

**Order below Exh. U-2 in Complaint (ULP) No.24/2017**

1. By this application, the complainant Union prays for the interim relief in terms of prayer clause 5 (a) to the effect that, to direct the respondent No.1 company not to deduct the subscription of the respondent No.2 Union from the wages of employees who have withdrawn the authority of deduction. For want of cause of action no interim relief claimed as per prayer clause 5 (b).

2. As per the submissions of the learned Advocate R. P. Shaligram for the complainant Union, in June 2017, 134 employees of the respondent No.1 company have accepted the membership of the complainant Union. This fact was communicated to the respondent company by the letter dated 6-6-2017. Also, the employees who are the members of the complainant Union have submitted their affidavits to the respondent No.1 Company on 29-7-2017. It is their right to join the Union as per their choice. However, in spite of withdrawing the authority, the respondent No.1 company still deducting the subscription of Rs.10/- pm. from the salaries of the 134 employees and used to transfer to the respondent No.2 Union. This act amounts to engaging in unfair labour practice.

3. It is further submitted by the learned Advocate for the complainant that as per the provision of Section 7(KKK) of the Payment of Wages Act, deduction towards Union subscription, is voluntary deduction requiring written authorization of the employed person. However, in spite of communicating to the respondent No.1 company, by an application and affidavit, still the amount of subscription from the wages of these 134 employees is deducted and transferred to the

respondent No.1 company. If the respondent No.1 company and respondent No.2 Union are restrained by way of temporary relief, then no prejudice would cause to them. On the other hand, there would be unnecessary double deduction from the wages of the employees towards the Union subscription. The balance of convenience also lies in favour of the complainant Union. Hence, he prays for the interim relief.

4. The learned Advocate V. R. Joshi for the respondent No.1 company and the learned Advocate Todkar for the respondent No.2 Union strongly opposed the present application. It is inter alias contended that the act of deduction of the subscription amount by the respondent No.1 company for the respondent No.2 Union does not cover under item No.9 & 10 of Schedule IV of the MRTU & PULP Act (in short "the Act"). The respondent No.2 is the recognized Union, while the complainant Union is not the recognized Union. Therefore, according to the provisions of Section 22 of the Act, the complainant Union has no right to claim the relief in terms of prayer clause 5 (a) of the present application. The documents pertaining to the resignation and affidavits of the so called 134 employees are concerned, they are under challenge. The complaints made to the Police Authorities and the Bar Council of Maharashtra regarding the said documents. No documents are produced on record by the complainant Union to show that in fact 134 employees have accepted their membership by making the payment of subscription as envisaged u/s 3(11) of the Act.

5. Therefore, according to the learned Advocate for the contesting respondents, the complainant Union failed to make out a prima facie case in its favour. The respondent No.2 Union already filed an undertaking that if on merits anything adversely decided against the

respondent No.2, then they are ready to repay the subscriptions amount along with the interest to the concerned employees. Therefore, no balance of convenience is in favour of the complainant Union. Also no irreparable loss would cause to anybody. Thus on the factual and legal matrix, it is submitted to reject the application.

6. In the light of the rival submissions of both sides, the following points arise for my determination and the finding thereon for the reasons recorded is as below.

<u>POINTS</u>	<u>FINDINGS</u>
1) Whether the complainant Union has made out a prima facie case ?	In the Negative
2) Whether the balance of convenience is in favour of the complainant Union ?	In the Negative
3) Whether an irreparable loss would cause to the complainant Union, if no relief granted ?	In the Negative

: **REASONS** :

7. It is the fact that the complainant Union is not the recognized Union of the respondent No.1 company. The respondent No.2 Union is the recognized Union and the sole bargaining agent.

8. According to the provisions of Section 22 of the Act, the Unrecognized Union have limited rights namely, to meet and discuss with the employer only about the grievance of an individual member relating to discharge, removal, retrenchment or termination of the

services and to appear on behalf of its member in any domestic and departmental inquiry held by the employer.

9. The said provision does not empower any right to the unrecognized Union to claim the relief in respect of its members, thereby to direct the employer not to deduct their subscriptions from the wages, when the same has been withdrawn by them.

10. It is the fact that according to the Payment of Wages Act, the deduction of the subscription of a Union as envisaged u/s 7(KKK) is the voluntary deduction. It requires the written authorization of the employed persons, whereby the employer is authorized to deduct the subscription for their Union.

11. Here in the present matter, no doubt the so called 134 employees of the respondent No.1 company by the affidavits dated 29-7-2017 informed about their resignation of the membership of the respondent No.2 Union, with a request not to deduct the subscriptions of the respondent No.2 Union from their wages.

12. It is relevant to note that the complaint made by the respondent No.2 Union with the Police Authorities and the Bar Council of Maharashtra, challenging the said documents on the ground that some of the affidavits are bogus and forged and some of them are obtained by coercion and threats.

13. None of the employee from the 134 employees of the complainant Union come forward to prima facie show that they in fact accepted the membership of the complainant Union by submitting their

resignation of the membership of the respondent No.2 Union and they have sworn an affidavit dated 29-7-2017.

14. It is also pertinent to note that the complainant Union failed to produce any documentary proof to show that the so called 134 employees of the respondent No.1 company accepted the membership of their Union and are regularly making the payment of subscription fees as envisaged u/s 3(11) of the Act.

15. The respondent No.2 Union gave an undertaking that in case on merits, it is proved that some of the employees of the respondent No.1 company tendered the resignation of their membership the by accepting the membership of the complainant Union. In that eventuality, they are ready to repay their subscription amount along with the interest.

16. If the above factual and legal aspects are considered, then prima facie, the complainant Union legally not entitled to claim the relief in terms of prayer clause 5(a) of the application. Also, prima facie failed to make a case that 134 employees of the respondent No.1 company have accepted their membership and withdrawn their authorization given to the respondent No.1 company for deduction of the monthly Union subscription of Rs.10/- which has been credited to the respondent No.2 Union.

17. When the complainant Union failed to make out a prima facie case, the balance of convenience will not be in their favour. Also, no monetary loss would cause to the so called complainant Union in view of the undertaking given by the respondent No.2 Union.

18. Therefore, in view of the facts and circumstances and for the reasons mentioned above, the complainant Union is not deserved for the interim relief. In the result, I have recorded my findings to Point No.1, 2 and 3 in negative. Hence, the following order.

**ORDER**

- 1) The application for interim relief in terms of prayer clause 5(a) stands rejected.
- 2) Both parties to expedite the main matter in the light of the controversies in the documents in question.

Date: 21/11/2018  
SATARA.

Sd/-  
(D. A. Dholakia)  
Member,  
Industrial Court, Satara.