

Yadav

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 11551 OF 2014

Kothari Kamgar Committee, a Trade Union, duly registered under Trade Union Act, 1926 and having its Registered Office at 105, Anandvan CHS Ltd., Kabad Galli, Opp. Aawaj Radio, Tembhi Naka, Thane – 400 607.

..Petitioner.

V E R S U S

1. The State of Maharashtra through Minister of Labour, Mantralaya, Nariman Point, Mumbai – 400 032.
2. Municipal Commissioner of Thane, The Municipal Corporation of Thane, Mahanagar Palika Bhavan, Dr. Almeda Road, Chandanwadi, Panchpakhadi, Thane – 400 602.
3. The Addl. Commissioner of Labour Maharashtra, C-20, Near City Park, Behind Reserve Bank of India, Bandra-Kurla Complex, Bandra East, Mumbai – 400 051.
4. The Deputy Commissioner of Labour, Office Complex Building, 6th Floor, Above Gopal Ashram Hotel, Mulund Check Naka, Waghule Estate, Thane West – 400 604.
5. M/s Kothari Auto-Parts Manufacturers Limited, a Company duly registered under Companies

Act, 1956 and having its Registered
Office at 37, Jaldarshan, Wing No.5,
51, Nepean Sea Road, Mumbai – 400 036.

And had its Factory at Swami
Vivekananda Road, Kapurbavadi,
Thane – 400 607.

..Respondents.

Mr. M. Janardhanan for Petitioner.

Mr. V. S. Gokhale, 'B' Panel Counsel State/for Respondent Nos.1, 3 & 4.

Mr. A. V. Bukhari, Senior Advocate a/w Mr. Amol B. Desai a/w Mr.
Avinash Jalisatgi I/b Lokeshappa for Respondent No.5.

**CORAM : SHANTANU S. KEMKAR AND
NITIN W. SAMBRE, JJ.**

RESERVED ON : JUNE 22, 2018

PRONOUNCED ON : OCTOBER 5, 2018

JUDGMENT - [PER NITIN W. SAMBRE, J.]

Heard Mr. Janardhanan, learned Counsel for the Petitioner,
Mr. V. S. Gokhale, learned Counsel for Respondent Nos.1, 3 & 4, Mr. A.
V. Bukhari, Senior Advocate along with Mr. Amol B. Desai along with
Mr. Avinash Jalisatgi instructed by Lokeshappa for Respondent No.5.

2. Impugned in the present writ petition is the no objection
dated 11.08.2005 issued by the Deputy Labour Commissioner, for
developing the factory land of Respondent No.5 and order dated
20.05.2008 issued to the Municipal Commissioner by the Labour

Commissioner and also the letter dated 31.10.2013 and 01.11.2013 issued by the Respondent No.2 i.e. Municipal Commissioner, Thane, justifying and confirming the permission issued for developing the land of the Respondent No.5 on the ground that same is without any authority, in exercise of any colourable exercise of the powers, abuse of process of law, arbitrary and violative of the principles of natural justice.

3. The facts necessary for deciding the present writ petition are as under :-

Pursuant to the request made by the Respondent No.1, the Respondent – Labour Commissioner on 28.08.2003, declared closure, which was objected by the Petitioner which is claiming to be a recognized Trade Union registered under the Trade Unions Act, 1926, claiming to be representing the interest of about 70% of the workers.

4. Since, according to the Petitioner, there exists an industrial dispute, the Labour Commissioner made a reference on 10.08.2004 to the Industrial Court, Thane. The same is numbered as Reference No.1 of 2004. The Petitioner in the said pending reference, on 19.09.2005 moved an application restraining Respondent No.5 from removing the plant and machinery from the factory premises, which application was

rejected on 19.09.2005. Feeling aggrieved, a Petition preferred before the Court being Writ Petition No. 8900 of 2005, came to be dismissed on 16.02.2006.

5. The Petitioner then pursuant to the provisions of the Right to Information Act, received a copy of the application preferred by Respondent No.5 for development of the factory dated 22.07.2005 in which there is a reference to the order dated 28.08.2003 passed by the Labour Commissioner, which is based on an application dated 31.07.2003 filed by Respondent No.5 seeking permission for closure and allowing the same pursuant to the provisions of Section 25-O (2) of the Industrial Disputes Act, 1947. It is claimed that in the said application seeking permission to develop factory premises, the reference made by the Labour Commissioner of existence of industrial dispute as is reflected in the order dated 10.08.2004 was not disclosed to the said authority.

6. The Petitioner also received a copy of the communication dated 11.08.2005 whereby Deputy Labour Commissioner granted no objection for development of the factory premises. It is claimed that on 11.08.2005, the Court Commissioner visited the factory premises and submitted a report dated 25.2.2011 wherein it is alleged that the stock, plant and machineries from the factory premises were removed, the

factory building was demolished and development activities were undertaken.

7. It appears that during the pendency of reference before the Industrial Court, since the Respondent No.5 started developing the factory premises, the Petitioner claimed to have lodged an objection on 19.12.2012 bringing to the notice of the said authorities the aforesaid development, alleging the fraud practised by the Respondent No.5. It is claimed that the development activities by the Respondent No.5 were stopped for a while, however, the same were restored.

8. The Respondent No.2 i.e. the Commissioner of Thane Municipal Corporation, has refused to revoke the development permission on 31.10.2013 and rather confirmed the earlier stand of 01.11.2013 of granting permission to carryout development. As a consequence, the Petitioner preferred a Writ Petition No. 11156 of 2013 which was withdrawn on 18.09.2014. As such this writ petition with the prayers referred above.

9. In the aforesaid background of the facts, Mr. Janardhanan, learned Counsel for the Petitioner would urge that the permanent employees of the Respondent No.5 to the extent of 70%, are the members of the Petitioner's recognized and registered union. Even

though a lock out was declared, it is illegally claimed by the Respondent No.5 and another Union viz – Maharashtra Shramik Sena that the claims of all the employees are settled. He would then urge that since present Petitioner demonstrated a presence of industrial dispute, the Labour Commissioner made a reference by order dated 10.08.2004 to the Industrial Court. Once such reference is pending, having noticed that there exists an industrial dispute, the entire act on the part of Respondent No.5 of removing and disposing of plant machinery, pulling down the factory structure, approaching Respondent No.2 seeking permission for developing the factory land, the act of Respondent No.2 in granting permission for development is contrary to the provisions of Section 20(3) and Section 17-A of the Industrial Disputes Act, 1947. It is further claimed that once the industrial dispute is pending before the Industrial Tribunal, pursuant to the provisions of Section 33, no employer shall be entitled to alter to the prejudice of the workmen concerned in such dispute, the condition of service applicable to them immediately before the commencement of such proceedings. The destruction of factory has to be read as an act contrary to the said provision. So as to substantiate his contentions, he would draw support from the Judgment of the Apex Court in the matter of *The State of Bihar V/s D. N. Ganguly*¹. In the aforesaid factual background, Mr.

¹ AIR 1958 SC 1018

Janardhanan would urge that the grant of no objection by the Deputy Labour Commissioner is contrary to the order of reference of industrial dispute passed by the Labour Commissioner on 10.08.2004, as the object with which the reference was made is frustrated.

10. *Per contra*, the learned Counsel for the Respondents would urge that the petition is wholly misconceived and is not narrating the correct picture. According to them, the reference to the Industrial Court at the behest of the Petitioner is already answered in negative and a petition to that effect is pending before this Court, which fact is suppressed by the Petitioner from this Court. It is also claimed that in Writ Petition No. 11156 of 2013 questioning the no objection certificate issued by the Labour Commissioner, this Court has passed an order permitting withdrawal of the writ petition with liberty to take appropriate proceedings in accordance with law. According to them, the prayers made in the present writ petition and in Writ Petition No. 11156 of 2013 are overlapping and as such the present writ petition itself is not maintainable. The learned Counsel for the Respondent then would urge that Writ Petition No. 8900 of 2005 filed by the Petitioner, wherein the issue as regards dismissal of the application by the Industrial Tribunal pending reference for grant of interim relief was filed, also came to be dismissed, having noticed that there is no *prima*

facie case in favour of the Petitioner. The fact remains that the order of closure/permission for closure dated 28.08.2003 till date is not interfered with. In the aforesaid background, it is claimed that the instant writ petition lacks merit and is liable to be dismissed.

11. Considered rival submissions.

12. The present writ petition is pending since 2014 and since the order of closure passed in 2003, the Petitioner is unable to establish its case before any of the Courts.

13. The factual matrix from the record depicts that of the total employees, 343 were represented by Maharashtra Shramik Sena which is a recognized Union, which has entered into an agreement about conditions of service on 15.03.1991 which was in existence till 15.03.1993. In view of differences between the members of the Union and the Employers, a closure was effected and of the 343 employees, 260 have settled their claims. Out of 83 employees, 74 have received their benefits in July-2005 and the remaining 9 employees who were informed to receive their claims, appeared to have not responded. An industrial dispute pursuant to the provisions of Section 25-O was referred to the Industrial Court by the Labour Commissioner on 10.04.2004 and the request for an order of injunction from transferring

the land moved before the Industrial Court was rejected, which was confirmed upto the Apex Court in Special Leave Petition No.(C)-1464/2007. On 01.10.2005, the Labour Commissioner issued no objection certificate pursuant to an affidavit of indemnity submitted by Respondent No.5.

14. Pursuant to the complaints made by the few labours, though the development of the factory land was tried to be stalled at the behest of the Petitioner, the attempts at the behest of the Petitioner remained unfruitful.

15. In the Reference No.1 of 2004, the learned Industrial Court in its award dated 11.10.2011 rejected the reference by recording a finding that the Petitioner was not in existence at the time when the order of closure dated 28.08.2003 was passed by the Labour Commissioner. It is also observed that the Petitioner Union has not produced any document to show that majority of the employees are the members of the Petitioner Union at the time of closure.

16. The fact remains that the said matter is pending before this Court in writ petition.

17. Apart from above, the entire factory land is already

developed and it is brought to the notice of this Court that in Writ Petition No. 7566 of 2012 which is still pending for consideration, the issue of illegal closure under Industrial Disputes Act is already sub judice. In our opinion, the claim of the Petitioner particularly in the light of the prayers made cannot be accepted.

18. In our opinion, the writ petition lacks merits, same is liable to be dismissed and it is accordingly dismissed for the aforesaid reasons. Needless to say that it shall be open for the Petitioner to pursue Writ Petition No.7566 of 2012, in accordance with law.

(NITIN W. SAMBRE, J.)

(SHANTANU S. KEMKAR, J.)