

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

WRIT PETITION NO. 3579 OF 2020

M/s. Vyenkateshwara Power Project
Limited, Shirol, Tahsil – Hatkangale,
District – Kolhapur,
Presently,
M/s. Vyenkateshwara Power Project
Limited, Unit No.2, Babdev, Tahsil-
Mouda, District – Nagpur.
Through its Managing Director,
Mr. Sanjay Indrajeetrao Gujar,
Aged about 52 years, Occupation–Business,
R/o Mauda, District – Nagpur.

.... **PETITIONER**

VERSUS

- 1) Rajaram Gambhir Kolhe,
R/o Shreeram Sakhar Karkhana
Colony, Babdev, Tahsil – Mauda,
District – Nagpur.
- 2) Anandrao Haribhau Dhomne,
R/o Shreeram Sakhar Karkhana
Colony, Babdev, Tahsil – Mauda,
District – Nagpur.
- 3) Ashok Sahadu Borse,
C/o Rajaram Gambhir Kolhe,
Shreeram Sakhar Karkhana Colony,
Babdev, Tahsil – Mouda, District -
Nagpur.
- 4) Suresh Kisanrao Nichante,
C/o Rajaram Gambhir Kolhe,
Shreeram Sakhar Karkhana Colony,
Babdev, Tahsil – Mouda, District -
Nagpur.

- 5) Sovinda Dinuji Hatwar,
C/o Rajaram Gambhir Kolhe,
Shreeram Sakhar Karkhana Colony,
Babdev, Tahsil – Mouda, District -
Nagpur.
- 6) Jagdish Ramkrushna Yelane,
C/o Rajaram Gambhir Kolhe,
Shreeram Sakhar Karkhana Colony,
Babdev, Tahsil – Mouda, District -
Nagpur.
- 7) Shalikram Ganpatrao Sandalwar,
C/o Rajaram Gambhir Kolhe,
Shreeram Sakhar Karkhana Colony,
Babdev, Tahsil – Mouda, District -
Nagpur.
- 8) Ravindra Mahadev Ambone,
C/o Rajaram Gambhir Kolhe,
Shreeram Sakhar Karkhana Colony,
Babdev, Tahsil – Mouda, District -
Nagpur.
- 9) Bhagwan Baliram Patil,
C/o Rajaram Gambhir Kolhe,
Shreeram Sakhar Karkhana Colony,
Babdev, Tahsil – Mouda, District -
Nagpur.
- 10) Chinda Arjun Bankar,
C/o Rajaram Gambhir Kolhe,
Shreeram Sakhar Karkhana Colony,
Babdev, Tahsil – Mouda, District -
Nagpur.
- 11) N.R. Waghmare,
C/o Rajaram Gambhir Kolhe,
Shreeram Sakhar Karkhana Colony,
Babdev, Tahsil – Mouda, District -
Nagpur.

- 12) Ravindra Pandurang Kinhekar,
C/o Rajaram Gambhir Kolhe,
Shreeram Sakhar Karkhana Colony,
Babdev, Tahsil – Mouda, District -
Nagpur.
- 13) Gajanan Trambakrao Deshmukh,
C/o Rajaram Gambhir Kolhe,
Shreeram Sakhar Karkhana Colony,
Babdev, Tahsil – Mouda, District -
Nagpur.
- 14) Arun Alias Suni Bhaurao Bawane,
C/o Rajaram Gambhir Kolhe,
Shreeram Sakhar Karkhana Colony,
Babdev, Tahsil – Mouda, District -
Nagpur.
- 15) Hirachand Urkuda Bankar,
C/o Rajaram Gambhir Kolhe,
Shreeram Sakhar Karkhana Colony,
Babdev, Tahsil – Mouda, District -
Nagpur.
- 16) Arvind Vishwanath Nikas,
C/o Rajaram Gambhir Kolhe,
Shreeram Sakhar Karkhana Colony,
Babdev, Tahsil – Mouda, District -
Nagpur.
- 17) Rambhau Bhagwan Thakre,
C/o Rajaram Gambhir Kolhe,
Shreeram Sakhar Karkhana Colony,
Babdev, Tahsil – Mouda, District -
Nagpur.
- 18) The Shreeram Sahakari Sakhar
Karkhana Ltd., Narendra Nagar,
through its President, Baburao
Madhavrao Tidke,
R/o Khosla Complex, Hindustan
Colony, Bharat Nagar, Nagpur.

19) Regional Joint Director (Sugar),
Nagpur Division, New Administrative
Building, Wing II A, 6th Floor, Civil
Lines, Nagpur.

20) The Maharashtra State Cooperative
Bank Ltd., Mumbai, through its
Authorised Officer/Dy. General
Manager, Regional Office, Dhananjay
Rao Gadgil Marg, Mahal, Nagpur.

.... **RESPONDENTS**

Mr. S.A. Marathe, Counsel for the petitioner,
Mr. R.S. Bhure, Counsel for respondents 1 to 17,
Mrs. M.A. Barbade, AGP for respondent 19,
Mr. A.A. De, Counsel for respondent 20.

CORAM : ROHIT B. DEO, J.
DATED : 15th MARCH, 2022

ORAL JUDGMENT :

The petitioner is assailing the judgment and order dated 07-1-2020 rendered by the Industrial Court, Nagpur in Complaint (ULP) 87/2015, the operative part of which reads thus :

- “1) The Complaint is partly allowed.*
- 2) The Complaint is dismissed against the Respondent Nos.1, 2 and 3.*
- 3) It is declared that the Respondent No.4 has committed unfair labour practice under Items 5 and 9 of Schedule IV of MRTU & PULP Act.*
- 4) The Respondent No.4 is directed to desist from committing such unfair labour practice.*
- 5) The Respondent No.4 is directed to pay all the legal dues of Complainants within one month from the date of order. Else to carry interest at the rate of 8% per*

annum on the legal dues.

6) *No order as to costs.”*

2. The relevant facts are few and brief.
 - (i) Respondents 1 to 17 herein preferred complaint under Section 28 of the Maharashtra Recognition Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (Act) claiming arrears of wages. According to the complainants, they were permanent employees of Shreeram Sahakari Sakhar Karkhana Ltd. (Sugar Factory) with effect from the dates mentioned in Annexure-A to the complaint. The Sugar Factory was taken over by the Maharashtra State Co-operative Bank Limited (Bank) in proceedings for recovery of debt. The Sugar Factory was purchased by M/s. Vyenkateshwara Power Project Limited-petitioner herein. The complainants claim that the payment of salary was irregular since 1995 and was completely stopped in the month of February, 1996. The Sugar Factory suspended production in May/June 1997 without issuing any notice of lay-off to the workers. In June 2002, the Sugar Factory availed subsidy and loan from the Government of Maharashtra and restarted production. However, the complainants were not paid the entire wages for the period June 2000 to June 2002 and were

paid only 70% of the wages. The complainants did not receive a single rupee for the period July 2002 to June 2003 and on 17-6-2003 the Sugar Factory displayed notice stating that due to financial crisis, all the workers are granted indefinite leave without pay. However, since no individual notice was issued, all the employees regularly reported on duty till the end of August 2003.

- (ii) According to the complainants, one of the conditions in the tender published by the Bank for sale of the Sugar Factory was that the purchaser shall pay all the dues of the employees. The petitioner herein, who purchased the Sugar Factory, invited applications by publishing advertisement in the newspapers from workers in various categories, without settling the dues of the workers. The substratum of the complainants' case is that the petitioner, who is the auction purchaser, was obligated to settle their dues and while on 17-4-2015 some workers were made part payment of the dues, the payment was made selectively and the complainants did not receive any amount.
- (iii) The Sugar Factory did not file its written statement. The Bank did file written statement contending that it was the purchaser petitioner herein who was responsible for settling the dues of the

workers. The purchaser-petitioner herein filed its written statement, the relevant portion of which reads thus :

“19. In view of these peculiar circumstances, on 27-1-2015 a meeting was held in presence of Guardian Minister Shri Bawankule and it was decided to make the payment of the salary etc. to 292 employees as per the list provided authentically. The amount of Rs.1,85,00,000/- was agreed to be disbursed towards this payment as full and final amount. It was also decided to withdraw the proceedings which are filed against the earlier and present management.

20. The authentic list of 292 employees to whom the payment is to be made as agreed in meeting is yet to be supplied to this respondent No.4. The respondent No.4 is ready to pay the agreed amount to those employees. If any of those employees is from that list, he will be paid accordingly.

21. Under the circumstances there is no unfair labour practice at the hands of the respondent No.4 as alleged. Moreover without having any substantial proof thereof in respect of the employment the complainant are not entitled to any relief. The complaint may be dismissed accordingly.”

- (iv) The complainants examined Mr. Anandrao Dhomne and certain documents were produced and proved substantiating the status of the complainants as the permanent employees of the Sugar Factory. The purchaser-petitioner did not cross-examine the witness nor did the purchaser-petitioner lead evidence. The Industrial Court noted that the purchaser-petitioner did not dispute the entitlement of the complainants to legal dues, and *inter alia* in view of the fact that the evidence adduced by the

complainants substantiating their status as the permanent employees of the Sugar Factory went unchallenged, allowed the complaint in terms of the operative part which is reproduced supra.

3. This petition, which assails the judgment dated 07-1-2020, is filed on 02-9-2020. The averment in paragraph 9 is that after filing the written statement, the learned Counsel could not attend the proceedings due to heart ailment, and therefore, the evidence of the complainants went unchallenged. Perusal of the memo of petition, particularly paragraph 17 thereof, reveals that except a bald statement that from January 2019 the Counsel could not attend the hearing, there is absolutely no explanation given why the purchaser-petitioner could not effectively defend itself. Assuming *arguendo*, that the Counsel could not attend due to illness, the purchaser-petitioner was expected to keep track of the litigation and indeed to depute a representative on the dates of the hearing. An omnibus statement in the petition that the counsel could not attend the hearing since January 2019 leads to no inference in the absence of non-disclosure of material particulars that the purchaser-petitioner was not in a position to effectively defend the complaint.

4. This Court further notes that in order to test the *bona fides* of the petitioner, a query was made to the learned Counsel whether the petitioner is willing to deposit the dues of the workers, in compliance with the judgment impugned, and in response the inability of the petitioner to do so was convened.

5. Considering the matter holistically, I am not inclined to interfere in the judgment impugned, in exercise of writ jurisdiction.

6. The petition is dismissed.

JUDGE

adgokar