

**IN THE INDUSTRIAL COURT MAHARASHTRA AT MUMBAI**

**COMPLAINT (ULP) NO. 96 OF 2020**

Krantikari Kamgar Union  
180 C, First Floor, Dharavi Koliwada,  
J.J. Keni Lane, Dharavi Road,  
Mumbai-400 017.

...Complainant

Versus

Mahanagar Media Networks Pvt. Ltd.  
502, Omega House,  
Hiranandani Garden,  
Powai, Mumbai-400 076  
& 3 Ors.

...Respondents

**CORAM: M.R. KUMBHAR, MEMBER.**

Appearances: Shri. A.D. Nimbalkar, Advocate for the Complainant.  
Shri. Manoj Gujar, Advocate for the Respondents.

**ORDER BELOW EXH.U-2**  
**(Passed on 10.11.2022)**

1) This is an application filed by complainant union under Section 30(2) of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (in short hereinafter referred to as the MRTU & PULP Act) praying as per para no. 5 which reads as:-

a) Pending the hearing and final disposal of this complaint, the court may be pleased to direct the respondents to pay the wages and all allowances which are not paid since March 2020 and thereafter every month to the employees concerned in this complaint.

- b) Pending the hearing and final disposal of this complaint, the court may be pleased to restrain the respondent nos. 1 to 3 from selling, shifting or transferring in any manner the plot of land at Rabale being Plot Nos. 604 and 631 on which the respondents' press and godown and other facilities are situated.
- c) Pending the hearing and final disposal of this complaint, the court may be pleased to restrain the respondent nos. 1 to 3 from dismantling, selling or transferring the plant and machinery.
- d) Pending the hearing and final disposal of this complaint, the court may be pleased to restrain the respondent nos. 1 to 3 from terminating the services of the employees concerned in this complaint without due process of law.
- e) Pending the hearing and final disposal of this complaint, the court may be pleased to direct the respondent no. 4 not to give any No dues or Clearance Certificate without the express consent of the complainant union.
- f) Ad-Interim/Interim Relief in terms of above prayers.
- g) Costs and compensation in favour of the complainant.

In short, the case of complainant union is as under:-

- 2) That the complainant has filed a complaint of unfair labour practices against the respondents. The facts and circumstances are well set out in the main body of complaint. For the sake of brevity and convenience, the complainant adopts, confirms, maintains and reiterates whatever stated in the complaint and prays to treat the same as part and parcel of this application.

3) The complainant further contended that the employees are suffering due to imposition of abrupt and illegal closure, therefore, the said imposed closure is void and non-est in the eyes of law. This has thrown the employees and their families in financial starvation. Under the circumstances, granting of prayers for work and also timely payment of salary and wages is essential. Respondents by their actions have demonstrated that they may sell plot and machinery thereon and abandon the employees without paying even their legal dues.

4) The complainant union further contended that since the employees are offering themselves for work, the respondents are duty bound to give the employees work and pay their salaries. Complainant has made out a strong prima facie case, therefore, the interim relief, in the circumstances if not granted, will cause irreparable loss and financial crisis to the members of the complainant union, whereas being legally bound, timely payment of salaries and legal dues will not cause any prejudice or damage to the employer and the balance of convenience lies in favour of complainant.

5) The complainant union lastly contended that if respondents succeed in disposing off the land, plant and machinery of the respondent establishment, the legal dues of the employees will not be cleared. Under the circumstances, the complainant has made out a strong prima facie case in its favour and prayed to allow interim relief application alongwith all prayers made therein.

The interim relief application is supported with affidavit at Exh.U-3 and list of documents at Exh.U-8, U-13 and U-14.

6) The respondents appeared and filed detailed reply cum written statement at Exh.C-2 denying each and every allegations, contentions, grounds raised by the complainant including unfair labour practices as alleged against him.

7) It is specific case of respondents that respondents raised strong preliminary objection regarding maintainability of the complaint on various grounds. Respondents further contended that consequent to closure of the printing and publication department of the daily Hindi newspaper "Hamara Mahanagar," there is no jural relationship of employer-employee between the respondents and the members of complainant union. In absence of jural relationship, this court has no jurisdiction to try and entertain and to decide the complaint as well as the interim relief application and prayed to dismiss the complaint filed by the complainant.

8) Respondents further contended that complainant approached this court with unclean hands. The complainant has failed to disclose that the decision to convert physical newspaper to digital platform was initiated almost a year ago. Consequent to the said decision to convert, the respondent no. 1 had launched the said newspaper "Hamara Mahanagar" on digital platform. The inaugural digital newspaper being uploaded on and from 15.06.2016. The respondent further contended that the present complaint is hit by misjoinder of the parties. The complainant had impleaded the Dy. Labour Commissioner, Mumbai Suburban as party respondent no. 4 and therefore complaint filed by the complainant is not maintainable.

9) The respondent strongly objected that it is trite law that delay defeats equity. Interim relief is an equitable relief. Equity demands that complainant should approach to court expeditiously with clean hands. It is undisputed fact that respondent displayed notice closing the printing and publication of its Hindi daily newspaper "Hamara Mahanagar" with effect from 18.03.2020 and complaint is filed on 01.07.2020. The affidavit is affirmed on 08.07.2020 and therefore, complaint filed by complainant not within limitation. Complainant failed to file a complaint within 90 days from the date of alleged unfair labour practices. There is no separate any delay condonation application nor prayer in the main complaint to condone the delay.

10) Respondent further contended that the closure of business is a fundamental right of employer. In **Hatisingh Mfg. Co. Ltd. Vs. Union of India & Ors.**, reported in AIR 1960 SC 923, the Hon'ble Supreme Court held that "it is as much a fundamental right of an employer to close down his business as to carry on the business. It is a matter within the discretion of an employer to organize and arrange his business in any manner he considers best including the closure of such business. In case of an actual closure, the termination of services of workmen has to be accepted as inevitable, however, unfortunate."

11) The respondents lastly contended that the Parliament by Act 18 of 1957 inserted Section 25 FFF in Chapter V-A of the Industrial Disputes Act, 1947. The said Section mandates that the employer give one month's written notice or one month pay in lieu of notice and compensation at prescribed rate for closure of an establishment. Section 25FFF of Industrial Disputes Act sets out the obligations upon

an employer in case of closing down of a place of employment or part thereof. As per the said provisions, a workman affected by closure are entitled to benefit of one month's notice or one month's pay in lieu of notice and closure compensation equivalent to 15 days average pay for every completed year of service. The printing and publication of newspaper has been permanently and irrevocably closed with effect from 18.03.2020 and the legal dues of 40 employees were released by way of bank transfer and the said employees have received the same in the respective bank account, therefore, action of respondents closing down its establishment does not amount to unfair labour practices as alleged by the complainant union and prayed that complainant miserably failed to make out any prima facie case of unfair labour practices and therefore complainant is not entitled to get any relief as prayed for.

The reply is supported with affidavit at Exh.C-3 and list of documents at Exh.C-4 and C-6 respectively.

12) From the rival pleadings of the parties, following points arise for my consideration and my findings to them are as under:-

	<b><u>POINTS</u></b>	<b><u>FINDINGS</u></b>
1)	Whether complainant union has made out a strong prima facie case in its favour?	...In the affirmative.
2)	Whether the balance of convenience lies in favour of complainant union?	...In the affirmative.
3)	Whether irreparable loss will be caused to the complainant union if interim relief is	...In the affirmative.

	not granted?	
4)	What order?	...As per final order.

### **REASONS**

13) Heard Shri. A.D. Nimbalkar, the Ld. Advocate for the complainant union and Shri. Manoj Gujar, the Ld. Advocate for the respondents at length. Both of them submitted their case as per the grounds raised in Exh.U-2 and Exh.C-2 respectively with the help of copies of documents placed on record. In addition to this, on behalf of complainant filed written synopsis of arguments at Exh.U-15. I have minutely gone through the written submissions filed on record.

14) On behalf of complainant relied the following citations. I have gone through the same.

- 1) Avishek Raja & Ors. Vs. Sanjay Gupta, 2017 DGLS (SC) 616
- 2) Excel Wear & Ors. Vs. Union of India & Ors., 1978 II LLJ 527 SC
- 3) Workmen of Meenakshi Mills etc. Vs. Meenakshi Mills Ltd. & Anr. etc., 1992 II LLJ 294 SC
- 4) Biddle Sawyer Ltd. Vs. Chemical Employees Union, 2007 II CLR 193
- 5) Maharashtra General Kamgar Union Vs. Vazir Glass Works Ltd. & Ors., 1996 II CLR 990
- 6) Industrial Perfumes Ltd. Vs. Industrial Perfumes Workers Union, 1998 II CLR 273 Bom.
- 7) Vazir Glass Works Vs. Bharat R. Tayade & Ors., 2000 II CLR 640
- 8) Workmen Vs. India Forge and Drop Stampings Ltd. & Anr., 1996 (2) LLN 813
- 9) Bhartiya Kamgar Karmachari Mahasangh Vs. G.K.W. Ltd. & Ors. 1998 I CLR 1078
- 10) Sarva Mazdoor Sangh Vs. Innovations Garments Ltd. & Ors., 1998 I CLR 278
- 11) Hindustan Lever Ltd. Vs. Hindustan Lever Employees Union, 1999 I CLR 56

15) On behalf of respondents relied the following citations. I have gone through the same.

- 1) Dalal Engineering Pvt. Ltd. Vs. Ramrao Bhaurao Sawant & Ors. 1991 II CLR 808
- 2) Hatisingh Mfg. Co. Ltd. & Ors. Vs. Union of India & Ors., AIR 1960 SC 923
- 3) Associated Cement Companies Ltd. Vs. Union of India & Ors., 1989 I LLJ 599
- 4) D. Macropollo & Co. (Pvt) Ltd. Vs. Their Employees' Union & Ors., AIR 1963 SC 1723
- 5) Ghatge & Patil Concern's Employees' Union Vs. Ghatge & Patil (Transport) (Pvt) Ltd. & Anr., 1968 I LLJ 566
- 6) Parry & Co. Ltd. Vs. P.C. Pal & Ors., AIR 1970 SC 1334
- 7) Payment of Wages Inspector, Ujjain Vs. Surajmal Mehta, Director, Barnagar Electric Supply & Industrial Co. Ltd. & Anr. 1969 I LLJ 762
- 8) M/s. Honda Ramchandra Vs. Yeshwant Mahadev Kadam, 2008 (116) FLR 362
- 9) District Red Cross Society Vs. Babita Arora & Ors., 2007 III CLR 325

16) Considering the oral submissions of the Ld. Advocates for the parties, I have minutely perused the allegations made by the complainant in the interim relief application and the objections raised by the respondents in their reply. I have also scanned the copies of documents placed on record.

At this prima facie stage, it appears that there is allegations versus allegations, affidavit versus affidavit and documents versus documents filed by both the parties on record. Therefore, it is necessary to refer the documents placed on record.

17) The complainant in support of its interim relief application filed some copies of documents alongwith list Exh.U-8 comprising of affidavit on refusal of service by the respondents office; true xerox

copy of postal receipt and postal track record of delivery; true xerox copy of returned envelope of documents by postal authorities; true copy of letter dtd. 10.08.2020, true copy of reply dtd. 13.08.2020; true copy of letter dated 14.08.202 through email; print copy of Hamara Mahanagar dtd. 22.07.2020 & 04.08.2020.

Further filed alongwith list Exh.U-13 documents comprising of provisional statement of profit and loss for the year ended 31.03.2019; form of submission of issues to PIB/RNI for the month of June, July & August of 2020 by the respondents; letter dated 14.02.2017; C.A. certificate; Statistic data published by Directorate of Advertising & Virtual Publicity (DAVP) on their official web site showing circulation of the paper of the respondent no. 1 for the year 2018 to 2020; list of workmen; appointment letter issued by Bombay Intelligent Security Ltd.; original copy of information obtained under RTI from Bhiwandi Nijampur Municipal Corpn., on 09.09.2020; original copy of Information obtained under RTI from Thane Municipal Corpn., on 16.07.2020.

Further filed alongwith list Exh.U-14 a statement showing that the respondent no. 1 is paying P.F. contribution to EPF organization, India.

18) On the contrary, on behalf of respondents, in support of their reply filed some copies of documents at Exh.C-4 comprising of copy of closure notice dated 18.03.2020 forwarded to various authorities and their acknowledgment effected on 19.03.2020; office copy of acknowledgment by some of the workers dated 18.03.2020;

copy of resignation letter of Shantaram Jadhav on whatsapp dated 17.09.2019; copy of complaint addressed to police regarding fraud committed by Shantaram Jadhav & Ors. Dated 15.11.2019, mutual settlement between respondent and Shantaram Jadhav dated 11.01.2020; copies of 5 cheques dated 17.01.2020, 23.01.2020, 24.01.2020 and 25.01.2020; demand notice dated 14.05.2020; copy of email dated 16.07.2020; copy of reply by email dated 16.07.2020, copy of email addressed to Registrar, Industrial Court, Mumbai dated 16.07.2020; copy of email dated 16.07.2020; reply dated 17.07.2020 to the email; copy of email dated 18.07.2020; copy of balance sheet for the year 2018-2019; copy of letter addressed to Asst. Commissioner of Labour dated 20.07.2020 and the reply dated 03.08.2020 to union's letter dated 28.07.2020.

19) Further filed alongwith list Exh.C-6 documents comprising of copy of agreement dated 26.06.2020; original newspaper printed as complimentary copy "not for sale" dated 01.08.2020 and 04.08.2020; newspaper printed for supplying to Directorate of Information Technology, bill and letter dated 25.06.2020; newspaper printed for supplying to Bhiwandi Nizampur City Municipal Corpn., bill and letter dated 22.06.2020; newspaper printed for supplying to MIDC, Udhyog Sarathi, bill and letter dated 29.06.2020; newspaper printed for supplying to Municipal Corpn. of Greater Mumbai, bill and letter dated 30.06.2020; newspaper printed for supplying to Kalyan Dombivali Municipal Corpn., bill and letter dated 22.07.2020; newspaper printed for supplying to Ulhasnagar Municipal Corpn., bill and letter dated 14.07.2020.

20) The present application is filed under Section 30(2) of the MRTU & PULP Act for claiming interim relief. Section 30 deals with the powers of Industrial/ Labour Courts. As per sub Section 2, “in any proceeding before it, under this Act, the court i.e. Industrial Court / Labour Court as the case may be, pass such interim order including any temporary relief or restraining orders as it deems just and proper. Such interim orders may include directions to the persons to withdraw temporarily practices complained of which is an issue in such proceedings pending final decision.” In view of the provisions as referred above, let us consider case in hand.

21) The power to grant interim relief is discretionary and such discretion has to be exercised on well established principles of law. It is settled principle of law that there are some parameters to grant the interim relief. To grant or refusal to grant interim relief application in the complaint is covered by three well established principles, (i) whether complainant union has made out a strong prima facie case, (ii) whether the balance of convenience lies in his favour, (iii) whether the complainant would suffer irreparable loss in absence of interim relief. The burden to prove these three points lies on the complainant union for seeking interim relief. The interim relief is not granted to the complainant if he is guilty of delay or engaged in suppression of material facts. The person seeking interim relief must approach to the court with clean hands. The court has to see whether claim is bonafide and whether it is fair and substantial question to be tried. At the same time it is also to be borne in mind the prejudice liable to be caused if interim relief is to be granted. The court while granting interim relief

has to keep in mind that interim relief is always granted in aid of final relief and if the final relief is not available to the person seeking interim relief, then no interim relief can be granted in his favour. In the light of these well established principles of law, I have to decide interim relief application as per facts mentioned therein.

22) Prima facie at this stage considering the documents placed on record and the oral submissions of the parties, it is undisputed fact that the employees whose names are annexed alongwith Annexure-A to the complaint are in the employment of respondent. Total 71 employees appear to be working with respondents. As per Annexure-C it is allegation of complainant that out of 71, 17 employees were allowed to resume their duties after accepting their resignation and remaining employees have not accepted the closure notice and not submitted resignation letter, they were prevented from reporting on duties. It is further an undisputed fact that the copy of closure notice dated 18.03.2020 at Annexure-D placed by complainant itself which reads as:

*“Management of Mahanagar Media Network (P) Ltd. is forced to take decision of closing down its printing and publication business of “Hamara Mahanagar” Hindi Daily, being released from Mumbai, Pune & Nashik, with immediate effect i.e. from today the 18<sup>th</sup> of March 2020, due to poor business viability in the present market conditions and enhanced financial burden and other reasons.*

*The company is continuously under financial loss since last couple of years and it has become very difficult to cope up with day to day losses in terms of finance and meet commitments of the borrowers/financer. It*

*has now become unfeasible and impractical to continue to survive in the business anymore.*

*All employees are therefore hereby informed that their services are terminated from Mahanagar Media Network (P) Ltd. from 18.03.2020 and are advised to co-operate with the company in this crisis situation. The full and final dues will be deposited in concerned Bank Account in due course of time.”*

23) From bare perusing the closure notice, it is crystal clear that on the day of 18.03.2020 when the notice was published, respondent failed to pay the legal dues of the concerned employees. As per law, respondent is bound to pay legal dues including amount of leave encashment, gratuity, closure compensation, notice pay etc. etc. on the day of closure. But in view of the reply filed by the respondents, it appears that on 18.03.2020, respondent has not paid amount to the concerned employees to which they are entitled to. Prima facie, it appears that respondents are engaged in unfair labour practices as alleged by the complainant.

24) It is strongly submitted on behalf of complainant that the workers of respondent formed union at respondent company and the complainant union has communicated formation of the union to the respondent by letter dated 29.07.2019 and raised demand to implement the Majithia Award. The provisions of Working Journalists and Other Newspaper Employees (Conditions of Service) and Misc. Provisions Act, 1955 are applicable to respondent company and other labour laws are also applicable to respondent including Industrial

Disputes Act, Industrial Employment Standing Orders Act and MRTU & PULP Act. As per the 'Majithia Award' to claim difference, complainant union approached the competent authority i.e. Assistant Labour Commissioner, Mumbai and the said authority called joint meeting on 16.01.2020 and 09.03.2020 to discuss for proper implementation of 'Majithia Award.' It is allegation of complainant that due to demand raised by complainant union for implementation of Majithia Award, respondents got annoyed and decided to get rid of complainant union declared closure dated 18.03.2020. Respondents failed to issue closure notice to concerned employees without paying legal dues, they were prevented from joining the duties. The documents placed on record are self-explanatory. It appears that the allegations made by the complainant, there is some substance in view of the documents placed on record.

25) It is needless to mention here that in view of the prayer made by the complainant, my Ld. Predecessor while granting the ad-interim order dated 17.07.2020 observed that *"as far as benefits of Majithia Award is concerned, the letter dated 16.01.2020, suggest that, the complainant raised demand for an amount of Rs.74245940.76 against all the employees and therefore, the office of the Labour Commissioner tried to intervene in the dispute and has issued hearing notice dated 09.03.2020 in respect of Application WJA No. 06 of 2020 and 34 of 2020."* That means the complainant union on behalf of their members raised dispute for demanding implementation of 'Majithia Award' and my Ld. Predecessor directed respondent nos. 1 to 3 not to terminate the services of 57 employees who are the members

of complainant union whose names are given in Annexure-A to the complaint without following due process of law till next date. The said ad-interim order further modified by order dated 06.08.2020 directing respondent nos. 1 to 3 to maintain status-quo about service conditions of 57 employees whose names are given in Annexure-A and shall not effect any change in their service conditions till next date. The said order was not challenged by respondent before the higher court.

26) Prima facie it appears that the concerned employees formed union and raised various demands including to implement the Majithia Award and therefore respondents declared closure of its establishment. It is contention of complainant that respondent is still functioning. Just to get rid of union, such type of notice is displayed by respondents and copies of the same were forwarded to provident fund commissioner, ESI corporation and labour office.

27) It is needless to mention here that complainant alongwith Exh.U-8 at sr. no. 7 placed print copy of "Hamara Mahanagar" dated 22.07.2020 and 04.08.2020. Alongwith Exh.U-13 placed print copy of "Hamara Mahanagar" dated 17.07.2020. Respondent alongwith Exh.C-6 placed copy of print (complimentary copy) of "Hamara Mahanagar" dated 01.08.2020, 04.08.2020, 26.06.2020, 23.06.2020, 02.07.2020, 01.07.2020, 21.07.2020 and lastly 15.07.2020. These documents are self-explanatory. It is case of respondents that they are permanently and irrevocably closed their establishment since 18.03.2020 and in due course they will transfer the legal dues to the concerned employees in their bank account. If "Hamara Mahanagar" is permanent closed down on 18.03.2020, then the print copies of

“Hamara Mahanagar” placed on record show that respondents just to get rid of the union, in view that concerned employees should resign from the union, the documents placed on record by the parties are self-explanatory.

28) If at all the services of concerned employees are not legally terminated by issuing individual letter of termination order due to closure, then the concerned employees are entitled to get their wages. Now it is apprehension of complainant that without paying the legal dues and salary from the month of March 2020, respondent may sell, shift or transfer in any manner, the plot of land situated at Rabale being Plot Nos. 604 and 631 on which respondent press and godown and other facilities are situated or respondent may dismantle, sell or transfer the plant and machinery and thereafter the services of concerned employees will be terminated without due process of law, then legal dues of concerned employees will not be recovered. It is contention of respondents that “Hamara Mahanagar” is permanently and irrevocably closed from 18.03.2020. On the contrary, it is contention of complainant that till today the printing and publication of “Hamara Mahanagar” is still continued. This fact requires to be proved by leading oral evidence on merit. Keeping open this point to be proved by the parties.

29) Considering the apprehension of the complainant and the copies of documents placed on record, I come to the conclusion that complainant succeeded to show that it has made out strong prima facie case in its favour. The balance of convenience lies in favour of complainant, if interim relief is not granted. Then since 18.03.2020

the concerned employees are out of employment and they were not paid their legal dues. If interim relief is not granted, then definitely complainants will suffer irreparable loss, they cannot be re-compensated in terms of money. Prima facie the respondents are engaged in unfair labour practices. I find much substance in the submissions made on behalf of complainant to grant relief in favour of complainant.

30) Therefore, all issues are required to be answered in the affirmative and I answer the same in affirmative and proceed to pass the following order.

**ORDER**

- 1) Application for interim relief stands allowed.
- 2) The respondent nos. 1 to 3 are hereby restrained from selling, shifting or transferring in any manner the plot situated at Rabale being plot no. 604 and 631 and dismantling the plant and machinery till final disposal of the main complaint.
- 3) The respondent nos. 1 to 3 are hereby directed to allow the concerned employees to resume on duty, if they are legally not terminated vice versa if they are terminated, then pay immediately the legal dues forthwith.
- 4) No order as to costs.

Dated: 10.11.2022

(M. R. KUMBHAR)  
Member  
Industrial Court, Mumbai

ams/-