

BEFORE SHRI. R. N. AMBATKAR, MEMBER,
IN THE INDUSTRIAL COURT AT MUMBAI
COMPLAINT (ULP) NO. 136 OF 2020

The BEST Workers' Union,
A Trade Union registered under
The Trade Unions Act, 1926,
Having its Office at : 42, Kennedy Bridge,
Mumbai : 400 004. ... Complainant

VERSUS

1. The Municipal Corporation of
Greater 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 Corporation of
Greater Mumbai, Municipal Head
Office, Mahapalika Marg, Fort,
Mumbai : 400 001.
4. Dr. Surendrakumar Bagde,
And/or his successors in Office,
The General Manager,
BEST Undertaking, BEST Bhavan,
BEST Marg, Colaba, Mumbai : 400 001.
5. The Chairman – BEST Committee of
Municipal Corporation of Greater
Mumbai, BEST Bhawan, BEST Marg,
Colaba, Mumbai : 400 001. ... Respondents

CNR No.MHIC01-000355-2020 :2: Complaint (ULP) No.136-2020(O)

ORDER BELOW AN APPLICATION FOR INTERIM RELIEF U/S.30
(2) OF THE MRTU & PULP ACT, 1971

Appearances :-

Learned Advocate Mr.P.S.Shetty for the Complainant.
Learned Advocate Mr.G.R.Naik for Respondent No..1 & 3.
Learned Advocate Mr.R.N.Shah for Respondent No..2,4 & 5.

:- ORDER BELOW EXH.U-2 :-

(Passed on 10th December 2020)

01) The Complainant, the Best Workers Union has filed this Complaint under Item No. 9, Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (in short, *the MRTU & PULP Act, 1971*). This separate Application is filed for grant of interim relief.

02) *The facts essential to dispose of the present Application, emerging from the Complaint and the present Application, may be summarized as follows :-*

The Complainant claims to be Representative and Approved Union under the provisions of Maharashtra Industrial Relations Act, 1946, for the employees employed in the Transport Undertaking and Common Administrative Departments of the Respondent No.2. The provisions of Maharashtra Industrial Relations Act, 1946 continues to apply to the Respondent No.2 – Undertaking and the status of the Complainant Union is still as Representative and Approved Union. According to the Complainant, the Respondent No.1 is a statutory Corporation

under the provisions of Mumbai Municipal Corporation Act, 1888. The Respondent No.2 is part and parcel of the Respondent No.1 – Corporation for providing transportation and electricity services to the public. The service conditions of the employees employed in the Transport Undertaking and Common Administrative Departments of the Respondent No.2 – Undertaking are governed by various agreements.

03) It is contended that,, the Respondents have started reducing the bus fleet owned by them and was willing to procure the buses on wet lease basis. Being aggrieved, the Complainant filed Complaint (ULP) Nos. 26, 80 and 158 in the year 2018 praying for restraining the Respondents from hiring buses on wet lease basis. During the pendency of said Complaints, negotiations took place and agreement was reached and it was reduced into writing in the form of memorandum of understanding (MOU). It was signed on 11/06/2019 and accordingly, came into existence. By the said MOU, the Respondents agreed to maintain bus fleet of 3337 self owned buses and Respondent No.1 – Corporation agreed to release the funds to purchase the buses in place of scrapped buses. It was also agreed that,, the Respondents may increase the bus fleet upto ten thousand with CNG / diesel / electric buses and such buses beyond 3337 self owned buses will be acquired on wet lease basis. As agreed between the parties, after execution of the MOU, the Complainant Union withdrawn their aforesaid Complaints. It is contended that,, from the MOU, it

is apparently clear that,, the Respondents shall maintain self owned buses fleet consisting of 3337 buses. On 11/06/2019, the Respondent Undertaking had its 3337 self owned buses. After execution of the MOU, some of the buses as per rules and the provisions of Motor Vehicle Act were scrapped and the number of self owned buses were reduced to 2819. The Respondents hired 462 buses on wet lease basis. It is contended that,, the Respondent No.2 – Undertaking have its own bus scrapping policy under the Motor Vehicle Act, 1988 and on government directives issued from time to time. As per the said policy, the Respondent No.2 – Undertaking had scrapped number of buses previously and is intending to scrap the buses in future. The Complainant Union has submitted a chart showing the buses that, have been scrapped since 2015-2016.

04) At the beginning of the financial year of 2019-2020, the Respondent had a bus fleet of 3223 self owned buses. During the year 2019-2020, the Respondent added only 37 self owned buses, thus totaling the bus fleet of 3260 self owned buses. During the year 2019-2020, the Respondents scrapped 169 buses and the number of self owned buses was reduced to 3091. It shows that,, there was shortage of 246 buses. As per the policy during the financial year 2020-2021, the Respondents will scrap 896 buses and the number of self owned buses fleet shall be reduced to 2195 and thus, there will be a shortage of 1142 buses. As per the MOU dated 11/06/2019, the Respondents were

required to maintain the bus fleet of 3337 self owned buses. The Respondents have failed to do so and thus, have committed breach of the MOU. The MOU is an agreement between the parties.

05) It is contended that, the Respondents have increased the number of wet lease buses even after signing of the MOU. The Respondents are continuously taking steps to continue to increase wet lease buses. On 30/07/2020, the Respondents have issued e-tender inviting tender bids from interested parties from 31/07/2020 for operation of stage carriage services with drivers and conductors for public transport of six hundred single decker non-AC CNG buses on gross cost contract. Thus, acquiring buses on wet lease basis without maintaining the bus fleet of 3337 self owned buses is contrary to MOU dated 11/06/2019 and it will cause serious prejudice, injury, damages and loss to the Complainant Union as well as the employees of the Best Undertaking. If this happens, it will reduce the number of drivers as well as conductors from the services of BEST Undertaking. It is contended that, the Respondents are required to restrain from acquiring any bus on wet lease basis without maintaining the bus fleet of 3337 of self owned bases. The prima facie case and balance of convenience thus lies in favour of the Complainant Union. If the Respondents are allowed to work on tender notice dated 30/07/2020, published for hiring of buses on wet lease basis, the employees of the BEST Undertaking would suffer

irreparable loss as there is possibility of loosing their services. It is contended that, the Interim Relief in favour of the Complainant Union be granted.

06) The Respondent Nos. 2, 4 & 5 have filed their affidavit in reply opposing the Interim Relief Application (Exh.C-1). It is contended that, the Interim Relief Application is bad in law, misconceived, not maintainable and without any substance. It is devoid of merits and ought to be rejected. It is contended that, the Complaint is bad for mis joinder of parties and the Respondent Nos.1, 3 and 5 are neither necessary nor relevant parties to the present proceeding. It is contended that, tender is issued for wet lease buses on 30/07/2020 whereas the Complaint is filed at the fag end of opening the tender and it shows that, the Complainant Union is having ulterior motive and malafide intention for filing this Complaint. It is contended that, considering the grievance of the Complainant Union, Item No.9 of Schedule IV of the MRTU & PULP Act, 1971 is not attracted. The Complainant is seeking blanket relief of injunction against the Respondents and hence, the same is not tenable.

07) It is further contended that, the BEST Undertaking is going through severe financial crisis due to losses in the Transport branch of the Undertaking. There is continuous deficit as there is a mismatch in the revenue and expenditure of the Undertaking. In order to come out of this situation, it is necessary to have a

concrete action plan for overall improvement. Accordingly, the MCGM recommended an action plan and necessary measures have taken. Commencing wet lease buses on contract basis is one of the important measures and accordingly, the BEST Undertaking prepared a proposal of hiring of single decker six hundred non-AC CNG buses on wet lease basis. By doing this, the Respondent Undertaking is not violating any of the conditions of MOU dated 11/06/2019.

08) It is contended that, the BEST Undertaking has entered into another MOU dated 05/09/2019 with BJP Kamgar Sangh for the employees employed in the Transport Industry and Common Administrative Departments for revision and pay scale and allowances. Due to this, there was hike in salary for the employees. This has created additional burden on the BEST Undertaking. The Undertaking is in financial crunch and to overcome from the situation, it is taking immediate steps including introduction of wet lease buses. The Respondent Undertaking agree to maintain self owned bus fleet of 3337 as per the MOU dated 11/06/2019. The present financial position of the Undertaking does not enable it to make any capital investment for procuring self owned buses. The growing demand of the commuters is also to be met and hence, hiring of buses on contract basis is most suited option for the Undertaking. It is further contended that, the outbreak of COVID-19 pandemic has also affected the financial condition of the BEST Undertaking. The

Respondent No.2 has further contended how the introduction of the wet lease buses in the bus fleet of the Respondent Undertaking is helping to improve its services and financial condition. It is contended that, the Complainant Union never agrees to implement any economic / efficient measures agreed upon in various agreements and the Union always try to create hindrances in day to day functioning of the Undertaking.

09) It is further contended that, the MOU dated 11/06/2019, makes it clear that, there shall be no retrenchment and other service conditions of the existing employees shall remain unaffected. The Undertaking has denied that, scrapping of buses shall affect the employees and their service conditions. It is contended that, the prima facie case and balance of convenience are not lying in favour of the Complainant Union and no irreparable loss would be caused if the Application rejected. It is further contended that, if the Application is allowed, then it will certainly affect the functioning of the BEST Undertaking and its administration.

10) The Respondent Nos. 1 and 3 have filed their written statement and reply to the present application at Exh.CA-1. According to them complaint is false, baseless, mischievous and deserves to be dismissed. It is barred by limitation and only on this ground the complaint is required to be rejected. According to Respondent Nos. 1 and 3 there is delay for about more than one

year and three months which cannot be entertained. Further it is contended that, the Complainant Union has no locus standi to file complaint as there is no employer-employee relationship between the alleged members of Complainant Union and Respondent Nos. 1 and 3. For this reason also the complaint is not maintainable. The employees of the BEST Undertaking are directly employed by the Undertaking without any interference of the Respondent No. 1 and 3 and thus there is no nexus of whatsoever nature between the members of the Complainant Union and Respondent No. 1 and 3. The Respondent No. 1 is having separate administrative functioning. It is not having direct control over the employees of the BEST Undertaking. The Municipal Commissioner is made party in his personal capacity and it amounts to misjoinder of party. The Respondent No. 1 is not necessary party to the present proceeding.

11) It is further contended by these Respondents that,, it is the case of Complainant Union that, the union has signed the MOU with Respondent BEST Undertaking and for this reason Item 9 of Schedule IV of the MRTU & PULP Act is not attracted and complaint against Respondent Nos. 1 and 3 is not maintainable. All other contentions of Complainant Union have been denied by these Respondents and it is contended that, for the reasons mentioned in the written statement/reply to the interim relief application the complaint as well as application, deserves to be rejected.

12) After going through the rival submissions of the parties, following points arise for my determination and I have recorded my findings for the reasons given below :-

<u>Sr.No</u>	<u>POINTS</u>	<u>FINDINGS</u>
01)	Whether there exists prima facie case in favour of Complainant Union ?	In the Affirmative
02)	Whether balance of convenience lies in favour of Complainant Union?	In the Negative
03)	Whether Complainant Union will suffer irreparable loss if the interim relief is not granted?	In the Negative
04)	What order?	As per final order

:- REASONS :-

13) It is an admitted fact that, the Complainant Union is representative and approved union under the provisions of M.I.R. Act, 1946 for the employees employed in the transport industry and common administrative departments of the Respondent No. 2 Undertaking. Admittedly on 26-7-2019 the Government of Maharashtra has issued a notification under M.I.R. Act, 1946 informing that, the provisions of MIR Act, 1946 ceased to be applied to the industry undertaken by Bombay Electric Supply and Transport Undertaking engaged in the conduct and maintenance of public passenger transport service. Admittedly Complainant Union had filed Complaint (ULP) Nos. 26, 80 and

158 in the year 2018 which were withdrawn by union after execution of the memorandum of Undertaking dated 11-6-2019. Thus, the execution of the said memorandum is not disputed.

AS TO POINT NO. 1 :-

14) Heard Learned Advocate Shri.P.S.Shetty for the Complainant Union. Learned Advocate submits that, the Respondent Undertaking (BEST Undertaking) and consequently the Respondent No. 1, the Municipal Commissioner of Greater Mumbai have engaged in unfair labour practices under Item 9 of Schedule IV of MRTU & PULP Act, 1971 and for this reason the present Complaint is filed for safeguarding the interest of employees of the BEST Undertaking. He submits that, the Respondent No. 2 Undertaking has started reducing buses from it's fleet and is willing to procure the buses on wet lease basis i.e. on contract basis. This policy of the Undertaking was seriously affecting the service conditions of the employees and hence Complaint (ULP) Nos. 26, 80 and 158 of 2018 were filed with a prayer for restrain the Respondents from hiring the buses on wet lease basis. During the pendency of complaint negotiations had taken place and it resulted into execution of memorandum of understanding on 11-6-2019. By the said MOU the Respondents had agreed to maintain a bus fleet of 3337 self owned buses and the Respondent No. 1 corporation assured that, it shall release the funds to purchase new buses that, will be scrapped out of the bus

fleet of 3337 buses. Learned Advocate submits that, the assurance was given by the Respondent Nos. 1 and 2 and concerned authorities that, the fleet of self owned basis of 3337 in number shall be continuously maintained by the BEST Undertaking. The Complainant Union agreed and accordingly signed MOU on 11-6-2019. He submits that, it was for the Respondent Undertaking to request to the Respondent No. 1 for funds to purchase new buses in the event of scrapping of old buses. The Respondent Undertaking as per the scrapping policy based on Motor Vehicles Act, 1988 has scrapped out some buses in the year 2019 onwards but has not requested the MCGM for providing funds to purchase new buses in order to maintain a fleet of 3337 self owned buses. After scrapping of old buses in the year 2019 number was reduced to 2819. In the year 2019-2020 the Respondent Undertaking scrapped 169 buses and the number of self owned buses was reduced to 3091. This also happened in the beginning of financial year 2020-2021. As per the policy, during the financial year 2020-2021 Respondents will have to scrap 896 buses and the number of self owned buses shall be reduced to 2195. Thus, it is apparently clear that, the Respondent Nos. 1 and 2 are acting in contravention to the terms of MOU dated 11-06-2019. Learned Advocate submits that, it was bounden duty of the Respondents to maintain fleet of 3337 self owned buses. On the other hand the Respondent Undertaking with the consent of Respondent No. 1 Corporation is inviting tenders for wet lease

buses. The Respondents have issued e-tender on 30-7-2020 and has invited tender bids from interested parties. The e-tender speaks that, the Respondents are intending to introduce 600 single decker non A.C. CNG buses on wet lease basis. The Complainant Union has apprehension that, if those buses shall be introduced along with their drivers and conductors, it will certainly reduce number of drivers and conductors and mechanics who are on the muster roll of BEST Undertaking. By not maintaining 3337 bus fleet of self owned buses as agreed in MOU, Respondents have engaged in unfair labour practices under Item 9 of Schedule IV of MRTU & PULP Act, 1971. There is prima facie case and balance of convenience in favour of Complainant Union. Learned Advocate submits that, if the work order as per tender notice dated 30-7-2020 is issued for hiring buses on wet lease basis, the employees of the BEST Undertaking would suffer irreparable loss and hence the interim relief of the Complainant Union is required to be granted. He submits that, prima facie case and balance of convenience is in favour of the Complainant Union.

15) Learned Advocate Shri.R.N.Shah for Respondent Nos. 2, 4 and 5 submits that, the Complaint and the present Application are based on misconceived facts and are deserved to be dismissed and rejected. He submits that, Complainant Union in para no. 2 of the complaint has specifically stated that, the Respondents have engaged in and are continuously engaging in

unfair labour practices with effect from 12-6-2019. The complaint is filed on 21-9-2020. This itself goes to show that, there is inordinate delay of more than one year in filing the complaint. The complaint was required to be filed within 90 days from the date of cause of action. Separate application for condoning delay mentioning acceptable reasons is not filed on record and hence the complaint is required to be dismissed on the ground of limitation.

16) Learned Advocate further submits that, tender for introduction of buses on wet lease basis was issued on 30-6-2020 and the complaint is filed at the fag end of opening of the tender. This shows that, there is ulterior motive and malafide intention. By this complaint the Complainant Union desires to disrupt and cause inconvenience in day-to-day affairs of the management of the Undertaking. The Complainant Union is seeking blanket relief of injunction and it should not be allowed. Learned Advocate submits that, the Undertaking is going through severe financial crisis due to continuous losses in the Transport branch of the Undertaking. There is continuous deficit as there is a mismatch in the revenue and expenditure of the Undertaking. This has constrained the Respondent Undertaking to introduce buses on wet lease basis. The need of the growing population of city of Mumbai is required to be satisfied and if immediate steps are not taken, the people at large would sustain inconvenience. Learned Advocate submits that, after implementation of earlier tenders of

wet lease basis, the said proposal of hiring of single decker CNG buses on wet lease basis is issued as a continuing process and as such there is no violation of MOU dated 11-6-2020. He submits that, hiring of wet lease buses and maintaining fleet are both independent of each other and the Undertaking is fully committed to the MOU. Learned Advocate further submits that, in the MOU the BEST Undertaking has agreed to maintain a bus fleet of 3337 self owned buses. It was also agreed that, MCGM shall release the funds for purchasing the buses that, will be scrapped out of the fleet of 3337 buses that, shall be maintained by BEST. This clause does not speak a particular period / time when the BEST Undertaking was required to maintain 3337 self owned buses and when MCGM shall release the funds to purchase buses that, will be scrapped out of a bus fleet of 3337 buses. The Complainant Union cannot take undue advantage of clause 5 of the MOU. As there is no particular period mentioned in the MOU for maintaining the bus fleet of 3337 buses, the action on the part of the Undertaking to introduce wet lease buses cannot be questioned by the complainant union.

17) Learned Advocate Shri. R.N. Shah further submits that, even if the wet lease buses are introduced there shall be no retrenchment and other service conditions of existing employees shall remain same. The contention of Complainant Union as to reduction of number of employees in the categories of driver, conductors, mechanic etc. had no substance. The interim relief

application is thoroughly based on misconceived facts. Apparently there is no prima facie case and balance of convenience in favour of the complainant union. If the Application is rejected, no prejudice will be caused to the employees of BEST Undertaking. On the contrary, if the application is allowed, the entire procedure of introducing 600 wet lease buses would come to stand still and it will create adverse impact on the transportation of public. Learned Advocate submits that, the Application is devoid of merits which is required to be rejected.

18) Learned Advocate Shri.G.R.Naik for Respondent Nos. 1 and 3 has supported the argument advanced by Learned Advocate for the Respondent Undertaking. In addition, he submits that, the MCGM has nothing to do with the present application. The employees of the BEST Undertaking have their separate service conditions. These employees cannot be said to be employees of MCGM and hence in absence of employer-employee relationship, the complaint is not maintainable against the Respondent Nos. 1 and 2. Learned Advocate further submits that, the Respondent Nos. 1 and 3 are not necessary parties to the present proceeding and hence their names are required to be deleted from the array of Respondents. He submits that, the complaint is filed with ulterior motive. It is one of the steps taken by the Complainant Union to interfere in day-to-day affairs of the

Respondents and this action on the part of the Complainant Union should not be entertained. He submits that, the Application deserves to be rejected.

19) At the outset, it is required to be mentioned that, the Respondent Nos. 1 and 3 have filed separate Application (Exh.CA-20 for deciding the preliminary objection about jurisdiction of the court to entertain the present Complaint. It was the contention of the Respondent No.. 1 and 3 that, the Complaint is required to be dismissed against Respondent Nos. 1 and 3 for the reason, mis joinder of parties. that, considering the judgment of Hon'ble Bombay High Court in Municipal Corporation of Greater Mumbai & Anr. Vs. BEST Workers' Union and Ors., (Writ Petition No.3652 of 2018 ; decided on 9-7-2018), the application has been rejected by passing detailed order dated 03-10-2020. It has been held that, the presence of Respondent Nos.1 and 3 and their impleadment is very much essential for proper disposal of the complaint as well as application.

20) In the beginning, Learned Advocate Shri.R.N.Shah for Respondent No. 2 Undertaking has submitted that, considering the averment of Complainant in para no. 2 of the Complaint, it cannot be said that, the complaint is filed within prescribed time. He pointed out that, the Complainant Union in this paragraph has stated that, the Respondents have engaged in and are engaging in unfair labour practices with effect from 12-6-2019. The Complaint

is filed on 21-09-2020. This itself goes to show that, there is inordinate delay of more than one year. He brought my attention to Regulation 100 of Industrial Court Regulations, 1975 and also provisions of Section 28 of the MRTU & PULP Act. Ld. Advocate has relied on the observations of the Hon'ble Bombay High Court in the judgment in Pune District Central Co-operative Bank Ltd.Vs. Hiralal Ramchandra Gaikwad [MANU/MH/0434/1995]. The Hon'ble Bombay High Court has observed that, “if the respondent had a good cause on merits, he ought to have moved court within reasonable time. Condoning delay of this nature would only encourage such improbable stories being put forward. There was no sufficient reason for condoning delay of more than four years in presentation of the complaint and hence Industrial Court ought to have exercised its powers under Section 44 of the Act and interfere with order of the Labour Court.” From the observations of Hon'ble Bombay High Court it is apparently clear that, the complaint under the MRTU & PULP Act, 1971 is required to be filed within prescribed time i.e. within 90 days from the date of cause of action.

21) Shri.P.S.Shetty has opposed the submission of the Learned Advocate for Respondent Undertaking and he submits that, the actual cause of action arose on the date of issuance of e-tender by the Undertaking. The e-tender was issued for the introduction of wet lease buses on 31-7-2020. The execution of the memorandum of Undertaking dated 11-6-2019 cannot be the

cause of action. He submits that, the complaint is filed within prescribed time and is within limitation.

22) Regulation 101 of the Industrial Court Regulations 1975 speaks that, if a complaint under Section 28(1) covers any unfair labour practices which occurred more than 90 days before the complaint was filed, the complainant shall file along with the complaint a separate application for condonation of delay. According to Section 28 of the MRTU & PULP Act, the complaint alleging unfair labour practices is to be filed within 90 days of the occurrence of such unfair labour practices. In the present case in para 2 of the complaint, though the Complainant Union has mentioned that, Respondents have engaged in and are continuing to engage in unfair labour practices with effect from 12-6-2019 it appears that, this date is improperly mentioned. The grievance of the Complainant Union is that, the Respondents are not following the terms and conditions of the MOU dated 11-6-2019. The Respondent Undertaking is not maintaining a fleet of 3337 of self owned buses and is intending to introduce wet lease basis. Accordingly, on 31-7-2020 e-tender was issued by the respondent inviting tender bids from interested parties. From e-tender it appears that, the respondent wants to introduce 600 single decker non A.C. CNG buses on gross cost contract. Thus, it is apparently clear that, this issuance of e-tender has given cause to the Complainant Union to approach this Court. The Complainant Union is aggrieved by the action of the Respondents inviting

tender bids. I am of opinion that, the actual cause of action to the present complaint accrued on 31-7-2020. The complaint is filed on 21-9-2020 i.e. within the prescribed time of 90 days as enumerated in Section 28(1) of the MRTU & PULP Act, 1971. Thus, it cannot be said that, there is delay in filing the Complaint.

23) The grievance of Complainant Union is that, the Respondents have specifically agreed to maintain the bus fleet of 3337 self owned buses and buses beyond 3337 buses may be acquired on wet lease basis. It is not disputed that, on 11-6-2019 the Complainant Union i.e. the representative and approved union for the BEST Undertaking and the Undertaking have executed memorandum of understanding. The MOU was resulted due to filing of the complaints by the union bearing nos. 26, 80, 158 of 2018. After execution of the MOU dated 11-6-2019 the complainant withdrawn the complaints as it was assured by the Respondents that, the Undertaking shall maintain continuously a bus fleet of 3337 of self owned buses.

24) I have carefully gone through the memorandum of understanding dated 11-6-2019. It was executed with the intention to improve quality and efficiency of the public transport service provided by the BEST Undertaking and for increasing the bus fleet by acquiring the bus on wet lease basis. By this MOU the MCGM has agreed to release funds on lumpsum basis to the BEST Undertaking for utilizing these funds for improving day-to-

day financial needs. It was agreed by MCGM to take care of monthly working capital deposit of the BEST Undertaking. Clause 5 & 6 of the MOU are of much importance. Those are as follows :-

“Clause No.05 :- It is agreed that, the BEST shall maintain a bus fleet of 3337 self owned buses. It is further agreed that, the MCGM shall release the funds to purchase the buses that, will be scrapped out of the bus fleet of 3337 buses that, shall be maintained by the BEST.”

“Clause No. 06 :- It is agreed to by the parties to increase the bus fleet up to 10,000 with CNG/Diesel/ Electric buses and remaining buses i.e. beyond 3337 buses will be acquired on wet lease basis.”

25) By this MOU, the Complainant Union agreed to withdraw its complaint bearing nos. 26, 80, 158 of 2018 and also Revision Application No. 04/2018 with a liberty to file fresh and separate complaints for the issues involved therein except for issue of hiring of buses on wet lease basis and allow BEST to immediately procure 450 non-electric buses for which contract work orders have already been issued.

26) From the terms and conditions of the MOU it is apparently clear that, negotiations had taken place between the Complainant Union and the Respondent No. 2 Undertaking. By this MOU it was agreed by the Respondents that, Undertaking shall maintain a bus fleet of 3337 of self owned buses. The

Respondents were at liberty to introduce wet lease buses on contract basis after maintaining the bus fleet of 3337 buses. It is the contention of Complainant Union that, on 11-6-2019 i.e. on the date of execution of MOU, the Undertaking had its 3337 self owned buses. After signing of MOU, as per the policy, the Respondent Undertaking scrapped its old buses and the number of self owned buses was reduced to 2819. The Respondent Undertaking hired 462 buses on wet lease basis. According to the Complainant Union at the beginning of financial year 2019-2020 Respondents had a bus fleet of 3223 self owned buses. Respondent added 37 self owned buses and the number of self owned buses came to 3260. It is the contention of Complainant Union that, during the year 2019-2020 as per the policy of the Undertaking, the respondent scrapped 169 buses and the number of self owned buses was reduced to 3091. It is contended that, in the financial year 2020-2021 Respondents, as per the policy, will scrap 896 buses and the number of self owned buses shall be reduced to 2195 and thus there will be shortage of 1142 buses. From the contention of Complainant Union it is apparently clear that,, the Respondents are not acting and following as per the terms and conditions of MOU dated 11-6-2019. As per the MOU the Respondent Undertaking is bound to maintain the bus fleet of 3337 buses continuously. In case of scrapping of old buses, the MCGM had agreed to release funds to purchase the buses that, will be scrapped out of bus fleet of 3337 buses. This contention

of Complainant Union has not been challenged by the Respondents and this goes to show that, they are admitting the contention of Complainant Union that, Respondents are not maintaining the agreed bus fleet of 3337 of self owned buses and on the contrary is inviting tender bids from interested parties for operation of stage carriage service with drivers and conductors. By the e-tender dated 31-07-2020 the Respondents have invited tender bids for the introduction of 600 single decker non A.C. CNG buses.

27) The complainant has produced the copy of the e-tender notice which clearly shows that, tender bids have been invited for the operation of stage carriage service (with drivers and conductors) for public transport of 600 single decker non A.C. CNG buses in the city of Mumbai. Prima facie it appears that, this e-tender has been issued in contravention to clause 5 of the MOU and without maintaining a bus fleet of 3337 self owned buses. The MOU has been signed by Shri. Suresh Bagde, I.A.S., the General Manager of the BEST Undertaking and he has signed this MOU after the approval from the Municipal Commissioner Shri Pravin Pardeshi, I.A.S. The letter for approval of MCGM was sent by the General Manager on 10-6-2019 and the Municipal Commissioner on the same day gave approval after going through the terms mentioned and agreed to in the MOU. Thus, it is apparently clear that, the Municipal Commissioner had gone through the terms of the MOU and extended the approval to the

General Manager who later on executed the MOU with the complainant union.

28) The Complainant Union has filed the chart of proposed scrapping of BEST owned buses (Annexure-B). From the chart it appears that, the Complainant Union has produced the figures of bus fleet of self owned buses from the year 2015-2016. The chart also represents the proposed number of scrapping of buses and the total number of self owned buses at the end of the year. According to Complainant Union, if the Respondents go on scrapping buses without purchasing self owned buses, at the end of year 2032-2033 the bus fleet of self owned buses would come to 250. If the Respondents continue with its policy of scrapping of buses, there is fear in the mind of the Complainant Union that, all its employees in future would lose their services.

29) From the contention of Complainant Union and documents produced on record including the MOU dated 11-6-2019, the copy of e-tender notice dated 31-7-2020, it appears that,, there is prima case in favour of the complainant union. When the respondent had started to increase the bus fleet by introducing wet lease buses, being aggrieved the Complainant Union had filed Complaint (ULP) Nos. 26, 80, 158/2018. Thereafter, the negotiations had taken place between the concerned parties and MOU was executed and the Complainant Union had withdrawn complaints.

30) It is the contention of the Respondents that, for improving quality and efficiency of the public passenger transport service and considering the ill financial condition of the Undertaking, buses on wet lease basis are introduced. The Complainant Union no doubt, has agreed for the introduction of buses on wet lease basis, but subject to the condition that, the respondent BEST Undertaking shall maintain the bus fleet of 3337 self owned buses.

31) Learned Advocate Shri. R.N. Shah for the Respondent Undertaking pointed out that, clause 5 of the MOU is vague. No time period is mentioned for maintaining of bus fleet of 3337 self owned buses and the MCGM has also not agreed that, it shall release the funds to purchase the buses within a prescribed time. No doubt, no time or a period is mentioned in clause 5 or in the MOU. Apart from this after scrapping of old buses as per the scrapping policy, the Respondent Undertaking was required to put a request before the MCGM for providing funds to purchase self owned buses for maintaining a fleet of 3337 buses. After execution of the MOU the Respondent Undertaking has scrapped its old buses but it has not approached to the MCGM for providing funds. Further this MOU has been signed by General Manager of the Undertaking who is I.A.S., Officer and that, the Municipal Commissioner of Respondent No. 1 has given approval after going through the terms of MOU. At the time of giving approval by the Respondent No. 2 and also at the time of signing the MOU by the

Respondent No. 4 who are the most superior Officers of the BEST Undertaking and MCGM were required to be specific about the terms and conditions of the MOU. Once it has been agreed that, the respondent BEST Undertaking shall maintain a bus fleet of 3337 self owned buses, now the BEST Undertaking cannot take 'U' turn. The Respondents are now '*estopped*' from challenging and disputing the terms and conditions of the MOU. As there exist prima facie case in favour of the complainant, I answer point no.1 in affirmative.

AS TO POINT NOS. 2 & 3 :-

32) The Item No.9 of Schedule IV speaks that, failure to implement award, settlement or agreement is one of the general unfair labour practices on the part of the employer. In the present case the MOU dated 11-06-2019 is nothing but the agreement executed between the Complainant Union and the Respondent Undertaking. The terms of agreement were approved by the Respondent No. 1. As the Respondent Undertaking is not maintaining bus fleet of 3337 self owned buses and issuing e-tender and trying to introduce 600 wet lease buses on contract basis, it amounts to failure to implement the agreement.

33) From the facts of this matter, it is apparently clear that, the Respondent No.2 – Undertaking is prima facie acting and has also acted in contravention to the terms of the MOU dated 11/06/2019. On one hand, the Respondent Undertaking has

agreed that, it shall maintain fleet of self owned buses of 3337. The number of self owned buses has been decreased due to scrapping the policy. No new buses have been introduced in order to maintain the strength of 3337 self owned buses. The Respondent Undertaking has not approached the Respondent No.1 – MCGM to provide the funds to purchase / introduce self owned new buses in place of buses that have been scrapped out. Besides, the Respondent Undertaking is continuing e-tender for the introduction of buses on wet lease basis. By this Application, the Complainant Union has prayed to restrain the Respondent Undertaking from issuing the work order through the contractors. At this stage, no doubt there is prima facie case in favour of the Complainant Union as the Respondents have violated the terms of MOU. If the prayer of the Complainant Union is considered, the question arise, who is going to suffer more and who would suffer greater hardship ? The strength of self owned buses has enormously decreased. To maintain the strength of 3337 self owned buses, the Respondent Undertaking is required to purchase / introduce more than one thousand buses. It will certainly bring a heavy financial burden on the BEST Undertaking and huge funds will have to be advanced by the MCGM to the Respondent Undertaking. Apparently, the Respondent Undertaking is running in acute financial crises. It is not having that much capacity to purchase more than one thousand buses. Moreover, if the prayer of the Complainant Union is considered, for the violation of the

terms of MOU, the Respondent Undertaking will not be in a position to introduce buses on wet lease basis. Here, the principle of 'balance of convenience' is required to be considered.

34) Granting of injunction is a matter of discretion. The balance of convenience and irreparable injury are triable issues and are required to be examined and positively found. In Cadila Health Care Ltd., V/s. Cadila Pharmaceuticals Ltd., [(2001) 5 SCC 73], it has been observed by the Hon'ble Supreme Court that, “while considering the question of granting an order of injunction one way or the other, evidently, the Court, apart from finding out a prima facie case, would consider the question in regard to the balance of convenience of the parties as also irreparable injury which might be suffered by the plaintiffs if the prayer for injunction is to be refused. The contention of the plaintiffs must be bona fide. The question sought to be tried must be a serious question and not only on a mere triable issue”.

35) In Hindusthan Lever Limited vs Godrej Soaps Limited [AIR 1996 Cal 367] it is observed that, “in considering whether to grant an interlocutory injunction, the right course for a Judge is to look at the whole case. He must have regard not only to the strength of the claimant but also to the strength, of the defence, and then decide what is best to be done. Sometimes, it is best to grant an injunction so as to maintain the status quo until the trial. At other times, it is best not to impose a restraint on the defendant, but leave

him free to go ahead". Thus, while considering the Application for Interim Relief, the Court must first be satisfied that, there is a serious question to be tried. Then, it should turn at once, to the balance of convenience. The principle of '*prima facie case*' and '*balance of convenience*' are important principles to be considered while considering the Application for Interim Relief. To provide the transportation services is the duty of the BEST Undertaking. No doubt, it has independent existence, but it is always under the supervision and control of the MCGM. Whenever the BEST Undertaking is going and has gone through the acute financial crises, the MCGM has come forward to provide funds to the BEST Undertaking. In the present case, the MOU has been executed by the General Manager of the BEST Undertaking after the approval of the terms by the Municipal Commissioner of MCGM. When the strength of self owned buses was reducing continuously, due to scrapping policy, it was for the BEST Undertaking to approach to the MCGM with a request to provide the funds. The Respondent Undertaking has failed to show that, it has approached the MCGM. Besides, one thing is very clear that, there is breach of terms of the MOU dated 11/06/2019 by the Respondents. Now, for improving quality and efficiency of the public passenger and also to satisfy the needs of the residents of city of Mumbai, the Respondent Undertaking wants to introduce buses on wet lease basis along with drivers and conductors. In this regard, e-tender has been issued inviting interested parties and it is learnt that, the

BEST Undertaking is in a position to continue work order i.e. to grant contract. If the MCGM is restrained from issuing work order as per e-tender dated 30/07/2020, the Respondent Undertaking will not be able to introduce new buses. In the result, the Undertaking will not be able to provide transport facility / services to the passengers who are in dire need of transportation. In my considered view, the principle of balance of convenience is required to be applied with great care and caution.

36) The question arise, who would suffer more inconvenience, if the Respondent Undertaking is restrained from issuing work orders? At present, the employees of the BEST Undertaking are not going to suffer any loss. Great inconvenience would be caused to the passengers who will not get sufficient buses for their travel in the city of Mumbai and resultantly, inconvenience would be caused to the BEST Undertaking. Hence, I conclude with the finding that, in the present case, even though the prima facie case exists, in favour of the Complainant Union, the balance of convenience lies in favour of the Respondent Undertaking.

37) In the present case, the interest of the passengers of the city of Mumbai is required to be considered. On one hand, the Respondent Undertaking is not maintaining the strength of 3337 self owned buses, as agreed in the MOU dated 11/06/2019 and on the other hand, it is issuing e-tenders for the introduction of

buses on wet lease basis i.e. on contract. As observed above, there is breach of the Clause No.5 of the MOU. The Clause No.7 of the MOU is also required to be considered and it reads as follows :-

“Clause No.7 :- It is agreed to by the BEST that there shall be no retrenchment and no stoppage / no curtailment / no suspension / no freezing of the service conditions of the existing employees”.

38) The Complainant Union has approached this Court with a grievance that, the Respondent Undertaking is issuing e-tender for the introduction of wet lease buses though it was agreed that, the Undertaking shall maintain the fleet of 3337 self owned buses. For the violation of Clause No.5 of the agreement, the Complainant Union has come before this Court. Again, on this background, it is required to be seen who would suffer irreparable loss, if the relief of injunction is granted. In my considered view, if the Respondent Undertaking is restrained from issuing work order and it is restrained from introducing buses on wet lease basis, the passengers of Mumbai who are in acute need of transportation services would suffer inconvenience and resultantly, the Respondent Undertaking would suffer irreparable loss, whose duty is to provide transportation services to the passengers. The Clause No.7 of the MOU speaks that, the Respondent Undertaking is not having any intention to retrench, stoppage, curtailment, suspension or freezing of service conditions of the existing

employees. Thus, if buses on wet lease basis are introduced by the Respondent Undertaking, the service conditions of the existing employees are not going to be affected. Further it is also not the contention of the union. There shall not be retrenchment of the employees of the BEST Undertaking. Thus, the future of the existing employees of the Respondent Undertaking is safe. It is fear in the mind of the Complainant Union that, if the Undertaking goes on scrapping of old buses without introducing new self owned buses, one day, there will be no self owned buses in the fleet of the Respondent Undertaking and the entire transportation services would be dependent on wet lease basis. In my opinion, the Complainant Union, at this stage, should not worry about the things which may occur in the future. At this stage, realistic and practical view is required to be taken not only by the Respondent Undertaking, but also by the Complainant Union. In the legal fight between the parties, citizens who are in need of transportation services should not suffer. For the violation of the term of the MOU by the Undertaking, legal directions may be given for maintaining the required strength of self owned buses.

39) It is apparently clear that, if the Application is allowed and pending hearing and final disposal of the Complaint, if the Respondents are directed not to issue any work order, as per e-tender notice dated 30/07/2020, published for hiring of buses on wet lease basis, certainly, the Respondent Undertaking would

suffer irreparable loss. Resultantly, the passengers of city of Mumbai would suffer greater hardship. Judicial note of the inconvenience and hardship of the commuters / passengers, is seriously required to be considered. If the Application is rejected, the Complainant Union has no immediate loss. There is no possibility of retrenchment or termination of services of the employees of the Respondent Undertaking due to introduction of buses on wet lease basis. Clause No.7 of the MOU has protected the interest of all the employees of the Respondent Undertaking.

40) In view of my above observation, I conclude with the findings that, the balance of convenience lies in favour of the Respondents. The Respondent Undertaking would suffer irreparable loss if the Application is allowed. On the other hand, no immediate irreparable loss or hardship would be caused to the Complainant Union if the Application is rejected. Hence, I answer Point Nos. 1 & 2 in the Negative and I pass the following order :-

-: O R D E R :-

- i) Application at Exh.U-2 stands rejected.

Mumbai
Dt:10-12-2020.

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