

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAW) NO.2661 OF 2022
IN
WRIT PETITION NO.932 OF 2010

Universal Ferro and Allied Chemicals Limited Liberty Building, Sir Vithaldas
Thakersey Marg, Mumbai-400020 .Vs. Maharashtra Ferro Alloys Mazdoor Sangh
Ekta Bhavan, Maneck Nagar, Tumsar, Tah. Tumsar, Distt. Bhandara and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R.R. Puranik, Adv. a/w Shri H.N. Verma, Adv. for the
applicant/ petitioner.

Shri S.D. Thakur, Advocate for the respondent No.1.

CORAM : ANIL S. KILOR, J.

DATED : 16/03/2023

1. Heard.
2. This is an application filed for recall of order dated 17.04.2017 on the ground that though the objections were filed by 31 employees, without considering the same, the Union was permitted to withdraw the writ petition in view of the settlement arrived between the management and the union.
3. It is submitted that even the settlement is not legal one, in view of the provisions of the Maharashtra Industrial Relations Act, 1947 as the necessary compliance after the settlement was not made.

4. He lastly points out that the present application came to be filed in view of the liberty granted by the Hon'ble Supreme Court of India vide order dated 25.03.2019.

5. Shri Puranik, learned counsel for the Management and Shri Thakur, learned counsel for the Union, jointly opposed the present application on the ground of delay as well as on the ground of tenability.

6. On merit, it is submitted that once the union has signed the settlement, it is binding on all the members of the Union and even those, who are not member of the Union.

7. It is pointed out that Clause-12 of settlement speaks about the benefits of the workers and not about the applicability of the settlement that it is not binding on the workers who have not signed the said Memorandum of Agreement. Therefore, it is submitted that the application is liable to be rejected.

8. In light of the rival contentions, I have perused the record and order dated 17.04.2017.

9. Paragraph 3 of the order dated 17.04.2017 shows that the objection filed by the applicants were taken into consideration and also the law laid down in the judgment referred in the said paragraph.

10. Thus, I do not find any substance in the submission of the learned counsel that the objections raised by the applicants were not considered.

11. The Supreme Court of India vide its order dated 25.03.2019 permitted the applicant to withdraw the S.L.P. and granted liberty to approach the High Court for raising their grievance.

12. For the delay from 25.03.2019 till the filing of the present application on 28.11.2022, no justification has been offered by the applicant. There is a delay of more than three and half years in approaching to this Court, after the Hon'ble Supreme Court of India had granted liberty and there is a delay of five years in filing the present application from the date of order of this Court dated 17.04.2017.

13. In absence of any explanation for such delay and on considering the fact that, rights of the parties have already been crystallized, the present application after such an inordinate delay cannot be entertained.

14. Further the present application is for recall and not for the review. There is a distinction between the review and recall of order.

15. The Hon'ble Supreme Court of India in a case of *Budhia Swain and others ..Vs.. Gopinath Deb and*

*others*¹, wherein the Hon'ble Supreme Court of India, has held thus:

“8. In our opinion a tribunal or a court may recall an order earlier made by it if (i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent, (ii) there exists fraud or collusion in obtaining the judgment, (iii) there has been a mistake of the court prejudicing a party or (iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented. The power to recall a judgment will not be exercised when the ground for re-opening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence.”

16. Thus, considering the limited scope of application for recall and as there are no pleadings made by the applicant for attracting any of the contingency, in which the tribunal or Court may recall the earlier order, made the application is not tenable.

17. In the circumstances, the application is rejected.

JUDGE