

**IN THE INDUSTRIAL COURT MAHARASHTRA, AT PUNE**

**Complaint (ULP) No.247 of 2017**

Hind Kamgar Sanghatana. ... **Complainant.**

V/s.

M/s. Oriental Rubber Industries Pvt. Ltd. ... **Respondent.**

**CORAM** : Shri. M.R. Kumbhar, Member.

**Appearances** : Shri G. S. Pol, Advocate for complainant.  
Shri A. R. Joshi, Advocate for respondent.

**Order Below Exh.C-7**  
**( Dated: 18.01.2018 )**

Read application filed by respondent company. Perused say filed by complainant below Exh.U-21 supported by affidavit.

2. Heard both the Ld. Advocates for the parties at length and perused the entire material and copies of documents produced on record.

3. By this application respondent raised objection regarding the members of the complainant union whose names are enlisted along with complaint are not workmen, therefore prayed for framing of preliminary issue and decide it first before proceeding further.

4. The Ld. Advocate for respondent vehemently argued that in the written statement at Exh.C-2 in para-1 to 9 it is specifically pleaded that the members of complainant union are not workmen within the meaning of Sec.2(s) of the Industrial Disputes Act, 1947 and in support of his contention listed the detailed nature of duties which were being performed by the members of complainant union. He further argued that, in para-10 of the written statement respondent has pleaded for framing of preliminary with regard to maintainability

of the present complaint. Further argued that the complainants are not workman as per Sec-2(s) of the I.D. Act and an employee as per Sec.3(5) of the MRTU & PULP Act and therefore, vehemently prayed for framing of preliminary issue because the same goes to the root of matter. Further in support of his argument relied on the judgments of the Hon'ble Supreme Court & Hon'ble High Court in the case of Management of Rangaswamy & Co. V/s. D.V. Jagdish (1990-II-CLR-56); H. M. Mhasvadkar V/s. Bombay Iron & Steel Labour Board, (2002-(91)-FLR-232; & Enercon (india) Ltd. V/s. Kishor B. Patel & Ors. (2013-II-CLR-308) in which it is categorically held that it is necessary for framing of preliminary issue, if same goes to the root of the matter, more particularly, if there is application for interim relief which is preferred by complainant. Lastly argued to frame the preliminary issue as, (i) whether complainant proves that they are workmen within the meaning of S-2(s) of the I.D.Act & an employee U/s.3(5) of the MRTU & PULP Act ? and (ii) whether the complaint is maintainable ? and these issues be decided first before proceeding further.

5. On the contrary, the Ld. Advocate for complainant argued that, the objection raised by respondent is frivolous, malafide and not legal. And prior to this application, Exh.U-5 & U-2 these two applications are pending for hearing, and during the course of argument by respondent raised some issues to avoid the hearing of interim relief application. Thereafter the present application is filed just to delay the hearing of interim relief application. On 22/11/2017 below Exh.C-5 respondent has filed the application for dismissal of the complaint because they have terminated the services of the workers mentioned in list about 26 workers. The said application is

still pending and just of avoid and prolong hearing of the complaint, such type of frivolous stand is taken by respondent. According to him the members of complainant union are workmen and & employee and this court has jurisdiction to entertain & try the present complaint. Lastly argued that Industrial Employment (SO) Act, 1946 is applicable to the complainants, & according to Model standing orders clause-2(i) and as per Sec-3(5) of the Act the complainants are workmen and an employee. Therefore, there is no necessity to frame the preliminary issue to that effect. He further argued that respondent has filed some copies of documents at Exh.C-3, and from these documents, though it appears that these workers are appointed as Jr. Supervisor, but actually they are working as operator in the production line and their wages are minimum then the workers. And prayed that application Exh.C-7 for framing of preliminary issue be rejected.

6. In support of his argument, he relied upon the case law in the case of Cricket Club of India & Anr. V/s. Baljit Shyam(Ms) & Anr. (1998-II-LLJ-578-BHC); National Council for Cement & Building Materials V/s. State of Haryana & Ors.,(1996-(3)-SCT-486-SC); and Modern Woolens Mills Ltd. V/s. Judge, Labour Court, Jaipur & Anr. (2002-(1)-Raj-216) and argued the above cited case law are helpful to decide the case of complainant, & prayed for rejection of application.

7. After hearing the parties & after going through the entire material placed before the court, it appears that complainant in support of his contention filed some documents below Exh.U-6, U-18, U-25 & U-30. On the contrary respondent also filed some copies of documents below Exh.C-3 and affidavits below Exh.C-9 to C-16. It appears that pleadings of the parties are word against word, affidavit

against affidavit, and documents against documents.

8. To resolve the controversy between the parties and to decided on prima-facie stage, it is necessary to see the provisions of the I. D. Act. After perusing the definition of a workman U/s.2(s) of the I.D. act and an employee U/s.3(5) of the MRTU & PULP Act, it reveals that the person who is engaged for skilled, unskilled, manual or technical work & his salary is upto Rs.10,000/- are workers. It should not be ignored that, it is the specific contention of respondent that complainants are working in the capacity of supervisors and they are drawing wages of Rs.16.628/- per month. And the nature of duties performed by complainants were exclusively in supervisory in nature as enumerated in para-5 of the written statement. Further it appears that the list of workers with their duty list is filed on record, and the copies of appointment letters of members of complainant are also filed on record. From these documents it appears that, members of complainant were initially appointed as Jr. Supervisor. It is admitted fact that Bhartiya Mazdoor Sangh is functioning in the respondent company. It is also not disputed fact that there is agreement between the said recognised union and respondent in respect of service conditions of employees. It is not also disputed fact that the benefits of said agreement are not made applicable to the members of the complainant union.

9. On the contrary, it is the case of complainant that they are workmen. To show this fact documents below Exh.U-6, U-18, U-25 & U-30 are filed, and after perusing the said documents it appears that, they were appointed as Jr. Supervisor. Further not disputed that they are getting wages more than Rs.10000/-. To show that members of

complainant are workmen, the Ld. Advocate for complainant invited my attention towards the documents filed below Exh.U-30 in which the work chart of concerned workers and attendance are shown. From the document below Exh.U-18 it shows that respondent has issued one warning letter to Dayaram Chaggan Mudame stating that he was sleeping while on duty and it is a misconduct as per Model standing orders applicable to the company.

10. After carefully scanning the entire documents filed on record, one thing is clear that status of workmen is in dispute. Once the status is disputed, then at this prima-facie stage it is unsafe to say that members of the complainant union are workmen or otherwise. It is a mixed question of facts & law, therefore it requires oral as well as documentary evidence to prove this contention. Therefore, in my opinion once the status is under challenge, then before proceeding further preliminary issue needs to be framed.

11. At this stage the Ld. Advocate for respondent put reliance on the case of Management of Rangaswamy (Supra), wherein the Hon'ble Karnataka High Court observed that,

"Appellant disputing that first respondent is 'workman' - Labour Court directing payment of interim relief of Rs.1200/- pm, to first respondent without deciding the question whether first respondent is 'workman' - In the instant case Labour Court ought to have decided the question whether first respondent is 'workman' as preliminary issue of it was required to consider interim relief sought for by first respondent".

Further put reliance on the case of Hussan Mhasvadkar (Supra), wherein the Hon'ble Supreme Court observed that,

"On a careful consideration of the respective submissions of the

learned counsel on either side, we are of the view that in a case of the nature where the Labour Court as well as the High Court entertained doubts about the status of the appellant as a workman within the meaning of Sec-2(s) of the I.D. Act, instead of embarking upon an adjudication in the first instance as to whether the respondent-Board is an Industry or not so as to attract the provisions of the Industrial Disputes Act, ought to have refrained from doing so and taken up the question about the status of the appellant for adjudication at the threshold and if only the finding record was against the appellant refrained from adjudicating on the larger issue affecting the various kind of other employees, as to the character of the Board, as an industry or not.... "

Further relied on the case of Siemens Ltd. V/s. Their Employees represented by Siemens Workers Union (2010-II-CLR-408) wherein the Hon'ble High Court has clearly observed that,

"Challenge to rejection of the application filed by petitioner to hear and decide preliminary issue, over maintainability of reference, in view of the settlement arrived at - Held that in view of the pleadings of parties, the preliminary objection so raised, needs to be adjudicated first by giving full opportunity to both the sides".

Further put reliance on the case of Enercon (India) Ltd. (Supra), wherein it is held by the Hon'ble High Court that, "*whenever there is controversy over jurisdiction of the Court/Tribunal/Authority, issue of jurisdiction is to be tried as a preliminary issue*".

12. In the light of the observations of the cited case law and the facts of the present case are similar. Therefore, in my opinion there is doubt about status of complainants. Though it is the case of complainant that they are workmen U/s.2(s) of the I.D. Act, this fact should be proved by adducing cogent evidence. To that effect both parties should be given opportunity to prove their contention.

13. The Ld. Advocate for complainant also placed reliance on the observations of the Hon'ble High Court in the case of Cricket Club of India (Supra) in which in respect of standing orders applicable to the workmen, as well as in the case of National Councilor Cement (Supra). With due respect to the observations of the Hon'ble High Court are not helpful to case of the complainant. In the case in hand the interim relief application is pending for hearing before the court, but before that the status of workmen and jurisdiction of the court is under challenge. Therefore, in my opinion the preliminary issue needs to be framed in respect of workmen and maintainability of the complaint.

14. Considering the observations and facts of the case, I come to the conclusion that application Exh.C-7 is liable to be allowed. Hence, I proceed to pass following order..

**-: ORDER :-**

1. Application Exh.C-7 is allowed
2. Preliminary issue is framed as under:
  - i) *Whether complainant proves that they are workman ?*
  - ii) *Whether complaint is maintainable ?*
3. No order as to costs.
4. Case to proceed further.

Sd/-  
( M.R. Kumbhar )  
Member,  
Industrial Court Pune.

Pune :  
Dated :18.01.2018.  
srw/-