

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 991 OF 2021

Sulzer Pumps India Private
Limited & Ors.

... Petitioners

Versus

Nikhil Suresh Khare

... Respondent

Mr. Shrinivas Deshmukh & Mr. Sunilkumar Neelambaran, i/b. Mulla And
Mulla And Craigie Blunt & Caroe, Advocates for the Petitioners.

Mr. Jane Cox a/w. Ms. Rohini Thyagarajan i/b. Ms. Subha N.
Shanmugasundaram, Advocate for the Respondent.

CORAM: G. S. KULKARNI, J
DATED: 24th November, 2021

PC:-

1 This petition takes an exception to an interim order dated 18th February 2021 passed by the learned 2nd Labour Court, Thane in Complaint (ULP) No. 30 of 2020 (for short, “**the complaint**”) by which the respondent/complainant’s application, for interim relief has been allowed whereby the petitioners are directed to allow the respondent to work as Office Assistant and not to act upon the letter dated 7th September 2020 till final disposal of the complaint.

2 Although the cause title of the petition shows that petition is filed under Article 226 of the Constitution of India, however, essentially the present petition is filed under Article 227 of the Constitution of India as the challenge in the present petition, as noted above, is to an interim order passed by the Labour Court under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, “**MRTU & PULP Act**”).

3 Be that as it may, learned Counsel for the respondent has raised a preliminary objection to the maintainability of this petition on the ground that an alternate remedy is available to the petitioner under Section 44 of the MRTU & PULP Act to approach the Industrial Court in a revision application. Learned Counsel for the respondent submitted that a writ petition under Article 227 of the Constitution ought not to be entertained when an alternate remedy of a revision was available to the petitioner under the statute. In support of this contention, learned Counsel for the respondent has placed reliance on the decision of the learned Single Judge of this Court in **Engineering Employees’ Union Versus Devidayal Rolling and Refineries (Private) Ltd., Thane**¹ and on the subsequent judgment of Division Bench of this Court in **Clifford Rebellow Versus Hotel Oberai Towers**² which approves the decision in **Engineering Employees’ Union** case (*supra*).

1 1986 (1) L. L. N., 307.

2 2002 (1) L. L. N. 162.

4 Per contra, Mr. Deshmukh submits that availability of alternate remedy under Section 44 of the MRTU & PULP Act *per se* would not amount a bar to the petitioner's remedy to file this petition under Articles 226 or 227 of the Constitution of India. He submits that availability of such remedy cannot exclude the jurisdiction of this Court to entertain this petition as the rule of alternate remedy is a rule of procedure. In support of his contentions, Mr. Deshmukh has placed reliance on the decision of the learned Single Judge of this Court in **Indian Tourism Development Corporation & Ors. Versus Presiding Officer, 9th Labour Court, Mumbai & Anr.**³ and the decision of the Division Bench of this Court **Nusli Neville Wadia Versus New India Assurance Co. Ltd.**⁴

5 Having heard the learned Counsel for the parties, I am not persuaded to accept Mr. Deshmukh's submission that the present petition needs to be entertained and/or that the petitioners need not avail of the alternate remedy as provided for under Section 44 of the MRTU & PULP Act for more than one reason.

6 In the case of **Engineering Employees' Union** (*supra*) while considering the provisions of section 44 of the MRTU & PULP Act this Court referring to an earlier decision in the case of **Navnath Siddhappa Koli Versus Shri**

3 2009 (5) Mh. L. J. 493.

4 2010 (2) Mh. L. J. 978.

Siddeshwar Sahakari Sakhar Karkhana Ltd., has held that the jurisdiction of the revisional Court under Section 44 of the MRTU & PULP Act is analogous to the jurisdiction of the Court under Section 85 of the Bombay Industrial Relations Act. Referring to the decision of the Division Bench of this Court in **Shree Talkies, Kamptee Versus Industrial Court, Maharashtra**⁵, it was held that such power as conferred on the Industrial Court of superintendence over the Labour Court was unlimited considering the language of Section 85 of the Bombay Industrial Relations Act. It was observed that the wording of such provision was identical with the language of Article 227 of the Constitution of India. The relevant observations of the Court as made in the said decision are required to be noted, which read thus :

"Section 85 of the Bombay Act (Bombay Industrial Relation Act) confers on the Industrial Court power of superintendence over the Labour Courts. This power superintendence appear prima facie to be unlimited and the language of section 85 is almost identical with the language Article 227 of the Constitution."

7 While comparing the powers vested under Section 85 of the Bombay Industrial Relations Act and powers under Article 227 of the Constitution of India, the Court observed that when the Industrial Court is invested with the powers of superintendence over the orders passed by the Labour Court and when such powers of superintendence were as wide as powers of superintendence under Article 227 of the Constitution of India, such alternate remedy ought not to be by-passed so as to directly approach the High Court

5 1970 L. & I. C. 1354.

under Article 227 of the Constitution of India. An argument that by approaching the Industrial Court it would take a longer time was rejected, observing that when an equally efficacious alternate remedy was provided by the Act itself, it was not proper for the Court to exercise discretion and entertain a petition under Article 227 of the Constitution of India.

8 In **Clifford Rebello** (*supra*) a learned Single Judge of this Court following the decision in **Engineering Employees' Union** (*supra*), held that it would not be proper to grant any indulgence to the petitioner so as to enable him to by-pass a remedy available to him under Section 44 of the MRTU & PULP Act.

9 In regard to the decision as cited on behalf of the petitioner, in the case of **Indian Tourism Development Corporation** (*supra*), such decision would not be applicable to the facts of the present case as the petition before the Court was filed under Article 226 and 227 of the Constitution of India challenging the issuance of process on a criminal complaint. This apart, the order as assailed before the Court as passed was not an interlocutory order. The Court in the facts and circumstances of the case referring to the decision of the Supreme Court in **Dhariwal Tobacco Products Limited & Ors. Versus State of Maharashtra & Anr.**⁶ held that the High Court could exercise its jurisdiction under Article 226 and 227 of the Constitution of India or Section 482 of the

⁶ 2009 (2) Mh.L.J. (Cri) (SC) 643.

Code of Criminal Procedure. It was also observed that the alternate remedy was not a complete bar to the petition under Article 226 of the Constitution of India. Considering that in the case in hand, the challenge being to an interim order passed by the Labour Court, the decision in **Indian Tourism Development Corporation** (*supra*), would certainly be not applicable.

10 In relying on the decision in **Nusli Neville Wadia** case (*supra*) learned Counsel for the petitioner has placed reliance on paragraph 18A of the decision contending that the rule of alternate remedy is a rule of procedure, hence it would not oust the jurisdiction of the High Court under Article 226 of the Constitution of India. It needs to be noted that the case before the Court had arisen from the orders passed by the learned Principal Judge, City Civil Court, Mumbai under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, it is in the context of such proceedings the Court had made the said observations. It was not a case where an issue of alternate remedy as in the case in hand was a subject matter of consideration before the Court. Thus, the reliance on the judgment on behalf of the petitioner is not well founded.

11 As an upshot of the above discussion, I am of the clear opinion that the objection as raised on behalf of the respondents to the maintainability of the present petition needs to be accepted. I am in complete agreement with the

principle of law as laid by the learned Single Judge of this Court in **Engineering Employees' Union** (supra) as also in the case of **Clifford Rebello** (*supra*). The petitioner needs to avail the alternate remedy as provided under Section 44 of the MRTU & PULP Act.

12 The Petition is accordingly disposed of with the liberty to the petitioner to approach the Industrial Court in a revision application.

13 All contentions of the parties in that regard are expressly kept open.

14 Disposed of in above terms. No costs.

(G. S. KULKARNI,J.)

RAJU
DATTATRAYA
GAIKWAD
Digitally
signed by RAJU
DATTATRAYA
GAIKWAD
Date:
2021.12.15
17:42:45
+0530