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

WRIT PETITION NO. 8353 OF 2018

General Manager (P& IR) and anotherPetitioners

V/s.

Divisional President, MaharashtraRespondent
S.T. Kamgar Sangathana

Mr. Y. D. Deshmukh for the Petitioner
Mr. Avinash J. i/b Mr. Vaibhav Jagdale for respondent

CORAM : NITIN W. SAMBRE, J.

DATE : JULY 24, 2019.

P.C.

Heard.

2 In complaint ULP No. 26 of 2018 preferred by the respondent, application for grant of interim order Exhibit U-2 came to be allowed whereby following order came to be passed by the Member, Industrial Court, Thane on 07/03/2018 which is impugned in the petition.

“ORDER

1. Interim Application is hereby allowed.

2. The respondents are hereby declared to have prima facie engaged in unfair labour practices under item 9 of Sch.IV of MRTU & PULP Act, 1971 and they are temporarily directed to cease and desist from the same.

3. The circular bearing No. 45/2017 issued by the respondent on 16.12.2017 is hereby stayed pending till the decision of main complaint.

4 No order as to costs”.

3 The submissions of the learned counsel for the petitioner are, circular issued which is subject matter of challenge in the complaint is within the jurisdiction and powers of the petitioner-employer. According to him, it was neither the intention to act contrary to provisions of Section 20 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ('the Act' for short) nor to restrict the right of the representative of respondent before the Enquiry Committee. According to him, change is effected by virtue of impugned circular so as to facilitate the uniform procedure to be adopted in the enquiry proceedings by the

petitioner-corporation. According to him, order impugned virtually amounts to grant of final relief and that being so, same is not sustainable.

4 The learned counsel for the respondent-complainant would support the order impugned by relying upon the provisions of Section 20 of the Act. According to him, the circular which is impugned in the complaint has given right of representation to the members of the respondent-recognised Union. According to him, order impugned is just and proper and as such, petition is liable to be dismissed.

5 Considered rival submissions.

6 The Tribunal had an occasion to consider the scope of right of representation, provided pursuant to impugned circular issued in the matter of disciplinary proceedings against employee of the petitioner-corporation, in the backdrop of provisions of Section 20 (1) (d) of the Act. The right of recognised Union to represent its member before Enquiry Committee is specifically provided by the

Statute. Such statutory right is sought to be taken away by the petitioner-corporation by issuing circular impugned, are the *prima facie* findings recorded.

7 Apart from the fact that Union through its representative has every right to represent the interest of its member before the Enquiry Committee is borne out of aforesaid statutory provision. The fact remains that such an authority in the union pursuant to provision of by-laws of the respondent-union were very much prevailing. A support to that effect can be drawn from amended and unamended provisions of by-laws of the respondent-union.

8 That being so, since the petitioner has tried to restrict the right of the respondent-union in the matter of provisions of Section 20 of the Act, order impugned in my opinion is very much justified which does not call for any interference. Petition fails, stands dismissed.

[NITIN W. SAMBRE, J.]