

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12810 OF 2017
WITH WRIT PETITION NO.12811/2017
WITH WRIT PETITION NO.12812/2017
WITH WRIT PETITION NO.12813/2017
WITH WRIT PETITION NO.12814/2017
WITH WRIT PETITION NO.12815/2017
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WITH WRIT PETITION NO.7713/2018
WITH WRIT PETITION NO.7714/2018

MANIK KESHAV JAGDALE
VERSUS
PARNER TALUKA SAHAKARI SAKHAR KARKHANA AND ANR

...
Advocate for Petitioner : Shri Barde Parag Vijay
Advocate for Respondent 1 : Shri Sonwane Mahesh R.
Advocate for Respondent 2 : Shri Shinde Abasaheb D.
...

CORAM : RAVINDRA V. GHUGE, J.
Dated: July 17, 2018
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PER COURT :-

1. In the first group of 41 Writ Petitions, the identically placed former workers (all have presently retired on attaining the age of superannuation) of respondent No.1 - Sugar Factory (hereinafter referred to as the 'Parner Factory'), are aggrieved by the identical judgment and order viz. 12.5.2017 in Application (IDA) No.80 of 2016 and in connected cases. Though the applications under Section 33-C(2) of the Industrial Disputes Act, are partly allowed, the entire claims of the said petitioners including the claims for gratuity and bonus, have not been granted by the impugned judgments.

2. In the second group of 41 Writ Petitions, the Parner Factory has challenged the same judgments through the Liquidator on the ground that the auction purchaser - respondent No.2 Kranti Sugar and Power Limited (Unit Parner Sugar) (hereinafter referred to as "Kranti Sugar"), has been absolved of

the entire liability in so far as the payment of legal dues of the workers are concerned.

3. It is by the consent of the parties that all these matters, being identical, are taken up for hearing. I have heard the lengthy submissions of the learned Advocates.

4. The workers, who have preferred the first 41 petitions, are undisputedly the former employees of the Parner Factory. All of them have attained the age of superannuation. Each of them has preferred an application under Section 33-C(2) of the Industrial Disputes Act, 1947 ("ID" Act) before the Labour Court for putting forth their claims towards unpaid wages, bonus, gratuity and leave encashment.

5. Each of these workers claim to have worked upto 1.9.2013. The Parner Factory went into liquidation in 2005. A State employee was appointed as a Liquidator in between 2005 to 2006. The Maharashtra State Cooperative ("MSC"Bank) had loaned huge amounts to the Parner Factory. An employee of the MSC Bank was appointed as a Liquidator in between 2006 to 2015. The possession of the Parner Factory was with the Bank from 2011. Again from 2015, a State employee was appointed as

a Liquidator.

6. It is stated that the MSC Bank proceeded under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“the SARFAESI Act”) for seeking auction of the immovable properties of the Parner Factory. The tenders were issued on 10.7.2015 and the auction was conducted on 15.9.2015.

7. A copy of the bid document prepared by the Authorized Officer of the MSC Bank indicates under Chapter VII Clause 4 that the authorized officer of the Bank does not assume any responsibility for any shortfall of the movable / immovable assets and several dues including that of the workers and such dues, if any, both existing and future relating to the property, will be borne / paid by the purchaser. There is a dispute whether the Deed of Undertaking cum Indemnity was signed by the Kranti Sugar - auction bidder or not. The Sale Certificate, however, indicates that the purchaser has accepted all the encumbrances presently thereon, on the property and which may arise in future and has agreed to pay the same as per the tender conditions accepted by the purchaser.

8. It is in the above backdrop that these workers preferred their claims before the Labour Court under Section 33-C(2) impleading the Parner Factory and Kranti Sugar as the respondents. They prayed for a direction that these respondents should pay the legal dues of these workers. By the impugned judgments, the Labour Court has concluded that the Parner Factory, through its Liquidator is alone the respondent, who will have to satisfy the legal dues of the workers, being their employer.

9. The workers are aggrieved with the impugned judgments on two counts. Firstly, that meager amounts have been granted by the Labour Court and the claims of bonus and gratuity have been ignored. Secondly, that Kranti Sugar should not have been absolved of the liability to pay the compensation since they had stepped into the shoes of the earlier employer. Parner Factory is aggrieved by the same judgments for the reason that Kranti Sugar is liable to make the payment of the legal dues considering the bid document and the sale certificate. The Parner Factory is further aggrieved that the impugned judgments are ex-parte to the extent of the said factory as it failed to appear before the Labour Court.

10. Shri Shinde, learned Advocate for respondent No.2 Kranti Sugar has vehemently opposed all these petitions and prays that they should be dismissed with heavy costs.

11. I find from the submissions of the learned Advocates and the various factors involved in these cases as recorded above that the following three issues need adjudication:-

(i) Whether Kranti Sugar could be termed as being an employer, so as to be liable to make the payment of the legal dues under Section 33-C(2) of the ID Act?

(ii) Whether the claims of the workers have been rightly adjudicated upon and whether the claims of bonus and gratuity were justifiably ignored by the Labour Court?

(iii) Whether the Parner Factory should be granted an opportunity to appear in the proceedings and for which purpose, whether the said proceeding should be remitted to the Labour Court? and

12. In these cases before me, there is no dispute that the workers were appointed and employed by the Parner Factory and it was on account of their superannuation that they have raised their claims. It is also undisputed that these workers had preferred Complaint (ULP) No.185 of 2001 through their Union

before the Industrial Court and the same was allowed by judgment dated 13.3.2012, directing the Liquidator, as an employer, to pay certain dues of those workers, who were represented by the Union, as a complaint in the said complaint.

13. The first issue, therefore, is as to whether Kranti Sugar can be said to have stepped into the shoes of Parner Factory owing to the auction purchase of the sugar factory and certain parcels of land belonging to the Parner Factory. There is no dispute that Kranti Sugar has purchased the machinery and certain parcels of land under auction proceedings and there has not been any transfer of ownership or management under Section 25-FF of the ID Act. I am restricting this observation only to these cases considering the factors emerging in these proceedings in view of the admitted position that these workers have superannuated from service rendered with the Parner Factory. Though contentions about Kranti Sugar having engaged some of the earlier employees in the same factory have been canvassed, I am not required to advert to these submissions since they are not a part of the proceedings in hand and can be left open to be dealt with in appropriate proceedings.

14. As such, unless the ownership and management of a

factory is not taken over by a new employer, who steps into the shoes of the earlier employer, it cannot be concluded that Kranti Sugar would be the employer. The Liquidator appointed on the Parner Factory would continue to be an authority representing the management of the factory for all purposes, including for settling the dues of the workers, in view of the law laid down in Baburao Dadarao Kolhe and Ors. vs. State of Maharashtra and Ors [2004 (101) FLR 99 : 2004 (2) Mh.L.J. 898]. A claim for unpaid wages or such other dues can, therefore, be maintained against the employer factory represented by the Liquidator.

16. A strenuous effort is made by Shri Barde and Shri Sonawane, learned Advocates for the workers and the Liquidator that the Labour Court can adjudicate upon as to who is the actual employer of these workers. I am not convinced by their submissions for the reason that there cannot be two employers at the same time vis-a-vis the workers. A Liquidator appointed by the Factory would not mean that the employer-employee relationship between the factory and the workers has been brought to an end. He would be liable to assess and quantify the monetary claims of such workers and would be duty bound to make payments of such dues keeping in view Rule 18A(2)(d)(ii) of the Maharashtra Cooperative Societies Rules, 1961. Even in

the case of B.D.Kolhe (supra), the learned Division Bench of this Court concluded that a claim of the workers against their employer represented by a Liquidator after the factory has gone into liquidation, can be entertained by the Industrial Court.

17. Section 33-C under Chapter VII of the ID Act provides for different modes of recovery of money due from an employer. All the different modes provided under Section 33-C are with regard to the workman or his assignee or heirs or a representative recovering money from an employer. In this backdrop, though an employer or an entity may disown a workman while opposing such a claim, the Labour Court can test the stand taken by such an entity and conclude whether the worker was employed by the said employer.

18. In Central Group and others Vs. Narayan Gangaram Patil [2008 (6) All M.R. 788], the learned Division Bench of this Court, while concluding that incidental issues can be gone into by the Labour Court, has noted in paragraph Nos.6 to 8 as under:-

“6. The Constitution Bench in the case of The Central Bank of India Ltd. v. P.S. Rajagopalan (1963) IILLJ 89 SC has

dealt with the scope of Section 33C(2) of the I.D. Act and it would be appropriate to reproduce the following observations in this regard:

16. ... In our opinion, on a fair and reasonable construction of Sub-section (2) it is clear that if a workman's right to receive the benefit is disputed, that may have to be determined by the Labour Court. Before proceeding to compute the benefit in terms of money, the Labour Court inevitably has to deal with the question as to whether the workman has a right to receive that benefit. If the said right is not disputed, nothing more needs to be done and the Labour Court can proceed to compute the value of the benefit in terms of money; but if the said right is disputed, the Labour Court must deal with that question and decide whether the workman has the right to receive the benefit as alleged by him and it is only if the Labour Court answers this point in favour of the workman than the next question of making the necessary computation can arise.... The claim under Section 33C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by Sub-section (2)....

Whereas, in the case of Ganesh Razak (Supra) the

maintainability of application under Section 33C(2) was disputed on the ground that the claim of the workman to be paid at the same rate as the regular workman was not adjudicated earlier by any competent forum and in fact it was disputed. It was under these circumstances, the Supreme Court held,

The Labour Court has no jurisdiction to first decide the workmens entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Courts power under Section 33C(2) like that of the Executing Courts power to interpret the decree for the purpose of its execution.

7. It is thus well settled that while deciding the application under Section 33C(2) of the I.D. Act, the Labour Court has the power to decide incidental issues. The application filed under Section 33C(2) of the I.D. Act is akin to the executing proceedings. If the applicants entitlement is not preadjudicated or based on a statutory claim or claim arising from a settlement, the Labour Court cannot entertain the claim. There is a distinction drawn between the terms "entitlement" and "status". It is well settled that if in an application under Section 33C(2) of the I.D. Act, the employer claims that the applicant is not a workman within

the meaning of Section 2 (s) of the I.D. Act, the same can be decided by the Labour Court as an incidental issue. Similarly, if the employer disputes the employer-employee relationship, the Labour Court has the jurisdiction to decide the same as an incidental issue while deciding an application filed under Section 33C(2) of the I.D. Act.

8. *In the instant case, the workman examined himself and stated that he was employed by the appellants and more particularly appellant No. 1 and the appellant Nos. 2 to 5 were the partners of the said firm. When the employer-employee relationship is disputed, the onus to prove the same also falls on the disputing party. The appellants examined Shri Lalit Jain. In his examination-in-chief he stated,*

The above said power looms were given on contract basis for running to Mr. Kantilal Rajput on 1.11.91 by executing a separate individual agreement, and the above said looms were run by him after 1.11.91. At present looms are not running because the shed was demolished by the Bhiwandi Corpn on 21.11.98. I have filed zerox copy of demolition punchanama dt. 21.11.98 on record. Demolished punchanama was prepared in the presence of Banehal. Exh.16 is a zerox copy of demolition punchanama. The power looms were given to Kantilal Rajput for running on rental basis for a period of 11 months and thereafter leave and licence period was extended from time to time till 28.2.99....

On 19/8/2002 Shri Jain was in the witness box and after his examination-in-chief was concluded, he offered himself for cross-examination for a short time and admitted that the four motors installed in the shed bearing No. 264 were in the name of the applicants and the said shed was taken on rent by his father i.e. original opponent No. 4 after executing leave and licence agreement. The cross-examination was deferred and after 19/8/2002 Mr. Jain did not offer himself for further cross-examination and, therefore, rightly the Labour Court did not consider the depositions in examination-in-chief of Shri Jain. The Labour Court noted that the so called agreement between the appellants and Kantilal Rajput was never brought on record and what was brought on record was a xerox copy and as it was not proved, it was not exhibited. Thus beyond a bald oral statement that the powerlooms were rented out to Mr. Kantilal Rajput, there was no evidence in that regard and Mr. Kantilal Rajput was not examined by the appellants to support their case that in fact he was running the 18 power looms installed in shed No. 264. If Mr. Kantilal Rajput was examined before the Labour Court he could have been called upon to produce the muster-rolls, wage register and other record in respect of his employees. The appellants did not discharge their onus to prove that the power looms were being run by Mr. Kantilal Rajput on rental basis from 1190 to 1998. Obviously, the contentions that the workman was not employed by the appellants was only to defeat the application and the appellants could not prove the same. On merits i.e. computation of the benefits of the overtime wages, leave wages and payment of bonus, there was

absolutely no opposition or dispute raised by the appellants before the Labour Court. The Labour Court passed a reasoned award and allowed the claim application. The learned Single Judge has considered the rival arguments and rightly confirmed the award passed by the Labour Court. In our considered opinion, the order passed by the learned Single Judge does not suffer from any errors apparent on the face of the record and, therefore, it does not call for any interference in this appeal.”

19. Shri Barde submits that the view taken in the Central Group (supra), indicates that the Labour Court can adjudicate upon which amongst the multiple respondents could be termed as an actual employer. I, however, do not find that his contentions are supported by the view taken in Central Group (supra). In that case, respondent No.1 was a partnership firm, in which, the workman had performed his service and respondent Nos.2 to 5 were the partners of the said firm. Issue was not as to which amongst these five entities was the employer. The issue was that these partners on behalf of their partnership firm had taken a stand that the worker was not their employee.

20. In Mahesh Pokhardas Vs. Umashankar Mangal Prasad [2000 (4) Mah. L.J. 18], the learned Single Judge observed that a mere denial of relationship would not oust the jurisdiction of

the Labour Court under Section 33-C(2) of the ID Act. An employer denying employer employee relationship is required to establish that there was no privity of contract of employment between the claimant and such entity. It was thus held that when an employer opposes a claim on the ground of there being no employer employee relationship, the Labour Court can test the defence of the respondent by adjudicating upon such relationship.

21. Neither in the Central Group (*supra*) nor in the Mahesh (*supra*), the learned Division Bench or the Single Judge of this Court was called upon to deal with the issue as to whether the Labour Court can adjudicate upon who is an actual employer in between several respondent industrial establishments / legal entities. In these circumstances, I conclude that the Labour Court could not have embarked upon the exercise of finding out who amongst the two i.e. Parner Factory or Kranti Sugar, is the real employer. When the Liquidator is appointed, he merely takes over the management of such a society and proceeds to liquidate its assets so as to repay the legal dues of all those who have a rightful claim. Though at times, the manufacturing activities of a factory may be brought to an end by the appointment of the Liquidator, the workers are required to raise their claims for legal

dues against the same factory, but through the Liquidator, who then is the management for such a factory.

22. In the evidence led on behalf of the workers, it was stated that the Parner Factory was the employer of the workers. These applicants / workers had never worked in the employment of Kranti Sugar. It was admitted in the cross-examination that there was no 'employer-employee relationship' between the applicants and Kranti Sugar. By a public notice (Exhibit U/9), published in the Marathi Daily Lokmat dated 31.3.2017, the Liquidator, on behalf of the Parner Factory had called upon all the retired employees to put forward their claims and submit proof in support of their demands for outstanding dues. The Liquidator had, therefore, accepted the liability on behalf of the Parner Factory to pay the dues of these applicants.

23. While considering the contentions of the Liquidator that the auction purchaser should be made liable for the payment of the legal dues of the workers, I find that the issue, whether the auction purchaser can indemnify the Liquidator if the terms of the auction sale and the conditions set out in the sale certificate warrant such indemnification, can be left open. The view taken by the learned Division Bench of this Court in the matter of

Nagar Taluka Sakhar Kamgar Union Vs. State of Maharashtra and others - Writ Petition No.9359 of 2015, decided on 10.1.2017, can be relied upon by the auction purchaser. However, the said issue cannot be taken up by this Court since Section 33-C (2) does not enlarge the scope and ambit of the recovery proceedings, which are restricted only to the extent of the employer. I am, therefore, not dealing with the said issue since it is not a matter to be considered in a proceeding under Section 33-C(2) of the ID Act.

24. In so far as the second issue of denial of the Labour Court in entertaining the claim of the workers to the extent of bonus and gratuity is concerned, I find that the Honourable Apex Court has dealt with the said issue in H.P. State Electricity Board and another Vs. Ranjeet Singh and others [2008 AIR SCW 2141], wherein, it is held that the Labour Court, under the ID Act, can decide only those matters, which are covered under Schedule II in relation to Section 33-C(2). So also, in so far as the gratuity is concerned, a special enactment in the form of the Payment of Gratuity Act, 1972 provides for the controlling authority in the Labour Court and the appellate authority in the Industrial Court to deal with such claims. The condition of predeposit if an appeal is to be filed and interest and penalty components are

found only under the Gratuity Act since it is a beneficial piece of legislation. When a specific enactment providing for two levels of adjudicatory processes in the form of the controlling authority and the appellate authority, is in place, the Labour Court cannot entertain such a claim under Section 33-C(2). The petitions filed by the workers therefore, cannot be entertained with regard to the non-quantification of bonus and gratuity.

25. In so far as the last issue is concerned, the Liquidator has contended that the impugned awards are practically ex-parte. The record reveals that though the Liquidator was served with Court notice in all these matters before the Labour Court, he chose to remain absent and did not participate in the said proceedings. Though there can be no dispute that the salary structure of these workers is governed by the Wage Board, the non-appearance of the Liquidator has undoubtedly caused prejudice to these workers as enough material was not on record to assist the Labour Court in the proper adjudication of the claims of the workers to the extent of unpaid wages and leave encashments. The Liquidator, therefore, needs to be penalized for this conduct. Nevertheless, as the claims of these workers, who have retired from employment have been jeopardized by the non-appearance of the Liquidator, the impugned judgments will

have to be partly set aside and these applications will have to be remitted to the Labour Court for a limited purpose.

26. Considering the above, the Writ Petitions filed by the workers as well as the Liquidator are partly allowed with the following directions:-

(A) The impugned judgments are partly set aside only to the extent of remitting the applications to the Labour Court for permitting the Liquidator to file its Written Statement and produce documents for the proper adjudication of the claims of these workers.

(B) The conclusions of the Labour Court to the extent of absolving Kranti Sugar from the liability to make the payment to the workers exclusively under Section 33-C(2) of the ID Act and holding Kranti Sugar as not being the employer of these workers, are sustained.

(C) The amounts, which have been calculated by the Labour Court in the impugned orders, notwithstanding the paucity of necessary documents which are in the custody of the Liquidator, are roughly about Rs. 50,00,000/-, which shall be deposited by the Liquidator before the Labour Court, on/or before 31.8.2018.

(D) The workers as well as the Liquidator shall appear before the Labour Court on 20.8.2018 and formal notices need not be issued by the Labour Court.

(E) The issue as to whether the Liquidator is indemnified by Kranti Sugar, is left open to be considered in any other proceeding and will not be a subject matter of the present proceedings before the Labour Court.

(F) The workers shall delete Kranti Sugar from the proceedings under Section 33-C(2) before the Labour Court.

(G) The workers are permitted to withdraw those principal amounts which have been granted by the Labour Court, without the interest component, after the Liquidator deposits the amount, by tendering an affidavit undertaking that if they have withdrawn excess amounts, they shall deposit the said amounts in the Labour Court within eight weeks after the findings / judgment of the Labour Court.

(H) The workers are at liberty to raise independent claims for unpaid bonus and gratuity amounts and the time spent by them before the Labour Court and this Court in the instant proceedings, shall be a good ground for condonation of delay, if any.

(I) The observations in this order are restricted to

the proceedings in hand in the face of the factors involved in the pending proceedings and will not be applicable to other workers, if the factors in their pending cases are distinct or distinguishable.

(RAVINDRA V. GHUGE, J.)

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