

BEFORE THE JUDGE, LABOUR COURT, BULDANA.**Cri. U.L.P. No. 7/2020****C.N.R. NO. MHLC28-000070-2020**

Ashok Daulat Chate

--Vrs--

Sandip Rayalwar,
Divisional Controller,
S.T. Buldana and others.**ORDER BELOW EXH. C/B - 2**
(DATE :- 25-02-2021)

1] This is the application filed by the counsel for respondent no. 3 for deleting the name of respondent no. 3 from the present proceeding. It is his contention that Divisional Controller is the head of Division Office of M.S.R.T.C. Buldana. The so called grievance of the complainant come under the pervue of Divisional Controller as Divisional Controller is appointing authority of Unit Cadre post and respondent no. 3 is the head of the corporation and appointing authority of State Cadre post. It is submitted that Divisional Controller is the authority over the Unit Cadre, therefore, he is only the necessary party in this matter and if the name of respondent no. 3 deleted from the present complaint no prejudice has caused to the complainant. It is their contention that complainant has made wrongly party to the respondent no. 3. He is not competent authority, he is a superior authority. Therefore, prayed to allow the application.

2] The counsel for the complainant resisted the appication by filling their say. He has taken preliminary objection on behalf of the complainant with regard to maintainability so also has filed say to the application of respondent no. 3 for deletling the name of respondent no. 3, and denied all the adverse contention mentioned in the application.

3] I have gone through the application filed by the respondent no. 3 and say filed by the complainant. It is the contention of the counsel for the respondent no. 3 that respondent no. 3 is not competent authority, he is superior authority. He has no concern with the present matter and Divisional Controller is the competent authority. In this regard it is argued by the counsel for the complainant that at this stage such contention cannot be considered. Since whether the respondent no. 3 is responsible for wilful disobedience order of the passed by this Court can only be decided after commencement of the trial. This application at this stage is pre mature. Since this Court has only issued notice to the respondent no. 3 to show cause whether cognizance can be taken against him. In the present matter respondent no. 3 has not yet filed his reply to the allegation made by the complainant against him in the present proceeding.

4] Perusal of the complaint, the complainant has made specific averment in para no. 3 with regard to the responsibility of respondent in committing contempt of the order passed by this Court. Without filing reply to this contention and without appearing him self to be tried before this Court such application at this stage for deleting the name of respondent no. 3 from array of accused cannot be considered. Similarly, the respondent no. 3 was party to the original complaint filed by the complainant in which the judgement of which alleged contempt has been committed by respondent no. 3 as per this complaint. It is pertinent to note that in the main complaint also the notice was issued by this Court to respondent no. 3 and till decision of the complaint respondent no. 3 did not move any such type of application in the main complaint and therefore, now at this stage he cannot claim in the present contempt proceeding he is not responsible for implementation for the order and terefore, his name should be deleted.

5] Similarly, perusal of the record it appears that while passing the judgment in complaint U.L.P. no 12/2017 dated 18-12-2019 this court has passed judgment against all the respondents and directions were issued as per operative order to all the respondents. Therefore, the respondent no. 3 is also duty bound to comply the order passed by this Court. Therefore, now he cannot say that he has no concern with the present matter and his name should be deleted from the present proceeding. No doubt respondent no. 1 is the appointing authority of complainant, but since respondent no. 3 is the party to the original proceeding complainant has sent notice to him for implementation of the order passed by this Court. Admittedly, he is the superior authority of corporation, he has authority to direct the respondent no. 1 and 2 to implement the order passed by this Court.

6] It can also be noted in various matters before this Court of execution or implementation of orders the respondent no. 1 used to take excuse on the ground that the copy have been forwarded to head office i.e. office of respondent no. 3 and they are awaiting direction from the head office. From such this averted, it can be revealed that the implementing authority of any order passed by the Court is respondent no. 3 itself and on his recommendation only respondent no. 1 and 2 act with regard to implementation of order. Similarly, the complainant has issued notice to respondent no. 3 for implementation of order but he has never informed to the complainant that he has no concern with the implementation of the order passed by this Court and the complainant should take proper steps against respondent no. 1 and 2. In fact, he has failed to reply this notice. All the respondent in the original complaint is added as accused in the present proceeding, therefore, execution will have to be proceeded against all the respondent in the original complaint. Therefore, it cannot be said that respondent no. 3 is wrongly made party to this present contempt proceeding. Similarly, in the application itself the counsel for the respondent

contended that he is head of corporation, therefore, certainly he is responsible for all the acts of corporation. Similarly, this Court has not yet taken cognizance of the offence and has not yet issued process against the respondent and only directed to respondent why process should not be issued against them. Therefore, the respondent no. 3 will have full liberty to demonstrate before the Court that he has no role to play in the implementation of the order, therefore, he cannot be proceeded or convicted for the offence committed under section 48(1) of M.R.T.U. & P.U.L.P. Act. At this stage such application cannot be entertained.

7] The counsel for the complainant his reply also raised preliminary objection that the present complaint is a contempt proceeding which is initiated against respondent no. 3 by his name, therefore, the present application cannot be filed by the counsel for the respondent no. 3. The present application should have been filed on affidavit by the respondent no. 3 itself. Therefore, he has raised preliminary objection with regard to maintainability of the present application. Similarly, it is his contention that the present application is premature. With regard to the above discussion, I need not go in the said objection. Therefore, considering the overall discussion, I proceed to pass the following order.

ORDER

- 1] Application stands rejected.
- 2] Matter to proceed further.

Date :- 25-02-2021

(Smt. R.V. Mete)
Judge,
Labour Court, Buldana.