

BEFORE SHRI S.V. SURYAWANSHI, MEMBER,
INDUSTRIAL COURT AT MUMBAI.

COMPLAINT (ULP) NO. 48 OF 2020

CNR NO : MHICO1-000130-2020

Maharashtra Employees Union

...Complainant

Versus

M/s. Sahara India Commercial
Corporation Limited & 6 others

...Respondents

Appearances : Shri F.R. Mishra, Ld. Advocate for the Complainant
Shri Mahesh Shukla, Ld. Advocate for the Respondents

COMMON ORDER BELOW EXHIBITS C-5 & CB-2

(Passed on 31/03/2021)

1. Respondents no.1 and 2 have filed these applications for dismissal of the complaint. As per respondents there are about 1500 employees working with the respondents. As per Section 4 of the Trade Unions Act, 1926 for registration of a union minimum 10% or minimum 100 workers engaged in the establishment are required to be members of a trade union. Complainant union is not complying with Section 4 of the Trade Unions Act, 1926. Complainant union is also not complying with definition of Trade Unions as defined under Section 3(17) of the MRTU & PULP Act, 1971. Therefore, the present complaint be dismissed.

2. The complainant union has filed common reply below Exh.U-13 wherein complainant union has denied the adverse allegations made by the respondents. As per complainant union these applications are filed malafidely for prolonging the matter. The complainant union is duly registered under the Trade Unions Act,

1926. As per Section 28 of the MRTU & PULP Act, 1971 the complainant union has every authority to file complaint for its members. Therefore, the application for dismissal of complaint filed by the respondents be rejected.

3. Heard both Ld. Advocates, perused record and proceedings. It is pertinent to note that the factual aspect that the complainant union is a registered trade union under the Trade Unions Act is not denied by the respondents. The Ld. Advocate for respondents pointed out my attention towards Section 4(1) of the Trade Unions Act, 1926, which reads as under:

"Section 4 - Mode of registration :-

(1) Any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act, with respect to registration, apply for registration of the Trade Union under this Act:

[Provided that no Trade Union of workmen shall be registered unless at least ten per cent or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration:

Provided further that no Trade Union of workmen shall be registered unless it has on the date of making application not less than seven persons as its members, who are workmen engaged or employed in the establishment or industry with which it is connected]".

4. As per respondents the respondent no.1 is employing about 1500 employees. 10% of said 1500 becomes 150. The complainant union has filed this complaint for 53 members. Thus, the complainant union is not complying with the criteria of 10% as well as minimum 100 workers as prescribed under Section 4(1) of

the Trade Unions Act, 1926 and therefore, the complainant union has no right to file the present complaint. In reply the Ld. Advocate for complainant union submitted that the complainant union is duly registered under the Trade Unions Act, 1926. As per Section 28 of the MRTU & PULP Act, 1971 any union can file a complaint of unfair labour practice for its members. In this background, I perused the pleadings. The present complaint is filed for the unfair labour practice alleged to be committed by the respondents under Items 3, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971. The complainant union has challenged the transfer orders of 53 employees who are concerned in the present complaint. According to the complainant union, all these 53 employees are its members. Under Section 28 of the MRTU & PULP Act, 1971 any union or any employee or any employer or any investigating officer can file a complaint of unfair labour practices. The term union is defined under Section 3(17) of the MRTU & PULP Act, 1971. According to which "union means a Trade Union of employees which is registered under the Trade Unions Act, 1926". Thus, the MRTU & PULP Act, 1971 does not define the term union in clear term but accept the union whichever is registered as trade union under the Trade Unions Act, 1926. The term Trade Union is defined under Section 2(h) of the Trade Unions Act, 1926, which reads as under.

"Trade Union" means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Union".

5. Now let us see how the trade union is register under the Trade Unions Act. Chapter II of the Trade Unions Act is in respect of Registration of Trade Unions. Section 4 of Chapter II provides that any seven or more members of a Trade Union may, by subscribing their names to the rules of Trade Union and by otherwise complying with the provisions of Trade Unions Act, with respect to registration, apply for registration of the Trade Union. It is provided that no Trade Union shall be registered unless atleast ten per cent or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is concerned are the members of such Trade Union on the date of making the application for registration.

6. The registered trade union of the workers is required to have not less than ten percent or hundred of the workmen which ever is less subject to minimum of seven engaged or employed in the industry in which it is connected as its members. Thus, these are the bare minimum requirement for registration of trade union. Section 9 of the Trade Unions Act provides for certificate of registration. The Registrar on registering a trade union shall issue a certificate of registration in the prescribed form. It is further provided under the said Section that the certificate of registration issued by the Registrar shall be the conclusive evidence that the trade union has been duly registered under the Act. In the present matter registration of the complainant union under the Trade Unions Act is not at all disputed. If at all the respondents are aggrieved or dissatisfied with the registration certificate issued by the appropriate authority under the Trade Unions Act then appropriate remedy is already available under

the Trade Unions Act. As per the MRTU & PULP Act union means a union registered under the Trade Unions Act. Undisputedly, the complainant union falls under the definition of Trade Union. It is also not disputed that the complainant union is a registered trade union. Under such circumstances, objection raised by the respondents holds no water.

7. In the present matter the Ld. Advocate representing the complainant union relied upon the judgment of Hon'ble Bombay High Court in Writ Petition No. 6103 of 2018 dated 25/06/2018. The ratio laid down by Hon'ble Bombay High Court in the said judgment is perfectly applicable to the present case in hand. Identical objection was raised by the petitioner in the said judgment. However, Hon'ble Bombay High Court has rejected the same and held that;

"These considerations are not relevant or germane for the purpose of deciding whether the union such as the Respondent herein, which fulfills the definition of a trade union under Section 2(h) of the Trade Unions Act with a subsisting registration under that Act, can be termed as a union under Section 3(17) of the MRTU & PULP Act. The industrial adjudicator hearing the complaint of unfair labour practices under that Act is neither expected nor enjoined to go beyond either the registration of a trade union or its continued existence as a registered trade union under the Trade Unions Act. These are entirely different matters, to be agitated under different proceedings and before different fora".

: 6 : Order C-5 & CB-2 in Com.(U) 48/2020

Thus, the applications filed by the respondents are liable to be rejected. Hence, I pass the following order.

ORDER

Applications Exh.C-5 and CB-2 stands rejected.

Dated : 31/03/2021
Rry/-31.3.

(S.V. Suryawanshi)
Member,
Industrial Court, Mumbai.