

BEFORE SHRI J.L. GANDHI, MEMBER,
INDUSTRIAL COURT, MUMBAI
Complaint (ULP)No.153 of 2021.
(MHICO1-000385-2021)

0-5

Transmodal Services Private Limited,
A to Z Indl.Estate, Ganpatrao Kadam Marg,
Lower parel, Delise Road,
Mumbai-400 013. ...Complainant.

Versus

1. Maharashtra Navnirman Kamgar Sena.
2. Shri Manoj Chavan, President,
Maharashtra Navnirman Kamgar Sena.
3. Shri Santosh Dhuri, Chairman,
Maharashtra Navnirman Kamgar Sena.
4. Shri Ketan Naik, Secretary,
Maharashtra Navnirman Kamgar Sena.

All at:- 3rd floor,A-Wing, Sairaj Dham
Co-op.Society,R.K. Vaidya Road,
Near Sindhudurg Hotel,
Dadar,Mumbai-400 028. ...Respondents.

Coram:- Shri Jeetendra L. Gandhi, Member.

Appearances:- Shri R.N. Shah,Ld. Counsel
for the Complainant.
Shri G.R. Naik, Ld. Counsel
for the Respondents.

O R D E R (Below Exhibit U-2)
(20.04.2022)

01. In the Complaint under items 1, 2 and 5 of Sch.III of the MRTU & PULP Act, 1971 ("**Act**" in short), the Complainant has moved this Application under section 30(2) of the Act seeking interim relief, to which the Respondents resisted.



02. The case of the Complainant is as under:-
The Complainant is in service industry and it is formed with an objective to provide trucking, pick-up and delivery related services at various locations. The concerned employees are working at the client's office address i.e. at Plot No.6A, RMSM Compound, Shyam Nagar, Opp. Majas Depot, Jogeshwari(E), Mumbai-400 060. Respondent No.1 claims to represent employees of the Complainant Company and Respondent Nos.2,3 and 4 are President, Chairman and General Secretary of the Respondent No.1 Union respectively and they are jointly and severally responsible for the unfair labour practices. Respondent No.1 is not a recognized union in the establishment of Complainant Company under the Act. It is contended that the service conditions of the employees are governed in accordance with law and they are paid more than minimum wages prescribed and at no point of time, any of the employee had raised the demand with regard to the service conditions. It is contended that the demands raised by the Respondents are totally

illegal, unjustified and cannot be acceded.

03. It is contended by the Complainant that the paramount duty during the ongoing Covid-19 pandemic was to provide pick-up and delivery of essential services for movement of pharma medicines and other essential shipments to various locations. During the pandemic, various companies have been devastated and are going through huge financial losses but the Complainant has maintained good economic work scenario. It is contended that the Respondent Union has resorted to illegal agitations and irrelevant demands to disturb the smooth functioning of the Company from time to time since 09.12.2020. It is contended that the TSPL/ Senior Manager-Operations Mr. Santosh Singh received letter dated 07.08.2020 stating that the Mumbai based TSPL Service Providers have joined the Respondent Union and he also received a call on 27.08.2020 from the Union office-bearers informing him that they need to have a meeting with the Management and if the management is not going to inform the Union the date of meeting in a day, then

they would come directly to the office and put their banners and hoardings. They further threatened that the Respondent Union would do some gate meeting with the members and start functioning directly in case meeting with the management is not scheduled. Thereafter a letter dated 31.08.2020 was received by Mr. Santosh Singh, informing that the Union shall conduct a gate meeting and erect the Union board at the UPS Express Pvt. Ltd. Premises at Jogeshwari, which is the client's premises. The Complainant replied to this letter, vide its letter dated 02.09.2020 stating that the registered office of the company is at Lower Parel and Jogeshwari is not their office. Thereafter another letter was received by Santosh Singh from the Union dated 16.09.2020, which mentioned to conduct gate meeting and erect the union board on UPS premises at Jogeshwari and it was also intimated that around 20-25 union members and Respondents will come to inaugurate the name-board and conduct the gate meeting. This incident was reported to the local police station, but the local police refused to accept the

letter as there was a curfew declared by the Government of Maharashtra.

04. The Complainant has come with the case that on 18.09.2020, the members of the Respondent Union forcibly and illegally assembled in the Jogeshwari Office of their client UPS Express Pvt. Ltd., and they were accompanied by two police-men. This forcible assembly was gathered despite of stringent lockdown measures and they informed Mr. Santosh Singh that they will be sending their charter of demands. The said incident was captured on videos without permission, glorified and illegally published without permission and broad casted even on social medial such as Facebook through their official page. On 01.10.2020, the union members met Mr. Santosh Singh and handed over the charter of demands, which were replied by letter dated 28.10.2020 stating that the demands are exorbitant, unjustified and unacceptable. On 03.11.2020, call was received by Mr. Santosh Singh to fix a meeting and threatened with dire consequences if the management does not meet the Respondents and settled their

demands. On 13.11.2020, letter was received from the Respondent Union demanding 20% Bonus and additional ex-gratia @ 20%, to which replied was given on 18.12.2020, stating that the Company has complied with all the statutory provisions and have also provided gifts to the TSPL employees. On 30.11.2020 at about 12 noon, Mr. Santosh Singh received calls on his mobile stating that the Union is no more interested in letters and talks and that they will be coming on Wednesday i.e. 02.12.2020 with their full strength of MNKS staff and members, to which reply was given that TSPL Office is at Lower Parel and not Jogeshwari and hence they need to meet him there if they need to discuss anything and accordingly the Union agreed to meet Mr. Santosh Singh on 07.12.2020 at TSPL Office at Lower Parel. On 09.12.2020, letter dated 08.12.2020 was received from the Union pertaining to loading/unloading and leave issues, to which reply was given by the complainant on 15.12.2020.

05. It is contended by the Complainant that Mr. Santosh Singh received calls on his mobile from office-

bearer of the Respondent Union on 20.01.2021 at about mid-day stating that the Union was not involved during the performance review of the TSPL Union members and directed that they will visit the office to protest and put their union banners on the office premises. On 25.01.2021, the Company received letter from the Union stating that their erstwhile letter pertaining to leave adjustment was not replied. Reply was given on 05.02.2021 to the letters dated 25.01.2021 and 08.12.2020. On 20.03.2021, a call was received from Shivaji Park Police Station asking for Mr. Santosh Singh's number. On 23.03.2021, MNKS members called to Mr. Santosh and were enquiring in an agitated tone on the leave letter and the Company received a letter dated 23.03.2021 from the Union, threatening to visit the UPS Jogeshwari Office on the next day for an "Andolan". The Complainant informed the local police station accordingly. The Complainant also wrote letter on 01.04.2021 to the Union mentioning the gloomy economic scenario as well as practice adopted by major industries by reducing

workforce or slashing the wages. On 08.05.2021, the Complainant received another letter dated 03.05.2021 from the Union stating that the Company should consider the Union while awarding any merit increase to its employees and all such decisions should only be implemented post discussion and finalization by the Union. Another letter dated 13.05.2021 was received from the Union, which was addressed to the Labour Commissioner stating that most of the queries are not closed by the Company.

06. The Complainant has come with the case that on 14.07.2021, around 13-15 Respondent Union's members forcibly gathered and entered the Jogeshwari Office premises of the client of the Company at around 13.50 hours and without any permission, forcibly, using threat conducted a unauthorized meeting at the reception area without any prior permission, which resulted in disturbing the work atmosphere and creating fear amongst the employees. Further post the forcible entry, letter dated 12.07.2021 was handed over by the Union and they threatened agitation and

the

: 9 : Comp.(ULP)No.153/21.(C-2).

stoppage of work in concerted manner if the meeting for discussion was not fixed. It is contended that all the threats and actions were carried out under the direct instigation and/or instructions of the Respondent Nos.2 to 4 and those amount to unfair labour practice. It is contended that there is a very high possibility that the Respondents and mob of their unknown persons would as per their letter dated 12.07.2021, make forcible and illegal entry, conduct violent acts to ensure stoppage of work from 29.07.2021 onwards and for the same may also squat on the premises and disturb the normal working and also there would be unrest and situation of fear in the minds of other employees. There is strong apprehension that Respondent's members, their agents also would shout vulgar and abusive slogans, obstruct the consumers, visitors, loyal employees, managerial staff and also obstruct ingress and egress at the offices of the Complainant in the city of Mumbai and the client's business, customers will also suffer huge loss of money, goodwill, business opportunities, reputation. All these acts on the part of the Respondents amount to

Q

gross unfair labour practice under items 1, 2 and 5 of Sch.III of the Act. A strong prima facie case has been made out by the Complainant. Balance of convenience is also in favour of the Complainant. Further irreparable loss would be caused to the Complainant if the interim reliefs as prayed for are not granted. With this, it is prayed that the interim reliefs be granted.

07. The Respondents have resisted the Application by filing Written Statement/ Reply at Exhibit U-3. It is submitted that the Respondents have not committed any unfair labour practice, as alleged in the present Complaint. The Complaint filed is false, baseless, mischievous, malicious, vexatious and deserves to be dismissed. It is contended that M/s. Transmodal Services Pvt. Ltd. & M/s. UPS Express Pvt. Ltd., are sister concerns and therefore the members of the Respondent Union are provided lockers at M/s. UPS Express Pvt. Ltd. All the administrative work of Complainant is carried out from Jogeshwari Office and sitting arrangement of all the offices of Complainant Company is at Jogeshwari Office. It is contended that

present Complaint is filed by Management of Complainant Company, but they are claiming relief in favour of Management of M/s. UPS Express Pvt. Ltd., situated at Jogeshwari. Under the Act, there is no provision for claiming relief for third party who is not party to the Complaint and hence the Complainant is not entitled for relief in favour of management of M/s. UPS Express Pvt. Ltd. It is contended that the Commissioner of Labour, Maharashtra State, Mumbai issued Circular dated 20.03.2020 and directed all the employers/owners and management not to terminate employees/ workers from job or to reduce their wages in view of outbreak of Covid-19 pandemic. In spite of this, the Complainant management did not pay wages to the members of the Respondent Union during Covid-19 pandemic period and illegal the privilege leaves of the employees were adjusted for lock-down period without consent of the workers. From 23.03.2020, the Government of India declared lockdown and general public were restrained from traveling from one place to other and all the business activities were stopped



except public essential services. It is contended that the Complainant is not covered under the Essential Service and inspite of this, the management directed the members of the Union to report on duty without providing any transport facility. Even identity cards were not issued to the workmen for identification purpose to show that the workmen are covered under the essential service and therefore, they can travel from one place to other during Covid-19 pandemic period. No transport facility or accommodation at working place was provided and workmen were compelled to report for work. Even the workers were not allowed to attend the nearest branch of the Company. One of the member Mr. Sachin Sawant is residing at Dadar and the nearest branch office of the Complainant is at Lower Parel, but he was compelled to report at Jogeshwari Office by way of victimization and harassment.

08. The Respondents contended that the employees of the Complainant Company accepted the membership of the Respondent No.1 Union on

07.08.2020 and thereafter immediately, the union sent letter to the Company informing the said fact. Thereafter on 31.08.2020, the Union sent letter to the Management and informed that they are going to conduct meeting of their members on 03.09.2020 at 2.30 p.m at the gate of the Company and requested to give time for discussion on the grievances of the employees. Total 60 employees are working and out of them, 32 employees are members of the Respondent Union. The Respondents contended that the Complainant Company is having their branches at Jogeshwari, Lower Parel, Airoli-Navi Mumbai and the employees working in all 3 branches are members of the Respondent Union. All the members are working as Delivery Boys for last 6-20 years and they are getting salary of Rs.12000-24000/- per month and they are working in two shifts and they have been deprived from statutory benefits and welfare benefits and hence the Union submitted charter of demands on 30.09.2020. It is further contended that though the members of the Union were working as Courier Boys,

Q

they were compelled to do the mathadi work i.e. loading, unloading and therefore the Union sent letter dated 08.12.2020 to the Management and brought notice about illegal deduction of salary and compelling the workmen to do the mathadi work.

09. The Respondents contended that no supporting documentary evidence has been produced for grant of any interim relief and hence they are not entitled for any relief, as prayed for. The Respondent Union is the only union representing the employees and therefore it has right to represent the grievances of the workmen, as per Section 22 of the Act. There is collusion between the Complainant Management and Management of M/s. UPS Express Pvt. Ltd. The Respondents have also given para-wise reply to the Complaint. The Respondents have denied that they have resorted to illegal agitation since 09.12.2020, as alleged. No threats have been advanced. False complaint was made only with an intention to create record against the Respondents and obtain Order. All the allegations made in the police complaint dated

02.09.2020 are beyond truth and hence denied. The Respondents denied that they forcibly and illegally assembled at the client's office on 18.09.2020 and all the allegations made in that regard are denied. The Respondents denied about making any call to Mr. Santosh Singh on 20.01.2021. The Respondents also denied that they forcibly gathered and entered the Jogeshwari Office at around 13.50 hours on 14.07.2021 and conducted unauthorized meeting. All the allegations regarding holding meetings, making protest, agitations are denied. The Respondents also denied that they and their members are using several coercive tactics to threaten, harass, bully the Complainant to accept their illegal demands. No case of unfair labour practice is made out much less any prima facie case for grant of interim relief. With this, it is submitted that the Application be rejected with cost.

10. In view of the rival submissions of the parties, following points arise for my determination. I have recorded my findings thereon. The reasons are given below.



<u>POINTS</u>	<u>FINDINGS</u>
1) Whether the Complainant has made out a strong prima-facie case in his favour?	In affirmative.
2) Whether balance of convenience is in favour of the Complainant ?	In affirmative.
3) Whether the Complainant shall suffer irreparable loss if interim relief is not granted?	In affirmative.
4) What Order?	Application is allowed.

REASONS

As to Point Nos.1 to 3.

11. Heard Ld. Counsel Shri R.N. Shah for the Complainant and Ld. Counsel Shri G.R. Naik for the Respondents who advanced their arguments in furtherance of their pleadings.
12. It is the contention of the Respondent Union that 32 out of 60 employees are members of their Union and this fact has been intimated to the Complainant. Further even the charter of demands are submitted by the Respondent Union on behalf of the members, which is pending for discussion.
13. Ld. Counsel Shri R.N. Shah drew the attention

of this Court to the letters dated 05.11.2020, 08.11.2020, 25.11.2020, 03.05.2021, 13.05.2021, 12.07.2021, wherein the Union had allegedly made illegal and illegitimate demands. He also submitted that various threatening calls were made to the concerned officer Mr. Santosh Singh. The Complainant Union has narrated the incidents that occurred on 14.07.2021 and the forcible entry made by the Respondents and its members and making abusive slogans, etc. The Complainant is having apprehension that as per the letter dated 12.07.2021, the Respondents may make forcible and illegal entry and conduct violent acts to ensure stoppage of work from 29.07.2021. The Respondents have refuted all these allegations and contended that they have espoused the cause of its members and have submitted the charter of demands.

14. The Complainant has filed on record documents alongwith list Exhibit C-4. The Union formation intimation letter dated 07.08.2020 is at Exhibit A. The letters dated 31.08.2020 and 16.09.2020

of the Respondent Union intimating about holding gate meeting and inauguration of union board on 03.09.2020 and 18.09.2020, are at Exhibit B and Exhibit E respectively. The letters dated 02.09.2020 of the Complainant Company are at Exhibit C and Exhibit D. The Union has served its charter of demands dated 30.09.2020, which is at Exhibit G. Reply to this charter of demands letter is dated 28.10.2020, which is at Exhibit H. Demand letter of the Respondent Union dated 05.11.2020 for payment of bonus and reply to the same by the Company dated 18.11.2020, are at Exhibit I and Exhibit J respectively. Various other correspondence exchanged between the parties are filed on record by the Complainant Company. Letter dated 23.03.2021 of the Complainant Company addressed to the Sr. Inspector of Police, Jogeshwari Police Station requesting for providing police personnel at the Office at Jogeshwari anticipating the intimidating tactics of the Union, is at Exhibit P. The letter dated 12.07.2021 of the Respondent Union addressed to the Complainant Management is very vital, which speaks

that if there is no positive response from the side of the Complainant and if no meeting is held within 15 days, the Union would have no other alternative but to resort to stoppage of work and for which the Management alone will be responsible.

15. On the basis of the correspondence exchanged between the parties and more particularly taking into consideration the letter dated 12.07.2021, and the incidence that occurred on 14.07.2021, the Complainant Company apprehends that the Respondents and their followers, agents, members would resort to violent agitations and the same amounts to unfair labour practice under items 1, 2 and 5 of Sch.III of the Act. Prima facie, I find force in the submission of the Ld. Counsel Shri R.N. Shah that the Respondent Union may resort to agitation, as intimated by them in their letter dated 12.07.2021. No doubt, the Union has legal remedy which it can resort to for espousing the grievances of its members. However, in order to maintain the peace within the work premises and to ensure that the business of the Complainant

Sp

Company runs smoothly, the interim reliefs as sought by the Complainant are required to be granted. Hence, I find that the Complainant has succeeded to prove strong prima facie case and balance of convenience is also in its favour and in compared to Respondents, more hardship will be caused to the Complainant Company if the interim reliefs are not granted. Hence, I answer Point Nos.1 to 3 in **Affirmative** and proceed to pass the following Order:-

ORDER

i) The Application at Exhibit C-2 is allowed.

ii) Pending the hearing and final disposal of the Complaint, the employees of the Complainant are restrained from indulging in concerted absence from work or stoppage of work in any manner. *on next date*

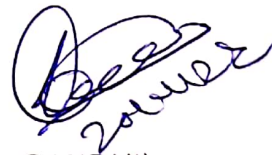
ii) Further pending the hearing and final disposal of the Complaint, the Respondents, their office-bearers,

: 21 : Comp.(ULP)No.153/21.(C-2).

agents, members and employees of the Complainant are restrained from picketing, demonstrating, holding dharnas, shouting obscene and/or defamatory/abusive slogans against the Complainant or the officers of the Complainant and/or crowding within the radius of 100 meters of Complainant's various premises situated in Mumbai including office of Principal, UPS Express Pvt. Ltd., at Plot No.6A, RMSM Compound, Shyam Nagar, JVLR, Opp. Majas Depot, Jogeshwari(E), Mumbai-400 060.

Date:-20.04.2022.

Skn/-



(J.L. GANDHI)
Member,
Industrial Court, Mumbai