

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13758 OF 2016

Emerson Network Power (Pune) Pvt. Ltd.] Petitioner

Vs.

Shri Sitaram Genba Landage] Respondent

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Mr. Sudhir Talsania, Sr. Advocate a/w Mr. Rahul Oak, for petitioner.

Mr. Meelan Topkar i/b Mr. V.R. Gaikwad, for respondent.

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CORAM : R.G. KETKAR, J.

DATE : 24th JULY, 2017.

P.C.

Heard Mr. Talsania, learned Senior Counsel for the petitioner and Mr. Topkar, learned Counsel for respondent at length.

2. By this Petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 19th September, 2016 passed by the learned Member Industrial Court, Satara [for short 'Tribunal'] below Exhibit-U-9 in Complaint (ULP) No. 27 of 2015. By that order, Tribunal partly allowed application Exhibit-U-9 made by the respondent hereinafter referred to as 'complainant' and directed the petitioner to produce documents at Sr. No. 1,2,3,5,6,7,8 and 11 and list of workers showing last payment on the date of closure and present salary against the names of each of the worker in all

the units in respect of Sr. No.4 of application Exhibit-U-9.

3. Rule. Mr. Topkar waives service. Having regard to the controversy raised in this Petition and at the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

4. In support of this Petition, Mr. Talsania raised various contentions. One of the contentions advanced by him was that Tribunal while ordering production of documents has not recorded any finding as regards relevancy of these documents. He invited my attention to paragraph 10 of the impugned order wherein Tribunal has ordered production of documents without recording any finding. He, therefore, submitted that Petition requires consideration.

5. On the other hand, Mr. Topkar has supported the impugned order. He submitted that in paragraph 5, Tribunal recorded submissions advanced on behalf of the complainant. In paragraph 6, Tribunal recorded submissions advanced on behalf of the petitioner (respondent therein). In paragraph 7, Tribunal referred to the decision of this Court in the case of **S.B. Patole and Ors. Vs. Fujitsu ICIM Ltd., Pune and Ors, 2011 (1) LJSOFT, 40** and extracted passage from that decision. In paragraph 8, Tribunal referred to the decision of this Court in the case of **Fox Cor.. (India) Ltd and F.H. Lala and Ors, Civil Application No. 2408 of 1972**. In paragraph 9, Tribunal referred to provisions of Section 2(cc), Section 25 (O) of the Industrial Disputes Act, 1947 [for short

'I.D. Act']. In paragraph 10, after considering submissions as also decisions, Tribunal ordered production of documents which are found relevant. He, therefore, submitted that no case is made out for interfering the impugned order.

6. I have considered rival submissions of the learned Counsel appearing for the parties. I have also perused material on record. As noted earlier, Tribunal has directed the petitioner to produce documents at Sr. No. 1,2,3,5,6,7,8 and 11 and list of workers showing last payment on the date of closure and present salary against the name of each workers in all the units in respect of Sr. No.4 of application Exhibit-U-9. A perusal of the impugned order shows that in paragraph 5, it referred to the submissions advanced on behalf of the petitioner herein. In paragraphs 7 and 8, it referred to decision of this Court and in paragraph 9, provisions of I.D Act. In paragraph 10, Tribunal has observed;

“In view of this provision, the management has not applied for prior permission of the appropriate Government to close down the unit. Learned counsel for the Respondent has submitted that when the strength of workers is below 50, such permission is not required. It is the fact that Respondent has not applied to appropriate Government for permission of closure of unit. Learned Counsel for the Respondent has admitted that there are more than 100 workers working in other units at Pune and those units have no concern with the Satara Unit in view of definition of section 2-CC of Industrial disputes Act. ENPP and ENPI are having several units at Pune and several service centers in different parts in India and when there are workers more than 100, the permission of appropriate Government before closure was required. Therefore, in order to establish the contention as alleged by the complainant, certain documents are required which are mentioned at Sr.

No. 1,2,3,5,6,7,8 and 11 and in respect of serial No.4 only list of workers showing last payment on the date of closure and present salary against the names of each of the worker working in all the units. With this discussion, I am of the opinion that, petition is required to be allowed partly as observed above, Hence, I pass the following order”.

7. A perusal of paragraph 10 of the impugned order does not indicate that Tribunal has recorded any findings as regards relevancy of these documents which are ordered to be produced. In view thereof, on this short count, impugned order requires to be set aside by restoring application Exhibit-U-9 for deciding it afresh. The Tribunal will consider the documents which are sought to be produced by the complainant as also will discuss relevancy of these documents before passing further order. Subject to this, Petition succeeds. Impugned order is set aside. Application Exhibit-U-9 is restored to file of the Tribunal and the same shall be disposed of in accordance with law and in the light of the observations made hereinabove. Rule is made absolute accordingly. In the circumstances of the case, no order as to costs.

8. At this stage, Mr. Topkar submits that next date of hearing before the Tribunal is 28th July, 2017. The Tribunal is requested to dispose of the application Exhibit-U-9 within three months from the next date of hearing. Order accordingly.

[R.G. KETKAR, J.]