

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 410 OF 2018

Crompton Greaves Ltd.

Plot No. D-2, MIDC,

Waluj, Aurangabad.

.... PETITIONER/

[ORI.FIRST PARTY - I]

VERSUS

Crompton Greaves Employees

Union, RX-4/5, Parijat Housing

Society, Bajaj Nagar, Waluj,

Aurangabad.

....RESPONDENT/

[ORI. SECOND PARTY]

....

Mr. A.S.Shelke, Advocate for Petitioner.

Mr. T.K.Prabhakaran, Advocate for Respondent.

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CORAM : V.L.ACHLIYA, J.

DATE OF JUDGMENT : 10/04/2018

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JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent heard finally at the stage of admission.

2. By this petition filed under Article 227 of Constitution of India, the petitioner – original First Party has challenged the Order dated 16/06/2016 passed by learned Member, Industrial Tribunal, Aurangabad in Reference [I.T.] No. 6/2009.

3. Heard learned counsel for the petitioner and respondent. Perused the impugned order.

4. In view of the limited challenge raised in the petition, it is not necessary to discuss the facts in detail. The petitioner has approached with the case that petitioner is a Company incorporated under the Companies Act and deals in the business of manufacturing transformers. Petitioner had engaged the services of two contractors namely M/s Shaileshwar Enterprises and M/s Sairaj services for carrying out incidental services at their factory premises. The petitioner – Company is also registered under the provisions of Contract Labour Act. The said contractors have also obtained licenses under the Contract Labour Act. The said contractors had

appointed various persons for carrying out the contractual services. In the year 2009, petitioner - Company terminated the contract of M/s Shaileshwar Enterprises. Later-on, the contract of M/s Sairaj Industries was also terminated. Some of the employees of those contractors approached the Industrial Court through respondent - Union and raised industrial dispute claiming that the contract between the petitioner and those contractors were sham and bogus and they were working under direct supervision and control of the petitioner. The petitioner - company has resisted the claim of respondent and denied the case as put forth by the respondent - Union. The respondent - Union examined its witnesses and closed the evidence. While the witness for the petitioner was under cross examination, the respondent - Union filed application seeking production of certain documents. The petitioner filed reply and opposed the application. By the impugned order dated 16/06/2016, the Presiding Officer, Industrial Tribunal, Aurangabad allowed the application moved by the respondent and directed

petitioner – company to produce those documents. Being aggrieved, the petitioner – company has preferred this petition.

5. Mr. A.S.Shelke, learned counsel for the petitioner assailed the impugned order with contention that the order impugned is not only cryptic but also passed without application of mind. By referring the overall facts of the case, the documents sought to be produced, the learned counsel submits that the application moved by the respondent is totally irrelevant. The documents sought to be produced are not relevant to decide the controversy. By referring the application filed seeking production of the documents, learned counsel pointed out that after the period of more than six years of Reference made to industrial court and conclusion of the evidence of respondent – Union, the application was filed that too when the witness for petitioner was under cross examination. No explanation put-forth by the respondent as to delay in making application and explaining relevancy of the documents to be produced

and adjudication of Reference. It is pointed out that in the reply filed by petitioner – Company, it specifically mentioned that the company is suppose to preserve its record for a limited period. The document directed to produce are from the year 1992 onwards i.e. more than 23 years old. It is also pointed out that the contract of these contractors were terminated in 2009 and, therefore, the records of the year 2009 onwards is totally irrelevant and not material for deciding the Reference. It is contended that except the the statutory record of more than 10 years the other are not available with the company. It is also pointed out that production of record as sought by the respondent involves production of reports which runs into thousands of pages and some of the record may be confidential in nature. Without looking into the objection raised by the petitioner as well as written submissions filed on record, learned Presiding Officer, Industrial Court has passed the impugned order.

6. Learned counsel for the petitioner

contended that it is settled position in law that party to litigation can not be permitted to embark on fishing or roving inquiry in the hope that some material will come to hand on the basis of which he can set out a case. By referring the decision of the Division Bench of this Court in the case of **20th Century Fox Corporation (India) Pvt. Ltd. Vs. F.H.Lala and Anr. reported in 1975 MhL.J. 273**, learned counsel submits that the order to produce the document can not be passed. Person seeking production of document must set out facts to justify as to how the documents are relevant and its production is necessary for adjudication of dispute. It is further submitted that the provisions of C.P.C. applies to the proceeding under the Industrial Disputes Act and the application moved under Order XI Rule 15 and 18 must be supported with the affidavit disclosing the necessary material so as to enable the Tribunal to apply its mind and to determine the relevancy of documents and ascertain whether inspection/production should be allowed or not. In this back-ground, learned counsel submits

that the impugned order is not sustainable in law and liable to be set aside.

7. On the other hand, learned counsel appearing for the respondent – Union supported the order passed by Tribunal and submits that the order impugned calls for no interference. By referring the overall facts of the case and the circumstances which prompted to make the application, learned counsel submits that the order passed by the trial Court to produce the document is fully justified.

8. On due consideration of the submissions advanced in the light of the impugned order passed by the Presiding Officer, Industrial Tribunal, Aurangabad; I am of the view that the order is not sustainable in law. The manner in which the order has been passed clearly reflect that the application seeking production of documents moved by the respondent has been dealt in a most casual manner. The order passed clearly reflect the objections raised by the petitioner to oppose the application were not

considered while deciding the application.

9. The impugned order reads as under :

**" ORDER ON EXH. U-10 IN
REFERENCE [IT] NO. 6 OF
2009.**

1. The Second Party has filed this application for giving directions to the First Party No. 1 for production of the following documents :

[i] Muster Roll of all the workmen including the concerned workmen for the year of 1992 – 2011.

[ii] Wage-Register of all the workmen including the concerned workmen for the year of 1992 – 2011 and

[iii] Production records/reports of the workmen for the year of 1992–2011.

2. The First Party No. 1 has opposed the application by filing Say Exh. C-88.

3. Heard the learned Advocate for the Second Party as well as the learned Advocate for the First Party No. 1.

4. It prima facie appears that the documents described in para 7

(I) to (iii) are in the custody of the First Party No. 1. These documents are prima facie necessary for the just decision of the Reference. No prejudice is likely to be caused to the First Party No. 1 if the application is allowed. Hence, following order.

ORDER

[a] The application is allowed.

[b] The First Party No. 1 is hereby directed to produce the documents described in para No. 7 (I) to (iii) of the application before this Tribunal on 02/07/2016. "

10. Perusal of order prima facie reveals that the learned Presiding Officer has taken no pains to examine rival contentions and record reasons, which prompted the Tribunal to allow the application. It was expected on the part of learned Presiding Officer to have look into the controversy involved in the matter, the context in which the production of documents was sought and the relevancy of those documents to decide the controversy involved in the matter. So also the justification in entertaining the application at the stage of cross examination of the witness for the

petitioner – Company also expected to have been dealt by Tribunal while passing order.

11. It is quite settled position in law that request for production of the documents can not be entertained merely on asking of party to proceeding. Before passing the order the Tribunal has to satisfy itself as to the relevancy of the documents sought to produced. The reflection of such examination and application of mind must be reflected in the form of reasons recorded in the order. In absence of examination of relevancy of documents in context of dispute pending for adjudication, the order impugned is not sustainable in law.

12. In the case of **20th Century Fox Corporation (India) Pvt. Ltd. Vs. F.H.Lala and Anr.** [supra], Division Bench of this Court has held that party to any litigation can not be permitted to embark on fishing or roving inquiry in the hope that some material will come to hand on the basis of which he can set out a case. It is further held that before

the Tribunal can order the production and inspection of documents it must satisfy itself as to the relevancy of the documents and its relevance to determine the dispute to be adjudicated. In paragraph Nos. 7, 10 and 12 the Division Bench has observed as under :

"7. The first contention of Mr. Singhvi, the learned advocate for the petitioner, was that there was no proper application made by the Union with the detailed information as to why the production of documents was sought, how the documents were relevant and what was expected to be proved. Mr. Singhvi also contended that without a supporting affidavit the application for production of documents was incompetent and the learned Tribunal had no jurisdiction to entertain the same or pass any order thereon. Mr. Singhvi further contended that it was settled law that the protection to be given to a party's documents must be the same as in the Civil Procedure Code and that there were two basic ingredients which has to be considered before an order for production of document could be made. The first ingredient was that the petitioner must be in possession of the documents and the second equally important one was that the document must be

relevant. In other words, there must be a proper inquiry on the question of relevance before any order for production and inspection of documents can be made. Mr. Singhvi invited our attention to section 11 of the Industrial Disputes Act and in particular to clause (3) (b) thereof to show that the Industrial Tribunal had powers for compelling production of documents and that these powers were to be exercised in the same manner as those exercised by the civil Court under Order XI of the Code of Civil Procedure. For this proposition, he relied on a judgment of the Madras High Court in *Mettur Chemical and Industrial Corpn. Ltd. Vs. Their Workers* in which the following observations occur :

"The combined effect of S. 11(3) of the Industrial Disputes Act, 1947, and Rule 21 of the Rules framed thereunder is to vest in the Industrial Tribunal, with reference to discovery, production and inspection of documents the same powers which the Civil Procedure Code vest in a civil Court when it tries civil suits. It is true that neither S. 11 of the Industrial Disputes Act, nor Rule 21, specifically provides for the application of all the provisions of the Civil Procedure Code governing the discovery, inspection and production of documents. All the same, considering what are the powers

of an Industrial Tribunal to order inspection of documents, the deciding factor should be what are the power of a civil Court to order inspection. It is not an unlimited power or rather a power the exercise of which is limited only by the discretion of the judge, that even S. 30 of the Civil Procedure Code confers on the civil Court. The power conferred by S. 30, Civil Procedure Code, is specifically subjected to 'limitations and conditions as may be prescribed', that is, the conditions and limitations prescribed for instance by relevant rules in Order XI, Civil Procedure Code. The Industrial Tribunal must conform to the general principles that underlay the provisions in Order XI, Civil Procedure Code, governing the inspection of documents. Under order XI, Rule 15, the right to seek inspection is confined to the documents referred to in the pleadings or affidavits of the party against whom that right can be claimed. Rule 18(1) of Order XI, Civil Procedure Code, provides for inspection of documents referred to in rule 15. Rule 18(2) of Order XI, Civil Procedure Code provides for inspection of documents other than those referred to in Rule 15. The conditions to be satisfied before the power under Rule 18(2) of Order XI, Civil Procedure Code, can be exercised are (1) there should be an affidavit to show the documents inspection of which is sought; (2) party who applied for the inspection of documents

should establish that he is entitled to inspect them, and (3) the documents inspection of which is sought must be in the possession of the party against whom the order for inspection is sought. The need for affidavit, the first requirement, may at first sight appear to be a rule of procedure failure to conform to which may not affect the power of the Court to order inspection. But on examination of the classes of documents excluded from the purview of clause 2 of Rule 18 of Order XI, Civil Procedure Code, the need for an affidavit, becomes obvious. The second requirement mentioned above that the party applying for inspection must be entitled to inspect the documents, appears to be a condition full proof of which the Court must insist upon before ordering inspection of documents that fall within the scope of Rule 18(2) of the Order XI, Civil Procedure Code. Whether the right to inspect claimed in a given case is to be held established or not must of course depend on the circumstances of that case and it is neither desirable nor even possible to prepare an exhaustive list of cases that would amount to an established right."

10. Now, it is not really necessary to consider authorities for the proposition that before any Tribunal can order production and inspection of documents it must be satisfied as to the relevancy of

the documents called for. In order to determine the relevancy, there must be material before the Tribunal. In order that there should be material before the Tribunal the applicant must place it before the Tribunal, and this he can do by setting out in the application the necessary facts, the necessary contentions as to the nature of the documents, the necessity for their productions, what kind of reliance he wishes to place thereon and what is the case which he wishes to make out.

12. Now, in our view, it is settled position in law that a party to any litigation can not be permitted to embark on a fishing or roving inquiry in the hope that some material will come to hand on the basis of which he can set out a case. We do not wish to say that in a proper case, after the necessary material is on record, the Tribunal can not order production of relevant documents which would be necessary for the purpose of the adjudication. But before that can be done it would be the duty of the party asking for production of documents to make out a case why it would be necessary for certain documents to be produced. "

13. In the light of order passed by the Tribunal which is impugned in this petition, I have no hesitation to hold that the impugned order is not

sustainable in law and the same is passed in most casual and cryptic manner. Learned Presiding Officer has not taken any pains to ascertain whether the documents as sought to be produced are relevant and necessary for the adjudication of the dispute. In that view, the order passed being perverse, same is liable to be set aside. Accordingly, the petition is allowed. The impugned order is set aside. The Tribunal is directed to decide the application [Exh. U-10] afresh after giving due opportunity of hearing to both sides and without influenced by its earlier order.

14. Rule made absolute in above terms. No costs.

[V.L.ACHLIYA, J.]

