

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

COMPLAINT (ULP) NO.60 OF 2016
[CNR NO.MHIC20-000-158-2016]

- [1] Maroti s/o Madhav Kewaite,
Age- 42 yrs. Occ: Service,
R/o- Phule Nagar, Osmanpura,
Aurangabad.
- [2] Sarjerao s/o Ashruji Misal.
Age-46 yrs. Occ: Service,
R/o- Mahunager, Beed bypass Road,
Aurangabad
- [3] Mahendra s/o Ratanrao Kolge,
Age- 40 yrs. Occ:Service,
R/o- Phule Nagar, Osmanpura,
Aurangabad.
- [4] Nivruthi s/o Dhondiram Gaikwad,
Age -51 yrs. Occ:Service,
R/o-Phule Nagar, Osmanpura,
Aurangabad.
- [5] Sonaji s/o Namdeo Salve,
Age – 57 yrs.Occ:Service,
R/o-Jyoti Nagar,near MIT College,
Satara Parisar, Aurangabad
- [6] Mohd. Anwaruddin s/o Mohd. Mazharuddin
Shaikh,
Age- 57 yrs. Occ:Service,
R/o- H.No.24,New S.T.Colony,
Kat-Kat Gate, Aurangabad

- [7] Suresh s/o Shaligram Suryawanshi,
Age-57 yrs: Occ: Service,
R/o- near old Ram Mandir,
Osmanpura, Aurangabad

... **COMPLAINANTS**

Versus

- [1] The Principal,
Government Polytechnic Aurangabad
Osmanpura, Aurangabad
- [2] The Chairman,
Paramveer Abdul Hamid Educated
Unemployed Co-operative Society Ltd.,
Aurangabad

... **RESPONDENTS**

[In the matter of Application for interim relief
Section 30 (2) of the Maharashtra Recognition of
Trade Unions and Prevention of Unfair Labour
Practices Act, 1971]

Appearance:

1. Shri.G.S.Telangre,the learned Advocate for the complainant.
2. Shri.A.S. Deshpande,the learned Advocate for respondent No.1.
3. Shri. R.B. Muley,the learned Advocate for respondent No.2.

ORDER BELOW EXH.U-2

[Passed on this 6th day of February, 2024]

This is an application for interim relief
under Section 30(2) of the Maharashtra Recognition of Trade
Unions and Prevention of Unfair Labour Practices Act, 1971 (In
short the Act)

2] In short the case of the complainants on the basis of the complaint and interim application can be summarized as under:

According to the complainants they have filed complaint under Section 28 r/w Item 6,9,10 of Schedule IV of the Act. The complainants have come with a case that they are workmen and they are serving as Security Guards. During the pendency of the complaint, complainant Nos.3,5 and 7 have expired and the complaint has abated as against them. The complainants have also claimed that respondent No.1 is a Principal of autonomous institute and respondent No.2 is said to be a society and a contractor. The complainants have been working with respondent No.1 from 2009 and much prior to the alleged agreement between the respondents inter se. During the pendency of the complaint, the complainants have amended the complaint vide order below Exh.U-28. It is their case that respondent No.1 has not paid wages to the Security Guards including themselves and others whose names are mentioned in Para No.(3) (AA) and after promotion of some Security Guards, there are vacant posts. But the complainants are not getting equal wages.

3] It is claimed that respondents Nos.1 and 2 do not possess any licence under the provisions of Contract Labour (Regulation) Act and they are not registered especially respondent No.2 with ESIC and EPF Authorities. The complainants are under the control and supervision of respondent No.1 only and their schedule is prepared by respondent no.1. But all of them are not provided any benefits. Even it is claimed that

the complainants were shown to be on the Roll of respondent No.2 without any prior intimation to the complainants. The complainants are getting Rs.8000/- per month which is less than minimum wages applicable to the services of the security guards. Hence, it is alleged that the Security Guard Board has to take action against the respondents. The complainants also approached office of Deputy Commissioner of Labour and made representation but no action was taken. So, it is alleged that the respondents have engaged in unfair labor practices under Items, 6,9 and 10 of Schedule IV of the Act. In the prayer clause it is prayed to direct respondent No.1 to issue confirmation order and to declare the complainants as permanent employees and give benefits etc. including difference of wages and allowances equal to other co workmen.

4] In the application Exh.U-2 also, similar averments have been made and it is submitted that the respondents be directed not to abolish regular work done by the complainants and to engage any other personnel in their place or through any other board and to direct names of the complainants to be registered with Security Guard Board. In addition , the complainants have prayed for issuing directions to the respondents to confirm their services and to provide payment slips and other benefits. The application is supported by affidavits of complainants at Exh.U-3 to U-9.

5] The say / reply of respondent No.1 is at Exh.C-7 and say and written statement of respondent No.2 is at Exh.C-11. In the reply of respondent No.1, it has claimed that it is

not an industry but Government instrumentality. So also, it is claimed that the complainants are not employees of respondent No.1 but they are employees of contractors and there is no relationship with the complainants. Moreover , it is claimed that contract with respondent No.2 has expired on 31-03-2016 which was extended till 30-04-2016. According to the respondent, as per Government orders, it had outsourced the services and no payments were made to the complainants. Work was given to respondent No.2 from 09-03-2009 and it has no concern with respondent No.2. Even shift schedule was fixed by respondent No.2 and only points are fixed by respondent No.1. Therefore, it is alleged that the complainants have made false allegations and it is prayed to dismiss the complaint and reject the application.

6] The reply is verified and affirmed by its principal one Shri. Faruk Nazir. Even respondent No.2 has taken preliminary objections alleging that complainant Nos.2 , 4 to 7 have attained age of superannuation as they are more than 60 years of age. It is also claimed that its labour contract with respondent No.1 expired on 30-04-2016 and there is no relationship with the complainants. It is further claimed that the complainants were granted temporary jobs considering the poverty and there was no licence with it as it never engaged more than 20 employees but it used to receive payment from respondent No.1 as per agreement . It is even alleged that the complainants were never appointed as Security Guards but they were working only as watchmen. It expressed its ignorance about earlier service of the complainant with respondent No.1 and it is claimed that it cannot

provide any work to the complainants as no work is available and there is no violation of provisions of any Act. Accordingly, it is prayed to dismiss the complaint along with the application.

7] The points for determination alongwith my findings thereon are as under :-

Sr. No.	POINTS	FINDINGS
1.	Whether prima facie case is made out in favour of the Complainants ?	Partly in the affirmative.
2.	Whether the balance of convenience lies in favour of the Complainants ?	Partly in the affirmative.
3.	Whether irreparable loss or hardship will be caused to the Complainants if the interim relief is refused ?	Partly in the affirmative.
4.	What order ?	Application is partly allowed.

REASONS

8] The complainants have filed documents as per lists at Exh.U-10, and U-25 . The documents filed by respondent No.1 are at Exh.C-9 and C-21. Heard the learned counsel for the complainants Shri. Telangre and he has also placed on record written notes of arguments at Exh.U-31. The learned A.G.P. for respondent No.1 has not argued or made any oral or

written submissions but as per the roznama it seems that on an earlier occasion, submissions were made by the learned A.G.P. Heard the learned counsel for respondent No.2 Shri. Muley.

9] According to the learned counsel for the complainants, the grounds raised by the respondents in their written statements are not supported by documents and when the provisions of Maharashtra Private Security Guard Act and other relevant provisions have not been complied with, the claim of the complainants cannot be defeated merely by denying the relationship. It is also claimed that the complainants were working with respondent No.1, even prior to engagement of respondent No.2 by respondent No.1. So, whatever the arrangement that may be between the respondents inter se, the complainants cannot be termed as employees of the contractors or respondent No.2 in absence of any documentary material. As such, it is prayed to grant certain reliefs, especially to those complainants who are still working with the respondents and their services are required to be protected. The following authorities are cited :

- [i] Hindalco Industries Ltd. v. Association of Engineering Workers [Appeal (Civil) No. 6410/2000 decided on 24-03-2008],**
- [ii] Hindustan Lever Limited v. Hindustan Lever Research Centre Employees Union [2010 (I) C.L.R. 309],and**
- [iii] Indo European Breweries Ltd. v. Dynaneshwar s/o Shyamrao Dhanwate [Letters Patent Appeal No.262 of 2010 d.o.20-03-2019].**

10] As observed earlier, no submissions, oral or written have been advanced by learned A.G.P. for respondent No.1. However, the learned counsel for respondent No.2 has submitted that the complaint itself is not tenable . It is further contended that when the documents filed by the complainants themselves show that they were engaged through contractor respondent No.2 and the contract had expired during pendency of the complaint, no relief can be granted against it and application may be rejected especially when the jurisdiction of the court and relationship between the parties are disputed. The following authorities are cited:-

- [i] **Vividh Kamgar Sabha v.Kalyani Steels Ltd. [2001 (88) FLR 727] and**
- [ii] **Cipla Ltd. v. Maharashtra General Kamgar Union [2001 (8) F.L.R. 163].**

As to Point No. 1:

11] As the complainants have approached the Court and have invoked discretionary jurisdiction of the court under Section 30(2) of the Act, they will have to show strong prima facie case. In this regard, if it is found that in the amended application Exh.U-2 also , the same prayers have been incorporated by the complainants which are of final nature like grant of permanency, arrears of wages, difference, provisions for Supply of P.F. Slip and other benefits of ESIC and P.F. authorities. It is however gathered that in the written notes Exh.U-31, they have

restricted the application to the extent of protection of services till final disposal of the complaint.

12] Before scrutinizing the documentary material on record, it is found that the contention of respondent No.2 that some of the complainants have attained the age of superannuation appears to be convincing as in the cause title itself the age of complainant No.4 is shown as 51 years and complainants Nos. 5 to 7 were shown as 57 years. So also, complainant Nos. 3,5 and 7 are expired. So out of the 4 surviving complainants, i.e. complainant Nos. 1 , 2 , 4 and 6 , the relief will have to be considered. Even otherwise complainant No.6 might have attained age of superannuation and complainant No.4 who was shown as 51 years of age, might have also crossed the age of 58 years. But no further amendment has been made by the complainants in that regard. But even no documents have been placed on record by the respondents also to show that they have verified the documents of the complainants before engaging them as security guards or watchmen either directing or through outsourcing or contractors. Therefore, this aspect appears to be some what vague and to avoid further complications , it will have to be observed that only those complainants who are still engaged by either respondent Nos.1 or 2 will be affected or benefited by the order.

13] According to the complainants, they have been working since 2009 with respondent No.1 much prior to alleged agreement between respondent Nos.1 and 2. In this regard, if the written statements of the respondents are perused, it

seems that there are some evasive statements but in paragraph 3(B), it has claimed that the services of respondent No.2 were engaged by it from 09-03-2009 and time to time the agreements were given extension till 2016. It is now not clear whether such agreements were extended during pendency of the complaint. It is also submitted that the lowest tender was accepted by the respondents and payments are made to the contractors as per agreement.

14] Here it is also found that respondent No.2 is also disputing the relationship with the complainants but it has also not filed any documents to show that subsequently on 30-04-2016 also. it had engaged the services of the complainants. But considering the stand of the respondents, it appears that respondent No.2 is also not specifically denying the relationship with the complainants. As per the documents filed by respondent No.1, at Exh.C-9, it is found that some instructions were issued by respondent No.1 to respondent No.2 about shift schedule and there is mention of security guards. There were three shifts and even it is mentioned that respondent No.1 had to ensure that minimum wages were paid to the said security guards by respondent No.2.

15] Even there was some correspondence with office of the Deputy Labour Commissioner by respondent No.1 and it was claimed that only respondent No.2 was concerned with the said employees and their grievances. In several agreements, it has been mentioned especially in clause 10- that the security guards should be at the age group of 21 to 45 years and they should be physically fit. They were required to guard the property, estate ,

gardens , high schools of respondent No.1. It is not clear as to what was the arrangement prior to year 2009. But when respondent No.1 was aware that respondent No.2 ought to have engaged the security guards, within age bracket of 21 to 45 years and as observed earlier the ages of the present complainants are more than 45 to 55 years, it is obvious that the respondents themselves have not adhered to the terms and conditions of their agreements.

16] Not a single document has been filed by respondent No.2 to show that it had made compliance of minimum wages Act in paying wages to the complainants or any other security guards , and even the details of security guards have not been mentioned by it. So, it prima facie appears that the respondents themselves have not come with clean hands and much has been suppressed by them.

17] The complainants have also produced some documents including various notifications and revised orders for fixation of minimum wages and allowances applicable to various establishments including that of security guards under the provisions of the Maharashtra Private Security Guard, Resolution of Employment and Welfare Act, 1981. Even shift schedules are signed by respondent No.1. As per some documents at Exh.U-25, there are signatures of security guards on gate passes wherein several employees of respondent No.1 were allowed to enter or made exit on holidays or before or after office hours. So, it seems that the security guards have to maintain some registers and they are in custody of various registers, keys, and other material. The

matter was raised by the complainants before the Deputy Labour Commissioner, but it seems that respondent No.1 had shifted the responsibility on respondent No.2.

18] At this juncture, it seems that even though respondent No.1 has taken a stand that it has no concern with the services of the complainant, it is prima facie found that some control or supervision is also exercised by the officials of the respondent No.1 directly on the security guards including the complainants without intervention of respondent No.2. Though it is quite clear that in the complaint filed under Section 28 of the Act, the complainants will have to show relationship with the respondents as employees and employer and they have to show that respondent No.1 is direct employer and even if questions of disputed relationship are raised , it cannot be said that the respondents have automatically established their defence or that the complaint can be dismissed without giving opportunity to the complainants to establish their stand at least for getting protection from any adverse order.

19] Even the respondents have not filed any application for framing of preliminary issues or for deciding the present application after settling the dispute of relationship. So, at this juncture, it would be proper to only observe that the stand of the complainants cannot be outrightly rejected or thrown away without going into some merits. On the other hand, the respondents could have easily produced some additional documents to show that the respondents had not engaged the complainants after 30-04-2016 or that not only the application but

a complaint has also become infructuous. But their inability to produce the record, some what compels the Court to draw adverse inference against them and when it has been found that respondent No.2 has also not fulfilled its agreed conditions about payment of minimum wages to the security guards and only to engage such employees as are within the age group of 21 to 45 , its stand that the complainants were not engaged as security guards or only as watchmen cannot be said to have been established.

20] From the abovesaid factual and legal analysis, therefore, I am of the opinion that at least the complainants have able to raise some pertinent issues that are required to be gone into merit in the course of trial and even if the preliminary issues can be framed, the services of the complainants cannot be allowed to be dispensed with during the pendency of the complaint, as it is a settled principle of law that interim protection can be granted to an employee who seeks benefits of permanency . So limited prayer made subsequently can be allowed- that too to the extent of the complainants who are alive and are actually working as Security Guards with the respondents.

21] Denial of such limited protection would render the complaint itself as infructuous or untenable and possibility of multiplicity of proceedings cannot be ruled out . On the other hand, if such limited protection is granted, no hardship or prejudice or irreparable loss would be caused to the respondents. The respondents can very well show that the agreement between them has not been extended or that respondent No.2 has ceased to be contractor or outsourcing agency or that the complainants

themselves have left the job. Accordingly, I am of the opinion that the complainants have made out strong case for invoking discretionary jurisdiction of the Court and affirmative action can be taken so that the complainants can be allowed to work as earlier. Even the authorities cited by the respondent *supra* are of no help to it. Hence, the appropriate forum can very well decide the issue of relationship but when respondent No.2 is also made a party, the complaint cannot be said to be not maintainable and the said aspect can be considered at an appropriate stage.

22] It is also true that there is no need to decide whether provisions of the Contract Labour Regulation Act are also complied with. Even otherwise also, the complaint cannot be said to be not maintainable and appropriate issues can be framed. In the case of **Hindalco (supra)**, the Hon'ble Supreme Court has observed that there was some control or supervision by the principal employer who had established the canteen and it was found that there was only a paper arrangement agreed with contract. The Judgments in the cases of **Cipla and Kalyani Steels (supra)** were also discussed. This aspect will be considered at an appropriate stage.

23] Respondent No.1 has also cited Judgment in the case of *Nandkumar v. State of Bihar* [CA No. 2835/2015] but it was about nature of the work done by the daily wagers and they were not held to be officers or employees within the meaning of relevant provisions of Bihar A.P. Market Act. The said authority is not helpful to the respondents. It has also referred order dt. 16-04-2015 passed by the learned Member, Industrial

Court Jalna in Com. ULP 1/2015. In that matter, it seems that interim relief was rejected as no sanctioned vacant posts were found to be in existence. But contractor was not a party in that matter. So, facts of the said case, appear to be different.

24] In the case of **Hindustan Lever Ltd.** (supra), the Hon'ble High Court had considered the rights of 30 security guards who were engaged through Security Guard Board and in para (19), it was observed that till claim of security guards was rejected by the board they would be considered as direct and regular employees of the registered employer for all purposes. Here also, the role of the Board will have to be gathered during the course of the trial.

25] The observations in the case of **M/s Indo European Breweries Ltd.** (supra) ,are not much relevant as it seems that the Hon'ble High Court has observed that all the issues should have been decided in the dispute at the same time. So, the issues including the tenability of the complaint and relationship with the respondents can be gone into during the course of trial and service conditions of the complainants can be protected and till the complaint is disposed of ,it may be directed that the respondents should not dispense with the services of the complainants without following due process of law. The rest of the reliefs sought by the complainants like grant of permanency benefits and other benefits like ESIC and PF or equal pay for equal work etc. cannot be granted at the initial stage without affording opportunities to the parties to lead evidence. Hence, Point Nos. 1 to 3 are answered partly in the affirmative.

As to Point No. 4:-

26] In view of my findings on the said points, the application is liable to be partly allowed. Hence, I pass the following order –

ORDER

1.	The application is partly allowed.
2.	Respondents Nos.1 and 2 are directed to not change the service conditions of complainant Nos.1, 2 , and 4 adversely in terms of agreement entered into between them and their services be protected till the complaint is decided and they shall endeavor to pay the wages as per agreement for the work done by the said complainants.
3.	Costs in cause.

Place: Aurangabad.

Sd/-xx

Date - 06-02 -2024

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

kad/-