Sayali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 5871 OF 2006
WITH
INTERIM APPLICATION No.1691 OF 2024
WITH
INTERIM APPLICATION No.2796 OF 2026

Maharashtra State Transport Kamgar Sanghatana, 1/205, Navjivan Co-op. Hsg. Society Ltd, Dr. Badkamkar Marg, Mumbai- 400 008. ... **Petitioner**

V/s.

Maharashtra State Road Transport Corporation, A Statutory Authority having its Head office at Vahatuk Bhavan, Bombay Central, Mumbai 400 008, through Mr. Ujwal Uke or his Successor in the Office as the Managing Director **and Others** ... **Respondents**

Mr. Mihir Desai, Senior Advocate i/b Ms. Devyani Kulkarni, for petitioner.

Mr. Nitesh V. Bhutekar, for respondent No. 1 – MSRTC and Applicant in IA/2796 of 2026.

Mr. Vaibhav Jaydale, for Applicant in IA/1691/2024.

Ms. Mamta Shrivastava, AGP for State- respondent No. 2.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 30, 2026

PRONOUNCED ON : MAY 7, 2026

JUDGMENT:

1. By the present writ petition instituted under Articles 226 and 227 of the Constitution of India, the petitioner has invoked the writ jurisdiction of this Court, calling in question the legality, propriety and correctness of the judgment and order dated 11 July 2006 rendered by the Industrial Court in Complaint (ULP) No. 334 of 2000.

2. The facts giving rise to the present proceedings, when stated in a concise manner, disclose that in the year 1995 the petitioner Union came to be registered as a recognised union in respect of all employees of the undertaking of respondent No. 1 across the State of Maharashtra. The said recognition was granted by the Industrial Court upon satisfaction of the statutory requirements contemplated under the MRTU and PULP Act, 1971, under which there can be only one recognised union for a particular undertaking. It is the case of the petitioner that since its recognition, it has been functioning with the object of securing and improving the service conditions of the employees. It is further stated that after prolonged negotiations and deliberations between the petitioner Union and the respondent Corporation, a bilateral settlement came to be executed on 16 October 1999. Under the said settlement, several benefits were extended to the employees and certain concessions were granted by the respondent Corporation in favour of the petitioner Union. One of the significant stipulations forming part of the settlement provided for deduction of an amount equivalent to 5% of the net arrears payable to each employee under the settlement towards union

fund, and for remittance of the said amount to the petitioner Union along with requisite particulars. This clause, according to the petitioner, formed an integral part of the overall settlement arrived at between the parties.

3. It is, however, not in dispute that the implementation of the aforesaid settlement was made subject to the approval of the State Government by respondent No. 1. The respondent Corporation, being an instrumentality of respondent No. 2 State, was required to obtain formal sanction of the State Government before giving effect to the settlement. The petitioner Union, as stated, agreed to such a condition in good faith with a view to ensure that there was no delay in implementation of the settlement. Upon the settlement being forwarded, the State Government, by its communication dated 1 October 1999, issued certain guidelines to the respondent Corporation. It was indicated that approval to the settlement would be conditional upon the State Government not being required to extend any financial assistance or subsidy towards any additional burden arising out of the settlement. A financial ceiling of Rs. 72 crores per annum for the first year was also stipulated. The State Government further directed that the entire financial implication should be borne out of the internal resources of the Corporation and that steps ought to be taken by the Corporation to enhance productivity. These conditions, therefore, formed the backdrop against which the settlement was considered for approval.

4. In view of the aforesaid position, further deliberations took place between the petitioner Union and the respondent

Corporation, culminating in a final settlement which was duly executed and thereafter forwarded to the State Government for its approval. The State Government, by its Notification dated 01 November 1999, granted approval to the settlement, albeit with specific exclusion of Clauses Nos. 110(2) and 114. Clause No. 110(2) pertained to conferment of certain facilities or concessions exclusively upon the recognised union, while Clause No. 114 related to deduction of 5% from the net arrears payable to employees and remittance thereof to the petitioner Union. It was also communicated that the legality and constitutionality of Clause No. 114 required further consideration by the State Government. Consequently, the respondent Corporation proceeded to implement the settlement excluding the aforesaid two clauses. The petitioner asserts that notwithstanding such exclusion, the respondent Corporation had in fact effected deduction of 5% from the arrears paid to employees, and therefore, in terms of the settlement, was under an obligation to remit the said amount to the petitioner Union. The refusal of the respondent Corporation to do so constitutes the core grievance of the petitioner. It is further clarified that the petitioner does not dispute the implementation of the remaining terms of the settlement and confines its grievance solely to non-implementation of Clause No. 114, which envisages deduction and remittance of union fund from arrears.

5. Aggrieved by the action of respondent No. 1 in not remitting the deducted amount, the petitioner Union instituted a complaint before the Industrial Court at Mumbai under Item No. 9 of Schedule IV of the MRTU and PULP Act, 1971, being Complaint

(ULP) No. 334 of 2000, along with an application for interim relief. During the pendency of the said proceedings, the State Government, by its communication dated 20 September 2004, expressly declined to accord approval to Clauses Nos. 110(2) and 114 of the settlement. Notably, the said communication did not disclose any reasons for such disapproval nor did it indicate the basis on which the said clauses were considered illegal or unconstitutional. The State Government was impleaded as a party to the proceedings before the Industrial Court, however, no affidavit or reply was filed on its behalf. Upon hearing the parties, the Industrial Court, by its order dated 11 July 2006, came to the conclusion that the respondents had not indulged in any unfair labour practice as alleged and accordingly dismissed the complaint. It is this order which is the subject matter of challenge in the present petition, the petitioner contending that the findings recorded therein are erroneous and liable to be interfered with in exercise of writ jurisdiction.

6. Mr. Mihir Desai, learned Senior Advocate appearing on behalf of the petitioner, submitted that respondent No. 2 does not possess any authority under the Road Transport Corporation Act, 1950 to interfere with the administrative or managerial domain of respondent No. 1, particularly in the matter of negotiating and arriving at settlements with employees in accordance with law, so long as such settlement does not cast any financial burden upon the State. It was urged that Clause No. 114 of the settlement merely embodies a consensual arrangement between the petitioner Union and respondent No. 1, acting on behalf of the employees,

whereby 5% of the net arrears of wages payable to each employee is to be deducted and the remaining 95% is to be disbursed to such employees who have accepted the benefits of the settlement. According to the learned Senior Counsel, such a stipulation forms part of a bilateral statutory settlement binding on both sides and has no bearing on the financial obligations of respondent No. 2. It was contended that respondent No. 2 has purported to exercise a power which is not traceable to any provision under the Road Transport Corporation Act, 1950, or the Industrial Disputes Act, 1947, or the MRTU and PULP Act, 1971, or any other governing statute. The submission proceeds on the footing that the settlement in question satisfies the tests of fairness and reasonableness as laid down in industrial jurisprudence and stands accepted by the employees, who by availing benefits under the settlement must be deemed to have consented to the deduction contemplated under Clause No. 114.

7. It was further submitted by the learned Senior Counsel that respondent No. 2 has failed to take note of the settled legal position as declared by the Supreme Court with regard to the permissibility and constitutional validity of such deductions from arrears of wages pursuant to a settlement. It was contended that there remained no scope for respondent No. 2 to independently examine or question the legality of Clause No. 114. According to the petitioner, the action of respondent No. 2 in withholding approval amounts, in effect, to a disregard of binding precedent, which is impermissible in law. The impugned decision was thus characterised as arbitrary, mechanical and suffering from

perversity, rendering it void ab initio. It was also contended that such action attracts the vice of arbitrariness under Article 14 of the Constitution of India. Reliance was placed upon the decision of the Supreme Court in the case of *Balmer Lawrie Workers' Union, Bombay v. Balmer Lawrie & Co. Ltd.,*1984 Supp SCC 663 wherein a similar clause relating to deduction towards union fund in a settlement executed by a recognised union under the MRTU and PULP Act, 1971 came to be upheld. It was submitted that the Supreme Court, in the said decision, has explained the rationale underlying such deductions, emphasizing their role in sustaining trade union activity, protecting the interests of labour, and promoting industrial harmony.

8. The learned Senior Counsel further submitted that the aforesaid principle laid down by the Supreme Court has been consistently followed by employers, employees and courts alike. It was pointed out that even this Court, in *Ashok Tayade v. MSRTC,* (1997) 3 Mah LJ 486 has taken a similar view. In such circumstances, it was urged that respondent No. 2, being a State authority, was bound to act in conformity with the law so declared and could not have adopted a contrary position. It was also submitted that approval of Clause No. 114 would not have entailed any financial implication upon the State, since the amount in question was to be deducted from the arrears payable to the employees themselves, who had derived benefit under the settlement as a result of the efforts of the petitioner Union. On these premises, it was contended that the impugned judgment and order are liable to be quashed and set aside.

9. Per contra, Mr. Nitesh Bhutekar, learned Advocate appearing for respondent No. 1, submitted that in view of the conditional nature of the approval granted by the State Government, the Corporation was not in a position to implement Clause No. 114 of the settlement. It was submitted that in these circumstances, the petitioner Union approached the Industrial Court by filing Complaint (ULP) No. 334 of 2000 along with an application for interim relief under Item No. 9 of Schedule IV of the MRTU and PULP Act, 1971. The Industrial Court, by its order dated 24 August 2000, directed the respondent Corporation to deduct 5% of the arrears payable under the settlement and to retain the said amount with the Corporation. Acting upon the said interim direction, the Corporation deducted the amount and retained it, which is stated to be approximately Rs. 10 crores. It was further submitted that during the pendency of the proceedings, certain unrecognised unions were also permitted to intervene and were impleaded as parties to the complaint by an order of the Industrial Court.

10. It was further submitted that for the relevant period from 1 April 1996 to 31 March 2000, in respect of which the settlement dated 16 October 1999 was arrived at, a substantial number of employees, including those now represented by the applicant, were in service of respondent No. 1. In terms of the settlement, 5% of the net arrears payable to such employees has already been deducted and continues to remain with the respondent Corporation. It was contended that the employees represented by the applicant, many of whom have since retired, are directly affected by the outcome of the present proceedings, and therefore

constitute necessary and proper parties. On this basis, an application for impleadment has been moved. It was also submitted that having regard to the present circumstances of such retired employees, the return of the deducted amount to them would provide material assistance at this stage of their lives, and this aspect deserves due consideration.

11. Ms. Mamta Shrivastava, learned AGP appearing for respondent No.2, submitted that the decision of the State Government to withhold approval to Clauses Nos. 110(2) and 114 was preceded by due deliberation, as reflected in an Office Note prepared in that regard. It was submitted that the said Note was considered and approved by the competent authorities including the Transport Minister, Additional Chief Secretary and Deputy Secretary of the Transport Department. The matter was examined in detail taking into account all relevant considerations. It was pointed out that at the relevant time there existed one recognised union, namely the petitioner, along with eleven other unrecognised but registered trade unions. The petitioner union represented only about 36% of the employees, whereas the remaining 64% were affiliated with the other unions.

12. It was further submitted that although the petitioner union had obtained recognition in the year 1995, such recognition itself was the subject matter of challenge by other trade unions. Be that as it may, it was contended that if Clause No. 114 were to be approved and implemented, the deduction of 5% from the arrears of all employees and its remittance exclusively to the petitioner union would give rise to disputes amongst various unions.

According to respondent No. 2, employees who were not members of the recognised union would contribute to the fund but would not derive any corresponding benefit, thereby leading to inequity and industrial discord. It was on this basis that the State Government declined to approve Clauses Nos. 110(2) and 114 of the settlement. On these grounds, it was submitted that the present petition is devoid of merit and deserves to be rejected.

REASONS AND ANALYSIS:

13. Having considered the rival submissions, the material placed on record and the legal position which governs the field, the point involved is whether Clause No. 114 of the settlement can be treated as a enforceable part of the settlement arrived at between the recognised union and the Corporation, or whether the State Government was justified in withholding its approval on the ground that such clause would not be proper because only a part of the workmen were members of the recognised union.

14. In my opinion, the settlement in question is a statutory settlement, entered into by a recognised union which is conferred with a legal status under the Act. When such settlement is reached after negotiation and in accordance with law, it acquires a binding nature which is not dependent on consent. The settlement has force which travels beyond individuals and attaches to the industrial relationship. In that situation, the role of the State Government remains within limits. Merely because the undertaking is under control or supervision of the State, it does not follow that the State can modify the terms of settlement. Such

interference must have support in statute. In present matter, no such provision is brought to notice.

15. The first submission of the petitioner is that respondent No. 2 has no authority under the Road Transport Corporation Act, 1950, or under the Industrial Disputes Act, 1947, or under the MRTU and PULP Act, 1971, to interfere with Clause No. 114. This clause is not creating any burden on State finances. It only regulates how the arrears payable to employees are to be distributed. A small portion, being 5%, is to be deducted and given to the recognised union as union fund. The remaining amount is to be paid to employees. Thus, the money does not come from State Government. It arises from arrears which are otherwise payable to employees themselves. If there is no financial obligation on the State, then objection based on financial burden becomes irrelevant. The State cannot claim that it is safeguarding public funds. The reasoning given for refusal of approval appears to be inconsistent with nature of clause. Approval power cannot be used to examine fairness of an arrangement which does not affect State finances.

16. The next submission relates to nature of settlement being bilateral and statutory, and binding on employees who accept its benefits. A recognised union is given status by law to act on behalf of workers. When it concludes settlement, it does so in representative capacity. Therefore, settlement is not confined only to members of that union. It extends to employees covered by it, subject to statutory provisions. The argument that only 36% of employees were members of the recognised union, and that

majority were affiliated to other unions cannot be accepted as legal reason. Once recognition is granted, that union becomes authorised agent. The settlement it enters into cannot be reduced to a contract limited to its members alone. Hence, the apprehension recorded in the Office Note that benefit would flow only to 36% cannot determine legality. The binding force of settlement flows from statute, not from percentage of membership.

17. The reliance placed on the judgment of the Supreme Court in *Balmer Lawrie Workers' Union, Bombay* assumes significance in this context. That decision has recognised that contribution to union fund through deduction from benefits under settlement is not something alien to industrial law. The Court has explained that such contribution supports functioning of union. Without financial support, a union cannot effectively represent workers. Therefore, such clauses have a rational basis. They are connected with larger objective of industrial peace. It is also made clear in that decision that mere fact of deduction from arrears does not make the clause illegal. When such pronouncement exists, it was not open for the State Government to ignore it and proceed as if the matter was open for fresh examination. In that background, the challenge raised by the petitioner that Clause No. 114 appears to have substance.

18. The submission of respondent No. 2 that approval of Clause No. 114 would create inter se disputes between recognised and unrecognised unions cannot be a reason to deny effect to a lawful settlement entered into by a recognised union. If that logic is accepted, then no recognised union settlement would ever survive

scrutiny whenever another union objects. The purpose of recognition is to avoid multiplicity and to create a lawful negotiating agent for the employees. The fear that the contribution is made by all and the benefit is received by the recognised union is also not a sufficient ground, because the contribution itself is part of the settlement voluntarily accepted in the course of collective bargaining. When the employees derive the benefit of the settlement, it is not open to them to reject the corresponding burden which formed the consideration for the settlement.

19. The Industrial Court, while dismissing the complaint, appears to have proceeded on the footing that the respondents had not committed any unfair labour practice because the State Government had refused approval. The Court was required to examine whether the refusal itself had legal sanctity and whether the Corporation had failed to implement a binding settlement in respect of a clause which was not shown to be illegal. In that exercise, the Industrial Court ought to have given due weight to the decision of the Supreme Court in *Balmer Lawrie* and to the fact that the disputed clause related only to union fund contribution from the employees' own arrears. The impugned order accepts the disapproval of the State as if that disapproval was conclusive. In my view, the conclusion therefore cannot be allowed to stand.

20. The apprehension expressed on behalf of the unrecognised unions that their members would be excluded from the benefit of the contribution does not persuade me to uphold the State action. The settlement was negotiated by the recognised union. Its binding force flows from statute and recognition. The contribution to union

fund is not shown to be discriminatory in the constitutional sense. It is a part of the bargain. The employees have taken advantage of the settlement and have received the arrears. Having done so, the deduction contemplated by Clause No. 114 cannot be treated as unlawful only because some other unions were outside the settlement.

21. On a cumulative assessment, therefore, the submissions of the petitioner deserve acceptance. The impugned order of the Industrial Court, to the extent it rejects the complaint, is therefore unsustainable. The complaint ought to have been allowed, because the non remittance of the deducted amount amounted to failure to implement a lawful settlement.

22. In the result, the petition succeeds.

(i) The judgment and order dated 11 July 2006 passed by the Industrial Court in Complaint (ULP) No. 334 of 2000 is quashed and set aside;

(ii) It is declared that Clause No. 114 of the settlement dated 16 October 1999 is legal and enforceable in law;

(iii) The action of respondent No. 2 in withholding approval to Clause No. 114 is held to be unsustainable and without authority of law;

(iv) Respondent No. 1 is directed to remit the amount of 5% deducted from the arrears of employees, together with complete particulars, to the petitioner Union in terms of Clause No. 114 of the settlement, within a period of twelve

weeks from the date of this order;

(v) In the event the amount has been retained in any separate account, the same shall be transferred to the petitioner Union along with accrued interest, if any, within the aforesaid period;

(vi) Rule is made absolute in the aforesaid terms. No order as to costs;

(vii) All pending interlocutory applications stand disposed of in above terms. No costs.

(AMIT BORKAR, J.)