

MHIC090003782021



Exh.O-

IN THE INDUSTRIAL COURT NO.1, MAHARASHTRA
AT KOLHAPUR

Complaint (ULP)No. 171/2021
(CNR No.MHIC090003782021)

1. Municipal Transport Workers Union .. Complainants
2. Tanaji Pandurang Kumbhar

V/s

Kolhapur Municipal Transport, Kolhapur .. Respondent

: ORDER BELOW EXH.C-3 :
(Dated :- 29.03.2022)

1. The Respondent has filed present application for rejection of complaint on the ground that as it is filed by Complainants without both having the right to approach this Court i.e. locus-standi. It is contended that the Respondent undertaking is owned and controlled by Kolhapur Municipal Corporation. The Union recognized under the provisions of the MRTU & PULP Act, 1971 namely Municipal Transport Workers'

--2--

Union is the sole bargaining agent functioning in the Respondent Undertaking.

2. It is contended that since last two years there arose a dispute between office bearers of above mentioned recognized union and complaint was filed bearing Comp. (ULP)No.32/2019 seeking order of injunction to deduct subscriptions of said union from the wages payable to the workmen. In that case, interim order came to be granted. Said Comp.(ULP) is still pending.

3. It is contended that the dispute about the office bearers of the union went to the Registrar, Trade Unions, Pune wherein rival members approached and placed their respective cases. Accordingly, the Registrar issued consent certificate under regulation 23(2) of the Bombay Trade Union Regulations 1927 in Form 'L' and referred the dispute to this Court. Accordingly, the Applicant Shashikant Patil filed application (ICTU)No. 01/2021 against Opponent Nishikant Sarnaik. Therefore, the dispute about the office bearers of the recognized union is pending before this Court.

4. It is contended that during pendency of said dispute, applicant Shashikant Patil issued letter of authority to one Manoj Vitthal Narvekar mentioning him as Joint Secretary of the Union stating that union has passed a resolution to file complaints in respect of daily wages workmen in this Court. The said certificate is undated. Accordingly, Manoj Narvekar for and on behalf of the recognized union along with the concerned employee has filed the present complaint.

5. Considering the nature of dispute, the Registrar, Trade Union referred the same to this Court. Under such circumstances, the present complaint is nothing but an abuse of process of law as it is filed without the Complainants having any locus-standi. It is an interference in pending dispute. The Complainants have taken the Court for granted. It is therefore urged to dismiss the complaint with cost of Rs.2000/-.

6. The application is contested by the Complainants through reply Exhibit U-16. It is submitted that the application is not maintainable and liable to be rejected. There is no cause of action to file such application as there is no nexus between the

--4--

dispute of members and present application.

7. It is submitted that admittedly Municipal Transport Workers' Union is recognized union of Respondent Undertaking. Mr. Nishikant Sarnaik was acting as the President. Since he superannuated on completion of 58 years, meeting was arranged on 27.10.2018 and he was removed from the post of President. During the course of his tenure as President he has committed various irregularities and did not submit accounts within time. Therefore, Mr. Shashikant Patil in his individual capacity filed application before Registrar of Trade Unions, Pune seeking consent certificate. After satisfying with the allegations and pursuing the documents, such consent certificate was issued that has resulted in ICTU Application No. 1/2021.

8. It is therefore, contended that that dispute involved in the consent certificate is between two members of the union and union itself is no where involved in the dispute. The resolution dtd. 28.10.2018 as well as selection of new office bearers is not challenged till today.

9. It is contended that for seeking permanency it is

required to file complaint through recognized union. At the relevant time, Mr. Manoj Narvekar was and is acting as Joint Secretary of the Union. As the appointment of Mr. Narvekar as Joint Secretary is not challenged, therefore, he is having locus-standi to sign on behalf of the union. Thus, the application is liable to be rejected.

10. Thereafter the Complainants have denied the parawise contentions raised by the Respondent.

11. On the basis of rival contentions the following point arise for my consideration and the same is answered as below for reasons to follow :

POINT	FINDING
1) Whether the complaint is maintainable ? Whether the Complainants have locus-standi to file the complaint ?	As per order.

: REASONS :

As to Point No. 1 :-

12. The Ld. Counsel for the Respondent filed an application to take Comp.(ULP)No.32/2019 on record. For the reasons mentioned in the order passed vide Exh.O-6 in Comp.

--6--

(ULP)No.154/2021, the application is allowed. By referring the said Comp.(ULP) 32/2019 the Ld. Counsel for the Respondent vehemently argued that the present complaint filed by the Complainants is not at all maintainable as they have no locus standi. There exists dispute about the real office bearers and therefore, the recognized union had filed Comp.(ULP)No. 32/2019 which is pending before this Court. On the one hand, Mr. Shashikant Patil claims to be the President of the recognized union but on the other hand Mr. Nishikant Sarnaik claims to be the President. When the dispute about the office bearer is pending, it would be in the interest of justice that the complaint is dismissed. Attention of the Court is drawn to the order passed in Comp.(ULP)No.32/2019 vide Exh.NAU-1 dtd. 31.12.2019. It is argued that this Court opined that there appears to be a serious dispute in respect of real office bearers of the union and such dispute do not come within domain and jurisdiction of this Court while dealing with and deciding the present complaint. It was therefore, directed that such dispute needs to be resolved and decided by an appropriate forum as provided in the Trade Union

..7/--

Act.

13. The Ld. Counsel for the Respondent argued that through the recognized union only one complaint could have been preferred mentioning the names of all such workmen that are claiming reliefs. Instead the Complainants have filed multiple complaints in the name of each workman thereby giving rise to multiplicity of litigation.

It is also argued that the consent certificate issued by the Registrar, Trade Unions has been challenged before the Hon'ble Bombay High Court by way of Writ Petition no.7789/2021. In the said Writ Petition, the Petitioner is named as Municipal Transport Worker's Union and the name of President is mentioned as Mr. Nishikant Sarnaik. It is pertinent to note that Mr. Shashikant Rajaram Patil is a party Respondent to the said Writ Petition. It is argued that the Hon'ble Bombay High Court was pleased to grant stay to the ICTU No. 1/2021 pending before this Court. Under such circumstances the complaint is liable to be dismissed.

14. The Ld. Counsel for the Complainants argued that the consent certificate was obtained under Sec. 28(1A) of

--8--

Trade Unions Act. There is no dispute about the recognized Trade Union. Even there is no dispute about the office bearers. The only dispute pertains to irregularities committed by the former President of the recognized Trade Union Mr. Nishikant Sarnaik. Accordingly, the consent certificate was obtained and ICTU 1/2021 came to be filed. The filing of Writ Petition before Hon. Bombay High Court and issuance of interim order is a matter of record. No declaration has been given by any competent forum that the present office bearers have no authority to file such complaints. Even the election of the office bearers has not been challenged before any forum. Under such circumstances, the Respondent cannot take advantage of dispute which pertains about the irregularities committed by former President. Therefore, the application challenging the maintainability of complaint is liable to be rejected.

15. Heard the Ld. Counsels at length and perused the documents. The Respondent has placed emphasis on the observations made by my Predecessor while passing an order below Exh.NAU-1 in Comp.(ULP)No.32/2019 dtd. 31.12.2019.

..9/--

The said complaint is filed by the recognized union against the Respondent urging thereby not to deduct subscription and for direction to negotiate with the office bearers that are elected through Special General Body Meeting dtd. 27.10.2018. In the said complaint Mr. Nishikant Sarnaik had filed the said application Exh.NAU-1 with prayer to implead him as party. The said application came to be rejected vide order dtd. 31.12.2019 with observations that there appears to be a serious dispute in respect of real office bearers of the union.

The present complaint is filed by the recognized union towards the claim of permanency of Complainant no. 2.

The Registrar, Trade Union issued consent certificate with covering letter dtd. 30.08.2021. Accordingly, ICTU No. 1/2021 came to be preferred before this Court. It is also not disputed that said consent certificate is challenged before Hon. Bombay High Court by way of W.P. No. 7789/2021 in which further proceeding in ICTU No. 01/2021 is stayed as well as Mr. Nishikant Sarnaik is also restrained from taking any major financial decision till further orders. Therefore, it demonstrates that the Hon. Bombay High

Court was pleased to maintain status-quo.

16. It is settled position that a union is a legal person. It has perpetual existence. It can sue in its' own name and legal proceeding can be filed against him. Under such circumstances, even if it is accepted for sake of arguments that there exists a dispute about the real office bearer of the Complainant Union it cannot be denied that the Complainant Union is the recognized union which is empowered to file the proceedings for permanency of the workmen.

Also at the same time, it cannot be ignored that the question raised by the Respondent is a mixed question of facts and law. Under such circumstances, the objection raised by the Respondent that the present complaint is filed by the Complainants that have no locus-standi, can be answered only after the litigant parties are afforded an opportunity to lead evidence.

The other objection contended by the Respondent that the recognized union ought to have filed only one common complaint and not so many identical complaints is liable to be rejected as it is the prerogative of the litigant to prefer the nature of

--11--

proceeding. Hence, the point no. 1 is answered accordingly.

Thus, the following order is passed.

: ORDER :

1. The application is disposed of.
2. Requisite issues shall be framed at relevant stage of proceeding as per paragraph no. 11.
3. Such issues shall be answered along with other issues.

Kolhapur.

Date : 29.03.2022.

(S. S. Khandekar)
Member,
Industrial Court No.1, Kolhapur.