

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.4070 OF 2023

General Motors Employees Union ...Petitioner
vs.
General Motors India Private Limited ...Respondent

**VISHAL
SUBHASH
PAREKAR**

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Date: 2023.07.07
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Mr. Sanjay Singhvi, Senior Advocate a/w. Mr. Rahul Kamrekar, Mr. Nitin Kulkarni and Ms. Aparajita Jha, for the Petitioner.

Mr. J.P. Cama, Senior Advocate a/w. Mr. Zubin Behramkamdin, Senior Advocate, Mr. Vijay Purohit, Mr. Faizan Mithaiwala and Mr. Samkit Jain i/b. P & A Law Offices, for the Respondent.

CORAM : N. J. JAMADAR, J.
RESERVED ON : JUNE 22, 2023
PRONOUNCED ON : JULY 06, 2023

JUDGMENT

1. Rule. Rule made returnable forthwith and with the consent of the parties heard finally.

2. The petitioner, a trade union registered under the Trade Unions Act, 1926, which claims to represent all the workers of the General Motors India Private Limited, the respondent, takes exception to an order dated 21st November, 2022 passed by the learned Member Industrial Court at Pune on an Application (Exhibit U-28) in Complaint (ULP) No.155/2021 whereby the application taken out by the petitioner to strike out the defence of

the respondent in accordance with the provisions contained in Order 39 Rule 11 of the Code of Civil Procedure, 1908 came to be rejected.

3. Background facts necessary for the determination of this petition can be summarized as under:-

3.1 The respondent allegedly illegally terminated the services of all its all 1086 workmen who, according to the petitioner, are the members of the petitioner union, vide notice of retrenchment dated 12th July, 2021 without adhering to the mandate contained in section 25N of the Industrial Disputes Act, 1947 (the Act, 1947). Neither the permission of the appropriate government was obtained. Nor three months notice was given to the workmen. The petitioner thus challenged the alleged illegal termination by filing a complaint of unfair labour practices, being Complaint (ULP) No. 155 of 2021.

3.2 In the said complaint by an order on interim application (Exhibit U-2), the learned Member Industrial Court directed the respondent/employer to pay 50% of the salary to each employee who had been retrenched as per order dated 12th July, 2021 on seventh day of each month till final disposal of the complaint.

3.3 Being aggrieved, the respondent preferred petition No. 1420

of 2022.

3.4 This Court found no merit in the petition and therefore the petition came to be dismissed by a judgment and order dated 12th September, 2022.

3.5 The respondent challenged the said judgment and order in Special Leave to Appeal (C) No(s). 17980/2022. By an order dated 21st October, 2022 the Supreme Court disposed the petition directing the Industrial Court to consider the matter on merits as expeditiously as possible and dispose of the disputes raised within four months from the date copy of the said order was made available. This Court is informed that the said period has been further extended by a subsequent order.

3.6 Alleging that the respondent has not complied with the interim order, which has been affirmed by this Court and not interfered with by the Supreme Court, the petitioner preferred an application purportedly under Order 39 Rule 11 of the Court. It was asserted that since the respondent had committed breach of the order passed by the Industrial Court, the defence of the respondent was liable to be struck out under the provisions of Order 39 Rule 11 of the Code.

3.7 The respondent resisted the application by filing an affidavit in reply. The tenability of the application was assailed on the ground

that the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act) is a self-contained code and thus the petitioner can not resort to the provisions contained in Order 39 Rule 11 of the Code. Secondly, the petitioner complainant was guilty of suppression of fact in as much as the filing of the contempt petition being MCC (ULP) NO. 3/2022 for non compliance of the very same order was not disclosed. Since the petitioner had resorted to the remedy of contempt, an application for striking out the defence was not tenable.

3.8 On merits, it was contended that the respondent had paid substantial amount to each of the workmen as terminal benefit and the respondent was required to know which of the workmen are the members of the union and support the said application.

3.9 By the impugned order, the learned Member, Industrial Court was persuaded to reject the application holding, inter alia, that MRTU & PULP Act is a complete code in itself and the provisions of the Code, 1908 were not applicable *stricto sensu* and that the petitioner had already moved in contempt by filing MCC (ULP) NO. 3/2022 before the Labour Court and thus recourse to the provisions contained in Order 39 Rule 11 was not justified.

4. I have heard Mr. Sanjay Singhvi, learned senior advocate, for

the petitioner and Mr. J.P. Cama, learned senior advocate, for the respondent, at some length. The learned senior advocates took the Court through the pleadings and the various orders passed in the wake of the dispute.

5. Mr. Singhvi laid emphasis on the fact that despite an order having been passed by the Industrial Court, which has attained finality upto the Supreme Court, the respondent has brazenly chosen not to comply with the said order and hundreds of workmen are left in the lurch. Mr. Singhvi would thus urge that the sanctity of the judicial orders is at stake.

6. Without disputing that the petitioner has moved in contempt before the Labour Court as well as this Court, Mr. Singhvi made an endeavour to draw home the point that what matters is the ultimate impact of the proceedings. Mere institution of contempt proceedings, according to Mr. Singhvi, cannot be a ground to allow a party to flout the orders of the Court with impunity and that is the main object of Rule 11 Order 39 of the Code, 1908. The said provision ensures that the party who commits the breach of the order is not permitted to participate in the proceedings without making compliance with the interim order.

7. The learned Member, Industrial Court, according to Mr. Singhvi, lost sight of the substance of the matter and took a hyper-technical view of the matter in holding that the provisions of the Code, 1908 are not applicable to the complaint under MRTU & PULP Act. The aforesaid view was also legally infirm, urged Mr. Singhvi. Not all the provisions of the Code, 1908 apply in strict sense but the principles analogous to the provisions of the Code, which are meant to ensure a fair trial, have been held to apply to the proceedings before the Industrial adjudicator.

8. To lend support to this submission, Mr. Singhvi placed reliance on a judgment of a learned single Judge of this Court in the case of **Maharashtra Kamgar Sangharsh Samiti and Anr. vs. Horizon, The Beach Hotel and Ors.**¹ wherein it was held that the principle contained in Order 23 Rule 1 of the Code would also apply equally to the proceedings before Labour and Industrial Court. Reliance was also placed on a judgment of a learned single Judge of Madras High Court in **Mettur Chemical and Industrial Corporation Ltd. vs. Their Workers**² wherein it was enunciated that the Industrial Tribunal must conform to the general principles that underlay the provisions in Order 11 of the Code, 1908 governing the

1 2006(2) Mh.L.J. 87.

2 (1955) 1 LLJ 27.

inspection of documents though it is not bound by all the rules of Order 11 of the Code. In any event, according to Mr. Singhvi, the fact remains that the respondent has not complied with the order passed by the Industrial Tribunal and yet contests the complaint despite being in clear breach thereof. Such proposition can not be countenanced, submitted Mr. Singhvi.

9. In opposition to this Mr. Cama, learned senior advocate, would urge that the impugned order to the extent it held that MRTU & PULP Act is a self-contained Code is impeccable. Banking upon a pronouncement of a Division Bench of this Court in the case of **Goa MRF Employees Union vs. MRF Limited**³ wherein it was enunciated that the Tribunal constituted under the Industrial Disputes Act, 1947 can exercise only those powers of the Civil Court which are conferred on it under section 11(3) and has no power to grant interim relief under Order 39 Rule 1 and 2, it was submitted that the recourse to the provisions contained in Order 39 Rule 11 is legally impermissible.

10. At any rate, the provisions contained in Order 39 Rule 11 are directory in nature. It is in the discretion of the Court to dismiss the suit or strike out the defence for non-compliance of an interim

3 (2014) 14 Supreme Court Cases 483.

order. In the circumstances of the case, according to Mr. Cama, since the Supreme Court while disposing of the SLP has kept all the questions, including jurisdiction and merits of the matter, open for consideration and directed the Industrial Court to decide the complaint in a time bound manner, an application to strike off the defence of respondent can only be said to have been filed with a design to delay the disposal of the complaint. Mr. Cama laid emphasis on the observations of the learned Member, Industrial Court in the impugned order to the effect that the present application appeared to have been moved only to prolong and delay the matter.

11. Mr. Cama further submitted that the respondent had parted with a substantial amount and there was no clarity as to who of the workmen were the members of the petitioner union. Many of the workmen have accepted the cessassion amount and settled the dispute. In such circumstances, the defence of the respondent does not deserve to be struck off.

12. Rule 11 of Order 39 which came to be incorporated by Bombay High Court amendment w.e.f. 1st October, 1983 reads as under:

“11. Procedure on parties defying orders of Court, and committing breach of undertaking to the Court – (1) Where the Court orders any party to a suit or proceeding to do or not to do a thing during the pendency of the suit or proceeding, or where any party to a suit or proceeding gives any undertaking to the Court to do or to refrain from doing a thing during the pendency of the suit or proceeding, and such party commits any defaults in respect of or contravenes such order or commits a breach of such undertaking, the Court may dismiss the suit or proceeding, if the default or contravention or breach is committed by the plaintiff or the applicant, or strike out the defences, if the defaults or contravention or breach is committed by the defendant or the opponent.

(2) The Court may, on sufficient cause being shown and on such terms and conditions as it may deem fit to impose, restore the suit or proceeding or may hear the party in defence, as the case may be, if the party that has been responsible for the default or contravention or breach as aforesaid makes amends for the default or contravention or breach to the satisfaction of the Court:

Provided that before passing any order under this sub-rule notice shall be given to the parties likely to be affected by the order to be passed.”

Sub Rule 1 of Rule 11 empowers the Court to dismiss the suit or proceedings if the plaintiff commits default in compliance of the order passed by the Court or breach of the undertaking and strike out the defence if the default, contravention or breach is committed by the defendant or the opponent. Sub Rule (2) vests jurisdiction in the Court to restore the suit or hear the party in defence upon such party making the amends for the default or contravention or breach. The phraseology of Sub Rule (1) of section 11 on its plain

reading makes it explicitly clear that the power to dismiss the suit or strike out the defence is discretionary in nature.

13. The question as to whether the provisions of Rule 11 Order 39 are directory or mandatory in nature came up for consideration before the Division Bench of this Court in **Ramavatar Surajmal Modi vs. Mulchand Surajmal Modi**⁴. After an analysis of the provisions, this Court enunciated that the provisions in sub-rule (1) merely vests power in the Court to dismiss the suit or proceeding where default is by the plaintiff and strike off the defence of the defendant where the defaulter is the defendant. It does not obligate the Court to do so in every case of default. The provision in the nature of Sub-rule (2) leaves no manner of doubt about intention of rule making authority that the provision of Sub-rule (1) of Rule 11 is directory and that by such provision power has been vested in the Court. The plain text of Order 39 Rule 11 and aforesaid enunciation of the intendment of the Rule making authority would justify an inference that there can be no duality of opinion that Rule 11 is discretionary.

14. Considerable submissions were canvassed on the point of the applicability of the provisions of the Code to the proceedings before the Industrial adjudicator. It was urged on behalf of the respondent

4 2004(2) Mh.L.J. 1

that MRTU & PULP Act is a self-contained Code and thus the provisions contained in Order 39 Rule 11 cannot be resorted to. Mr. Singhvi countered the submission by making reference to the judgment in which the principles analogous to the provisions contained in the Code, 1908 were resorted to.

15. The judgment of this Court in the case of **Goa MRF Employees Union** (supra), upon being challenged before the Supreme Court, led to a reference to a larger Bench for resolution of the question, as to whether the Industrial Court has the power to grant relief including in the nature of injunction in a complaint filed under section 33A of the Act, 1947. In the case of **Goa MRF Employees Union vs. MRF Limited**⁵ the Supreme Court did not find it necessary to answer the said question opining that when such questions arise in a given case, same shall be decided by the Industrial Tribunal appropriately having regard to the scheme of the Act, 1947 and the decisions of the Supreme Court in the cases of **Delhi Cloth and General Mills Co. Ltd. vs. Rameshwar Dayal**⁶; **Grindlays Bank Ltd. vs. Central Govt. Industrial Tribunal**⁷; **Lokmat Newspapers (P) Ltd. vs. Shankarprasad**⁸.

⁵ (2014) 14 Supreme Court Cases 483.

⁶ AIR 1961 SC 689.

⁷ 1980 Supp. SCC 420.

⁸ (1999) 6 SCC 275

16. In my view, the broad question as to whether the provisions contained in Order 39 Rule 11 can at all be invoked does not strictly warrant for determination in this petition. As Industrial Tribunal is a creature of statute, the Tribunal has to exercise the jurisdiction in accordance with the governing statute be it Industrial Disputes Act, or MRTU & PULP Act. In the matters where there is no express provision in the governing enactment, the Tribunal can adopt a procedure which is consistent with fundamental principles of judicial process. On this premise, though the Tribunal is not strictly bound to follow the provisions contained in the Code, 1908 it can where warranted, regulate its procedure on the touchstone of the principles analogous to the provisions in the Code.

17. In the facts of the case, two factors bear upon the exercise of discretion to strike out the defence of the respondent proceeding on an assumption that principles analogous to Order 39 Rule 11 apply. First, a remedy is provided under the MRTU & PULP Act. Under section 48 of the MRTU & PULP Act, a person who commits breach of an order under sub sec.(2) of section 30 (under which interim relief has been granted in this case) is liable to be punished. Section 48 thus provides a mechanism for redressal of the grievance of non-compliance of the interim order. Indisputably, the petitioner has

invoked the remedy under section 48 of the Act, 1971.

18. Second, the Supreme Court in Special Leave to Appeal (C) No(s). 17980/2022 considered it appropriate to keep all questions, including the aspect of jurisdiction, open for consideration and decision by the Industrial Court and therefore directed the disposal of the complaint in a time bound manner. The Supreme Court, *inter alia*, observed as under:-

3] For the present, we note that the order impugned is an interim relief granted to the workmen and therefore, in that circumstance, we see no reason to interfere. However, taking into consideration that such interim relief is payable to more than thousand employees and the issue, in any event, is to be decided by the Industrial Court on the jurisdiction and merit, we deem it appropriate in the instant case, to direct the Industrial Court to consider the matter on its merits as expeditiously as possible and dispose of the dispute raised within four months from the date a copy is made available. The parties to the litigation shall co-operate with the Industrial Court without seeking for unnecessary adjournment.

4] All contentions of the parties, on all issues are left open to be urged at the appropriate stage and the same shall be considered by the competent Court without being influenced by the observations contained in the orders passed by the Industrial Court as well as the High Court while disposing the interim issue.

19. In view of the aforesaid directions, an order of striking out the defence of the respondent, at this stage, where substantial progress is made, in the trial of the complaint, including recording of the evidence of the witnesses, would impede the disposal of the complaint on merits.

20. Undoubtedly, the Court cannot and does not countenance, much less give its imprimatur to, the conduct of the respondent in not complying with the order of the Industrial Court. However, there is a remedy for the non-compliance, which the petitioner has invoked before the Labour Court and this Court as well. Therefore, in my view, especially at this stage of the proceedings, the learned Member, Industrial Court was justified in declining to exercise the discretion to strike out the defence of the respondent for breach of the interim order. Interference with the impugned order is, therefore, not warranted. The petition, thus, deserves to be dismissed.

Hence, the following order.

ORDER

- 1] The petition stands dismissed.
- 2] Rule discharged.
- 3] In the circumstance, there shall be no order as to costs.

(N. J. JAMADAR, J.)