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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 945 OF 2015

Umesh Vithal Teli & Ors.

...Petitioners

Vs.

M/s. AFL Pvt. Ltd & Ors.

...Respondents

Mr. Aarshad Shaikh i/b. S.M. Shettigar for the Petitioner

Mr. K.S. Bapat i/b. J.K. Desai for the Respondent Nos. 1 & 2

Mr. B.D. Birajdar for the Respondent No.3

**CORAM : N.M. JAMDAR, J.**

**DATE : 2<sup>ND</sup> FEBRUARY, 2016.**

**ORAL ORDER:**

1] Rule. Rule made returnable forthwith. Taken up for final disposal.

2] By this petition the petitioners challenge the order passed by the Industrial Court Mumbai dated 10<sup>th</sup> September 2014, dismissing the complaint filed by the petitioners.

3] The petitioners were initially working with the respondent no.1 M/s. ALF Pvt. Ltd. Company. The respondent no.1 is engaged in passenger baggage and cargo clearance at the Sahar International Airport and Cargo Complex, Mumbai. One of the division is for International Freight Forwarding and Customs Clearance. The respondent no.3 was incorporated on 1<sup>st</sup> February 2007 as a joint venture M/s. AFL Dachser Pvt. Ltd. The Company started

functioning from 26<sup>th</sup> June, 2007. The petitioners filed a complaint bearing Complaint (ULP) No.96 of 2011 against the respondent no.1 its Chairman and Managing Director and respondent no.3 under item Nos. 3,9 &10 of Schedule VI of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (for short MRTU & PULP Act, 1971). It was their contention that the respondents had engaged in an unfair labour practices. It was their case that after the formation of respondent no.3 some of the assets were transferred to the respondent no.3, but nothing was informed to the workers. For removing the workmen from the protection of the Labour Laws, they were being re-designated as Executives. Some of the workmen accepted these designations. However, the petitioners refused to do so. It was their case that the respondent no.3 addressed a letter on 25<sup>th</sup> November, 2008, that though their services are transferred to respondent no.3 they were not reporting to work. According to them the respondent No.1 had terminated their services by an order dated 17<sup>th</sup> September, 2011 on the ground that the operations of respondent no.1 have been closed from 14<sup>th</sup> June, 2010. This action was challenged by the petitioners in the said complaint.

4] The respondent no.3 filed its written statement and contended that no relief is sought against the respondent no.3 and there is no relationship of employer and employee. It was their contention that the respondent no.1 had transferred all its assets and liabilities after following provisions of Section 25 FF of the Industrial Disputes Act. Notices were served to all the workmen. The petitioners did not report to work. It was their contention that the action of termination taken by the respondent No.1 was rightly taken. On behalf of the

respondent no.1 it was contended that the petitioners inspite of directions to join the respondent no.3 refused to do so and after and since the operation of respondent no.1 were closed the petitioners were terminated and cannot be now taken back in service.

5] The Industrial Court considered the provisions of Section 25 FF of the Industrial Disputes Act, 1947. It noted that the International Freight forwarding division is transferred to respondent no.3. The petitioners were informed to join the respondent no.3, however, the petitioners failed to report at the transferred place of new employer, when the others accepted the transfer and ultimately respondent no.1 rightly terminated their services. Accordingly by the impugned order the Industrial Court dismissed the complaint.

6] I have heard the learned Counsel for the parties.

7] The main grievance made by the learned Counsel for the petitioners is that the order is passed by the Industrial Court without considering various vital issues and the Court has proceeded in a simplistic manner. It is his contention that, if the services of the petitioners transferred to the respondent no.3, then the respondent no.1 could not have terminated the services. On the other hand it is the contention of the respondent no.3 that the petitioners never joined the services of the respondent no.3 and they were being paid by the respondent no.1 and there is no employer employee relationship with them. It is the contention of the Counsel for the respondent no.1 that since the operation of respondent no.1 were closed the services were terminated and the petitioners did not join

the services of the respondent no.3 as the other employees joined. It was also urged by the learned Counsel for the petitioners that the documents which are 56 in number, which showed a factual position that in fact the petitioners worked with the respondent no.3 after 2007 which is not considered by the Industrial Court.

8] The petitioners has asserted that their transfer is illegal and had placed on record the material to show that they were being paid by respondent no.3. The question that would arise in such matters is what is the relationship between the respondent no.1 and respondent no.3. It is by way of an agreement between these two entities that the services of workmen have been transferred. The workmen are not party to these agreements and it is not possible for them to know the nature of the relationship between these two entities. If the workmen have to be terminated for not joining another entity, then the assertion on their behalf, for which documents have been produced, that they in fact, worked for the transferred entity, cannot be ignored. As a corollary as an industrial adjudication Court will also consider the status of the two entities.

9] Without concluding this issue of facts it needs to be noted that in the cross examination of the witness of the respondent no.3 he has admitted that the pay-slips though issued by the respondent no.1 showed the address of the respondent no.3. He has also admitted that the respondent nos. 1 and 3 operated from the same address and have the same Chairman. Further more the petitioners have relied upon various documents to show that it is in fact respondent no.3 who was paying their wages.

10] This vital aspect of the matter has not been considered by the Industrial Court at all. It is the contention of the Counsel for the respondents that the functional integrality between these two entities was not put into issue by the petitioners in their complaint. However, from the cross examination and from the documents an area of scrutiny had opened up in the Industrial Adjudication to consider the aspect functional integrality. The Industrial Adjudicator should be vigilant that the workmen are not sacrificed by creating paper business arrangements between the two entities, who essentially have the same Master.

11] Therefore, in my opinion the question of functional integrality between the respondent no.1 and respondent no.3, and the factual aspect of payment of wages etc., by the respondent no.3 or respondent no.1 needs to be examined by the Industrial Court before concluding the issue. For that purpose the matter will have to be remanded back to the Industrial Court for fresh adjudication. Attempts were made to resolve the dispute amicably. However, the learned Counsel for the respondent no.3 upon taking instructions states that since the petitioners were not their employees it is not possible to consider their requests for employment at this stage.

12] It is clarified that what is observed above is only illustrative. The references to the admissions etc., are only for the purpose of stressing the need for fresh consideration of the matter and it is not conclusion on the merits of the rival contentions.

13] Accordingly, the impugned order passed by the Industrial

Court dated 10<sup>th</sup> September, 2014 is quashed and set aside. Complaint filed by the petitioners being Compliant (ULP) No.96 of 2011 is restored to file, to be disposed of on merits.

14] The writ petition is disposed in above terms.

(N.M. JAMDAR, J.)