

Meena

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 13 OF 2017

ZUARI AGRO CHEMICAS LTD
WORKERS UNION

Having its office at Jai Kissan Bhawan,
Zuarinagar- Goa, by its President, Mr
Orlando S A Da Silva, R/o H No 425,
Orlim, Salcete Goa 403 717

...Petitioner

~ VERSUS ~

- 1. STATE OF GOA**
Through the Chief Secretary
Having its office at Secretariat,
Porvorim- Goa.
- 2. LABOUR COMMISSIONER,**
Office of the Labour Commissioner,
Government of Goa,
Shrama Shakti Bhawan, 2nd Floor,
Patto Plaza, Panaji Goa
- 3. ASST. LABOUR COMMISSIONER**
Dourado Building, 1st Floor,
Vasco Da Gama, Goa.
- 4. THE MANAGING DIRECTOR,**
Zuari Agro Chemicals Limited,
Jai Kissan Bhavan,
Zuari Nagar, Goa 403 726.
- 5. THE MANAGING DIRECTOR,**
Zuari Global Limited,
Jai Kissan Bhavan,
Zuari Nagar, Goa 403 726.

EMPLOYEES UNION,
represented by its President,
Mr Eknath V. Salkar,
Jai Kissan Bhavan,
Zuari Nagar, Goa 403 726

...Respondents

APPEARANCES

FOR RESPONDENTS NO 6 Mr V Menzes with Mr Akshay Shirodkar,
Advocates

DATED : 20th September 2017

ORAL JUDGMENT (per GS Patel J)

1. Heard.

2. We are not inclined to grant any relief in exercise of our discretion under Article 226 of the Constitution of India in this writ petition brought by the Zuari Agro Chemicals Ltd Workers Union. The Petitioners seem to be a breakaway union from the 6th Respondent, the Zuari Agro Chemical Ltd. Employees Union. The Petitioner seek a mandamus directing the State Government, Respondent No 1 to exercise its powers under Section 34 of the

Industrial Disputes Act and, after conducting an investigation in accordance with section 11(2) and 11(4) of that Act, to file a complaint before the Judicial Magistrate First Class at Vasco Da Gama, Goa.

3. This is how the prayer clause 'a', the only final prayer, reads:

"(a) For a writ of Mandamus or any other appropriate writ in the nature of Mandamus directing the Respondent No 1 to exercise its powers under Section 34 of Industrial dispute Act, 1947 and after conducting necessary investigation in terms of Section 11(2) and 11(4) of Industrial Dispute Act, 1947 to file necessary complaints before the learned Judicial Magistrate First Class at Vasco Da Gama, Goa in respect of unfair labour practice as complained by the Petitioner in its complaints dated 70.01.2015, 09.02.2015, 06.10.2015 or other unfair instances of unfair labour practices or in the alternative the Petitioners be given sanction or authority to file necessary complaint to the learned Judicial Magistrate First Class in respect of said unfair labour practices."

4. On the face of it, this prayer seems to us to proceed on the assumption that there indeed exists an unfair labour practise. In order to appreciate this, we must have regard to certain provisions of the Industrial Disputes Act. Unfair labour practises are covered by Section 25-T and 25-U, which, between them, make up the entirety of Chapter V-C of the Industrial Disputes Act. Section 25-T prohibits unfair labour practices and says that no employer or workman or trade union, whether registered under the Trade Unions Act or not, is to commit any unfair labour practice. Section 25-U stipulates the infraction penalty and says that any person who

commits any unfair labour practice is punishable with imprisonment of up to six months or a fine of up to Rupees 1000/- or both. The terms 'employer', 'workman', 'trade union' and 'unfair labour practice' are all defined in Section 2 of the Act.

5. We need not consider the other definitions because nothing material turns on them. The definition of 'unfair labour practice' is set out in Section 2(ra) as meaning any of the practices specified in the Fifth Schedule. Now the Fifth Schedule has two separate parts to it. The first speaks of unfair labour practices on the part of the employer, and their unions, and the second part speaks of unfair labour practices by workmen and their trade unions.

6. What is of immediate relevance to us however, is the jurisdictional section and this is Section 34. Sub-section 1 says that no court is to take cognizance of any offence punishable under this Act or of the abetment of any such offence except on a complaint made by or under the authority of the appropriate government. The term appropriate Government is also defined in Section 2(a) of the Act. Section 34(2) then says that no court inferior to that of the Metropolitan Magistrate or Judicial Magistrate First Class shall try an offence punishable under this Act. Taken together, this means that a Metropolitan Magistrate or Judicial Magistrate First Class can examine an offence of an unfair labour practice only on a complaint made by or under the authority of the appropriate Government.

7. Mr Amonkar for the Petitioner complains that the appropriate Government has impermissibly made a reference to the industrial court of a alleged unfair labour practice. We find this indeed not so from page 163 onwards is a copy of the order of the Government of Goa in its Labour Department. This order was passed on 26th February 2016 and it says that the State Government is of the opinion that there exists an industrial dispute between Zuari Agro Chemical limited/Zuari Global Limited and its workmen represented by the Petitioner Union in respect of a specified matter. This dispute is referred to adjudication of the industrial Tribunal Goa under Section 7A of the Act. The order includes a schedule and its obvious from the schedule that what is referred is not a unfair labour practice properly so-called but an industrial dispute.

8. In fact, it seems that what has actually happened is this. The charter of demands of the 6th Respondent was addressed by the company Zuari Agro Chemical Limited/Zuari Global Limited. There was a conciliation in respect of that charter of demand. The Petitioner Union seems to be aggrieved by a part of that charter and objects to certain portions of it. This objection will not constitute an “unfair labour practice” as defined in the Act.

9. More problematic is the frame of the prayer. This is not only a question of drafting or of moulding a relief. We are presented with a situation where we have quite literally a Hobson’s choice: we must either declare that what the Petitioner claims is in fact an unfair labour practice, something we cannot do; or we must direct the Government to decide only in one way and compulsorily force the complaint to the Judicial Magistrate First Class. That also is

something we cannot possibly do. It is entirely up to the appropriate Government to decide what is to be done with the so-called unfair labour practice allegation presented to it by the Petitioner. We cannot conceivably direct the Government to exercise its discretion only in one way. We cannot usurp that exercise of discretion either.

10. It is in these circumstances that we find ourselves unable to grant the Petitioner any relief.

11. We see no merit in the petition, which stands rejected. There will be no order as to costs.

NUTAN D. SARDESSAI J.

G. S. PATEL J.