

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.6568 OF 2019

Girish s/o Baliram Wankhede, Tiwaskar Wadi, Raipur, Hingna, Nagpur

-vs-

B. P. Ergo (HNI) Ltd. MIDC, Nagpur Thr. Vice President (Operations)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri R. N. Deshpande, Advocate for petitioner.

Shri H. V. Thakur, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.

DATE : September 25, 2019

Challenge raised in the present writ petition is to the judgment of the Industrial Court dated 17/09/2019 thereby rejecting the revision application that was preferred by the petitioner herein so as to challenge the rejection of the prayer for grant of interim relief by the Labour Court in the complaint filed by him.

2. The petitioner who is in employment with the respondent has approached the Labour Court by filing complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1972 (for short, the said Act) invoking Item-1 of Schedule-IV to the said Act. It is his

grievance that pursuant to a charge-sheet dated 05/12/2016, enquiry proceedings were held against him. On the basis of Enquiry Report dated 04/04/2019 he was issued a notice on 08/04/2019 calling upon him to show cause why the respondent should not proceed further on the basis of the Enquiry Report. According to the petitioner he has been victimised in the matter and by conducting a farce of an enquiry he apprehends termination of his services. Along with the complaint he filed an application under Section 30(2) seeking interim relief in the form of staying the effect and operation of the notice dated 08/04/2019. The Labour Court by taking a prima facie view of the matter found that the enquiry was conducted by following the due procedure and there was no procedural defect noticed. Since no case was made out by the petitioner for grant of interim relief, the application came to be rejected. The Industrial Court in exercise of revisional jurisdiction has confirmed that order.

3. Shri R. N. Deshpande, learned counsel for the petitioner submits that there are various infirmities in the enquiry conducted by the respondent. Though the charge-sheet was issued on 05/12/2016 the enquiry was completed only on 04/04/2019. The statement of the Human Resources Manager

was recorded in the said enquiry and in his deposition he stated that the incriminating articles were seized from the house of the petitioner. However, in the First Information Report as lodged in respect of the same incident the seizure of the very same material is shown from a different place. Moreover the persons named in the First Information Report were not examined in the enquiry proceedings. Despite these infirmities the Courts have refused to grant any interim relief. He has placed reliance on the decision in *Hindustan Lever Ltd. vs. Ashok Vishnu Kate and ors. AIR 1996 SC 285* to urge that the interim relief as prayed for ought to have been granted.

4. Shri H. V. Thakur, learned counsel for the respondent while supporting the impugned order submitted that the petitioner participated in the enquiry proceedings without any protest. There was no procedural infirmity in the conduct of the enquiry and full opportunity was given to the petitioner. By the notice dated 08/04/2019 copy of the Enquiry Report was supplied to the petitioner to enable him to respond to the same. Both the Courts found that prima facie there was no basis to hold any aspect of victimisation as alleged. Interim relief has been rightly rejected by both the Courts. He referred to the judgment of the Division

Bench of this Court in L.P.A. No.328/2011 dated 17/10/2011 (*Arvind Kashinath Chavan and ors. vs. Gharda Chemicals Ltd. And ors.*). It is thus submitted that there is no case made out to interfere.

5. On hearing the learned counsel for the parties and after perusing the material on record it is found that the Courts have taken a prima facie view that the petitioner has not been able to indicate any victimisation at the hands of the respondent when it initiated departmental proceedings against him. The reason for initiating the proceedings is with regard to the incident dated 15/11/2016 which has subsequently resulted in lodging of a First Information Report against the accused person which includes the petitioner. Though certain inconsistencies are sought to be highlighted in the material that was brought on record before the Enquiry Committee and the First Information Report, that by itself would not be sufficient to restrain the employer from proceeding further in the enquiry. As noted above, prima facie there is no indication of procedural lapses in the conduct of enquiry. Infact no grievance in that regard appears to have been made till the completion of the enquiry. The effect of the material brought on record in the said proceedings and the criminal proceedings is a

matter to be considered at the trial. At this stage it is found that both the Courts have recorded a prima facie finding which does not appear to be perverse. With regard to the decision relied upon by the learned counsel for the petitioner there cannot be any quarrel with the same. However in the facts of the present case it is found that the Courts have rightly recorded a conclusion that the petitioner has failed to make out a prima facie case. Moreover, as observed by the Division Bench in *Arvind Kashinath Chavan and ors.* (supra), the Labour Court has the necessary jurisdiction to grant relief even after the petitioner responds to the show cause notice.

6. In that view of the matter I do not find any reason to interfere in writ jurisdiction. It is clarified that the observations made by the Labour Court and thereafter by the Industrial Court as well as by this Court are only for the purposes of deciding the prayer for interim relief. The complaint be decided on its own merits in accordance with law without being influenced by the same.

At this stage, learned counsel for the petitioner seeks extension of interim protection that is operating as of today.

The learned counsel for the respondent submits that before

the Industrial Court it was stated that the respondent would not act on the Enquiry Report till 29/09/2019. He submits that such statement be treated as being extended for further three weeks from today. Statement accepted.

The writ petition is dismissed with no order as to costs.

JUDGE