

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9539 OF 2011
WITH
CIVIL APPLICATION NO.11836 OF 2012
WITH
CIVIL APPLICATION NO. 6989 OF 2016
WITH
CIVIL APPLICATION NO.10778 OF 2016

Marathwada Rashtriya Mill Mazdoor Sangh
Representative and approved Union for
Cotton Textile Industrial for local area of
Aurangabad, Latur and Nanded under
The B.I.R. Act (Affiliated to INTUC)
Having its office at Khadkeshwar Aurangabad
Through its President,
Mr.Vithal S/o Sadashiv Kadam,
Age-60 years, Occu-Service,
R/o Khadkeshwar, Aurangabad,
Dist. Aurangabad

PETITIONER

VERSUS

1. The Director,
Office of the Directorate, Handloom Powerloom,
and Co-operative Textiles,
Old Secretariat Building, Opp. G.P.O.
Nagpur, Tq. and Dist. Nagpur,
2. The Liquidator,
Aurangabad District Cotton Growers
Co-operative Spinning Mills Ltd.,
Garkheda, Aurangabad,
Office at CIDCO, Administrative Building,
CIDCO, Aurangabad,
3. The Divisional Commissioner,
and the President,
Divisional Sports Complex,
Officer of Divisional Commissioner,

Delhi Gate, Aurangabad,
Tq. and Dist. Aurangabad

RESPONDENTS

Mr.M.R.Andhale, Advocate for the petitioner.
Mr.S.W.Munde, AGP for the respondent/State.
Mr.Deelip Patil Bankar, Advocate for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/07/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner/Union has filed a civil application praying for directions that the amount collected from the private persons towards the development of the land be deposited in this Court. There is another civil application by which the Union prays for a direction to the non-applicant to deposit Rs.2,54,52,357/-.
3. While considering the civil applications, it is revealed that this writ petition filed by the Union pending in the Court, could be decided. Learned Advocates, therefore, graciously agreed to address the court on the main issue and hence this petition is taken up for final hearing.

4. I have heard the learned Advocates for quite some time. Mr.Patil appearing on behalf of the liquidator and the learned AGP, appearing on behalf of respondent Nos. 1 and 3 have strenuously opposed the petition. It is vehemently contended that the impugned judgment is legal and proper and therefore the dismissal of Complaint (ULP) No.108/2006 by the Industrial Court on 21/07/2011 does not call for any interference.

5. Both the learned Advocates have vehemently submitted that the Complaint filed by the petitioner was not maintainable in view of Section 107 of the Maharashtra Co-operative Societies Act, 1960 as the demand of purported dues towards unlawful closure of the spinning mill are issues touching the business of the society. Hence, unless the permission of the Registrar is not obtained u/s 107 of the Maharashtra Co-operative Societies Act, 1960, the Industrial Court would not have the jurisdiction to entertain the complaint.

6. Notwithstanding the strenuous submissions of Mr.Patil and the learned AGP, I am afraid that the said submissions cannot be entertained.

7. It is settled that the demand for wages or legal dues towards

payments flowing from the service conditions of the workmen, is not an issue touching the business of the society. The learned Division Bench of this Court in the matter of Baburao Dadarao Kolhe Vs. The State of Maharashtra and others, [2004(2) Mh.L.J. 898] has relied upon an earlier Division Bench judgment of this Court and concluded that in the matters of claim for wages or similar claims put forth by the workmen, would not require the permission of the Registrar for initiating proceedings under Labour Laws.

8. The learned Division Bench of this Court in the matter of Waman Vyankatesh Rulkar Vs. Registrar, Co-operative Societies, Maharashtra State, Pune and others [2002(III) CLR 981], doubted the very need for seeking leave of the Registrar u/s 107 for prosecuting complaints under the MRTU and PULP Act, 1971. As such, the learned Division Bench in the case of Baburao Dadarao Kolhe (supra), has observed in paragraph No.3 as “*The Division Bench in the said judgment, which is rendered in similar situation, held that as a matter of course the Registrar ought to have granted permission. We are in respectful agreement with the view taken by the Division Bench.*”

9. This Court, therefore, concluded by expressing a doubt as to whether such a permission was at all required for initiating such

proceedings, by observing that “*Our attention is invited to a judgment reported in 2002(III) CLR 981 wherein a Division Bench of this Court has doubted the very need for seeking leave of the Registrar u/s 107 of the Maharashtra Co-operative Societies Act, 1960 for prosecuting the complaints under the MRTU and PULP Act, 1971. We, too, voice our doubts about the application of Section 107 to the proceedings pending on the file of the Industrial Court under the provisions of the MRTU and PULP Act, 1971.*”

10. In so far as the challenge to the closure is concerned, I find that the Industrial Court has erroneously concluded that the issue of closure cannot be gone into by the Industrial Court. Once the closure has been effected, depending upon the applicability of Chapter V-B of the I.D.Act 1947, the legality of the closure can be gone into by the Industrial Court. Ultimately, if the closure is held to be illegal, the Industrial Court, upon facts of the case, may not direct the reopening of the factory or industry, but can surely quantify compensation considering the effect of Section 25-O of the I.D.Act r/w 30(2) of the 1970 Act.

11. However, there is a different angle to this case. There is no

dispute that the petitioner/Union has arrived at a settlement with respondent No.2 on 25/05/2006, by which the parties have agreed to end their employer/employee relationship upon respondent No.2 calculating their legal dues under the various Acts mentioned in clause 6 of the agreement. There is no dispute that the said agreement is treated as a settlement between the parties under the I.D.Act, 1947.

12. It is also not in dispute that respondent No.2, by its communication dated 31/03/2006, prior to the settlement, has informed the Union that the legal dues payable to the 350 workmen as against gratuity, leave encashment, unpaid wages from September to December 1991, lay off wages, retrenchment compensation and such other benefits, would be an amount of Rs.2,29,02,985/-. Thereafter the settlement is signed. It appears that the petitioner/Union did not oppose the said figure of the legal dues mentioned only until it preferred Complaint (ULP) No.108/2006 on 12/10/2006.

13. In the light of the above, by accepting the suggestion of Mr.Patil, learned Advocate, I hereby direct the Industrial Court to decide the said complaint only to the extent of the following issues :-

- [a] Whether the settlement dated 25/05/2006 signed between the petitioner and respondent No.2 would preclude the petitioner/complainant from seeking any amount towards legal dues beyond the amount mentioned by respondent No.2 in its letter dated 31/03/2006 ?
- [b] Whether the complaint of the petitioner/complainant deserves to be considered only to the extent of the shortfall in payment of legal dues ?
- [c] The litigating sides shall lead oral and documentary evidence to assist the Industrial Court to arrive at the amount of shortfall in payment of legal dues, if any.
- [d] Considering the arrangement between respondent No.2 and respondent No.3 herein by virtue of the State Government Resolution dated 08/12/2014, the remainder legal dues, if any, shall be paid by respondent No.3 in the light of clause 4 of the said GR.

14. It is made clear that the litigating sides shall be precluded from raising any other issue before the Industrial Court in the said complaint besides those which have been framed above.

15. The litigating sides agree to appear before the Industrial Court on 20/08/2016.

16. Besides the above, considering the statement made by the petitioner/complainant in paragraph No.9 of CA No.6989/2016 that

the complainant/Union is willing to waive the interest over the unpaid amount of legal dues, the Industrial Court shall take note of the said statement while deciding the complaint, in as much as, considering the statement of the litigating sides, they are at liberty to settle this matter amicably.

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

18. All pending civil applications, do not survive and stand disposed of.

20. No costs.

(RAVINDRA V. GHUGE, J.)