

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2557 OF 2017

1. Shrirang Prakashan Pvt.Ltd.,
New Congress House, M.G.Road,
Nashik,
 2. Shri Vikram Devkisan Sarda,
Director, Shrirang Prakashan Pvt.Ltd.,
Age-55 years, Occu-Business,
New Congress House, M.G.Road,
Nashik.
- PETITIONERS

VERSUS

Yogendra Punamchand Junagade,
Age-Adult, Occu-Business,
R/o Dhule, 13, Patrakar Colony,
Champabag, Sakri Road,
Dhule, Tal. and Dist.Dhule

-- RESPONDENT

Mr.Y.G.Gujarathi, Advocate for the petitioners.
Mr.S.S.Patil, Advocate for the respondent.

WITH
WRIT PETITION NO.2816 OF 2017

Yogendra Punamchand Junagade,
Age-60 years, Occu-Nil,
R/o 13, Patrakar Colony,
Chumpabaug, Sakri Road,
Dhule

-- PETITIONER

VERSUS

1. Shrirang Prakashan Pvt.Ltd.,
Through its Manager
New Congress House,
M.G.Road, Nasik - 424001,

2. Vikram Devkisan Sarda,
President/Director,
Shrirang Prakashan Pvt.Ltd.,
New Congress House,
M.G.Road, Nasik - 424001

-- RESPONDENTS

Mr.S.S.Patil, Advocate for the petitioner.

Mr.Y.G.Gujarathi, Advocate for the respondents/Establishment.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 01/03/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. In both these petitions, the litigating sides before the Labour Court in Complaint (ULP) No.23/2009 are aggrieved by the judgment of the Industrial Court dated 03/08/2016 by which Revision (ULP) No.14/2015 filed by the Establishment has been rejected though the Industrial Court has concluded that the impugned order of the Labour Court is perverse.

3. For the sake of clarity, the petitioners in the first petition which is the Employer would be referred to as the Establishment and the 'respondent/employee' who has filed the 2nd petition would be

referred to as the 'worker'.

4. The worker had approached the Labour Court by filing Complaint (ULP) No.23/2009 for challenging his dismissal. Considering the law laid down, the Labour Court has framed the following two issues :-

[a] Does the complainant prove that the departmental enquiry conducted by the respondent is not fair, legal and proper ?

[b] Does the complainant prove that the findings recorded by the Enquiry Officer are perverse ?

5. The first issue was answered in the negative and the second issue was answered in the affirmative. Consequentially, the enquiry stood vitiated and set aside.

6. After the Part-I judgment dated 27/02/2015 was delivered, the Establishment preferred a revision petition u/s 44. The Industrial Court, by relying upon the judgment of the Hon'ble Supreme Court in Cooper Engineering Ltd., Vs. P. P. Mundhe [AIR 1975 SC 1900], concluded that the revision petition was not tenable before the Industrial Court. While concluding that the revision petition was not maintainable, the Industrial Court proceeded to scrutinize the part-I judgment of the Labour Court and held that the conclusion of the

Labour Court was perverse and the findings of the Enquiry Officer cannot be said to be perverse. In short, the Industrial Court held that the revision petition was not maintainable and yet delivered its verdict concluding that the impugned judgment of the Labour Court was perverse.

7. Naturally, both the litigating sides are before this Court.

8. It is trite law that if a Court concludes that it has no jurisdiction or if it concludes that the proceedings are not maintainable, it is not required to consider the merits of the matter. If the proceedings are not maintainable, the concerned Court has to dispose of the proceedings without going into the respective merits of the averments set out by the litigating sides.

9. There is no doubt that the Hon'ble Apex Court in Cooper Engineering (supra) has laid down the law that the matter should not be decided in bits and pieces and challenges should not be posed at every interlocutory stage. This Court, in the matter of Suryabhan M. Avhad Vs. Mahindra and Mahindra, [2011(1) CLR 457] has concluded that when an interlocutory/interim order is perverse and unsustainable, this Court can set aside the order. The

Supervisory/writ jurisdiction of this Court under Article 227 is akin to the revisional jurisdiction of the Industrial Court u/s 44. As such, when this Court can entertain a writ petition against an interim order, the Industrial Court can very well consider a revision petition u/s 44.

10. It appears that the Establishment has not cited the above judgment before the Industrial Court and as such the Industrial Court was deprived of the assistance of the view taken by this Court in similar circumstances. It is pointed out that this Court in Yuvraj Kalu Patil Vs. Dhule and Nandurbar Zilla Parishad [2012(4) Mh.L.J. 897], has held that the Industrial Court could have entertained the revision and could have refused to interfere with the Part-I judgment of the Labour Court if it found that the findings of the Enquiry Officer are perverse or otherwise.

11. Considering the above, both these petitions are allowed. The impugned judgment of the Industrial Court dated 03/08/2016 is quashed and set aside. Revision (ULP) No.14/2015 stands remitted to the Industrial Court with the following directions :-

[a] The litigating sides shall appear before the Industrial Court on 24/03/2017.

[b] The Industrial Court thereafter shall call for the record and proceedings from the Labour Court in Complaint (ULP) No.23/2009 and then decide the revision petition on its own merits keeping in view the law laid down by this Court in Suryabhan Avhad and Yuvraj Patil (supra)

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

(RAVINDRA V. GHUGE, J.)