

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2054 OF 2017

Maharashtra Samarth Kamgar Sanghatana	...	Petitioner
versus		
M/s. AFL Pvt. Ltd. & Anr.	...	Respondents

Ms. Anubha Rastogi, for Petitioner.

Mr. S.K.Talsania, Senior Advocate with Mr. Jayesh Desai I/by M/s. Desai and Desai Associates, for Respondents.

CORAM: S.J. KATHAWALLA, J.

DATE: 10th NOVEMBER, 2017

P.C.:

1. The above Writ Petition is filed by the Petitioner – Maharashtra Samarth Kamgar Sanghatana, impugning the Judgment and Order passed by the President, Industrial Court, Maharashtra, Mumbai dated 16th October, 2014 in Complaint (ULP) No.273 of 2010. The Respondents to the above Writ Petition are (i) M/s. AFL Pvt. Ltd. (Respondent No.1) and Mr. Cyrus Guzder (Respondent No.2), Chairman of Respondent No.1 Company. By the impugned Judgment and Order dated 16th October, 2014, the President of the Industrial Court has held that the Petitioner/Complainant Union has miserably failed to prove unfair labour practice on the part of the Respondents under Item 6 of Schedule II and Items 9 and 10 of Schedule IV of the MRTU and PULP Act, 1971 and therefore, the Complaint is dismissed.

2. The Petitioner/Complainant Union in Complaint (ULP) No.273 of 2010 has

interalia contended as under :

2.1 That the Respondent No.1 is engaged in the passenger baggage and cargo clearance at Sahar International Airport, Mumbai and having various divisions under its control, including the International Freight Forwarding and Customs Clearance division. The Respondent No.1 Company has engaged approximately 300 workmen in different categories.

2.2 That the workmen of the Respondent Company became members of the Petitioner. The Petitioner by its letter dated 31st October, 2005 addressed to the Respondent No.1 informed the Respondent No.1 that its workmen have become its members and also forwarded the names of the committee members.

2.3 That earlier there was Air Freight Employees Union representing the workers and was having the status of recognized Union. The Petitioner made an Application for getting status of recognition in place of the said Union and accordingly succeeded in getting the recognition certificate which is issued on 5th April, 2008 and from that date, the Petitioner represented all the workers of the Respondent Company as a recognized Union.

2.4 That the last settlement was entered into by the Respondent No.1 with the workmen on 12th July, 2004 in respect of the service conditions, which Settlement expired on 31st December, 2006. The Petitioner therefore, submitted their charter of demands dated 27th December, 2006 to the Respondent No.1 and thereafter, addressed

letters to the Respondent No.1 dated 26th March, 2007, 13th August, 2007 requesting the Respondent No.1 to settle their demands by way of negotiations. However, the Respondent No.1 failed to do so.

2.5 That thereafter, correspondence was carried out between the Petitioner and Respondent No.1 and repeated requests were made to have negotiations on the charter of demands submitted by the Petitioner. However, the Respondent No.1 failed to pay any heed to such requests. Instead the Management started giving threats to the workers and asked them to leave the Union, failing which their services will be terminated.

2.6 That in view of such threats, the Petitioner filed Complaint (ULP) No.326 of 2008 before the Industrial Court, Mumbai and sought protective orders/reliefs. The Industrial Court by its Order dated 18th August, 2018 called upon the Respondent No.1 not to terminate the services of the employees without following due process of law.

2.7 That thereafter, the Respondents started discussions with the other group of workers ignoring the Petitioner. The Petitioner was therefore, constrained to file another Complaint (ULP) No.90 of 2009 seeking directions from the Industrial Court to restrain the Respondents from negotiating with any other Union qua the service conditions. The Industrial Court by its Order dated 19th December, 2009 directed the Respondents not to negotiate, discuss or settle the issue in respect of the charter of

demands with any other unrecognized Union.

2.8 That despite the aforestated orders, the Respondent No.1 neglected the issue pertaining to the charter of demands and all of a sudden on 12th June, 2010 displayed a notice informing the workers that the Undertaking is closed down and thereby terminated the services of the workers by sending individual letters to the workers.

2.9 That in order to deprive the workers of their right of pay revision, the Respondent No.1 without following the due process of law, by notice dated 12th June, 2010 declared illegal lock out under the guise of closure and thereby engaged in unfair labour practice under Item 6 of Schedule II and Items 9 and 10 of Schedule IV of the Act.

2.10 That the Petitioner, therefore, filed Complaint (ULP) No.273 of 2010 and sought a declaration that the Respondent No.1 have indulged in unfair labour practice under Item 6 of Schedule II and Items 9 and 10 of Schedule IV of the Act and also sought direction against the Respondent No.1 to lift the illegal lock out declared by the Respondent No.1 under the guise of closure and to allow the workmen to resume their duties and to pay their wages regularly.

3. The Respondents filed their Affidavit in Reply (Exhibit C-4) and opposed the Application for interim reliefs. The Respondent No.1 also filed its Written Statement (Exhibit C-18) opposing the Complaint by setting out as follows :

3.1 That the Respondents have not engaged in unfair labour practices as alleged and the Complaint is not maintainable.

3.2 That the Respondent Company has been incorporated under the Companies Act, 1956 and was engaged inter alia in the business of carting of air cargo, both for import and export purpose till 13th June, 2010. The carting activities of the Company was set up in 1946 to do bonded carting for air cargo for both export and import purposes. The said activities were carried out round the clock in three shifts from Monday to Saturday and the workmen employed in the said activity were around 279, out of which 189 were loaders and 21 were drivers.

3.3 That the work of carting division also involved the activity of import delivery orders.

3.4 That for many years till 2004, the workmen were represented by the AFL Employees Union with which the Respondent No.1 Company had been signing the Settlements. The last Settlement with the said Union was dated 12th July, 2004 for the period 1st January, 2004 to 31st December, 2006. The said AFL Employees Union had also agreed to increase productivity and not raise demands of a financial nature during the subsistence of the Settlement. The workmen were given an increase of Rs.970/- per month.

3.5 That during the subsistence of the said Settlement, the Petitioner sent a letter dated 31st October, 2015 inter alia contending that it would henceforth represent

the workmen and that the employees of the Carting Division had become its members.

3.6 That prior to 2004 for carrying out its business, the Respondent No.1 Company had contracts from ground handling agencies like Air India, and Cambata Aviation Pvt. Ltd., and Airlines like British Airways, Ethiopian Airlines, Emirates, Jet Airways amongst others. In recent years, most of the major airlines have preferred to go in for self handling of cargo and have broken away from Air India which at one time, had a monopoly in ground handling and in turn had sub-contracted to the Respondent No.1 Company.

3.7 That around mid 2006, the operation, development and maintenance of the Mumbai Airport was handed over to the Mumbai International Airport Pvt. Ltd., (MIAL) by the Airport Authority of India (AAI) under the provisions of the Airports Authority of India Act, 1994. With MIAL taking over the operations, there was steep hike in the royalty from 11% to 15% as well as in the lease rentals for the space occupied by the Respondent No.1 Company in the cargo complex.

3.8 That around early 2007, MIAL being in charge of the Airport itself, got into ground handling operations for cargo and therefore, the share of cargo ground handling by Air India have reduced. This had a considerable fall out on the work of the Respondent No.1 Company and its revenues. Certain airlines like Emirates and Jet Airways also moved their ground handling activities to MIAL resulting in a loss of around 70% of the business of the Respondent No.1 Company by mid 2008.

3.9 That all these facts as regards the financial condition of the Respondent Company were brought to the notice of the Petitioner by a letter dated 8th July, 2008. The resultant situation was that on one hand the volume of business had reduced drastically and on the other hand, although the workmen wanted increased wages and better service conditions, they were not willing and were in no mood to contribute to the productivity of the Respondent No.1 Company.

3.10 That on various occasions, the workers were called upon and requested for co-operation in fulfilling their contractual obligations, but the workmen for the reasons best known to themselves, refused to do so.

3.11 That the Respondent No.1 Company had been attempting to get an increase in the rates for carting from the airlines it was rendering services to, but failed to do so primarily on the ground of non-delivery of service on time as well as market conditions.

3.12 That the Petitioner had in early May 2008 created a law and order situation by making defamatory speeches and instigating the workmen. The Respondent No.1 Company was therefore, constrained to approach the Industrial Court by way of a Complaint being Complaint (ULP) No.208 of 2008 and restraint orders against the workers were obtained from the Industrial Court.

3.13 That since the Charter of Demands did not make much headway, the Respondent No.1 Company gave an amount of Rs.5,000/- to each workmen as agreed

between the parties vide Minutes dated 22nd August, 2008.

3.14 That the Petitioner was made aware about the financial losses being incurred by the Respondent No.1 Company for the financial year 2008-09, which was to the tune of Rs.0.89 Crores and Rs.3.51 Crores for the financial year 2009-10. The Management appealed to the workers to co-operate, but in vain.

3.15 That therefore, the Respondent No.1 Company issued Notice dated 12th June, 2010 and closed down the Carting Division at the Cargo Complex at Chhatrapati Shivaji International Airport with effect from 14th June, 2010. The Respondent No.1 Company has in accordance with law paid all the workmen 60 day's wages in lieu of notice along with their wages. Individual letters were also issued to the workers enclosing therewith the cheques of their dues.

3.16 That the action taken by the Respondent No.1 is by following due process of law and it cannot be alleged that the Respondent No.1 have committed unfair labour practice under Item 6 of Schedule II and Items 9 and 10 of Schedule IV of the Act.

3.17 That the Complaint filed by the Petitioner be therefore, dismissed.

4. The Petitioner adduced evidence by filing an Affidavit in lieu of Examination-in-Chief of one Amrutlal B Pawar (U.W.1) who was employed with the Respondent No.1 Company since 1986 and was the Unit President of the Petitioner. Mr. Pawar interalia deposed that pending negotiations on the charter of demands, the Respondent No.1 Company issued notice dated 12th June, 2010 suddenly closing down

the Undertaking with immediate effect and issued termination letters to all the workmen numbering 280 and thereby engaged in unfair labour practice under Item 6 of Schedule II and Items 9 and 10 of Schedule IV of the Act. Mr. Pawar was cross-examined by the Advocate for the Respondents.

5. On behalf of the Respondent No.1 Company, evidence was adduced by filing Affidavit in lieu of Examination in Chief of Mr. Ameet Amar Shroff (C.W.1). In his deposition, he reiterated the facts stated in the written statement of Respondent No.1 Company. He reiterated that since the financial condition of the Respondent No.1 Company was deteriorating day by day, it was not possible for the Company to run its activities. Therefore, by following due process of law, the Company closed down its Unit and terminated services of all the concerned workers by paying them their necessary legal dues. Hence, there is no lockout, nor the action is contrary to any agreement, settlement, award or service rules. Hence, there is no unfair labour practice on the part of the Respondent Company. Mr. Shroff was cross-examined by the Advocate for the Petitioner.

6. The learned President of the Industrial Court after considering the Complaint filed by the Petitioner, Written Statement filed by the Respondents and the evidence of the parties, by his detailed Judgment dismissed Complaint (ULP) No. 273 of 2010. The learned President of the Industrial Court in his Judgment interalia held as follows :

6.1 That the contents of the Notice of Closure issued by the Respondent No.1 under Rule 82-A of the Industrial Disputes (Maharashtra) Rules, 1947 clarifies in what circumstances and for what reasons the Respondent No.1 Company was compelled to issue the said Notice.

6.2 That from the facts set out in the Judgment and Order and based upon the documents which are filed by the Petitioner, it is crystal clear that the Respondent No.1 Company have issued closure notice as per Section 25FFA of the Act and an intimation is given to the concerned authorities in the proforma prescribed under the Rules and thereby action has been taken.

6.3 That viewing all the aspects as set out in the Judgment and Order, it cannot be said that the Respondent No.1 Company have declared lockout at any time. That therefore, this is not a case of lock out, but it is a case of closure, that too by following due process of law.

6.4 That it therefore cannot be said that the Respondent No.1 Company have engaged in unfair labour practice under Item 6 of Schedule II of the Act.

6.5 That as far as Items 9 and 10 of Schedule IV of the Act are concerned, it is an admitted fact that the services of all the concerned workers are terminated by the Respondent No.1 Company by giving notice of closure. This fact is admitted by the witness of the Petitioner during cross-examination with these words *“it is correct to say that by notice dated 12th June, 2010, Company closed its activities of Carting*

Division and terminated services of all the concerned employees by paying their legal dues.” It is an admitted fact that all the concerned workmen have accepted their legal dues. Therefore, it cannot be said that the Respondent No.1 Company have terminated their services in breach of any agreement, settlement, award or service rules by way of force. It therefore, cannot be said that the Respondent No.1 Company has indulged in unfair labour practice under Items 9 and 10 of Schedule IV of the Act.

6.6 That the Complainant Union has therefore, miserably failed to prove unfair labour practice under Item 6 of Schedule II and Items 9 and 10 of Schedule IV of the Act.

6.7 That the Complainant Union is therefore, not entitled to the reliefs sought in the Complaint and the Complaint is dismissed.

7. As set out hereinabove, being aggrieved by the said Judgment and Order dated 16th October, 2010, the Complainant has filed the above Writ Petition impugning the said Judgment passed by the learned President of the Industrial Court, Maharashtra, Mumbai thereby dismissing the Complaint (ULP) No.273 of 2010. In the said Writ Petition, same facts which formed the subject matter of the Complaint (ULP) No.273 of 2010 and the deposition of the Petitioner and Respondent No.1 is set out. It is submitted that the Industrial Court has failed to appreciate that the Respondents had created an artificial situation of financial crisis only to illegally closed down the international division without following due process of law. It is submitted

that by passing the impugned order the Trial Court has allowed the Respondent No.1 to take advantage of its own wrong. It is submitted in the Writ Petition that the impugned Judgment and Order is contrary to law, material on record, justice, equity, good conscience and errors apparent on the face of the records as set out in the grounds of the Writ Petition.

8. I have gone through the impugned Judgment and Order dated 16th October, 2014. The learned President of the Industrial Court has after setting out all the relevant facts and considering all the documents including the notices, letters, minutes, etc. correctly come to the conclusion that the Respondents have declared the closure under compelling circumstances by following due process of law and it cannot be said that the Respondents have declared a lock out and it is not a case of closure. The learned President has also correctly pointed out that the witness of the Petitioner/Complainant Union during his cross-examination has himself admitted that *“it is correct to say that by notice dated 12th June, 2010, Company closed its activities of Carting Division and terminated services of all the concerned employees by paying their legal dues.”* In fact all the concerned workers have accepted their legal dues. The learned President is therefore correct in holding that the Respondents had not indulged in any unfair labour practices under Item 6 of Schedule II and Items 9 and 10 of Schedule IV of the Act.

9. In the above circumstances, no interference under Articles 226 and 227 of the Constitution of India is called for in the above Writ Petition. The Writ Petition is therefore dismissed. However, there shall be no order as to costs.

(S.J.KATHAWALLA, J.)