



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10712 OF 2022

Santosh Keshavrao Shinde and anr
VERSUS
M/s Laxmi Riksha Auto Body Pvt Ltd, Through its Director and anr

CORAM : R. M. JOSHI, J.
DATE : 04th March, 2025

PER COURT :-

1. Suo moto this motion is moved for speaking to minutes of judgment dated 21.01.2025 to record the appearance of “Mr. P. V. Barde, Advocate for Petitioners, Mr. T. K. Prabhakaran, Advocate for Respondent Nos. 1 and 2 and Mr. Y. I Thole, Advocate for Respondent No. 3” which is inadvertently remained to be mentioned.
2. This being inadvertent error, the judgment be corrected. After carrying out necessary corrections, fresh judgment be uploaded.

(R. M. JOSHI, J.)

bsj

**(This order is corrected pursuant to order dated 04.03.2025)
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10712 OF 2022

- 1] Santosh Keshavrao Shinde
Age: 41 Years, Occu: Nil,
R/o: R H-99/8, Indraprastha Colony,
Bajaj Nagar, Waluj Aurangabad
- 2] Kailas Ramrao Kadam
Age: 44 Years, Occu: Nil,
R/o: Plot No. 85, CIDCO, Mahanagar,
Waluj Aurangabad
- 3] Pandurang Rambhau Chavan
Age: 43 Years, Occu: Nil,
R/o: New Hanumannagar,
Ranjangaon Shenpunji, Tq. Gangapur,
Dist: Aurangabad
- 4] Santosh Pundlik Najire
Age: 48 Years, Occu: Nil,
R/o: Hari Om Nagar,
Ranjangaon Shenpunji, Tq. Gangapur,
Dist: Aurangabad
- 5] Dattatray Laxman Khoche
Age: 43 Years, Occu: Nil,
R/o: House No. RM-152/2,
Chinchban Colony, Bajaj Nagar,
Aurangabad Tq & Dist: Aurangabad
- 6] Mohan Raibhan Sultane
Age: 50 Years, Occu: Nil,
R/o: Jijamata Nagar, Near CIDCO
Garden, Tisgaon, Tq & Dist: Aurangabad
- 7] Shankar Dhondiram Khoche
Age: 47 Years, Occu: Nil,
R/o: Jogeshwari, Post Waluj,
Tq. Gangapur, Dist: Aurangabad
- 8] Pandurang Ramdas Shinde

Age: 42 Years, Occu: Nil,
R/o: RX-1/11, Room No. 2,
Bajaj Nagar, Walunj, Aurangabad
Tq. & Dist: Aurangabad

9] Shivaji Asaram Misal
Age: 38 Years, Occu: Nil,
R/o: Takli, Khultabad,
Tq. Khultabad & Dist: Aurangabad

10] Tarachand Murlidhar Sontakke
Age: 56 Years, Occu: Nil,
R/o: Galli No. 03, Ghandinagar,
Ranjangaon (Shenpunji), Aurangabad
Tq. & Dist: Aurangabad

11] Ramesh Vitthal Bondre
Age: 44 Years, Occu: Nil,
R/o: Bharatnagar, Vitava
Post Ghanegaon, Tq. Gangapur,
Dist: Aurangabad

12] Subhash Anna Vanarase
Age: 42 Years, Occu: Nil,
R/o: Plot No. 637, CIDCO, Waluj,
Mahanagar-1, Aurangabad
Tq. & Dist: Aurangabad

13] Gajanan Vitthal Sarate
Age: 38 Years, Occu: Nil,
R/o: Girjamata Mandir,
Mitmita, Padegaon, Aurangabad,
Tq. & Dist: Aurangabad

14] Deelip Shankar Arak
Age: 49 Years, Occu: Nil,
R/o: Naigaon, Post Waluj
Tq. Gangapur & Dist: Aurangabad

15] Rajendra Baburao Dhumal
Age: 48 Years, Occu: Nil,
R/o: New Hanuman Nagar,
Ranjangaon Shenpunji,
Tq. Gangapur & Dist: Aurangabad

.....PETITIONERS

VERSUS

1] M/s Laxmi Riksha Auto Body Pvt Ltd,
Through its Director
Plot No. 1,170/154/109, MIDC Walunj
Aurangabad, Tq & Dist. Aurangabad

2] M/s Luminaz Safety Glass Pvt Ltd,
Through its Director
Gut No 62, 63 and 66,
Pune Highway, Limbejalgaon,
Gangapur, Aurangabad
Tq & Dist. Aurangabad

3] Laxmi Riksha Body Employees Union
Through its President
R H-36/5, Aurangabad Electrical
Housing Society, Bajaj Nagar,
MIDC Waluj Aurangabad

.....RESPONDENTS

Mr. P. V. Barde, Advocate for Petitioners

Mr. T. K. Prabhakaran, Advocate for Respondent Nos. 1 and 2

Mr. Y. I Thole, Advocate for Respondent No. 3

CORAM : R. M. JOSHI, J.

DATE : 21st January, 2025

JUDGMENT :-

1. By consent of both sides, heard finally at the stage of admission.

2. Petitioners herein are the workmen of respondent Nos. 1 and 2 company and being aggrieved by rejection of statement of claim filed by them in Reference (IT) No. 06/2021 by order dated 04.01.2022 present petition is filed.

3. The facts which led to the filing of the petition can be narrated in brief as under :-

Petitioners are workmen of respondent Nos. 1 and 2. Those respondents are private limited companies engaged in manufacturing of automobile parts and having manufacturing units at the addresses mentioned in title clause. Respondent No. 3 is Trade Union duly registered under the Trade Unions Act, 1926 and claims to have been representing of workmen of respondent Nos. 1 and 2 company.

4. The case of the petitioners is that there are in all 56 workmen employed with respondent Nos. 1 and 2. There is allegation that though these two companies are shown as separate entities and have different registration under the Companies Act, but they are closely supervised, managed and controlled by same person and, therefore, a single unit. It is further claimed that the production unit of both companies is one and the same. There is further allegation of the present petitioners that though 56 workmen are shown as permanent workmen and there are other contractual workmen engaged by these companies. It is alleged that notice of closure was issued by respondent No. 1 company. Respondent No.3-Union issued demand notice to respondent No. 1 company for withdrawal of closure notice and providing work to all 56 permanent workmen in another unit i.e., respondent No.

2. Pursuant to the said demand notice, conciliation process was initiated however it culminated into failure. Thus, failure report came to be submitted on 24.06.2021 and taking cognizance of the same, State Government has referred the dispute for adjudication to the Industrial Court, Aurangabad Reference (IT) No.06/2021. It is alleged by petitioners that the respondent No. 3-Union is in collusion with respondent Nos. 1 and 2 and is acting against interest of employees. It is also claimed that the Union has failed to point out correct factual position before the Conciliation Officer that there are 5 sister companies of respondent Nos. 1 and 2 engaging more than 700 temporary workmen and, therefore, conciliation proceeding failed. In these circumstances, since the petitioners did not want to be represented by respondent No. 3-Union, they filed independent statement of claim before the Industrial Court. Industrial Court passed suo moto order vide Exhibit 1 and rejected the statement of claim filed by petitioners. Being aggrieved by the said order, this petition.

5. Learned counsel for the petitioner has drawn attention of the Court to the provisions of the Industrial Disputes Act more particularly Industrial Dispute Maharashtra Rules 16 and 22(2) which according to him provide for service of notice to the Union as well as to the workmen calling upon them to file statement of claim. He drew attention of the

Court to Form V and VIII which according to him sufficiently demonstrates that the workmen are within their right to file statement of claim if they choose not to be represented by the Union. It is his submission that the Industrial Court has committed serious error by placing reliance on Section 18(3)(d) of the Industrial Dispute Act in order to reject the statement of claim filed by the petitioner-workmen. He also made reference to Section 36 of the Act which deals with the representation of the parties and according to him since respondent No. 3 Union is not a recognized union under the provisions of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (For short "**MRTU & PULP Act**") it cannot claim exclusive right to represent of all the workmen.

6. Learned counsel for the respondent No. 3 Union contended that the petitioners as well as all other workmen of respondent-company are members of this union even as of date. It is his further submission that except for bold statement that the union is not functioning in the interest of the workmen, prima facie there is absolutely no material to hold so. It is his submission that the Union in fact had filed proceedings before the Industrial Court seeking directions of payment of wages to the workmen and the present petitioners are also beneficiary of the said order. Thus, it is his submission that having regard to the fact that there

is absolutely no evidence to show any collusion between union and the management, the petitioners are not justified and cannot be permitted to file statement of claim. According to him, permitting petitioners to file statement of claim would lead to the inference that Union is not acting in the interest of workmen, without any case being made out to that effect.

7. Learned counsel for the employer though at the outset submitted that the employer has nothing to do with issue and the factual aspects of the case. He, however, sought to argue that any dispute between the workmen and workmen, workmen and union also amounts to industrial dispute and as an incidental issue, it may be open for the Industrial Tribunal to decide the same at appropriate time in the instant reference. He has also drawn attention of the Court to the provisions of the Industrial Dispute Act and rules framed therein in order to seek appropriate order.

8. At the outset, the order of reference needs to be considered which reads thus:

**“आदेश
औद्योगिक विवाद अधिनियम, १९४७**

क्रमांक कउआ/औबाद/औसं/औविअ/जी.
डी/एसएपी/०९/२०२१, ज्या अर्थी औद्योगिक विवाद
अधिनियम, १९४७ (१९४७ चा १४) कलम ३९ (ब) अन्वये
प्रदान करण्यात आलेल्या शक्तीचा वापर करून महाराष्ट्र
शासनाने उद्योग उर्जा व कामगार विभागाची अधिसूचना क्रमांक

आयडिए—२००२/५६८६/(२८८२)/ काम — ३, दिनांक १८.०८.२००३ द्वारे असे निर्देश दिले आहेत की, उक्त अधिनियमाच्या कलम १० चे पोट कलम (१) आणि कलम १२ चे पोट कलम (५) अन्वये शासनास वापरता येण्याजोग्या शक्ती कामगार उप आयुक्त औरंगाबाद विभाग, औरंगाबाद यांनाही वापरता येतील, आणि ज्या अर्थी महाराष्ट्र शासन हे सदर प्रकरणी समुचित शासन आहे.

आणि ज्या अर्थी कामगार उपआयुक्त, औरंगाबाद विभाग, औरंगाबाद यांनी रामेट अधिकारी औरंगाबाद यांच्या औद्योगिक विवाद अधिनियम १९४७ च्या कलम (१९४७ चा १४) कलम १२ च्या पोट कलम (४) अन्वये १. मे लक्ष्मी रिश्ना बॉडी प्रा. लि. प्लॉट नं. १७०/१५४/१०९. एम.आय.डी.सी. वाळुज, औरंगाबाद. २. लुमीनाझ सेफटी ग्लास प्रा.लि. गट नं. ६२, ६३ आणि ६६, औरंगाबाद—पुणे हायवे, लिंबेजळगाव, गंगापुर, औरंगाबाद. आणि लक्ष्मी रिश्ना बॉडी एम्पलाईज युनियन. श्री संजय कडुबाळ कपे आर.एच.३६/५, औरंगाबाद इलेक्ट्रीकल हौसिंग सोसायटी, बजाजनगर, वाळुज, औरंगाबाद, यांचेतील औद्योगिक विवादाच्या सोबत परिशिष्टातील मागण्याबाबत सादर केलेल्या असफलता अहवाल विचारत घेतला आहे.

आणि ज्या अर्थी, कामगार उप आयुक्त, औरंगाबाद विभाग, औरंगाबाद यांचा उक्त अहवाल विचारात घेत सदर विवाद औद्योगिक न्यायाधिकरण यांच्या कडे अभिनिर्णयार्थ संदर्भ करण्यास सकृतदर्शनी बाब आहे अशी खात्री झाली आहे.

त्या अर्थी, आता उक्त अधिसूचनेद्वारे प्रदान करण्यात आलेल्या औद्योगिक विवाद अधिनियम, १९४७ च्या कलम १२ च्या पोट कलम (५) मधील शक्तीचा वापर करून कामगार उप आयुक्त, औरंगाबाद विभाग, औरंगाबाद हे सदर विवाद अभिनिर्णयासाठी मा. अध्यक्ष औद्योगिक न्यायालय, महाराष्ट्र मुंबई यांचे अन्वये प्रस्थापीत करण्यात आलेल्या मा.सदस्य, औद्योगिक न्यायालय, औरंगाबाद यांच्याकडे पाठवित आहे. प्रस्थापीत करण्यात आलेल्या मा. सदस्य, औद्योगिक न्यायालय, औरंगाबाद यांच्याकडे पाठवित आहे.

परिशिष्ट

या सोबत जोडलेल्या परिशिष्टा मधील मागण्या.”

This shows that the parties to reference are respondent Nos. 1 &2 and respondent No. 3 Trade Union. Thus ordinarily right to file statement of claim would be with the Union, who is party to the reference.

9. Undeniably, there are total 56 workman involved in the reference and all are members of this Union. Pertinently, out of these 56 workmen, only 15 workmen claimed that the union is not representing workmen effectively. Majority of the workmen do not think so and they reposed faith in Union. Interestingly, these 15 workmen still continue to be members of the respondent-union. Further, admittedly after closure, Union has taken up issue of closure before the Conciliation Authority and has represented all the workmen therein, without making discrimination of any nature between them. Even after closure, a complaint was filed under the Unfair Labour Practices Act against the employer and interim relief is obtained seeking direction of payment of wages. Petitioners/15 workmen are also beneficiary of this order. Though the employer disputes that this order does not pertain to the closure and according to the employer, the order was in respect of lay off, but as a matter of fact, Union has espoused the cause of all workmen including petitioner.

10. Thus, there is ample evidence on record to indicate that the

union has represented and is representing effectively all the workmen even after closure. The reference made to the Industrial Court under Section 10 of the Industrial Disputes Act also indicates that the Industrial Dispute is raised on behalf of all workmen without making any kind of discrimination between two sets of workmen.

11. In the light of these facts, whether it would be permissible for the petitioners to independently contest the said dispute by filing separate statement of claim. No doubt, part III of the Industrial Dispute Maharashtra Rules, 1957 makes provision for the procedure to be followed by the Industrial Court and Labour Court for the purposes of decision of a reference. It also provides for various forms which require publication of notice of the dispute and calling upon the workmen too for filing their statement of claim. The said notices indicate that where the workmen desire not to be represented by the Union, they are permitted to file statement of claim. Thus, forms and relevant rules can be said to have been made in order to ensure that any workman who is not represented by Union, is not denied the hearing in a dispute. This would not apply to the petitioners who are members of the respondent-union.

12. At this stage, it would also be relevant to consider the provision of Section 36 of the Act, which reads thus;

"36. Representation of parties. -

(1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by-

(a) any member of the executive or other office bearer of a registered trade union of which he is a member;

(b) any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by any member of the executive or other office bearer of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorised in such manner as may be prescribed.

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by-

(a) an officer of an association of employers of which he is a member;

(b) an officer of a federation of associations of employers to which the association referred to in clause (a) is affiliated;

(c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorised in such manner as may be prescribed.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.

(4) In any proceeding before a Labour Court, Tribunal or National Tribunal, a party to a dispute may be represented by a legal practitioner with the consent of

the other parties to the proceedings and with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be."

This provision more than sufficiently demonstrates that where a workmen is party to a dispute, he shall be entitled to be represented by a registered trade union of which he is member. In case, he is not a member he could be represented by any other workmen as provided in clause(c) above. The contribution of membership of petitioners with respondent-union therefore disentitle them to deny representation by the Union.

Now coming to provision of Section 18 of the Act, which reads thus:

"18. Persons on whom settlements and awards are binding-

(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

(3) A settlement arrived at in the course of conciliation proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3-A) of section 10-A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable] shall be binding on-

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

This provision shows that an award passed by Tribunal shall be binding on all parties to Industrial dispute, Clause(b) of this provision enables the Industrial Tribunal to hold that the summons to appear is without proper cause. It is thus clear that the substantive provision of Section 18 would override the rules which are essentially directory in nature. Thus, even if notice is contemplated to have been issue to all workmen, it is discretion of Tribunal to permit the workmen to independently file the statement of claim, when they are admittedly represented by Union.

13. There is no need to emphasis on the importance of collective bargaining. This is not only necessary to take care of interest of the

weaker section of Industry i.e., workmen but also relevant for maintenance of industrial peace, which is of paramount importance for over all growth of Industries and ultimately in the strengthening of economy of country. The collective bargaining not only helps weaker class to unitedly fight for their rights but also enable the employer to meet the representative i.e., Trade Union, so that the settlements could be arrived at and implemented. In the light of this fact, perusal of Section 18 indicates that the settlement if arrived outside conciliation, the same would bind only parties to the agreement but once settlement takes place during the course of conciliation, same binds all parties to the dispute. Similar is application in respect of an award passed by Tribunal.

14. Reverting back to the facts of the case, Respondent-Union has been representing all the workmen since time prior to the closure. There is no denial of fact that Union on behalf of all workmen, raised industrial dispute, as it can be seen from the order of reference. Similarly, there is material on record to indicate that Union has acted in the interest of workmen. Most importantly all workmen including petitioners contributed their membership of Union till date.

15. The only contention which could have been considered of the petitioners is that if there was any apparent material on record to

indicate that the Union is not functioning in the interest of workmen at which the fact that Union is representing the workmen since time prior to the closure and after closure and also have filed litigation before the Industrial Court and obtain orders in their favour. These facts clearly indicates that there is no apparent substance in the contention of the petitioner workmen that union is not acting in their interest. In any case, it would not be within jurisdiction of the Tribunal to decide the dispute between workmen and union, in the reference owing to the limitations of jurisdiction of reference Court/Tribunal.

16. In this context learned counsel for respondent-employer made submission that the dispute between the petitioners and the Union can be permitted to be adjudicated in the present reference. To appreciate the said submissions, it would be relevant to consider Section 2(k) of the Act, which defines term Industrial Dispute

"Section 2(k)"*Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"*

The definition of industrial dispute requires that there exist a dispute between employer and employees or between employer and workmen or between workmen and workmen. The word "workman" is defined by

Section 2(s) of the Act which reads thus;

"Section 2 (s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

A bare perusal of the said definition shows that a Trade Union cannot be termed as a workman. Nor can it be an employer. Moreover any dispute between workmen and Trade Union, would not be connected with employment-non employment or terms of employment or with conditions of labour of any person. Thus the dispute between petitioner workmen would not become a industrial dispute. Thus, question of such

issue being determined by tribunal does not arise.

17. Apart from this, the reference Court is not permitted to go beyond the terms of the reference. Hence, on this ground petitioners cannot be allowed to participate in the proceedings. Not only that Tribunal would not be able to expand terms of reference but to permit any such dispute in the reference would only lead to defeat the interest of workmen, as there cannot be a decision of reference on merit expeditiously.

18. It is necessary to take note of the inherent danger in permitting such different statements of claim to be filed. If it is so allowed hypothetically, even employer would be in a position to influence/instigate the individual workmen or few workmen to file statement of claim, to see that the dispute does not get adjudicated on merit and it could be kept pending on ancillary issues. Without attributing any such thing to the parties herein, suffice it to say that the issue of closure of establishment is of July 2021 and reference of same year, but adjudication thereof is yet to begin.

19. As far as contention of petitioner-employer is that conciliation failed due to the Respondent-Union not putting forth the correct facts is concerned, the Conciliation Officer has no authority to

adjudicate and it can only attempt amicable settlement. Thus, this Court finds no substance in the said contention of petitioner of attributing mala fides against Union.

20. In view of above discussion, and as per clause (b) of Section 18(3), it was very much within the power of Tribunal to suo Moto pass order impugned, prohibiting petitioner to file statement of claim. Particularly, in the facts of the exercise of the said power is just and proper. The said order has not led to miscarriage of justice.

21. This Court, therefore, finds no error being committed by the Industrial Court. For want of any perversity in the findings recorded by the Industrial Court, in exercise of writ jurisdiction, no interference is called therein. Hence, petition dismissed. The Industrial Tribunal is directed to decide reference within a period of 6 months from today.

(R. M. JOSHI, J.)

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