IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 11595 OF 2016
IN WP/11219/2015

ADHAR GENERAL KAMGAR UNION NEAR PANCHSHEET HOTEL AHMEDNAGAR THROUGH ITS SECRETARY
VERSUS
AAM INDIA MANUFACTURING CORPORATION PVT LTD THROUGH ITS FACTORY MANAGER AND OTHER
...
Advocate for Applicant : Shri Barde Parag Vijay.
Advocate for Respondent 1 : Shri Yugant R. Marlapalle.
Advocate for Respondents 2 and 3 : Shri A.A.More.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th September, 2016

Per Court:

1 I have heard the learned Advocates for the respective sides for quite sometime.

2 This Court by it's order dated 30.11.2015 delivered in Writ Petition Nos.11219/2015 and 2407/2015, had directed the Industrial Tribunal to decide Reference (IT) No.1/2015 (new No.2/2015 at Aurangabad) on or before 30.06.2016. In order to balance the equities considering the rival contentions, this Court had issued certain directions below paragraph 4 of the order dated 30.11.2015 which read as under:-

"4. Having heard the learned Advocates for the respective sides in WP No.11219/2015 and in the light of the consent accorded on instructions by both the sides, the impugned order dated 03/11/2015 below Exh.U-4 in Reference (IT) No.1/2015 (2/2015 Aurangabad) stands modified as under :-

[a] The respondent Union is agreeable for the deployment of the 52 workers mentioned in Annexure - A to the reference proceedings, in any establishment within the limits of Supa Industrial Area, situated at Post Supa, Tal. Parner, Dist.Ahmednagar, as per clause (c) hereinbelow.

[b] Such deployment as above, shall be without prejudice to the respective contentions and averments of the litigating sides to the reference proceedings and shall not influence the result/decision of the Industrial Tribunal in the said reference proceedings.

[c] Those employees mentioned in Annexure - A who would be willing to work as per the deployment by the two contractors M/s Hangeshwar Industrial Services, House No.1, Gram Panchayat Road, Burunjwadi, Tal.Shirur and M/s Atharav Facility Management Services, Office No.6, First Floor, Sukhwani Chambers, Station Road, Pimpri (hereinafter referred to as the two contractors), within the Supa Industrial Area., shall be paid at the rate of minimum wages prescribed under the Minimum Wages Act for the Engineering Industry depending on their skills as well as the Zone for the days they would remain present and work.

[d] Those employees mentioned in Annexure - A, who would not be inclined to work at any place as may be deployed by the two contractors, would be entitled to earn 15 days wages in each calendar month @ Rs.315/- per day (last drawn wages).

[e] Subject to further directions in this order, the said amounts will be deposited before Industrial Tribunal, on or before the 15th day of each month. They would be entitled to withdraw the said amounts subject to filing an undertaking affidavit in each month before the Tribunal that they are not gainfully employed and in the event the reference is decided in the negative, they shall be obliged to return the said amount without interest within 2 months from the date of the judgment and award.

[f] Those employees who would work as per clause (a), (b) and (c) above, would not be liable to return the monthly wages earned notwithstanding the result in the reference proceedings.

[g] Reference (IT) No.1/2015 (Ahmednagar Registration No.) which is registered as Reference (IT) No.2/2015 (Industrial Tribunal, Aurangabad) shall stand transferred to the Industrial Tribunal, Aurangabad for final adjudication.

[h] Considering the ratio laid down in the matter of M/s Hochtief Gammon Vs. Industrial Tribunal, Bhubaneshwar, AIR 1964 SC 1746 and the judgment delivered by the Division Bench of this Court in the case of Digambar Madye and others Vs. Union of India and others, 2015(II) CLR 540 and the judgment delivered by this Court in the matter of The Manager, Maharashtra Krushi Udyog Vikas Vs. The State of Maharashtra and others passed in WP No.4228/2014 dtd. 11/08/2015, the Industrial Tribunal. Aurangabad is directed to permit the second party Union to add the two contractors namely M/s Hangeshwar Industrial Services, House No.1, Gram Panchayat Road, Burunjwadi, Tal.Shirur and M/s Atharav Facility Management Services, Office No.6, First Floor, Sukhwani Chambers, Station Road, Pimpri as First Party Nos. 2 and 3 within two (2) weeks from the date of appearance of the parties before the Industrial Court, Aurangabad.

[i] So also, the Industrial Tribunal shall formally refer the order of reference dated 18/03/2015 to the Dy.Commissioner, Labour, Nasik, for correction in the nature of addition of the two contractors as directed in clause (h) above.

[j] The litigating sides shall appear before the Industrial Tribunal on 15/12/2015 at Aurangabad.

[k] Notices be issued to the said two contractors by the Industrial Tribunal, Aurangabad so as to enable them to cause their appearance in the reference proceedings.

[l] Formal notices to the existing First Party and Second Party therefore need not be issued by the Industrial Tribunal.

[m] All the litigating sides inclusive of the two contractors are at liberty to file Draft Issues before the Industrial Tribunal, after the appearance of the contractors within two (2) weeks therefrom.

[n] The Industrial Tribunal shall consider the draft issues and shall formalize the issues.

[o] The Industrial Tribunal shall ensure that the issue "Whether the Second Party Union proves that the two contractors are sham and bogus and the First Party principal employer is the actual employer ?" shall be cast keeping in view the observations of the Supreme Court in paragraph No.5 of the Vividh Kamgar Sabha Vs. Kalyani Steel, 2001(2) SCC 381 and paragraph Nos. 8 and 9 of the judgment of the Apex Court in the case of Cipla Limited Vs. Maharashtra General Kamgar Union, 2001(3) SCC 101.

[p] All the litigating sides shall render their co-operation to the Industrial Tribunal for the expeditious disposal of the reference proceedings and which the Industrial Tribunal shall endeavour to decide on or before 30/06/2016.

[q] The payment of wages for the days actually worked by those employees mentioned in Annexure-A, as may be deployed in Supa Industrial Area by the two contractors as well as the payments to be made to those employees who desire to sit idle, as directed above, shall continue by way of an interim arrangement in the light of the consent of the parties till 30/06/2016 or the decision of the Industrial Tribunal, Aurangabad in the reference proceedings, whichever is earlier.

[r] The Industrial Tribunal shall disallow the litigating sides from seeking adjournments on unreasonable and trivial grounds.

[s] In view of the consent of the learned Advocates on instructions, this interim arrangement as set out in this order shall not be treated as a precedent and this order shall not be cited by any of the litigating sides or any other litigant before any Court or Tribunal as a precedent.

[t] Needless to state, the Industrial Tribunal, Aurangabad shall decide the reference on its own merits and after considering the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the law as is applicable.

[u] The Industrial Tribunal shall not be influenced by its own observations made in its earlier order and shall not take into account any of the orders passed by the Industrial Court, Ahmednagar in Complaint (ULP) No.84/2014 while deciding the reference proceedings."

3 It emerges from the submissions of the learned Advocates that four witnesses have already been examined by the Applicant/ Union. It

intends to examine four more witnesses. The Industrial Tribunal has allotted about 52 dates for this matter, till date.

4 In the above backdrop, the Applicant prays that the direction to pay 15 days' wages as set out in clauses 4(d) and 4(e) reproduced above, be continued till the disposal of the proceedings before the Industrial Tribunal, considering the extension of time granted.

5 The learned Advocate for the original Petitioner submits that because of the order of this Court dated 30.11.2015, the contractors are required to pay about Rs.2 lac per month towards 15 days' wages to the employees at issue. Not a single member of the Applicant Union at issue in the proceedings has opted to work as per the directions of the contractors and are earning wages sitting idle.

6 Shri Barde denies the said allegation and submits that the contractors have not allotted duties to these workers. It is further submitted on behalf of the contractors that the amount of Rs.2 lac per month is being paid without any reimbursement from the Principal Employer since none of these workers have been discharging duties. They are sitting idle and the pendency of litigation before the Industrial Tribunal is virtually became the source of income for these employees.

7 Having considered the submissions of the learned Advocates, I am of the view that the equities would be balanced by continuing the directions in clauses 4(d) and 4(e) only for a period of two months i.e. for September and October, 2016 keeping in view the Diwali festival as well as the fact that time to decide the reference proceedings has been extended by this Court upto December, 2016.

8 As such, this Civil Application is partly allowed. The directions in clauses 4(d) and 4(e) reproduced above, which is part of the order dated 30.11.2015 passed by this Court, shall continue to the extent of payment of 15 days' wages to the concerned employees mentioned in Annexure-A only for the months of September and October, 2016.

9 It is expected that the litigating sides would extend their cooperation to the Industrial Tribunal for deciding the reference proceedings within the time frame as is directed by this Court.

kps (**RAVINDRA V. GHUGE, J.**)