

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10345 OF 2019

Eurotex Industries and Exports Ltd.

...Petitioner

vs.

Additional Commissioner of Labour-cum-Specified
Authority & Ors.

...Respondents

Mr.A.V. Bukhari with Avinash Jalisatgi i/b. Pavitra Mahesh for Petitioner.

Ms.Vaishali Nimbalkar, AGP for Respondent Nos.1 to 3 – State.

Mr.Rakesh Sawant for Respondent No.4.

Mr.K.S. Bapat i/b. Desai & Desai Associates for Respondent No.5.

CORAM : S.C. GUPTE, J.

DATE : 25 FEBRUARY 2020

PC. :

Heard learned Counsel for the parties. Rule. Rule taken up for hearing forthwith, by consent of Counsel.

2 This writ petition challenges an order passed by the Assistant Commissioner of Labour, purporting to holding charge of Additional Commissioner of Labour. The impugned order is passed under Section 25-M of the Industrial Disputes Act, 1947 ('Act'). The Petitioner herein, who is an employer, applied for permission of the State Government, as an Appropriate Government, for lay-off. The application was made in the prescribed manner stating reasons for the intended lay-off and a copy was served on the workmen concerned. The workmen appeared and showed cause through their union. The Deputy Commissioner of Labour, Respondent No.2 herein, passed an order. By his order dated 31 July 2019,

the Commissioner refused to grant permission under Section 25-M for the proposed layoff. This order is the subject matter of challenge in the present petition.

3 Though the challenge is on various grounds including merits of the order, the main ground of challenge, which goes to the root of the matter, is the authority or power vesting in Respondent No.2 to hear and decide an application under Section 25-M of the Act. Under Section 25-M of the Act, no workman, whose name is borne on the muster rolls of an industrial establishment to which Chapter V-B applies, can be laid-off by his employer except with the prior permission specified in Sub-section (1) thereof. The authority or power to grant such prior permission is with the Appropriate Government itself or such authority as may be specified by that Government by notification in the Official Gazette. It is not in dispute that the State Government, who is the Appropriate Government in the present case, had by a Gazette Notification dated 28 February 2002 specified Additional Commissioner of Labour, Pune, as the specified authority for the purposes of Section 25-M of the Act for the local area of Pune Division. Respondent No.2, who heard the application of the Petitioner and who passed the impugned order, claimed to hold the charge of Additional Commissioner of Labour, Pune. Learned AGP produces before the court the orders passed by the Minister of Labour, Government of Maharashtra and by the Commissioner of Labour, State of Maharashtra. The Hon'ble Minister, by his order dated 3 April 2018, entrusted the charge of the office of the Additional Commissioner of Pune to Respondent No.2, who was at the relevant time, Assistant Commissioner of Labour, office of Deputy Commissioner of Labour, Thane. This order of the Minister was followed by a formal order passed on 11 April 2018 by the Commissioner of Labour,

State of Maharashtra, by which, the Commissioner of Labour entrusted the charge of Additional Commissioner of Labour, Pune to Respondent No.2 as an additional charge. Based on these two orders, it is submitted by learned AGP and also learned Counsel for Respondent Nos.4 and 5, the trade unions opposing the Petitioner's application, that Respondent No.2 had the requisite authority to pass orders under Section 25-M by virtue of this delegation or entrustment.

4 As we have noted above, the power to pass orders under Section 25-M of the Act is with the Appropriate Government or the authority specified by that Government by notification in the Official Gazette. The Act also contains an appropriate provision for delegation of powers. That provision is contained in Section 39 of the Act. Even under this provision, delegation of powers by the Appropriate Government is by a notification in the Official Gazette. Where the Appropriate Government is the State Government, any power exercisable by it under the Act or Rules made thereunder is, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, exercisable also by such officer or authority subordinate to the State Government as may be specified in the notification. Such delegation must be to an officer or authority subordinate to the State Government but such officer or authority must be specified in the notification. Admittedly, there is no notification issued by the State Government in this case, save and except in favour of the Commissioner of Labour himself and Additional Commissioner of Labour, Pune for the local area of Pune Division. Respondent No.2, who was at the relevant time the Assistant Commissioner of Labour, Pune, did not have the authority to decide any application under Section 25-M of the Act by reason of holding the charge of the office of Additional

Commissioner of Labour, Pune at the relevant time. (It so happens that by the time he came to actually exercise the power under Section 25-M, the designation of Respondent No.2 had changed to Deputy Commissioner of Labour, Aurangabad.) The order is, thus, without jurisdiction or authority.

5 Mr.Bapat, learned Counsel appearing for Respondent No.5, submits that the delegation in the present case is justified by reason of the rules of business of the State Government. Learned Counsel submits that such delegation does not require any Gazette Notification. Learned Counsel relies on the decision of a Division Bench of this court in the case of **Mohd.Izaz Abdul Rafique vs. Additional Commissioner**¹.

6 Rules 7 and 10 of the Maharashtra Government Rules of Business relied upon by Mr.Bapat do not support him. Under Rule 7, the State Government is empowered to place more than one department in charge of the same secretary or divide the work of the department between two or more secretaries. Rule 10, which is without prejudice to Rule 7, makes the Minister-in-charge of the Department primarily responsible for disposal of business appertaining to that department or part of the department. This merely decides reorganisation of administration duties within the department and the Minister's responsibility for disposal of business pertaining to a department or its part. It has nothing to do with the specification of an authority within the meaning of Sub-section (1) of Section 25-M or delegation falling within the ambit of Section 39 of the Act.

7 The judgment of **Mohd.Izaz Abdul Rafique** (supra) proceeds

1 2009 SCC OnLine Bom 1924 : (2010) 1 Bom CR 77 : (2010) 2 AIR Bom R (NOC 163) 49

on an entirely different footing. That was a case arising under Bombay Village Panchayats Act. Section 182 of that Act provides for delegation of powers by a Commissioner or a Collector to an officer not below the rank of Mamlatdar, Tahsildar, Naib-Tahsildar or Mahalkari. The provision is subject to general or special powers of the State Government. The section *inter alia* provides for the power of the State Government to delegate its powers under that Act. Such delegation can be done to a Commissioner or any other officer by notification in the Official Gazette. The Commissioner or Collector may, however, delegate his own powers under Sub-section (4) of Section 182 to any officer below the rank of Mamlatdar, Tahsildar, Naib-Tahsildar or Mahalkari. So also, Chief Executive Officer may under Sub-Section (5) of Section 182 delegate any of his powers to any officer working under Zilla Parishad. The Division Bench in that case was conscious of the fact that barring a Gazette Notification, which was required under Sub-section (1) of Section 182, the other sub-sections, namely, Sub-sections (4) and (5) of Section 182, did not prescribe the requirement of a notification in the official Gazette of any delegation. The Court observed that what emerged from Section 182(1) as well as from Section 182(4) was that Section 182(4) permitted delegation of powers exercisable by a Commissioner or a Collector under the Act and for such delegation, the law did not require any notification in Official Gazette. The Division Bench did not find fault with respect to entrustment of the charge of the post of Additional Commissioner to Deputy Commissioner as was the case before it. In the particular case before the Division Bench, it was not a matter of dispute that entrustment of charge of the post of Additional Commissioner to the Deputy Commissioner was done by a memorandum issued by the State Government. The court did not treat this as an order of delegation. The Court held that the Deputy Commissioner in the case, who

was officially put in charge of the post of Additional Commissioner, had no barriers on his exercise of powers and so long he was holding the charge of the post, he was for all purposes an Additional Commissioner equipped with all legal powers, functions, duties, jurisdiction etc. These facts are clearly distinguishable from the facts of our case. As we have noted above, in our case, the law itself requires the matter to be decided only by the Appropriate Government or an authority specified by it vide a Gazette Notification. As we have noted above, the Gazette Notification of the State Government only specified the Commissioner of Labour himself and the Additional Commissioner of Labour, Thane for the local area of Pune Division as an authority specified for the purposes of Section 25-M. If that is so, as we have noted above, Respondent No.2 had no power to pass any order under Section 25-M.

8 Learned AGP submits that the Petitioner herein never raised the issue of want of power or authority on the part of Respondent when the application under Section 25-M was being considered by Respondent No.2. That is neither here nor there. If there is an inherent lack of jurisdiction or authority, the same cannot be conferred by the parties through their volition. The want of jurisdiction or authority strikes at the root of exercise of jurisdiction or authority.

9 In the premises, Rule is made absolute and the writ petition is allowed by quashing and setting aside the impugned order passed by Respondent No.2. It will be open, however, to the Appropriate Government to entrust the matter to the Commissioner of Labour or to Additional Commissioner of Labour, Pune, for deciding the application.

10 Mr.Bapat, learned Counsel appearing for Respondent No.5, submits that for the purposes of reckoning 60 days' period under Sub-section (5) of Section 25-M, which is a deeming provision for grant of permission under Section 25-M, time should be reckoned from today's date.

11 Mr.Bukhari, learned Senior Counsel appearing for the Petitioner, objects to the suggestion. Learned Counsel submits that Sub-section (5) of Section 25-M provides for a period of 60 days from the date on which an application is made under Sub-section (2) for permission under Section (1) of Section 25-M. Learned Counsel submits that since his client has already made an application, 60 days' period must run from the date of that application and since there was no order granting or refusing to grant permission passed by a competent authority within that period, the deeming provision contained in Sub-section (5) must operate. Learned Counsel is not right there. In this particular case, there is an order refusing to grant permission to the employer under Sub-section (1). That order may have been passed by an authority, who is ultimately found to be incompetent to pass that order. But, in the premises, one cannot say that there being no communication of an order granting or refusing to grant permission within 60 days from the date of the application, the permission shall be deemed to have been granted on expiration of 60 days. If the order refusing to grant permission is set aside today and the matter is remitted to an appropriate authority, the period of 60 days should be reckoned from today. It is clarified accordingly.

12 Learned AGP informs the court that there is no Additional Commissioner in place even as of today. If that be so, the matter must be remitted to the Commissioner of Labour, who undoubtedly has the power

by virtue of the specification made by the State Government by its Notification dated 16 August 1996 issued under Section 39 of the Act. The Commissioner may, accordingly, decide the application within a period of 60 days from today. All rights and contentions of the parties on merits are kept open. The parties, to that end, may appear before the Commissioner of Labour on 2 March 2020 at 11.00 a.m. and produce an authenticated copy of this order. The Commissioner may thereupon fix a schedule of hearings and decide the matter accordingly.

(S.C. GUPTE, J.)