

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

921 WRIT PETITION NO. 3300 OF 2017

NAGAR TALUKA SAHKARI SAKHAR KARKHANA LTD THROUGH ITS
INCHARGE MANAGING DIRECTOR AND ANOTHER
VERSUS
SHAIKH AKIL SUBHAN

WITH
WRIT PETITION NO. 3301 OF 2017

NAGAR TALUKA SAHKARI SAKHAR KARKHANA LTD THROUGH ITS
INCHARGE MANAGING DIRECTOR AND ANOTHER
VERSUS
ASHOK SOPAN PALVE

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Advocate for Petitioner Mr. Abasaheb D. Shinde

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CORAM : V. K. JADHAV, J.
DATED : 20th MARCH, 2018

PER COURT:-

1. The writ petition No. 3301 of 2017 is not on board. However, since the issue involved in both the writ petitions is identical, at the request of learned counsel for the petitioners, writ petition No. 3301 of 2017 is taken on board for hearing.
2. Heard learned counsel for the petitioners. None appears for the respondent sole in both the petitions though the notices of hearing as to admission as well as of final disposal are served.
3. By way of both these petitions, the petitioners have challenged

the orders passed by the Labour Court, Ahmednagar in Reference (IDA) No. 16 of 2013 and in reference (IDA) No 17 of 2013, respectively, both dated 05.11.2016.

4. Brief facts giving rise to the present writ petitions are as follows:-

The Labour Court has dealt with the reference under Section 10(1) c of the Industrial Dispute Act 1947, referred by the Deputy Commissioner of Labour, Nashik for adjudication of the issue as per Schedule, whether the respondents should be reinstated in service with full back wages and continuity of service w.e.f. 1.9.2012 and 1.4.2010, respectively. As per the said references, the present petitioner terminated the services of the respondents and though the respondents have issued demand notice to the petitioners, requesting to reinstate them in the service, however, the petitioners refused to reinstate the respondents. In consequence of which the respondents approached the Conciliation Officer and since the conciliation could not be arrived at, the failure report has been submitted, upon which the reference for adjudication has been made. The Presiding Officer of the Labour court, Ahmednagar by its impugned order dated 5.11.2016 answered the reference partly in affirmative and quashed and set aside the oral order dated 1.9.2012

and 1.4.2010, respectively, terminating the services of the respondents and further directed the petitioners to pay retrenchment compensation and also the back wages to the respondents. Hence, these writ petitions.

5. Learned counsel for the petitioners submits that in para 3 of the written statement, the petitioners have specifically raised preliminary objection to the effect that the respondents workmen have no cause of action to raise the industrial dispute, as referred, as well as the contentions and averments in the statement of claims are also general and vague. It also deserves to be rejected on the ground that the petitioner No.1 Karkhana is under liquidation and the petitioner No.2 is also appointed as Liquidator. In the backdrop of these facts, the preliminary objection has been raised to the effect that the reference is not tenable on the ground that the respondents workmen have not sought prior permission of the Registrar of Co-operative Societies to raise the industrial dispute. Learned counsel submits that the learned Presiding Officer of the Labour Court though given reference to the objection raised by the petitioners in para 3 of the impugned judgment, however, failed to frame any issue to that effect and further has not even considered the said objection raised by the petitioners.

6. Learned counsel for the petitioners submits that in the case of ***Sadashiv K. Sutar vs. Kolhapur Zilla Janta Sahakari Bank Limited and Anr, reported in 2004 (2) Bom.C.R. 111***, this court had an occasion to deal with the similar issue and held that in view of the provisions of Section 107 of Maharashtra Co-operative Societies Act, no proceedings against the co-operative bank/society under liquidation could be initiated without permission of the Registrar, either under the provisions of M.R.T.U. and P.U.L.P. Act or Industrial Dispute Act and as such, the Industrial Court's action in absence of such permission is without jurisdiction. Learned counsel for the petitioners submits that in the light of ratio laid down by this Court, the impugned judgment and orders passed by the Labour Court are liable to be quashed and set aside. In the alternate, learned counsel for the petitioners submits that the matter may be relegated to the Labour Court to frame specific points in this regard and after giving an opportunity of being heard to the petitioners, decide the same in accordance with law.

7. In view of above submissions and more particularly the ratio laid down by this court in the case of ***Sadashiv K. Sutar vs. Kolhapur Zilla Janta Sahakari Bank Ltd. and Another (supra)*** relied upon by learned counsel for the petitioners, in para Nos. 5, 6 and 7, this court has made the following observations:-

"5. Bare reading of the complaint and the impugned judgment and award apparently discloses that the grievance of the employee is related to the alleged illegal termination of his service. At the same time, it is a matter of record that the proceedings before the Industrial Court were initiated after the appointment of the Board of Administrators to the bank pursuant to the dissolution of the Board of Directors. Further, the impugned order has been passed after the winding up proceedings were initiated and the liquidator was appointed. In the background of these facts, it is apparent that the grievance of the employee relating to the alleged illegal termination of his services could fall under Item No. 1 of Schedule IV of the MRTU & PULP Act, and therefore, the learned Advocate for the bank is justified in contending that considering the provisions of section 5(d) read with section 7 of the MRTU & PULP Act, the jurisdiction to entertain the complaint filed by Sadashiv Sutar was with the Labour Court and not with the Industrial Court.

6. Section 107 of the Co-operative Societies Act provides, that save as expressly provided in the Act, no Civil Court shall take cognizance of any matter connected with the winding up or dissolution of a society under the said Act and when a winding up order has been made no suit or other legal proceedings shall lie or be proceeded with against the society or the liquidator, except by leave of the Registrar, and subject to such terms, as he may impose;

7. The learned Single Judge in Amravati Growers Co-operative Spinning Mills Ltd. v. Sheshrao K. Ingle & others (supra), after taking into consideration the ruling of Federal Court in (Governor General in Council v. Shriomani Sugar Mills Limited), reported in A.I.R. 1946(33) Federal Court 16, and after taking note of the provisions of section 171 of the Companies Act, 1913, wherein similar provision is to be found with the expression "other legal proceedings" and which was

the subject matter of interpretation in the said Shriomani Sugar Mill's case (supra), and relying upon the same, has interpreted the expression "other legal proceedings" in section 107 of the Co-operative Societies Act to include the proceedings under MRTU & PULP Act. The contention of the learned Advocate for the employee that the I.D. Act is a special law and, therefore, will have overriding effect in relation to the provisions of section 107 of the Co-operative Societies Act cannot be accepted, and I do not find any justification to take the view different from the one taken by the learned Single Judge in Amravati Grower's case (supra). In fact, the finding about the non-exclusion of the proceedings under the MRTU & PULP Act from the expression "other legal proceedings" under section 107 of the Co-operative Societies Act has been arrived at after detail analysis of the provisions of law contained in both the statutes and there is no justification to take a different view in the matter. Being so, the learned Advocate for the bank is justified in contending that in the absence of leave of the Registrar of Co-operative Societies, the Industrial Court or for that matter even the Labour Court could not have proceeded with the proceedings in the complaint initiated by Sutar. Apparently, the exercise of the Industrial Court is without jurisdiction for the reasons stated above. This itself is in fact sufficient to dispose of the petitions by setting aside the impugned orders."

8. It further appears from the impugned judgment and order passed by the Labour Court that even though the petitioners have raised specific grounds for dismissal of reference, however, the Labour Court has not framed specific issue to that effect nor considered the same. In view of above, it would be just and proper if the matters are remanded to the Labour court to frame the specific issue with regard to the objection raised by the petitioners in para 3

of the written statement and decide the said issue after giving an opportunity of being heard to the parties to the reference in accordance with law. Hence, I proceed to pass the following order:-

O R D E R

- I. Writ petitions are hereby partly allowed. No costs.
- II. The impugned orders passed by the Labour Court, Ahmednagar in Reference (IDA) No. 16 of 2013 and in reference (IDA) No 17 of 2013, respectively, both dated 05.11.2016, are hereby quashed and set aside.
- III. The matters are remanded to the labour court with following directions:-
 - a) Restore the Reference (IDA) No. 16 of 2013 and Reference (IDA) No. 17 of 2013, to their original numbers.
 - b) In the light of the grounds raised by the petitioners in the written statement, more particularly in para No.3, frame specific issue and decide the same in accordance with law, after giving an opportunity of being heard to both the parties.
- IV. Writ petitions are accordingly disposed of.

(V. K. JADHAV, J.)