

**BEFORE SHRI JEETENDRA L. GANDHI, MEMBER,
INDUSTRIAL COURT, MUMBAI**

**COMPLAINT (ULP)No.159 of 2020.
(CNR No. MH1C01-000400-2020)**

1. Shri Girishkant Krishnaprasad Dubey,
Patil Chawl, Gawand Compound,
Ekvira Road, Thembhi Pada,
Bhandup,Mumbai-400 078.
2. Shri Pramod Mulchand Yadav,
Nana Sadan,2nd floor R.No.203,
Diva(W),Matoshri Nagar, Dist.Thane
& 2nd Pokhran Road,Thane(W)-400 601.
3. Shri Suhas Ravindra Tamhane,
Matheran Road, Hetkar Ali, Neral,
Tal.Karjat, Dist.Raigad. ...Complainants.

Versus

1. M/s. Shangrila Food Products Ltd.
LBS Marg,Bhandup(West),
Mumbai-400 078.
2. Shri Vedanta Vivek Pitti,
Chairman/Managing Director,
M/s. Shangrila Food Products Ltd.
LBS Marg,Bhandup(West),
Mumbai-400 078. ... Respondents.

Coram:- Jeetendra L. Gandhi, Member.

Appearances:Shri B.K. Hegde, Ld.Counsel
for the Complainants.

Smt. Anjali P. Purav, Ld. Counsel
for the Respondents

**O R D E R (Below Exhibit U-2)
(12.03.2021)**

01. The Complainants have preferred Application

under section 30(2) of the MRTU & PULP Act, 1971 (in short, "**the Act**") for interim relief claiming that during the pendency of the Complaint, Respondents be directed to pay the subsistence allowance to the Complainants for the month of October 2020 and for subsequent months on or before 7th day of every succeeding month until further orders.

02. The case of the Complainants is as under:-

All the complainants are the employees of respondent no. 1. Shri Pramod Yadav joined services of the Respondent No.1 in the year 1994 and working as Machine Operator and his last drawn salary was Rs.16690/-. The other worker Girishkant Dubey joined the services of Respondent No.1 on 08.08.1990 and was working as Machine Operator and last drawn gross monthly salary was Rs.18240/- and worker Shri Suhas Tamhane joined services of the Respondent No.1 in the year 1994 and working as a Machine Operator. His last drawn gross monthly salary was Rs.16690/-.

03. The Complainants contended that the Respondents placed all of them under suspension w.e.f.

24.10.2017 by charge-sheet dated 23.10.2017 pending the domestic enquiry. It is claimed that the terms and conditions of the employees employed by the Company, including the Complainants, are interalia governed by the existing settlements, agreements and memorandum and understanding and the Standing Orders. Respondent No.1 had employed more than 100 workmen for manufacturing activities and vide charge-sheet dated 23.10.2017 placed all the Complainants under suspension pending domestic enquiry. The Complainants have submitted their explanation and denied the allegations, imputations and charges leveled against them. It is claimed that the charges against them are false, malafide and vindictive. The Complainants did not engage in the acts amounting to employment misconduct. The Complainants then pleaded about appointment of enquiry officer, further enquiry by enquiry officer and examination of the witnesses. It is submitted that on 09.03.2019, one witness was discharged and thereafter several dates were taken to bring Rajkumar Singh as witness and his

written statement was taken on record in breach of the procedure explained by the enquiry officer. The said Rajkumar Singh was partly cross-examined and after part cross-examination on 01.08.2019, the management was asked to produce certain documents and the enquiry officer adjourned the enquiry to 10.08.2019, but since then no proceeding took place. It is submitted that during the pendency of enquiry, the Respondents have paid the subsistence allowance at 75%, but the Complainants did not receive any payment after receiving the subsistence allowance @75% for the month of January 2020, which is paid in the month of February 2020.

04. The Complainants submit that though the enquiry was adjourned, it is learned that the witness refused to appear in the enquiry on the ground that he was not present on the date of alleged incident and he was forced to give false evidence. The Complainants made application to the enquiry officer to give direction to the management to pay full wages i.e. 100% of wages as subsistence allowance as the delay

in conducting the enquiry was directly attributable to the management, but the enquiry officer did not give any finding, directions and abandoned the enquiry. It is contended that the Complainants are entitled for full wages minus subsistence allowance paid to them during the period 24.10.2017 to 31.01.2012 @ 50% for the first 90 days and 75% of the last drawn wages. The Complainants state that they are eligible for full wages till the Respondents allow them to resume their duties. It is further submitted that there was no legal, valid reason to place the Complainants under suspension, nor much less any reason is mentioned in the suspension orders.

05. The Complainants state that they have no means of livelihood and since February 2020, the Respondents have illegally and arbitrarily withheld their subsistence allowances and the Respondents are forcing the Complainants and their dependents to starve. It is further submitted that wage is the property of the workman as defined under Article 300 A of the Constitution of India and the property cannot be denied

without following due procedure set by law. The Respondents have illegally imposed the punishment on the Complainants by depriving their wages. Hence, they are entitled for the subsistence allowance and wages, as claimed in the prayer clause. It is submitted that if the interim relief, as prayed for, is granted, no harm or loss will be caused to the Respondents. On the other hand, Complainants will be put to suffer irreparable loss if the subsistence allowance, as prayed, is not granted. It is further submitted that the Respondents are guilty of unfair labour practice. Hence, there is prima facie case and balance of convenience is in favour of the Complainants.

06. The Respondents have filed the reply-affidavit of Sanjay Katiyar at Exhibit C-2 and opposed the Application for Interim Relief. It is submitted that the Complaint is totally misconceived, unjustified and untenable. The Respondents are not indulged in any of the unfair labour practice, as claimed. It is submitted that the Respondents used to manufacture and pack biscuits only for Britannia Industries Ltd. (in short,

“**BIL**”) for around 32 years. On 31.05.2019, the Respondents received a written termination notice from BIL, stating that business relationship between the parties shall stand terminated on close of business hours of 27.11.2019. The Company, therefore, by notice dated 11.06.2019 intimated all the workmen and the recognized union of the workmen about the written notice received from the management of BIL, informing that the business relationship between the parties shall stand terminated on close of business hours of 27.11.2019. The Respondents tried to settle the matter, but the BIL has not given any positive response. Hence, the Company tried to get job-work from other biscuit manufacturers, but it failed. Hence, it had no other alternative, but to close down its manufacturing activities by following due process of law.

The Respondents contended that Application came to be filed on 28.08.2019 for permission of closure under section 25-O(1) of the I.D. Act read with Rule 82-B(1) of Maharashtra Rules, 1957. The

Respondents complied with all the provisions for permission of closure and also forwarded a closure application dated 28.08.2019 for permission of closure to the Secretary, to the Commissioner of Labour, Mumbai; to the Jt. Director of Industries, Mumbai and to the Jt. Secretary of the Union and all of them have received the applications, but the appropriate Government did not act upon it and did not give hearing to the employer or to the workmen nor passed any Order by recording reasons and thereby did not refuse to grant permission as sought by the Company. As such, there is 'deemed permission' of closure as the Government failed to take any action within a period of 60 days from the date on which such application was made. Accordingly, the Respondent No.1 is deemed to have received permission for closure as applied for on and from 27.10.2019.

07. It is further submitted that there is total cessation of employer-employee relationship between the Company and its workmen including the present Complainants on and from the close of working hours

on 27.11.2019. It is further submitted that the deemed closure is sub-judiced before the Hon'ble High Court in Writ Petition No.3397 of 2019. The work orders given by BIL were completed on 16.11.2019 and from 17.11.2019, there are no manufacturing activities in the factory. As such, closure came to be effected from 28.11.2019. It is further submitted that as per the Order of the Hon'ble High Court on 30.06.2020, the Respondents have deposited the entire amount of terminal dues of all the workmen including the 3 suspended workmen in the Hon'ble High Court. It is further submitted that during the pendency of Writ Petition, the Union has claimed wages for their members and accordingly the Company agreed to pay amount equivalent to wages to the workmen and the workmen are paid said amounts for the month of December 2019 and January 2020. Even these 3 Complainants being suspended workmen who were getting subsistence allowance @75%, were paid amount equivalent to subsistence allowance for the month of December 2019 and January 2020.

08. It is submitted that the Complainants had indulged in severe acts of misconduct such as willful slowing down of the work, instigating the workers to slow down the production and other lapses, causing financial loss to the Company. Therefore, they were rightly suspended and enquiry is pending. The Respondents have paid the subsistence allowance as per the directions of the Hon'ble High Court. Hence, there is no unfair labour practice committed by the Respondents. It is submitted that as the Respondents have not indulged in any of the unfair labour practice, the Complaint as well as the present Application is liable to be rejected.

09. Besides denying all the adverse allegations by raising specific defence, the Respondents have denied each and every averment in the Complaint. It is submitted that the subsistence allowance was paid as per the directions of Hon'ble High Court and payment of any further subsistence allowance shall be subject to the outcome of Writ Petition pending before the Hon'ble High Court. It is submitted that the dates of

appointment, last drawn salary, are not in dispute, but the suspension was for valid and appropriate reason. Hence, the Complainants have no right to say that the Respondents have engaged in unfair labour practice. The Respondents have also admitted the pendency of enquiry and examination of the witness, but it is denied that the witness has refused to give the evidence on the count that he was forced to give false evidence. It is submitted that the Complainants are trying to get the Order by hook or crook. Hence, the Complaint is liable to be dismissed and so also the Application for Interim Relief is also liable to be dismissed. It is submitted that the claim is for monetary compensation. Hence, no irreparable loss will be caused to the Complainants if the relief is not granted. On the other hand, if the relief is granted, it will lead to multiplicity of proceeding. Hence, the Application be rejected.

10. Heard Ld. Counsel Shri B.K. Hegde for the Complainants and Ld. Counsel Smt. Anjali P. Purav for the Respondents.

11. 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 Complainants have made out prima-facie case of unfair labour practice?	In the negative.
2) Whether balance of convenience is in favour of the Complainants?	In the negative.
3) Whether the Complainants shall suffer irreparable loss if interim relief is not granted?	In the negative.
4) Whether the Complainants are entitled to the relief sought?	As per final Order.

REASONS

As to Point Nos.1 to 4:-

12. The Complainants have filed the documentary evidence at Exhibit U-8, which include the true copy of the enquiry proceedings and the copy of the charge-sheet dated 23.10.2017. The Respondents have also filed the documents with list Exhibit C-4, which include the Order passed by the Hon'ble High Court and the Order passed by the Industrial Court in Complaint (ULP)No.81 of 2020.

13. Ld. Counsel Shri B.K. Hedge for the Complainants submitted that identical charge-sheet was issued to the Complainants and there is no enquiry after 06.03.2020. Despite that, subsistence allowance was paid till January 2010 and thereafter no subsistence was paid. He further submitted that factory is yet not closed and no permission for closure is given. It is the mandate of Standing Orders that if the enquiry is not completed within a period of 6 months, then the delinquent employees are entitled for subsistence allowance @100%, to which they are deprived. Hence, there is prima facie case of unfair labour practice on the part of the Respondents.

14. Ld. Counsel Smt. Anjali P. Purav, on the other hand, vehemently submitted that there is a deemed closure as per the provisions of the I.D. Act and from the date of closure of the Company, there is no employer-employee relationship between these 3 Complainants and the Respondents. She relied on the Order passed by the Ld. Member, Industrial Court, Mumbai Complaint (ULP)No. 81 of 2020 wherein in the

similar circumstances, the Ld. Member was pleased to reject the Application at Exhibit U-2 for grant of wages from the month of February 2020 to other workers on the ground that the matter is sub-judiced before the Hon'ble High Court and the Order is specifically passed by higher court whereby the Respondents have deposited the monthly wages till January 2020 including the allowances of complainant. She further submitted that the issue of deemed closure is sub-judiced before the Hon'ble High court on ground that the letter issued by the Government Office after 60 days period from filing of the Application under section 25-O of the I.D. Act, is against the provisions of law. Hence, the workers are not entitled for any subsistence allowance when relationship as to employer and employee is ceased between the parties. She submitted that there is no manufacturing activity since 28.11.2019 and there is no payment to any of the worker as per the directions of the Hon'ble High Court and if the Application is allowed, then it will be against the Order of Hon'ble High Court and it will cause serious prejudice to the

rights of Respondent No.1.

15. I have given thoughtful consideration to the submissions canvassed by both the parties. It appeared from the copy of Order filed with Exhibit C-4, that the Ld. Member, Industrial Court was pleased to pass Order in Complaint (ULP)No.81 of 2020 below Exhibit U-2. It is observed by the Ld. Member, Industrial Court in the said Order that the Complainant Union has filed another two Complaints viz. Complaint (ULP)No. 313 of 2019 and 13 of 2020, and admittedly parties in all the 3 Complaints are the same. He further observed that the cause for filing these Complaints is the same i.e. closure notice of the Respondent Company dated 28.08.2019, letters dated 25.09.2019 and 04.11.2019 issued by the Deputy Secretary to the Government of Maharashtra and non payment of wages. He has also observed that the Complainant Union therein is a recognized union under the provisions of the Act and therefore has special status for representation of the employees employed by the Respondents irrespective of membership of the employees. On going through the

record, I do also find that the Complainant Union in Complaint (ULP)No. 81 of 2020 is functioning in the Respondent No.1 Undertaking and there are various settlements signed by the Complainant Union and the Respondents and the last settlement is dated 31.10.2018 for the period 01.11.2018 to 30.10.2021. It is not in dispute that the Respondents have only one client i.e.BIL and it is manufacturing the biscuits for BIL only. It is also not in dispute that the Respondents have received the letter from the BIL on 31.05.2019 stating that the business relationship between the parties shall stand terminated on close of business hours of 27.11.2019. It is also not in dispute that after receiving the letter from BIL, the Respondents have approached the BIL to continue its work order, but they did not get any response from the BIL nor they have got any response from other companies and this fact is made aware to the employees by notice dated 11.06.2019. It appeared that the Company chose to close down its Undertaking for want of work order and it displayed a closure notice dated 28.08.2019 for information of all

the workmen and also served copy of closure notice to the recognized union. It also appeared that no Order was passed by the competent authority within a period of 60 days. Hence, the Respondents claimed that there is a deemed closure. Thereafter, as per Section 25-O (3) of the I.D. Act, the Respondent Company assumed that deemed permission is granted by the appropriate Government for closure of the Undertaking after expiry of 60 days notice period.

16. It transpired from the admitted fact that after the completion of 60 days, the Union firstly on 25.11.2019 filed Complaint (ULP) No. 313 of 2019 under items 9 and 10 of Sch.IV of the Act and in that Complaint, Order below Exhibit U-2 came to be passed, whereby directions were given to the Respondent Company not to close down its manufacturing activities on and from 28.11.2019 in pursuance of the closure notice dated 28.08.2019 and to maintain the position till next date. Thereafter, the Union filed Application at Exhibit U-10 for extension of the Order dated 26.11.2019. It appeared that necessary Order was

passed by the Ld. Member, Industrial Court, Mumbai and it is observed that the Respondents as on date also considered that the closure matter is sub-judice and workmen are still in employment. Hence, the Order was not extended as the Respondents during the pendency of the Writ Petition are not going to effect closure subject to outcome of Writ Petition. It further appeared that letters dated 25.09.2019 and 04.11.2019 are challenged by the Respondents by filing Writ Petition No. 3447 of 2019 and both the letters are the subject matter of that Writ Petition and those are on the basis of closure application dated 28.08.2019, seeking closure of company.

17. In the light of this, if we peruse the application, wherein the Complainants claimed that they are entitled for full wages from February 2020, in form of subsistence allowance, I find that the relief claimed is also contrary to the relief claimed and denied by the Ld. Member, Industrial Court, Mumbai in the earlier Complaint i.e. Complaint (ULP)No. 81 of 2020. It appeared that the Complainants have

suppressed the fact of filing of different Applications and rejection of Application below Exhibit U-2, whereby the Ld. Member, Industrial Court, Mumbai was pleased not to grant further wages from February 2020 on the ground that the matter is subjudice before the Hon'ble High Court. Despite that, the Complaint came to be filed with Application for Interim Relief, which shows that the Complainants are not coming with clean hands before the Court and purposefully chosen to file present complaint.

18. It is contended that the Respondents are guilty of unfair labour practice on and from 01.02.2020 by not paying the subsistence allowance, but the Complainants have suppressed the material fact that the Respondents, in compliance of the Order passed by the Hon'ble High Court, have deposited the subsistence allowance of the Complainants for the period December 2019 and January 2020. Even otherwise the question of deemed closure is sub-judice before the Hon'ble High Court and the Hon'ble High Court in the Writ Petition has directed the parties to deposit the

amount with liberty to the Union to withdraw the same. It is pertinent to note here that after passing the Order by the Hon'ble High Court for wages of December 2019 and January 2020, the Respondents have deposited the wages along-with subsistence allowance, but the Union has filed Complaint (ULP)No.13 of 2020 on 07.01.2020 and Complaint (ULP)No.81 of 2020 on 01.06.2020. The issue of wages along-with subsistence allowance was pointed out by the said Union before the Hon'ble High Court and the said issue along-with various other issues were considered by the Hon'ble High Court for the month of December 2019 and January 2020. But there is no any Order to pay subsistence allowance from the month of February 2020 and there is no any application or subsequent proceeding either from the Complainants or the Union before the Hon'ble High Court. Therefore, the Complainants are not authorized to agitate the same issue before the subordinate Court because the issue of closure and connected wages with subsistence allowance in the present Complaint, is subjudice before the Hon'ble High Court. It cannot be

ignored that the Respondents have vehemently submitted that they have deposited the subsistence allowance till January 2020 in compliance with the Order. Hence, when the matter is sub-judice, I find that this Court cannot go and proceed with the Application to grant the relief, as claimed.

19. It is clear from the record that in view of the deemed closure and the filing of Writ Petition by the Respondent Company before the Hon'ble High Court, the matter is sub-judice and the Order is issued by the Hon'ble High Court. As such, it cannot be said that the Respondents are guilty of unfair labour practice, as defined under item 9 of Sch.IV of the Act. Further, as pointed out earlier, the Complainants are guilty of suppression of the facts as they have not come with clean hands before the Court. Prima facie it appears that the Respondents have followed the provisions of Section 25-O of the I.D. Act. But, on the last date of the proposed closure, the Union filed Complaint of unfair labour practice and now the present Complaint came to be filed by the Complainants suppressing the

material facts. As such, I find that the Complainants have failed to prove strong prima facie case and balance of convenience. It further appeared that the claim is of monetary relief and the entire closure amount in form of retrenchment is deposited by the Respondents before the Hon'ble High Court. In case the Respondents failed to prove their contentions, then the amount can be given to the workers and they can be compensated in terms of money. But if the Respondents succeeded, they would be put to suffer irreparable loss. As such, I answer Point Nos.1 to 3 in the **Negative** and proceed to pass the following Order:-

ORDER

The Application at Exhibit U-2 is rejected.

Date:-12.03.2021.

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

Skn/-15.03.