

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3486 OF 2021

Panvel Municipal Corporation ..Petitioner  
V/s.  
Chhaya Mhatre and Ors. ..Respondents

WITH  
WRIT PETITION NO. 5187 OF 2021

SNEHA  
NITIN  
CHAVAN

Digitally signed by  
SNEHA NITIN  
CHAVAN

Date: 2022.09.16  
10:07:52 +0530

Panvel Municipal Corporation ..Petitioner  
V/s.  
Sarva Shramik Sangh ..Respondent

----

Mr. Mahendra Agvekar a/w Ms. Shraddha Chavan, Vijay Vaidya i/b Shriniwas Kshirsagar for the Petitioners in both petitions.  
Mr. Sanjay Singhvi a/w Rahil Fazelbhoy i/b. C.M. Lokesh and Ravindra Nair for the Respondent Nos. 1 to 20 in WP/3486/2021.  
Ms. Ashwini Jadhav i/b Sanjay Ghaisal for Respondent Nos. 21 to 23 in WP/3486/2021.  
Mr. G.S. Hegde a/w Ms. P.M. Bhansali for Respondent Nos. 24 and 25/CIDCO in Writ Petition No. 3486/2021.

----

CORAM : C.V. BHADANG, J.

RESERVED ON : 06 SEPTEMBER 2022

PRONOUNCED ON : 14 SEPTEMBER 2022

**:COMMON JUDGMENT :**

. Rule in both petitions. The learned counsel for the Respondents waives service. Heard finally by consent of parties.

2. Both these petitions can be conveniently disposed of by this common judgment.

**WRIT PETITION NO. 3486 OF 2021**

3. The Respondent Nos. 1 to 23 (original complainants) are working at Urban Health Center of Respondent-City Industrial Development Corporation Limited (CIDCO) as General Nurse Midwife (GNM) Auxiliary Nurse Midwife (ANM), Laboratory Technicians, Pharmacists-cum-clerk, in the Health Department. CIDCO is a company incorporated in 1970 and was established to create a new township under the provisions of the Maharashtra Regional and Town Planning Act. The Petitioner-Panvel Municipal Corporation was established on 01.10.2016 comprising of areas of New Panvel, Kharghar, Kalamboli and Kamothe etc. and the Primary Health Center (PHC) falling in these area which were earlier under the Management of CIDCO, were transferred and came under the Management of the Respondent-Corporation. It appears that there was an agreement executed incorporating the terms of such transfer of employees and as per

the said agreement, the employees came under the services of the Respondent-Corporation w.e.f. 01.07.2018.

4. The original complainants filed complaint (ULP) No. 301 of 2016 before the Industrial Court at Thane alleging commission of Unfair Labour Practice under Item 5, 6, 9 and 10 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ('1971 Act' for short). It was contended that the complainants were working under CIDCO since the year 2012 to 2015 and inspite of the fact that they had completed 240 days in a year, they were not treated as regular/permanent employees. The complainants therefore, by filing the aforesaid complaint against CIDCO *inter alia* sought benefits of permanency and corresponding salary/wages.

5. It appears that subsequently, the Respondent Corporation was impleaded as Respondent in the complaint.

6. The Respondent CIDCO resisted the complaint by claiming that on constitution of the Respondent-Corporation, the civic amenities provided by CIDCO including health services were required to be ceased and they were accordingly transferred to the Respondent-Corporation. It was thus, contended that CIDCO cannot be saddled with the responsibility of continuation

or grant of permanency to such employees whose services were transferred to *inter alia* created Parnel Municipal Corporation.

7. It was next contended that the complainants were working on temporary post on an Ad-Hoc basis and complainant were aware of nature of their services which was contractual their nature till corporation of the new local body. Thus, it was contended that the completion of 240 days of service cannot confer consequent permanency as this principle may not apply. It was thus, denied that CIDCO has engaged into any unfair labour practice as alleged.

8. The Respondent corporation resisted the claim more or less on similar lines. It was contended that the complainants were employed purely on contractual/ad-hoc basis, for a fixed period, under the National Urban Health Mission (NUHM) scheme as per the provision of the said scheme. They were paid consolidated pay/honorarium as mentioned in the schedule. It was contended that the complainants have not been recruited/appointed against sanctioned/clear/vacant post as their services were initially governed by NUHM scheme. It was next contended that the complainant Nos. 1, 3, 5, 6 and 17 namely Sweta, Shalini, Lalita, Pavitra have absented themselves since long. In short, it was contended that there was no employer-

employee relationship between the complainants/workmen and the Corporation and the complainant was liable to be dismissed.

9. The Industrial Court framed issues on the basis of the rival pleadings. The parties led evidence. The Tribunal by a Judgment and Order dated 07.05.2021 has allowed the complaint holding that the Respondent-Corporation has engaged into unfair labour practices under Item 5 and 9 of Schedule-IV of 1971 Act. In the face of such finding, the Tribunal has granted benefits of permanency to the Respondent-complainants directing the Petitioner to pay all the benefits as admissible to the permanent workmen. This Judgment and order is subject matter of challenge in Writ Petition No. 3486 of 2021.

#### **WRIT PETITION NO. 5187 OF 2021**

10. The Respondent Sarva Shramik Sangh ('Union' for short) filed Complaint (ULP) No. 268 of 2018 alleging unfair labour practices against the Petitioner Corporation under item 9 and 10 of Schedule-IV of 1971 Act. The union represented about 17 employees/workmen who were in the employment of CIDCO on a "fixed term contract" on a consolidated salary in the health services. Pursuant to the agreement dated 20.06.2018 between CIDCO and the Petitioner-Corporation.

11. The case made out by the Union in the complaint was that the concerned workmen were paid wages from July 2018 to October 2018. Insofar as November 2018 is concerned, the wages for 14 days were paid on 19.12.2018 and the workmen were informed that the wages for the balance period would be paid through the contractor. The union therefore, claimed that there were unilateral, proposed change effected by the Petitioner corporation, in the conditions of service which amounts to commission of unfair labour practice. It was also contended that the correspondence made with the Corporation for grant of minimum wages and for general improvement of service conditions, did not evoke any favourable response. It was contended that unilateral change in the condition of service (by introduction of an intermediary/contractor) was made in order to frustrate the claim of permanency made in complaint (ULP) No. 301 of 2016.

12. The complaint was resisted by the Petitioner Corporation on similar grounds about a dispute as to existence of employer-employee relationship. It was contended that the services of the concerned workmen were governed by the terms of NUHM scheme and as they were employed on a consolidated salary/wages through a contractor/agency by name *Guruji Infrastructure Private Limited*, they are not entitled to reliefs as claimed. However, it was subsequently conceded that there was a

genuine error insofar as payment of only 14 days of wages/salary to the workmen for November 2018 is concerned. However, subsequently, the same has been rectified and the wages have been paid. It was denied that the concerned workmen were recruited or appointed by the Corporation. It was contended that it was the Director of health services who is the head of a committee which appoints the employees under NUHM scheme.

13. On the basis of the rival contentions, the Tribunal framed issues. The parties led evidence. The Tribunal by Judgment and Order dated 07.05.2021 has allowed the complaint, directing the Petitioner-Corporation to pay wages directly to the employees-workmen (as mentioned in Annexure -A to the complaint) without any intermediary. That is subject matter of challenge in Writ Petition No. 5187 of 2021.

14. I have heard Mr. Agvekar, the learned counsel for the Petitioner and Mr. Sanghvi, the learned senior counsel for the Respondent. With the assistance of the learned counsel for the parties, I have gone through the record.

15. It is submitted by the learned counsel for the Petitioner that impugned order could not have been passed directing the Petitioner-Corporation to grant benefits of permanent employees. In the submission of the learned counsel, the learned Industrial Court has failed to appreciate that the Petitioner is bound by

provisions of the Maharashtra Municipal Corporations Act, 1949 ('1949 Act' for short) and the impugned direction is in contravention of the agreement dated 20.06.2018. It is submitted that the impugned order has an effect of altering terms of said agreement. It is submitted that the learned Industrial Court has failed to properly appreciate the terms of the said agreement. It is submitted that findings in paragraphs 28 and 29 of the impugned judgment are in relation to the Respondent CIDCO and cannot bind the Petitioner. It is submitted that the concerned employees were engaged on fixed term contract basis on a consolidated salary from the funds of NUHM and the same could not have been altered. It is submitted that the names of Respondent Nos. 18 to 23 (original complainant Nos. 18 to 23) do not figure in the annexure to the agreement dated 20.06.2018 and thus, the relief granted even in respect to these Respondents is clearly beyond documents on record. On behalf of the Petitioner, reliance is placed on the decision of this Court in *Municipal Council, Tirora, through its Chief Officer and Anr. v/s Tulsidas Baliram Bindhade, Gondia* in Writ Petition No. 5191 of 2004 and the decision of Gujarat High Court in *Sajipur Bogha Nagar Palika Octroi Karmachari Mandal and Anr. v/s. Ahmedabad Municipal Corporation and Anr.*<sup>1</sup>

16. Insofar as the Writ Petition No. 5187 of 2021 is concerned, it is submitted that although a statement was made on behalf of

---

1 1991 SCC Online Guj 305

the Petitioner that the intermediary is withdrawn, the declaration of unfair labour practice could not have been given.

17. Mr. Singhvi, the learned senior counsel for the Respondents has submitted that CIDCO has rightly been found to be competent in law to create posts. The learned senior counsel has referred to the findings of the Tribunal in this regard on the basis of applicable provisions. It is submitted that admittedly the posts were filled by CIDCO on the basis of an advertisement and after following the regular procedure after finding the concerned employees to be eligible and qualified for such appointment. It is submitted that it was also not in dispute that these employees were working for more than 240 days in a year. The learned senior counsel submitted that the work is indeed of a permanent nature and not temporary or seasonal, inasmuch as the health services are to be provided round the year. It is submitted that the agreement between CIDCO and the Petitioner Corporation makes it clear that services were transferred without any change in pay structure and service conditions. He, therefore, submitted that the impugned direction is legal and proper.

18. On behalf of the Respondents, reliance is placed on the decision of the Supreme Court in *Western India Match Company Limited v/s. Workmen*<sup>2</sup>

---

2 (1974) 3 Supreme Court Cases 330

19. Insofar as Writ Petition No. 5187 of 2021 is concerned, it is submitted that there was an attempt to introduce intermediary, where the wages for the balance period in November 2018 were sought to be paid through the Contractor. He, further pointed out that the statement about withdrawal of intermediary was made belatedly before the learned Industrial Court and therefore, the learned Industrial Court was justified in recording the finding about the Petitioner having engaged in unfair labour practice.

20. I have carefully considered the rival circumstances and the submissions made.

21. I would first propose to deal with the challenge in Writ Petition No. 5187 of 2021. That petition arises out of a complaint lodged by the Union alleging unfair labour practice under Items 9 and 10 of Schedule-IV of 1971 Act. A perusal of the impugned judgment would show that at the stage of arguments before the learned Industrial Court, it was submitted that a bonafide mistake, in trying to handover the employment to the private contractor, was made and the same has been rectified. The Industrial Court has dealt with this aspect in paragraph 9 of the Judgment.

22. It is in these circumstances that the Industrial Court has directed that the wages shall directly be paid to the employees

without an intermediary. It is true that the Petitioner claimed before the Industrial Court, albeit at a belated stage, that there was an error in introducing intermediary/contractor which error/mistake has been rectified. However, the fact remains that such an attempt was made and therefore, I do not find that the impugned order suffers from any infirmity so as to require interference. All that the impugned order directs is to pay, the employees without any intermediary. Thus, insofar as the challenge to the judgment and order in complaint (ULP) No. 268 of 2018 is concerned, the same has to fail.

23. This takes me to the challenge in Writ Petition No. 3486 of 2021. The material facts are not in dispute. CIDCO had established Urban Health Centers in which the medical staff which is covered by the complaint was employed. On establishment of the Petitioner-Corporation certain areas including the health and other services were transferred to the Petitioner-Corporation. Insofar as the health services are concerned, there is an agreement dated 20.06.2018 which is styled as “agreement for handing over health services”. Clause 3 of the agreement which is relevant for the purpose, reads thus:

*“3. Along with the above services, the CIDCO shall also hand over the manpower engaged by CIDCO, directly or through agency on contract basis, for providing the above services in the said nodes, there will be no change in pay structure and service*

*condition. The said manpower has been more particularly mentioned in Schedule-A to the present agreement. The said list also includes the manpower engaged for rendering the said services under the National Urban Health Mission Scheme.”*

24. Annexure-A to the agreement which lists the names of the employees/staff is in two parts. The first part contains the details of staff in Urban Health Center, under CIDCO, while the second part contains details of staff in Urban Health Centers under NUHM. It appears that the names of Respondent Nos. 18 to 23 do not figure in annexure A to the agreement.

25. Be that as it may. Both parties have placed reliance on clause 3 of the agreement and therefore, the question is essential one of interpretation of the said clause.

26. A perusal of the impugned judgment shows that the learned Industrial Court has essentially considered the issue about the creation of the posts in relation to the applicable provisions, insofar as the Respondent CIDCO is concerned. In particular the learned Industrial Court has considered clause 190(cc) of the Articles of Association and the recruitment Rules of CIDCO, which are framed in 1977. It is precisely in this context, it is submitted on behalf of the Petitioner that there is no consideration insofar the provisions for creation of posts by the Petitioner-Corporation in the Context of the 1949 Act. The learned Industrial Court has considered the case with reference to

the Petitioner-Corporation from paragraph 30 onwards and has placed reliance on clause (3). The learned counsel for the Petitioner has urged that there is no consideration so far as the restriction placed on the powers of the Petitioner-Corporation for creation of such posts in the context of the provisions of 1949 Act.

27. A brief reference at this stage may be made to the decision of the Division Bench of this Court at Nagpur in *Municipal Council Tirora* case. In that case, the following issue was referred for decision of the Division Bench.

*“Whether, in the absence of creation or sanction of the posts under Section 76 of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965, the Complainants were entitled to claim permanency or regularization in service on the basis of Clause 4C of the Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946?”*

28. The Division Bench in paragraph 21 has concluded that in the absence of vacant/sanctioned posts, with the Municipal Council, workmen who have put in continuous service of 240 days or more in a span of 12 months cannot invoke clause 4C of the Model Standing Orders (MSO) to claim either permanency or regularisation. The Division Bench has referred to the earlier decisions of the co-ordinate Bench of this Court in *Pune Municipal Corporation v/s Dhananjay Prabhakar Gokhale* and *State of Maharashtra and Anr. v/s. Pandurang Sitaram Jadhav*, taking a similar view.

29. The said submissions is sought to be countered on behalf of the Respondent claiming that the posts were duly created in CIDCO and even there was a regular process of recruitment followed and therefore, in terms of agreement of the year 2018, the same terms and conditions would continue. In my considered view, the specific issue about whether such a direction can be issued which would ultimately bind the Corporation governed by 1949 Act in the light of decision in Municipal Council, Tirora(supra) and other decisions referred to above has not been considered by the learned Industrial Court. I find that those decisions were not brought to the notice of the learned Industrial Court.

30. The decision in the case of Western India Match Company Limited (supra) involved the question whether the terms of employment specified in the Standing Order should prevail over corresponding terms in the contract of service. Incidentally, the question was whether a special agreement can be imposed inspite of existence of standing order.

31. There is one more aspect. It is pointed out on behalf of the Petitioner that the names of the complainant Nos. 18 to 23 do not figure in the agreement. This aspect has also not been considered by the Industrial Court. In such circumstances, I find it appropriate to remit the complaint (ULP) No. 301 of 2016

back to the learned Industrial Court for deciding it afresh in accordance with law.

32. The observations aforesaid are only to find the necessity and justification of the remand. It is for the learned Industrial Court to decide the complaint on its own merits.

33. In the result, the following order is passed:

**ORDER**

(i) Writ Petition No. 3486 of 2021 is partly allowed. The impugned Judgment and order is hereby set aside. The Complaint (ULP) No. 301 of 2016 is restored back to the file of learned Industrial Court at Thane for deciding it afresh in accordance with law in the light of the observations made above.

(ii) The Industrial Court shall proceed to hear and decide the complaint as expeditiously as possible and preferably within a period of six months from the appearance of the parties.

(iii) The parties to appear before the Industrial Court on 26.09.2022.

(iv) The status quo regarding the present service conditions of the employees shall be maintained during the pendency of the complaint.

(v) Writ Petition No. 5187 of 2021 is hereby dismissed.

(vi) Rival contentions of parties are left open.

(vii) In the circumstances, no order as to costs.

**C.V. BHADANG, J.**