

MANU/MH/0286/1995

Equivalent Citation: [1995(71)FLR1110], (1996)IIILLJ587Bom

IN THE HIGH COURT OF BOMBAY

W.P. No. 940/1987

Decided On: 06.02.1995

Appellants: **Harishchandra Haqiqatrai Chhabra and ors.**

Vs.

Respondent: **Chamraj Subhukrishna Krishna Swamy and ors.**

Hon'ble Judges/Coram:

B.N. Srikrishna, J.

Case Note:

Labour and Industrial - wages - Section 28 of Trade Unions Act, 1926 - whether business in dispute was a proprietary concern or partnership business - due to said dispute employer denied wages to employee - employer committed unfair labour practice of failure to implement an agreement - wages not paid due to internal quarrels between brothers - held, employers were liable to pay wages irrespective of quarrels.

JUDGMENT

1. This writ petition under Article 227 of the Constitution of India is directed against an order of the Industrial Court dated November 28, 1986 made in Complaint (ULP) Nos. 404 to 407 of 1985 under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act") and typifies the jeopardy, into which the workmen are thrown when brothers in business quarrel and bring the business crashing down.

2. The present petitioners are the legal heirs of Harishchandra Hagigatrai Chhabra, who is now deceased. (For the sake of brevity, and convenience, deceased Harishchandra Hagigatrai Chhabra will be referred to as "the petitioner" in this judgment. The petitioner and Respondent No. 6 are brothers in full blood. They were partners in several businesses and were also running some businesses in their own respective rights as sole proprietors. Respondent No. 5, M/s. Ball and Roller Bearing Company, was one of such family partnership concerns in which the mother of the petitioner and the Sixth Respondent were partners. According to the Sixth Respondent, April 1, 1976, the petitioner, by his conduct of addressing letters to their bankers, effected an assignment of the partnership businesses and thereby ceased to have any right, title or interest in the business of the Fifth Respondent from April 1, 1976. The Sixth Respondent claimed that, as and from April 1, 1976, the business of the Fifth Respondent concern became his sole proprietary business and the petitioner had no connection with or interest in it. Some time in July, 1976 the petitioner filed a suit, S. C. No. 4921 of 1976, before the City Civil Court at Bombay, alleging that he had not ceased to be partner in the business of the Fifth Respondent. He claimed a declaration that he continued as a partner of the Fifth Respondent partnership and

also sought appropriate reliefs by way of accounts and injunction to protect his interests. Though, initially, the Bombay City Civil Court had appointed a Receiver of the business of the Fifth Respondent and had also granted an interim injunction restraining the Sixth respondent from carrying on the business, the interim reliefs granted by the Bombay City Civil Court came to be modified by a consent order made in terms of Consent terms dated August 3, 1976. Under the Consent Terms it was agreed that the injunction and the order for Receiver would be vacated and, until further orders of the Court, all sales, purchases and payments in respect of the present Respondent No. 5 and three other concerns would be effected by the consent of the petitioner and the Sixth Respondent. There were also arrangements made for diverting the pending orders and for utilisation of the stocks from one such concern to another. What is important for the purpose of the present Writ Petition is clause (c) of paragraph 1 of the Consent Terms making provision with regard to the staff employed in the business. The said clause reads :

"(e) The present staff of the firms Ball Roller Bearing Company. All Range Bearing Distributors, Rolling Bearing Distributors and United (India) Agencies shall be considered as the common staff of the plaintiff and Defendant No. 1 for day to day working of the business of said firms".

The Consent Order also provided that the Court Receiver would stand discharged and hand over all books of account documents to the present petitioner and present Sixth Respondent under their joint signatures and for removal of all seals by the Court Receiver. The said suit is still pending in the Bombay City Civil Court.

3. Respondents 1 to 4 were working as employees of the Fifth Respondent concern. Respondents 1 to 4 filed Complaints (ULP) No. 404 to 407 of 1985 before the Industrial Court, Bombay under Section 28 read with Item 9 of Schedule IV of the Act, alleging that though they continued to be the workmen of Respondent No. 5, their wages had not been paid since May 7, 1985 and that, by not doing so, their employer had committed an Unfair Labour Practice of failure to implement an Agreement/Award/Settlement in respect of them, within the meaning of Item 9 of Schedule IV of the Act. In their complaints, Respondents 1 to 4 impleaded the present Fifth Respondent as the First Respondent and the petitioner and the Sixth Respondent as party respondents. In fact, in the complaint the grievance made was that there was a dispute between the petitioner and the Sixth Respondent as to whether the Fifth Respondent was a proprietary concern of the Sixth Respondent or a partnership business in which the petitioner had interest and that, despite the Consent Order dated August 3, 1976 filed in Suit No. 4921 of 1976 before the Bombay City Civil Court, which continued to be operative and binding on the parties requiring the parties jointly to fulfill and discharge their respective obligations in respect of third parties, including the employees, the employees had not been paid their wages because of the internal quarrels between the brothers. The complainants specifically averred that all three Respondents to the complaints (present Fifth Respondent, Petitioner and Sixth Respondent) were the employers and were equally engaging in the Unfair Labour Practice alleged. The Industrial Court tried the said complaints and, by the impugned order, declared that all the Respondents to the Complaints (i.e. the present Fifth Respondent) petitioner and sixth respondent had indulged in and were indulging in the Unfair Labour Practice under Item 9 of Schedule IV of the Act and directed the present Respondents 1 to 4 to pay to the complainants their earned wages from 1st April, 1985 within one month from the date of the order and to continue to pay their earned wages for the subsequent months on or before the 7th of the next month till their services were dispensed with.

It is this order which is impugned in the present writ petition at the instance of the petitioners.

4 . Mr. Naidu, learned Advocate appearing for the petitioner, raises the following contentions :-

(1) That the petitioner was not an employer of Respondents 1 to 4 and, therefore, whatever be his liability under any inter se arrangement between the parties, the Industrial Court had no jurisdiction to entertain the complaint, much less make a declaration of Unfair Labour Practice against the petitioner and give any consequential direction.

(ii) That, as Respondent No. 6 continued to assert that he was the sole proprietor of the business of the Fifth Respondent concern, he should be held liable as employer of the Respondents 1 to 4 workmen to make payment of the wages for the concerned period.

(iii) That merely because the petitioner had asserted in the suit in the Bombay City Civil Court that he continued to be a partner in the business of the Fifth Respondent, the petitioner cannot be foisted with the liability for wages of the workmen of the Fifth Respondent.

(iv) That, in any event, the evidence on record shows that the Fifth Respondent concern had not done any business during the relevant period, but that the concerned workmen had been exclusively engaged by the Sixth Respondent only upon work of his proprietary business, Rolling Bearing Distributors.

(v) That, in any event, the Industrial Court having recorded a clear finding that there was collusion between the workmen and Respondent No. 6, which finding not having been challenged by the Sixth Respondent, the Sixth Respondent ought not to be permitted to gain by his own wrongful conduct.

(vi) That under the Consent Terms all payments had to come out of the assets of the Fifth Respondents and that the terms of clauses 1(a) and (c) of the Consent Terms dated August 3, 1976 were intended fully to regulate all dealings between the parties and clause (e) was merely intended to provide that the Sixth Respondent would also give direction to the workmen in respect of the day-to-day business of the four concerned firms.

5 . Taking the first contention of Mr. Naidu, had the contention been advanced in the absence of the Consent terms, there might have been substance in the contention. It is trite that the Industrial Court has no jurisdiction to make a declaration of Unfair Labour Practice vis-a-vis a person who is not an employer, when the Unfair Labour Practice alleged is one falling within Item 9 of Schedule IV of the Act. However, the facts of the present case are not as simple as urged. Originally, the petitioner was himself a partner in the partnership business of the Fifth Respondent, along with his mother. Although, according to the Sixth Respondent, the business of the Fifth Respondent became his sole proprietary concern on account of an alleged oral assignment from April 1, 1976, the petitioner hotly contested the said stand of the Sixth Respondent and filed a declaratory and accounts suit before the Bombay City Civil Court. It is the petitioner's assertion in the said suit that he was and continues to be a partner of Fifth Respondent firm and that he never ceased to be a partner. If he were to succeed in the said suit, the Bombay City Civil Court would give a

declaration that the petitioner was and continues to be a partner of the Fifth Respondent's business. In these circumstances, instead of allowing the business to come to an end by the appointment of a Receiver and because of the injunction order issued by the Bombay City Civil Court, the parties to the suit entered into Consent Terms dated August 3, 1976, making a workable arrangement, so that the businesses of the four firms in question, including the Fifth Respondent, could be carried on pending the suit. It is under this working arrangement that it was stipulated by the parties to the suit that all payments made, would have to be made with the consent of the parties. It was by virtue of the Consent Order that the order of one concern were to be diverted to another and the stocks of one to be used by another. However, the Consent Order does not provide that, during the interregnum, the employees would be treated as employees of the present Fifth Respondent. On the other hand, it provides that they "shall be considered as the common staff of the plaintiff and Defendants No. 1 for day-to-day working of the business of the said firms". Against the background of the facts of the present case, it is not possible to accept the contention of Mr. Naidu that this stipulation was only intended to enable the petitioner to give directions to the employees of the Fifth Respondent, without foisting any liability regarding the staff on the petitioner. In the background of the case, the construction of clause 1(c) of the Consent Terms suggested Mr. Cama, learned Counsel appearing for the Sixth Respondent, appears to be more probable. It is probable that, pending the suit before the Bombay City Civil Court, parties agreed that they would jointly be employers of the staff employed by the Fifth Respondent, though they were free to utilise their services for the day-to-day businesses of all the four concerns referred to in the Consent Terms. In this view of the matter. I am unable to accept the contention that the petitioner was not at all an employer, or that he was such a stranger as to be outside the purview of the jurisdiction of the Industrial Court under the Act. In fact, the Industrial Court has referred to those Consent Terms at several places in the impugned order and it is not possible to accept the contention that the provisions of paragraph 1, clause (e), were not within its purview when it entertained the complaints, though the Industrial Court has not adverted to it in the manner in which the contention was raised by Mr. Cama. In any event, if the Industrial Court has taken the view, which seems equally probable. I do not think that this is a fit case which requires exercise of the Constitutional powers of this Court under Article 227 of the Constitution to over-rule that view.

6. The second and third contentions of Mr. Naidu do not hold water. The mere fact that Respondent No. 6 asserts that he is the sole proprietor cannot result in the liability being foisted totally upon him. Perhaps, absent the Consent Order, it may have been possible to urge this contention. But, as the petitioner entered into the Consent Order, with open eyes, he cannot now be heard to say that he is not responsible for the wages of the workmen subsequent to the date of the Consent Order.

7. The fourth contention of Mr. Naidu also does not impress me. Even if it is true that the Fifth Respondent had done no business during the period in question and that the Sixth Respondent had utilised the services of the workmen for doing work of another concern of which he is the sole proprietor, that would be a matter of ascertaining the mutual rights and liabilities in the pending suit between the parties vis-a-vis the workmen, particularly in view of the assertion of the workmen that the Fifth Respondent, Petitioner and Sixth Respondent are their employers. As a matter of fact, in the evidence of petitioner H. H. Chhabra, examined on behalf of the petitioner before the Industrial Court, it comes about that he had given consent for payment of wages to the workmen till May, 1983. But, when pointedly asked why he refused to

give consent for payment of wages to the workmen from June 1983 onwards, the answer given by him was, "There was no money and no business". This answer, in my view, is revealing enough. He did not assert that there was no question of giving payment of wages to the workmen from June 1983 onward, because they were not employees of the Fifth Respondent or because their services were utilized by the Sixth Respondent for doing the work of his own proprietary concern. In my view, it would not be possible for this Court to take a different view of the evidence than been done by the Industrial Court.

8. The fifth contention of Mr. Naidu as to collusion appears to be misplaced. What the Industrial Court says in the impugned order is that there is collusion between the workmen and the present Sixth Respondent. But the so-called collusion was with regard to the workmen, on the sly, carrying on the work of another proprietary concern of the Sixth Respondent. The collusion talked of is not one affecting the proceedings before the Court, but some kind of a covert, collateral arrangement between the Sixth Respondent and the workmen, Respondents 1 to 4. I am, therefore, unable to accept the contention of Mr. Naidu that this is a case where collusion has vitiated the proceedings or that the discretion of the Court should be exercised against the Sixth Respondent. On the contrary, if the Sixth Respondent utilised the services of the workmen for doing the business of one of his concerns, other than the one referred to in the Consent Order dated August 3, 1976 it would, at the highest, mean that the Sixth Respondent has diverted part of the assets or resources of the suit property for personal gain. This Court is not concerned with such a dispute. That is a matter which can be agitated before the Bombay City Civil Court when the partnership suit is heard, for taking accounts.

9. It is not possible to accept the last contention of Mr. Naidu that a fair reading of the Consent Order would indicate that all payments are to be regulated by clauses (a) to (d). If this contention means that all payments are to be effected with the consent of both parties, then it may be true. Otherwise, not. In my view, a fair reading of sub-clauses (a) to (e) of clause 1 would indicate that a working arrangement was made between the consenting parties in the suit that all payments were to be made by consent of the petitioner and Sixth Respondent, stocks of some of the concerns could be used by other concerns, orders in favour of one concern could be diverted to another concern and the employees were considered as common staff of the petitioner and Sixth Respondent for the day-to-day working of the businesses of the firms. Considering that, in the past, the petitioner was employer of the workmen, in his capacity as a partner of the Fifth Respondent, and that he continued to assert his right as a partner in the business of the Fifth Respondent - which would necessarily include liability qua employer of the workmen of the Fifth Respondent - it is not possible to read the Consent Order in the manner suggested by the learned Advocate for the petitioner.

10. Upon careful consideration of all aspects of the matter, I am satisfied that substantial justice has been done by the Industrial Court which has rightly taken the view that, despite internal quarrels between the partners, both of them must be held liable for the wages of the employees. I see no reason to differ therefrom or to interfere therewith, in exercise of my jurisdiction under Article 227 of the Constitution of India.

11. In the result, the petition is without merit and must fail, in my view. Petition is dismissed. Rule discharged. There shall be no order as to costs.

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