IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1911 OF 2020

SHEET SHAPERS AURANGABAD
VERSUS
DIGAMBAR MANOHAR KONDKE AND OTHERS

Mr.T.K.Prabhakaran, Advocate for the petitioner.
Mr.R.G.Shirsat and Mr.G.S.Gadiwar, Advocate for the respondents.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 13/03/2020

PER COURT :

1. The petitioner/Management is aggrieved by the interlocutory orders dated 20/01/2015, 24/09/2018, 26/11/2018 and 28/08/2019 passed by the Industrial Court, Aurangabad below Application Exh.U-2 and C-13/B, in Com.(ULP) No.366/2015.

2. I have considered the submissions of the learned Advocates for the petitioner and the respondents. I have perused the prayers put forth by the workers in ULP No.366/2015.

3. The respondents had approached the Industrial Court alleging unfair labour practices under Items 1, 4 and 6 of Schedule II and

Item 9 of Schedule IV of the MRTU and PULP Act, 1971. The contention was that the workers should be paid their salary from July 2015 and the illegal lock out dated 12/09/2015 be lifted. It was also prayed that the machinery should not be moved out of the factory premises and the plant and machinery should not be alienated.

4. By the first order dated 21/11/2015, the Industrial Court concluded at an interlocutory stage that as the workers were not paid their wages for the period of suspension of operations from 12/09/2015 to 27/09/2015, the employer shall be restrained from shifting, removing, transferring or alienating the "embedded machineries" and immovable properties.

5. The learned Advocate for the petitioner/Management points out the payment vouchers dated 07/07/2015 through its account held with the State Bank of Hyderabad, as well as the payment vouchers dated 06/08/2015, 08/09/2015 and 08/10/2015 vide which, the payments of the monthly wages of these workers was made through bank transactions.

6. It is obvious from the pleadings of the workers in the ULP

complaint before the Industrial Court that they had alleged a lock out from 12/09/2015. The notice put up by the Management indicated suspension of operations from 12/09/2015 for a period of 14 days and the clamping of a lock out w.e.f. 27/09/2015. Eventually, the factory was permanently closed down vide notice dated 11/01/2018. It appears that closure compensation was not paid to the workers alongwith the notice of closure. Prima-facie, this is legally impermissible.

7. Be that as it may, the closure has not been challenged by the workers.

8. The learned Advocate for the Management submits that the closure compensation inclusive of gratuity was calculated by the Management and cheques for an average of Rs.1,50,000/-, all dated 04/04/2019, inclusive of bonus, leave encashment and retrenchment compensation were deposited before the Industrial Court, after 14 months. These workers did not accept the said payments probably under the impression that it would amount to compromising their rights.

9. It is well settled and does not call for any debate that

acceptance of closure compensation or retrenchment compensation, would not amount to waiving the right to challenge such closure or retrenchment (Nar Singh Pal Vs. Union of India and others [2000 AIR SCW 1141] and Management of Oasis School, Hyderabad Vs. Labour Court, Himayatnagar, Hyderabad and others [1990 II CLR 506]). As such, these workers could have accepted the discharge compensation and yet could have continued to prosecute their ULP complaint.

10. The grievance of the petitioner is that the Industrial Court has lost sight of the fact that the proviso below Section 30(2) of the 1971 Act, permits review of an interim order. The Hon'ble Apex Court has recently concluded in Naresh Kumar and others Vs. Government (NCT of Delhi) [2019(9) SCC 416] that a Court can review its order, not as an inherent power to review, but exercisable only when the statute expressly and specifically provides for such a review. It appears that the Industrial Court was under a belief that an order cannot be reviewed unless there is an error apparent on the face of the record and that changed circumstances could not have been considered.

11. The learned Division Bench of this Court has held in the matter of Bhor Industries Ltd., Vs.State of Maharashtra and others, 2001

Vol.1 LLJ 106) that an employer has a right to utilize his machinery. In the instant case, the total strength of the workers is admittedly less than 100. Chapter V-B of the Industrial Disputes Act, 1947 would not be applicable. It appears that, at the time of the closure dated 11/01/2018, only 21 workers appeared to be in employment. Besides these 21, not a single worker has approached the Industrial Court with any grievance.

12. In my view, the Industrial Court should have assessed as to what were the unpaid legal dues of the workers and by permitting the workers to withdraw the deposited payments, could have passed an order of creating a buffer amount in the event the workers could be held to have a bright chance of success in the pending complaint.

13. Going by the pleadings of the parties, it is apparent that these workers have not challenged the closure from 11/01/2018. The Management seems to have taken into account the fact of there being a lock out which is not declared illegal and which would absolve the Management from payment of wages. So also, if the monetary aspect of the matter can be taken care of, the Industrial Court would be unjustified in allowing the plant and machinery to rust only because of the pendency of a complaint. The balance of convenience and the

comparative hardships should have been assessed by the Industrial Court.

14. In view of the above, this petition is partly allowed. The impugned orders dated 20/01/2015, 24/09/2018, 26/11/2018 and 28/08/2019 are quashed and set aside. Application Exh.U-2 would stand partly allowed in the following terms :-

[a] The Management shall now deposit the respective amounts payable to these workers as per the earlier cheques dated 04/04/2019, before the Industrial Court, on or before 31/03/2020.

[b] All these complainant / workers would be entitled to withdraw the said amount through the cheques deposited, without prejudice to their rights and contentions in Complaint (ULP) No.366/2015.

[c] The petitioner shall deposit an additional amount of Rs.10,00,000/- before the Industrial Court upto 31/03/2020 and the said amount would be invested by the Industrial Court in a Nationalized Bank until the complaint is finally decided. I make it clear that neither the workers nor the Management would be permitted to withdraw the said amount till such decision.

[d] Complaint (ULP) No.366/2015 shall be decided by the Industrial Court as expeditiously as possible, and in any case on or before 31/12/2020.

[e] The complainants/workers, their Union if any and their sympathizers or accomplices shall not obstruct the Management in moving out their machineries, raw material and finished or semi finished products.

[f] In the event the complainants/workers come forward with a case that a different manufacturing unit has been commenced by the employer or the machineries are moved to an existing unit for carrying out the same manufacturing activity at Aurangabad, they would be at liberty to seek redressal of their grievance, as may be permissible in law.

(Ravindra V.Ghuge, J.)