

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION NO. 2854 OF 2015

M/s.All India Manufacturer's Organization,
through Mr.Hasmukh N. Zaveri,
Zonal Vice President, Mumbai Zone,
Jeevan Sahakar, IV floor, Sir P.M.Road,
Mumbai – 400 001.

... Petitioner

v/s

1. General Kamgar Union (Red Flag),
60, Madina Manzil, II floor, Post Galli,
Parel, Mumbai – 400 012,
17, Dalvi Bldg., Parel, Mumbai-400 012.

2. Shri Amitkumar Sen, President
M/s.All India Manufacturers Organization,
Jeevan Sahakar, IV floor, Sir P.M.Road,
Mumbai – 400 001.

3. Shri jagdish Todi,
Senior Vice President,
M/s.All India Manufacturers Organization,
Jeevan Sahakar, IV floor, Sir P.M.Road,
Mumbai – 400 001.

4. Mr.M.N.Tarachand Dugar, President
M/s.All India Manufacturers Organization,
Dugar Tower, 7th floor,
34(123) Marshalls Road, Egmore,
Chennai – 600 008, Tamilnadu.

5. Mr.K. Raghunathan, Gen. Secretary
M/s.Solkar Solar Industries Ltd.,

13/2, Jayalaxmipuram,
Chennai – 600 034, Tamilnadu.

... Respondents

Mr.Rajesh Gehani for the petitioner.

Mr.G.R.Naik i/by G.R.Naik & Co. for the respondents.

CORAM: N.M. JAMDAR, J.

DATED : 12 JANUARY 2016

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. By consent, taken up for final disposal

2 The Petitioner challenges the order passed by the Industrial Court, Mumbai, in Recovery Application No.17 of 2009 in Complaint (ULP) No.343 of 2008. By the impugned order, the Industrial Court has directed the Petitioner to pay Rs.13,00,000/- equally against nine employees and also directed issuance of recovery certificate of Rs.6,34,060/-.

3. I have heard learned counsel for the parties.

4. The Industrial Court has recorded that the Petitioner is liable to pay an amount of Rs.15,00,000/- to the concerned employees as per the calculations. The Industrial Court has passed the impugned order based on the consent terms entered into by the parties in Writ Petition Nos.1810 of 2009 and 1811 of 2009, which was accepted

by this Court on 7 December 2012. Nothing is shown by the Petitioner as to why they are not liable to pay as per the consent terms. The amount of Rs.13,00,000/- which is deposited, will have to be paid by the Petitioner. As regard the amount of Rs.6,34,060/- is concerned, that has been granted without any discussion whatsoever and merely because the Respondent Union has claimed an amount of Rs.19,25,258/-. Learned counsel for the Respondent is not able to show the basis for the direction to issue recovery certificate in respect of Rs.6,34,060/-.

5. On 27 October 2015, after hearing the parties at length, following order was passed :

'PC.: After hearing the learned counsel for the parties, it appears that there is a dispute between the parties as regard the exact amount payable to the Respondents. According to the Petitioner that they have carried out the correct calculations and have deposited the amount of Rs. 13,00,000/- which the Industrial Court by the impugned order has permitted the Respondents to withdraw.

2. After hearing the learned Counsel for the parties and perusing the record it appears that the claim of the Respondents that they are entitled to monetary benefits cannot be disputed and is not disputed. It is only the quantum that has been disputed. Considering the arguments it appears that the dispute is whether the Respondents are entitled to the amount of Rs.15,00,000/- minus Rs.87,500/- or Rs.15,00,000/- minus Rs.63,000/-. The learned Counsel for the parties state that they will make an attempt to put to an end to the dispute amicably and for that purpose they seek time.

3. Stand over to 24 November 2015 for directions.

4. *In the meanwhile, considering the contentions as above, the claim of the Respondents to receive an amount of Rs.1,00,000/- per head, as a minimum, cannot be disputed. Therefore, the Respondents, that is the concerned nine workmen, will be entitled to withdraw an amount of Rs.1,00,000/- each i.e. total Rs.9,00,000/-.*

5. *Till the next date, no coercive steps will be taken by the Respondents based on the impugned order except the one permitted above.'*

6. Therefore, the dispute is now only as regard the amount of deduction. As regard the case of the Petitioner that the deduction should be Rs.87,500/-, nothing is placed on record as to why this calculation be accepted. In the impugned order, if the Industrial Court has specified the amount of deductions towards the provident fund contribution and professional tax, no reason is shown as to why this calculation arrived at by the Industrial Court specifying the deduction at Rs.63,000/-, be set aside.

7. Learned counsel for the Respondent submitted that the Petitioner be directed to pay the amount with interest, as they had not paid the amount as per the order of this Court. The Respondent has made no such submission before the Industrial Court and the Industrial Court has not granted the interest. I am not inclined, therefore, to accept the submission of the learned counsel for the Respondent.

8. It is informed that, pursuant to the order dated 27 October

2015, the amount of Rs.9,00,000/- stands withdrawn by the Respondent. Therefore, the entitlement of the Respondent being Rs.15,00,000/- and the deduction being Rs.63,000, the total amount to be paid by the Petitioner would be Rs.14,37,000/-. Since the amount of Rs.13,00,000/- is already deposited, the Petitioner will deposit the balance amount of Rs.1,37,000/- within a period of four weeks from today, before the Industrial Court, Mumbai. The concerned nine employees will be entitled to withdraw the balance amount and the amount to be deposited by the Petitioner, as per their share.

9. The writ petition is disposed of in above terms. No order as to costs.

(N. M. JAMDAR, J.)