that the production of a document can be directed if the concerned litigating side is in the exclusive possession of the said document and the same is germane to the cause of action. Since I do not find that the business transfer agreement dated 20/05/2011 has any bearing on the pending complaints, the impugned orders to that extent deserve to be quashed and set aside.

15. In the light of the above, these petitions are partly allowed and the impugned orders dated 05/04/2016 below application Exhs.U-7 and U-10 in both these petitions are set aside only to the extent of the direction to produce the documents in relation to the Business Transfer Agreement and Mr.Dattatraya Shankar Kasar.

16. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)