

**BEFORE SHRI R.N. AMBATKAR, MEMBER,**  
**INDUSTRIAL COURT, MUMBAI**  
**Complaint (ULP) No.136 of 2020.**  
**(MHICO1-000355-2020)**

The BEST Workers' Union,  
42,Kennedy Bridge,  
Mumbai-400 004. ... Complainant.

V/s.

1. The Municipal Corporation of Gr. Mumbai,  
Municipal Head Office,  
Mahapalika Marg, Fort,  
Mumbai-400 001.
2. The BEST Undertaking,  
BEST Bhavan, BEST Marg,  
Colaba,Mumbai-400 001.
3. Shri Iqbal S. Chahal,  
And/or his successors in Office,  
The Municipal Commissioner,  
The Municipal Corporation of Gr. Mumbai,  
Municipal Head Office,  
Mahapalika Marg, Fort,  
Mumbai-400 001.
4. Dr. Surendrakumar Bagde,  
And/or his successors in Office,  
The General Manager,  
The BEST Undertaking,  
BEST Bhavan, BEST Marg,  
Colaba,Mumbai-400 001.
5. The Chairman,  
BEST Committee of Municipal  
Corporation of Gr. Mumbai,  
The BEST Undertaking,  
BEST Bhavan, BEST Marg,  
Colaba,Mumbai-400 001. ... Respondents.

**O R D E R (Below Exhibit CA-3)**  
**( 03.10.2020 )**

**01.** This is an Application filed by the Respondent  
Nos.1 and 3, who have raised preliminary objection

regarding jurisdiction of this Court to entertain the present Complaint, before deciding the Interim Relief Application.

**02.** The Complainant-BEST Workers' Union has filed the Complaint under section 28 read with item 9 of Sch.IV of the MRTU & PULP Act, 1971 (hereinafter, referred to as '**the PULP Act, 1971**'). In this Complaint, the Complainant Union has raised the grievance that as per the Memorandum of Understanding ('hereinafter, referred to as '**the MOU**') dated 11.06.2019, the Respondent No.2 i.e. the BEST Undertaking has agreed to maintain a bus fleet of 3337 self-owned buses and Respondent No.1 Corporation shall release the funds to purchase the buses that will be scraped out of the bus fleet of 3337 buses. Though in the MOU dated 11.06.2019, the Respondents have agreed to maintain the bus-fleet of aforesaid number of buses, the Respondents have not implemented the same till the date. Not maintaining the self-owned buses the aforesaid fleet is breach of the MOU dated 11.06.2019. The Respondents are taking steps to

increase the bus fleet upto 10000 with CNG/ Diesel/ Electric buses and such buses beyond 3337 self-owned buses will be acquired on wet lease basis. It is contended by the Complainant Union that on 30.07.2020, the Respondents have issued an e-tender /advertisement inviting tender bids from interested parties from 31.07.2020 for operation of stage carriage services with drivers and conductors for public transport of 500 single decker non-AC CNG buses on gross cost contract. It is contended that acquiring the buses on wet lease basis without maintaining the bus fleet of 3337 self-owned buses is contrary to the MOU dated 11.06.2019 and will cause serious prejudice, injury, damage and loss to the Complainant Union. It is contended that, in this way, the Respondents have engaged in unfair labour practice under item 9 of Sch.IV of the PULP Act, 1971. Accordingly, the Complainant Union has prayed reliefs against all the Respondents.

**03.** The Respondent Nos.1 and 3 have filed their Written Statement. They have filed the present

Application challenging the jurisdiction of the Court contending that they are not necessary parties to the present proceeding and there is absolutely misjoinder of parties and hence their names should be deleted from the array of Respondents.

**04.** The Respondent Nos.2,4 and 5 have not filed any reply to the present Application under consideration, but during the arguments through video-conference, the Ld. Advocate representing the Respondent Nos.2,4 and 5 submit that they have no oppose to the present Application.

**05.** In the Application under consideration, it has been contended by the Respondent Nos.1 and 3 that the Complainant Union has no locus-standi to file the present Complaint against the Respondent Nos.1 and 3 as the alleged members of the Complainant Union are not the employees of the Respondent No.1 Corporation and there is no employer-employee relationship between the alleged members of the Complainant Union and the Respondent Nos.1 and 3. it is further contended that the present Complaint under item 9 of

Sch.IV of the PULP Act, 1971 have committed breach of the MOU dated 11.06.2019 which was signed by the Complainant Union with Respondent Nos.2 and 4 and Respondent Nos.1 and 3 were not party to the said MOU and therefore the said item 9 of Sch.IV of the PULP Act, 1971 is not attracted in case of Respondent Nos.1 and 3. In short, the Respondent Nos.1 and 3 have challenged the maintainability of the Complaint on following two grounds:-

(a) Absence of employer-employee relationship between the members of the Complainant Union and the Respondent Nos.1 and 3.

(b) The Respondent Nos.1 and 3 were not party to the MOU dated 11.06.2019.

**06.** It is contended by the Respondent Nos.1 and 3 that this preliminary objection raised by them be decided as a preliminary issue. In this regard, they have relied on the observations of Hon'ble Bombay High Court in the judgment- **Hydroflex (India) v/s. A.D. Shelar- 2005 I CLR page No.48.**

**07.** The Complainant Union has filed its Reply (Exhibit U-10) and has strongly opposed the Application. It is contended that the present Application challenging the jurisdiction of the Court to entertain the Complaint against the Respondent Nos.1 and 3 is not bonafide. It is the Municipal Corporation of Gr. Mumbai, which is established and is maintaining the BEST Undertaking and its affairs. At para No.6 of the Written Statement of the Respondent Nos.1 and 3, it has been stated that there is a separate administrative functioning between the MCGM and the BEST Undertaking and at para No.9 of the affidavit-in-reply, the Respondent Nos.2,4 and 5 say that it was envisaged that in order to come out of the situation, it is necessary to have a concrete action plan for overall improvement and accordingly, the MCGM recommended an action plan wherein short term, medium term measures have been suggested to overcome this crisis. In the MOU dated 11.06.2019, it was specifically stated in Clause No.1 that the terms agreed herein in the Memorandum of Understanding

are agreed to by the MCGM and the MC has issued a letter to the BEST to that effect in support of this Memorandum of Understanding. It is contended that the MOU itself speak that the Respondent Corporation has to maintain 3337 self-owned buses and to provide required finance for the same and for meeting the day-to-day financial needs of the BEST Undertaking. Annexures to the said MOU are the two letters exchanged between the General Manager of the BEST Undertaking and the Municipal Commissioner. It is contended that in para No.3 of the letter of the Municipal Commissioner, it has been narrated that- *'The terms mentioned therein and agreed to in the said MOU are acceptable to MCGM and General Manager, BEST Undertaking is directed to sign the said MOU with the BEST Workers' Union.'* It is contended that in the light of this situation, the Respondent Nos.1 and 3 cannot say that they are not necessary party to the present proceeding. All the policy decisions with regard to the functioning of the BEST Undertaking including the service conditions of the employees on the roll of

the BEST Undertaking are taken by the BEST Committee which is Municipal Authority under section 4 of MMC Act, 1888 and a statutory body constituted under section 50 of the MMC Act, 1888. Some of the members of the BEST Committee are elected Corporators and some are appointed by the Municipal Authorities. All the decisions taken by the BEST Committee are required to be approved by the General Body of the MCGM. The General Manager of the BEST undertaking is also a Municipal Authority under section 4 of the MMC Act, 1888. Thus, under no stretch of imagination, it can be said that there is separate administrative functioning between MCGM and the BEST Undertaking and there is no employer-employee relationship between the MCGM and the employees on the rolls of the BEST Undertaking. It is contended that the Application is based on misconceived facts and deserves to be rejected.

**08.** In view of the rival submissions of the parties, following points arise for my determination and I have recorded my findings for the reasons given

below:-

<b>POINTS</b>	<b>FINDINGS</b>
1) Whether the Complaint deserves to be dismissed against the Respondent Nos.1 and 3 for the reason misjoinder of necessary parties?	In the negative.
2) What Order?	As per final Order.

**REASONS**

**As to Point Nos.1 & 2:-**

**09.** Heard Ld. Advocate Shri G.R. Naik for the Respondent Nos.1 and 3. Also heard Ld. Advocate Shri P.S. Shetty for the Complainant Union and Ld. Advocate Shri R.N. Shah for the Respondent Nos.2,4 and 5.

**10.** In this Application, the Respondent Nos.1 and 3 have raised preliminary objection about jurisdiction of the Court to entertain the present Complaint against the Respondent Nos.1 and 3. It is contended that there is absolutely no employer-employee relationship between the Respondent No.1 and the members of the Complainant Union and that the Respondent No.1 was not party to the MOU dated 11.06.2019. In short, it is the contention of the Respondent Nos.1 and 3 that they have nothing to do with the present Complaint or

the matter in issue and hence the Complaint be dismissed against them.

**11.** Ld. Advocate Shri P.S. Shetty for the Complainant brought my attention to the Order passed by the Hon'ble Member, Industrial Court, Mumbai in Complaint (ULP)No. 387 of 2017 and also the judgment passed by the Hon'ble Bombay High Court in Writ Petition No.3652 of 2018. It is pertinent to note that Complaint (ULP)No. 387 of 2017 was filed by the present Complainant against the Respondent No.1-The Municipal Corporation of Gr. Mumbai; Respondent No.2-The Municipal Commissioner; Respondent No.3-The BEST Undertaking; Respondent No.4-The General Manager of BEST Undertaking and Respondent No.5-The Chairman, BEST Committee of Municipal Corporation of Gr. Mumbai. In this Complaint, similar objection was raised by Respondent Nos.1 and 2 i.e. The Municipal Corporation of Gr. Mumbai and the Municipal Commissioner of the MCGM. The Hon'ble Member, Industrial Court, Mumbai observed that-  
'...admittedly the BEST Undertaking is looking after the

*affairs of transport and electricity and the budget of BEST Undertaking is also independent. However, it cannot be said that the BEST Undertaking is no way concerned with the Respondent Corporation. Apart from employer-employee relationship, there must be some nexus between the BEST Undertaking and Municipal Corporation of Gr. Mumbai.'* The Hon'ble Member of the Industrial Court, Mumbai further observed that- *'It appears that Respondent No.1 and 2 are necessary party to the present Complaint and if they continue to be a party in the present proceeding, no any prejudice will be caused to the Respondents.'* Accordingly, the application filed by the MCGM and MC for dismissal of the Complaint for misjoinder of necessary parties was rejected. This Order was challenged by the MCGM and also the Municipal Commissioner of MCGM by filing Writ Petition No.3652 of 2018.

**12.**      I have carefully perused the copy of the judgment of Hon'ble Bombay High Court in the aforesaid Writ Petition No.3652 of 2018 dated

0907.2018. In the judgment, the Hon'ble Bombay High Court has elaborately discussed Section 3(mm) as well Section 3(nn) of the MMC Act. Section 3(mm) discuss about the status of Brihanmumbai Electric Supply and Transport Undertaking and Section 3(nn) speaks about the status and meaning of General Manager. From the definition of Section 3(mm) of the MMC Act, it is clear the BEST Undertaking is a collection of undertakings acquired, organised, constructed, maintained, extended, managed or conducted by MCGM. The Hon'ble Bombay High Court has observed that- '*... therefore the BEST Undertaking does not have any existence separate from MCGM generally and as a matter of law. Chapter XVI-A of the MMC Act deals with operations of the undertaking and construction and maintenance of its works. Section 460A provides for management of Undertaking by its General Manager. Under Section 460A, though the General Manager manages the Undertaking and performs all acts necessary for the economical and efficient maintenance, operation, administration and*

*development of the Undertaking, such management is subject to the superintendence of the Brihan Mumbai Electric Supply and Transport Committee established by the Corporation and of the Corporation itself.' It is further observed that- '..the General Manager performs all these powers with the sanction of the BEST Committee. The section provides for disposal of proposals of the General Manager when sanction or approval of the BEST Committee of the corporation is required under the provisions of Chapter XVI-A. Under Section 460A, every contract made by the Undertaking is on behalf of MCGM. No contract for any purpose which, in accordance with the provisions of Chapter XVI-A, the General Manager may not carry out without the approval or sanction of some other municipal authority, can be made by him until and unless such approval or sanction has first been duly given. So also, no contract, which involves expenditure exceeding fifty lakh rupees, can be made by the General Manager unless the same is previously approved by the BEST committee. Every property acquired by the General*

*Manager for the purposes of the Undertaking is on behalf of the Municipal Corporation and is leased, sold or otherwise, conveyed by the General Manager either with a report to the BEST committee or with the sanction of the BEST committee or of the corporation depending on the value of the property. Even as regards officers and servants of the Undertaking, the General Manager under law (Section 460R) is bound to prepare and bring before the BEST committee a schedule setting forth the designations and grades of the officers and servants and it is the BEST committee which sanctions such schedule either as it stands or subject to such modifications as it may deem expedient. Section 460R has a proviso that no new permanent post of which aggregate emoluments exceed ten thousand rupees per mensem can be created without the sanction of the corporation and no variation in the scales of pay of any specified classes or grades of officers or servants can be made without approval of the corporation, if the corporation by resolution directs that such pay scales shall not be*

*varied without its approval, so long as such resolution is in force. The service regulations of the employees are framed by the BEST Committee from time to time and no regulation made by the BEST committee in this behalf has any force or validity unless and until it has been confirmed by the corporation. Even as far as leave of absence to be granted to the employees of the Undertaking is concerned, the appointing authority, namely, the General Manager, has authority to grant leave of absence only upto a certain period. Any leave of absence exceeding such period can only be granted by the BEST Committee. The administration reports and statements of account prepared by the General Manager of the Undertaking are required to be submitted to the BEST committee and to be reviewed by the BEST committee. All these provisions clearly go to show that there is an all-pervasive and direct control of the Municipal Corporation over the affairs of the BEST Undertaking.'* In para No.6 of the judgment, the Hon'ble Bombay High Court observed that - '*....it cannot be said by any stretch of imagination that the*

*Petitioners herein are not necessary parties to the complaint. If a relief is directly claimed against them, they are clearly the most necessary parties to be impleaded.'* The observations of Hon'ble Bombay High court are perfectly applicable to the present set of facts.

**13.** In the present Complaint, the Respondent Nos.1 and 3 have come with the contention that there is absence of employer-employee relationship and for this reason the Complaint is not maintainable against them. Every time this criteria cannot be applied. The employees of the BEST Undertaking may not be the direct employees of the MCGM, but one thing is very important that the MCGM is having superintendence over the BEST Undertaking.

**14.** The another contention of the Respondent Nos.1 and 3 is that they not party to the MOU dated 11.06.2019. On this background, if the MOU is perused, the first clause of the MOU speaks that- *'The terms agreed herein in the Memorandum of Understanding are agreed to by the MCGM and the MC has issued a*

*letter to the BEST to that effect in support of this Memorandum of Understanding annexed hereto and marked as Annexure 'A.'* This goes to show that the BEST Undertaking has entered into a MOU with the Complainant Union after the approval from the MCGM. Thus the MCGM has played an important role in the execution of the MOU. The letter of Municipal Commissioner annexed to the MOU dated 11.06.2019 further speaks that the MOU is being executed between the General Manager, BEST Undertaking of the Municipal Corporation of Greater Mumbai and the General Secretary, BEST Workers' Union in order to improve the quality and efficiency of the public passenger transport service provided by the BEST Undertaking. This letter of the Municipal Commissioner also supports the contention of the Complainant Union and it is very much clear that the MCGM has played an important role in the execution of the MOU between the BEST Undertaking and the Complainant Union. Hence, I conclude with the finding that it cannot be said that the Respondent Nos.1 and 3 are misjoinder to

the present Complaint. In my opinion, their presence and their impleadment is very much essential for the proper disposal of the present Complaint. The Complainant has prayed the reliefs not only against the BEST Undertaking, its General Manager and Chairman, but also against the Respondent Nos.1 and 3. there is no substance in the contention of the Respondent Nos.1 and 3. Hence, the Point No.1 is answered in the Negative and I pass the following Order:-

**ORDER**

*The Application stands rejected.*

*Date:-03.10.2020.*

*(R.N. AMBATKAR)  
Member,  
Industrial Court, Mumbai.*

*Skn/-05.10.*