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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1606 OF 1998

Vicco Laboratories Ltd. and Anr. .. Petitioners

Vs.

Maharashtra General Kamgar Union .. Respondent

Mr.Sudhir Talsania, Senior Advocate, Mr.K.S.Bapat, Mr.Saurabh Kulkarni i/b Mr.C.R.Naidu for the petitioners

Mr.N.M.Ganguli for the respondent

CORAM: K.K. TATED, J.
DATE: 21st MARCH, 2011

P.C.

1. Heard the learned Senior Counsel for the petitioner and Mr.Ganguli for the respondent. The petitioner filed this petition under Article 226 and 227 of the Constitution of India against the judgment and order dated 19.3.98 passed by the Industrial Court, Thane in Revision Application No.20 of 1996 confirming the

judgment and order dated 12.03.1996 passed by the III Labour Court in complaint (ULP) No.225 of 1990.

The facts giving rise to this petition are, briefly stated, as under:

2. The petitioner is a limited company incorporated under the Companies Act, 1956 and carried out its activities at Plot No.C-20, M.I.D.C. Phase-1, Dombivli (E), District Thane which produced Ayurvedic products engaging around 16 employees.. During the period 1986-87 the Company had engaged 74 employees though the position of the Company was not encouraging. The position of the company deteriorated and during January 1989 to April 1989, the factory work was purely 10 days a month. During that period from April 1989 to August 1989, there was hardly any working and the Company was required to pay idling wages to a large work force. Therefore, they decided to retrench 28 workmen after complying with the provisions of section 25-F and 25-G of the Industrial Disputes Act, 1947. The petitioner retrenched 28 workers and when

the vacancy arose, it re-employed two workmen as per their seniority. Ten workmen accepted their retrenchment compensation.

3. The respondent is a Union registered under the Trade Unions Act, 1926 and filed a complaint being complaint ULP No.225 of 1990 on 19.11.1990 under section 28 r/w items 1(a), 1(b), 1(d) and 1F of Schedule IV of MRTU and PULP Act, 1971.

4. The petitioner submitted reply by filing affidavit of Yeshwant Keshav Pendharkar, solemnly affirmed on 24.3.1992. The petitioners filed documents in support of their contention, as per the list of documents dated 9.11.1993 and 20.09.1994. The respondent examined two witnesses and the petitioner also examined two witnesses. Both the parties filed written arguments before the Labour Court besides oral arguments.

5. On considering the evidence adduced by the parties, the Labour Court passed a judgment and an order dt. 12.3.1996. The Labour Court came to the conclusion that the retrenchment was sought for genuine reasons

and the same was bonafide and legal. It also held that the mandatory provisions of section 25-G and 25-F were fully complied with by the petitioner company. Even after holding that the retrenchment was bonafide and legal, the Labour Court held that the petitioner ought not to have retrenched the workmen at the stage "i.e. at that point of time", but should have deferred the retrenchment and, therefore, held that the petitioner committed unfair labour practices by terminating the services of the employees with undue haste and in colourable exercise of the employer's right.

6. The petitioner being aggrieved preferred revision application ULP (20) of 1996 before the Industrial Tribunal (Thane). The petitioner impugned the findings in para 9 to 12 of the Judgment of the Labour Court where the Labour Court gave directions interalia that the employees should be reinstated with continuity of services but without any back wages for the intervening period. The Industrial Court by its order dt.19.3.96 came to the conclusion that no

interference was required in the finding recorded by the Labour Court and confirmed the order dt.12.3.96 passed by the Labour Court.

7. The petitioner in this petition seek that the order dt. 12.3.96 and 19.3.98 of the Labour Court and the Industrial Court respectively be quashed and set aside, to the extent directing petitioners to reinstate those remaining concerned employees in service with the continuity and declaration that the petitioners have committed unfair labour practice by terminating their services and in colourable exercise of employer's right.
8. The learned counsel for the petitioner contended that the Labour Court having found that the retrenchment of the employees was legal and bonafide after fully complying with the statutory requirements under the Industrial Dispute Act, erred on facts and in law in holding that the action of the petitioner in retrenching the workmen was an action with undue haste and in colourable exercise of employer's rights for no any

good and just reason and amounted to unfair labour practices and on that count ordered reinstatement of the retrenched employees.

9. The learned counsel submits that the Labour Court was not right in not applying the law laid down by the Hon'ble Supreme Court in **M/s.Parry and Co. Ltd. vs. P.C. Pal, Judge of the Second Industrial Tribunal, Calcutta and others reported in AIR 1970 SC 1334** which was cited before him.

10. The Industrial Court while accepting the findings of the Labour Court that the petitioners complied with all statutory provisions of the retrenchment erred in confirming the orders of the Labour Court for the reinstatement of the employees.

11. The learned counsel for the petitioner in support of his submissions, relied on following authorities:

    1. **Robert D'souza v. The Executive Engineer, Southern Railway and another reported in AIR 1982 SC 854**

2. **M/s.Parry and Co. Ltd. vs. P.C. Pal, Judge of the Second Industrial Tribunal, Calcutta and others reported in AIR 1970 SC 1334.**

12. The learned counsel for the respondent supported the judgment and order of the Labour Court and the Industrial Court and submitted that they do not require any interference by this court. He further submits that both the courts erred in coming to the conclusion that the petitioner company employed less than 100 workers and therefore, Chapter V B of the Industrial Disputes Act, 1947 is not applicable. He submits that before passing an order of retrenchment, the petitioner company failed to comply the provisions as described under Chapter V B that is taking permission from the State Government, issuing notice to the affected workmen, giving them hearing and passing an appropriate order thereafter.

13. He further submits that both the courts failed to consider that before passing an order of retrenchment, the petitioner company failed to issue notice under

section 9A of Chapter IIA of Industrial Disputes Act, 1947.

14. In support of his contention, he relies on Judgment in the matter of **S.G.Chemicals and Dyes Trading Employees' Union Vs. S.G.Chemicals and Dyes Trading Limited and Another reported in (1986) 2 SCC 624.** In that case, the Apex Court held that where more than one undertaking constituted a single industrial establishment, the closure of one of them having less than 100 workmen would also attract section 25-O instead of section 25-FFA if total number of workmen of all the undertakings of the establishment is not less than 100.

15. The learned counsel for the respondents also relied on judgment in the matter of **Lokmat Newspapers Pvt.Ltd. vs. Shankarprasad reported in (1999) 6 SCC 275** in support of his submission that for want of notice under section 9A of Industrial Disputes Act, the order passed by the petitioner for retrenchment is against law.

16. He also relies on judgment in the matter of **Colour-Chem Ltd. And Alaspurkar A.L. & Others reported in 1998 ILLJ page 84** in support of his submission that if the punishment is shockingly disproportionate it would be unfair labour practice and instance of legal victimisation.

17. The learned counsel for the respondent further relied on judgment in the matter of **Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat (Haryana) reported in 2010 Vol II CLR page 1** in support of his contention that normally the court should not interfere under Article 226 and 227 of the Constitution of India where the concurrent findings are given by the court below. He also relies on judgment in the matter of **Mohd. Yunus v. Mohd. Mustaqim and others reported in AIR 1984 SC 38** in support of his contention that the supervisory jurisdiction conferred on the High Court under Article 227 of the Constitution is limited and, therefore, errors

of law cannot be corrected under Article 227 of the Constitution of India.

18. I have gone through the judgment and orders of the Labour Court and also the Industrial Court. Both the courts have found that the retrenchment of the employees by the petitioner was genuine and bonafide. They have also found that the petitioners complied with all the statutory requirements of section 25-A and 25-F of the Industrial Disputes Act, 1971. They have also held that there was no violation of section 25-G and Rule 81 framed under the Industrial Disputes Act. The Labour Court at para 11 of the judgement gave reasons for not following the decision of the Supreme Court referred to above as under:

> "but if same employees were retrenched without any justification and without making reorganisation of business then with due respect to the views expressed by their Lordship. I feel that such retrenchment of employees could be termed as an action with undue haste as it has been contemplated one sort of unfair labour practice under the

> meaning of unfair labour practice vide item 1(F) of the Schedule IV of MRTU and PULP Act, so I am restricting my next discussion only of the said issue."

19. In para 12, the learned Member of the Labour Court inter alia observed as under :

> "I am of the opinion that the action of respondent may be not malafide but it was an action with undue haste and in colourable exercise of employer's right for no any good and just reason."

20. The courts below are not at all justified in distinguishing these cases from the facts of the cases on facts and in not following the law laid down by the Supreme Court in the case of **M/s.Parry and Co. Ltd. vs. P.C. Pal, Judge of the Second Industrial Tribunal, Calcutta and others (Supra). T**heir Lordships of the Supreme Court at pages 1340, 1341 and 1342 laid down the law thus:

“12. In D. Macropollo & Co. v. Their Employees' Union, (1958) 2 Lab LJ 492 = (AIR 1958 SC 1012) this Court held that if a scheme of reorganisation has been adopted by an employer for reasons of economy or convenience and it has been introduced in all the areas of its business, the fact that its implementation would lead to the discharge of some of the employees would have no material bearing on the question as to whether the scheme was adopted by the employer bona fide or not. In the circumstances, an industrial tribunal considering the issue relating to retrenchment, should not attach any importance to the consequences of reorganisation. The resulting discharge and retrenchment would have to be considered as an inevitable, though unfortunate, consequence of such a scheme. It also held that where the finding of a tribunal is based on wrong and 'erroneous assumption of certain material facts, such a finding would be perverse. A recent decision in Ghatge & Patil Concern's Employees' Union v. Ghatge & Patel (Transport) (P) Ltd., (1968) 1 SCR 300 = (AIR 1968 SC 503) was a case of an employer reorganising his business from conducting a transport business himself through employees engaged by him to conducting it through a contract system where under he let out his motor trucks to persons who, before this change, were his employees. Admittedly, this was done because he could not implement some of the provisions of the Motor Transport Workers Act, 1961. The change over to the contract system was held by the Tribunal not to have been effected for victimising the employees. The employees had voluntarily resigned and hired the employer's trucks on

contract basis. It was held that a person must be considered free to so arrange his business that he avoids a regulatory law and its penal consequences which he has, without the arrangement, no proper means of obeying. In Workmen Subong Tea Estate v. The Outgoing Management of Subong Tea Estate, (1964) 4 SCR 602 = (AIR 1967 SC 420) this Court laid down the following propositions: (1) that the management can retrench its employees only for proper reasons, which means that it must not be actuated by any motive of victimisation or any unfair labour practice, (2) that it is for the management to decide the strength of its labour force, for the number of workmen required to carry out efficiently the work in his industrial undertaking must always be left to be determined by the management in its discretion, (3) if the number of employees exceeded the reasonable and legitimate needs of the undertaking it is open to the management to retrench them, (4) workmen may become surplus on the ground of rationalisation or economy reasonably or bona fide adopted by the management or on the ground of other industrial or trade reasons, and (5) the right to affect retrenchment cannot normally be challenged but when there is a dispute about the validity of retrenchment the impugned retrenchment must be shown as'justified on proper reasons,- i.e., -that' it was not capricious or without rhyme or reason."

"14. It is well established that it is within the managerial discretion of an employer to organise and arrange his business in the manner he considers best. So long as that is done bona fide it is not competent of a tribunal to question its propriety. If a scheme for such reorganisation

results in surplusage of employees no employer is expected to carry the burden of such economic dead weight and retrenchment has to be accepted as inevitable, however unfortunate it is. The Legislature realised this position and therefore provided by sec. 25F compensation to soften the blow of hardship resulting from an employee being thrown out of employment through no fault of his. It is not the function of the Tribunal, therefore, to go into the question whether such a scheme is profitable or not and whether it should have been adopted by the employer. In the instant case, the Tribunal examined the propriety of reorganisation and held that the company had not proved to its satisfaction that it was profitable. The Tribunal then held (a) that the scheme was' not reasonable inasmuch as the number of agencies given up in Madras was less than that in Calcutta, (b) that though development of manufacturing activity was taken up in Madras, no such activity was undertaken in Kidderpore, and (c) that the company should have developed its manufacturing activity in Kidderpore simultaneously with the surrenderof the agencies. It is obvious that while reorganising its business it is not incumbent on the company to develop its manufacturing side at the very place where it has surrendered its agencies, namely, Calcutta, nor to do so at the very same time. These considerations which the Tribunal took into account were totally extraneous to the issue before it and the Tribunal ought not to have allowed its mind to be influenced by such considerations and thereby disabling itself from viewing the issue from proper perspective. It was also beyond its competence to go. Into the question of propriety of the company's decision to reorganise its

> business. Having come to the conclusion that the said policy was not actuated by any motive of victimisation or unfair labour practice and therefore was bona fide, any consideration as to its reasonableness or propriety was clearly extraneous. Therefore,its finding that the company had failed to establish that it was profitable was incompetent. It is for the employer to decide whether a particular policy in running his business will be profitable, economic or convenient and we know of no provision in the industrial law which confers any power on the tribunal to inquire into such a decision so long as it is not actuated by any consideration for victimisation or any such unfair labour practice."

21. Now coming to the authority cited by the learned counsel for the respondent, it is to be noted that the respondent neither challenged the finding given by the Labour Court or the Industrial Court on the point of retrenchment. It is to be noted that the respondent filed a complaint being (ULP) No. 225 of 1990 under section 28 r/w section 30 of the MRTU and PULP Act, 1971 and in the matter of item nos. 1(a), 1(b), 1(d), 1(e) and 1(f) of Schedule IV of MRTU and PULP Act, 1971. In their complaint, they no where referred section 9A of the Industrial Dispute Act about notice of change.

Therefore, the authority relied by the petitioner in the matter of **Lokmat Newspapers Pvt.Ltd. vs. Shankarprasad** (Supra) is not applicable in the present case. In any case, the said objection was not raised by the respondent either before the Labour Court or the Industrial Court. The same is not applicable in the present case and therefore, it is not necessary to consider the same at this stage. It is to be noted that neither the respondent challenged the finding of Labour Court nor the Industrial Court about retrenchment.

22. The learned counsel for the respondent submits that it is specifically stated by them in their pleading that the petitioner engaged 74 workmen in their factory at Dombivali and more than 40 workers at their Head Office in Bombay. Therefore, the retrenchment order passed by the petitioner without obtaining the permission from the Government and without following the procedure as required by law is not maintainable. In support of his contention, he relied on judgment in

the matter of **S.G.Chemicals and Dyes Trading Employees' Union Vs. S.G.Chemicals and Dyes Trading Limited and Another** (Supra). In that case the Apex Court held that where more than one undertaking constituted a single industrial establishment, the closure of one of them having less than 100 workmen would also attract section 25-O instead of section 25-FFA if total number of workmen of all the undertakings of the establishment is not less than 100. The Apex Court in that case held that all undertakings of a single industrial establishment were dependent upon each other. They used to purchase the raw material and other day to day requirements jointly and used to supply from one place to other establishment. Whereas in the present case, the Labour Court categorically held in para 7 of its judgment that the respondent failed to produce any documentary evidence to show that the existence of Dombivali Unit was dependent on other units. The said observation in para 7 reads as under:

> "I have considered evidence adduced by complainant. It does not show that the existence of Dombivli unit was dependent on other units. There is also vague pleading. There is admission of employee that, the services of employee were non transferable and raw material were also not transferable from one unit to other. So I think that the point of functional intergality cannot survive."

23. In view of specific observation of the courts below I am of the opinion that the authority cited by the learned counsel for the respondent in the matter of **S.G.Chemicals and Dyas Trading Employees' Union** reported in (1986) 2 SCC 624 is not applicable to the facts and circumstances of the present case.. The other authority cited by the learned counsel for the repsondent on the point that the High Court cannot correct errors of law under Article 227 of the Constitution of India is also not applicable to the facts and circumstances of the prsent case.

24. The law laid down by the Honourbale Supreme Court in the case of **M/s.Parry and Co. Ltd. vs. P.C. Pal,**

Judge of the Second Industrial Tribunal, Calcutta and others (Supra) fully applies to the present case. The court below were not right in distinguishing the same on the facts and circumstances and in not following the law laid down therein. The courts below had no basis to hold that the retrenchment of the employees by the petitioner could be termed as an occasion with undue haste and it was one sort of unfair labour practice under the meaning of Unfair Labour Practices vide item no.1-f of Schedule IV of MRTU and PULP Act. The courts below having held that the retrenchment was genuine and bonafide and not malafide and all statutory requirements for retrenchment were complied, erred in law in allowing complaint partly and ordering reinstatement of the employees and as such those orders need to be set aside.

25. The learned counsel appearing on behalf of Petitioner fairly stated that the retrenchment of compensation/amount is lying with them, they are

ready and willing to pay the said amount to the respondent whosoever approach them within one month from the date of this order with interest at the rate of 6%. In view of this statement, I am of the opinion that the respondent whosoever approaches the Petitioner for payment of their retrenchment compensation within one month from today, Petitioner is directed to pay the same to those workers/employees with interest at the rate of 9% from the due date till date of payment and not at the rate of 6% as learned counsel appearing on behalf of Petitioner made a statement.

26. In the result, petition is allowed in terms of prayer clause (a) which reads as under:

> "(a) For a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, direction or Order under Article 226 and 227 of the Constitution of India call for the records and proceedings of Complaint (ULP) No.225 of 1990 & Revision Application

(ULP) No.20 of 1996, from the Office of the Learned Labour Court and the Honourable Industrial Court, Thane, respectively, and after perusing and examining the legality, validity and proprietary of the Impugned Orders dated 12.03.96 and 19.03.1998 & at Exhibits 'F' & 'K' hereto respectively be pleased to quash and set aside the same."

27. Petitioner is directed to pay the retrenchment compensation to those workers/employees whosoever approaches them within one month from today, with interest at the rate of 9% from the due date till date of payment.

28. No order as to costs.

(K.K. TATED, J.)