IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 133 OF 2020

Municipal Corporation of Greater
Mumbai & Anr. ….. Petitioners
vs
The Municipal Union ….. Respondent

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A. V. Bukhari, Vinod Mahadik, Burhan Bukhari & F. Bukhari for the Petitioner-MCGM.
J. Cox i/b Karishma Rao for the Respondent.
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CORAM : S.C. GUPTE, J.
DATED: FEBRUARY 14, 2020

P.C. :

Rule. Rule taken up for hearing forthwith by consent of counsel.

2. This Writ Petition challenges an interim order passed by the Industrial Court at Mumbai on a complaint of unfair labour practice. The Respondent-union was the Complainant before the Industrial Court. The complaint was of unfair labour practice under item 9 of Schedule IV of The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "MRTU & PULP Act") on the part of the petitioner establishment. The grievance of the complainant-union was in respect of medical benefits to be given by the Petitioner-employer to

its employees represented by the complainant-union.

3. The short facts of the case may be stated as follows:

3.1 The Petitioner-Municipal Corporation is a large organization employing about 1,09,781 employees, out of whom nearly 67,185 employees are members of various unions which are recognized by the Petitioner-corporation. (The Respondent-Union has been recognized recently by the Petitioner, i.e. with effect from 12 December, 2018. As on January, 2019 the Respondent-union had about 3472 members.)

3.2 Originally, by circular dated 7 September, 1996, the Petitioner had announced a medical support scheme for its employees. Under this scheme, reimbursement claims of employees for minor ailments were to be considered up to a sum of Rs. 20,000/- for the employee plus an additional Rs. 10,000/- for the family of the employee. As for major ailments, the packet was up to a sum of Rs. 45,000/- for the employees. In 2005, there was a revision in this policy. By a circular dated 07th April 2005, the existing benefits both for minor and major ailments were continued but a monthly benefit of Rs. 200 per month was introduced with effect from 1st April 2005. A further revision took place on 30th November, 2010. Under this revision, the limit of reimbursement claimed for major ailments was raised from Rs. 45,000/- to

1,00,000/-.

3.3 Some time later, i.e. on or about 19 September, 2011, an agreement was reached between the petitioner-corporation and about fourteen or fifteen recognized unions representing various employees of the corporation. Under this agreement (clause 15 thereof), a committee was agreed to be appointed for examining *inter-alia* up-gradation of the medical support scheme. This committee came to be constituted in due course and pursuant to its report, a group insurance medical scheme was introduced by the petitioner corporation for its employees. The scheme was approved by the standing committee of the corporation on 15th April 2015 and by the corporation in its meeting on 5th May, 2015. By a circular dated 16th July, 2015, the scheme was announced by the Petitioner-corporation.

3.4 The scheme envisaged a cashless cover of medical insurance for all serving employees of the corporation. The cover was to be up to Rs. 5 lakhs. It was meant for a family of four persons, i.e. the employee himself, his wife and two children. A circular was issued on 2nd March, 2016 for extending this scheme even to retired employees of the corporation. These employees were to be covered in the scheme, if they had retired post April 2011. The scheme envisaged participation of a general insurance company.

3.5 The Petitioner corporation accordingly entered into an agreement with United India Insurance Company Ltd. for a period of three years. The agreement *inter-alia* provided for a formula arriving at the premium payable by the Petitioner-Corporation during each of these three years.

3.6 In the first year, that is to say, for the period between 1st August, 2015 and 31st July, 2016, the corporation was required to pay a premium of about Rs. 84 Crores plus GST. As against this premium, the Insurance Company ended up paying claims of the Corporation employees for the particular year in the sum of Rs. 110.09 crores. As a result, in keeping with the formula proposed in the agreement between the Petitioner corporation and the Insurance Company, and in pursuance of negotiations between the Petitioner and the Insurance Company, a premium of Rs. 96.60 Crores plus GST was fixed for the following year, i.e. from 1st August, 2016 to 31st July, 2017. In this second year, the Insurance Company had to clear employees' claims aggregating to about Rs. 146.74 crores. Based on these circumstances, the Corporation demanded enhanced premium of over Rs. 149 Crores plus GST from the Petitioner-Corporation for the third year. The Petitioner-Corporation did not agree to the premium proposed by the Insurance Company. There was correspondence between the parties followed by negotiations, but nothing came out of it and no agreement could be reached between the Petitioner Corporation and the Insurance Company for coverage of the former's employees for the third year, namely, for the period between 1st August, 2017 to 31st July, 2018. In the premises, by its order dated 5th October, 2018, the Corporation proceeded to blacklist the Insurance Company.

3.7 The Corporation thereafter proceeded to float a tender for its group insurance scheme. The tender notice was followed by two more notices issued on 7th February, 2019 and 14th March, 2019. The tender notices, however, elicited no response from any insurers.

3.8 In the premises, a joint meeting was held between the Petitioner Corporation and the recognized unions, who had originally signed the settlement of 2011, for finding a solution to the problem. Three important decisions were taken in this joint meeting: the first was to involve private insurance companies in the tender process; the second was to introduce an insurance broker for facilitating the insurance contract; and the third was to apply an ad-hoc compensation limit of Rs. 2 lakhs by way of reimbursement pending finalization of the group insurance contract with insurance company with effect from 1st August, 2017 for the employees.

3.9 Based on this joint meeting and the decisions taken thereat, on or about 18th September, 2019, a circular was issued by the Petitioner Corporation declaring the new ad-hoc proposal. The circular *inter-alia* offered an ad-hoc medical support upto a sum of

Rs. 2 lakhs to the employees of the petitioner corporation pending finalization of a group insurance scheme with an insurer.

3.10 This circular is the subject matter of challenge by the Respondent Union before the Industrial Court in its complaint of unfair labour practice. It was submitted that withdrawal of benefits extended to the employees of the Corporation, including the employees represented by the Respondent Union, under the original settlement of 2011 (which was premised on a group insurance scheme agreed to between the corporation and the insurers), was unlawful and amounted to a failure to implement an award, settlement or agreement within the meaning of Item 9 of schedule IV of the MRTU & PULP Act.

4. In support of the impugned order of the Industrial Court, learned Counsel for the Respondent submits that withdrawal of any benefit, which was in the nature of a customary concession or privilege, would amount to a change in conditions of service and would attract Section 9(a) of the Industrial Disputes Act, 1947 read with Schedule IV to that Act. Learned Counsel, in the premises, submits that the impugned order of the Industrial Court staying the circular of 17th September, 2019 and directing the Petitioner corporation to continue to grant benefits to the employees of the Petitioner on the basis of the earlier circulars issued on 16th July, 2015 and 2nd March, 2016 is clearly justified as an interim order

under sub-section (2) of Section 30 of the MRTU & PULP Act.

5. The order of the Industrial Court clearly exhibits non application of mind. In the first place, there is no case of a breach of settlement (settlement of 2011) inviting an action under Item 9 of schedule IV of the MRTU & PULP Act. The settlement of 2011 between the petitioner corporation and the recognized unions of its employees was for constitution of a committee to look into modalities of medical assistance to be granted by the Corporation to its employees. Based on the recommendation of a committee appointed in pursuance of this agreement, a group medical insurance scheme was introduced by the petitioner corporation in 1 May, 2016. The scheme, which accorded cashless medical cover to employees of the Corporation, was inextricably premised upon an insurance contract to be entered into between the Petitioner corporation and a general insurance company. A contract was accordingly entered into with New India Insurance Company Ltd. If this contract was not continued or renewed as between the petitioner corporation and the insurer for any particular period of time, the scheme obviously cannot be operated. The reasons for non-renewal of the contract are not amenable to any scrutiny by the Industrial Court; the rival contentions in that behalf of the petitioner on the one hand and the insurer on the other cannot be subjected to any adjudication at the hands of an industrial adjudicatore or labour court. The Industrial Court is essentially concerned with the

settlement as between the employer and the employee, it has no concern whatsoever with the contract between the employer and the insurer. The group insurance contract extending cashless medical cover to the employees of the corporation is clearly incapable of being implemented in the face of the fact that the insurance company has refused to extend the cover for the third year, namely, for the period between 1st August, 2017 and 31st July, 2018. In the premises, the corporation, as noted above, has proposed a new arrangement under which, pending formulation and finalization of a fresh group medical insurance scheme interim benefits have been extended to its employees, based on a joint meeting held between the corporation and about fourteen to fifteen unions of its employees, who are recognized and who were signatories to the settlement of 2011.

6. On these facts, the Industrial Court could not have directed the Municipal Corporation to implement the original group insurance scheme or extend medical benefits thereunder to the employees of the corporation as an interim measure of protection. Learned Counsel for the Respondent union submits that the benefits of the ad-hoc scheme of reimbursement up to Rs. 2 lakhs announced by the petitioner corporation is only for the period between 1st August, 2017 to 31 July, 2018. Learned Counsel for the Petitioner corporation disputes the position. Learned Counsel submits that these benefits are available for the whole of the period from 1

August, 2017 and till an appropriate group insurance scheme is arrived at between the Petitioner-corporation and the insurers. In any event, if there was any lack of clarity in this behalf, it would have been more prudent and reasonable for the Industrial Court to have passed an interim order clarifying the position and extending the ad-hoc benefits to employees of the petitioner corporation beyond 31st July, 2018. Surely, it could not have ordered the Municipal Corporation to implement the original group insurance scheme in the absence of an insurer.

7. The impugned order of the Industrial Court is, in the premises, clearly untenable and deserves to be quashed and set aside. It is instead in the interest of justice to order the Industrial Court to expeditiously dispose of the original complaint itself, which, in any event, was the alternative prayer of the Respondent Union (original complainant) in its interim application before the Industrial Court, and, in the meantime, to require the Corporation to extend the ad-hoc benefits so long as an alternative group medical insurance scheme is not formulated and finalized.

8. Accordingly, Rule is made absolute, and the Petition is allowed by quashing and setting aside the impugned order dated 24th October, 2019 passed by the Industrial Court. The impugned order shall stand substituted by a direction to the Municipal Corporation to extend the benefits of ad-hoc medical

reimbursement of upto Rs. 2 lakhs to all its employees pending the hearing and final disposal of the complaint or finalization of a group insurance contract in that behalf with an insurer, whichever is earlier.

(S.C. GUPTE, J.)