

IN THE INDUSTRIAL COURT AT AURANGABAD
(Presided over by S. S. MAUDEKAR, Member)

COMPLAINT (ULP) NO.44 OF 2023
[CNR NO.MHIC20-000-118-2023]

Siemens Workers' Union,
Kopri, Thane (E).
Through its General Manager. ... **COMPLAINANT**

Versus

1] M/s. Siemens Ltd.,
Waluj, Aurangabad & Ors. ... **RESPONDENTS**

COMMON ORDER
BELOW EXH.U-28,U-30,U-33,U-36,U-39,U-42,U-45,
U-48,U-51,U-54,U-57,U-60 & U-62

[Passed on 6th December , 2023]

Application Exh.U-28 has been filed by the complainant for amendment in Annexure-A to the complaint and interim relief application, whereas the applications Exh. U-30, U-33, U-36, U-39, U-42, U-45, U-48, U-51, U-54,U-57,U-60 have been filed by 11 individual workmen with identical prayer for deletion of their names from the present complaint. Exh. U-62 has been filed by the complainant

Union for directing the said 11 workmen to disclose about the terms and settlement between them and the respondent management.

2] As per application Exh.U-28, the complainant intends to amend Annexure-A to the complaint and application Exh.U-2 by inclusion of some facts which were subsequent developments. In the proposed Annexure-A , it has been mentioned that 10 workmen had become members of the complainant Union subsequent to the filing of the complaint i.e. on 13-06-2023 and they are working with the same respondent. Their names may be included as being necessary party. It is supported by affidavit of one Girish Ashtekar .

2] No say has been given by the respondent.

3] When the present application was pending, the remaining applications Exh.U-30,33, 36, 39, 42, 45, 48 ,51, 54, 57 and U-60 were filed by the 11 individual workmen as mentioned earlier. There are identical prayers and it is claimed that their names are included in the Annexure A as members of the complainant Union . However, they have

resigned from the membership of the complainant Union on such dates as 19-10-2022, 20-10-2023, and 22-10-2023. So also, they have claimed that they have no grievance or claim against the respondent and they do not want to prosecute the complaint and want to withdraw the complaint unconditionally. They have filed affidavits in support of the application and separate Vakalatnamas also.

4] On 23-10-2023, the matters were kept for order.

5] The complainant Union has filed an application Exh.U-62 and sought direction to the said 11 workmen alleging that members are leaving membership which is heart-breaking and the Advocate has no right to represent them. So also, they are required to disclose the terms and conditions on which their grievance have been settled.

6] On behalf of those 11 workmen, the say has been given by the learned Advocate on the rear side of the application. It is claimed that the application is not tenable and 11 members want to withdraw their names and they

have given authority to the Advocate. Similarly, they have already tendered resignations. It is also submitted that they are not bound to disclose the terms and conditions to any Union.

7] Heard the learned counsel for the complainant-Union and the learned counsel for the individual workmen. According to the learned counsel for the complainant, individual workmen have no right to withdraw the complaint or to get their names deleted in the absence of no objection from the previous Advocate or without disclosing the terms and conditions of the settlement. So, it is prayed to reject the application. The order of the Hon'ble High Court of Orissa dt.04-08-2021 in the case of Beta @ Bibekanand @ Santosh Hansdah @ Santosh Hansda vs. State of Odisha in BLAPL No. 9893 of 2019 is cited.

8] On behalf of the individual workmen, it has been submitted that there is no bar to the individual workman from withdrawing the claim or for permission to delete their names in the Annexure A as they do not want to continue with the Union or with the membership of the Union itself. Moreover, the individual workmen have every right to

engage an Advocate of their choice and take appropriate steps without consent of the Union. Reliance is placed on the following authorities:

- [i] **Karnataka Power Transmission Corporation Ltd. v. M. Rajashekar [MFA No. 6526 / 2013 dt.02-12-2016],**
- [ii] **R.D. Saxena v. Balaram Prasad Sharma [LEX (SC) 2000 – 8 – 59],**
- [iii] **C. V. Sudhindra v. Divine Light School for Blind, Bangalore [LEX (KAR) 2008 – 7 - 62], and**
- [iv] **New India Assurance Co. Ltd. v. A.K. Saxena [LEX (SC) 2003 - 11 – 8].**

9] During the course of submissions, it has been brought on record that some of the individual workmen i.e. total 5 have not been included in Annexure “A” of the complaint and Exh.U-2 but their names have been included in Annexure “A” of the proposed application for amendment at Exh.U-28 . The record shows that the complainant Union has filed complaint under Section 28 r/w Item 1 (a),(b),4 (a) and 5 of Schedule II and Item 3, 5 , 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of

Unfair Labour Practices Act, 1971 (In short “the Act”) . In the prayer clause, it has been prayed to direct the respondents not to entice the workmen with the offers of glorified and false designation as Junior Executive or Floor Assembly Technician and monetary increase with a view to break the complainant Union and also to direct the respondents to not discharge or dismiss the complainants named in the Annexure “A” for union activities and joining THE complainant and wage-rise for quitting the membership of the Union.

10] The complainant is a Trade Union and according to it, the names , details and particulars of employment of individual members are mentioned in the Annexure “A”. The workmen whose names are mentioned at Sr.No.(1),(5),(6) , (8) and (29) have also filed applications for withdrawal or deletion of their names ,whereas the remaining six workmen have claimed to be added as per application at Exh.U-28, which is yet to be decided. To that extent, there is some substance in the contention of the learned counsel for the complainant that their applications are premature. But the respondent has not filed any say and if the application Exh.U-28

is allowed for addition of earlier members of the Union mentioned in the Annexure "A", it will have to again file separate application for deletion . So, those applications can also be decided along with applications of other workmen who are already mentioned in Annexure – A.

11] There is no dispute that earlier the complainant had mentioned various workmen as its members as per Annexure -A. Subsequently, it added or proposed to add ten workmen but that application is yet to be decided. But in the mean time, six workmen whose names are mentioned in the proposed amendment and Annexure-A are before this Court and they do not want to proceed with the complaint.

12] Admittedly, the burden is on the complainant to establish commission of acts of unfair labour practice on the part of the respondent but before that the dispute between the complainant Union and its members about prosecuting the claim will have to be adjudicated. There is no doubt that as per Form 19 of Regulation 100 of the Industrial Court Regulations, 1975 , the complaint is to be filed. It is also

not in dispute that even members of the complainant Union need not be made complainants and sole Union can prosecute the complaint on behalf of the workmen if their interest is common. So also, when the complainant Union has itself given list of members in Annexure -A and if some of them have resigned from the membership and if they do not want to prosecute the claim or to permit the complainant to represent them, by no stretch of imagination, it can be said that there is any bar in the Act or Rules and Regulations framed in the Act.

13] The application filed by the learned counsel for the complainant and the contents of the application Exh.U-62 are without any legal basis and the said 11 workmen cannot be compelled to disclose the terms and conditions of the settlement of their grievance with the respondents. Whether there is diminishing prospects of getting relief or the workmen have been won over by any promise etc. can not be the subject matter of enquiry here.

14] It is further provided in Regulation
149 that wherever the provisions under the Act and the
Industrial Court Regulations are silent, the provisions of Code

of Civil Procedure under Sections 27 to 32 r/w Order XI, XII, XIII, XIV, XVI, XVI-A, XVIII and XIX, shall be applicable to the proceedings under the Act. It is quite clear that Order III of the Code of Civil Procedure has not been mentioned in the said Regulation. As per Chapter-II , Regulation 11 to 20, it has been provided that a party to any proceeding, employer / employee, trade union of the members employed in any undertaking or the owner of the undertaking or any other person impleaded to a proceeding may appear in person or may be represented by a duly authorized advocate , an office bearer of the Union of which he is a member and a party workman to a proceeding may enter appearance by filing a memorandum of appearance in Form 1.

15] As per Regulation 15, statements and acts of the representative authorized to appear shall be binding on the persons authorising such representative to appear in the particular proceeding and such representative may apply for withdrawal from appearance by an application in writing filed before the Court. The Court may allow such application after making necessary enquiry. In the present

matter, the complainant Union has authorised Advocate to appear on its behalf by filing Vakalatnama Exh.U-23. It is signed by the General Secretary.

16] Though, there is no document showing proof of membership of the workmen named in Annexure- A or even in proposed Annexure-A ,it can be said that it is a matter between the members and the Union. But even if it is true that individual workmen were not required to give Vakalatnama in favour of the present Advocate who was appearing for the Union ,there is no such bar in Regulations to engage separate or independent advocate of their choice , especially if the interest of the workmen is not identical or if it becomes contrary to the main relief sought in the complaint. Otherwise, the individual workmen will have no voice to say that they do not want to continue with the complaint or to be represented by the complainant Union. It will certainly cause prejudice to their interest as they are not mere pawns but they may have to take a conscious decision of their choice. Therefore, the applications filed by the individual workmen cannot be said to be barred by any provisions of Law.

17] Similarly, as these individual workmen had not engaged previous Advocate, they were not under an obligation to seek no objection from him to engage another advocate and even they were not required to seek permission from the General Secretary or any other office bearer to appear before the Court and to seek withdrawal or deletion of their names from the Annexure-A. So, if five workmen whose names are appearing in Annexure-A to Exh.U-1 and they do not want to be associated with the complainant-Union, the later cannot restrain them or seek disclosure of reasons or grounds. Whatever may be the reasons behind the said steps or whatever may be implications on the future prospectus of the complainant Union in that respect when some of the members had parted their ways, is another matter. So, it cannot be said that the members have no choice but to continue with the Union as it would frustrate their choice and it is not a proper stage or forum to decide whether there was really act of resignation of membership by the members and appropriate steps can be taken by the complainant in that regard. So, no such enquiry can be

made in leaving the membership or withdrawal of the membership or the complaint by them.

18] Even the authority cited by the learned counsel for the complainant (supra) is not relevant, as the members have not filed any authority for appointing the previous advocate . So, there is no question of seeking letter of consent . So also, there is no question of applicability of Order III Rule-4 of the Civil Procedure Code. In some of the authorities cited by the individual workmen, the Hon'ble Supreme Court and the Hon'ble High Court of Karnataka have held that the Advocate cannot retain the file or papers of their client and that contract of Vakalatnama can be withdrawn by the client at any time.

19] There is no dispute about the said propositions of law as it has observed earlier that there is no representation of the earlier learned counsel in strict sense of the present workmen as he was engaged by the Union. Therefore, individual workmen can be allowed to be represented by Advocate of their choice for limited purpose of intimating the Court about their future course of action and lack of interest in

proceeding with the matter. So, if they do not want to continue with the membership of the Union and if they want to get their names deleted , the complainant had no other option but to accommodate them and be content . In future, if , in its opinion, the presence of workmen is indispensable or necessary ,it can take suitable steps also. Thus, from the above said discussion , it is quite clear that the application Exh.U-62 is liable to be rejected.

20] Now, applications filed by the workmen whose names are mentioned in Sr. No.1, 5, 6, 8 and 29 of the Annexure -A i.e. Exh. , U-39, 45,48, 51, 54, and 60 will have to be allowed and even the applications filed by the remaining workmen whose names are mentioned in the proposed Annexure-A at Sr.No.1,2,6,8 and 10 i.e. Exh. 30,33,36,42, and 57 will have also to be allowed, otherwise again the complainant will have to undertake unnecessary steps to delete their names . So, it will be better to direct the complainant to modify the Annexure -A by deleting the names of the individual workmen who have filed the applications even before inclusion of their names by amendment. Hence, the following Order:

ORDER

1.	The application Exh.U-28 is partly allowed.
2.	The applications Exh. U-30, U-33, U-36, U-39, U-42, U -45, U -48, U -51, U -54, U -57, U -60 are allowed.
3.	The workmen whose names appear at Sr. Nos. 1,5,6,8 ,10 and 29 are permitted to not prosecute the complaint and to get their names withdrawn from the Annexure-A and the workmen whose names appear to be proposed in Annexure -A at Sr. Nos. 1,2,6,8 and 10 are also permitted to get their names withdrawn.
4.	The complainants shall carry out the amendment by incorporating the names of only six workmen who have not sought withdrawal or deletion of names and shall also make amendment in Annexure “A” of the complaint.
5.	Application Exh.U-62 is rejected.
6.	Cost in cause.

Place:-Aurangabad.

Date – 06-12-2023

**(S.S. Maudekar)
Member,
Industrial Court, Aurangabad**

kad/-