

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11414 OF 2016

- | | |
|---------------------------------|-----------------|
| 1. M/s. Esdee Paints Ltd. |] |
| Plot No.D-20/2, |] |
| T.T.C. Industrial Area, |] |
| Indira Nagar, Turbhe, |] |
| Navi Mumbai. |] |
| 2. Mr. Mahavir Dawada, Director |] |
| M/s. Esdee Paints Ltd. |] |
| Plot No.D-20/2, |] |
| T.T.C. Industrial Area, |] |
| Indira Nagar, Turbhe, |] |
| Navi Mumbai. |] |
| 3. Mr. Sunil Nayak, |] |
| Administrative Manager, |] |
| M/s. Esdee Paints Ltd. |] |
| Plot No.D-20/2, |] |
| T.T.C. Industrial Area, |] |
| Indira Nagar, Turbhe, |] |
| Navi Mumbai. |] |
| |]...Petitioners |

Versus

Sarva Shramik Sangh,	]
Neelkanth Apartment,	]
Near Dr. Bhadkamkar Hospital,	]
Mahagiri, Thane.	]...Respondent

Shri. A. K. Jalisatgi i/by Shri. Ratnesh R. Mishra for the Petitioners.
Shri. Ravindra Nair for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 7th OCTOBER, 2016

ORAL JUDGMENT

1 Rule. Having regard to the nature of the challenge raised

made returnable forthwith and heard.

2 The writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India is invoked against the order dated 16.08.2016 passed by the Learned Member of the Industrial Court, Thane, by which order, the Revision Application filed by the Respondent being Revision Application (ULP) No.28 of 2016 came to be allowed. Resultantly, the order dated 20.07.2015 passed by the Labour Court came to be set aside and in place thereof directions as contained in clause 2 of the operative part of the said order came to be issued. The said clause 2 is reproduced hereinunder for the sake of ready reference.

“2. Exh.U-2 in Complaint (ULP) No.152/2014 allowed in following terms:-

(i) Respondents shall pay Rs.10,000/- for each group of employee within one month from the date of this order.”

3 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Respondent herein has filed a Complaint being Complaint (ULP) No.152 of 2014 under Items 1(a) (b) and (f) of Schedule IV of the MRTU & PULP Act, 1971. The cause for filing the said Complaint is the departmental enquiry initiated against six workmen of the Petitioner company who have been charged with various misconducts and whose cause the Respondent Union is espousing. In so

far as the said enquiry is concerned, the same has commenced pursuant to the charge-sheet issued to the said six workmen. In the said Complaint, the Respondent filed an application Exh.U-2 for the reliefs which have been mentioned in paragraph 3 of the said application. Amongst the reliefs claimed by the said interim application is the relief to engage an advocate of their choice and to bear the cost of such advocate in respect of his travelling and food expenses. The said clause (iv) is reproduced hereinunder for the sake of ready reference :-

“(iv) Direct the Respondent to allow the workers concerned to engage the Advocate of their choice as their Defence Representative and to bear the cost of such Advocates in respect of his and is travelling and food expenses.”

4 It seems that after the application for interim reliefs came to be filed an understanding was reached between the Petitioners and the Respondent Union. As a result of which, a pursis came to be filed on 13.02.2015 in the said Complaint (ULP) No.152 of 2014. The said pursis records the agreement reached between the parties. Clauses (i) and (ii) of the said pursis are reproduced hereinunder for the sake of ready reference :-

“i) The condition of signing the Suspension register is withdrawn and the workers need not sign the same.

ii) The chargesheeted workmen will be permitted to

engage an Advocate or office bearer of the union namely Seema Sarnaik Singh.”

At the bottom of the said pursis, it is stated that the parties pray that the Hon'ble Court be pleased to dispose of the interim relief application as not pressed at the said stage. It appears that the application for interim reliefs was accordingly disposed of as not pressed.

5 The Respondent Union long after the said pursis dated 13.02.2015 was filed disposing of the said application Exh.U-2, filed an application for rehearing of the said application Exh.U-2 in respect of the remaining matters. It was stated in the application that other issues in the application for interim reliefs and the Complaint are not resolved between the parties and therefore there was need and an urgency in respect of the remaining issues and therefore prayed that the application for interim reliefs be heard on the remaining issues. The Learned Presiding Officer of the Labour Court thereafter heard the said application Exh.U-2 and by his order dated 20.07.2015 rejected the said application. The gist of the reasoning of the Learned Presiding Officer was that in respect of the relief of payment of advocates fees, there was no material placed on record to substantiate the claim for the said relief either in the form of contract or in the form of rules. The Learned Presiding Officer held that no doubt, the Model Standing Orders are not

applicable, but the Complainant cannot claim payment of advocates fees as a matter of right. The Learned Presiding Officer held that since the Respondent i.e. the Company has allowed the Complainant to engage an advocate, there is no violation of the principles of natural justice on account of non-payment of the advocates fees. The Learned Presiding Officer has adverted to the judgments cited on behalf of the Union and recorded a finding that the said judgments are not applicable in the facts and circumstances of the present case. In so far as the judgment of the Apex Court reported in 1996 DGLS(Soft.) 824 in the matter of Director, Beg Vaccine Laboratory, Madras Vs. S. Pandian is concerned, the Learned Presiding Officer distinguished the said judgment and held that the same would not apply in the facts and circumstances of the present case. The Learned Presiding Officer of the Labour Court as indicated above, has by order dated 20.07.2015 rejected the application for interim reliefs.

6 The Respondent aggrieved by the said order dated 20.07.2015 filed a Revision Application after seven months of the said order on 20.04.2016. Suffice it would be to state that the Learned Member of the Industrial Court has by the impugned order dated 16.08.2016 allowed the said Revision Application and set aside the order passed by the Learned Presiding Officer of the Labour Court dated

20.07.2015 and issued a direction vide clause 2 of the operative part of the impugned order which has already been adverted to hereinabove. The result of the direction is that the Respondents i.e. the Petitioners herein are required to pay Rs.10,000/- for each group of employees within one month from the date of the said order. The Industrial Court whilst allowing the Revision Application has observed that the departmental enquiry can be interfered with at any stage of hearing. The Learned Member of the Industrial Court held that since the employees are getting Rs.8,500/- as subsistence allowance, they cannot be foisted with the additional burden of the payment of the advocates fees. The Learned Member of the Industrial Court has further observed that the right to get legal fees of the advocate is integral part of natural justice for fair and proper enquiry. The Learned Member of the Industrial Court as indicated above has accordingly allowed the said Revision Application by the impugned judgment and order dated 16.08.2016.

7 Heard the Learned Counsel for the parties.

8 The Learned Counsel for the Petitioners Shri. A. K. Jalisatgi would contend that having reached an agreement which has been recorded in the pursis dated 13.02.2015, whereby the Petitioners had given a concession in the matter of the delinquent employees being

represented by advocate, it was not open for the Respondent to re-apply for the grant of interim reliefs. The Learned Counsel would contend that the claim for advocates fees does not have any basis in law. It was the submission of the Learned Counsel that the Learned Member of the Industrial Court has erred in holding that the enquiry proceedings could be interfered with at any stage. It was the submission of the Learned Counsel that the said observation of the Learned Member of the Industrial Court was contrary to the ratio laid down in the judgment of the Apex Court reported in (1995) 6 SCC 326 in the matter of **Hindustan Lever Ltd. Vs. Ashok Vishnu Kate and others.** The Learned Counsel would contend that the judgment in *Director, Beg Vaccine Laboratory, Madras's* case (*supra*) is clearly distinguishable and would not have any application in the facts of the present case.

9 Per contra, the Learned Counsel appearing for the Respondent Shri. Ravindran Nair would support the impugned order. It was the submission of Shri. Ravindran Nair that having regard to the fact that the employees are drawing only Rs.8,500/- per month, it is not possible for them to pay advocates fees out of the said amount. The Learned Counsel would contend that the payment of advocates fees would be a facet of fair opportunity being given to the employees in the departmental enquiry as otherwise the employees are pitted against the

lawyers who are appearing for the company in the departmental enquiry. The Learned Counsel appearing for the Respondent sought to place reliance on the judgment of the Apex Court in *Director, Beg Vaccine Laboratory, Madras's* case (*supra*) to contend that in the facts of the said case, wherein the departmental enquiry was against class IV employees, the Apex Court thought it fit to grant them the advocates fees as they did not have the financial wherewithal to pay the same.

10 Having heard the Learned Counsel for the parties, I have considered the rival contentions. As indicated above, on account of the agreement reached between the parties as evidenced by the pursis dated 13.02.2015 the delinquent employees were permitted to be represented by an advocate in the departmental proceedings which are being conducted against them. In so far as the said pursis is concerned, as indicated above, a statement is appearing at the foot of the said pursis that the parties pray that the interim application being Exh.U-2 be disposed of in terms of the said pursis. In fact, an order was passed by the Labour Court disposing of the application Exh.U-2 in terms of the said pursis. It is long after the said pursis was filed that an application came to be made in July 2015 for revival of the application for interim reliefs in so far as the other reliefs which were sought vide the said application Exh.U-2. This was notwithstanding the fact that in respect of

the appearance of an advocate and the payment of his fees, there was an agreement between the parties as evidenced by the pursis dated 13.02.2015. Notwithstanding the same, the Respondent applied for revival of the application for the interim reliefs. Whether the Respondent Union could file such an application after a concession was made by the Petitioner in the matter of delinquents being represented by advocate therefore begs an answer.

11 The Labour Court as indicated above heard the application Exh.U-2 and has rejected the said application for the reasons mentioned in the said application which reasons are primarily revolving around the fact that there is no basis in law for the delinquents to claim advocates fees. The Respondent Union aggrieved by the order passed by the Labour Court filed the Revision Application almost after seven months of the order being passed by the Labour Court. It seems that in the interregnum the enquiry has proceeded and that the Petitioners have finished the recording of the evidence of their witnesses. It seems that the evidence of the delinquents is also over as can be seen from the averment made in paragraph 3(h) of the Writ Petition. It seems that upto the stage at which the enquiry is at present, the office bearer of the Respondent Union is representing the delinquents in the said enquiry.

12 Hence though by pursis dated 13.02.2015 an agreement was reached as regards the delinquents being represented by an advocate, the delinquents have as yet not appointed any advocate. The Industrial Court considered the said Revision Application and has by the impugned order allowed the same and issued the direction as contained in the operative part of the said impugned order. A reading of the impugned order discloses that the Learned Member of the Industrial Court seems to have been swayed by the fact that the employees who are getting a subsistence allowance of Rs.8,500/- per month would be saddled with the additional burden of payment of the advocates fees and has therefore directed the Petitioners to pay the advocates fees to the extent mentioned in clause 2 of the operative part of the impugned order. The Learned Member of the Industrial Court in the said process has not appreciated the fact that there is no right in the employees to get the advocates fees paid by the employer i.e. the Petitioners herein.

13 The Learned Member of the Industrial Court, in the facts of the present case, has erred in holding that the payment of the advocates fees is also a facet of the principles of natural justice. It is required to be noted that in the instant case, the delinquent employees are not on their own but are being represented by a Union who in fact has filed the Complaint on their behalf. The delinquent employees are thus far being

represented in the departmental enquiry by the office bearer of the Union. It is therefore not as if that the said delinquent employees are undefended in the said enquiry. It is also required to be noted that after the agreement was reached between the parties on 13.02.2015 and the interim application Exh.U-2 came to be disposed of, the application for revival of the application for interim reliefs was filed almost five months thereafter, even the Revision Application was filed by the Respondent seven months after the order came to be passed by the Labour Court. The aforesaid facts therefore can be said to be a pointer to the fact whether there is any need to engage an advocate. Be that as it may, the fact remains that there is no basis in law for a delinquent to claim the fees of the advocate who is appearing for him in a departmental enquiry. In both the Courts below the Respondent Union has not been able to point out any provision of law on the basis of which a claim for payment of advocates fees could be made. In so far as the judgment of the Apex Court in *Director, Beg Vaccine Laboratory, Madras's case (supra)* is concerned, the facts in the said case were that the departmental enquiry was being held against class IV employees under the Central Civil Services Rules, 1965. The employees were under suspension and under the Central Rules the subsistence allowance is a percentage of the basic wages, it is in the said context, the Apex Court directed the payment of

the advocates fees to the employees concerned therein.

14 In the instant case, the delinquent employees as per the Learned Counsel for the Petitioners are being paid the full wages i.e. amount of Rs.8,500/- per month. The delinquent employees are also represented by the Respondent Union both in the Complaint as well as in the departmental proceedings through a office bearer who as indicated above has participated up to the stage at which the departmental proceedings are at present. Hence the facts of the present case are clearly distinguishable from the facts of the case in *Director, Beg Vaccine Laboratory, Madras's case (supra)*. Hence the said judgment would not further the case of the Respondent in claiming the advocates fees from the Petitioners. In that view of the matter the impugned order dated 16.08.2016 is required to be quashed and set aside and is accordingly quashed and set aside. The Revision Application would accordingly stand dismissed. It is however clarified that the delinquent employees would however be entitled to be represented by an advocate if they so choose. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

[R.M.SAVANT, J]