

sg

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4482 OF 2006

Dudhganga Vedganga S.S.K. Ltd.

...Petitioner

vs

Sakhar Kamgar Sabha

...Respondent

.....

Mr. M.S. Topkar, for the Petitioner.

Mr. Abhijeet Desai, w. Ms. Bhavika Thakkar, i/b. Desai Legal, for Respondent No.1.

.....

CORAM : S.C. GUPTE, J.

DATED: 12 DECEMBER, 2019

ORAL JUDGEMENT :

. Heard learned Counsel for the parties. This writ petition challenges an order passed by the Industrial Court at Kolhapur on a complaint of unfair labour practice filed by Respondent No.1 Union.

2. The complaint was under Section 28 of the MRTU & PULP Act, read with Item 9 of Schedule IV of that Act. The Union's case was that it had entered into a settlement with the Petitioner Karkhana on 19 April 1990. One of the terms of that settlement included a contribution of 5% of the total differential amounts in wages to be made over to the complainant Union. (The term was for deduction of 10% of the total amount in differential wages from the Petitioner Karkhana from its

employees and making over 5% thereof to the complainant Union and 5% to the Trade Federation to the Sugar Industries Union.) Around the time this settlement was entered into by the Karkhana with Respondent No.1 Union, there was an application of a rival Union, who is Respondent No.2 herein, under Sections 16 and 23(4) of the Bombay Industrial Relations Act for cancellation of the status of Respondent No.1 Union as an approved Union for sugar industry. (The application was made in August 1989.) By an order passed on that application, the status of Respondent No.1 Union as a representative Union was cancelled and Respondent No.2 Union was recognized as a representative Union in its place. This order was challenged by Respondent No.1 in an appeal before the appropriate authority (Appeal (I/C) No.6 of 1991). During the pendency of the appeal, on its application, interim relief was granted to Respondent No.1 Union staying all proceeding commenced by it and pending before any authority in relation to disputes involving workmen of sugar industry. In the meantime, the Union filed its present complaint, being Complaint (ULP) No.219 of 1990, seeking enforcement of the term of contribution of 5% to be paid to it in accordance with the settlement agreement. As in the case of the other complaints and cases filed by it, this complaint remained stayed as a result of the order passed in Appeal (I/C) No.6 of 1991. Finally, that appeal came to be dismissed and, thereafter, the complaint was heard. The Industrial Court, in its impugned order dated 20 April 2006, directed the Petitioner Karkhana to implement the term of settlement contained in the settlement of 19 April 1990 *inter alia* by payment of 5% contribution to Respondent No.1 Union. The amount was directed to be paid with the same rate of interest, which the

Karkhana used to pay on deposits accepted by it. This order is challenged in the present writ petition.

3. The challenge pertains to both the principal amount payable by the Karkhana to Respondent No.1 Union as well as interest payable on this amount. So far as the principal amount is concerned, it is submitted by Mr. Topkar, learned Counsel appearing for the Petitioner, that the status of Respondent No.1 Union, as a representative Union was under a cloud as of August 1989. It is submitted that this status came to be cancelled as a result of an application made by a rival Union on 5 April 1989. Learned Counsel submits that the term of contribution under an agreement entered into by the Petitioner Karkhana with Respondent No.1 in the meantime (i.e. 19/1/1990) would not entitle the Union to any contribution, since by then it was not a representative Union of the employees of the Karkhana. There is no substance in the argument, since the Petitioner Karkhana had in fact proceeded to enter into the settlement agreement with Respondent No.1 Union during the pendency of the rival Union's application under Section 16 and 23(4) of the BIR Act. This settlement has abided and otherwise been fully implemented. 5% contribution payable to the Federation under the very term of this settlement agreement has been duly paid. In that case, there is no reason why the stipulation of 5% contribution payable to Respondent No.1 Union under this agreement should not be honoured.

4. Coming now to the interest ordered on this amount, it is important to note that all throughout, during the pendency of Apepal (I/C) No. 6 of 1991, the complaint of Respondent No.1 alleging breach of

settlement under item 9 of Schedule IV of the MRTU and PULP Act, remained stayed, as a result of the application of Respondent No.1 itself. The stay was vacated only after its appeal from cancellation of its representative status, namely, Appeal (I/C) No. 6 of 1991, came to be disposed of on 7 March 2005. There is no reason why the Karkhana should be saddled with interest for this period, namely, the period between 2 May 1991 (the day on which Respondent No.1 procured a stay of all proceedings from the Industrial Court at Kolhapur) and till 7 March 2005. The amount of contribution has been duly deposited by the Karkhana in this Court in Letters Patent Appeal No.47 of 2007 in the Karkhana's writ petition, being Writ Petition No.4482 of 2006. The deposit has been made on 17 March 2007. If at all, only interest that may be payable to Respondent No.1 could be from the dismissal of its appeal on 7 March 2005 and till a deposit of the amount was made on 17 March 2007, i.e. for about two years. Since 17 March 2007, the amount has earned interest as it remained invested by the Registry. In these facts, the award of interest may be restricted to a sum of Rs.40,000/- only. Save and except the stipulation of interest (as noted above, the interest shall be restricted to 40,000/-) the impugned order is sustained. Order to permit Respondent No.1 to withdraw the amount deposited by the Petitioner Karkhana along with accrued interest. The amount of interest (Rs.40,000/-) shall be paid by the Petitioner to Respondent No.1 within four weeks from today.

5. The petition is disposed of accordingly.

(S.C. GUPTE, J.)