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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9193 OF 2016

Santosh Shridhar Salkar

... Petitioner

vs.

United White Metal Ltd. & Ors.

... Respondents

Ms. Ketki Rege for the Petitioner.

Mr. A. V. Bukhari, Senior Advocate i/b. Mr. Avinash K. Jalisatgi for Respondent no. 1 and 2.

Mr. K. M. Naik, Senior Advocate a/w. Mr. S. P. Salkar i/b. Mr. Hemant Telkar for Respondent no. 3.

CORAM : A.K. MENON, J.

DATE : 13th DECEMBER, 2017

P. C.

1. By this Writ Petition the petitioner, a former employee of the respondent no.1 has called into question the judgment and order dated 26th August, 2015 passed by the Industrial Court, Mumbai in Original Complaint (ULP) No. 180 of 2008. By the impugned order the Court dismissed the petitioner's complaint and directed the complainant to pay costs to the respondent in the original complaint.

2. Few facts are necessary to lay the background before considering the order impugned in this petition. The original complainant no.1 is the sole petitioner who has challenged the order of dismissal. The original complainant no.2, it is stated across the bar, has not challenged this order as on date.

3. The complaint alleged and attributed unfair labour practices to the respondent nos. 1 and 3 as a result of respondent no. 3 having transferred ownership of an undertaking to respondent no.1 on 29th December, 2003. The transfer has occasioned by virtue of an agreement between respondent no. 3 and respondent no.1. Respondent no. 1 transferee thus became entitled to the undertaking comprising a factory situated at Akurli Road, Kandivali (East), Mumbai along with about 235 of its workers. Admittedly, the transfer included transfer of ownership of immovable property as well. It is the case of the petitioner that the agreement for transfer and undertaking was illegal.

4. Vide letter dated 23rd December, 2003 the respondent no. 1 informed its employees of the transfer of the undertaking as a going concern, but the petitioner has taken objection on the ground that respondent no. 1 had never been engaged in business of manufacturing or services of elevators or escalators which is the primary business of respondent no. 3 instead respondent no. 1 was always engaged in the business of real estate development. In view of the aforesaid transfer it is submitted that several workers accepted the transfer after registering their protest. According to the petitioner the transfer was merely to circumvent the mandatory provisions of Chapter V-B of the Industrial Disputes Act, 1947 and to close down the factory of respondent no. 1 and to utilise the asset comprised in the property, for commercial exploitation.

5. Thereafter respondent no.1 sought permission to retrench employees which was granted on 17th September, 2004 and on the very same day 116 workers

including the petitioner were retrenched. Although the petitioner accepted the retrenchment compensation, Ms.Rege learned counsel for the petitioner would submit that the retrenchment compensation was accepted under protest and without prejudice to the rights and contentions of the petitioner. A Review application was filed by the concerned Union came to be disposed of since the order of reference had lapsed after one year. There were two unions involved the Bharatiya Kamgar Karmachari Mahasangh (BKMM) and Bhartiya Kamgar Sena (BKS). BKMM had filed a complaint being Complaint No. 11 of 2004 and the other Union BKS filed Complaint No. 181 of 2004 under the provision of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU Act) challenging the transfer as being illegal, null and void and by way of an unfair labour practice. It is material to note that it is an admitted fact that no other proceeding was filed in any Civil Court challenging the said transfer.

6. The second complaint came to be dismissed by the Industrial Court by judgment dated 30th August, 2005 since the court found that it had no jurisdiction to entertain the complaint which had summary powers. In the meantime on or around January, 2006 respondent no. 1 declared a scheme of voluntary retirement (VRS) which led to several of the workers opting for the said scheme. Respondent no. 1 – Company admittedly also offered benefits of the VRS to the 116 workers who had been retrenched. The petitioner did not opt for VRS and had continued his challenge which ultimately resulted in the complaint forming subject matter of this Writ Petition being filed. The petitioner therefore filed a complaint along with

his co-petitioner Mr. Sunder Dattaram Govekar being Complaint (ULP) No. 180 of 2008 interalia seeking following reliefs :

- a) To hold and declare that the respondents have indulged in unfair labour practice under item 9 and 10 of Schedule IV of MRTU & PULP Act.*
- b) To restrain the respondents from the unfair labour practice.*
- c) Pending hearing and final disposal of the complaint the respondent be restrained from demolishing the building and disposing of plant and machinery or selling land premises or to make any changes including that of leasing out the said premises to any other person for any other activities.*
- d) To grant interim/ad-interim order in terms of prayer (c) as prayed for.*

Ad-Interim relief sought in terms of prayer clause (c) above was initially granted but later the order was vacated. The crux of the petitioner's complaint is that respondent's intention was all along to exploit the land on which factory at Kandivali was located and that the transfer was only an eye wash. The intention was always to close down the undertaking systematically by terminating services of the workers and the agreement was merely executed to facilitate the said intention. Considering the pleadings the following issues were framed :

- (1) In view of the dismissal of the two complaints Complaints (ULP) Nos. 11/2004 and 181/2004 and the third Complaint (ULP) No. 95/2006 filed by the complainants in their individual capacity and pendency of Reference (IT) No. 1/2007 (which has been reportedly stayed by the Hon'ble High Court) whether this*

complaint is maintainable ?

(2) Whether the complainants have locus to file this complaint on behalf of the retrenched employees and the employees who have taken VRS?

(3) Whether the complainants prove unfair labour practices within the meaning of item 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971 ?

(4) What relief and Order ?

The first three issues were answered in the negative and as a consequence the complaint was dismissed.

7. Ms .Rege, learned Advocate for the petitioner submitted that observation is the impugned order to the effect, that the complainant as on date of filing complaint was not employee since he had accepted retrenchment compensation and the benefit of the Voluntary Retirement Scheme is not correct. She submitted that the petitioner was the first complainant in the complaint and he had not availed of VRS. The second complainant may have accepted the VRS and acted upon it but the petitioner certainly did not. Ms. Rege further submits that this being the basis of rejecting the complaint is fallacious and therefore she seeks intervention of this court.

8. Ms. Rege further submitted that the mere fact that several other employees have accepted VRS does not in any way take away from the fact that the respondent nos. 1 to 3 have indulged in unfair labour practices. The transfer of the

undertaking was not bonafide as is evident from the fact that on the very day, 17th September, 2014, that retrenchment permission was granted, the respondent no.1 retrenched 116 workers and thereafter offered VRS to the others, 85 of whom initially accepted the VRS. The entire exercise was pre-planned and intended to deprive the workers of their jobs. The transfer was thus not a bonafide transfer of the undertaking. It was aimed at facilitating development of the land forming part of the undertaking that was transferred.

9. Ms. Rege further submitted that the impugned order holds that the complainant has no locus to plead on behalf of other employees since the complaint was authorisedly filed in representative capacity, but even as far as the second complainant is concerned there is no letter of authority from any of the other employees which would have enabled the petitioner to pursue the complaint on their behalf. Paragraph 9 of the impugned order records that although petitioner had deposed that he represents all employees, he had denied the suggestion that he is pursuing the complaint on his own account. He was not in position to establish that the complaint was being pursued on behalf of any other person. On the other hand it admits of the fact that there is no authority granted to any of the other employees.

10. The only other issue that was pointed out by the learned Counsel for the petitioner is that in Writ Petition No. 864 of 2006 filed by respondent no. 1 and Writ Petition No. 1350 of 2007 filed by respondent no. 3 the transferee and the transferor respectively, challenging the order passed by the Industrial Court in

Reference number 1 of 2007 whereby the said court by canceling the agreement dated 29th December 2003 directed the workmen to be absorbed in the Respondent no.3. The said two petitions had been dismissed by a common order dated 25th July, 2014 which dismissal was thereafter subject matter of SLP (C) No. 23563 of 2014 and SLP (C) No. 23995 of 2015. Vide order dated 23rd February, 2017 these petitions came to be admitted and the Civil Appeals have been directed to be heard within 6 months and the order of the High Court continues to be stayed.

11. Mr. Bukhari, and Mr. Naik representing Respondents 1 and 3 oppose the petition and states that the challenge is devoid of any merit inasmuch as the petitioner had no locus to continue with the complaint. It is submitted that it is not in dispute that the said undertaking of respondent no. 3 was sold to the respondent no. 1 as a going concern. It is also not in dispute that the respondent no. 1 is not under management common with that of respondent no.3. It is therefore submitted the petition be rejected.

12. Having heard the counsel for the parties and having considered the facts, I find there is no reason to fault the impugned order. The impugned order has dealt with facts as appearing on the record and has held that the petitioner had no locus to challenge his transfer on the basis that the earlier Complaint (ULP) nos. 11 and 181 of 2004 and 95 of 2006 which were also filed by the other complainant in their individual capacity had been dismissed.

13. In the course of submissions before me today, I inquired to the learned Counsel for the petitioner whether the petitioner was acting on behalf of the Complainant no. 2 or any of the other employees under any valid authorised power of attorney or whether there was any other form of collective representation that was forthwith produced before the Court, to which she fairly stated that there was no authority as on the date of the complaint and that the petitioner had acted for the co-complainant on an earlier occasion for some purpose not connected with the present complaint. In the circumstances, the challenge in the present petition is limited in scope as aforesaid.

14. The other issues that has been urged is that the Court failed to appreciate the petitioners contention that the entire scheme of the respondent was to deprive the employees and to get rid of the employees by transferring the undertaking to respondent no. 1. But this overlooks the fact that out of 235 employees, about 232 employees had accepted the retrenchment compensation, had also accepted Voluntary Retirement Scheme post the payment of retrenchment compensation. It is not in dispute that out of 235 employees, 116 employees accepted VRS and 85 employees who had been retrenched and were offered benefit of the scheme, also opted for Voluntary Retirement. Out of 235 employees 232 persons had chosen not to challenge the transfer and only three persons had not accepted the Voluntary Retirement Scheme and their services were terminated on or about 6th January, 2007.

15. In the circumstances it becomes obvious that the petitioners challenge was on his own account and not on behalf of any of the others. After the permission for retrenchment was granted on 17th September, 2004, all 116 workmen who were retrenched were paid retrenchment compensation and thereafter another 116 workman were paid Voluntary Retirement Scheme package. The retrenchment compensation was paid in September, 2004. However, the VRS scheme came to be accepted pursuant to settlement with the two unions sometime in January 2006. These are facts which are not in dispute.

16. In conclusion, there is no perversity or error that is pointed out in the impugned order. I find no reason to interfere and exercise the Writ Jurisdiction of this Court. . In the circumstances, I pass the following order :

- (1) Writ Petition is dismissed.
- (2) No orders as to cost.

(A.K. MENON, J.)