

IN THE INDUSTRIAL COURT AT AURANGABAD
(Presided over by S. S. MAUDEKAR, Member)

COMPLAINT (ULP) No. 148 of 2019
[CNR NO.MHIC20-00000446-20191]

Babasaheb s/o Bhaurao Gore ... **COMPLAINANT**

Versus

[1]The Chairman,
Shri Sant Eknath Sahakari Sakhar
Karkhana Ltd. Eknath Nagar,
Paithan, Tq-Paithan,
Dist: Aurangabad + (2).

... **RESPONDENTS**

Appearance:

Shri R.R. Imale ,the learned Advocate for the complainant.
Shri S.V.Dankh, the learned Advocate for respondent Nos.1 & 2.

ORDER BELOW EXH. C-4
[Passed on 05/12/2024]

This is an application filed by respondent Nos.1 and 2 for dismissal of the complaint with cost of Rs.50,000/-.

2] According to the respondents, the complaint is not maintainable in view of the judicial proceedings concluded earlier and also in the light of the order passed by the Hon'ble High Court in Writ Petition No.11233 of 2016. Even otherwise, it is claimed that the complainant has suppressed all such material facts before the Court though he is / was a member of the representative Union. Hence, it is

claimed that the present proceeding being abuse of law being required to be dismissed with costs of Rs.50,000/-.

3] In the say of the complainant at Exh. U-11 it is submitted that the application is misconceived with an intention to misdirect the Court. It is claimed that the copy of order does not speak about satisfaction of monetary benefits of the complainant. So, it has no relation with the claim made in the complaint. It is also claimed that the provisions of law has not been mentioned in the application and written statement has not been filed containing the contentions raised in the application. As per the documents, the respondents have shown the unpaid wages of their employees to the tune of Rs.1861.40 lakhs and they were to discharge the liability within six years from the commencement of the agreement. So, there is no substance to claim that the liability has been reduced to Rs.25 lakhs only. So, it is alleged that to avoid liability to pay the claimed amount to the complainant, the respondents are filing the applications for prolonging the proceeding. The complainant is an old and senior citizen. The respondents are misusing the process of law by filing cryptic applications. Accordingly, it is prayed to reject the same with compensatory costs of Rs.80,000/-.

4] The points for determination along with my findings thereon are reproduced below as under :-

Sr. No.	POINTS	FINDINGS
1.	Whether the present proceedings are not maintainable and hence liable to be dismissed in view of the	No

	order dt.11-02-2019 in Writ Petition No.11233 of 2016 ?	
2.	What order	Application is rejected.

REASONS

5] As per the record, the respondents have filed documents at Exh.C-17 and Exh.C-6. It is also found that in other matters also including applications for condonation of delay, recovery applications, similar applications have been made, but the documents have been filed only in few matters.

6] Heard the learned counsel for respondent Nos.1 and 2 Shri. Dankh and the learned counsel for the complainant Shri.Imale. According to the learned counsel for respondent Nos. 1 and 2, the complainant has suppressed material facts and due to various reasons, the documents could not be placed on record by respondent Nos. 1 and 2 but it is further claimed that the complainant has suppressed various facts about collaboration agreement between Shri Sant Eknath Sahakari Sakhar Karkana Ltd. (In short “the Karkhana”) and Shri Sant Eknath Sachin Ghayal Sugar Pvt. Ltd. i.e. “the entity” , whereby various conditions were laid down for executing the work of running the Karkhana and to pay legal dues of the employees. It is claimed that some of the employees / complainants had received full or partial amount of legal dues, but they have not mentioned it in the complaint

or in the evidence. So also, they have not mentioned about order of the Hon'ble High Court in the said Writ Petition, whereby undertaking was accepted and the representative union had withdrawn the petition itself. So, when there is full and final settlement, the present complaint cannot continue and it is abuse of process of law. As such, it is prayed to dismiss the complaint by allowing the application.

7] On the other hand, the learned counsel for the complainant has submitted that there is no proper authority issued by respondent no.2 in favour of the present learned counsel for respondent Nos. 1 and 2. So also, respondent No.2 has not filed any written statement. Moreover, all the contentions raised by respondent Nos. 1 and 2 are not found in the written statement. So, it is alleged that the application is devoid of merit and it is misconceived, especially when the relief claimed in the present complaint and the prayer made in the said writ petition are not shown to have been identical. It is also claimed that those contentions cannot be raised by the respondents by filing such applications without swearing affidavit and cross examining the complainant or by leading defence evidence in support of the contentions. Hence, it is pointed out that even from the documents filed on record by respondent Nos. 1 and 2, the liability of respondent Nos. 1 and 2 has not been extinguished, but unless and until unpaid wages or dues are cleared they cannot be discharged. As such, it is prayed to reject the application.

As to point No.1 :

8] As the main basis for filing the present application is the order dated 11-02-2019 in Writ Petition No.11233 of 2016, it is necessary to go through the same. The said Writ Petition appears to have been filed by Paithan Taluka Sakhar Kamgar Union through its Local President and Another. There were at least ten respondents. Admittedly, the copy of Writ Petition has not been filed on record by the parties. Though sufficient time was granted to file the same, respondent Nos.1 and 2 have not filed any such copy or certified copy also. But in the order, the Hon'ble High Court has mentioned that the said Writ Petition was filed for payment of employees' dues such as; P.F., gratuity, arrears of pay, bonus etc. The statement of respondent No.10 in the Writ Petition i.e. present respondent No.3 was accepted as an undertaking whereby it was mentioned that the respondent no.10 will abide by the concerned conditions of collaboration agreement dt.03-08-2015 and compromise agreement dt.30-07-2011. It deposited the cheque of Rs.25 lakhs to respondent No.9 i.e. the Karkhana towards dues of employees. It undertook to deposit balance amount of crushing season within four weeks. So also, it was observed that as per the submissions of the learned counsel of respondent No.8, as and when amount would be deposited by respondent No.10, it would be disbursed to the members of the petitioner-Union and the employees as per the collaboration agreement and the compromise agreement.

9] Accordingly, the writ petition was withdrawn. Though in absence of copy of the writ petition, it cannot be ascertained whether the said Union was representative Union, it is found that in document No.2 itself copy of agreement was filed by respondent Nos.1 and 2

whereby the said Union was shown as the First Party and it was an agreement between the Union, Karkhana and the Vaidyanath Sahakari Sakhar Karkhana. So, it can be said that it was a representative Union for employees of the Sugar Factories in Paithan Taluka. However, the learned counsel for the complainant has claimed that in the said writ petition, the claim of the present complainant was not involved or included and so the complaint cannot be dismissed as nothing was paid to the complainant and it is even contended that contempt proceedings were also filed for non-compliance of the order of the Hon'ble High Court or for breach of the undertaking. In absence of copies of the Writ Petition and other relevant documents, it is not possible to make any comments on those aspects. However, if respondent Nos. 1 and 2 want the Court to believe that the said Union had settled the matter on behalf of the employees of the Karkhana including complainant, they must show that even the claim of the complainant was involved in the said Writ Petition or that decision of the said Union was binding on the present complainant.

10] If the provisions of the Maharashtra Industrial Relations Act, 1946 (hereinafter the Act) are perused, it is found that representative union has been defined as a union for the time being registered as a Representative Union under the Act and when any proceedings are pending before the Courts of Law as such Union has right to appear on behalf of the complainant also as per the provisions of the Act. It is provided in Section 114 a registered agreement, settlement or award shall be binding upon the persons who are parties thereto provided that when a registered union is a party to such

agreement, settlement or award, all the employees in the Industry in the local area are the members of the said Union shall be bound by the agreement etc. In other words, even if it is admitted that the said representative union has power to represent the complainant also in the said Writ Petition, the order would not have binding effect unless it was a registered agreement, settlement or award in accordance with the provisions of the Act, especially Section 115 (A) of the said Act. So, it is not proper to say that the order of the Hon'ble High Court would be binding on the complainant also when in fact in the present proceedings he has sought some amount towards unpaid wages, unpaid bonus, advance amounts, difference of fifth pay commission, etc. as well as gratuity.

11[Even, there is no annexure or list of employees who were being represented by the said Union before the Hon'ble High Court. But , as there is some agreement and compromise, award etc. it is necessary to go through the other documents filed by the respondents. It seems that earlier also, the said Vaidyanth Sahakari Sakhar Karkhana Ltd had entered into agreement with the Karkhana in the year 2007 which was continued till year 2012-13. Thereafter, there was collaboration agreement between the Karkhana and the Sachin Ghayal Sugar Pvt. Ltd. in the year 2015. Various detailed terms and conditions were laid down in Article -A to G, including liability to pay legal dues of the employees. The said Sachin Ghayal Sugar Pvt.Ltd. had sought extension of the agreement, settlement or award, in case it was liable to pay sum of the above statutory liability. Though in several terms and conditions are laid down in Article G , the said entity had

tried to avoid liability, it is clear that the Karkhana had accepted the liability to pay the dues. It was more than Rs.1861.40Lakhs, out of which the Karkhana had taken liability up to Rs.601.13/- Lakhs. There was additional agreement also regarding extension of terms in case the said entity had to pay additional amount and to incur the liability .

12] There was some different agreement between the Karkhana and one Sheelaatul Sugar Tech Pvt. Ltd. and an arbitration award was passed on 27-01-2017 . The respective claims were resisted, but the Karkhana was directed to make arrangement to permit the Ghayal Sugar Pvt.Ltd. To run the business smoothly. The said Award was slightly modified in C.A. No.384/2017 by the learned Principal District Judge, Aurangabad and the said Sachin Ghayal Sugar Pvt.Ltd. agreed to transfer Rs.100/- per ton till 2018-19 and at the rate of Rs.85/- subsequently till liability of Rs.1861.40 lakh shall be paid. So, the initial liability was also upheld by the learned District Judge. All those agreements and liabilities have been referred in the said order of the Hon'ble High Court but then there is nothing on record to show that any efforts were taken by respondents Nos. 1 and 2 or even respondent No.3 to honour the commitment and undertaking given before the Hon'ble High Court and the District Judge.

13] Even otherwise, while filing written statement, no word was uttered by respondent No.1 about all those developments. So, it can definitely be presumed that even according to respondent No.1, the claim of the complainant and prayer made in the Writ Petition, have no connection at all . Otherwise, it would have taken strong objection

about maintainability of the complaint itself. In the present proceeding, the burden is on the complainant to show that the respondent has indulged in unfair labour practice under Item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971. The record shows that the respondents have not taken any interest in defending their case and it is alleged by the complainant that the respondents are in the habit of changing their Advocates as per their will and prolonging the matter by hook or crook by depriving the employees including the complainant from getting legal dues though they are senior citizens and have been fighting for their claim for last so many years after retirement etc.

14] Though there is much substance in the contention of the complainant, some analysis of the documentary material needs to be made to gather any substance in the contention of the respondents and the same cannot be summarily dismissed. But as discussed above, it is not possible to say that the complainant has suppressed any facts or that he was bound by the order in the Writ Petition, as it has not been shown that any compliance was made by the respondents in honouring their own undertakings. So, the complaint / proceeding cannot be dismissed as there is no bar for proceeding the matter under Section 59 of the M.R.T.U. & P.U.L.P. Act or on the ground of res-judicata or on any other legal ground. In the the result, the object of respondent Nos. 1 and 2, to file the present application cannot be said to be genuine and there is no substance in the contentions of the respondents that the complaint is liable to be dismissed at threshold, especially when the complainant has led evidence and the matter was kept for evidence of

respondents. So, the application is misconceived and is liable to be rejected. So, the point No.1 is answered in the negative.

As to point no.2:

15] In view of my finding on point No.1, the present application is rejected with costs. So also, it is necessary to direct the parties to expedite the mater. Accordingly, I pass the following order :

ORDER

[1]	The application is rejected with costs.
[2]	The proceedings are expedited.

Place:-Aurangabad.

Sd/-

Date -05-12-2024

(S.S. Maudekar)

Member,

Industrial Court, Aurangabad

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