

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 2296 OF 2018

M/s. Encino Enterprises.

..Petitioner.

V/s.

Akhil Bhartiya General Kamgar Union.

..Respondent.

Mr. Vijay Vaidya I/b. Mr. Mahendra M. Agavekar, advocate for petitioner.

Mr. Ashok D. Shetty I/b. Mr. Swapnil P. Kamble, advocate for respondent No. 1.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : OCTOBER 1, 2018.

P. C. :

1 Heard the learned Counsel for the petitioner and the learned counsel for the respondent.

2 Rule. Rule returnable forthwith with the consent of the parties.

3 The petitioner herein is respondent Nos. 1 and 2, who happen to be the sister concerns. The respondent No. 1 herein is the original complainant in Complaint(ULP) No. 362 of 2009. It was the case of the complainant that the establishment had indulged into unfair labour practices and that the working conditions are very poor. The workmen are exploited and therefore, majority of the employees employed with

Talwalkar

the respondent Nos. 1 and 2 have enrolled themselves as a member of the complainant-Union. A complaint was sent to the labour commissioner on 24/7/2009. No cognizance was taken and therefore, union was constrained to approach the labour court. The complaint disclosed an apprehension that the respondents i.e. present petitioner may terminate service of union members/workmen without following due process of law and there was further apprehension that the respondent i.e. present petitioner would declare lock out under the guise of closure. The complainant complained of various unfair labour practices as far as payments are concerned. The petitioner herein had filed the written say to the complaint and had demonstrated before the labour court that the establishment is closed with effect from 23/9/2009.

4 Perused the issues framed by the learned labour court. Findings to the issue as to whether the petitioner had indulged into unfair labour practices is recorded in the negative. It is also recorded that the respondents have proved that the complaint is not maintainable as contended in the Written Statement and yet the learned Industrial Court had passed an order as follows :

ORDER

- 1) Complaint (ULP) No. 362/2009 is hereby dismissed.
- 2) Respondent no. 1 and 2 are hereby directed to pay closure compensation according to section 25FFF of I.D. Act to

18 employees from date of their joining as above mentioned in tabular form till closure of their establishment on 23.9.09 with 18% interest within 2 months from the date of this order.

5 In fact, after the Written Statement was filed, it was incumbent upon the complainant to amend the complaint in view of the changed circumstance, as the complainant had only expressed an apprehension that there would be lock out under the guise of closure. However, according to the petitioner, there was in fact, closure with effect from 23/9/2009 although the date of closure is subsequent to the filing of the complaint. It is further submitted that in fact, Complaint(ULP) is dismissed. However, the complainant has been granted consequential reliefs as contemplated under section 25FFF of the Industrial Disputes Act.

6 Upon perusal of the Judgment, it is clear that the operative order is not in consonance with the findings recorded by the Industrial Court. The very fact that the issue of indulging into unfair labour practice by the petitioner is answered in the negative. The question would be as to whether they would still be entitled to the consequential benefits. In any case, the issue had to be framed by taking into consideration the contention raised in the complaint as well as written statement. No issue was framed in respect of the closure of the

Talwalkar

establishment.

7 In view of this, the operative order dated 10/2/2016 passed in Complaint (ULP) NO. 362 of 2009 deserves to be quashed and set aside. The matter deserves to be remanded to the Industrial Court for considering the written statement of the petitioner and at the same time allow the original complainant to amend complaint and raise the issue of closure since they would also have to demonstrate as to whether the closure is in the guise of lock out as they had apprehended. The learned Industrial Court shall recast the issues and decide the issue. In the eventuality that the complainant amends the complaint, both the parties would be at liberty to submit their draft issues and at this stage, learned Industrial Court could consider grant of consequential relief in respect of closure. All contentions raised by the respective parties are kept open. The matter is remanded. The learned Industrial Court shall consider the whole issue afresh and decide the same as far as possible before 30th April, 2019.

8 Rule is made absolute in the above terms. The petition is allowed and disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]

Talwalkar