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

LETTERS PATENT APPEAL NO. 447/2009 IN WRIT PETITION NO. 3234/2006 (D)

Rashtriya Mill Mazdoor Sangh,
Kamgar Bhawan, Baidyanath Chowk,
Nagpur – Through its President. **APPELLANT**

.....VERSUS.....

1. Nagpur Vinkar Sahakari Soot Girni Maryadit,
Umred Road, Nagpur – Through its Liquidator.

2. The Member, Industrial Court, Nagpur.

3. The Director, Textiles, Government of
Maharashtra, Old Secretariate Bldg.,
Civil Lines, Nagpur.

4. The State of Maharashtra,
Department of Cooperation & Textiles,
Mantralaya, Mumbai. **RESPONDENTS**

Shri S.D. Thakur, counsel for the appellant.
Shri R.B. Puranik, counsel for the respondent no.1.
Shri D.P. Thakare, Additional Government Pleader for the respondent nos.3 and 4.

CORAM : A. S. CHANDURKAR AND G.A. SANAP, JJ.
DATE ON WHICH ARGUMENTS WERE HEARD : 06TH AUGUST, 2021.
DATE ON WHICH JUDGMENT IS PRONOUNCED : 03RD SEPTEMBER, 2021.
JUDGMENT (PER : A.S. CHANDURKAR, J.)

The judgment of the learned Single Judge in Writ Petition No.3234 of 2006 dated 12.03.2009 is the subject matter of challenge in this letters patent appeal filed under Clause 15 of the letters patent. By the said judgment, the learned Single Judge was pleased to set aside the order passed on 23.03.2006 by the learned Member of the Industrial Court, Nagpur in Complaint U.L.P. No.1044 of 2000 as a result of which the complaint filed by the appellant came to be dismissed.

2. The facts giving rise to the present proceedings are that the respondent no.1 is a co-operative society registered on 15.06.1962 under the provisions of the Maharashtra Co-operative Societies Act, 1960 (for short, 'the Act of 1960'). The Society was running a spinning mill and at the relevant time about 1100 employees were working therein. In view of the fact that the Society was incurring losses and it had lost its share capital, it was not in a position to meet its day-to-day expenditure. Since it was suffering losses and it was not in a position to pay salaries to its employees, on the recommendation of the Administrator, the Additional Registrar passed an order of winding up of the Society on 09.05.1996 under Section 102(1)(c)(ii) of the Act of 1960. By virtue of said order the Liquidator came to be appointed as an interim measure under Section 103(1) of the Act of 1960. This interim order was subsequently confirmed on 24.06.1996. The liquidator appointed took charge of the affairs of the Society and continued to run it for the beneficial winding up of the society. Since the dues of the electricity board were not paid, the power supply was discontinued and the working of the spinning mill being run by the Society stopped. Since 08.10.1996 the manufacturing process in the spinning mill was discontinued.

The appellant-the employees registered Union made an application under Section 107 of the Act of 1960 seeking permission of the Registrar to initiate proceedings for recovering dues of its members.

The Additional Registrar refused to grant such permission on 16.10.1997. However, the State Government on 08.08.2000 allowed the revision application and granted permission to the Union to initiate appropriate proceedings. On the strength of this permission the Union on 17.11.2000 filed a complaint before the Industrial Court on behalf of 853 employees seeking wages for the period from 01.09.1996 to 31.10.2000. In this complaint filed under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, 'the Act of 1971') the prayer for interim relief was granted on 18.12.2002 and the Society was directed to pay 50% of the wages to the employees for the aforesaid period. This order was challenged by the Society in Writ Petition No.626 of 2003 and while maintaining the interim order proceedings in the complaint were expedited by this Court. The Industrial Court after considering the material on record by its judgment dated 23.03.2006 allowed the complaint and directed the society to pay wages for the period for which the same were claimed. This judgment of the Industrial Court was challenged before the learned Single Judge in Writ Petition No.3234 of 2006 and by the judgment dated 12.03.2009 the writ petition was partly allowed and the judgment of the Industrial Court was set aside. Being aggrieved, the Union has come up in appeal.

3. Shri S.D. Thakur, learned counsel for the appellant-Union submitted that the learned Single Judge erred in holding that it was not necessary for the Society to obtain prior permission of the State Government under Section 25-O of the Industrial Disputes Act 1947 (for short, 'the Act of 1947') on winding up of the Society. Mere fact that the Society was required to be wound up under the provisions of the Act of 1960 could not be the reason to give a go-by to the mandatory requirements of Section 25-O of the Act of 1947. Referring to the scheme of Chapter V-B of the Act of 1947, it was submitted that since the Society had engaged more than hundred employees the provisions of the aforesaid Chapter would come into play. It was necessary for the Society to have sought prior permission as contemplated by the aforesaid provision before closing down the spinning mill and on failure to do so the consequences as provided under Section 25-O(6) of the Act of 1947 would come into play. It was submitted that the learned Single Judge proceeded on an erroneous premise that in the absence of an employer pursuant to the order of winding up, the provisions of Section 25-O of the Act of 1947 would not operate. Inviting attention to Section 3(14) of the Maharashtra Industrial Relations Act, 1946 (for short, 'the Act of 1946') which defines the expression "employer" it was submitted that under sub-clause (c) even the head of the department is included in the definition of "employer". On his appointment as liquidator, such authority steps into

the shoes of the employer and continues till the Society is ultimately wound up by cancelling its registration under Section 21 of the Act of 1960. He also referred to the provisions of Section 2(g) of the Act of 1947 in that regard. It was thus submitted that the character of the employer was not relevant and during the process of winding up the liquidator would act as an employer and the relationship of employer and employee would continue. It was urged that there was no justification for recording a finding that the provisions of Section 25-J and 25-S of the Act of 1947 would not be applicable.

In the complaint the basis for claiming relief was the breach of the provisions of Section 25-O(6) of the Act of 1947 coupled with the fact that the services of the employees had not been terminated. This was despite the fact that the winding up order was passed. The provisions of the Section 25-O being mandatory in nature the same were required to be strictly construed. In absence of any exceptional circumstances and there being no satisfaction of the appropriate Government as contemplated therein, the Society was liable to face consequences as stipulated on account of such non-compliance. Attention was invited to Rule 82B of the Industrial Disputes (Bombay) Rules, 1957 alongwith Form XXIV-C to urge that the information required to be supplied while applying for closure indicated that the appropriate Government was required to apply its mind and the exercise in question was not an empty formality.

4. It was then submitted that co-operative societies found place in List II at Entry No.32 of the Constitution of India while industrial and labour disputes were covered by List III at Entry No.22. The social purpose behind enactment of the Act of 1947 and the Act of 1960 could not be lost sight of. He further submitted that since the provisions of the Act of 1947 and the Act of 1960 were clear they had to be implemented and under the garb of harmonious construction, their mandatory provisions could not be overlooked. It was not for the liquidator to decide as to whether the provisions of Section 25-O of the Act of 1947 were applicable or not. The Industrial Court having rightly considered the aforesaid issues and having granted relief to the Union, the learned Single Judge was not justified in setting aside that order and dismissing the complaint. In support of his submissions the learned counsel sought to rely upon the decisions in *Gujarat State Co-operative Land Development Bank Ltd. Versus P.R. Mankad & Others* [**(1979) 3 SCC 123**] wherein the provisions of the Act of 1960 prior to amendment of Section 91 were considered. He also relied on the judgment in *Life Insurance Corporation of India Versus D.J. Bahadur* [**(1981) 1 SCC 315**] for the proposition that the provisions of the Act of 1947 would prevail over the Life Insurance Corporation Act, 1956. He also sought to distinguish the judgment of the Division Bench in *Bombay Metropolitan Transport Corporation Ltd. Versus Servants of the B.M.T.C. (CIDCO)*

[**1991 (1) Mh.LJ. 382**] that was relied upon by the learned Single Judge. In the light of the aforesaid submissions it was submitted that the reliefs granted by the Industrial Court ought to be restored by setting aside the judgment of the learned Single Judge.

5. Shri. R.B. Puranik, learned counsel for the respondent no.1 opposed the aforesaid submissions and submitted that the learned Single Judge had taken a correct view of the issues arising in the writ petition. Drawing attention of the Court to various provisions of the Act of 1960 and especially Chapter-X thereof he submitted that on his appointment as liquidator, the provisions of Section 105 of the Act of 1960 and especially Section 105(1)(b) thereof indicated that the business of the Society was required to be carried on only as far as it was for the beneficial winding of the Society. It was urged that the winding up of the Society had no connection with any industrial dispute and the fact that the liquidator was required to be appointed itself indicated that the Society was no longer the employer and the relationship of the employer and employee had come to an end. Inviting attention to the requirements of Section 25-O of the Act of 1947, it was submitted that when the Society was wound up under the Act of 1960, there would be no occasion to seek prior permission for closure under Section 25-O of the Act of 1947. In the matter of registration of a co-operative society, its winding up and

cancellation of registration, the Act of 1960 would govern the dispute while in case of an industrial dispute between the Society and its employees where the provisions of the Act of 1947 were applicable, the same would operate. The winding up in question was not due to any industrial dispute but in view of the contingencies prescribed by the Act of 1960 due to which it was not viable for the spinning mill to continue its operation. Moreover, in view of the provisions of Section 91(1) of the Act of 1960 the Co-operative Courts and Authorities under the said Act had no jurisdiction to entertain any industrial dispute. He sought to demonstrate the impracticability of seeking permission under Section 25-O of the Act of 1947 by a Society under the Act of 1960 when it was being wound up. The same would result in the order of the Registrar who had directed winding up being made subject to the order of the Appropriate Government under Section 25-O of the Act of 1947. Since both the statutes operated in separate and distinct fields there was no question of any implied repeal. As regards the provisions of Chapter V-B of the Act of 1947 and its applicability it was submitted that while a co-operative society engaging hundred or more workers in a factory would have to seek permission under Section 25-O of the Act of 1947, a co-operative society engaging less than hundred workers would not be required to seek any such permission. The same would result in creating an anomalous situation. Since the liquidator had limited powers under

Section 105 of the Act of 1960 and there being no power to terminate the services of any employee, the liquidator could not be called an employer under Section 3(14) of the Act of 1946. An order of winding up itself would result in cessation of the relationship of employer and employee and this aspect was rightly noticed by the learned Single Judge. In support of his contentions, the learned counsel placed reliance on the decisions in *Bombay Metropolitan Transport Corporation Limited* (supra), *Kashinath Prabhu Desai Versus State of Goa* [**2007 (1) Mh.L.J. 795**], *Balasaheb Devram Wagh & Others Versus Karmaveer Kakasaheb Wagh Sahakari Karkhana Ltd. & Others* [**2019 (6) BCR 354**] and *BIFR & Another Versus KMA Ltd. & Others* [**2016 (2) BLC 339**] it was thus submitted that the judgment of the learned Single Judge did not call for any interference and the letters patent appeal was liable to be dismissed.

Shri D.P. Thakare, learned Additional Government Pleader for the respondent nos.3 and 4 referred to the affidavits filed on record and submitted that *ex-gratia* payment was made to the employees of the society as per Government Resolution dated 05.03.2019.

6. We have heard the learned counsel for the parties extensively and we have gone through the material placed on record. On giving due consideration to the respective submissions, we are of the considered view that the judgment of the learned Single Judge does not call for any

interference. The learned Single Judge after referring to the relevant provisions of the Act of 1947 as well as the Act of 1960 has held that pursuant to the order of winding up when the employer-Society is incapacitated in law and is unable to impose any obligations or duties, the provisions of Section 25-O of the Act of 1947 cannot revive such employer and employee relationship. On the winding up of a co-operative society, the provisions of Section 25-O of the Act of 1947 would not be applicable.

7. It is not in dispute that pursuant to the order dated 09.05.1996 an interim order was passed by the Assistant Registrar, Co-operative Societies under Section 103(1) of the Act of 1960 appointing a liquidator to oversee the liquidation of the society running the spinning mill. This order was thereafter confirmed on 24.06.1996 under Section 103(3) of the Act of 1960. The production at the Spinning Mill was discontinued from 08.10.1996. The Union sought to urge that in absence of any prior permission as contemplated by Section 25-O of the Act of 1947 being obtained by the Society, the closure of the Spinning Mill was illegal. On the other hand according to the Society by virtue of appointment of the liquidator and commencement of the winding up proceedings, the relationship of employer and employee between the Society and its employees statutorily came to an end and the provisions of Section 25-O of the Act of 1947 would not be attracted in such case.

8. Section 4 of the Act of 1960 prescribes for registration of a co-operative society in the light of its objects. By virtue of Section 36 thereof the society becomes a body corporate with perpetual succession and a common seal. Section 72 vests final authority of every society in the general body of members. Section 91(1) excludes an industrial dispute as defined by Section 2(k) of the Act of 1947 to be a dispute under the Act of 1960. Chapter-X of the Act of 1960 deals with liquidation of societies registered under the Act. Section 102 contemplates winding up of a co-operative societies on contingencies mentioned therein occurring. Section 103 deals with appointment of the liquidator. On appointment of a liquidator, the assets of the society vest in such liquidator. As per Section 105(1)(b) the liquidator has to carry on the business of the society as far as it may be necessary for the beneficial winding up of the society. Section 105(1) indicates the nature of powers conferred on the liquidator who has to work under the general supervision, control and direction of the Registrar. It thus becomes clear that in view of Section 103(5) the assets of the society vest in the liquidator and he has to exercise powers as conferred by Section 105(1). These powers do not indicate conferment of any authority on the Liquidator to terminate the services of any employee. On the contrary the business to be carried on is only insofar as it would be necessary for the beneficial winding up of the society. The effect of the order of winding up is prescribed by Section 106 and on the

same being effective, the assets of the society have to be realized by sale or otherwise in view of the interest of creditors and contributories. Section 109 indicates the manner in which the liquidation proceedings can be terminated and Section 110 stipulates the manner of disposal of surplus assets. It is thus clear that Chapter-X of the Act of 1960 is a Code in itself insofar as liquidation of a co-operative society is concerned.

9. It has to be kept in mind that winding up under Section 102 can be ordered by the Registrar on satisfaction of the conditions mentioned in sub-Section (1) thereof. In the present case, as per the order dated 09.05.1996 the weak financial condition of the society is the reason for directing its winding up. The Competent Authority found that the Society was not in a position to clear its various dues nor could it pay the wages of the employees of the spinning mill. The only option found available was to wind up the Society. The winding up order has attained finality. On 09.05.1996 itself the Liquidator came into control of all the property of the Society as per Section 103(2) of the Act of 1960. Even the general body of the Society was not in a position to exercise any powers in view of Section 103(3). Thus, on the liquidator being appointed the limited scope available to him in the matter of carrying on business of the society was only with a view to ensure beneficial winding up of the co-operative society. The fact that the liquidator under Rule 89(4) of the Rules of 1961 has to take steps to satisfy all claims against

the society and decide questions of priority, compromise, debts and liabilities indicate that the activities of the society that is being wound up cannot be further continued. Even the surplus assets pursuant to the final report of the liquidator have to be disposed of as per Section Section 110 of the Act of 1960.

These provisions therefore clearly indicate that on the appointment of the liquidator for the purposes of winding up, the society through its general body under Section 72 of the Act of 1960 is no longer in control of its affairs. In other words, where the society has engaged employees the relationship of employer and employee would automatically cease on the appointment of the liquidator under Section 103(1) of the Act of 1960 being the statutory effect of said provisions.

10. The provisions of Section 25-O(1) of the Act of 1947 require the employer who intends to close down an undertaking of an industrial establishment to seek prior permission at least ninety days before the intended closure of the undertaking. Thus for a period of at least ninety days the undertaking would have to operate after moving an application as contemplated by Section 25-O(1) of the Act of 1947. Permission of closure is deemed to be granted on expiry of period of sixty days from making the application under Section 25-O(1). The order of the

appropriate Government is also subject to review/challenge under Section 25-O(5).

On the other hand, pursuant to an interim order passed under Section 103(2) of the Act of 1960 the Liquidator is required to be handed over the control and custody of all the property of the society. Under Section 106 of the Act of 1960 when the order of winding up becomes effective the Liquidator has to proceed to realise the assets of the society by sale or otherwise.

Requiring a society under liquidation to seek permission of closure under Section 25-O(1) would result in compelling the Liquidator to disregard the provisions of Sections 105 and 106 of the Act of 1960. Instead of realising the assets of the society for facilitating its winding up, the Liquidator would have to operate the business of the society till he is permitted to effect closure under Section 25-O of the Act of 1947. In other words, the Society that was found fit for being wound up under the Act of 1960 would be still required to run its business in the form of the spinning mill till such time permission for closure was granted by the appropriate Government under the Act of 1947. This would be highly impracticable. Such conflict of situation by seeking simultaneous implementation of Section 25-O of the Act of 1947 and Sections 105 and 106 of the Act of 1960 would have to be avoided by harmoniously interpreting the provisions of both the statutes.

11. Seeking prior permission pre-supposes the existence of an employer who can seek such permission under Section 25-O(1) of the Act of 1947. The judgment of the Division Bench in *Bombay Metropolitan Transport Corporation Limited* (supra) which was relied upon by the learned Single Judge and in our view rightly clearly recognises the continued existence of the employer and the undertaking for the application of the provisions of Section 25-O of the Act of 1947. Though it is true that the provisions of the Companies Act, 1956 *vis-a-vis* the Act of 1947 fell for consideration before the Division Bench, we find that the principle of law applicable would be the same. It has been observed that the company is an industrial establishment which ceases to function upon the passing of winding up order. The winding up order itself is deemed to be a notice of discharge of the business and employees of the company. The services of the employees thus come to an end by operation of law. In that context it was observed that there would be no question of permission under Section 25-O being sought for closing down. Though the learned counsel for the Union sought to distinguish the aforesaid decision by referring to the provisions of Section 167 of the Act of 1960 we find that the principle of law laid down therein would be applicable even to the case in hand.

The learned Single Judge has considered the decision in *D.J. Bahadur* (supra) and we are in agreement with the observations made in that regard. In the absence of any industrial dispute, the ratio of the decision in *P.R. Mankad* (supra) cannot be made applicable to the facts of the present case.

12. The judgment of the learned Single Judge has in detail considered various aspects that were urged in the writ petition and since we are in agreement with said reasoning and the conclusions recorded therein we do not find it necessary to reiterate the same again. It was faintly sought to be urged by the learned counsel for the appellant that the maximum period of ten years of appointment of liquidator as per Section 109(1) of the Act of 1960 from 09.05.1996 came to an end on 08.05.2006. Though the judgment of the Industrial Court was dated 23.03.2006, the writ petition was filed by the society through its liquidator only on 20.06.2006. As the maximum period of ten years prescribed had come to an end the liquidator had no authority in law to initiate the present proceedings and for this reason also the judgment of the learned Single Judge was liable to be set aside. In this regard it may be noticed that this contention was not raised before the learned Single Judge and is being raised for the first time in appeal. Hence we refrain from going into said aspect.

13. In the light of aforesaid discussion, we find that the learned Single Judge has arrived at the correct conclusion that by virtue of the winding up of the society it was not required to seek prior permission of the State Government under Section 25-O of the Act of 1947. The observations made by learned Single Judge as regards non-applicability of the provisions of Sections 25-J and 25-S of the Act have to be understood in that context. We do not find any reason to interfere with the judgment of the learned Single Judge.

14. The letters patent appeal therefore fails. It is accordingly dismissed leaving the parties to bear their own costs.

(**G.A. SANAP, J.**) (**A.S. CHANDURKAR, J.**)

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