

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3652 OF 2018

Municipal Corporation of Greater Mumbai & Anr. ...Petitioners
Vs.
The BEST Workers Union & Ors. ...Respondents

Mr.R.S. Apte, Senior Advocate with Dhruti Kapadia and Vinod Mahadik for
Petitioners.

Ms.Neeta Karnik for Respondent No.1.

Ms.Kavita Anchan I/b. M.V. Kini & Co. for Respondent Nos.2 and 3.

CORAM : S.C. GUPTE, J.

DATE : 9 JULY 2018

P.C. :

This petition challenges an order passed by the Industrial Court at Mumbai in a miscellaneous application filed in a complaint of unfair labour practice. The miscellaneous application was made by the Petitioners herein, who are, respectively, the Municipal Corporation of Greater Mumbai and its Commissioner impleaded by his name, for deletion and discharge from the complaint. By its impugned order, the Industrial Court rejected that application.

2 The complaint in the present case is under Section 28 read with Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“the Act”). The complainant (the Respondent herein) is a representative union acting under the Maharashtra Industrial Relations Act *inter alia* representing employees of an undertaking known as “BEST Undertaking” which

undertaking is part and parcel of the Petitioner corporation. The undertaking mainly carries on, and employs work force for, the businesses of electricity distribution and transport. The complaint pertains to leave travel assistance and leave encashment of the employees of BEST Undertaking working in the transport industry and common administrative department, payable to them under a departmental circular issued by BEST Undertaking on 29 May 2012. It is the grievance of the complainant union that as per the existing practice, employees who apply for leave travel assistance before 10th day of the month are paid leave travel assistance applicable to them along with the salary payable for the month, whereas employees applying for it after 10th day of the month are paid leave travel assistance along with the salary for the next month. It is the grievance of the complainant that employees of the Undertaking, who had applied for leave travel assistance by 10 September 2016, were paid the same with the salary for the month of September 2016 in October 2016. It is submitted that those of the employees of the Undertaking (working in transport industry and common administrative department and numbering about 23000), who had applied for leave travel assistance after 10 September 2016, were not paid any amount till date. It is also their grievance that no leave encashment was paid to the employees. It is the case of the union that discontinuing or suspending the facility of leave travel assistance as well as of encashment of leave to eligible employees amounts to unfair labour practice under Item 9 of Schedule IV of the Act. The union arraigned not only the BEST Undertaking and its General Manager as well as Chairman of the BEST committee of Municipal Corporation of Greater Mumbai as party Respondents to their complaint but also impleaded the Municipal Corporation of Greater Mumbai ("MCGM") as well as the Municipal Commissioner by his name ("Commissioner") as party

Respondents to the complaint. These latter impleadments were objected to by the Petitioners herein on the ground of mis-joinder. The Applicants sought deletion of their names from the array of parties. That application, as noted above, was rejected by the Industrial Court and being aggrieved, the Applicants have approached this court in its writ jurisdiction challenging that order.

3 It is submitted by Mr.Apte, learned Senior Counsel appearing for the Petitioners, that BEST Undertaking is an altogether separate Undertaking though owned by MCGM. It is submitted that the employees of the Undertaking are directly employed by the Undertaking by issuing them appointment orders without any approval or sanction of MCGM or the Commissioner. It is submitted that their wages are paid by the Undertaking and they are under direct control and supervision of the Undertaking. The Undertaking itself is covered by the Maharashtra Industrial Relations Act, 1946, whereas MCGM is covered under the provisions of Industrial Disputes Act, 1947. It is submitted that even service conditions of their respective employees are differently provided for, those of the Undertaking being governed by the Model Standing Orders, whereas municipal employees are governed by Municipal Service Regulations and the applicability of Model Standing orders to them is a matter under dispute presently in the Supreme Court. It is submitted that BEST has its own source of income and created its own fund which is utilized for its own activities and even has its own budget. It is submitted that for all intents and purposes, it is the BEST Undertaking which is the employer here, and the impleadment of MCGM and the Commissioner is an instance of misjoinder.

4 If one has regard to the provisions of the Mumbai Municipal Corporation Act (“MMC Act”), it contains the following definition of BEST Undertaking:

“S.3 (mm) - “the Brihan Mumbai Electric Supply and Transport Undertaking” means all undertakings acquired, organised, constructed, maintained, extended, managed or conducted by the corporation for the purpose of providing tramways, trackless trams or mechanically propelled transport facilities for the conveyance of the public or for the purpose of supplying electrical energy to the public and includes all movable and immovable property and rights vested or vesting in the corporation for the purposes of every such undertaking.”

The General Manager of the Undertaking is defined as follows:

“S.3(nn) - “the General Manager” means the General Manager of the Brihan Mumbai Electric Supply and Transport Undertaking appointed under Section 60A and includes an acting General Manager appointed under Section 60B.”

It is at once clear from the definition in Section 3(mm) that BEST Undertaking is a collection of undertakings acquired, organised, constructed, maintained, extended, managed or conducted by MCGM. It, therefore, does not have any existence separate from MCGM generally and as a matter of law. Chapter XVI-A of the MMC Act deals with operations of the undertaking and construction and maintenance of its works. Section 460A provides for management of Undertaking by its General Manager. Under Section 460A, though the General Manager manages the Undertaking and performs all acts necessary for the economical and efficient maintenance, operation, administration and development of the Undertaking, such management is subject to the superintendence of the

Brihan Mumbai Electric Supply and Transport Committee established by the corporation and of the corporation itself. So also, the General Manager performs all these powers with the sanction of the BEST committee. The Section provides for disposal of proposals of the General Manager when sanction or approval of the BEST committee or the corporation is required under the provisions of Chapter XVI-A. Under Section 460A, every contract made by the Undertaking is on behalf of MCGM. No contract for any purpose which, in accordance with the provisions of Chapter XVI-A, the General Manager may not carry out without the approval or sanction of some other municipal authority, can be made by him until and unless such approval or sanction has first been duly given. So also, no contract, which involves expenditure exceeding fifty lakh rupees, can be made by the General Manager unless the same is previously approved by the BEST committee. Every property acquired by the General Manager for the purposes of the Undertaking is on behalf of the Municipal Corporation and is leased, sold or otherwise, conveyed by the General Manager either with a report to the BEST committee or with the sanction of the BEST committee or of the corporation depending on the value of the property. Even as regards officers and servants of the Undertaking, the General Manager under law (Section 460R) is bound to prepare and bring before the BEST committee a schedule setting forth the designations and grades of the officers and servants and it is the BEST committee which sanctions such schedule either as it stands or subject to such modifications as it may deem expedient. Section 460R has a proviso that no new permanent post of which aggregate emoluments exceed ten thousand rupees per mensem can be created without the sanction of the corporation and no variation in the scales of pay of any specified classes or grades of officers or servants can be made without approval of the corporation, if the corporation by resolution

directs that such pay scales shall not be varied without its approval, so long as such resolution is in force. The service regulations of the employees are framed by the BEST committee from time to time and no regulation made by the BEST committee in this behalf has any force or validity unless and until it has been confirmed by the corporation. Even as far as leave of absence to be granted to the employees of the Undertaking is concerned, the appointing authority, namely, the General Manager, has authority to grant leave of absence only upto a certain period. Any leave of absence exceeding such period can only be granted by the BEST committee. The administration reports and statements of account prepared by the General Manager of the Undertaking are required to be submitted to the BEST committee and to be reviewed by the BEST committee. All these provisions clearly go to show that there is an all-pervasive and direct control of the Municipal Corporation over the affairs of the BEST Undertaking.

5 In any event, relying on various provisions of law and conditions of contract and service, the complainant union, in the present case, has prayed for a declaration against all the Respondents, including MCGM and the Commissioner, who are Petitioners herein, concerning engagement of unfair labour practice under Item 9 of Schedule IV of the Act and directions are sought by way of affirmative action against all the Respondents, including the Petitioners herein. The directions concern payment of leave travel assistance and leave encashment to all employees of the Undertaking working in the transport industry, who have applied for the same. Thus, as far as the Petitioners herein are concerned, direct reliefs are claimed against them in the complaint.

6 In the premises recorded above, it cannot be said by any

stretch of imagination that the Petitioners herein are not necessary parties to the complaint. If a relief is directly claimed against them, they are clearly the most necessary parties to be impleaded.

7 Besides, the claimant before the court as *dominus litus* has every discretion to implead such parties as it may be advised to join. The court can act on a prayer of deletion only if the court finds that the party impleaded is neither a necessary party nor proper party to the proceedings. As I have discussed above, it is impossible to conclude that the Petitioners herein are neither necessary nor property parties to the complaint.

8 In the premises, there is no infirmity in the impugned order. There is, accordingly, no merit in the petition. The petition is dismissed.

9 Learned Counsel for the Respondent agrees to delete the reference to the Municipal Commissioner by his name in the complaint. Accordingly, name of the Commissioner appearing in the complaint shall stand deleted though the Commissioner shall continue to be a party to the complaint by his designation.

10 All rights and contentions of the parties on merits are kept open.

(S.C. GUPTE, J.)