MANU/MH/0282/2005

Equivalent Citation: (2005)IILLJ535Bom

IN THE HIGH COURT OF BOMBAY

O.O.C.J. W.P. No. 1384/2002

Decided On: 13.01.2005

Appellants: **Gosh D.P.**
Vs.
Respondent: **New Adarsh General Kamgar Union and Ors.**

Hon'ble Judges/Coram:
Dr. D.Y. Chandrachud, J.

Counsels:
For Appellant/Petitioner/Plaintiff: S.C. Naidu, Adv., i/b., C.R. Naidu andCo.

For Respondents/Defendant: V.P. Vaidya, Adv.

Case Note:
Labour and Industrial - Condonation of delay - Complaint filed for unfair labour practices by first Respondent-Union against second Respondent and four others - Gravamen of the complaint was that the second Respondent upon the formation of a Union, prevented the workmen from carrying out their normal work and declared a lock-out - Held, ex-parte order passed by the Industrial Court does not meet the requirement of law of a specific finding in regard to the commission of an unfair labour practice by Petitioner and Court was in error in declining to condone the delay as Petitioner had informed the Union of his resignation - Petitioner deprived of an opportunity of pursuing the proceedings for setting aside ex-parte order - Since, there is no finding in the impugned order that Petitioner had committed any unfair labour practice, therefore, petition disposed of.

JUDGMENT

D.Y. Chandrachud, J.

1. The Petitioner was a Director of the Second Respondent until May 7, 1988 on which date he tendered his resignation. A certified true copy of Form 32 lodged with the Registrar of Companies intimating that on May 7, 1988, the Petitioner had resigned as a Director of the Company has been annexed at Exhibit F to these proceedings. It may be material to note that by the aforesaid intimation in Form 32, apart from the Petitioner, another Director by the name of Mr. Amal Dasgupta resigned as Director and two other Directors were appointed in their place.

2. On July 7, 1988, a complaint of unfair labour practices was instituted by the First Respondent-Union against the Second Respondent and four others who were styled as partners. The Second Respondent being a Private Limited Company, the reference to four others as partners was clearly inapposite and presumably they were sought to be impleaded as Directors of the Company. Be that as it may, on the date on which the complaint was instituted, namely, July 7, 1988, the Petitioner and Shri Dasgupta had ceased to be Directors of the Company. The gravamen of the complaint was that

the Second Respondent upon the formation of a Union, prevented the workmen from carrying out their normal work on and from June 16, 1988 and declared a lock-out. Declaratory and other reliefs were accordingly sought in the complaint.

3. The Petitioner had engaged an advocate, Ms. Pushpa Menon who had filed her Vakalatnama. Counsel appearing on behalf of the Petitioner stated that Ms. Menon had in the meantime left India and had settled abroad. The complaint came up before the Industrial Court. Respondent No. 1 to 3 to the complaint, who had filed their Written Statement, did not appear before the Court. The complaint was allowed ex-parte on July 20, 1993. The Industrial Court directed the Petitioner and the other Respondents to the complaint to lift the illegal lock-out and to pay full wages from June 16, 1988 until the lock-out was lifted. Thereafter, on April 26, 1994, an application was filed before the Industrial Court by the Union under Section 50 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, claiming that the Industrial Court has ordered that a sum of Rs. 7,67,818.20 be paid to the complainant. The Union claimed that it had made a demand on August 20, 1993 to which there was no reply. This application was allowed by an order dated February 29, 1996.

4. According to the Petitioner though he had been served with the original complaint of unfair labour practices (ULP 821/88), he was not served with the application under Section 50 (Misc. Application (ULP) 14/94). The Petitioner thereupon filed an application under Sections 31 and 32 of the Act on March 30, 1998 for setting aside the ex-parte order dated July 20, 1993 and for the restoration of the complaint. In that application it was specifically pleaded that the Petitioner had resigned from the Directorship of the Company with effect from May 7, 1988 and a copy of Form 32 submitted to the Registrar of Companies was annexed to the application. The Petitioner set up the case that on and from May 8, 1988, he had no connection of whatsoever nature with the Company. Besides, it was submitted that at the highest even at the material time, he was only a Director of a body corporate and that he was, therefore, not liable in respect of any unfair labour practices. The Petitioner stated that officers from the office of the Tahsildar had visited his residential premises demanding the payment of an amount of Rs. 7,70,000/- due under the order of the Industrial Court, upon which he was apprised of an ex-parte order passed against him though no documents were made available. In these circumstances, the Petitioner prayed for setting aside the ex-parte order. On this application, the Industrial Court passed an order dated June 24, 1998 holding that while the application was maintainable, it would be considered only after an application for condonation was filed and in the absence thereof, the relief as prayed could not be granted. The Petitioner thereupon filed an application for condonation of delay on July 1, 1998, once again reiterating the fact that he had ceased to be a Director of the Company with effect from May 7, 1988. That application has been dismissed by the impugned order dated February 28, 2002.

5. Counsel appearing on behalf of the Petitioner submitted that the entire approach of the Court below has been flawed: (i) The Petitioner, it is submitted, ceased to be a Director with effect from May 7, 1988 as evidenced by Form 32 as submitted to the Registrar of Companies; (ii) There was a complete absence of jurisdictional facts before the Industrial Court that would enable it to hold that the Petitioner was guilty of unfair labour practices; (iii) The ex parte order of the Industrial Court did not contain any determination that the Petitioner was responsible for the commission of any unfair labour practice and, therefore, the order was unsustainable; (iv) Though the Petitioner had entered appearance before the Industrial Court though an

advocate, she had ceased to practice in Mumbai and settled abroad as a result of which the Petitioner was not represented when the complaint came up before the Industrial Court; and (v) The entire approach of the Industrial Court is erroneous when the material on the record clearly demonstrated that the Petitioner ceased to have any association with the Second Respondent on and from May 7, 1988.

6. A perusal of Form 32 which was lodged with the Registrar of Companies under the provisions of the Companies' Act, 1956 would reveal that the Petitioner ceased to be a Director of the Company from May 7, 1988. The complaint is totally silent about what role, if any, was ascribed to the Petitioner in committing an unfair labour practice. Paragraph 3(e) of the complaint would reveal that the gist of the complaint was the declaration of an illegal lock-out on June 16, 1988. This is after the Petitioner ceased to be a Director of the Company. The ex-parte order passed by the Industrial Court on July 20, 1993 does not meet the requirement of law of a specific finding in regard to the commission of an unfair labour practice by the Petitioner that would involve the jurisdiction of the Industrial Court to pass an order with reference to the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The contention of the Petitioner is that on September 8, 1993 he had informed the Union of his resignation from the Directorship of the Second Respondent, a reference to which is to be found in the application dated July 1, 1998. The Industrial Court was, in these circumstances, clearly in error in declining to condone the delay, The effect thereof would be to deprive the Petitioner of an opportunity of pursuing the proceedings for setting aside the ex parte order. Ordinarily, in the matter such as the present, I would have been inclined to remand the matter back to the Industrial Court by condoning the delay and restoring the application for setting aside the ex parte order. However, counsel appearing on behalf of the First Respondent-Union has fairly stated before the Court that the First Respondent has now completely become defunct on the expiry of Mr. J.A. Lobo, the General Secretary of the Union who it is stated was the sole moving force for the Union. Having regard to the conspectus of facts that has been placed before the Court, I am of the view that this Court has sufficient material on the record to deal with the issue in its entirety and to render a full, final and complete adjudication insofar as the liability of the Petitioner is concerned. The Petitioner having ceased to be a Director before the declaration of the lock-out which formed the subject matter of the complaint, the proceedings against him were misconceived. There is no finding in the impugned order that the Petitioner has committed any unfair labour practice.

7. In these circumstances, the petition succeeds. The impugned order dated February 28, 2002 is quashed and set aside. Sufficient cause has been shown for condoning the delay and the application for condonation is accordingly allowed. The order dated February 29, 1996 on Miscellaneous Application (ULP) 14 of 1994 and the order dated July 20, 1993 in Complaint (ULP) 821 of 1988 are quashed and set aside in relation to the Petitioner. The Petition is accordingly disposed of in these terms. In the facts and circumstances of the case, there shall be no order as to costs.