

**BEFORE THE MEMBER, INDUSTRIAL COURT NO.02,
AT KOLHAPUR**

COMPLAINT (U.L.P.) NO.131/2022.

Shri. Sandip Vishnu Patil,

Age :- Major, Occu. :- Nil,

R/o. Durgewadi, Kumbhoj,

Tal. :- Hatkanangle, Dist. :- Kolhapur.

.. Complainant

V/s.

1) Ganesh Foundry Private Limited,

26/27, Industrial Estate, Unit No.01, In

front of Bhagatsingh Garden, Ichalkaranji,

Tal. :- Hatkanangle, Dist. :- Kolhapur

and other 02.

.. Respondents

CORAM :- Shri. S. D. Suryawanshi, Member.

J. O. Code :- MH02959.

APPEARANCE :-

For Complainant :- Ld. Adv. Shri. V. S. Chavan

For Respondents :- Ld. Adv. Shri. D. S. Joshi

ORDER BELOW EXH.U-02

(Passed on this 04th day of September, 2023)

1) The complainant employee for the cause of not paying his legal dues as agreed by signing memorandum of understanding dated 25/04/2022 and also for the cause of illegally closing its Undertaking has been filed present complaint against the respondent u/s. 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair

Labour Practices Act, 1971 (hereinafter shall be referred as 'the Act') read with Item-9 and 10 of Schedule-IV and prayed in terms of Para 14.

2) He has been submitted that, he was working with the respondent No.01 Company on and from 2018 on the post of Maintenance and his nature of work was purely Clerical. The complainant was not having any authority to recommend leave of co-employee and also not having any power to decide production policy and distribute work to the co-employees. The complainant was getting Rs.15,746/- as wages in the month of June 2022. Hence, considering his nature of duties he is the 'Workman' defined under Section-2(s) of the Industrial Disputes Act, 1947. So far as respondents are concerned; he has been pleaded that, respondent No.01 is Private Company of which respondents No.02 and 04 are the Directors. Said company is engaged in the business of Foundry and it was run by respondent No.04. In the respondent company there were different Departments i.e. Production Department, Maintenance Department, Pattern Shop, Inspection Department, Dispatch Department, Core Shop, Shot Blasting, Fetting Department and Security Department. From all these Departments on an average 215 to 220 employees were working in three shifts. In the month of April-2021, in three shifts work was going on and in one shift around 60 to 70 employees were working. Because of cordial relation between

the employees and respondents it was taking production and earning profit. Hence, considering the nature of activities of respondent No.01 it is an 'Industry' defined under Section-2(j) of the Industrial Disputes Act, 1947 and all the Labour Laws are applicable to the Company.

3) On dated 25/04/2022, respondent No.04 and employees Representative Shri. B. S. Kalawant, Shri. V. B. Pawar, Shri. Sanjay Jadhav took the decision about the closure of Unit 01 i.e. respondent No.01 and also signed agreement dated 25/04/2022. Thereby it was agreed to pay legal dues of the employees step by step. However, respondent failed to pay legal dues as agreed in the agreement dated 25/04/2022. The respondent has not given any written order or compensation, however, production activities is being closed. The respondent was supposed to take prior permission from the Appropriate Government as per provisions of Industrial Disputes Act, 1947, but it has failed to opt the permission. Hence, action of closure is illegal and it amounts to unfair labour practice under Item-9 and 10 of Schedule-IV of the Act.

4) The complainant was employed by respondent since the date mentioned in the complaint and he has completed 240 days every year. The respondent was maintaining the record of employees i.e. Service Record, Attendance Card, Wage Register, Wage Slip, Leave Card etc.

The provisions of Provident Fund Act and Employees State Insurance Act are applicable to the respondent and necessary contribution have been paid except few years.

5) Since January 2021 respondent was telling that, it is not visible to run the business. In the month of April-2021 electricity was discontinued by Transformation Company in the premises of respondent no.1. However, employees were on duty till the date of 19/04/2021. The respondent did not provide work from 20/04/2021 and he was compelled to seat idle in the month of May, June, July-2021. The respondent without paying legal dues started Unit at Rui, Taluka Hatkanangle, District Kolhapur from 01/08/2021. With a view to stop-gap arrangement, the respondent was provided work to the complainant at Unit 02 on and from August-2021. The complainant has performed the work at Unit 02 for the month of August, September, October, November, December-2021 and January, February, March-2022 and he has received wages for the said period. However, on dated 25/04/2022, the respondent has called the meeting of Representative of employees and closed Unit No.01 subject to condition that, the company shall pay legal dues and monetary benefits. Though the respondent has closed factory but it has failed to take permission from the Government. The respondent has obtained resignation of 80

employees and given them cheque. However, said cheques are dishonored, therefore, resignation given by those employees shall be treated as cancelled.

6) The respondent was not having any reason to close the factory but for the own benefit, the respondent has closed the factory and started new Unit at Rui, Taluka Hatkanangle, District Kolhapur and engaged contractual employees. The production activities of respondent No.01 are similar to newly established Unit. The respondent was having sufficient work order, however, respondent chose to close the factory and cause irreparable loss to the complainant. Therefore, complainant was not having option except to approach the Court.

7) Along-with the complaint, he has filed application for interim relief under Section-30(2) of the Act and prayed for direction to the respondent to deposit legal dues as per Annexure-A to the complaint. Further prayed that, till the ceases of employer-employee relationship, the respondent may be directed to deposit monthly wages with the Court and restrained to create any third party charge in the respondent No.01 premises and residence premises of respondents No.02 and 04.

8) The respondents have duly served and accordingly they appeared and submitted their Written Statement at Exh.C-03. The respondents

have strongly objected to the complaint as well as interim relief application stating that, said complaint is false, mischievous, misconceived, frivolous. Also respondents have challenged the complaint on the ground of limitation, misjoinder of parties and incorrect name mentioned in the complaint. Further it is submitted that, this Court has no jurisdiction to entertain and decide the complaint.

9) As far as legal dues are concerned; it is submitted that, so-called dues are not payable by respondent as mentioned in Annexure and those figures are out of wild imagination. However, it is admitted that, around 180 employees were working and out of above, 83 employees have been resigned and now only 97 employees are remain to be resigned. The respondent is making efforts to clear dues of resigned employees, but due to paucity of funds, the payment of resigned employees has delayed. But, none of the resigned employee has filed complaint and only to harass and to extract the money, present group of employees have been filed complaint. Due to severe financial crunch respondent could not pay financial dues of various Creditors, therefore, Maharashtra State Electricity Distribution Company disconnected electricity supply of the respondent. In the result, Unit no. 1 came to grinding halt and it has paralyzed. The respondent was struggling to

survive by making various efforts and is in serious financial trouble. The respondent has incurred heavy losses for accounting year 2019 and 2020.

10) As far as averments in Para 01, 02, 03, 04, 05, 06 are concerned; these contents are false, frivolous, mischievous and not admitted to the respondents. As the respondent was facing financial difficulties and future was uncertain and in dark. So, to safeguard the financial dues of employees, they themselves approached to the respondent No.04 and requested for way out. The issue of safeguarding of financial dues was discussed with all the employees and complainant was one amongst them. The discussion took place in very cordially atmosphere and in good faith. The employees raised the issue of Voluntary Retirement Scheme and full and final dues were finalized and schedule of payment was decided. Accordingly, memorandum of understanding was prepared and for the sake of convenience, the committee of workers appointed by the employees signed it on 25/04/2022. But, due to heavy financial crunch and problems, the respondent No.04 could not make payment as per memorandum of understanding.

11) The Unit 02 was partially running and therefore complainant and other employees were given work from 01/08/2021 and paid them wages. The Creditors have been taken steps to recover their dues and

their action ended into sale of Unit 02 at Rui. The Unit No.02 purchased by one Shri. Khamkar and six others and dues were recovered by Apna Sahakari Bank Limited.

12) The employees have opted VRS and question of closure and allegations thereof are false, frivolous and mischievous. The memorandum of understanding is the outcome of meeting with all the employees including the complainant and till date none of the resigned employee have objected or have rejected the memorandum of understanding. After signing the memorandum of understanding employees have not turned for duties and are not entitled for any amount. Also the resigned employees have not disputed their resignation. Due to severe financial crunch their final payment are delayed, but some amount is paid to them by RTGS. The Unit No.02 was started in the year 2006, but due to Bank Mortgage it is sold. The dues under the E.S.I. Act and E.P.F. and M.P. Act are to be paid and respondents are paying the same. Under these circumstances, complainant is not entitled for any relief and hence complaint may be dismissed.

13) Heard both the learned Advocates and perused complaint proceeding. On the basis of submission made by respective parties and documents available on record, following points arise for determination

which are discussed and necessary findings to that effect recorded as under :

POINTS	FINDINGS
1) Does the Complainant <i>prima-facie</i> succeed to show that, the Respondents have indulged into unfair labour practices under Items-9 and 10 of Schedule-IV of the M.R.T.U. & P.U.L.P. Act, 1971 ?	.. In the affirmative.
2) Does the Complainant succeed to show strong <i>prima-facie</i> case and balance of convenience in his favour?	.. In the affirmative.
3) Whether the Complainant <i>prima-facie</i> succeed to show that, he will cause irreparable loss or great hardship if not granted interim relief ?	.. In the affirmative.
4) What order and relief ?	.. As per final order.

R E A S O N S

AS TO POINTS NO.01 TO 04 :-

14) After going through the entire proceeding and submission made by respective parties it is observed that, admittedly the respondent No.01 Undertaking is an 'Industry' defined under Section-2(s) of the Industrial Disputes Act, 1947, therefore, all the Labour Laws must be applicable to it. Respondent itself submitted that, the respondent No.01 is the Company registered under the Companies Act, 1956, therefore, it would be appropriate to consider that, the respondents No.02 and 03

are its Directors. Further admittedly the respondent in its Written Statement admitted that, respondent No.04 was looking the affairs of respondent No.01 Company and hence it would be proper to say that, the plea of complainant about respondent No.04 appears to be true. Further admittedly the complainant is/was employed by respondent No.01 Company in the capacity of Maintenance on and from 2018 and lastly he was drawing wages of Rs.15,746/- per month. The complainant has disclosed the nature of work performed by him, therefore, it can be concluded that, he is the 'Employee' defined under Section-3(5) of the Act.

15) Further the learned Advocate for respondent Shri. D. S. Joshi submitted that, the respondent No.01 Company is old and established somewhere in 1970 and it was engaged in Foundry. As per submission made by learned Advocate Shri. D. S. Joshi it appears that, the Company was functioning from years together with the help of 169 employees in different capacity. Unfortunately, the Company has suffered from so-called losses from the year 2019 onwards, therefore, it was very difficult to run the business and pay the Creditors. Knowing the business of Company all the employees were worried and they had been approach to the respondent on dated 25/04/2022 and requested for the way out. Giving respect to the employee's expectations and with

intent to safeguard the future of employees, Company has decided for amicable way which was agreed by all the employees. Hence, Company has signed memorandum of understanding dated 25/04/2022 under the signature of Representative of employees. Hence, Company signing memorandum of understanding agreed to pay legal dues of employees i.e. Gratuity, Unpaid Bonus, Leave Salary, Weekly Payment, Unpaid Overtime, Pending Salary and 30% amount of remaining service of each employee in installment. But, due to financial crisis, the Company is unable to pay legal dues of the employees. However, Company is willing to pay legal dues.

16) The learned Advocate for complainant Shri. V. S. Chavan submitted that, the Company was employing more than 100 employees, therefore, Chapter-V(B) of the Industrial Disputes Act, 1947 is applicable to it. If the Company was facing financial difficulties and it was willing to close the Undertaking, then Company should have approached to the appropriate Government for permission of closure. Instead of that, the Company called the meeting with the employees in which it is resolved that, all employees should be resigned from the employment, because of no work available with the respondent. Further learned Advocate Shri. V. S. Chavan submitted that, on dated 25/04/2022 one memorandum of understanding was signed in

continuation of meeting dated 23/04/2022 and therein it is decided and agreed that, the Company shall pay legal dues of employees i.e. Wages, Bonus, Leave Wages, Weekly Wages, Overtime Wages, Outstanding Wages and 30% amount of the remaining service in three installments. First installment shall be paid in the month of July-2020 @ 40% and in the month of September-2020 it shall paid 30% and remaining 30% shall be paid in the month of October-2022. On the basis of memorandum of understanding many employees have tendered their resignation except 57 employees. However, respondent failed to pay legal dues as agreed in the memorandum of understanding dated 25/04/2022 and also has not availed legal remedy to close the Undertaking. Therefore, unless and until respondent undertaking shall not closed legally the respondent is duty bound to pay legal dues to the employees along-with monthly wages. Alternatively, the respondent is also bound to pay the legal dues which are agreed in the memorandum of understanding. The respondent failed to pay legal dues or failed to restart the production activities, therefore, complainant was compelled to file present complaint.

17) After going through the pleadings of the both parties it is observed that, the respondent though was started in the year 1970, but incurred so-called losses from accounting year 2019-2020. Therefore, it

was came to the conclusion that, it is not visible to run the business. Hence, respondent instead of preferring application to the appropriate Government chose the way of negotiation with the employees. Finally employees and respondent arrived at amicable solution in the form of memorandum of understanding dated 25/04/2022. Along-with respondent No.01 Factory it was having another Unit which is called Unit 02 situated at Rui, Taluka Hatkanangle, District Kolhapur. When electricity was discontinued in the premises of respondent No.01 in the month of April-2021 production activities were stopped and all the employees compelled to be unemployed on and from 20/04/2021. It is the contention of complainant that, though the respondent has not provided work from 20/04/2021, however, in the month of May, June, July-2021 all the employees were seating idle. It is admitted fact on the part of both the parties that, the employees including complainant was provided work with Unit 02 from 01/08/2021 to 22/04/2022 as a stop gap arrangement and paid them wages for such period. It is also admitted fact that, Unit 02 also came to be closed on and from 31/03/2022. As per submission of learned Advocate Shri. D. S. Joshi, Unit 02 has sold out to the purchaser namely Shri. Khamkar and six others and dues were recovered by Apna Sahakari Bank Limited. Thereafter Company has signed memorandum of understanding on

dated 25/04/2022.

18) If perused memorandum of understanding dated 25/04/2022 it is appears that, it has signed by employees Representative and Company Management and agreed that, *“rates of raw material increased and Company suffered from financial losses, therefore, Company has taken decision to close Unit 01 and said decision is accepted by the employees. Against the legal dues, Company has agreed to pay Bonus, Leave Wages, Weekly Wages, Overtime Wages, Outstanding Wages and 30% amount towards remaining service in three installments i.e. in July-2022, September-2022 and October-2022. Before the actual disbursement of legal dues, all the details shall be shown to the employees and after that, all the employees should resigned from the employment. Once legal dues are paid, the employer shall pay or deposit outstanding towards provident fund. In the event of failed to pay legal dues till the month of October-2022, the respondent shall not be consider resignation of the employees”*.

However, it is observed that, respondent employer failed to pay legal dues of employees upto October-2022, therefore, it is possible to draw that, the resignation given by employees stands to be cancelled.

19) It is to be noted that, every Undertaking which is governed by Chapter-V(B) of the Industrial Disputes Act, 1947 shall have to apply for closure of Undertaking to the appropriate Government in the

prescribed format mentioning the date of proposed closure. Once the Undertaking got the permission of closure it can be close the Undertaking subject to paying closure compensation (as per section 25F of ID Act) along-with three months notice pay and all other legal dues of the employees. Herein present case respondent has not submitted any application before the appropriate Government nor the employees are communicated independently about the closure of Undertaking. But by way of memorandum of understanding, the respondent employer has declared closure of Unit 01 on and from 25/04/2022. Therefore, decision of closure without due procedure of Law and without paying closure compensation and notice pay attracts to Item-9 and 10 of Schedule-IV of the Act.

20) For a moment if it is considered that, the respondent Company is closed on and from 25/04/2022 in that circumstances, the respondent was required to pay legal dues i.e. closure compensation @ 15 days for each completed year, gratuity amount, notice pay and any other dues for which employee is entitled. In the present case the complainant has relied on Annexure-A to the complaint and memorandum of understanding assuming that, the respondent Company is closed. Needless to say that, the service tenure, last drawn wages of complainant and closure of respondent is not disputed by respondent.

Also it has not disputed the fact of memorandum of understanding dated 25/04/2022. Therefore, employer is not having any right to avoid the benefits of closure compensation and legal dues on the ground of so called financial difficulty. Admittedly, the respondent has not availed legal remedy to close the Undertaking by following due procedure of law, therefore, as on today also, it is possible to the respondent to re-think about the decision of closure and start the production activities. If the respondent started its production activities then automatically issue shall be resolved. But till that time if the respondent is directed to deposit legal dues of Rs.2,16,776/- towards closure compensation, leave salary, over time wages, bonus and outstanding it would not cause any irreparable loss to the respondent. To the other hand, if no such order is passed certainly the complainant would cause irreparable loss as the respondent may take its own time to release the amount of complainant and to restart the functioning.

21) Hence, under these circumstances, this Court *prima-facie* comes to the conclusion that, the respondents have indulged into alleged unfair labour practices by not paying legal dues of employees and by closing its undertaking without following due procedure of law. In the result, complainant has succeed to show strong *prima-facie* case and balance of convenience in his favour. Even-though the Court has not

granted relief, the complainant would cause irreparable loss. Hence, the findings of above points answered in the 'Affirmative' and proceed to pass following order.

O R D E R

- 1) Application at Exh. U-02 is partly allowed.
- 2) It is held and declared that, *prima-facie* respondents No.01, 02 and 04 have indulged into unfair labour practices under Item-9 and 10 of the M.R.T.U. & P.U.L.P. Act, 1971.
- 3) The respondents are hereby directed to cease and desist from unfair labour practices henceforth.
- 4) The respondents No.01, 02 and 04 hereby directed to deposit amount of Rs.2,16,776/- (Two Lakhs Sixteen Thousand Seven Hundred and Seventy Six Rupees Only) as per Annexure-A to the complaint within two (02) months from the date of this order.
- 5) No order as to cost.

Kolhapur.
Date :- 04/09/2023.

(Shri. S. D. Suryawanshi)
Member,
Industrial Court No.02, Kolhapur.