

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.58 OF 2017

Bhartiya Kamgar Sena .. Petitioner

vs.

Anand Teknow Aids Engg.(I) Ltd. .. Respondent

Mr.M.D.Nagle for the petitioner

Mr.K.S.Bapat i/b Mr.T.R.Yadav for the respondent

CORAM : K. K. TATED, J.
DATE : JANUARY 9, 2017

PC.:

1 Heard the learned counsel for the parties.

2 By this petition under Article 227 of the Constitution of India, the Petitioner Bhartiya Kamgar Sena challenges the order dated 28.11.2016 passed by Industrial Court, Pune below Exhibit-C-13 in complaint (ULP) No.149 of 2015 allowing the respondent Company's application for permission to close down the Company's Unit at Talawade and also to remove the plant, machinery & equipments.

3 The learned counsel for the petitioner submits that at the time of deciding the respondent's application below Exhibit-C-13, the Industrial Court failed to consider the fact that more than 100 persons were employed in the respondent Company and therefore, they require

necessary partition under section 25-N of the Industrial Disputes Act, 1947. He submits that to that effect, petitioner specifically raised objection in their reply dated 21.4.2016.

4 The learned counsel for the petitioner submits that in the present proceedings, the respondent filed application for closing down their factory Unit at Talawade immediately, as soon as the Industrial Court passed order below Exhibit- U-2 in complaint (ULP) No.149 of 2015 on 15.9.2015. He submits that at the time of hearing of application below Exhibit- U-2, respondent has not disclosed their intention to close down the factory premises at Talawade. Hence, the impugned order is required to be set aside.

5 On the other hand, the learned counsel for the respondent submits that the service of 21 workers were terminated on 6.11.2015. He submits that in any case, Reference (IT) No.35 of 2016 is pending for hearing on its own merits. He further submits that even the Industrial Court at the time of passing impugned order dated 28.11.2016 made it clear that the respondent has to follow due procedure of law. He submits that in similar way, at the time of passing order below Exhibit (U-2), court has made it clear that the respondent cannot take action without following due process of law. Hence, there is no substance in the present Writ Petition and same is required to be dismissed with costs.

6 I have heard both the sides at length.

7 It is to be noted that in the present proceedings, Reference (IT) No.35 of 2016 is pending on its own merits. If the petitioner proves in the said Reference that the respondent without obtaining prior

permission as required under Industrial Disputes Act, 1947 under section 25-N closed down their unit at Talawade, in that case, court can reinstate all the workers by setting aside the impugned order also. In any case, the respondent filed their written statement in complaint on 8.5.2015. Respondent in paragraph 8 specifically denied the contention of the petitioner that they employed more than 100 workers. Paragraph 8 of the said written statement reads thus:

“8. The Respondent further submits that it is totally false that there are more than 100 workmen engaged in the establishment and in fact there are only 21 workmen and on whose behalf the present Complaint has been filed. The Respondent further submits that since the strength of the establishment is only 21 employees the provisions of the Model Standing Orders Act do not apply to the undertaking of the Respondent.”

8 Considering these facts and as Reference (IT) No.35 of 2016 is pending for hearing on its own merits, I do not find any substance in the present Writ Petition. Same stands rejected.

9 Industrial Court to decide Reference (IT) No.35 of 2016 on its own merits without influencing the order passed by this court.

JUDGE