

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10814 OF 2023

THE INDIAN EXPRESS (P) LTD. & ORS.

....PETITIONERS

V/S

DINESH RANE & ORS.

....RESPONDENTS

...

Mr. Darius Khambata, Senior Advocate a/w Dr. Abhinav Chandrachud, Mr. Amol Joshi, Mr. Pranit Kulkarni, Ms. Tejasvi Ghag and Mr. Shivam Singh i/b Mr. Poorvi Kamani for the Petitioners.

Ms. Gayatri Singh with Ms. Madhvi Gomathieshwaran for Respondent Nos.1, 3, 4, 6 and 7.

...

CORAM: SANDEEP V. MARNE, J.

DATE : JANUARY 30, 2024.

ORAL JUDGMENT:

1 **Rule.** Rule is made returnable forthwith. With the consent of the learned counsel appearing for the parties, the Petition is taken up for final hearing and disposal.

2 The Petitioners have filed this Petition challenging the order dated 19 September 2022 passed by the Industrial Court, Thane on Application at Exhibit U-2 filed by the Respondents in Complaint (ULP) No.160 of 2022. By the impugned order, the Industrial Court has restrained the Petitioners from terminating the services of Respondents without

following due process of law and has further directed that in the event of their transfer, seven days' time be granted to them before giving effect to the order of transfer so as to enable them to challenge the transfer order.

3 I have heard Mr. Khambata, the learned senior advocate appearing for the Petitioners and Ms. Singh, the learned senior advocate appearing for the Respondents.

4 After having considered the submissions canvassed by the learned counsel appearing for the parties and on perusal of the impugned order dated 19 September 2022, it is seen that the order grants interim relief to the Respondents in the form of restraining the employer from terminating the services of its employees without following due process of law and from operating the order of transfer, if and when issued, for a period of seven days.

5. Respondents have filed Complaint (ULP) No.160 of 2022 seeking following prayers:

- “(a) To hold and declare that the Respondents are engaged in the Unfair Labour Practices under Items 1 (a), 2 (a), 3 & 4(f) of Schedule II and items 3, 5, 9 & 10 of Schedule IV of the MRTU & PULP Act, 1971.
- (b) To direct the Respondents to cease and desist from engaging in the Unfair Labour Practices complained hereinabove.
- (c) To direct the Respondents to refrain from interfering in the election process, decision making and affairs of the Union.
- (d) To direct the Respondents to withdraw the managerial staff from union work and further direct Shri Sajid Sheikh and any other

person to interfere in or influence the decision making process of the Union.

- (e) To direct the Respondents to not to entertain, deal with, negotiate or sign or finalise any matter pertaining to the services and service conditions of the workmen and or employees working in the Mahape unit.
- (f) To quash & set aside any Order adversely impacting service conditions and or place of employment of the Complainants.
- (g) To direct the Respondent to continue the Complainants to work at their present work place at Mahape, Navi Mumbai in their original post and department.
- (h) Pending hearing and disposal of this complaint, restrain the Respondents from changing the place of employment or service conditions of the Complainants.
- (i) Pending hearing and disposal of this complaint, restrain the Respondent from taking any action against the Complainants in furtherance of or consequent to the illegal and irregular election process.
- (j) Ad Interim or Interim reliefs in terms of prayer clause (h) to (i) above.”
- (k) Any other relief more beneficial that the Hon’ble Court may deem fit and proper in the facts of the case and in interests of justice.
- (l) Cost and compensation in favour of Complainant may please be ordered.”

6 Thus the main grievance of the Respondents in their Complaint before the Industrial Court is about the alleged interference by the Petitioners in the election process of the Union and deputation of managerial staff for interfering in the functioning of the Union.

7 The Industrial Court, while passing the impugned order, has recorded following *prima facie* findings with regard to each of the grievance of the Respondents pleaded in the Complaint:

“27. The complainants alleged that respondents are using coercive tactics against the employees and stopping them from exercising their rights to organize and they are engaged in unfair labour practice under item 1 of schedule II of MRTU & PULP Act. If facts of the case are seen, then union is working in establishment of respondent no.1. The complainant no. 1 and 2 were the office bearers of the union before some years. They have not formed the new union. The union which is in existence and has elected its office bearers on 08.08.2022, is not made party to this complaint. The complainants are not forming new union to which the respondents opposed. **So in such circumstances prima facie there is no unfair labour practice under item 1(a) of schedule III is made out.**

28. It is also allegations of complainants that respondents dominate or interfere in working of the union of employees. Hence, it amounts to unfair labour practice. It is coming on record that respondent no. 2 and 3 acted as election officers in the elections of union, but when they were appointed the complainants did not challenge it. **One Mr. Shaikh is working as an advisor of the union since 2008, but complainant no.1 and 2 who were office bearers of the union did not raise any voice against his capacity as an advisor,** when they were office bearers of the union. So all of a sudden once complainants could not become office bearers of the union, they realized this fact and now they are complaining for the same. The complainants have every opportunity to raise objection against indulgence of Mr. Shaikh in union activity when they were office bearers of the union. Since the year 2010, Mr. Shaikh is taking active part in the affairs of the union as an advisor and same it challenged for the first time before this Court in this complaint, why the complainants did not challenge it, earlier this fact is not explained by them. The complainants are alleging that the respondents influenced the election process to see that employees of their choice should be the office bearers of the union. **But most important facts which goes to the root of this allegation is that the complainants are not challenging the election till this date** and they are making allegations against the union. If the elections would have been challenged by the complainants, then one can say that the complainants are aggrieved by the election process.

29. The complainants alleged that transfers of Mr. Vaibhav Palav, Mr. Sharad Pawar and Mr. Abhay Kargutkar were made by the

management, which amounts to colourable exercise of right of employer. But the complainants did not bring any record showing that these three persons challenged those orders or the complainants have not filed their affidavit stating that these three persons were aggrieved by the order of transfer or those orders were totally illegal. So in such circumstances it cannot be said that employer has used his powers just to harass or victimize the employees. **The apprehension expressed by the complainants is not supported by any evidence.**

30. The complainants also alleged that the respondents support one set of employees and tried to dominate other set of the employees and tried to change their service conditions, but not a single incidence of change of service conditions effected by the respondents is brought on record by the complainants. **If the service conditions are altered, the complainants are at liberty to challenge the same before this Court. But this Court cannot give directions without any attempt on the part of respondents to change service conditions."**

(emphasis supplied)

8 Thus the Industrial Court did not *prima facie* find any merit in any of the grievances raised by the Respondents in the Complaint. Ideally, therefore the Industrial Court ought to have rejected the application for interim relief. However, the Industrial Court has proceeded to grant interim relief in favour of the Respondents by recording following findings and in following terms:

"32. As complainants failed to prove that the respondents are engaged in unfair labour practice under item 1(a), 2, 3 and 4(f) of schedule II, but complainants are partly proved that the respondents may take action against them as they filed litigation before the Court and respondents may transfer them and commit unfair labour practice under items 9 and 10 of schedule IV of the MRTU & PULP Act. Hence, directions are required to be given to the respondents not to terminate any employee without following due process of law and in case any of the complainant is transferred, 7 days time may be given to him to challenge the transfer order before giving effect to that transfer. So I proceed to pass following order:

ORDER

1. Application at Exh. U-2 is partly allowed.
2. The respondent no.1 to 3 are restrained from terminating the services of complainants without following due process of law and in case the complainants are transferred, 7 days time be given to the complainants before giving effect to the transfer, so that complainants can challenge the transfer order, if they desire so, till final disposal of complaint."

9 Thus merely because Respondents have initiated litigation by filing the compliant, the Industrial Court thought it prudent that they must be granted protection from termination and transfer. This would mean that every employee who files a compliant under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 must be granted interim relief of protection from termination and transfer. The Industrial Court has virtually rejected every allegation of the Respondents, albeit prima facie, and despite no case being made out for grant of interim relief, it has proceeded to grant a one in Respondents' favour.

10. Perusal of the order shows that no material is produced by the Respondents to demonstrate that any eminent threat of termination or transfer was given by the Petitioners to any of the Respondents at any point of time. In absence of any such eminent threat, there was in fact no cause for the Respondents to seek any interim relief from the Industrial Court.

11. Petitioners, being the employer of Respondents, have inherent right to take disciplinary action against its employees, if any misconduct is committed. Employer's right to punish errant employee cannot be circumscribed by passing a blanket order of the nature that is passed by the Industrial Court. Same applies to transfer, where again the employer has inherent right to transfer its employees, as per terms and conditions of employment as and when required in exigency of service. As and when disciplinary action is initiated or punishment is imposed, the same can be tested in the court of law. Similarly, if a demonstrable case is made out that the transfer is actuated by malice or is not for exigency of services, the Courts can always interfere in the same. However, under no circumstances, the employer can be restrained from exercising its inherent right of initiating disciplinary proceedings or transferring an employee. The nature of order passed by the Industrial Court is such that it puts an embargo on the inherent rights of the employer to take disciplinary action and to transfer its employees. The manner in which the Industrial Court has exercised its jurisdiction is disquieting.

12. Ms. Singh has attempted to submit that the order is merely an interim order and that instead of interfering in that order, this Court can expedite the hearing of the main Complaint itself. She has also submitted that the order is in fact an innocuous order and that it does not cause any prejudice to Petitioners. I am unable to agree. If the order is of such nature which could not be passed by the Industrial Court, this Court cannot be a mute spectator to erroneous exercise of jurisdiction by the

Industrial Court. The blanket order of Industrial Court seeks to circumscribe the right of the employer to punish an errant employee or from effecting transfers, that too in absence of any eminent threat or *prima facie* case being made out. The argument of non-cause of prejudice to employer cannot be accepted as the Order may provide license to employees to misbehave or indulge in misconduct.

13. Ms. Singh's reliance on the judgment of the Apex Court in ***Hindustan Liver Ltd. vs. Ashok Vishnu Kate*** (1995) 6 SCC 326 does not cut any ice. The judgment holds that the Industrial adjudicator can exercise jurisdiction before an actual order of discharge or dismissal of employee is passed. In the present case neither any show-causes notice or a charge-sheet or even a memorandum is issued to any of the Respondents. Therefore, there was absolutely no cause for any of the Respondents to seek any interim protection from the Industrial Court.

14. After going through the findings recorded by the Industrial Court, I am convinced that no case was made out by the Respondents for grant of any interim protection in their favour. Even otherwise the nature of directions that are issued by the Industrial Court are something which could not have been granted in the facts and circumstances of the present case.

15 In my view therefore the impugned order passed by the Industrial Court is indefensible. The Writ Petition accordingly succeeds. Order

dated 19 September 2022 passed by the Industrial Court is set aside. The Writ Petition is allowed in above terms. Rule is made absolute.

(SANDEEP V. MARNE, J.)

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by
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