

Sayali Upasani

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

WRIT PETITION NO.- 10901 OF 2022

Indo Count Industries Ltd., Kolhapur ...Petitioner

Vs.

General Secretary, Shahu Sooth Kapad ...Respondent
Kamgar Sangh, Kolhapur

Mr. J.P. Cama, Senior Counsel a/w Mr. Avinash Jalisatge, Mr.
T.R. Yadav, Divya Wadekar, for Petitioner.

Mr. Kiran Bapat, Senior Counsel i/b Mr. Gaurav Gawande,
for Respondent.

CORAM:- N. J. JAMADAR, J.

RESERVED ON : 17th APRIL, 2023.

PRONOUNCED ON:- 3rd AUGUST, 2023

JUDGMENT:-

- 1) Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties, heard finally.
- 2) By this Petition under Article 227 of the Constitution of India, the petitioner takes exception to an order on an application for interim relief (Exhibit-U-6) in Reference (IC) No. 07 of 2020, passed by the learned Member Industrial Court at Kolhapur dated 20th July, 2022, whereby the petitioner has been directed to give 10% rise in the salary per month to each

employee in every category of employees from the date of the application till the disposal of the Reference.

3) Shorn of unnecessary details, the background facts can be stated as under:-

(a) The petitioner is a company registered under the Companies Act, 1956 and is engaged in the business of manufacturing of cotton yarn and home fabrics. The petitioner runs spinning mills i.e. Mill A and Mill B at MIDC Gokul, Shirgaon, Kolhapur. Shahu Sooth Kapad Kamgar Sangh, the respondent, is a trade union registered under the Trade Unions Act, 1923. It claims to be the Representative and Approved union for the local area of Karveer Taluka in Kolhapur District for cotton textile industries under the provisions of Maharashtra Industrial Relations Act, 1946 (“MIR 1946”). It also claims to represent all the employees employed in petitioner’s spinning Mill.

(b) The respondent issued a notice of change dated 18th December, 2018 under Section 42 of the MIR Act, 1946, and raised various demands including upward revision in wage rates. Conciliation proceedings before the Conciliator failed. Respondent obtained the certificate of failure from the Conciliator. Eventually, respondent-first party approached the

Industrial Court at Kolhapur for adjudication of the Industrial Dispute being Reference (IC) No. 7 of 2020.

(c) In the said Reference, the respondent filed an application for interim relief. It was the case of the respondent that the petitioner-second party introduced modern machines. Resultantly, there has been increase in the workload but reciprocal benefits were not being extended to the workmen. The last settlement had expired in the year 2018. There has been a steep increase in the cost of living since the last settlement. It was becoming increasingly difficult for the workmen to survive on the unrevised wages. Since the disposal of the Reference would take time, the respondent- first party prayed for an interim relief by way of a rise of Rs.6,000/- per month to each of the workmen during the pendency of the Reference.

(d) The petitioner-second party resisted the Reference and the prayers in the interim application. The tenability of the Reference, at the instance of the Secretary of Shahu Sooth Kapad Kamgar Sangh, was called in question. It was contended that the petitioner- second party was facing severe financial crunch and had been suffering huge losses in the preceding four financial years. The situation of the spinning Mills was precarious and they were struggling to survive. 'B' Unit of the spinning division, to which the Reference pertains, had suffered

huge losses. The respondent No. 1- first party had resorted to unfair labour practices putting further strain on the smooth and profitable management of the spinning Mills. According to the petitioner, the wages of workmen had already been increased by Rs.2,498/- on account of increase in dearness allowance and the wages paid by the petitioner were higher than the wages paid by the other spinning mills in the region. On these, amongst other, grounds, including the unsustainability of the prayer at an interim stage, the petitioner prayed for dismissal of the application.

(e) The learned Member Industrial Court after appraisal of the pleadings and material tendered for his perusal and the submissions canvassed before him, was persuaded to partly allow the application for interim relief and direct the petitioner to give 10 % rise in salary to each employee in every category. The learned Member was of the view that the grievance raised in the Reference pertained to the period 2019-2021. The petitioner-second party had increased the wages of its staff members but there was no increase in the wages of the workmen though there has been manifold increase in the cost of living. Therefore, during the pendency of the Reference, the workmen were entitled to some relief. The learned Member was thus impelled to grant 10% rise in the monthly salary.

4) Being aggrieved, the employer has invoked the writ jurisdiction.

5) I have heard Mr. J. P. Cama, the learned Senior Counsel for the petitioner, and Mr. Kiran Bapat, the learned Senior Counsel for the respondent. I have also perused the pleadings, material on record before the Industrial Court, impugned order and documents tendered before this Court along with affidavits in support and in opposition to the Petition.

6) Mr. Cama mounted a multi-pronged challenge to the impugned order. Firstly, according to Mr. Cama, the impugned order suffers from the vice of granting an interim relief without adverting to the elementary principles of *prima facie* case, balance of convenience and irreparable loss. Secondly, by the impugned order, the learned Member Industrial Court has granted a relief which, in the circumstances of the case, cannot be granted even at the stage of final adjudication. Thirdly, the Industrial court has unjustifiably discarded the material which indicated that the financial position of the employer was precarious. A wage revision, urged Mr. Cama, cannot be granted without considering the financial position of the employer as it has propensity to bring down the enterprise. The learned Member Industrial Court completely misdirected himself in awarding interim wage revision sans consideration of the

financial position of the employer. Fourthly, the learned Member Industrial Court also lost sight of the fact that in determining wage revision, unit is the test and not the group. The entire company could not have been construed as one unit for accessing the financial health for determining the wages. A profit making unit, according to Mr. Cama, can not be compelled to pay wages of a loss making unit. Lastly, the impugned order singularly lacks consideration as to why the Industrial Court found it appropriate to grant a wage rise of 10% and not at any other rate.

7) Mr. Cama urged, with a degree of a vehemence, that the over all impact of the wage rise of Rs.2200/- per month, if made applicable to 800 workmen, would lead to further losses and would prove disastrous for the viability of the enterprise. The fact that the petitioner – Company had given a small wage rise to its staff which is minuscule if compared with the number of workmen, was given undue weight by the Industrial Court and that led to vitiation. The fact that the staff are not entitled to dearness allowance was also lost sight of by the Industrial Court, urged Mr. Cama.

8) In opposition to this, Mr. Bapat stoutly supported the impugned order. It was forcefully canvassed by Mr. Bapat that the submission canvassed on behalf of the petitioners are neither

factually correct nor legally sound. Laying emphasis on the fact that the last settlement got over in the year 2018 and since the year 2015, there has been no wage revision for almost eight years, Mr. Bapat submitted that a 10% rise in wages can by no stretch of imagination be said to be unreasonable.

9) Mr. Bapat further submitted that argument that the unit is the test for wage revision is fallacious. The mere fact that there is loss in one unit of the company by itself cannot be a ground to deny wage revision by the company which is otherwise in the pink of health. According to Mr. Bapat, the learned Member Industrial Court correctly took into account the benefit of wage revision extended to the staff and exercised the discretion. Such a discretion, according to Mr. Bapat, is not amenable to interference in exercise of writ jurisdiction unless it can be said to be perverse. In the totality of the circumstances, in no way, the exercise of discretion to grant 10% wage rise, especially in the context of the fact that since more than eight years there has been no wage revision, can be termed as perverse, submitted Mr. Bapat.

10) Before advertent appreciate rival contentions, it may be apposite to note that on the factual score there is not much controversy. Admittedly settlements were entered into between the representative union and the employer for the period 2011-

2014 and 2015-2018. After the term of the second settlement got over, the respondent first party made a demand for wage revision. Conciliation proceedings ended in failure. The question that wrenches to the fore is, whether during the pendency of the Industrial Reference in the context of the charter of demand, including a demand for wage revision, the Industrial Court could have granted wage revision by way of an interim relief ?

11) As noted above, two factors seem to have primarily weighed with the learned Member Industrial court in passing the interim order. One, the settlement got over in the year 2018 and effectively since 2015 there has been no revision in wages though the cost of living has increased substantially. Two, the petitioner -second party had granted wage revision to its staff. Whether the aforesaid approach of the learned Member Industrial Court is justifiable ?

12) The thrust of Mr. Cama's submission was that the learned Member Industrial Court committed a grave error in not giving due weight to the financial position of the petitioner-employer and attaching undue weight to the aforesaid two circumstances. Financial position of the employer, according to Mr. Cama, plays a significant, if not decisive, role in determining the wages. Wage revision cannot be awarded so as to entail the consequence of the very industry being closed down. Secondly, Mr. Cama would urge

the failure to take into account the precarious financial position of the petitioner, resulted in passing of the order, which can not be granted even at the final adjudication, much less at an interim stage.

13) To bolster up the aforesaid submissions, Mr. Cama placed a strong reliance on a judgment of the Supreme Court in the case of **Punjab State Cooperative Milk Producers Vs. Balbir Kumar Walia and Others**¹. In the said case, the Supreme Court after adverting previous pronouncements including the decision of the Supreme Court in the case of **A.K. Bindal and Another Vs. Union of India and Others**² enunciated that economic viability or financial capacity of the employer is an important factor which cannot be ignored while fixing wage structure lest the unit may have to be closed down.

14) The principles which govern the aspect of revision of wages of workmen were illuminatingly postulated by the Constitution Bench of the Supreme Court in the case of **Express newspaper (P) Limited Vs. Union of India**³. After an elaborate analysis of the factors which bear upon the determination of the wages, the Supreme Court culled out the principles as under:-

1 (2021) 8 SCC 784

2 (2003) 5 SCC 163

3 AIR 1958 SC 578

(1) In the fixation of rates of wages which include within its compass the fixation of scales of wages also, the capacity of the industry to pay is one of the essential circumstances to be taken into consideration except in cases of bare subsistence or minimum wage where the employer is bound to pay the same irrespective of such capacity;

(2) The capacity of the industry to pay is to be considered on an industry-cum-region basis after taking a fair cross section of the industry; and

(3) The proper measure for gauging the capacity of the industry to pay should take into account the elasticity of demand for the product, the possibility of tightening up the organisation so that the industry could pay higher wages without difficulty and the possibility of increase in the efficiency of the lowest paid workers resulting in increase in production considered in conjunction with the elasticity of demand for the product – no doubt against the ultimate back ground that the burden of the increased rate should not be such as to drive the employer out of business.”

15) On the aspect of the capacity of the industry to pay, on which considerable submissions were canvassed in the instant case, the Supreme Court explained the import of the term of the capacity to pay as under:-

“62. The capacity of the industry to pay being thus one of the essential ingredients in the fixation of wages, it is relevant to consider the different methods of measuring such capacity.

The capacity of the industry to pay:

The capacity of industry to pay can mean one of three things, viz :

- (i) the capacity of a particular unit (marginal, representative or average) to pay,
- (ii) the capacity of a particular industry as a whole to pay or
- (iii) the capacity of all industries in the country to pay. ”

16) It was also enunciated that the capacity of an industry to pay should be gauged on an industry-cum-region basis. The observations in paragraph No. 63 read as under:-

“63. It is clear, therefore, that the capacity of an industry to pay should be gauged on an industry-cum-region basis after taking a fair cross-section of that industry. In a given case it may be even permissible to divide the industry into appropriate classes and then deal with the capacity of the industry to pay classwise”.

17) In the case of **Hindustan Times Ltd., New Delhi Vs. Their Workmen**⁴, again the Supreme Court emphasized that the economic factors also deserve to be carefully considered while assessing the ability of the industry to pay. The observations in paragraph No. 7 read as under:-

“7. While industrial adjudication will be happy to fix a wage structure which would give the workmen generally a living wage economic considerations make that only a dream for the future. That is why the industrial tribunals in this country generally confine their horizon to the target of fixing a fair wage. But there again, the economic factors have to be carefully considered. For these reasons, this Court has repeatedly emphasized the need of considering the problem on an industry-cum-region basis, and of giving careful consideration to the ability of the industry to pay. (Vide Crown Aluminium Works V. Their Workmen, 1958 SCR 651: (AIR 1958 SC 30), the Express Newspaper (P) Ltd Vs. Union of India, 1959 SCR 12: (AIR 1958 SC 578) and the Lipton Ltd V. Their Union (1959) Supp (2) SCR 150: (AIR 1959 SC 676)”.

(emphasis supplied)

4 AIR 1963 SC 1332

18) In the case of **A.K. Bindal** (supra), the question of wage revision arose in the context of a public sector enterprise. After advertent to the previous pronouncements, the Supreme Court postulated that the economic capacity of the employer also plays a crucial part in it; as also its capacity to expand business or earn more profits. It appeared to be a consistent view of the Supreme Court that the economic viability or the financial capacity of the employer is an important factor which cannot be ignored while fixing the wage structure, otherwise the unit itself may not be able to function and may have to close down which will inevitably have disastrous consequences for the employees themselves.

19) In the case of **Punjab State Cooperative Milk Producers** (supra), on which a strong reliance was placed by Mr. Cama, the following proposition was enunciated:-

“25. This Court in *A.K. Bindal (2003) 5 SCC 163* also considered two earlier judgments that the financial capacity of the employer cannot be held to be a germane consideration for determination of the wage structure of the employees, therefore, it must be confined to the facts of the aforesaid case. It was held that economic viability or the financial capacity of the employer is an important factor which cannot be ignored while fixing the wage structure, otherwise the unit itself may not be able to function and may have to close down which will inevitably have disastrous consequences for the employees themselves”.

20) It cannot be gainsaid that the economic capacity of the employer to pay the increased wages is a significant consideration. The Counsels, however, deferred on the point of the measure to be applied in assessing the financial capacity of the employer. Mr. Bapat would urge that the petitioner has been progressively making profits as is evident from the annual reports for the financial years of 2017-2018, 2018-2019 and 2019-2020. In fact, the petitioner selectively relied upon the profit and loss account of spinning division to portray a picture that the employer has been suffering losses. Thus, the learned Member Industrial Court vide an order dated 14th September, 2021, directed the petitioner-employer to produce on record balance sheet and reports for the financial years of 2017-2018, 2018-2019, 2019-2020 and 2020-2021, which clearly indicated that the employer has been generating profits, year after year.

21) Mr. Cama would urge that the learned Member Industrial Court had fallen in error in taking into account the profits of the company as a whole when the spinning division in which the concerned workmen were working had been suffering huge losses consistently.

22) To lend support to the submission that the unit in which the workmen work is the test and not the company as a whole, Mr. Cama placed reliance on a decision of the Supreme Court in

the case of **Shivraj Fine Arts Litho Works Vs. The State of Industrial Court, Nagpur and Others**⁵. In the said case, the Supreme Court after making reference to the decisions in the cases of **M/s. Unichem Laboratories Ltd Vs. The Workmen**⁶ and **The Silk and Art Silk Mills Association Ltd Vs. Mill Mazdoor Sabha**⁷, observed that it is well established that fixation of wages has to be done on industry-cum-region basis having due regard to the financial capacity of the unit under consideration. The observation in paragraph No. 15 read as under:-

“15. In *Unichem Laboratories Ltd. v. The Workmen* this Court after referring to the cases cited above held that in the fixation of wages and dearness allowance the legal position is well-established that it has to be done on industry-cum-region basis having due regard to the financial capacity of the unit under consideration. The same view was reiterated in *The Silk and Art Silk Mills Association Ltd. v. Mill Mazdoor Sabha* at p. 288, where the Court re-emphasised the principles laid down in the earlier cases. There is thus ample authority in support of the view taken by the Tribunal and the High Court that the employer can be classified according to his paying capacity.”

23) At this stage, the fact that the learned Member Industrial Court has exercised the discretion to grant wage revision at an interim stage needs to be kept in view while applying the aforesaid propositions. As noted above, the factors which weighed

⁵ (1978) 2 SCC 601

⁶ (1972) 3 SCC 552

⁷ (1972) 2 SCC 253

with the learned Member Industrial Court were i) the last settlement expired in the year 2018; ii) there was in fact no revision in wages since the year 2015; iii) Cost of living has increased over a period of time; iv) the company has generated profits, year on year and v) the employer had increased the wages of its staff.

24) The first and second factors are indisputable. The third is also rather incontestable. In this inflationary era, the prices of the commodities and services reflect an increasing trend over a period of time. Judicial notice of inflationary trend in the economy cannot be faulted at.

25) On the fourth, pertaining to the revision in wages of the staff, an endeavour was made on behalf of the petitioner to demonstrate that the said consideration was irrelevant on the premise that there were only 60 staff members as compared to 800 workmen and the increase was also marginal. The number of staff may be small as compared to the workmen. However, the fact that the employer could afford to raise the wages of the staff cannot be totally discounted. The learned Member Industrial Court thus cannot be said to have committed any error in taking the said factor into account.

26) The controversy essentially boils down to the financial capacity of the employer. The learned Member, Industrial Court

proceeded on the premise that the balance sheet of the employer reflected profits. That leads to the question as to whether the profits of the company as a whole or the profitability of the unit in which the concerned workmen were working, ought to be the measure for assessing the financial capacity.

27) The copies of the annual statements of the petitioner-Company do indicate that for the financial year ending 31st March, 2018, the profit was Rs.13,107.57 Lakhs; for the financial year 2018-2019, the profit was Rs.5,921.80 Lakhs and for the financial year 2019-2020, the profit rose to Rs.7,376.27 Lakhs.

28) In contrast, the profits and loss account statements of the spinning division (as claimed and annexed at Exhibit -A to the Petition) indicate that the said unit has suffered losses as under:-

FINANCIAL YEAR	LOSSES (IN RS.)
2017-2018	2,51,64,619/-
2018-2019	4,22,61,466/-
2019-2020	7,84,07,928/-
2020-2021	14,76,15,256/-

29) At this interim stage, in my considered view, the issue cannot be determined by taking into account the sole factor that the spinning division had suffered losses, even if the case of the petitioner is taken at par on the said count. Rest of the factors adverted to above, like the absence of settlement post 2018 and no revision in wages since the year 2015 and the inflationary

trend in the economy also deserve to be taken into account. It is not the case that the petitioner-Company, as such, is in financial doldrums. The annual statements of accounts paint a rosy picture. Incontrovertibly, there has been a growth in over all profits. Nor is it the case that the petitioner-Company has refrained from increasing the wages of the administrative staff and other employees.

30) Lastly, the average increase in the wages of the employees, pursuant to the impugned order, in the contemplation of the petitioner-Company, also deserves consideration. To the affidavit-in-reply filed on behalf of the respondent, a copy of the notice dated 3rd August, 2022 (Exhibit- 3) is annexed. By the said notice, the workmen were informed that having considered the impugned order passed by the Industrial Court, the employer reckoned that the interim increase would be Rs.600/-and the management was contemplating implementation of the said order taking a sympathetic view of the interest of the workmen. If this is the amount of average increase in the wages of the workmen, in the contemplation of the employer, the financial burden which would fall on the employer cannot be said to be such as would render the enterprise itself unviable or bring about the closure of the establishment.

31) If the interim order is considered in the backdrop of the aforesaid factors, it does not warrant interference in exercise of extraordinary writ jurisdiction as the learned Member, Industrial Court can be said to have exercised the discretion keeping in view the relevant considerations.

32) The submission of Mr. Cama that, in the facts of the case, even a final relief by way of wage revision cannot be granted does not merit countenance at this stage. As noted above, all the relevant considerations will have to be delved into at the time of final adjudication of the reference. On the basis of the sole consideration of the losses, which the spinning division has allegedly suffered, the claim for wage revision cannot be thrown overboard. Nor the submission of Mr. Cama that the aspects of balance of convenience and irreparable loss were not adequately considered by the learned Member Industrial Court merits acceptance. In the light of the burden, which may fall on the employer, in the estimation of the employer itself, the balance of convenience tilts in favour of the workmen, who had no revision of wages since the year 2015. Grant of such wage revision, in the circumstances of the case, does not seem to cause an irreparable loss to the employer. Lastly, in the matter of wage revision at an interim stage, some element of guess and estimation is bound to

occur and thus the impugned order cannot be assailed for increasing the wages by 10% and not at a higher or lower rate.

33) The upshot of the aforesaid consideration is that this Court is not persuaded to interfere with the discretionary order in exercise of writ jurisdiction. Hence, the Petition deserves to be dismissed.

34) Hence, the following order.

ORDER

- i) The Petition stands dismissed.
- ii) Rule discharged.
- iii) In the circumstances, there shall be no order as to costs.

[N. J. JAMADAR, J.]

At this stage, the learned Counsel for the petitioner seeks continuation of stay to the Criminal BIR No. 1 of 2022, for a further period of six weeks.

The stay shall continue to operate for a period of four weeks from today.

[N. J. JAMADAR, J.]