

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CONTEMPT PETITION NO. 49 OF 2011
IN
WRIT PETITION NO. 3026 OF 2008**

Shri Suresh R. Kandu & Anr.

...Petitioners

VS.

Pfizar India Ltd. & Ors.

...Respondents

Ms.Gayatri Singh, Senior Advocate with Bhavna Mhatre for Petitioner No.1.
Mr.Ajit Kapadia with Pratik Salgaonkar I/b. Chitnis & Co. for Respondent Nos.1,
3, 5, 6, 7 and 8.

CORAM : S.C. GUPTE, J.**4 MAY 2016****P.C. :**

Heard learned Counsel for the parties.

2 This contempt petition seeks a committal order against the Respondents. It is alleged that Respondent No.1 - Pfizar India Ltd. along with its officers, who are Respondent Nos.2 to 8 to the present petition, have willfully breached and disobeyed an order passed by the Industrial Court on 19 December 1995 in Complaint (ULP) No.539/1992, which is said to have merged with the order passed by this court on 18 January 2008 in Writ Petition No.1003/1996.

3 The Petitioners were in the employment of Parke-Davis (India) Ltd., which has since been merged with Respondent No.1 company. The present contempt petition is urged only on behalf Petitioner No.1, who is represented by Ms.Gayatri Singh, learned Senior Advocate, who is hereinafter referred to as "the Petitioner". The Petitioner joined the services of Parke-Davis (India) Ltd. on 6 May 1986 and was shown as a badli / temporary workman. His case along with other similarly placed badli / temporary employees was that he had worked

continuously with Parke-Davis for more than 240 days in a year since his appointment with the undertaking. He along with others, accordingly, filed a complaint under the MRTU and PULP Act before the Industrial Court under Items 5, 6 and 9 of Schedule IV of that Act for a direction *inter alia* confirming him as a permanent workman from the date he was actually provided work and for payment of the difference between the wages paid and the wages he was entitled to as a permanent workman. The Industrial Court, by its order dated 19 December 1995, allowed the complaint and directed Parke-Davis to provide the Petitioner with the job and treat him as a permanent workman with all consequential benefits. This order was challenged by Parke-Davis in a writ petition before this court. The order was also challenged by the Petitioner along with others. The writ petitions were numbered as Writ Petition Nos.1003/1996 and 6385/1996, respectively. By a judgment and order dated 18 January 2008, a learned Single Judge of this Court upheld the order of the Industrial Court insofar as the Industrial Court held in favour of the employees that Parke-Davis had committed an unfair labour practice under Item 6 of Schedule IV and dismissed the complaint with respect to the unfair labour practice under Item 5 of Schedule IV. In the premises, the petition of the workmen, including the Petitioner herein, namely, Writ Petition No.6385/1996, was dismissed. As for the petition of Parke-Davis, namely, Writ Petition No.1003/1996, the petition was partly allowed and the complaint was remanded to the Industrial Court to decide whether there was any unfair labour practice under Item 9 of Schedule IV. Upon its remand, by a judgment and order dated 7 April 2008, the Industrial Court dismissed the complaint insofar as Item 9 of Schedule IV was concerned. The company, which was by then taken over by the present Respondent No.1, was directed to grant permanency with consequential benefits to the complainants, including the Petitioner, as required by the order dated 19 December 1995 passed by the Industrial Court. This order was carried in a challenge before this court by Respondent No.1 herein by a writ petition, being Writ Petition No.3026/2008. This Court, by its order dated 15 January 2009, granted Rule and made the same absolute, setting aside the direction of the Industrial Court insofar as granting of permanency with consequential benefits to the complainants was concerned, since the earlier order dated 19 December 1995 under Item No.6 was confirmed

by this court in Writ Petition No.1003/1996. Further by that order, this Court observed that the order of the learned Single Judge in Writ Petition No.1003/1996 was said to be the subject matter of a letters patent appeal, being LPA (Stamp) No.11995/2008, before a Division Bench of this court. That order was also passed without prejudice to the rights of the Petitioner herein and others to adopt suitable proceedings in respect of the order of the Industrial Court dated 7 April 2008. By an order dated 6 March 2009, a civil application taken out by Parke-Davis (shown as "now merged with Pfizer India Ltd.") was disposed of by this court condoning the delay in filing the letters patent appeal. A further civil application was taken out by Parke-Davis in the letters patent appeal was disposed of, as not pressed, in the light of the statement by learned Counsel for Parke-Davis that the Applicant company was closed down. That is where the matters stand as far as court proceedings go. The grievance of the Petitioner before this court in the present contempt petition is that despite a clear direction of the Industrial Court passed on 19 December 1995, which had since been confirmed by this court in Writ Petition No.1003/1996, the Petitioner was neither reinstated nor his back wages paid.

4 In reply, it is submitted by Respondent No.1 that the particular undertaking of Parke-Davis, which was a factory at Sakinaka in Mumbai, where the Petitioner was employed, has long been closed. It is submitted that the undertaking was closed somewhere in 1997, i.e. after the first order of the Industrial Court dated 19 December 1995. It is submitted that all workmen, including the complainants in Complaint (ULP) No.539/1992 save and except the Petitioners herein, were paid their entire dues and the matter of re-reinstatement with back wages was fully settled as between them and Parke-Davis. It is submitted that even the Petitioners herein were offered their dues together with closure compensation, but that they did not accept such compensation, presumably insisting on reinstatement. It is submitted that what Respondent No.1 has taken over is an undertaking in terms of a scheme of amalgamation between Parke-Davis and Respondent No.1. The scheme of amalgamation was sanctioned by this court on 7 February 2003 with the appointed date as 1 December 2001. The scheme shows that the undertaking which was taken over

by the company was "All the assets and properties of the transferor company as on the appointed date", i.e. 1 December 2001. It is clear from an order passed by this court in **Akkadian Housing and Infrastructure Pvt.Ltd. vs. Pantheon Infrastructure Pvt.Ltd.**¹, which was a case involving the factory of Parke-Davis, that the particular undertaking of Parke-Davis at Sakinaka was closed and the property was acquired by a developer, such acquisition having been fully accomplished in or about March 2001. In other words, on the appointed date, the undertaking of Parke-Davis at Sakinaka in Mumbai did not exist and was no longer with the transferor company. The concerned undertaking of Parke-Davis, thus, cannot be said to have been taken over by Respondent No.1 herein in pursuance of the scheme of amalgamation. If the undertaking was indeed closed down and the property, including the land, was disposed of by Parke-Davis prior to the scheme of amalgamation, there is no question of fastening the liability of Parke-Davis to reinstate the Petitioner on the transferee company, namely, Respondent No.1 herein. The particular undertaking, where the Petitioner worked, was not taken over or amalgamated with Respondent No.1 herein.

5 Relying on the provisions of the scheme of amalgamation, learned Counsel for the Petitioner submitted that all suits and proceedings by or against the transferor company, namely, Parke-Davis, were continued and could be enforced by or against the transferee company, i.e. Respondent No.1. She submitted that under the scheme, all employees of the transferor company were to become employees of the transferee company. Learned Counsel is right, but it is only those employees, who were in service of the undertaking taken over by the transferee on the date immediately preceding effective date, who were alone to become employees of the transferee company on the effective date. On the effective date, which, in any event, was after the appointed date, the Petitioner cannot be said to be an employee of the particular undertaking taken over by the transferee company. The particular undertaking of the transferor company was, as noted above, already closed in 1997; and the entire property, including the land, was disposed of fully in March 2001. In the premises, there is no obligation on the transferee company to employ the Petitioner as its employee.

1 **Company Appeal No.19/2009 in CLB Company Petition No.106/2005 decided on 21.9.2015**

6 Insofar as the monetary liability is concerned, it is already seen that the liability was sought to be discharged upto the date of closure, including the closure compensation payable to the Petitioner. Even at the hearing of the present petition, an offer was made by Respondent No.1 to pay the entire dues, including the closure compensation, to the Petitioner, in full and final settlement of his claim against Respondent No.1. The offer, however, was not accepted by learned Counsel for the Petitioner.

7 From the foregoing discussion, it is clear that the order of reinstatement could not be enforced against Respondent No.1 herein. In any event, even if the contention of Respondent No.1 concerning its liability under the orders of the court, which are said to be breached by it, is not correct, the least that can be said is that the order was capable of being interpreted as proposed by the Respondent, in which case Respondent No.1 cannot be held guilty of any deliberate or contumacious defiance of the order of the court.

8 Even otherwise, it is clear that breach of the order of the Industrial Court dated 19 December 1995, which is confirmed by this court in Writ Petition No.1003/1996 on 18 January 2008, cannot be complained of in a contempt petition filed more than one year after the stipulated date of compliance. The breach, if any, has occurred in 2009. A petition filed in the year 2011 alleging contempt is beyond time under Section 20 of the Contempt of Courts Act.

9 In any view of the matter, there is no merit in the contempt petition and the same is dismissed. No order as to costs.

(S.C. Gupte, J.)