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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2584 OF 2018

Solapur Municipal Corporation ... Petitioner
Solapur Indra Bhuvan
Through its Municipal Commissioner
vs.
The General Secretary ... Respondent
Lal Bavta Mahanagar Palika and Ors.

WRIT PETITION NO. 2583 OF 2018

Solapur Municipal Corporation ... Petitioner
Solapur Indra Bhuvan
Through its Municipal Commissioner
vs.
Kamgar Kranti Union, Solapur ... Respondent

Mr. I. M. Khairdi for the petitioner.

Ms. Gayatri Singh, Senior Advocate a/w. Ms. Bhavana H. Mhatre for Respondent no.s 1 and 2 in WP/2584/2018.

Mr. Prasad Kulkarni for Respondent no. 1 in WP/2583/2018.

Mr. Vijay Killedar for Respondent no. 3 in WP/2584/2018 and Respondent no. 2 in WP/2583/2018.

CORAM : A.K. MENON, J.

DATE : 2nd MAY, 2018

P. C.

1. By this Writ Petition the petitioner corporation challenges the impugned order dated 28th December, 2017 passed in Complaint (ULP) No. 146 of 2016. The contention of the petitioner corporation is that the respondent no. 3—transport

undertaking is a separate legal entity and the petitioner is not responsible for the affairs of corporation. Mr. Khairdi contends that while the petitioner understands their plight the grievances of employees of the transport undertaking who were members of the respondent union, it cannot be a matter which the petitioner is concerned with since there is no employer-employee relationship between the workmen and the corporation. The impugned order holds otherwise.

2. The respondents have opposed the petition on the basis that the petitioner corporation seeks to disown responsibility and that the petitioner had been correctly directed to fund payment of salary of the workmen. Ms. Singh learned senior counsel on behalf of respondent no. 2 in Writ Petition No. 2584 OF 2018 states that the contentions taken up by the petitioner corporation are incorrect. In support of her contention she relied upon affidavit filed in this Court in Writ Petition No. 2556 of 2010 by one Mr. Abdul Ahamed Pathan, Transport Manager of respondent no. 3 -corporation who has solemnly sworn as follows :

*“The Petitioner No. 1 is the Municipal corporation and is established under Bombay Provincial Corporation Act. **The Transport undertaking is a part of Municipal Corporation, Solapur and it is owned by Municipal Corporation, Solapur** Provision is made for expenditure of the Transport Undertaking in the budget of the Municipal Corporation. The Transport Undertaking had two workshops for the purpose of carrying out the repairs of its vehicles” (emphasis supplied)*

4. Ms. Singh submits that the statement made on oath leaves no manner of doubt that the Transport undertaking is very much part of the petitioner corporation. Mr. Kulkarni and Mr. Killedar learned Advocates for the other respondent adopt the submissions of Ms. Singh. Learned counsel for the petitioner submitted that by virtue of Section 25 of the Maharashtra Municipal Corporation Act and the provisions of Chapter XX of the said Act the transport undertaking setting up management and operations are treated as a separate undertaking of the Corporation and separate legal entity and therefore there is no relationship of employer and employee the petitioner corporation and the employees of the transport undertaking.

5. Having heard the learned counsel for the parties it is obvious that respondent no. 3 – undertaking is either “acquired” by the Corporation or “set up” by the Corporation under the Maharashtra Municipal Corporation Act. The contention of the Corporation that it is not the employer and therefore not responsible for payment of salary will be decided at the final hearing of the said complaint. The challenge is to the impugned order passed on 28th December, 2017 which also has left this question open to the parties. In the meanwhile the petitioner cannot shy away from their responsibilities to the employees of the transport wing however onerous they may find it.

6. In the circumstances it is not necessary to interfere with the impugned order in view of the prima facie finding that the transport corporation is very much part

of the corporation. Accordingly, I pass the following order :

- (i) Writ Petitions are dismissed.
- (ii) No orders as to costs.
- (iii) The Complaint (ULP) No. 146 of 2016 will be decided in accordance with law and without being influenced by any observations of this Court.
- (iv) Ad-interim order dated 5th March, 2018 stands vacated.
- (v) Learned counsel for the petitioner seeks continuation of the ad-interim order for a further period of four weeks. The request is declined.

(A.K. MENON, J.)