

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7742 OF 2016**

M/s. Pravi Auto Swing Pvt Ltd.)
L-41, Additional M.I.D.C. Sataram)
415004 through its Managing Director) ..Petitioner

Vs.

1 Ashok Kisan More)
Residing at and post Rajarapuri)
Taluka and District Satara)

2 Hanmant Kisan Katkar)
At and Post Wade, District Satara)

3 Anantkumar Sadashiv Pawar)
1443, Sambhaji nagar MIDC, Satara)

4 Dada Bhanudas Katkar)
C/o B. H. Pawar, Shrinagar Colony,)
Sangamnagar, Satara)

5 Ashok Uttamrao Nikam)
At and Post Kumathe,)
District Satara)

6 Ganesh Nathuram Kumbhar)
At and Post Navipeth, Taluka Patan)
District Satara)

7 Uttam Govind Tilave)
329/3/2, Plot No.15)
Shivnagar, MIDC, Satara)

8 Rajesh Vinayakrao More)
Sagar Housing Society, Kodoli,)
Satara)

9 Uttam Atamaram Lade)
Tejaswi Bungalow, Ahire Colony,)
Degaon Road, Satara)

10 Jayawant Dhondiba Jadhav	)	
At and Post Kodoli, Satara	)	
11 Vijay Babanrao Jangam	)	
Bilvadal Ahire Colony,	)	
Degaon Road, Satara	)	
12 Shrikant Hanmant Kulkarni	)	
923, B-2, Anantlaxmi Nivas,	)	
Shaniwar Peth, Satara	)	..Respondents

Mr. Kiran Bapat i/b M/s Desai & Desai Associates for the Petitioner
Mr. Vaibhav Gaikwad for the Respondent No.1

CORAM : R. M. SAVANT, J.
DATE : 26th SEPTEMBER, 2016

ORAL JUDGMENT

1 Rule. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The Writ Jurisdiction of this Court is invoked against the judgment and order dated 21-3-2016 passed by the Learned Member of the Industrial Court by which order, the complaint in question being Complaint ULP No.54 of 2005 came to be allowed resultantly a declaration came to be issued that the Petitioner herein who was the Respondent in the Complaint has engaged in unfair labour practice under Item 9 of Schedule IV of the MRTU and PULP Act 1971. A further direction came to be issued to the Petitioner to pay the remaining subsistence allowance @ 75% for the period between 90 days to 180 days and thereafter @ 100% for the period beyond 180 days.

3 It is not necessary to burden this order with unnecessary details having regard to the nature of the final directions to be issued. The Respondents herein were in employment with the Petitioner. It seems that on account of certain incidents which had taken place in the factory premises of the Petitioner that a charge sheet came to be issued to each of the Respondents alleging misconduct against them. In view of the situation prevailing in the factory premises and outside it, which was on account of the acts of the Respondents, the Petitioner had filed Complaint ULP No.59 of 2004 and in the said Complaint, the Petitioner had filed an application for interim relief. In the said application, an exparte ad-interim order came to be passed against the Union representing the Respondents on 18-11-2004, and the interim relief granted was that the Respondents Union and its office bearers, striking workers their representatives, agents etc, were restrained from wandering, sitting and loitering within the periphery of 1500 meters from the gate of the factory of the Petitioner and the surrounding vacant area. They were further restrained from obstructing the moments, jobs, material discharge, vehicles visitors etc. It seems that though the said order was passed in the Complaint ULP filed by the Petitioner, since a domestic inquiry had commenced against the Respondents, the Petitioner vide its letter dated 14-2-2005 (similar letter was addressed to all the Respondents) had informed the Respondents that the interim order passed by the Industrial Court would not come in the way of the

Respondents from attending the inquiry proceedings. The Respondents replied to the said letter vide their reply dated 21-2-2005 and in the said reply, it was stated that in view of the interim order passed by the Industrial Court, it was not possible for the Respondents to remain present in the inquiry proceedings. It seems that the Petitioner thereafter applied for modification of the interim order vide application Exhibit C-2. The said application came to be allowed and the injunction was restricted to 500 meters from 1500 meters which was originally granted. Upon this the Petitioner addressed another letter dated 2-6-2005 to one of the Respondents (similar letters were addressed to all the Respondents) intimating the Respondents that the subsistence allowance was reduced to 50% of their entitlement. It seems that between 23-2-2005 and 29-4-2005 the inquiry was held on 7 days when none of the Respondents had remained present in the inquiry and this prompted the Petitioner to reduce the subsistence allowance.

4 The reduction of the subsistence allowance resulted in the Respondents filing Complaint ULP No.54 of 2005 under Item 9 and 10 Schedule IV of the said Act. In the said Complaint, the case of the Respondents was based on standing order 25(5A) which postulates payment of 50% of the wages as subsistence allowance for the first 90 days thereafter 75% for the period from 90 days to 180 days and 100% for the period beyond 180 days. It was the case of the Respondents in the said Complaint that the reduction in

the subsistence allowance in the teeth of the injunction obtained by the Petitioner in the Complaint filed by it was not justified.

5 Per contra it was the case of the Petitioner in its Written Statement that inspite of the notice issued to the Respondents to remain present in the inquiry notwithstanding the order of injunction passed by the Industrial Court the Respondents had refused to remain present and therefore the Petitioner was entitled to reduce the subsistence allowance having regard to the proviso to Standing Order 25(5A). The parties led evidence in respect of their respective assertions. In so far as the Petitioner is concerned, it examined its Managing Director, whereas on behalf of the Respondents one of the Respondents deposed in the said Complaint.

6 The Learned Member of the Industrial Court ventured to adjudicate upon the said Complaint on the basis of the material on record and has accordingly allowed the said Complaint and issued the directions to the extent mentioned in the earlier part of this order. The gist of the reasoning of the Learned Member of the Industrial Court was that in the teeth of the order of injunction obtained by the Petitioner, the Respondents could not be blamed for not attending the inquiry in the period during which the injunction was operating. The Learned Member of the Industrial Court therefore deemed it appropriate to allow the Complaint and has directed the payment of

subsistence allowance to the Respondents to the extent mentioned in the operative part of the impugned order.

7 Heard the Learned Counsel for the parties.

8 On behalf of the Petitioner it was the submission of the Learned Counsel Mr. Bapat that though the Respondents were issued notice to remain present notwithstanding the order of injunction passed by the Industrial Court, they having not remained present and thereby delayed the inquiry, the Petitioner was within its right to reduce the subsistence allowance having regard to the proviso to Standing Order 25(5A). It was the submission of Mr. Bapat that the Respondents were not entitled to 100% subsistence allowance in view of Section 10A of the Standing Orders Act. It was the submission of Mr. Bapat that Section 10A being the substantive provision would superimpose itself upon Standing Order 25(5A) in the matter of payment of subsistence allowance. In support of the said contention the Learned Counsel place reliance on the Judgment of a Division Bench of this Court in the matter of **May and Baker Ltd. Vs. Kishore Jaikishandas Icchaporia & Anr** ¹ and the Judgment of the Apex Court in the matter of **B. D. Shetty & Ors. Vs. Ceat Ltd & Anr.**²

9 Per contra the Learned Counsel Mr. Gaikwad appearing on behalf of the Respondent No.1 would seek to support the impugned order. It was the

1 1991 MhLJ 1070

2 (2002) 1 Supreme Court Cases 193

submission of Mr. Gaikwad that in terms of Section 10A(3) the Respondents are entitled to 100% subsistence allowance under Standing Order 25(5A) as the said Standing Order is “any other law” contemplated by Section 10A(3). Hence in so far as the Respondents are concerned, they were claiming 100% subsistence allowance by placing reliance on Section 10A(3).

10 Having heard the Learned Counsel for the parties, I have considered the rival contentions. The first issue which arises for consideration in the above Petition is whether the Petitioner was entitled to reduce the subsistence allowance payable to the Respondents. In so far as the said aspect is concerned, the same is governed by Standing Order 25(5A). The said Standing Order provides for the payment of the subsistence allowance and the rate at which it is required to be paid. For the said purpose, there are three time frames mentioned in the said Standing Order, as indicated above for the first 90 days the subsistence allowance is payable @50% of the wages, whereas for the period of 90 and 180 days its 75% and beyond 180 days it is @ 100%. The proviso to the said provision carves out an exception in as much as it confers power on the employer to reduce the subsistence allowance if the delay in the inquiry is on account of the delinquent workman. In the instant case, it is required to be noted that the Petitioner had filed a Complaint ULP invoking provisions of the MRTU and PULP Act 1971 in view of the prevailing situation in its factory premises and surrounding area. In the said Complaint,

the Petitioner had filed an application for interim reliefs. The said application came to be allowed and the interim relief by way of injunction restraining the Union representing the Respondents came to be granted restraining them from wandering, sitting and loitering within 1500 meters of the factory premises. The said injunction thereafter came to be restricted to 500 meters by an application for modification made thereafter. However, the fact remains that there was an injunction operating against the Union of which the Respondents are the members. Hence letters addressed by the Petitioner to the Respondents asking them to attend the inquiry proceedings would be of no avail in the light of the fact that the Petitioner had obtained an injunction against the Respondents. Hence the blame for not attending the inquiry proceedings would not lie solely with the Respondents so as to dis-entitle them to part of the subsistence allowance. Conversely the Petitioner obviously could not have reduced the subsistence allowance by taking recourse to the proviso to Standing Order 25(5A). Hence in so far as the said aspect is concerned, this court endorses the view taken by the Industrial Court and therefore does not deem it appropriate to interfere with that part of the impugned order.

11 Now comes the question whether the Respondents are entitled to to 75% in the maximum or 100% of the subsistence allowance. As indicated above Standing Order 25(5A) is the provision in contention which was brought into service before the Industrial Court. However, during the course of

the hearing of the above Petition, the Learned Counsel appearing for the Petitioner sought to place reliance on Section 10A of the said Act. Though the adjudication before the Industrial Court was on the touchstone of Standing Order 25(5A). However, in view of the fact that the entitlement of the Respondents to the subsistence allowance is a question of law, this Court deemed it appropriate to permit the Learned Counsel for the Petitioner to raise the said contention and to deal with the said contention.

In so far as Standing Order 25(5A) is concerned, the same provides for the payment of the subsistence allowance at the maximum of the 100% of the wages i.e. for the period 180 days. In so far as Section 10A is concerned, it provides for the payment of subsistence allowance at 75% in the maximum. However the provisio carves out an exception that if any other law contains a more beneficial provision, then that provision would apply.

In so far as Standing Order 25(5A) of the Model Standing Order is concerned, it is not “any other law” mentioned in Section 10A. The said issue is no more resintegra and is covered by the Judgment of the Apex Court in B.D. Shetty's case (Supra) wherein the Apex Court has referred to the judgment of a Division Bench of this Court in May and Baker Ltd. (supra). The Apex Court held that the “any other law” necessarily refer to the law other than one covered by the very Act and Rules made thereunder, meaning thereby the Standing Orders. The Apex Court has lastly held in the said case that the contention urged on behalf of the workman that they are entitled to 100&

subsistence allowance cannot be accepted in view of the specific provision contained in Section 10-A of the said Act. Hence the Apex Court has impliedly held that Section 10A would over ride or superimpose itself on Standing Order 25(5A) and hence the workman would be entitled to the payment of subsistence allowance at the maximum of 75%.

12 Having regard to the judgment of the Apex Court in B. D. Shetty's case (supra) the contention urged on behalf of the Respondents by the Learned Counsel Mr. Gaikwad, cannot be accepted. The Respondents would therefore be entitled to payment of subsistence allowance at the maximum of 75%. The impugned order passed by the Learned Member of the Industrial Court would accordingly have to be modified to the extent that for the period beyond 90 days the Respondents would be entitled to subsistence allowance at the maximum of 75%. Clause (3) of the impugned order would accordingly stand modified.

13 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]