

BEFORE S.V.SURYAWANSHI, MEMBER
INDUSTRIAL COURT, MAHARASHTRA, AT MUMBAI.
COMPLAINT (ULP) 66 OF 2018
CNR NO. :MHIC01-000159-2018

M/s. BSES MG Hospital ... Complainant

V/s

Maharashtra Navnirman Kamgar Sena ... Respondents

ORDER BELOW EXH. C-11
(Declared on 20.03.2019)

1. The Complainants have filed this application for interim relief. The main complaint is filed for unfair labour practice alleged to be committed by Respondents under Item 2, 5 & 6 of Schedule III of MRTU & PULP Act, 1971. As per Complainant, Complainant is a trust registered under the provisions of Bombay Public Charitable Trust Act, 1950. The complainant is having its hospital at Andheri (West), Mumbai. Respondent is a Trade Union registered under the provisions of Trade Union Act claiming to be representative for 31 self employed contractors, one ex-employee and 5 permanent employees of the complainant hospital. Complainant is a spiritual institution having no profit motive. The services are offered by Complainant hospital to poor people free of charge, including medicine. The hospital is owned by Municipal Corporation of Greater Mumbai, Complainant is just running the said hospital. Due to various reasons, Complainant is suffering from

financial crises, Complainant is found it difficult to run its activities economically and simultaneously in the interest of the employees. Therefore, complainant decided to take various measures for smooth running of the hospital. One of such measure was to convert the services of the employees into contract employees agreement without any protection. Thereafter, those employees who were working under self employed, the contract service agreement have accepted to continue through contractor M/s. G4S Facility Services (India) Pvt. Ltd. Further, due to these activities, many self employed termed as ex-employees as well as permanent employees became member of the Respondent Union and Respondent Union started engaging unfair labour practice under Item 2, 5 & 6 of Schedule III of MRTU & PULP Act, 1971. The Complainants has narrated various incidence happened with the various employees to show that the Respondents is creating scene of terror within the hospital premises. Even police complaint were also filed. Complainant has also produced on record the CCTV Footage to justify the allegations made against the certain employees as well as against the office bearers of the Respondent Union. As per Complainant, Respondents are openly threatening to the trustees, obstructing ingress or egress to doctor, manager and trustees etc. All these acts are amounting to unfair labour practice. Hence, the complainant has filed this complaint. By way of additional interim relief application, complainant has prayed for direction against the Respondent from holding dharna/sit down strike and violent demonstration within vicinity of 500 meter from hospital.

2. Respondents has file reply below Exh. U-9 and strongly opposed this application contending that this application is filed malafidely. Respondents have denied all the adverse allegations made by the Complainant. As per Respondents they never committed any action of unfair labour practice. Respondent is only the union representing the workers of the complainant hospital. Respondents have already given undertaking before the Court that Respondents shall not block the gates or block ingress or egress to the gates of the hospital. Respondents have never held nor intend to hold in future any violent dharnas/sit down strike or ever held violent demonstration within the premises of the complainant hospital or in the lobby or at the gate of the complainant hospital. Respondents just tried to have a meeting with officers of the complainant. However, for one or other reason complainant is avoiding with the Respondents to discuss the various issues of the workers. With these and other avermnts, Respondents prayed that the application for interim relief be rejected.

3. Heard both Advocates. Perused the entire record and proceedings. Following points are arising for my consideration to decide the present application.

<u>POINTS</u>	<u>FINDINGS</u>
1) Whether the Complainant has : prima facie case and balance of convenience in his favour ?	In Negative
2) Whether irreparable loss would	In Negative

be caused to the Complainant, if interim relief is not granted ?

- 3) Whether Complainant is entitled : In Negative
for the reliefs as claimed in the
interim relief application ?
- 4) What Order ? : As per final Order.

AS TO POINT NO.1 TO 3

4. All the three points are interlinked and depending upon each other, hence, I am taking all these points for simultaneous consideration. Complainant has filed this complaint under Item 2, 5 & 6 of Schedule III of MRTU & PULP Act, 1971. Those Items read as under:-

2. To Coerce employees in the exercise of their right to self-organization or to join unions or retain from joining any union, that is to say-

(a) for a union or its members to picketing in such a manner that non-striking employees are physically debarred from entering the workplace

(b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking employees or against managerial staff.

5. To stage, encourage or instigate such forms of coercive actions as wilful "go slow" squatting on the work premises after working hours or "gherao" of any of the members of the managerial or other staff.

6. To stage demonstrations at the residences of the employers of the managerial staff members.

5. In the background of the aforesaid items, when I perused the pleadings absolutely there are no pleadings in respect of Item 2 of

Schedule III of MRTU & PULP Act. It is not alleged that the Respondent Union is coercing employees in the exercise of their right to self-organization. In so far as Item 5 is concerned, the same is in respect of 'go slow' squatting on the work premises after working hours or 'gherao' of any of the members of the managerial or other staff. Item 6 is in respect of stage demonstrations at the residence of the employers of managerial staff members. There are no pleadings in the entire complaint on this aspect in the complaint as well as in the present application for interim relief. Complainant has narrated various incidents of mis-behavior/misconduct by various employees on various occasions. This, actions/omissions are not sufficient to restrain the Respondents from pursuing collective issues for all the employees. It has come on record that relationship between the Complainant and Respondents are strained. Even Complainant has filed police complaint against the Respondents. Even one complaint bearing complaint (ULP) No. 30 of 2018 is also filed by Respondent Union against the Complainant wherein Respondents has prayed for restraining the order against the complainant from terminating the services of the workers without following due process of law.

6. Under such circumstance, if any employee gives threats or commits any illegality, it is open for the complainant to take appropriate action. In the present complaint, complainant from the beginning and during the course of the argument also, Respondents has specifically stated that, Respondents does not wish to go on any

kind of dharna. Respondents have further given undertaking to not to indulged into any act of force or violation or any coercive action. Respondent has undertaken to not to obstruct ingress and egress the workers in premises and entry of the complainant hospital. The Respondent union is under obligation to act as per said undertaking. If Respondents commits any breach of undertaking given before this Court right from the beginning and even during the course of argument, the appropriate remedy is available to the complainant.

7. Ld. Advocate for the complainant, tried to contend that complainant wants to take police action against the Respondent if they committe any violated act and for such police action complainant needed the order of this Court. This cannot be the ground for allowing the application for interim relief, when the Respondents have assured before this Court with contention that, Respondents would not commit any illegality, violation or coercive action, there is no need to pass any order merely for the aforesaid reasons. Under such circumstance, the complainant is failed to show strong prima facie case and balance of convenience is also does no lie in favour of the complainant. Hence, my answer to point No.1 to 3 in negative.

8. On the basis of above discussions, I proceed to pass following order:-

- : ORDER :-

1. *The interim relief application below Exh. C-11 is hereby*

rejected.

2. *Respondents to act as per its undertaking before this Court till decision of the main complaint.*
3. *Declared in Open Court.*

Date:-20.03.2019

ppkadam

Sd/-
(S.V. Suryawanshi)
Member,
Industrial Court, Mah. Mumbai

INDUSTRIAL COURT