

also filed an application for adding them as third party. It is further contended that the respondent company and third party applicants are hand in gloves with each other and the complainant apprehended that they are going to misuse the office of the union in order to conduct a farce of election and to control the complainant union. It is further contended that third party applicants are conspiring with the respondent Company illegally and without consent of the complainant and permission of this court, declared elections by displaying notice on 12/3/202. The election notice is Counter signed by the HR officer of the company. The elections are declared only to make the present complaint infructuous. The respondent company has started threatening permanent workers that in case of elections they should vote for candidates who are approved by the company and should not listen to actual office bearers of the Union. The company and third party applicants are trying to gain control of the complaint Union through the back door. There are already two applications pending before this court and it will take time to hear and pass an order on It. It is therefore prayed to issue a restraining order to seal the office of the union till order on interim application Exh. U-2. It is further prayed to direct the proposed party and respondent company not to conduct election till the disposal of the present complaint and for some other reliefs.

3. The application is resisted by respondent company by

filing reply (Exh. C-5) and contended that the application is not maintainable as this court by order below (Exh. UA-3) allowed representation of a third party in the present complaint. The company has also preferred an application for framing a preliminary issue which needs to be decided before this application. The complainant is trying to file matters which can only be entertained under section 28 (1-A) of the Trade Unions Act. It is clear from perusal of the application that this is a dispute between office bearers of the union. It is denied that the complainant is having representation of employees of the company. It is not the official body of the union. Any dispute between the union or its members can only be resolved by proceeding under the Trade Unions Act and therefore the complaint and the application is not maintainable.

4. During the pendency of the matter, an application filed by third party Union (Exh. UA-3) came to be allowed as per order dated 17.03.2022 and Sunil Dutt Deshmukh claiming himself to be the general secretary of complaint Union, has been allowed to be added as party respondent No. 2.

5. Respondent No. 2 has filed separate reply (Exh. UA-11) and contended that the complaint is filed by a group of workers who have been expelled from the union. Said group has declared the Executive committee of the union without authority and without election. For the reason of theft and

preparation of false documents these workers were expelled from the union as per the resolution of the General Body. This matter is not filed under Section 28 (1-A) of The Trade Unions Act and therefore stay cannot be claimed under the present complaint which is filed for unfair labour practices. The elections are being conducted through independent Election Officers who are not party to the present case and therefore no relief can be granted. The process of election has already commenced and therefore it cannot be stayed. The complainant's group has no control over the union or its members, however in order to get control over the union, the present application is filed.

6. It is further contended by respondent No. 2 that for the purpose of declaring elections and proceeding further, it is not required to take consent of the complainant's group, who is no longer a member of the union. Respondent No. 2 was the office bearer of the union elected in 2019. The term of office bearers came to an end in January 2022. The matter is pending before this court but there is no stay granted and therefore the elections have been declared by following provisions of the Constitution of the union. The elections are being conducted through an independent Election committee. Senior employees in the company used to work as an independent Election Officers. This type of procedure was followed when the Complainant's group was part of the Executive committee of the union. The

said group can seek appropriate relief at appropriate places. It is therefore prayed to reject the application.

7. Heard the Ld. Counsel Shri Kshirsagar for the complainant. He submitted that the elections are declared when the present matter is pending. He drew my attention towards the election programme and submitted that the production manager and HR manager of the company are being appointed as election officers. If the elections are conducted, the very purpose of filing the present complaint will be frustrated. He, therefore prayed to allow the application.

8. The Ld. Counsel Shri Joshi for the company on the other hand submitted that for granting any interim relief it is required to establish unfair labour practices alleged in the complaint. Unfair labour practices under items 5, 9 and 10 of the Schedule IV are not at all established. According to him, if there is dispute of office bearers or members or question of wrongful expulsion, the procedure is given under the Trade Unions Act and with consent of the Registrar under the Trade Unions Act, matter can be entertained under section 28 (1-A) of the Trade Unions Act. He further submitted that concern labour minister's Personal Assistant has directed to take action against the leaders of group who initiated this case, for giving false information. According to him this is purely a case under the Trade unions Act. Election Officer is not party to this

proceeding and the election process is almost complete. The complainant Union has not filed an affidavit of members who are voters in the said election. As such, he prayed to reject the application.

9. The Ld. Counsel Shri Pol for respondent No. 2 submitted that period of the Executive Committee of the union which was elected by procedure, came to an end in the month of February 2021. Thereafter, a group of workers who has initiated the present complainant, without declaring elections and against the provisions of the constitution of the union, has declared Executive Committee members of the union. According to him, this group of workers is already expelled from membership of the union as per resolution of the General Body. Criminal case is also filed against this group for fabrication of documents and theft, which is pending before the JMFC Court, Pune. He also raised similar contention like Ad. Joshi that this is a case under Section 28 (1-A) of the Trade Unions Act, Election Officers are not party, process of election is almost over and the elections are being held as per the Constitution of the union. Therefore, according to him, no relief can be granted as prayed for.

10. The following points arise for my determination. I have recorded my findings thereon with the reasons stated below :-

	POINTS	FINDINGS
1	Whether the complainant has made out a strong prima-facie case of unfair labour practices ?	No.
2	Whether balance of convenience lies in its favour ?	No.
3	Whether the complainant is entitled to reliefs as prayed for?	No.
4	What order ?	The application is rejected.

REASONS

As to points No. 1 to 4 :-

11. It is the case of the complainant Union that respondent Company along with the other group of union, has taken position of office of the union. According to the complainant, members of this other group have been expelled from the Union and hence, have no concern which the Union activity. According to the complainant the company is supporting this group and therefore the present complaint was filed claiming relief to direct the respondent Company to handover key of office of the union. It is not in dispute that earlier the said other group was not made party in this complaint. However, as per order below Exh. UA-3 application of the third party group came to be allowed and the said group is now represented by respondent No. 2 in this complaint. It is the claim of the said group that the group who has filed the present complaint is

already expelled from membership of the complainant Union by process and after decision in the General Body. Hence, said group has no authority to represent the complainant Union.

12. It is not in dispute that the earlier Executive Committee of Jubilant Kamgar Union union was elected in the year 2019 as per procedure provided in its Constitution. It is also not in dispute that in the month of February 2012 period of the said executive committee came to an end. it is also apparent from contentions of rival parties that prior to completion of the said period, dispute started between two groups of union. Therefore the first group has filed the present complaint and prayed for directing respondent company to handover key of office of the union. It is admitted in the complaint that the office of the said Union is in position of the other group now represented through respondent No. 2. It is also not in dispute that while filing the present complaint there was no question of elections of the office bearers of Jubilant Kamgar Union. However, it appears that during the pendency of this complaint, the other group of the union, now represented by respondent No. 2, has declared elections. In the light of these facts, the complainant has claimed specific interim Relief to seal office of Jubilant Kamgar Union and also for direction to prevent from conducting the elections.

13. It is required to mention here that two groups of

Jubilant Kamgar Union are alleging against each other. Both groups are claiming that they have expelled the other group members from the union and therefore, claim to have control over the union. The group of members who has filed the present complaint claims that it is the elected body of Jubilant Kamgar Union. On the other hand, the other group represented by respondent No. 2 claims that period of earlier elected body is over and therefore as per the Constitution of the union, elections are being declared. At this Prima facie stage, it is clear on record that period of earlier elected Executive Committee of Jubilant Kamgar Union came to an end in the month of February 2012.

14. While arguing the interim relief application on 22.03.2022, it was admitted by both parties and their Counsels that voting process was in progress. On that date, considering peculiar facts and circumstances of the case, I have passed an ad-interim order on 22.03.2022 and directed officer of respondent company/Election Officers to withheld result of the election. The Ld. Counsel Shri Joshi for the Company, on the next date, has submitted that the Election Officer has completed entire process of election and only the result is withheld as per order of this Court.

15. From aforesaid discussion, this dispute *prima-facie* appears to be a dispute between two groups of one union and

thus appears to be the dispute under the Trade Unions Act. Furthermore, on the date of argument that is on 22.03.2022, respondent company has filed copy of letter dated 21.03.2022 issued by the Deputy Registrar under the Trade Unions Act to Yashwant Bhosale of Jubilant Kamgar Union. It appears from the said letter that the group who has filed the present complaint for Jubilant Kamgar Union has approached to the said authority in respect of illegal process of election which is being declared by another group of Jubilant Kamgar Union. Thus, the group of union members who has filed the present complaint, has also availed remedy under Section 28 (1-A) of the Trade Unions Act by challenging the election process declared by the other group and prayed for Consent certificate which is the pre-requisite to approach to the Industrial Court under the said Act.

16. For brevity, it would be apposite to refer provisions of Section 28-1A) of the Trade Unions Act, 1926. It reads as -

“28-1A. Power of Industrial Court to decide certain disputes. —(1) *Where there is a dispute as respects whether or not any person is an office-bearer or a member of a registered Trade Union (including any dispute relating to wrongful expulsion of any such office-bearer or member), or where there is any dispute relating to the property (including the account books) of any registered Trade Union, any member of such registered Trade Union for a period of not less than six months may,*

with the consent of the Registrar, and in such manner as may be prescribed, refer the dispute to the Industrial Court constituted under the Bombay Industrial Relations Act, 1946, for decision.

17. The Ld. Counsel Shri Kshirsagar drew my attention towards decision of the Hon'ble Bombay High Court in *Shri. P. D. Siddhaye V/s. G.N. Patvardhan, 1998 (2) Bom. C.R. 663* and submitted that this Court is having power to issue direction in respect of election of union under the MRTU and PULP Act.

18. I have given thoughtful consideration to the said decision. It is held by the Hon'ble Bombay High Court that direction to conduct election can be given by Industrial court while dealing with complaint under unfair labour practices. There is no disputed about ratio laid down in the said matter. However, in my view, due to distinguishing facts it is not helpful to the complaint in this case. The group of members who have filed the present case has already approached to the Deputy Registrar under the Trade Unions Act for obtaining consent certificate in respect of election which is being declared by other group of the trade union. While filing the complaint, main relief claimed by the complainant was to hand over key of office of the union. Subsequently due to changing circumstances, the complainant has claimed relief to stay the election process and for other reliefs. Anyhow, the dispute

appears to be in respect of wrongful expulsion of members and dispute whether or not any person is an office bearer or member of a trade union. As discussed above the group of members who has filed the present case has already approached to the Registrar of the trade unions and availed remedy under the Trade Unions Act. In such circumstances, being a case under the Trade Unions Act, relief under the M.R.T.U. and P.U.L.P. Act cannot be considered.

19. It is also a well settled proposition of law that unless prima-facie unfair labour practices are established, no relief much less, an interim relief can be granted. In this case, the complainant has failed to establish prima facie unfair labour practices against respondent company under item 5 or 9 of the Schedule IV of the Act. Merely appointing an officer of company to conduct election cannot be termed as unfair labour practices. It is specifically pleaded by respondent No. 2 that such type of practice was also followed while selecting earlier Executive Committee. This fact is not denied expressly by the complainant.

20. Respondent No. 2 claimed representation of the other group of the union who has declared election of the union on the ground that period of earlier executive committee of the union came to an end. Fact of election of 2019 and its period for three years till February 2022 is not disputed. In this situation, it is not the case of the complainant that elections of Executive Committee are

conducted after February 2022. In such circumstances, when the period of earlier elected body of the union is over, it cannot be said to be unfair labour practice to commence procedure of election. This issue, at the most, can be dealt with under Section 28-1A of the Trade Unions Act. Moreover it is admitted during the argument that voting process is also over. In this situation, it would not be appropriate to issue any interim order to stall the election process.

21. On the basis of aforesaid discussion the complainant has failed to establish strong prima-faice case of unfair labour practices either against respondent No.1 or respondent No.2. Process of election is almost over. Group of member who initiated this complaint has approached to the Registrar under the Trade Unions Act for obtaining *Consent certificate* in which the present election is under challenge. Therefore the complainant union is not entitled to interim reliefs as prayed for. Hence, I answer points No.1 to 3 in the negative and in answer to point No. 4, proceed to pass the following order :-

ORDER

Application Exhibit U-28 is here by rejected.

Pune :
Date : 04/04/2022
GCM/-

(S. G. Dabadgaonkar)
Member
Industrial Court Pune.