

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

COMPLAINT (ULP) No.505 OF 2015.

Sanjay Madhukar Kemkar ...Complainant.

Vs.

[1] Chairman and Managing Director,

R.R.B. Energy Ltd. & Others. ...Respondents

ORDER BELOW EXH.U-14

(Dated : 07-10-2023)

This is an application for permission to file notice of documents along with notice supported by affidavit.

2] The facts are as under :

According to the complainant, he had filed notice of documents before the Court but, in their say , the respondents have claimed that it is not signed and verified by the complainant. The said application is yet to be decided. It is claimed that the documents sought to be produced before the Court are relevant and necessary for resolving the dispute. They are in custody of respondents and are in respect of service and service conditions , so no harm will be caused to the respondents to produce the documents. Hence it is prayed to permit the complainant to file notice of documents.

3] In the notice , there are 16 documents which are sought to be produced including copies of appointment orders, payment slips, sale deeds, Account Books, Settlements, relieving

Orders, permission to close unit, etc. It is supported by affidavit dt. 10-03-2022.

4] In the say of the respondents at Exh.C-14, it is submitted that when earlier notice of documents was filed and pending for consideration, the complainant has no legal right to indulge in filing another notice. Moreover, the say has already been filed by the respondents. It is claimed that the application is meritless and is mala fide. So, heavy costs may be imposed on the complainant.

5] Heard the learned counsel for the complainant Shri. P.M. Shinde and the learned counsel for the respondents Shri. S. V. Dankh. According to the learned counsel for the complainant, relevant documents are required to be taken on record by the respondents as they are in custody of them and serious prejudice will be caused to the complainant if the application is not allowed and direction is not issued to the respondents. On the other hand, the learned counsel for the respondents has submitted that a detailed say was already filed by the respondents and even if affidavit was subsequently filed by the complainant, it will not cure the defect as the documents cannot be placed on record by way of roving and fishing enquiry. The complainant has to prove his case and the respondents cannot be issued any direction. Hence, it is prayed to reject the application. The authority is cited in the case of 20th Century Fox Corporation (India) Private Ltd. v. F.L. Lala , [(1976) I L.L.N. 146]

6] Perused the record. The complainant has filed the complaint alleging unfair labour practices on the part of

the respondents under Items 1 (a & b) and Item Nos. 3, 5, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The prayer is that the transfer dated 07-12-2015 and closure of establishment may be declared as illegal and to direct the respondents to not take illegal action or change the service conditions adversely during the pendency of the complaint. The respondents have filed Written Statement and preliminary objections at Exh.C-5. Several other connected matters are also pending at the same stage . As per order Exh.U-9, the respondents were directed to maintain status-quo existing on 18-12-2015 and till final decision of Exh.U-2. Ultimately, the status-quo was extended until further orders. Even the application for dismissal of the complaint on various grounds Exh.C-7 was disposed of. It is also gathered that earlier , the matter was referred for mediation. But it could not be settled.

7] As per the record, earlier the complainant had filed notice of documents at Exh.U-13 and the respondents filed say at Exh.C-12. They had taken detailed objection . Ultimately, the notice was not pressed claiming that fresh notice of documents was filed vide Exh.U-14 on 11-03-2022. So the earlier say of the respondents can be considered. The complainant is seeking some documents for substantiating his case that, the transfer order was issued by victimization and that he and others were transferred from Sautada Site Office to R.R.B. Energy Office at Muppandal site in Tamil Nadu. It is claimed that several farmers had sold land to the company at the rate which was far bellow than prevailing market value of the land as it was assured that the company was a permanent establishment,hence, all the farmers would be benefited

with permanent employment to their family members at village Kuslamb. It is claimed that the complainant was engaged with the respondents since long and permanency benefits were not given to him. So, the complainant had filed complaint and the Industrial Court had allowed the same by passing the order in which the benefits were granted to total 25 employees.

8] The respondents had filed Writ Petition which was dismissed by the Hon'ble High Court on 19-08-2013. It is claimed by the complainant that the documents sought to be produced show that the respondents intentionally and deliberately transferred the complainant by victimization and in colourable exercise of employer's rights and on patently false grounds. Promise of providing work at village was breached.

9] If the original say of the respondents is perused, it has been vaguely stated that there is no whisper about the relevancy of the documents sought to be produced but it is submitted that already release order was filed by the complainant himself and there was memorandum of settlement. But the respondents had kept mum about the rest of the documents. It has not stated as to whether any such documents were in existence at all . Such stand can be said to be evasive and in the written statement itself, it is claimed by the respondents that due to substantial losses, the company had decided to leave the site and it in fact left the premises. So no work is available at Sautada Site. The further contention is that that the complainant had not joined the said place though he was relieved. So it is quite clear that the respondents are justifying the claim of the transfer, relieving,

deputation etc. Hence, they cannot be now heard to say that those documents such as appointment letters, payment slips, leave register, seniority list, order of promotion, status of vacant posts, relieving order, permission if any site for withdrawal, etc. are not relevant for deciding the complaint.

10] Merely because the complainant has shouldered the burden of establishing his case, it cannot be said that the respondent can be allowed to take evasive stand in spite of not specifically denying the existence of those documents. The justifiability or otherwise of the stand of the respondent can not be decided unless it is clarified whether the respondents would be in a position to produce the said documents. Previous litigations are not in dispute and claim of permanency was not set aside even by the Hon'ble High Court. Therefore, before the complainant is asked to lead evidence, the respondents at least should make it clear as to how many documents are in their custody or in possession or are they in a position to produce the same on record.

11] When the company has engaged itself in a business of erection of Wind Electric Generators and has engaged several employees and started work after executing various documents evidencing various rights, liabilities and obligations, etc. it cannot be said that it can simply go away without answering the notice by merely alleging that the complainant is trying to indulge in fishing and roving enquiry. In the above said authority of **20th Century Fox Corporation (supra)**, the Hon'ble High Court referred provisions of Section 11(3)(b) of the Industrial Disputes Act and it was observed that the Court has power to direct any party to

produce documents and as the complainant has filed affidavit, , if in notice, there is reference of some documents which are relevant or material for considering the controversy , necessary direction can be issued by the Court. So, it does not lie in the mouth of the respondents to contend that the documents are not relevant.

12] It cannot be said that the complainant could be in possession of those documents such as; seniority list, register of payment slips and other record, order of regularization , permanency, list of vacant posts, promotion etc. If the respondents deny such documents including existence, custody or even impracticability or impossibility due to destruction thereof, etc. , any of their responsible person can file affidavit to that effect. So, in my opinion, the complainant is very well justified in seeking permission to file the application to direct the production of documents from the respondents. At the most ,if no response is given by the respondents , the complainant can get the documents from earlier proceedings or may seek permission to lead secondary evidence or any other mode of proving the documents. Therefore, no prejudice will be caused to the respondents if such direction is issued to them. On the other hand, rejection of application may cause severe hardship and prejudice to the complainant, as it cannot be said that, the respondents are not in a position to produce the same at any event or that the controversy can be completely resolved even without these documents. Therefore, I pass the following Order:

ORDER

[1]	The application is allowed.
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[2]	The respondents are directed to place on record the documents sought by the complainant as per list and if those documents are not in existence or not available at all, place on record affidavit of duly authorized person within 30 days from the date of order.
[3]	Costs in cause.
[4]	Matter be expedited.

[S.S. MAUDEKAR]
Member,

Date : 07-10-2023

Industrial Court, Aurangabad.

Kad/-