IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1282 OF 2018

Maharashtra State Transport
Kamgar Sanghatana .. Petitioner.
Vs.
Maharashtra State Road Transport
Corporation and Ors. .. Respondents.

Mr.A.V.Bukhari, Senior Advocate i/b Mr.Kishore Shetty for the Petitioner.
Mr.Nilesh Bhutekar for the Respondent Nos.1 to 3.

CORAM : A.K. MENON, J.

DATED : 29TH JANUARY, 2019

P.C. :

1. The petitioner challenges the judgment and order dated 25th October, 2016 by which Complaint (ULP) No.1 of 2016 filed alleging unfair labour practice under Item 9 of Schedule IV of the MRTU and PULP Act was dismissed by the Industrial Court. Mr. Bhutekar appears for respondents 1 to 3 and respondent no.4 is a formal party being the Chairman of the respondent no. 1 at the material time. Considering the narrow compass within which the matter lies, the petition is taken up for hearing by consent.
2. Rule. Rule returnable forthwith. By consent taken up for final hearing and disposal.

3. The controversy before the Court arose out of the obligation of the respondent no.1 to deduct Rs.200/- towards annual subscription fees due to the petitioner is members which was said to be deducted in the month of January each year. The petitioner claims support of 66,863 employees since 2013. A settlement was arrived on or about 21st June, 2013 between the complainant and respondent no.1. The settlement was valid upto 31st March, 2016. It appears that one of the officers of respondent no.1 working at Nagpur Division had issued a letter in the month of January 2016 declaring that there should be no deduction of membership subscription from salaries of the employees. In view of that communication, respondent no.1 did not deduct further amounts.

4. The respondents' case as pleaded before the Industrial Court was to the effect that there were other unions also acting in the interest of the employees therefore, the petitioner ought not to have filed the complaint. At the ad-interim stage an order came to be passed on 4th January, 2016 recording that there was a settlement in existence from 1st April, 2012 and valid till 31st March, 2016. While time was granted to the respondent to file a reply, the Court directed that vide circular dated 24th September, 2014 deduction of Rs.200/- towards subscription for each of the employees had commenced and this was continued till December 2015. The Divisional Commissioner Nagpur

division vide his letter dated 4th January, 2016 claimed that there was telephonic message from the Pradeshik Vyavsthapak Rajya Parivahan Vahatuk Mahamandal not to remit subscription fees already deducted and not to deduct subscription thereafter. The said order/direction was prima facie found to be contrary to the settlement and circular dated 24th September, 2014. As a result the Court found that the apprehension of the petitioner was well founded and therefore, an ad-interim order came to be passed directing the respondent corporation to continue to deduct Rs.200/- from the wages of employees who had consented for deduction. While this order was to be in operation till disposal of the complaint, the impugned order decided seven substantial issues one of which was whether the complainant/petitioner proved that it was a recognised union duly registered and having majority of employees as its members. The issue was answered in the negative but a related issue as to whether the respondent corporation proved that recognition of the petitioner to represent the employees on its establishment had been lost because of reduction of membership of the employees was answered in the affirmative. Effectively, the issue relating to unfair labour practice was held to be not proved.

5. Having heard learned counsel for the parties and having perused the record, I find that answer to issue no.1 to be perverse in view of the

fact that it was an admitted position that the union was a recognised union and having authority to represent the employees. This is evident from the Certificate of Recognition issued by the Industrial Court, a copy of which is annexed at Exhibit-A to the present petition. This is an admitted document and it is not understood on what basis the Industrial Court has come to the finding which it has as regards issue no.1. That apart, the impugned order considered rival contentions and proceeds to hold in paragraph 50 that the requirements of compliance with clause 48 had undergone a change by virtue of a direction issued on behalf of respondent no.4. It is material to note that the settlement vide clause 48 required annual subscription of the members to be deducted from salary and transferred by the respondents to the petitioner subject to written consent of individual employees. It is pursuant to this clause 48 is admittedly part of settlement and the amounts stand deducted in pursuance of the circular of September 2014 and till direction of 4th January 2016 was issued. It was thus contended on behalf of the respondent corporation that the settlement agreement dated 21st June, 2013 was subject to approval of the State Government.

6. Whereas the State Government vide letter dated 4th April, 2016 informed the respondent no.2 before the Industrial Court that the settlement agreement had been approved for the period 2012 to 2016

but excluding certain clauses. Clause 48 was amongst those clauses which was excluded. Therefore, it was contended on behalf of the corporation that clause 48 had not met with approval of the State Government and therefore, not effective and there was no obligation to deduct. This stand is now taken up in the affidavit in reply filed by Mr.Madhav Kale, General Manager (P & I.R.) on behalf of the corporation. Mr.Bhutekar, learned counsel for the respondent therefore submitted that clause 48 stood excluded and for want of approval of the State Government, it was not possible for the corporation to deduct and pay over these amount.

7. In the course of submissions Mr.Bukhari, learned Senior Advocate appearing on behalf of the petitioner pointed out that as against ad-interim order passed by the Industrial Court, the respondent corporation had filed Writ Petition No.6606 of 2010 in this Court which came to be disposed vide order dated 30th June, 2016. This Court substituted the interim protection and directed the corporation to disburse 50% of the amount collected from 58,159 employees who have consented to the deduction of subscription and directed the Industrial Court to dispose of complaint expeditiously. The balance 50% amount collected by the Corporation was to be invested in a fixed deposit which would abide by the final orders to be passed by the Industrial Court in the complaint. The complaint, however, has

been dismissed. Mr.Bukhari further submitted that said 50% amount collected has been duly received by the petitioner, however, as far as remaining 50% amount is concerned, in view of rejection of the complaint, the amount still lies invested by the corporation and is now required to be paid over.

8. Having considered the submissions of learned counsel, pleadings and the impugned order it is evident that the impugned order cannot be sustained inasmuch as the direction from the State Government granting approval to exclusion of clause 48 has been issued only on 4th April, 2016 after period of settlement expired. It is not in dispute that the settlement expired on 31st March, 2016. It is not possible to accept the submissions of Mr.Bhutekar that approval granted of relates to period during which it was operative and was also acted upon by the corporation. The direction dated 4th April, 2016 was so issued after the complaint was filed and obviously as reaction to the complaint. The settlement was operative and therefore could not be altered in an unilateral manner. It is not in dispute that the amounts of subscription have been collected from the employees and presently lie invested. These are not amounts on which the corporation can lay claim. The impugned order, I find demonstrates perversity and conclusions find no justification in the reasons or consideration of the documents and pleadings. In my view, the complaint ought to have

been allowed and the respondents should have been directed to pay over the balance 50% in view of the fact that the amount of 50% of subscription which now lies invested ought to have been paid over to the petitioner. I am of the view that a direction is required to be issued to pay over the sum interest accrued, if any after encashing the fixed deposit.

9. At this stage Mr.Bukhari states on instructions that the petitioner has no other claim against the corporation in relation to subscription fees issued for the period during which the settlement was in operation. Statement is accepted.

10. Accordingly, I pass the following order :

(i) Rule is made absolute in terms of prayer clauses (a) and (c) in respect of all 58,159 members.

(ii) The petition is disposed in above terms.

(iii) No costs.

(A.K. MENON,J.)