

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

WRIT PETITION NO.6906 OF 2022

The BEST Workers' Union ..Petitioner
Versus
The BEST Undertaking and Ors. ..Respondents

Ms. Neeta Karnik, for the Petitioner.

Mr. Sudhir Talsania, Senior Advocate a/w Kavita Anchan & Arsh Mishra, for the Respondent Nos.1 to 3.

Mr. Mayuresh Nagle, for the Respondent No.4.

CORAM : NITIN W. SAMBRE, J.

DATE : 14th JUNE, 2022

P.C.

1. Impugned in the petition is an order dated 12th April, 2022 passed in Complaint (ULP) No.111 of 2021, wherein prayer of the petitioner moved under Section 30(2) of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "MRTU & PULP Act") for interim relief came to be rejected.

2. The petitioner, a union of employees of BEST Undertaking moved before the Industrial Court alleging unfair labour practice in the matter of enrollment of membership and recovery and transfer of the membership fees. In the said proceedings, it is claimed that settlement was arrived at between union which led the issuance of Circular dated 28th June, 2019. According to Ms. Neeta Karnik, learned counsel for the petitioner, the said circular

since was in tune with the consent terms reached between the parties was duly acted upon and was given effect in the matter of processing the request of the members as regards shifting of the membership from one union to another union. She would urge that without any appropriate notice of change another Circular dated 12th April, 2021 came to be issued, which is contrary to the earlier settlement which has led to filing of the aforesaid unfair labour practice complaint. The counsel would invite attention of this Court to the calender fixed pursuant to the Circular dated 28th June, 2019, so also 12th April, 2021. The contentions are, the subsequent Circular dated 12th April, 2021 is contrary to the settlement arrived at and as such amounts to unfair labour practice. So as to substantiate her contention, she has tried comparatively to demonstrate from the earlier Circular dated 28th June, 2019, so also new Circular dated 12th April, 2021 as to the mode and manner in which the unfair labour practice is committed. It is claimed that since the subsequent circular is without appropriate notice ought not to have been given effect to which fact Tribunal has failed to consider. She would urge that the petitioner has come with certain prayers before the Tribunal which were in fact not dealt with in accordance with law and as such, interference at the hands of this Court is warranted.

3. While countering the aforesaid submissions, Mr.

Sudhir Talsania, learned senior counsel appearing for the respondent Nos.1 to 3 i.e. BEST Undertaking would urge that the order impugned is self speaking. According to him, the due procedure in the matter of issuance of subsequent circular is followed by issuing change notice to the petitioner. He would also invite attention of this Court to the fact that the petitioner has participated in the proceedings which as regards switching over of membership was initiated based on the circular and that being so, according to him, the Tribunal was justified in rejecting the prayer.

4. I have appreciated the said submissions.

5. The fact that the Circular dated 28th June, 2019 was issued in view of the settlement arrived vide consent terms dated 10th August, 2018 passed in Writ Petition No.985 of 2018 is not in dispute. The said Circular dated 28th June, 2019 was duly acted upon by the parties to the present petition and was not complained about. As far as subsequent Circular dated 12th April, 2021 is concerned, though during the challenge to the same, ad-interim protection was granted in favour of the petitioner, the Tribunal while passing the order impugned dated 12th April, 2022 has considered the conduct of the petitioner. The Tribunal has specifically observed that the petitioner/complainant along with its members participated

in the membership drive and as such, duly acted upon such circular. It is further claimed that total 8454 employees participated in the membership drive. As a consequence, 7000 employees of the respondent have resigned from their existing membership of the union and shifted to certain other unions. Petitioner is informed to have displayed the same on the notice board for information to its members.

6. The aforesaid fact has rightly led to the Industrial Court in passing the order impugned.

7. In the aforesaid background, it cannot be said that the petitioner is in a position to demonstrate any illegality or the material irregularity causing substantial prejudice to the petitioner. Rather very conduct of the petitioner and its members in participating in the process of withdrawal and enrollment of the membership specifically depicts that the petitioners have taken chance by acting in accordance with the fresh circular and perhaps having suffered consequences of withdrawal of membership. That being so, no case for interference is made out.

8. The petition as such stands dismissed.

[NITIN W. SAMBRE, J.]