

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

WRIT PETITION NO.14222 OF 2018

Pune Krishi Utpanna Bajar Samittee .. Petitioner.

Vs.

Bajar Samiti Rojandari Sanghatana .. Respondent.

Mr.Anil Anturkar, Senior Advocate i/b Mr.Sugandh B. Deshmukh for the
Petitioner.

Mr.Nitin Kulkarni for the Respondent.

CORAM : A.K. MENON, J.

DATED : 15TH JANUARY, 2019

P.C. :

1. By this writ petition, the petitioner challenges an order dated 5th December, 2018 passed in Complaint (ULP) No.256 of 2018 by the Industrial Court Maharashtra at Pune by which the respondent was restrained from transferring services of the members of the complainant union to the Labour Contractors, namely, National Securities Services Pune and Sion Vigilant Services Pvt. Ltd. without their consent. The respondent was also restrained from compelling members of the complainant union to accept the employment through the said contractors and also restraining the respondent – Samiti from prohibiting members of the complainant union from joining their services with the Respondent till a final decision in the

complaint. The order is therefore an interim order.

2. The petitioner is a market Samiti established under the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 and is said to be a local authority. The respondent is a union of workmen, who are daily wage earners. The union had raised a charter of demands pertaining to conditions of service and since the matter was not settled at the level of Conciliation Officer, the appropriate Government had made reference to the Industrial Court. The reference came to be heard.

3. According to the respondent union, their members were prevented from joining duties and were told that they would have to accept employment through the said two contractors and hence the union filed the complaint (ULP) No.256 of 2018 before the Industrial Court under Item Nos.3, 9 and 10 of Schedule IV of MRTU & PULP Act, 1971. The complaint was filed on 29th September, 2018. Thereafter an interim application was moved in which the impugned order came to be passed.

4. Mr.Anturkar, the learned Senior Advocate appearing on behalf of the petitioner was critical of the impugned order and submitted that it goes beyond scope of the complaint. He submitted that the impugned order is in three parts. The first and second portions of the impugned order restrain the petitioner from transferring services of the members of the respondent union to the contractors without their consent and/or compelling members of the respondent union to join the services of the contractors. These two parts are

not being objected to since this is an interim application, however, the third part restrains the petitioner from preventing the members of respondent union from joining their services with the petitioner till a final decision in the complaint. He submitted that grant of this relief amounted to grant of final relief. Furthermore, it is likely to cause a law and order problem since the members of the respondent would insist of being provided work. He submitted that a similar case filed on behalf of different union, namely, Sarva Shramik Sanghatana, Pune against the petitioner Samiti and its Director being the Complaint (ULP) No.149 of 2005 was dismissed on 16th August, 2012 by the Industrial Court. He submitted that in that case, the issue of regularisation of those employees was urged and it was observed that daily wage employees were appointed without any advertisement or interview or without following due process of the recruitment and therefore, they could not be regularised in view of settled law in that respect. It is submitted that the respondents in the present case were also similarly placed and therefore no relief could be granted.

5. Lastly, Mr.Anturkar submitted that relief granted is beyond scope of application itself. Mr.Anturkar invited my attention to prayer clauses in the complaint, at Exhibit-B, which did not contemplate restraining the petitioner from preventing the members of the respondent union from joining services. He, therefore, submitted that the impugned order cannot be sustained. He invited my attention in case of *Secretary, State of*

*Karnataka & Ors. vs. Umadevi and Others*¹ and also copies of documents filed in the Industrial Court in separate compilation in support of his contention. He therefore submitted that the impugned order is liable to be quashed and set aside.

6. Mr.Kulkarni, learned Advocate on behalf of the respondent submitted that the impugned order cannot be faulted for the reasons that the order was protecting rights of the members of union to attend to their duty and in any event as an interim arrangement in main complaint which is still pending. That the submissions on behalf of the petitioner would not justify interference because in the instant case daily wage earners were working for more than ten years as recorded in the impugned order and the respondent had abruptly started insisting that the complainant union members must accept employment through the contractors which they rightly refused. It is submitted that conduct of the petitioner clearly admits of unfair labour practices and the market committee as a body corporate and local authority cannot be permitted to behave in this fashion. He submitted that the Industrial Court found that a prima facie case had been made out and the balance of convenience is in favour of the respondent and therefore, appropriate protection has been granted. He submitted that the members of union are not being deputed to other places or being transferred from one unit to another and the petitioner has not come with clean hands and therefore, the Industrial Court had rightly held that the petitioner was liable

¹ (2006) 4 SCC 1

to be restrained.

7. Mr.Kulkarni who relied on the decisions of the Supreme Court in *Kundan Sugar Mills vs. Ziyauddin*² and *Jawaharlal Nehru University vs. K.S. Jawatkar*³ in support of his contentions.

8. Mr.Anturkar in the rejoinder submitted that case of the respondent cannot be accepted in view of prior rejection of the case wherein the respondent's members were claiming permanency and that in the instant case the Samiti as a local authority is entitled to engage its own staff and create posts. In absence of such posts there is no question of any right being created in favour of the respondent. He submitted that in the earlier case, the Director of the market Samiti was also a member and was duly empowered to attend to the matters pertaining of creation of posts, however, despite this the Industrial Court has rejected the application. Mr.Anturkar therefore submitted that the impugned order seeks to restrain the petitioner from preventing the respondent's members from joining the employment must be set aside.

9. Having heard the learned counsel for the parties at length, I am of the view that no interference is called for. Firstly, it is an interim order and the main complaint is still pending. The issues raised in the earlier complaint No.149 of 2005 were not similar to the issues raised in present complaint. The present complaint proceeds on the basis not of claiming permanency but

² AIR 1960 SC 28

³ AIR 1989 SC 1577

on the aspect of being coerced to join services through contractors against the will of the members of the respondent union. While on subject it was noticed that when ad-interim relief came to be granted on 1st October, 2018, the Court had recorded submissions of the petitioner's Advocate in paragraph 4 as follows :

“4. The Ld.Advocate Mr.A.V. Lokhande appeared today for the Respondent, and submitted that the Respondent is not compelling these workers to join services through contractors. However, these workers are not joining services. Therefore, for one month they have appointed the contractors, and they are taking services of the contractors for only one month. The Respondent wanted some time to file his say and argue the matter. Hence, in such circumstances necessary orders may be passed or the status quo as it is be directed to be maintained by the Respondent.”

(Emphasis supplied)

10. Mr.Kulkarni has correctly submitted that representation made to the respondent and to the Court at that stage was that the petitioner was not compelling workers to join the contractors yet workers were not

attending to the duties and as a result of which the contractors have been appointed only for one month. The petitioner has sought time on that basis, however, the Industrial Court had rightly restrained the petitioner. Furthermore, reliance was placed by Mr.Kulkarni on the reply filed by the petitioner in Complaint (ULP) No.256 of 2018 of which paragraph 9 is in my view material. The Administrator of the petitioner Samiti had made the following averments on oath :

“9. Adverting to the recitals in para 3(b) of the complaint, it is emphatically denied that the employees mentioned in Annexure “A” are put to terms that they should join duties only if they accept the employment through the contractors. None of them are denied employment. On the contrary, the employees themselves are not resuming duties. The appointment of a contractor is only on an experimental basis and further in the interests of justice and employees. The service condition of all the employees are protected and no prejudice is caused to anyone.”

(Emphasis supplied)

In view of above, therefore, it is evident that contention of the petitioner itself was that the respondent's members were not joining service and were not resuming duties and further appointment of the contractors were on an experimental basis. As regards the contention of the petitioner alluding to the likelihood of a law and order problem, none existed prior to the petitioner adopting these unprecedented steps of preventing the respondents' members from joining work. There is much which needs to be gone into at the stage of final hearing of the main complaint. I find no reason to interfere with interim relief which was so granted after hearing the parties at length. In the circumstances I pass the following order :

- (i) Writ Petition is dismissed.
- (ii) No costs.

(A.K. MENON,J.)