

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5035 OF 2019

Dhannu Bhagu Rathod,
Age : 52 years, Occupation : Nil,
R/o At Rahuwadi, Post : Chinchkheda,
Taluka Ambad, Dist. Jalna.

...PETITIONER

-VERSUS-

1. Sarpanch,
Grampanchayat Office,
Rahuwadi, Tq.Ambad,
Dist.Jalna.
2. Gramsevak,
Grampanchayat Office,
Rahuwadi, Tq.Ambad,
Dist.Jalna.

...RESPONDENTS

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Advocate for the Petitioner : Shri Shelke Avishkar S.
Advocate for the Respondents : Shri Lukhe Arjun R.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th March, 2022

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. By this Writ Petition, the petitioner seeks to challenge the

judgment and order dated 09.10.2018 delivered by the Industrial Court, Jalna, vide which, Complaint (ULP) No.298/2016 filed by the petitioner under Item 9 of the Schedule IV of the MRTU & PULP Act, 1971, seeking implementation of the award delivered by the Labour Court in the reference case has been held to be untenable on the ground of bar of Section 59.

3. The petitioner had approached the Labour Court in Reference (IDA) No.2/2015 for challenging his termination. By the judgment and award dated 11.02.2016, the reference was answered in the affirmative and the petitioner was granted reinstatement with continuity and 50% back wages. As the award was not implemented, the petitioner approached the Industrial Court under Item 9 of the Schedule IV of the MRTU & PULP Act, 1971 alleging that failure on the part of the employer in implementing the settlement, agreement or award, would amount to unfair labour practice. The Industrial Court has concluded that as the petitioner had initially approached the Labour Court for challenging his termination, he could invoke the jurisdiction under Section 11(9) and (10) or under Section 29 of the I.D.Act, 1957.

4. No doubt, sub-section (9) of Section 11 does render a remedy available to the employee to seek execution of the award by treating the same as a decree delivered by the Civil Court under Order 21 of the Code of Civil Procedure. However, Section 29 is not a remedy. Section 29 is only

as regards penalty, which is prescribed for breach of settlement or award. Be that as it may, Item 9 of the Schedule IV is also an effective remedy available to the employee to seek implementation of the award or settlement or agreement and such award can be got executed by preferring a ULP complaint. The doctrine of election can, therefore, be made applicable permitting the employee to choose one of the two remedies when both are available to him.

5. On the Doctrine of Election, the Hon'ble Supreme Court of India has held in **A.P State Financial Corporation Vs. M/s GAR Re-Rolling Mills and another**, [AIR 1994 SC 2151 = 1994 AIR SCW 1953], in paragraph Nos.13, 15 and 16 as under :-

"13. On a conjoint reading of Sections 29 and 31 of the Act, it appears to us that in case of default in repayment of loan or any instalment or any advance or breach of an agreement, the Corporation has two remedies available to it against the defaulting industrial concern, one under Section 29 and another under Section 31 of the Act. The choice for availing the remedy under Section 29 or Section 31 of the Act is that of the Financial Corporation alone and the defaulting concern has no say whatsoever in the matter, as to which remedy should be taken recourse to by the Corporation against it for effecting the recovery. The expression "without prejudice to the provisions of Section 29 of this Act" as appearing in Section 31 of the Act clearly demonstrates that the Legislature did not intend to confine the Corporation to take recourse to only a particular remedy against the defaulting industrial concern for recovery of the amount due to it. It left the choice to the Corporation to act in the first instance under Section 31 of the Act and save its rights and remedies under Section 29 of the Act to be availed at a later stage, with the sole object of enabling

the Corporation to recover its dues. It is not, however, obligatory on the part of the Financial Corporation to invoke the special provisions of Section 31 of the Act, it can even without taking recourse to the provisions of the said section invoke the procedure prescribed under Section 29 of the Act for realisation of its dues. Where the Corporation takes recourse to the provisions of Section 31 of the Act and obtains an order from the court, it shall ordinarily and invariably seek its enforcement in the manner provided by Section 32 of the Act, which provisions are aimed to act in aid of the orders obtained under Section 31 of the Act and it cannot simultaneously initiate and take recourse to the remedy available to it under Section 29 of the Act unless it gives up, abandons or withdraws the proceedings under Section 31 of the Act, at whatever stage those proceedings may be. The Corporation cannot simultaneously pursue two remedies at the same time. The reach and scope of the two remedies is essentially different even if somewhat similar result flows by taking recourse to either of the two provisions in certain respects.”

- “15. *The Doctrine of Election clearly suggests that when two remedies are available for the same relief, the party to whom the said remedies are available has the option to elect either of them but that doctrine would not apply to cases where the ambit and scope of the two remedies is essentially different. To hold otherwise may lead to injustice and inconsistent results. Since, the Corporation must be held entitled and given full protection by the Court to recover its dues it cannot be bound down to adopt only one of the two remedies provided under the Act. In our opinion the Corporation can initially take recourse to Section 31 of the Act but withdraw or abandon it at any stage and take recourse to the provisions of Section 29 of the Act, which section deals with not only the rights but also provides a self-contained remedy to the Corporation for recovery of its dues. If the Corporation chooses to take recourse to the remedy available under Section 31 of the Act and pursues the same to the logical conclusion and obtains an order or decree, it may thereafter execute the order or decree, in the manner provided by Section 32(7) and*

(8) of the Act. The Corporation, however, may withdraw or abandon the proceedings at that stage and take recourse to the provisions of Section 29 of the Act. A 'decree' under Section 31 of the Act not being a money decree or a decree for realisation of the dues of the Corporation, as held in AIR 1978 SC 1765 (1769) (supra) recourse to it cannot debar the Corporation from taking recourse to the provisions of Section 29 of the Act by not pursuing the decree or order under Section 31 of the Act, in which event the order made under Section 31 of the Act would serve in aid of the relief available under Section 29 of the Act."

- "16. The doctrine of election, as commonly understood, would, thus, not be attracted under the Act in view of the express phraseology used in Section 31 of the Act, viz., "without prejudice to the provisions of Section 29 of this Act,. While the Corporation cannot simultaneously pursue the two remedies, it is under no disability to take recourse to the rights and remedy available to it under Section 29 of the Act even after an order under Section 31 has been obtained but without executing it and withdrawing from those proceedings at any stage. The use of the expression "without prejudice to the provisions of Section 29 of the Act" in Section 31 cannot be read to mean that the Corporation after obtaining a final order under Section 31 of the Act from a court of competent jurisdiction, is denuded of its rights under Section 29 of the Act. To hold so would render the above-quoted expression redundant in Section 31 of the Act and the courts do not lean in favour of rendering words used by the Legislature in the statutory provisions redundant. The Corporation which has the right to make the choice may make the choice initially whether to proceed under Section 29 of the Act or Section 31 of the Act, but its rights under Section 29 of the Act are not extinguished, if it decides to take recourse to the provisions of Section 31 of the Act. It can abandon the proceedings under Section 31 of the Act at any stage, including the stage of execution, if it finds it more practical, and may initiate proceedings under Section 29 of the Act."*

6. The Industrial Court has also ventured into concluding that the said complaint was untenable as it was struck by the bar of Section 59. In my view, the Industrial Court has misdirected itself. The learned Full Bench of this Court has delivered a verdict in *C.S. Dixit vs. Bajaj Tempo Ltd., Pune, 2004 (4) Mh.L.J. 261 (FB)*, on this issue. Such an issue of bar of Section 59 has also been dealt with in *Johnson & Johnson Ltd. vs. Gautam Hari Vedi (Shri) and others, 2001(1) Bom. C.R. 335*. Similarly, this Court has also delivered the verdict in *Nanasaheb Eknath Suryawanshi vs. Pune District Central Cooperative Bank Ltd., 2016 (4) Mh.L.J. 615*.

7. The learned counsel for the respondents has strenuously supported the impugned order. In my view, his submissions do not deserve any consideration in view of the crystallized position of law.

8. In view of the above, this Writ Petition is allowed. The impugned judgment of the Industrial Court dated 09.10.2018 is quashed and set aside and Complaint (ULP) No.298/2016 stands remitted to the stage of filing of the Written Statement since the learned advocate for the respondents makes a request in this context. Hence, the following directions :-

(a) Both the litigating parties shall appear before the Industrial Court at Jalna on 01.04.2022 at 11:00 AM. On the same date, the respondents would enter their written statement along with documents, if

any, and shall not seek an adjournment.

(b) After considering the pleadings of the parties, the Industrial Court shall frame the issues in the matter, on or before 21.04.2022.

(c) The issue as regards maintainability that has been framed by the Industrial Court earlier, shall stand deleted.

(d) The Industrial Court is requested to decide Complaint (ULP) No.298/2016 as expeditiously as possible and preferably, on or before 21.10.2022.

9. Rule is made absolute in the above terms.

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(RAVINDRA V. GHUGE, J.)