

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

WRIT PETITION NO.2774 OF 2002

Godawari Dudhana Sahakari Sakhar Karkhana,
Deonandra, Taluka – Pathri, Dist. Parbhani
Through its Managing Director

.. Petitioner

Versus

1. Annasaheb Rajaram Wadekar
Age : 48 years, Occu : Seasonal
Employee, R/o.Chinchala,
Taluka - Wadwani, Dist. Beed.
2. Sudhakar Yeduba Mate
Age : 41 years, Occu : Seasonal employee,
R/o. (B), Tal. Pathri, Dist. Parbhani
3. Baban Gulabchand Gonge
Age : 39 years, Occu : Seasonal employee,
R/o. Hadgaon (B), Tal.Pathri, Dist. Parbhani
4. Kalyan Appasaheb Nakhate
Age : 44 years, Occu :Seasonal employee,
R/o. Hadgaon (B), Tal.Pathri, Dist. Parbhani
5. Pralhad Sukhram Gaat,
Age : 44 years, Occu : Seasonal employee,
R/o.Hadgaon (B), Tal. Pathri, Dist. Parbhani
6. Madhukar Shamrao Nakhate
Age : 40 years, occu : Seasonal employee,
R/o.Hadgaon (B), Tal. Pathri, Dist. Parbhani
7. Sanjay Eknath Harale
Age : 40 years, Occu ; Seasonal employee,
R/o.Netaji School, Chowk Bazar, Pathri,
Tal.Pathri, Dist. Parbhani

.. Respondents
(Orig. Complainants)

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Mr. Abhishek Patil, Advocate h/f. Mr. Deelip Bankar Patil,
Advocate for the petitioner

Respondent Nos.1 to 7 – served.

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CORAM : SHARMILA U. DESHMUKH, J.

RESERVED ON : 17.02.2023

PRONOUNCED ON : 14.03.2023

JUDGMENT :

1. Heard.

2. Rule.

3. The challenge in the petition is to the order dated 05.07.2002 passed by the Industrial Court, Jalna in an interim application filed below Exh.U-2 in Complaint (ULP) No.28 of 2002 whereby the petitioner was directed to deposit the amount of wages and retention allowances in respect of the respondents within the period of 30 days.

4. The office noting shows that the respondents were served, however none appears for the respondents and as the petition is of the year 2002, the same has been taken up for final hearing.

5. The learned counsel appearing for the petitioner would submit that as there was financial difficulty, an Administrator came to be appointed on the Sakhar Karkhana (Sugar Factory) and on 14.05.2002 the final order of liquidation was passed. He would

further submit that the complaint came to be filed by the respondents on 08.03.2002 without impleading the liquidator as party to the proceeding. He would further submit that on 08.03.2008 notice was issued to the petitioner, however in view of the liquidator being appointed there was no appearance caused before the Industrial Court and by interim order the respondent was directed to deposit the amount of wages and the retention allowance by holding that the respondents had made out a *prima facie* case to seek interim relief. He would further submit that the respondents being workmen of Sakhar Karkhana were aware that the liquidator has been appointed as the same was published in the newspaper and also on 20.03.2002, a notice was affixed in the factory premises that the Collector Parbhani has been appointed as an administrator. He would further submit that interim order of liquidation was passed on 14.03.2002 and as such, without the leave of the Registrar the proceedings could not continue as the bar under Section 107 and Section 163 (2) of the Maharashtra Co-operative Societies Act apply. He would further submit that the liquidation proceedings are still in force as is evident from the document which has been produced on record on 30.08.2022.

6. Considered the submission of the learned counsel for the

petitioner. Perused the material placed on record.

7. The Complaint (ULP) No.28 of 2002 came to be instituted by the petitioner under Section 28 (1) read with Item 5, 9 and 10 of the Schedule IV of the MRTP and PULP Act, 1971 seeking *inter alia* direction to the respondent - employer to pay the wages and retention allowance in respect of the period from October -2001 to March - 2002. This complaint came to be filed on 08.03.2002. At this time the Administrator had been appointed and notice to that effect was pasted in the premises of the Karkhana on 20.03.2001. As such, it cannot be said that the respondent - employees were not aware about the appointment of the arbitrator. In spite of being aware of the position, the respondents - employees did not reveal the said fact in the complaint. The complaint came to be instituted as against the Sakhar Karkhana. On 14.03.2002 the interim order of liquidation came to be passed and on 20.03.2002 the liquidator had taken charge.

8. Interim order directing the respondents to deposit the amount of wages and retention allowance has been passed on 05.07.2002 and prior to that in the month of March -2002, the liquidator had already taken charge. As the employees were working

with Sakhar Karkhana, the respondents were well aware of this position and in spite of the same failed to bring the fact of appointment of liquidator to the notice of the Industrial Court. As far as the application below Exh.U-2 is concerned, by this application the respondents sought the final relief of payment of amount of wages and retention allowance, which the Industrial Court granted by the impugned order. Perusal of the impugned order shows that there are no reasonings and a very cryptic order has been passed granting interim relief. From the reading of the impugned order, it appears that it was only non-appearance of the respondent which prevailed upon the Industrial Court to pass the impugned order. There is no *prima facie* case being made out.

9. In my opinion, at the interim stage the final relief could not have been granted inasmuch as the whole complaint is disposed of by the grant of the interim relief. The reliance placed by the learned counsel upon Section 107 and Section 163 (2) of the Maharashtra Co-operative Societies Act is appropriate inasmuch as the statutory bar has been created once the liquidation proceedings had commenced. In such an event, without the leave of the Registrar the proceedings could not have been continued.

10. In light of the facts above, the impugned order dated 05.07.2002 is not legally sustainable and is hereby quashed and set aside.

11. Writ Petition is allowed. Rule is made absolute.

(SHARMILA U. DESHMUKH, J.)

GGP