IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 95 OF 2017

M/s.Sterling Newspaper Pvt.Ltd. ...Petitioner
Vs.
Mr.Rajesh Vesmaker ...Respondent

Mr.R.V. Pranjape for Petitioner.
Ms.Jane Cox with Karishma Rao I/b. Manmohan A. Amonkar for Respondent.

CORAM : S.C. GUPTE, J.

DATE : 4 JULY 2018

ORAL JUDGMENT :

Heard learned Counsel for the parties.

2 This writ petition challenges an award passed by the Labour Court at Mumbai in a reference made to it under Section 10 of the Industrial Disputes Act, 1947.

3 The case of the Respondent workman in his statement of claim before the Labour Court was that he was employed with the Petitioner since 20 January 1986 and worked continuously till 16 March 2001 when his services came to be terminated. Initially, the Respondent was working in Sterling Newspaper Pvt.Ltd., which was engaged in publication of various periodicals. On 1 October 1990, Sterling Newspaper Pvt.Ltd. was taken over by Indian Express (Bombay) Ltd. Then, in 1995, Sterling Newspaper Pvt.Ltd. was transferred to Indian Express (Madurai) Group, Chennai and later on, it came to be named as “The New Indian Express,

Madurai”. The Respondent was chargesheeted for an alleged misconduct as per Industrial Employment Standing Orders Act. An inquiry was conducted against him in which he was found guilty of the charge levied. Based on the report of the Inquiry Officer, his services were terminated vide dismissal order dated 16 March 2001. Aggrieved by the order of dismissal, the Respondent filed a complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. During the pendency of the complaint, the Petitioner closed its establishment on 14 October 2001. In its order passed on the complaint, the Labour Court held the inquiry to be fair and proper and findings as not perverse. It, however, held the punishment to be shockingly disproportionate and accordingly, set aside the dismissal and ordered the Petitioner to pay 50% backwages from the date of his dismissal, i.e. from 16 March 2001, till the date of the closure, i.e. till 14 October 2001, plus a compensation of Rs.20,000/- in lieu of reinstatement. Pursuant to the order of the Labour Court, the Respondent filed a recovery application where the Petitioner deposited the amount. The Respondent was allowed to withdraw the amount and the recovery application was disposed of vide order dated 8 October 2010. The Respondent, however, thereafter raised a new dispute claiming difference of wages as per awards of two Wage Boards, known as “Bachawat Wage Board” and “Manisana Wage Board”. It was the case of the Respondent that with effect from 1 January 1988, when he was working with Sterling Newspaper Pvt.Ltd., he was governed by 'the Bachawat Wage Board Award For Working Journalists and Non-journalist Newspaper Employees' and accordingly entitled to wages on the basis that the newspaper establishment was classified as Class VI. (Newspaper establishments were classified between Classes I to IX based on their gross revenue in the Bachawat Award. At the relevant time, i.e. on 1 January 1988, Sterling

Newspaper Pvt.Ltd. fell within Class VI of that classification, its gross revenue being above Rs.1 crore but below Rs.2 crores.) It was his case that on and from 1 October 1990, after Sterling Newspaper Pvt.Ltd. was taken over by Indian Express (Bombay) Ltd., the establishment was liable to be classified as Class I, since the gross revenue of the combined establishment, namely, of Sterling Newspaper Pvt.Ltd. and Indian Express (Bombay) Ltd., was between Rs.50 crores and Rs.100 crores. It was further his case that after Sterling Newspaper Pvt.Ltd. was taken over by Express Publications (Madurai) Ltd. on 1 February 1995, the establishment was liable to be classified under Class 1A of Bachawat Award, since its combined gross revenue was above Rs.100 crores. Bachawat Wage Board Award was applicable till 31 December 1997. It was submitted that with effect from 1 January 1998, wages and other conditions of newspaper employees were governed by another wage board award known as “Manisana (Wage Board) Award”, according to which the Respondent's dues ought to have been calculated with effect from 1 January 1998 and till the closure of the establishment on 14 October 2001.

4 The Labour Court, in its impugned award, accepted the Respondent's contention that with effect from 1 October 1990, when he was working with Sterling Newspaper Pvt.Ltd., when Sterling Newspaper Pvt.Ltd. was taken over by Indian Express group, he was entitled to wages in accordance with wages applicable to Class I establishment and later, when it was taken over by Madurai group, to Class 1A establishment. (It is common ground that Manisana Award having been set aside by Delhi High Court, the case was governed by Bachawat Award and the calculations under Manisana Award were inapplicable.) The court was of the view that the calculations as such furnished by the Respondent were not challenged

by the Petitioner; the calculations were duly made in accordance with the Bachawat Wage Board Award. The court, accordingly, granted relief in terms of difference in wages and allowances. The court awarded a total payment of Rs.7,08,087/- towards difference of wages along with interest at the rate of 6% per annum from the date of the respective take overs of the establishment by the two companies noted above and till its realisation. This award is challenged by the Petitioner in the present petition.

5 At the outset, it needs to be noted that the Respondent accepts that his entitlement to wages must be based on the classification of the newspaper establishment in Class IV in accordance with the Bachawat Award and not in Class I or IA as originally claimed by him and granted by the impugned award. The dues worked out by the Labour Court would, accordingly, have to be reworked, whereafter the aggregate dues would work out to Rs.4,66,580/-, taking the classification of the newspaper establishment as Class IV under Bachawat Award and considering simple interest at the rate of 6% per annum as awarded by the Labour Court.

6 The main contention of learned Counsel for the Petitioner is that, firstly, the issue of correct classification of the newspaper establishment is not in terms considered by the Labour Court in its impugned order. Learned Counsel submits that the Labour Court appears to have proceeded on the footing that the calculation was not a matter of dispute. Learned Counsel draws my attention to the written statement of the Petitioner filed in the reference. Learned Counsel submits that in the written statement, the Petitioner has squarely questioned the classification of the newspaper establishment as claimed by the Respondent. Though the Labour Court in its impugned award does appear to have proceeded on the

footing of an undisputed classification, it is *ex facie* clear, going by the express terms of Bachawat Award, the applicability of which is not a matter of dispute, that the newspaper establishment in question ought to be classified in Class IV. The gross revenue of the establishment, namely, the combined establishment of Sterling Newspaper Pvt.Ltd. and Indian Express (Bombay) Ltd., between 1990 and 1995, and of Sterling Newspaper Pvt.Ltd. and Indian Express (Madurai) between 1995 and 2001, respectively, was admittedly between Rs.50 crores and Rs.100 crores and above Rs.100 crores. Bachawat Award makes it clear (Clause 6 of the Award) that two or more newspaper establishments including their departments, branches and centres under common control of a person or body of persons, whether incorporated or not, shall be treated as one newspaper establishment and their combined gross revenue shall be determinative of their placement in a class. This is entirely in keeping with the scheme of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 together with its schedule. The schedule to the Act provides that for the purposes of the definition of a 'newspaper establishment' (Section 2(d) of the Act), two or more newspaper establishments under common control shall be deemed to be one newspaper establishment and also that two or more establishments shall be deemed to be under common control *inter alia* where such establishments are owned one body corporate. It is not in dispute in the present case that from 1990 onwards, the establishments, namely, Sterling Newspaper Pvt.Ltd. and Indian Express (Bombay) Ltd. till 1995, and Sterling Newspaper Pvt.Ltd. and Indian Express (Madurai) Ltd. after 1995, were owned by one body corporate and thus, were deemed to be under common control and therefore, one newspaper establishment.

7 Learned Counsel for the Petitioner, however, submits that Bachawat Award provides for continuation of the particular classification determined in accordance with its provisions till the establishment is reclassified in accordance with the provisions of Para 13 of the Award. Learned Counsel submits that there is no reclassification of the establishment of Sterling Newspaper Pvt.Ltd. under these provisions and that, accordingly, the original classification, i.e. Class VI, continues to hold good throughout the relevant period. There is no substance in the submission. Para 10 of Bachawat Award specifically deals with a case of transfer of ownership of a newspaper from one person to another. In the case of such transfer, the provisions of Para 3 to 9 of the award apply to the newspaper establishment as if the gross revenue of the establishment for the relevant accounting years under the previous owner was its revenue for those years under the new owner. It is, thus, clear that in case of transfer of ownership of a newspaper establishment, the classification on the basis of gross revenue shall hold good only for the relevant accounting years when the establishment was under the previous owner and not for any period after it is transferred to the new owner.

8 The gross revenue of the combined establishment of Sterling Newspaper Pvt.Ltd. and Indian Express (Bombay) Ltd. and thereafter of Sterling Newspaper Pvt.Ltd. and Indian Express (Madurai) being what it is admitted to be, the newspaper establishment, originally falling in Class VI, should have ordinarily been classified within Classes 1 and 1A, respectively, after 1990 and 1995. Considering, however, sub-para (2) of Para 6 of Bachawat Award, the establishment cannot admittedly be stepped up by more than two classes as a result of clubbing of gross revenue under sub-para (1) of para 6. It is, thus, beyond any dispute that the concerned

newspaper establishment is to be classified under Class IV.

9 There is, accordingly, no merit in the writ petition. The writ petition is dismissed. It is, however, clarified that the amount of award shall be reworked and pegged at Rs.4,66,580/- which is inclusive of interest as per the award. The amount deposited by the Petitioner in the recovery application and which has since been withdrawn by the Respondent shall be adjusted towards this amount. Balance amount shall be paid by the Petitioner to the Respondent within six weeks. The recovery certificate issued by the Collector shall stand modified accordingly and shall not be executed for a period of six weeks.

(S.C. GUPTE, J.)