

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

CONTEMPT PETITION NO. 319 OF 2018

IN

WP/1675/17 WITH CA/6678/19 IN CP/319/18 IN WP/1675/17

Shaikh Afsar Shaikh Imam

..PETITIONER

VERSUS

Manisha Patankar-Mhaiskar and Others

..RESPONDENTS

WITH

CONTEMPT PETITION NO. 321 OF 2018

IN

WRIT PETITION NO. 1675 OF 2017

Dharampal Shankar Ambegave

..PETITIONER

VERSUS

Manisha Patankar-Mhaiskar and Others

..RESPONDENTS

WITH

CONTEMPT PETITION NO. 326 OF 2018

IN

WRIT PETITION NO. 1675 OF 2017

Vishwanath Vithalrao Gaikwad

..PETITIONER

VERSUS

Manisha Patankar-Mhaiskar and Others

..RESPONDENTS

....

Mr. M.S. Choudhary, Advocate for petitioners

Mr. P.V. Barde, Advocate for respondent no.4

....

**CORAM : P.B. VARALE AND
R.G. AVACHAT, JJ.
DATED : 14th JUNE, 2019**

PER COURT :

Heard Mr. Choudhary, learned Counsel for petitioners.

2. Petitioners are before this Court with grievance that respondents and more particularly Respondent No.4 – Municipal Council, Udgir failed to comply with the orders passed by this Court on 03rd May, 2017 in Writ Petition No. 1675 of 2017. In order dated 03rd January, 2019, Division Bench of this Court, to which one of us (P.B. Varale, J.) was member, recorded some observations for not accepting the contentions of the learned Counsel appearing for petitioners.

3. Mr. Barde, learned Counsel for Respondent No.4 – Municipal Council, Udgir submitted before us that order of Division Bench dated 03rd May, 2017 in Writ Petition No. 1675 of 2017 directs Municipal Council to pay the amount which is due and payable and the Division Bench in clear words further observed that this due and payable amount must be an admissible amount. Mr. Barde, learned Counsel submits that stand of the Municipal Council is that the petitioner, who stood retired and have submitted their claim through the union viz. Marathwada Lal Bawata Kamgar Union, the union representing these three petitioners alongwith other members had approached the competent authority viz. Assistant Commissioner of Labour, Latur seeking recovery of the amount due and payable of its members and

this amount sought to be recovered to the tune of Rs.4,64,55,484/- only. It is also submitted by Mr. Barde that the union had filed Writ Petition No. 6758 of 2016 for the same relief viz. recovery of the amount. Then Mr. Barde submitted that these petitioners are raising their claim in two parallel proceedings i.e. present contempt petition and the claim being represented through the union in the separate writ petition i.e. Writ Petition No. 6758 of 2016. Mr. Barde placed before us a chart so as to submit that the amount as alleged by these petitioners due and payable is already paid to these petitioners and same amount over and above the due entitlement is paid to these petitioners.

4. Mr. Choudhary, learned Counsel for petitioners vehemently submitted before us that all these contentions, which are raised by Mr. Barde, are already raised before this Court while passing order dated 03rd May, 2017. It was the submission of Mr. Choudhary that these contentions were raised in affidavit-in-reply to Writ Petition No. 1675 of 2017 and Division Bench could not find any favour with respondent – municipal council on the contentions raised and reflected in affidavit-in-reply and ultimately passed order on 03rd May, 2017.

5. To deal with the controversy on the backdrop of the submissions and counter submissions, we have called the record of Writ Petition No. 1675

of 2017. On perusal of the record it reveals that no reply is filed in Writ Petition No. 1675 of 2017 on behalf of Municipal Council, Udgir. As such, we are unable to accept the submission of Mr. Choudhary that the contentions raised by municipal council were the very contentions raised in affidavit-in-reply in Writ Petition No. 1675 of 2017 and the Division Bench while passing order in Writ Petition No. 1675 of 2017 turned down the contentions. Thus, it is clear that the statement of Mr. Choudhary before us is not in consonance with the record.

6. Perusal of Writ Petition No. 6758 of 2016 filed on behalf of the union through its General Secretary shows that the document Exhibit “A”, placed on record, is a document in respect of the settlement arrived at between the parties viz. members of union and Municipal Council, Udgir. Exhibit “B” to the said petition refers to the name of the employees and their amounts due and payable under the heads like gratuity, pension, leave encashment and amount of pension. In the list we could find the names of these three contempt petitioners i.e. Shaikh Afsar Shaikh Imam, Dharampal Shankar Ambegave and Vishwanath Vithalrao Gaikwad at Sr. Nos. 183, 182 and 200 respectively.

7. Now the amounts which are shown in this chart against these contempt petitioners are exactly same as the amount unpaid to these

petitioners in contempt petitions and this chart is for example chart annexed to Contempt Petition No. 319 of 2018, the total amount shown by petitioner due and payable is Rs.5,45,038/- and this very amount is shown in the chart submitted in Writ Petition No. 6758 of 2016 against entry no.183 of Shaikh Afsar Shaikh Imam. Now the contempt petitioners, in the body of the petition, refers to certain other amounts as due and payable against municipal council. On a specific query to Mr. Choudhary as to the source of this quantification and also as to whether this is an admissible amount by municipal council, Mr. Choudhary submitted before us that these calculations are by higher services of private accountants and there is no other support to these quantifications.

8. Mr. Barde, learned Counsel for municipal council submitted that municipal council made request to the State Government to provide funds so as to make payment of the claims under the recovery certificate. State Government forwarded certain amount under 13th Finance Scheme and with this financial assistance, municipal council paid the amount of Rs.4,64,55,448/-. This amount includes 15% interest. This reference finds place in Annexure R-2 i.e. the communication placed on record alongwith affidavit. This is a communication forwarded through Chief Executive Officer of Municipal Council, Udgir to Assistant Commissioner, Labour, Latur.

9. Considering all these facts, the only conclusion can be drawn is that these contempt petitions are only based on assumptions, presumptions and misreading of the facts. Needless to say that the contempt petitions, as such being devoid of merits, are dismissed. Civil application also disposed of accordingly.

SSD (R.G. AVACHAT, J.)

(P.B. VARALE, J.)