BEFORE THE MEMBER INDUSTRIAL COURT, MAH., AT SANGLI

Complaint (ULP) No.21 Of 2019

Shri Vidyadhar Baburao Astekar ..Complainant

V/s

1) Vasantdada Shetkari Sahakari Sakhar Karkhana Ltd., and Ors. ..Respondents

Order Below Ex.U-7 & Ex.U-8

(Date : 4th May 2022)

This application at Ex.U-7 came to be filed by the complainant seeking direction to the respondents to produce documents in the present complaint which are in their custody. The complainant has sought documents of all the original wage registers of all the workers including complainant during the period 2003 to 2011, original documents of bonus register / record of all the workers including complainant during the period 2003 to 2011 and original leave register of all the workers including complainant during the period 2003 to 2011. According to complainant, the present complaint has been filed by the complainant demanding unpaid wages, bonus, leave wages etc. from the respondents. The respondents vaguely denied the said liability in its written statement. The respondent has maintained all the record pertaining to the said documents of all the workers in its custody. The documents are best possible evidence available with the respondent which are required to be produced in

the present case and the same are necessary to decide real controversy in the matter.

2. By filing application Ex.U-8 the complainant also demanding document of tripartite agreement dt.04/07/2017 entered into between Sangli DCC Bank Ltd. from respondent No.1 and respondent No.2. According to complainant in the said tripartite agreement all the terms and conditions about liability to pay legal dues are enumerated and the said agreement requires to be produced in the present matter in order to decide real controversy.

3. The respondent No.1 has filed say at Ex.C-13 on the said application. It is contended that respondent No.1 sugar factory has been taken into possession by Sangli DCC Bank Ltd. towards the recovery of dues and thereafter the said factory is given for running on lease basis on the agreed lease rent for the period of ten years from July 2017 onwards to respondent No.2. The respondent No.1 is not in possession of the sugar factory nor is presently running the same. The complainant was employee of respondent No.1 who has retired long back and received all the legal dues as also gratuity amount. So far as demand of three documents are concerned the respondent No.1 has stated that complainant stood retired from the respondent No.1 prior to 2017. Therefore, there is no relevancy of claiming record for the period 2017 onwards and demand to that effect is illegal as relationship of employer-employee ceased to

operate after 2017. The main contention of the respondent that the demand made by the complainant in the year 2019 claiming documents of a period beyond ten years. The respondent No.1 is not bound to maintain any record beyond ten years in accordance with Factories Act and on this count also the demand is not tenable. The respondent No.1 was passing through critical condition during 2010 onwards and struggling for survival and ultimately resulted into taking over possession of factory under Securitisation Act by financial institution in the year 2017. In the intervening period many times the factory could not run. It is also contended that the respondent No.1 has tried to trace out the record but it could not trace the record for the period from 2010 onwards and it is not traceable. It is further contended that complainant is trying to conduct roving and fishing enquiry without there being any evidence on record. Therefore, the respondent prayed to reject the demand of the complainant.

4. The respondent No.2 has filed its say on the said application at Ex.C-14 claiming that respondent has raised preliminary objection of no employer-employee relationship as respondent No.1 factory was taken on lease basis for the period of ten years in the tender process initiated by Sangli DCC Bank. Without deciding preliminary objection raised by respondent No.2 this application cannot be considered. So far as demand of documents are concerned it is contended that all the workers including the complainant were the employees of

Vasantdada Shetkari Sahakari Sakhar Karkhana and the complainant was retired from the services of respondent No.1 prior to 2017. Hence no demand can lie against respondent No.2. It is further contended that since the complainant was not in the employment between 2017 to 2020 he cannot claim documents for the period 2017 onwards. Therefore, the respondent prayed to reject the application of the complainant.

5. The respondent has also filed reply at Ex.C-18 on the application filed by complainant at Ex.U-8. According to respondent No.1 application which is not signed by the complainant cannot be taken into consideration. There is no relevancy to the demand made by the complainant in the present application. The respondent No.2 is not successor-in-interest. The sugar factory is in possession of respondent No.2 under the provisions of Securitisation Act and ownership is still with the respondent No.1 only. The agreement entered with the bank has no relevancy in the present proceeding. The complainant is doing a fishy enquiry by demanding such irrelevant documents. The complainant has no legal right or *locus sandi* to claim any sort of record as he stood retired from respondent No.1 prior to 2017. Hence the demand of complainant is liable to be rejected.

6. The complainant has filed rejoinder at Ex.U-9 and the respondent has also filed his say on rejoinder at Ex.C-19. I have

perused the application, say and rejoinder and say filed thereon.

7. Heard both the learned advocates. It is submitted by learned advocate Mr.D.S. Yadav for complainant that to maintain record of wage register, bonus register and leave register is a statutory duty and burden of respondent. It is submitted that admittedly factory was given on lease basis to respondent No.2 for ten years from 2017 and therefore there is admittedly lease agreement was entered into between the parties. What are the terms and conditions of said lease agreement are required to be seen as liability to pay the legal dues has to be borne by successor in interest. According to complainant vague submissions are being made that record is not maintained beyond ten years and record is not traceable. It is submitted that the respondent has not come with the case that record is destroyed. It is also submitted that relationship of employer-employee relationship is continued with respondent No.2. According to complainant there is computer system in which record is maintained vis-a-vis manual system and it is not possible to say that record is not traceable or destroyed. The matters of employees are pending in court since long and the respondent is aware about pendency of litigation. Hence it cannot lie in their mouth that record is destroyed. In support of its contentions, the complainant has relied upon following Judgments.

(i) Z.P.Steering Gears (India) v/s Ramchandra S. Tapkir (2006 II CLR 526 – Hon'ble Bombay High Court)

(ii) Surrendra Industries Ltd., Thane v/s A.L. Alaspurkar, Member, Industrial Court, Thane (2002 III CLR 736 – Hon'ble Bombay High Court)

(iii) Rashtriya Hatmag Yantramag Kamgar Sangh v/s K.D. Kochargaonkar and Ors. (2000 I CLR 917- Hon'ble Bombay High Court)

8. *Per contra*, it is submission of learned advocate Mr.S.S. Mutalik for respondents that respondent No.2 has acquired possession of the factory being highest bidder. The complainant is retired prior to agreement entered into between Sangli DCC Bank, respondent No.1 and respondent No.2. The complainant is well aware about it. Lease period is only of 10 years and assets of respondent No.1 are not sold to respondent No.2. It is strongly submitted that respondent No.2 cannot be made as party to the present proceeding and no demand can lie against it. The respondent No.2 is only occupied the factory and nor successor-in-interest. It is submitted that there is no relevancy in the demand made by the complainant and the complainant has engaged into roving and fishing enquiry. Therefore, in the light of law laid down by Hon'ble Supreme Court in the case of **The 20th Century Fox Corporation v/s F.H. Lal and Ors.(1974 III LLJ 156–Hon'ble Bombay High Court)**the application demanding documents are liable to be rejected. It is also submitted that Judgment of *Surrendra Industries Ltd., Thane (supra)* relied upon by the complainant is not applicable as facts in the said case are

different from the facts of present case. In the present case demands are pertaining to the year 2003 to 2020. The demand of the documents since the year 2003 is beyond ten years from the date of filing complaint and also from the date of filing application demanding documents. Hence it is not tenable. It is submitted that facts involved in the case of *Rashtriya Hatmag Yantramag Kamgar Sangh* (supra) relied upon by complainant are totally different from present situation involved in the present case. The matter of *Rashtriya Hatmag Yantramag Kamgar Sangh* is in respect of permanency whereas in the present complaint the complainant is demanding so called legal dues. Therefore, all the documents are demanded only for fishy enquiry and to harass the respondent. Therefore, the said application at Ex.U-7 is liable to be rejected.

9. In reply, it is submitted on behalf of complainant that complainant is claiming monetary benefits which are not paid. It is submitted that there is no roving and fishing enquiry as specific documents are called for which are pertaining to the complainant. So far as tripartite agreement is concerned it is submitted that respondents have taken plea in its written statement about tripartite agreement and trying to avoid liability. Therefore, the said tripartite agreement is necessary in this matter to decide the liability. It is submitted that all the documents are in the custody of the respondents and it is best possible evidence which is required to

come on record to decide mutual rights of the parties. Hence no harm would be caused to respondents by producing said document. Hence it is submitted to allow the said application.

10. Heaving heard both the parties, I have gone through the record of present complaint. This complaint has been claiming that the complainant was working with respondent since 1/04/1980 till his resignation dt.31/12/2011 on the post of clerk and has rendered clean and unblemished services with the respondent. It is claimed that the properties of respondent were hypothecated with Sangli DCC Bank, Sangli as security for loan and due to inability of respondent No.1 to discharge debt the Sangli DCC Bank took possession of mortgaged properties and said properties are given to respondent No.2 on rental basis for ten years since July 2017. According to complainant the respondent No.2 is running or operating the sugar factory since then and continued services of all the workers of respondent No.1 on same service conditions. The complainant has also taken plea that respondent No.1 and respondent No.2 and Sangli DCC Bank entered into a tripartite agreement on 04/07/2017 providing certain terms and conditions. The complainant alleged unfair labour practice under item 9 and 10 of Sch.IV of the MRTU & PULP Act, 1971 against the respondents by not paying earned wages, allowances and allied financial benefits to the complainant which includes wages since September 2003 to July

2004, August 2004 to August 2005, arrears of wages since September 2005 to September 2007 and unpaid wages since April 2009 to May 2010. The complainant has also claimed bonus which remained unpaid since 2002 to 2011.

11. The respondent No.1 has filed written statement at Ex.C-20 and respondent No.2 has filed written statement at Ex.C-16. On perusal of contents of written statements it appears that respondents have denied the contention of the complainant about any dues remained unpaid to the complainant and it is also contended that complainant is not entitled to the bonus. On perusal of pleas of the parties taken in their respective pleadings it can be seen that the documents which are claimed by the complainant are relevant for the purpose of deciding the complaint finally on merit. However, the complainant has claimed all the wage registers, bonus registers, record, original leave registers for the period 2003 to 2011 with respect to all the workers. The complaint is pertaining to a particular complainant and not with respect to all workers. Hence the complainant cannot claim documents with respect to all the workers.

12. In so far as demand made by the complainant in application at Ex.U-8 regarding production of tripartite agreement is concerned, the respondents just resisted it saying it to be irrelevant. As noted above the case of the complainant is for claiming unpaid wages, bonus etc. Admittedly due to non-payment of outstanding loans the Sangli DCC

Bank has taken over possession of the properties of respondent sugar factory and given the said factory to the respondent No.2 for running the same on lease of ten years. The complainant has came with a case that there is tripartite agreement dt.04/07/2017 in which terms and conditions are provided. Not only this but complainant has come with a plea that all the workers of respondent No.1 were continued with respondent No.2. Therefore, the terms and conditions as to how the workers are to be employed with the respondent No.2 must have been regulated by the tripartite agreement dt.04/07/2017. It is also relevant to see terms of tripartite agreement in order to decide liability of payment of legal dues of the worker. Hence the demand of said document cannot be termed as roving and fishing enquiry as held by Hon'ble Bombay High Court in the case of *The 20th Century Fox Corporation* (supra). In the case of The 20th Century Fox Corporation the union had demanded documents like Balance Sheet, Profit and Loss A/c, franchise agreement, number of bookings and billings, sums advanced by employer to various theaters in India etc. The Hon'ble Bombay High Court has held that there is no relativity between officers and workmen can have any bearing on the financial capacity of the company and it is not open to the union on principle of equity to question the business of the employer in employing officers. The circumstances involved in the said Judgment are different from the present case in as much as there is admittedly a

tripartite agreement by which respondent No.2 has taken over possession of the factory. Hence the said agreement would be necessary to determine the liability of aspect of unpaid wages, bonus of the complainant. The Judgment in the case of Surrendra Industries (supra) delivered by Hon'ble Bombay High Court need not be considered at this stage as the question whether the respondent No.2 is successor in interest has to be decided on merit finally. In the case of *Rashtriya Hatmag Yantramag Kamgar Sangh* (supra) if one considers the aspect of liability to pay unpaid wages to the complainant the best possible evidence would be available only with the respondents. The agreement has been entered into between respondent No.1, respondent No.2 and Sangli DCC Bank admittedly. Therefore, copy thereof would be available with both the respondents. In the reply, the respondents have not contended about any harm would be caused to them by production of said document. Therefore, I hold that the complainant has justified its demand of claiming tripartite agreement vide application at Ex.U-8. Under such circumstances, the respondent No.1 and respondent No.2 are required to be directed to produce tripartite agreement dt.04/07/2017. Hence the complainant has justified his demand only in respect of his own demand but documents with respect to all workers cannot be directed to be produced. Therefore in the light of aforesaid discussion, I proceed to pass the following order.

Order

(i) Application at Ex.U-7 is partly allowed.

(ii) Application at Ex.U-8 is allowed.

(iii) The respondent No.1 and respondent No.2 are directed to produce documents of wage register, bonus register and leave register for the period 2003 to 2011 only with respect to complainant in court on or before next date.

(iv) Dictated and pronounced in the Open Court.

Digambar Marutirao Patil

Digitally signed by Digambar Marutirao Patil
Date: 2022.05.13 16:25:52 +0530

Sangli.

Date : 4th May 2022.

(D.M. Patil)
Member,
Industrial Court Sangli