

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13513 OF 2017

M/s.S.M.E.Clothing Company and ors. .. Petitioners
Vs.
Mr.Virendrakumar Peskar Chaudhari and ors. .. Respondents

Mr.Bhushan Mahadik, for the Petitioners.
None for the Respondents.

CORAM : M.S.KARNIK, J.

DATE : 18th APRIL, 2019

P.C. :

. Heard learned Counsel for the petitioners. None present on behalf of the respondents though they are duly served.

2. By this Petition, the petitioners are challenging the order dated 29/09/2017 passed below Exhibit U-6 by 4th Labour Court at Mumbai in Application (IDA) that was filed before the Labour Court. The respondent No.1 filed application at Exhibit U-6 to debar the petitioners from being represented through

legal practitioner. This, in view of sub-section 4 of section 36 of the Industrial Disputes Act, 1947 which provides that in any proceeding before a Labour Court, Tribunal or National Tribunal, a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceedings and [with the leave of the Labour Court, Tribunal or National Tribunal as the case may be]. The Labour Court relying upon the decision of the Apex Court in the case of **Paradip Port Trust Vs. Their Workmen 1977 AIR 36, 1977 SCR (1) 537** and decision of this Court in the case of **T.K.Varghese Vs. Nichimen Corporation 2001 (4) Bom CR 168**, was of the opinion that the petitioners could not be permitted to be represented by legal practitioner without consent of the respondent. The petitioners are therefore restrained from being represented through legal practitioner.

3. Learned Counsel for the petitioners invited my attention to the order dated 05/02/2018 passed by the 5th Labour Court Mumbai in Reference (IDA) No. 49 of 2017. It is

the submission of learned Counsel that this reference raises similar issues as reference (IDA) No. 48 of 2017. It is pointed out that there are some other proceedings filed by the Union and by the workmen raising similar issues relating to the unpaid wages, bonus, leave wages, overtime wages, medical allowance and provident fund contribution payable by the petitioners to the respondents.

4. Learned Counsel for the petitioners submits that the Labour Court by the impugned order has refused the petitioners to be represented through a lawyer. He however, submits that 5th Labour Court in IDA No. 49 of 2017 which involves similar issues in respect of a similar situate workmen of the petitioner company in the similar circumstances, was pleased to direct the parties to lead evidence and the application for restraining the petitioners from engaging the lawyer was to be decided along with the main application.

5. In this view of the matter, as the respondents had

failed to appear in this Court and contest the present Petition, and further in view of the order dated 05/02/2018 passed by the 5th Labour in a similar matter involving similar issues, I find it appropriate and in the interest of the justice that the Labour Court to hear the application Exhibit U-6 afresh on its own merits considering the order dated 05/02/2018 passed by the 5th Labour Court Mumbai in reference (IDA) No. 49 of 2017. Hence, the following order.

ORDER

- (I) The impugned order is quashed and set aside.
- (II) The Labour Court to hear application Exhibit U-6 afresh on its own merits.

6. The Petition is allowed in the aforesaid terms. All contentions are open.

(M.S.KARNIK, J.)