

CNR No.- MH IC 04 000 252 2022 :- 1 :-

Complaint (ULP) No.-150/22
Order Pre. Issue of Inquiry

**BEFORE SHRI S. Z. SONBHADRE
MEMBER INDUSTRIAL COURT AT THANE MAHARASHTRA**



Complaint (ULP) No.- 150 of 2022.

CNR No.- MH IC 04 000 252 2022.

Exhibit – O – 4

Shri. Satish Eknath Kamble

Age 59 Years

01/202, Manohar Niwas Residency,

Hendre Pada Road, Badlapur (W),

Taluka – Ambernath, Dist. - Thane. -- -- -- **Complainants**

Versus

1. Divisional Controller

MSRTC, Thane Division,

Nr. Vandana Talkies,

L. B. S. Road, Thane – West.

2. M.S.R.T.C. Mumbai

Through – Divisional Controller

Thane Division,

Nr. Vandana Talkies,

L. B. S. Road, Thane – West.

-- -- -- **Respondents**

Coram :- Shri. S. Z. Sonbhadre, Member Industrial Court.

Appearances :- Shri. U. S. Jagdale, Ld. Adv. For Complainant.

Smt. Smita Danke, Ld. Adv. For Respondents.

ORDER ON PRELIMINARY ISSUE OF FAIRNESS OF Inquiry &

ON FINDINGS OF Inquiry OFFICER

(Delivered On 18-08-2025)

01. This is a Complaint under Section 28 R/w. Items 5, 9 and 10 of Schedule - IV of the Maharashtra Recognition of Trade Union & Prevention of Unfair Labour Practices Act, 1971 (Hereinafter Referred to as "MRTU & PULP Act"). Complainant in this Complaint have challenged the Charge-Sheet dated 22-12-2020 and Recovery Order dated 09-01-2021. The Facts of the Complaint are as under :-

02. Complainant was Working as Accountant since the Year 2005. Last Drawn Wages of the Complainant was Rs. 54,769/- as a Basic Wages Per Month. It is stated that, vide Report No.- 49, dated 10-12-2020, it is stated that, Complainant have given the Work of Cleaning the Buses to Private Employees @ Rs. 100/- Per Bus and thereby Complainant has violated the Circular No.- 1 of 2020 dated 11-03-2020. It is also stated in the Report that, the Work of Cleaning Buses is allotted without calling tenders and therefore, Complainant is held responsible for the irregularity.

03. The Complainant was served with Charge-Sheet dated 22-12-2020 and the Charges under Clauses 9, 10, 11 and 15 of Schedule A of the D & A Procedure were leveled against

the Complainant. Inquiry was fixed on 30-12-2020. Complainant was not provided with all the Documents. Complainant applied for supply of Documents and have prayed to adjourn the Inquiry dated 30-12-2020. The Respondents on 30-12-2020, itself conducted Inquiry against the Complainant in his Absence and Inquiry Officer have submitted Inquiry Report of the Ex-Parte Inquiry.

04. It is a case of the Complainant that, Respondent No.- 1, have sanctioned all the Bills. Respondent No.- 1 is the Authority for grant of Approval to the Administrative Expenses. It is further case of the Complainant that, Tenders are to be called at the Level of the Divisional Office by Divisional Engineer or concerned officer. As such, it is case of the Complainant that, he is innocent and have denied the Charges leveled against him. Complainant stated that, Inquiry is Not Fair and Proper and the Findings of the Inquiry Officer are Perverse.

05. Respondents filed its Written Statement at Exh.- C-3 and have opposed the Claim of the Complainant. It is case of the Respondents that, at Vitthalwadi Depot, Six Cleaners were

Working and instead of taking Work of Cleaning the Buses from the said Six Cleaners, the Work of Cleaning Buses was allotted to the Outside Agency Without Calling Tenders. The said Work was allotted @ Rs.100/- Per Bus. As such, the Complainant is held responsible for the Loss of Rs. 1,53,220/- to the Respondent Corporation.

06. It is case of the Respondents that, it has issued Circular bearing No.- 1/2020, dated 11-03-2020 and there were specific instructions for Cleaning the Buses and Sanitizing the Buses, from out side the institution, after considering the Tenders and after following the Procedure. It is further case of the Respondents that, Inquiry conducted against the Complainant is Fair and Proper and also stated that Findings of the Inquiry Officer are Not Perverse.

07. In view of the Rival Submissions of the Parties, issues are framed at Exh.- O-3. Issue No.- 1 and 2, of the said issues, are the issues in respect of Fairness of Inquiry and Findings of the Inquiry Officer. Said issues are taken up for adjudication, as Preliminary Issues, on the basis of Inquiry Proceeding filed by the Parties, without adducing any further

fresh evidence. Said issue No.- 1 and 2 are in respect of Inquiry are reproduced hereunder and I have recorded my Findings against each of them, for the Reasons to be followed -

<u>Issues</u>	<u>Findings</u>
1. Whether the Complainant proves that the Inquiry conducted against the Complainant is Not Fair, Proper and is against the Principles of Natural Justice ?	-- Affirmative
2. Whether the Complainant proves that the Findings of the Inquiry Officer, are Perverse and are not supported by the Material available on record ?	-- Affirmative
3. What Order ?	-- As Per Final Order

-: REASONS :-

08. As To Issue No.- 1.- Heard both Sides. Perused Records. It is admitted position on record that, Complainant was Working at Vitthalwadi Depot as 'Accountant'. Complainant was served with Charge-Sheet dated 22-12-2020. Particulars of Misconduct against the Complainant as per said Charge-Sheet reads as under :-

रा. प. विठ्ठलवाडी आगारात ०६ (सहा) रा. प. स्वच्छक नियुक्त असताना आगारामध्ये खाजगी स्वच्छकांमार्फत रु. १००/- प्रति बस या दराने रा. प. बसेस धुण्याचे काम करून घेतल्यामुळे रा.प. महामंडळास आर्थिक बोजा सहन करावा लागला. वास्तविक रा. प. मध्यवर्ती कार्यालयाकडील परिपत्रक क्र. ०१/२०२०, दि. ११.०३.२०२० मध्ये दिलेल्या सुचनांनुसार बाह्यसंस्था कर्मचारी यांना प्रति वाहन आतुन - बाहेरून स्वच्छ धुणे, झाडलोट करण्यासाठी दर ठरवून वाहन स्वच्छतेची कामे करून घेण्यासाठी निविदा मागवणेबाबत सुचना प्रसारित केलेल्या असताना तुम्ही आगार पातळीवरती निविदा प्रक्रिया न करता त्याचप्रमाणे सदरची बाब प्रशासनाचे निदर्शनास आणून देणे आवश्यक असताना प्रचलित नियम डावलून खाजगी स्वच्छकांकडून रा. प. बस धुण्याकरीता सादर केलेली बिले अंकेक्षण करून दिली व नियम डावलून सदरचे बिले अदा केली. सदरचे तुमचे वर्तन हे गैरवर्तन असून शिस्त व अपिल कार्यपध्दतीमधील वरील दिलेल्या अनु. अ. कलममध्ये अंतर्भूत होणारे आहे. म्हणून तुम्ही दोषी आहात.

09. Perusal of Charge-Sheet reveals that at Vitthalwadi Depot, there were Six Cleaners and inspite of there being Six Cleaners, the Work of Cleaning of Buses was got done from

Private Agency @ Rs. 100/- Per Bus and accordingly, Respondent Corporation have incurred loss. Said Act of Cleaning Buses from Private Agency is in violation of Circular No.- 01/2020 dated 11-03-2020. It is stated that, No Tenders were called for allotting Work to the Private Agency. So also, inspite of there being availability of Six Cleaners, the Work was got done from Private Agency.

10. I find that, after Charge-Sheet dated 22-12-2020, Inquiry was kept on 30-12-2020. The Complainant vide Application dated 30-12-2020 have sought Adjournment. It was First Day of Inquiry. Respondents without granting Adjournment to the Complainant have conducted Inquiry on 30-12-2020 itself and the Inquiry Officer have submitted this Inquiry Report. On the basis of Ex-Parte Inquiry, thereby holding that, there is loss of Rs. 1,53,220/- to the Respondent Corporation and therefore, Half of the said loss i.e. of Rs. 76,610/- was sought to be recovered from the Complainant.

11. Complainant have filed his Reply to the Show Cause Notice, thereby stating that, on the Day of Inquiry i.e. on 30-12-2020, Complainant could not remain present, since

his Union Representative was absent. So also, Shri. Bhise was on Weekly Off. Complainant further stated in his reply that he has requested for Adjournment of the Inquiry. However, request of the Complainant for Adjournment was not considered and Inquiry was conducted in the absence of the Complainant. In Ex-Parte Inquiry huge liability of Rs. 76,610/- is saddled upon the Complainant. As such, it is case of the Complainant that, Inquiry is Unfair and Findings of the Inquiry Officer are Perverse.

12. I find that, the Respondents have filed Documents on record vide List Exh.- C-6. Vigilance Report is at Page No.- 2 to 6. In the said Report in Para – B at Page No.- 2, it is stated that at Vitthalwadi Depot Total Six Cleaners were Working. Out of said Six Cleaners, four are the Women Cleaners namely (1) Smt. Katarnavare, (2) Smt. M. S. Kamble, (3) Smt. A. M. Salve and (4) Smt. S. G. Patil. Out of said Women Cleaners, Smt. Katarnavare is retired in the Month of February 2020. Names of Two Male Cleaners is (1) Shri. A. V. Dhivar and (2) Shri. K. G. Borude. As such, it is clear that at Vitthalwadi Depot upto February 2020 there were 4 Females Cleaners and and 2 Male

Cleaners. One of the Female Cleaner Smt. Katarnavare have retired in February 2020. As such, after February 2020, there were 3 Female Cleaners and 2 Male Cleaners.

13. It is admitted position on record that, the said period of the Year 2020 was a peak period of Covid - 19 Pandemic Situation. It is also admitted position that earlier the Contract of Cleaning of Buses was allotted to M/s. Brisk India Company @ Rs.145/- Per Bus. Said Contractor M/s. Brisk India Company has stopped giving Services since January – 2020. Accordingly Respondents have issued Letter dated 14-03-2020 and direction were issued to all Depot to get the Buses cleaned and sanitized by engaging Local Persons. I find that the said Letter dated 14-03-2020 was addressed to the Depot Manager and not to the Accountants, like Complainant.

14. I find that, on the day of Inquiry i.e. on 30-12-2020 Complainant have sought Adjournment on the ground that his Union Representative is Not Available. That being a First Day of Inquiry, I am of the view that Inquiry Officer should have considered the difficulty of Complainant Employee and should have accommodated the Complainant Employee. However,

the Inquiry Officer have conducted and finalized the Inquiry proceeding on the same day i.e. on 30-12-2020. Furthermore, even if, the Inquiry is conducted in the absence of the Complainant, then atleast after examination of the Management Witness, Inquiry should have been adjourned for Defense Witness of the Complainant Employee. However, Inquiry Officer Unilaterally Closed the Inquiry Proceeding without granting any opportunity to adduce Defense Evidence to the Complainant Employee. As such, Inquiry conducted against the Complainant is Not Fair and Proper and is in utter disregard to the Principles of Natural Justice.

15. As to issue No.- 2 : The Inquiry Officer have Unilaterally accepted the Report of the Reporter and have given his Findings that Complainant is responsible for Not Calling the Tender and Not Getting Bus Cleaned, at the hands of the Available Cleaners. However, Inquiry Officer have not considered the Duty List of the Complainant. I find that, Complainant was Working with Respondents as Accountant. As such, Prima Facie Complainant is Subordinate Employee of the Depot Manager. Complainant is not vested with any

authority to take policy decision, regarding calling of Tenders or regarding allocation of duties. Inquiry Officer have not considered the Duty List of the Complainant who was Working as Accountant.

16. I am of the view that, Depot Manager being head of the Depot vested with authority to call Tenders, to pass bills, to recruit employee etc. Complainant is Working as Accountant and is supposed to pass the bills which have been approved by Depot Manager or any other Higher Authority. However, this aspect is not considered by the Inquiry Officer. As such, the Findings of the Inquiry Officer are Perverse and are not supported by material available on record. Inquiry also suffers from non grant of opportunity of being heard to the Complainant, and without considering Duty List of the Complainant.

17. As such, Issue No.- 1 and 2 are answered in Affirmative, thereby holding that Complainant have proved that the Inquiry conducted against the Complainant is Not Fair and Proper and is against the Principles of Natural Justice. Complainant have further proved that the Findings of the

Inquiry Officer are Perverse and are Not Supported by material available on record.

18. Accordingly, Issue No.- 1 and 2 are answered in Affirmative. As such, I proceed to pass the following Order :-

-: O R D E R :-

- i.** Inquiry conducted against the Complainant Shri. Satish Eknath Kamble is Not Fair and Proper and is against the Principles of Natural Justice.
- ii.** Findings of the Inquiry Officer against the Complainant, Shri. Satish Eknath Kamble, are not supported by material available on record and are Perverse.
- iii.** No Orders as to Costs.

Date :-
18-08-2025.
Place :- Thane.

S. Z. Sonbhadre
Member
Industrial Court, Thane