IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3220 OF 2018

Eco Board Industries Limited ....PETITIONER
V/S
Krishnaji Pandurang Patil
deceased through L.Rs
Smt. Vaishali Krishnaji Patil & Ors. ....RESPONDENTS

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Mr. Dhananjay J. Bhanage for the Petitioner.
Mr. Kuldeep U. Nikam for Respondent Nos.1, 2, 3 and 5.
Mr. Bhushan Walimbe for Respondent Nos.4A to 4E.

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CORAM : SANDEEP V. MARNE, J.
DATE : OCTOBER 31, 2023.

P.C.:

1 By this Petition, Petitioning Company challenges the judgment and order dated 10 January 2018 passed by the Industrial Court in Complaint (ULP) No.17 of 2013. The Industrial Court has allowed the Complaint and, while holding that the Petitioning Company has engaged in unfair labour practices, has directed it to pay to the Respondents wages and allowances from 13 April 2010 till the dates of their superannuation or end of employment by legal means.

2 The Petitioning Company has closed its factory at Islampur on 13 April 2010 by terminating services of all the employees by paying them

compensation and other dues. The recognized Trade Union was not happy with the decision of the Petitioning Company to close the Unit at Islampur and therefore filed Complaint (ULP) No.113 of 2010 challenging the closure decision contending interalia that the Petitioning Company had employed more than 100 workmen and that closure could not be resorted to without following the provisions of section 25-O of the Industrial Disputes Act, 1947. During pendency of that Complaint, a settlement was signed between the recognized Union and the Petitioning Company on 9 June 2011, under which the Petitioning Company agreed to pay certain additional ex-gratia payments to the workers. Pursuant to the settlement so arrived at the Union withdrew Complaint (ULP) No.113 of 2010 on 18 June 2011.

3 Few ex-workmen (Respondents) were not happy with the withdrawal of the Complaint by the Union and they filed an application for restoration of Complaint (ULP) No.113 of 2010 on 20 October 2011. The said application was however rejected. Thereafter they filed a fresh Complaint (ULP) No.17 of 2013 challenging the decision of the Management, to close the establishment. By judgment and order dated 10 January 2018, the Industrial Court has proceeded to allow the Complaint (ULP) No.17 of 2013 and has directed the Management to pay to the Respondents wages and other allowances from 13 April 2010 till the dates of their respective superannuation or end of their employment by legal means.

4 I have heard Mr. Bhanage, the learned Counsel appearing for the Petitioner, Mr. Walimbe, the learned Counsel appearing for Respondent No.4A to 4E and Mr. Nikam, the learned Counsel appearing for Respondent Nos.1,2, 3 and 5.

5 Perusal of the order passed by the Industrial Court would indicate that the Management had not placed on record the memorandum of settlement entered into with the recognized Union for perusal of the Court. Under the memorandum of settlement, the recognized Union had agreed to withdraw the Complaint (ULP) No.113 of 2010 after accepting the ex-gratia payment offered by the Management to its members. There is no dispute to the position that Respondents herein were also members of the recognized Union which entered into the terms of settlement. Therefore, after executing the memorandum of settlement by the recognized Union, whether the five complainants could individually maintain the complaint challenging the closure is something which would go to the very root of the matter. Mr. Bhanage in this regard has placed reliance on the judgment of this Court in ***Walchandnagar Industries Limited vs. Dattusingh Lalsingh Pardesh,i & Ors.*** 2005 (6) Bom.C.R. 733. However, since the Petitioning Company failed to produce and prove before the Industrial Court that the memorandum of settlement was indeed executed with the recognized Union, the Industrial Court did not have the occasion to examine the issue of maintainability of the Complaint in view of the settlement so arrived at.

6 Another factor which, in my view, needs to be re-examined is the exact member of employees which were employed in the establishment of the Petitioning Company at the time of closure. The Complainants asserted that the Petitioning Company had employed more than 135 workers whereas the Petitioning Company contended before the Industrial Court that it had employed only 88 workers. It appears that the memorandum of settlement contains a list of workers who were paid the benefits of settlement and the total number of workers employed at the time of closure as per that list is only 88. Therefore, production and proof of memorandum of settlement would also have a bearing of the exact number of workmen employed by the Petitioning Company at the time of closure.

7 In my view, therefore, the execution of memorandum of settlement between the Management and recognized Union may change the entire result of the litigation. In that view of the matter, an opportunity needs to be given to the Petitioning Company to produce and prove the memorandum of settlement executed with their recognized Union. For that purpose, the judgment and order dated 10 January 2018 passed by the Industrial Court is required to be set aside.

8 Accordingly, the present Petition is disposed of by setting aside the judgment and order dated 10 January 2018 passed by the Industrial Court and the Complaint (ULP) No.17 of 2013 is restored on the file of

Industrial Court, Sangli to be decided afresh. The Industrial Court shall provide an opportunity to the Petitioning Company to produce memorandum of settlement and also to lead such evidence as may be necessary for the purpose of proving the said memorandum of settlement. The Petitioning Company shall also be at liberty to produce such other evidence as is necessary for the purpose of proving the exact number of employees who were employed at the time of closure of the establishment. The Industrial Court shall proceed to decide the Complaint (ULP) No. 17 of 2013 afresh as expeditiously as possible, preferably within a period of six months from today, without being influenced by any of the observations made in earlier judgment and order dated 10 January 2018 as well as by the observations made in the present order.

9 Parties shall appear before the Industrial Court on 8 November 2023 and shall obtain further directions.

10 With the above directions, the Writ Petition is disposed of. All contentions raised by the parties are kept open.

(SANDEEP V. MARNE, J.)