

BEFORE SHRI. J. G. DORLE, MEMBER,
IN THE INDUSTRIAL COURT AT MUMBAI
COMPLAINT (ULP) NO. 113 OF 2021

Shramjivi Kamgar Union,
Near Panchal Steel Industries,
Mogra Village Road, Andheri (E),
Mumbai : 400 069.

... Complainant

VERSUS

1. M/s. Matoshri Arts & Sports Trust,
Matoshri Meenatai Thakre Maidan,
JVL Road, Andheri (East),
Mumbai : 400 093.
2. Mr. Ravindra D Waikar (Chairman),
M/s. Matoshri Arts & Sports Trust,
Matoshri Meenatai Thakre Maidan,
JVL Road, Andheri (East),
Mumbai : 400 093.
3. Mrs. Manisha R Waikar (Treasure)
M/s. Matoshri Arts & Sports Trust,
Matoshri Meenatai Thakre Maidan,
JVL Road, Andheri (East),
Mumbai : 400 093.

... Respondents

Appearances :-

Learned Union Repre. Shri.D.V.Shinde for Complainant.
Learned Advocate Shri.B.K.Ashok for Respondents.

:- ORDER BELOW EXH.U-2 :-

(Passed on 09th September 2021)

01) The Complainant Kamgar Union has filed the present Complaint under Item 1 (a), (b) of Schedule II and Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and

Prevention of Unfair Labour Practices Act, 1971 (In short, the MRTU & PULP Act, 1971) against the Respondents.

02) It is the case of Complainant that, it is a registered trade union registered under the provisions of Indian Trade Unions Act, 1926 and representing the workmen of the Respondent No.1 Organization. The employees employed with the Respondents are members of the Complainant Union. The Respondent No.1 Organization is commercial Trust and the Respondent No.2 is a Chairman and Respondent No.3 is Treasure of Respondent No.1 Organization. They are from one family and they have ultimate supervision and control over all the affairs and entire administration of Respondent No.1 Organization including its business activities.

03) It is further contended that, the Respondent No.1 Organization is a Public Trust. In the Respondent No.1 Organization, several physical activities are going on such as swimming pool, badminton court, tennis court, jim, snooker etc. The Respondent No.1 Organization giveen above mentioned sport facilities to their members and charged huge maintenance and membership per month. The Respondent No.1 Organization charged five lakhs rupees from each member towards membership. In the Respondent No.1 Organization, more than 60 employees are working. All are working since 22 to 23 years.

04) The Respondents are earning huge profit since last so many years, but never shared amongst the workers. There are lot of business activities are going in the Respondent No.1 Organization and the Respondent Nos. 2 & 3 are doing business of hotel and

restaurants in the name of “Supremo” in the premises of Respondent No.1. The Respondents have given lawn on rent to several parties for functions such as marriages, engagements, parties etc and charges huge rents for per events. It is alleged that, the Respondents are not providing benefits of labour welfare liabilities to the workers. The Respondents also not maintained musters and wage registers of all the workers. The Respondents are not paying wages to the workers as per the provisions of Minimum Wages Act applicable to the “Shop and Establishment Industries”. They are also not paying special allowances to the workers as per Notification of “Shop and Establishment Industries”.

05) It is further contended that, the workers are not getting earned wages on fixed time. The Respondent No.1 Organization is in existence for more than 24 years. The workers are in the employment of Respondents since 1997 onwards and they are working in various categories such as attendance builders, attendance lone tennis, guest room boy, jim col, life guards, ladies' health care attendance etc. It is further contended that, since 06/04/2021, the Respondent No.2 stopped to provide normal work to the listed workers and therefore, the workers approached the Respondent No.2 and requested him to provide normal work to the workers, but they did not get reliefs. Therefore, few workers of the Respondent No.1 Organization formed Union under the banner of Complainant Union for securing their service conditions and improving their standard of living. Accordingly, the Respondents were intimated about formation of Union by letter dated

22/04/2021 and the same is duly served to the Respondents. After coming to know about the formation of Union by the workers of the Respondent Organization, they have resorted to various unfair labour practices with a view to see that the workers are dissuaded from joining and continuing to be the members of the Complainant Union. Since the date of formation of Union, the workers have been threatened with dismissal and discharge if they will continue to be the members of Complainant Union. The Respondent No.2 has not given heed to the formation of Union and started to harass the workers with the threats of dismissal, discharge, lockout and closure.

06) It is further alleged that, the Respondent No.1 Organization is doing very well in their business and earn huge profits in the business every year. They are making several indoor activities centers from strength of these workers, but inspite of sound financial position and paying capacity, they are not ready to pay the good service conditions to the workers. The workers are not getting special allowance as per the Notification of Government Authority. The workers have not got permanency letters till this day of filing of the present Complaint inspite of the fact that the workers are in the continued service from last 23 years and they have rendered work for more than 240 days in each and every calendar year. The Respondents are not keeping muster, wage register of all the workers and they have not issued payment slips to the workers. The workers are not getting leave facilities such as sick leave, casual leave, privilege leave and festival leave as well as public holidays as

per the provisions of law. The Respondents forced workers to do twelve hours duty instead of eight hours without overtime wages. The other labour welfare legislations of the workers are very poor.

07) The Complainant Union further contended that, after receipt of Union formation letter, the Respondents have resorted to several acts of precautions, inducements, harassments and applying of pressure tactic to see that the workers dissuaded from joining and later on continuing as a members of Complainant Union. The Respondents are not paying attention towards the grievances of the workers. The acts of Respondents clearly interferes with restrain or coerce to the employees in the exercise of their rights to organize, form and join or assist with the Trade Union to engage in concerted activities for the purpose of collective bargaining. The act of threatening the workers with discharge and dismissal or declare a lockout and closure when the Union has been organized and if the workers will be continuing as members of Union, clearly amounts to unfair labour practices under Item 1 (a), (b) of Schedule II of the MRTU & PULP Act, 1971. The Complainant Union had written a letter to the Respondents dated 27/04/2021 and requested to them to desist from aforesaid activities of unfair labour practices.

08) It is further alleged by the Complainant Union that, from January-2021, the Respondent No.2 forced skilled workers to do work of sweeper, gardeners etc. Whenever the workers attempted to ask to provide regular work to the Respondent No.2, the same was ambushed by the vulture thoughts and concurrent acts of the masters. From 06/04/2021, the Respondent No.2 has stopped

to provide normal work to the enlisted workers and kept them sit idle. Therefore, it is breach of the terms of service conditions since the Respondent are not providing bonafide work to the employees when the employees are ready and willing to do the work. In view of the terms of employment, it is the responsibility of the Respondents to provide the work to all the workers who are ready for work and willing to do the work to all the workers by not providing the work to the employees. Hence, the Respondent No.1 Organization is failing to keep its promise of terms of employment to provide the work which clearly amounts to failure to implement an agreement of employment. This act of the Company amounts to an unfair labour practice under Item 9 of Schedule IV of the MRTU & PULP Act, 1971.

09) Lastly, the Complainant Union prayed to hold and declare that the Respondents are engaged and in engaging in unfair labour practices under Item 1 (a), (b) of Schedule II and Item 9 of Schedule IV of the MRTU & PULP Act, 1971 and direct the Respondents to cease and desist in engaging such unfair labour practices. In view of prayers made in the main Complaint, the Complainant Union prayed to grant various reliefs claimed therein.

10) In view of present Application for Interim Relief at Exh.U-2, the Complainant Union has prayed that, pending hearing and final disposal of the main Complaint, the Respondent, their agents and servants be restrained by an order from terminating the services of the members / workers of Complainant Union whose names are listed in Annexure-A without following due process of

law. It has been further prayed to restrain the Respondents from giving lay-off, declaring lock-out and closure. Further, the Respondents be restrained from refusing to provide work to the listed workers at Annexure-A. Also prayed to direct the Respondents to pay month to month earned wages to the workers whose names are listed at Annexure-A. Also prayed to circulate the directions to give overtime ratio of double to the workers whose worked for more than eight hours duty per day. Lastly, prayed to allow the Interim Relief Application at Exh.U-2.

11) In response to the notices, the Respondents appeared and filed their affidavit in reply at Exh.C-2 and contended that, the present Complaint is not tenable at law and in facts amongst other grounds. It is submitted that, the Respondent No.1 is a Public Trust duly registered under the provisions of Maharashtra Public Trust Act and is not a commercial establishment under Section 2 (j) of the Industrial Disputes Act, 1947. Therefore, on this ground also, the Complaint is liable to be dismissed. The Respondent No.2 and Respondent No.3 have no role on the day to day administration of the Trust. The Respondent No.2 – Mr.Ravindra Waikar have no any direct role in respect of the labour issue of Respondent No.1 Trust. The Trust is run by various committees for the members of the Trust. It is a voluntary organization run on no profit / no loss basis. The parcel of the land belongs to MCGM and the said premises is being given to the Respondent No.1 on conducting basis.

12) The Respondents further contended that, the employees enlisted in Annexure-A are not the members of the Complainant

Union. According to the information furnished by the employees, they have not enrolled with the said Union by paying any subscription as alleged. Therefore, the said Union has no locus standi to file the present Complaint under the provisions of MRTU & PULP Act, 1971. It is specifically denied that, the Respondent is a commercial Trust and submitted that, no document is furnished to that effect. Since the Organization is not a commercial Trust, the present Complaint be dismissed on this ground alone. Further, it is not known as whether the Complainant is a registered Trade Union. The Complainant has not furnished any such document in respect of the registration of the Union. It is denied that, the Respondent No.1 is a Commercial Trust as alleged. It is also denied that, the Respondent Nos. 2 & 3 are looking after the day to day affairs and administration of Respondent No.1. It is also denied that, the Respondent No.1 is earning huge profits as alleged. In fact, the members are collecting the subscription for their welfare and the Trust is run on the basis of said income from its members for the benefit of members. It is specifically contended that, it is not an industry as alleged.

13) The Respondents further contended that, the Respondent No.1 has various activities in the establishment and the entire expenditure of the establishment is on the basis of membership subscription and donations, if any. It is also denied that, more than 60 employees are working as alleged. The details furnished along with Annexure-A to the Complaint are not correct. The operation of the establishment is about 21 years old whereas

the services of the employees erroneously shown as 23 years. It is specifically denied that, the Respondents are engaged in and are continuing to engage in the unfair labour practices under Item 1 (a), (b) of Schedule II and Item 9 of Schedule IV of the MRTU & PULP Act, 1971 on and from 20th April 2021 as alleged or otherwise at all.

14) It is specifically denied that, the Respondent Nos. 2 & 3 are running business of hotels and restaurants in the name of 'Supremo' in the premises of Respondent No.1. It is also denied that, they are giving grounds for several parties such as engagements, marriages and parties etc and charging huge amounts as alleged. It is also denied that, they are not providing welfare benefits to the workers. It is contended that, all the permanent employees are covered under the statutory welfare schemes and they have been paid more than the minimum rate of wages applicable to the establishment. It is also denied that, the workers are not getting earned wages on fixed time as alleged. It is further denied that, the employees are working since 1997 under various categories as alleged. In fact, majority of the employees are unskilled category and later on they have been trained by the Respondents.

15) It is specifically contended that, the Government of India and the State Government had issued various Notifications and restricted the running of clubs, restaurants as such the Respondent No.1 is liable to comply with those lawful orders of the Government. It is not known as to whether the employees had joined with the Complainant Union as alleged. It appears from Annexure-B that, none of the employees have made an endorsement

that they are the members of the Complainant Union. The allegations are totally fabricated and contrary to the facts. The Respondent No.1 is a Trust running on no profit / no loss basis. At present it is running on extremely bad financial constraints as there is no financial income from the members subscription ever since the lock down was declared. In view of Government guidelines, the activities are shut and there is no football of the members, so as to make any earnings. The Trust has to bear the overhead expenditures, taxes, electricity, maintenance and other miscellaneous expenditure. Since the restrictions are imposed by the Government, there are no visitors, guests and activities in the Club. Since there are no regular activities, the members are also refraining from paying the subscription which has critically affected the economy of the club. The members and employees are fully aware about the financial outlay of the Club as the Trust made high transparency in their day to day activities. In spite of all the hurdles, the employees are being given the minimum wages and other statutory benefits as per the provisions of law.

16) It is denied that, on receipt of formation of Union notice, the Respondents had resorted to inducement, harassments, pressure tactics etc and involved in to dissuade the employees from the membership of the Complainant Union as alleged or otherwise. It is submitted that, formation of Union is a fundamental right of the employees as such threatening the workers with the dismissal or discharge on these grounds is imaginary. The Respondents have not intention to declare lockout or closure of the establishment and or to

dismiss or discharge the employees as alleged. It is also denied that, the Respondent No.2 has stopped providing normal work to the enlisted workers from 06/04/2021 as alleged. The club activities were stopped as per the directions of the Government. The Government had issued various Notifications under the Disaster Management Act, 2005 and the Epidemic Disease Act, 1897 regarding not to run various club activities due to pandemic COVID-19. However, those employees who had reported for work, were being paid wages as per the prevailing practice.

17) The Respondents have no intention to terminate the employees without following the due process of law. All the employees are being paid wages on the basis of their attendance and they are covered under the ESI & PF benefits. In respect of leave, the same is on the basis of their attendance and the same is credited to their account.

18) The Respondents further contended that, the Complainant Union has failed to establish a prima facie case of unfair labour practice. The balance of convenience is much in favour of Respondents. The Respondents have no intention to terminate the services of employees without following due process of law. In the circumstances, it is prayed to reject the Interim Relief Application.

19) Following points are set down for determination :-

<u>Sr.No</u>	<u>POINTS</u>	<u>FINDINGS</u>
01)	Does the Complainant Union prima facie prove that, the Respondents have	

	indulged into unfair labour practices under Item No. 1 (a), (b) and Item No.9 of Schedule IV of the MRTU & PULP Act, 1971 ?	Partly in the Affirmative
02)	Does the Complainant Union succeed to show strong prima facie case and balance of convenience in their favour to grant interim relief ?	Partly in the Affirmative
03)	Whether the Complainant Union would cause irreparable loss, if not granted interim relief ?	Partly in the Affirmative
04)	What order ?	As per final order

-: **REASONS** :-

AS TO POINT NOS.1 to 3 :-

20) After perusing the pleadings of the Complaint, it shows that, there are some basic allegations raised by the Complainant Union. First principal allegation is that, the member-employees of Complainant Union are working since last 23 years and have worked for 240 days in each and every calendar year and inspite of that, they are not getting better service conditions from the Respondents. Second allegation is that, the benefits of welfare labour legislations are not being paid to the member employees. Third allegation is that, after receipt of Union formation letter, the Respondents have resorted to several acts of the precautions, inducements, harassments and applying of pressure tactics to see that the workers dissuade from joining and later on continuing as members of Complainant Union. Fourth

allegation is that, the Respondents are not paying attention towards the grievances of the workers. Fifth allegation is that, it is the responsibility of the Respondents to provide work to all the workers who are ready for work and willing to do the work. Sixth allegation is that, the Respondents will terminate the services of the member employees without following due process of law and or will declare lockout or closure. Seventh allegation is that, the Respondent Club is making huge profit but not sharing the same with the workers. Eighth allegation is that, the Respondents have employed about 60 workers since 1997 onwards. Ninth allegation is that, the Respondents are not maintaining the required muster rolls and wage registers and not issuing payment slips as well as not providing leave facilities as required by law. Tenth allegation is that, the workers have not got permanency letters till this day of filing of the present Complaint inspite of the fact that the workers are in the continued service from last 23 years and they have rendered work for more than 240 days in each and every calendar year.

21) From the aforementioned allegations, it shows that, it is the case of the Complainant Union that, inspite of working for so many years, the workers are not getting legitimate benefits as required to be paid by the Respondents in view of welfare labour legislations. Further, it also shows that, there is also a grievance of permanency and therefore, it is the apprehension in the mind of Complainant Union that, during the pendency of present Complaint,

there is likelihood of termination of services of member employees as well as declaration of lockout or closure of Respondent Club.

22) On the contrary, it is the stand of Respondents that, there is no merit in the allegations raised by the Complainant Union and it is their fundamental right to form a Union. Further, It is a Public Trust and therefore, the present Complaint needs to be dismissed on this ground alone. It is also denied that, the Respondent No.1 is a Commercial Trust. It is specifically submitted that, the Respondent No.1 Trust is running on no profit / no loss basis and at present, there is extremely bad financial constraints as there is no financial income from the members subscription due to lockdown as various guidelines issued by the Government Authorities.

23) This Court gone through the pleadings of the Complaint as well as contents in the written statement. It shows that, this Court is called upon to decide the controversy regarding benefits of various welfare legislations applicable to the workers as well as a question of law whether the Respondent Club is commercial activity as well as a Trust or not registered under the provisions of Maharashtra Public Trust Act and is not a commercial establishment under Section 2 (j) of the Industrial Disputes Act, 1947. This Court is of the view that, all the contentious issues have to be decided on the basis of oral as well as documentary evidence to be placed on the part of both the parties during the course of final adjudication of the matter.

24) It is to be noted that, it is principal apprehension in the mind of the member employees of the Complainant Union that, due to raising the dispute of unfair labour practice before the Court, the Respondents may terminate or discharge the services of the member employees of the Complainant Union. It is pertinent to note that, in the written statement at Exh.C-2, the Respondents have specifically contended that, the Respondents have no intention to declare lockout or closure of the establishment and or to dismiss or discharge the employees as alleged. Therefore, this Court is of view that, as the Respondents have given an assurance to the effect that, they have no intention to do so, then there is no need to grant all the prayers made in the Interim Relief Application at Exh.U-2. Furthermore, if the workers involved in the present Complaint do their work, then automatically they will earn their wages according to the provisions of law. The legality and validity of the allegations made on the part of both the parties, can be very well be decided on its own merit. But, it is equally true that, if the services of member employees are terminated without following due process of law, then it is every likelihood that, the jurisdiction of the Industrial Court may be ousted. It is the principal grievance of the Complainant Union that, they are working since last 23 years and on the contrary, it is the contention of Respondents that, the operation of the Respondent establishment is about 21 years. Therefore, that issue has to be gone on merit. If there is any merit on the contention of the Complainant Union that, since last 23

years, their member employees are employed by the Respondent Club, then that contention needs to be gone through this Court in the light of oral as well as documentary evidence. But, till then, this Court is of considered view that, the services rendered by the member employees marked at Annexure-A needs to be protected.

25) It is to be noted that, the Respondents themselves have given an assurance in the affidavit in reply that, they have no intention to lockout or closure or terminate or discharge the member employees. Furthermore, if the services are protected till pending hearing and final disposal of main Complaint, no prejudice or irreparable loss would cause to the Respondents. The workers will work and earn their wages according to the provisions of law. On the contrary, if their services are terminated without following due process of law, the member employees will cause great prejudice and irreparable loss for the reason that, their grievances will remain unaddressed.

26) Therefore, this Court is of the view that, the Complainant Union succeed to show that, it has strong prima facie case in its favour and if interim relief is not granted to the extent of protection of their services till pending hearing and final disposal of main Complaint, then it will cause irreparable loss. The balance of convenience lies in favour of Complainant Union. The Complainant Union is entitled to grant interim relief in part. Therefore, the Point Nos.1 to 3 partly in the Affirmative and this Court proceed to pass following order :-

ORDER

- i) Application for Interim Relief at Exh.U-2 is partly allowed.
- ii) The Respondent Nos. 1 to 3 are hereby directed not to terminate or discharge the services of the workers whose names are mentioned in Annexure-A with the Complaint, without following due process of law.
- iii) In view of circumstances, no order as to costs.

Mumbai
Dt:09-09-2021.
SRS/-

Sd/-
(J. G. DORLE)
Member
Industrial Court, Mumbai.