

Iresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 12 OF 2020

Union of India through Secretary
Ministry of External Affairs

... Petitioner

Versus

State of Maharashtra through office of
Government Pleader and others

... Respondents

Mr. Vinod Joshi a/w Ms. Shivani Chandolkar for the Petitioner.
Mr. Sukanta Karmakar AGP for the State.
Ms. Shobhana Gopal for Respondent No. 4.

CORAM: G. S. KULKARNI, J.

DATED: JANUARY 23, 2023

P.C.

1. This petition challenges an order dated 26 June 2019 passed by the Industrial Tribunal in the recovery(execution) application filed by deceased employee Shri. C.M. Chauhan now represented by his widow, Smt. Sumitra Chaman Chauhan. Such recovery application was filed under section 50 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'MRTU & PULP Act').

Digitally
signed by
IRESH
SIDDHARAM
MASHAL
Date:
2023.02.15
12:48:54
+0530

IRESH
SIDDHARAM
MASHAL

2. At the outset it needs to be stated that this petition has been filed by the Union of India on behalf of the UNICEF. There is some relevance to the description of the petitioner in the cause title of the present proceedings which reads thus:

“Union of India through Secretary Ministry of External Affairs Jawaharlal Nehru Bhawan 23-D, Janpath New Delhi – 110 011 on behalf of United National Children’s Fund (UNICEF).”

(Emphasis supplied)

3. It also needs to be observed that the title of the petition certainly is not as per the record of the proceedings before the Industrial Court nay it is deceptive, particularly considering the prayers made in the petition which would be clear from the following discussion.

4. Respondent No. 4 C. M. Chauhan (since deceased, represented by his widow Sumitra Chaman Chauhan) had filed Complaint ULP No. 237/1989 before the Industrial Court, Mumbai under the provisions of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act). The cause title of the said original proceedings is required to be noted which reads thus:

“C. M. Chauhan,

MAG 91, Navy Geeta Nagar,

Colaba, Bombay 400 005

...Complainant.

V/s.

1. United Nations Children Fund (UNICEF)

B-Wing, R2, Ground floor, Technopolish Bldg,

Opp. Holy Family School, Near Mahakali

Caves Road, Andheri (E), Mumbai 400 093.

2. Union of India,

Through Ministry of External Affairs, New

Delhi, Protocol Division, Jawaharlal Nehru

Bhavan, 23 D Janpath, New Delhi – 110 411.”

...Respondents.

5. It is thus clear that United Nations Children Fund was the first respondent and Union of India was the second respondent in Complaint ULP No. 237/1989 filed by late shri C.M. Chauhan. Such complaint came to be allowed by the Judgment and Order dated 9 November 1990 passed by the Industrial Court at Bombay, by which it was declared that the employers ‘UNICEF and Union of India’, had engaged in unfair labour practice under Item No. 9 of Schedule IV of the MRTU & PULP Act, 1971. The employers, (petitioners herein) were directed to reinstate late Shri. C. M. Chauhan immediately and to pay him full backwages from 2 August 1988 till the date of his reinstatement and pay him cost of Rs. 50/-.

6. The petitioner has averred in para 7.16 of the petition that UNICEF (respondent No. 1 in the Complaint ULP filed by late Shri. C. M. Chauhan) had filed Writ Petition No. 1060/1999, before this Court challenging the award of the Industrial Court dated 9 November 1990, which had granted reinstatement of services in favour of late Shri. C. M. Chauhan along with relief of full backwages as noted above. The said petition was not pursued, and came to be dismissed for want of prosecution on 28 April 2003. No steps were taken to restore the said writ petition. It is now almost about 20 years that the said proceedings stand buried. Thus in such manner the award of the Industrial Court had attained finality. It is thus clear that it was not possible and/or even for the UNICEF to reopen the said proceedings after so many years and/or to agitate the challenge to the award dated 9 November 1990 of the Industrial Court.

7. In the meantime, C. M. Chauhan during his lifetime being kept deprived of the benefits of the award of the Industrial Court, took steps to execute the award by filing a recovery application under section 50 of the MRTU & PULP Act, 1971 being Recovery Application (ULP) No. 9/2016.

8. Considering the circumstances that the substantive challenge to the award dated 9 November 1990 itself had come to an end by writ petition no. 1060/1999 filed by the petitioner having stood dismissed on 23 April 2003, the learned Member of the Industrial Court proceeded to adjudicate the recovery application, and by the impugned judgment and order dated 26 June 2019 has allowed the said application by the following order.

“ORDER

i) Application is allowed.

ii) It is hereby declared that the Applicant is entitled for the following amounts:-

(a) Wages for 4/14 to 3/16 = Rs.1388043/-

(b) Leave wages for 2014 & 2015 = Rs. 115030/-

(c) Dependency Allowance (Spouse)

for 4/14 to 3/16. — = Rs. 6025/-

(d) Medical Insurance Subsidy

for 4/14 to 3/16. = Rs. 126771/-

TOTAL = Rs.1635869/-.

iii) Issue Recovery Certificate under section 50 of the Act to the Collector, Mumbai Suburban District, for recovery of the amount of Rs.16,35,869/from the Opponents and pay to the Applicant.

iv) No order as to cost.”

9. The petitioner being confronted by such order has now filed this petition making diverse prayers surprisingly raising a challenge to the award dated 9 November 1990. A frail attempt is being made on behalf of the petitioner that the award dated 9 November 1990 was rendered by the Industrial Court without jurisdiction to adjudicate the Complaint (ULP) as filed by late Shri. C. M. Chauhan. Thus the present petition not only challenges the impugned order on the recovery application which is passed in the execution of the award but also challenge to the award dated 9 November 1990.

10. In my opinion the petition is thoroughly misconceived, as the challenge of the petitioner to the award dated 9 November 1990 on all the aspects has already come to an end about twenty years back in the dismissal of the writ petition No. 1060/1999 on 23 April 2003, as noted above. The petitioner therefore is not permitted to re-agitate issues which stood concluded even on jurisdiction.

11. On the above backdrop, the only issue is of recovery of the amount under the award of the Industrial Court dated 9 November 1990. Mr. Joshi could not urge any submission as to why the impugned order passed on the recovery application needs to be interfered. The only

contention urged by Mr. Joshi is to the effect that the Industrial Court was in an error to adjudicate the complaint (ULP) of late Shri. C. M. Chauhan. It is settled principle of law that executing court cannot go behind the decree. The contention on behalf of the petitioners to assail the recovery orders is in fact an attempt to go behind the award dated 9 November 1990 as rendered by Industrial Court, which had attained finality. Even assuming that the issue of jurisdiction could be asserted in execution proceedings, however, in the present facts it was not permissible for the petitioner to do so, much less it would be unreasonable for the petitioner to re-agitate the issue, when the earlier substantive proceedings being Writ Petition No. 1060/1999 was not pursued and in fact stood dismissed. Admittedly the award dated 9 November 1990 having attained finality, the petitioners were bound to honour the award. Further the grounds which could be raised in assailing the award dated 9 November 1990 cannot be pressed into service in opposing the recovery proceedings, including the issue that any immunity was enjoyed by the UNICEF. It is also clear from the proceedings that UNICEF was not the only party to the complaint filed by late C. M. Chauhan but also the petitioner Union of India was a party to the proceedings before the Industrial Court. The award of the Industrial

Court being against both, was thus equally against the Union of India. It was hence certainly binding on the Union of India. As averred by the petitioner in paragraph 7.16 of the petition, Writ Petition No. 1060/1999 was filed by UNICEF, assailing the award dated 9 November 1990 rendered by the Industrial Court, however it is not the contention of the petitioner that Union of India had not assailed the award dated 9 November 1990, nor can it so contend, as the present petition is being pursued by the Union of India on behalf of the UNICEF, as seen from the cause title of the petition as noted above. If that be so, now after a period of almost 32 years neither the UNICEF nor, the Union of India can assail the award dated 9 November 1990. Even otherwise the issue which had arisen at the relevant time including on jurisdiction of the Industrial court, cannot be re-opened and/or re-agitated in the present proceedings. This would lead to travesty of justice and disturb the well settled principles of law in regard to finality of decisions of the Court. Certainly, the principle that the issue of jurisdiction can be raised at any stage of the proceedings, even at the stage of execution proceedings, would not apply in the present facts.

12. It is also pointed out by Ms. Shobhna Gopal on behalf of the Respondent No. 4 that after the award dated 9 November 1990, and under

the recovery application in question, on several occasions part amounts were paid in favour of the deceased employee. This would clearly give credence to the fact that not only the UNICEF but also Union of India had accepted that it was liable to make payments under the award, hence on such count the Union of India is precluded to take a contrary position.

13. For the above reasons, the petition fails. It is accordingly dismissed. No costs.

14. At this stage, it is surprising to hear from Mr. Joshi, counsel for petitioner that he would request a prayer for stay. It is certainly required to be rejected as there cannot be stay on the dismissal of the petition.

15. The amounts under the impugned order along with interest be released in favour of respondent No. 4 - Smt. Sumitra Chauhan, widow of deceased, within two weeks from the day a copy of this order is made available on the High Court's website.

(G. S. KULKARNI, J)