

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

WRIT PETITION NO. 779 OF 2007

Snehal Shivalkar & Ors.

...Petitioners

vs.

Elegant Industries Pvt.Ltd. & Ors.

...Respondents

Mr.M.D. Nagle for Petitioners.

None for Respondents.

CORAM : S.C. GUPTE, J.

DATE : 11 DECEMBER 2019

P.C. :

This writ petition challenges an order passed by the Industrial Court at Mumbai on a complaint of unfair labour practice. The Petitioners herein were the complainants before the Industrial Court. The complaint was under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ('Act') alleging unfair labour practices under Items 6 of Schedule II and Items 9 and 10 of Schedule IV of the Act. The complainants' case was that they were employed by Respondent No.2 herein (original Respondent No.2); that Respondent No.1 had two proprietary concerns, namely, Respondent No.2 and Sunshine Industries; and that there was a direct employer-employee relationship between the complainants, on the one hand, and Respondent No.1, on the other (Respondent No.2 being the employer of her, Respondent No.1 being a proprietor of the former and Respondent No.3 the chairman of Respondent No.1). It was submitted that the complainants had completed 240 days of service in the employment of Respondent No.1. Their grievance was that Respondent No.2 had proposed a lock-out of the establishment and disposed of its plant and machinery and an

advertisement was given for sale of the premises. It was submitted that these actions on the part of the Respondents were illegal and amounted to unfair labour practices under Item 6 of Schedule II and Items 9 and 10 of Schedule IV of the Act *inter alia* on account of breach of the provisions of Section 24(2) of the Act as well as Sections 25F and 25G of the Industrial Disputes Act. It was submitted that the Respondents were under a legal obligation to provide regular work and pay wages to the complainants under Item 6 of Schedule II of the Act, and closing down of the business activities, despite being in a position to provide such work and wages, with a view to pressurise the complainants to leave their jobs without receipt of retrenchment compensation or notice pay, amounted to an unfair labour practice under Item 10 of Schedule IV of the Act as also under Item 9 of Schedule IV of the Act.

2 The Industrial Court framed two issues on the basis of the pleadings of the parties. The issues pertained to, in the first place, existence or otherwise of an employer-employee relationship between the complainants, on the one hand, and Respondent No.1, on the other, and on merits of the alleged unfair labour practices under Item 6 of Schedule II and Items 9 and 10 of Schedule IV. On the issue of employer-employee relationship, the Industrial Court noted that the complaint itself proceeded on the basis that the complainants were employed by Respondent No.2. The court noted that except for a bare allegation that Respondent No.2 was a sister concern of Respondent No.1, there was no pleading in the complaint either on the functional integrity between the two concerns or otherwise in support of the complainants' case of an employer-employee relationship between them and Respondent No.1. The court noted that though an attempt was made in the evidence of one of the employees, who

had deposed on behalf of the complainants, to show functional integrity, the witness clearly admitted that the appointment was given to him by Respondent No.3, who was the proprietor of Respondent No.2. The court noted that no evidence of pay slip or punching card, etc. was produced before the court in support of the alleged employer-employee relationship as between the complainants and Respondent No.1. The court observed that there was no proof in support of the complainants' allegation that Respondent No.1 was making deductions from their salaries towards Provident fund contribution; in fact, there was an admission that the complainants had filed their application concerning payment of gratuity before the competent authority against Respondent No.2 alone. On these facts, the Industrial Court answered the issue against the complainants.

3 So far as this issue is concerned, there is no infirmity to be found in the impugned order. The impugned order essentially proceeds on the basis of want of pleadings as well as evidence on the existence of employer-employee relationship between the complainants and Respondent No.1. Nothing is pointed out to the court to show either by means of functional integrity or otherwise that there was an identity as between Respondent No.1 and Respondent No.2. Learned Counsel for the Petitioners relies on Exhibit-D to the complaint, which is a notice issued by Respondent No.2 on its letterhead, which shows Respondent No.1 as its proprietor. It does not appear from the impugned order that this particular notice was referred to or produced before the court in the context of the complainants' case of functional integrity as between the two Respondents. In any event, merely on the basis of a stray document and without anything being stated in that behalf in the evidence, such functional integrity cannot be made out. As the Industrial Court has noted in its impugned order,

nothing was brought in the documentary or oral evidence before the court in support of any such case.

4 Coming now to the merits of the alleged unfair labour practice, it is difficult to see how the facts of the case amount to either a proposal or continuation of an illegal lock-out within the meaning of Item 6 of Schedule II or failure to implement an award or settlement or agreement or indulgence in an act of force or violence within the meaning, respectively, of Items 9 and 10 of Schedule IV of the Act. As the Industrial Court has noted in its impugned order, there was nothing on record to show that Respondent No.2 had declared any lock-out; there was no evidence adduced to show that there was any lock-out or that what was proposed amounted to a deemed lock-out. There was absolutely no case, accordingly, under Item 6 of Schedule II. The court noted that there was a clear case of closure by Respondent No.2; no breach of agreement, settlement or award or violation of law whilst effecting such closure was made out. The court also noted that the alleged failure on the part of the Respondents to deposit provident fund amounts or other deductions from the salaries of the complainants was not substantiated by any evidence. There is indeed no evidence on record to show that any deduction was, in fact, made from the salaries of the complainants. So also, there was no allegation of breach of any agreement, settlement or award. Thus, there is no case for a complaint under Item 9 of Schedule IV of the Act. Apropos Item 10, as noted by the Industrial Court, there was no pleading of any violation or force used by Respondent No.3 (or indeed any of the Respondents) against the complainants. The court, lastly, noted that the sole proprietor of Respondent No.2 had died on 30 August 2005; his legal heirs were not brought on record; and thus there was abatement of complaint as against

Respondent No.3, the sole proprietor of Respondent No.2. The court noted that the sole proprietor of Respondent No.2, i.e., the employer of the complainants, having died and the undertaking having been closed, and which closure was not found to be illegal, no order in relation to any unfair labour practice could be passed on the complaint.

5 Both conclusions of the Labour Court and the Industrial Court are clearly possible views based on the material produced before the court. The courts have considered all relevant and germane circumstances and materials placed before them and have not disregarded any relevant or germane circumstance or material. The writ petition, accordingly, does not merit admission.

6 The writ petition is, in the premises, dismissed.

(S.C. GUPTE, J.)