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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11264 OF 2024

Shramik Kamgar Sena

.. Petitioner

Versus

Daibu Automotive Seat India Pvt. Ltd.

.. Respondent

-
- Mr. Sanjeev Kumar B. Deore a/w Ms.Sunita J. Pawar and Mr.Jitendra K. Pagare, for the Petitioner.
-

CORAM : SANDEEP V. MARNE, J.

DATE : AUGUST 13, 2024

P. C.:

1. The challenge in the present Petition is to the orders dated 31st July 2024 passed by the learned Member, Industrial Court, Nashik by which the application filed by the Respondent-Employer at Exhibit 'C-7' challenging the jurisdiction of the Industrial Court is allowed holding that the Industrial Court has no jurisdiction to decide the complaint. By a separate order passed on 31st July 2024, the application for interim relief at Exhibit 'U-2' has been rejected.

2. Perusal of the impugned orders would indicate that the finding of fact is recorded that the members of the Petitioner-Union are employed by the Respondent-Employer through a Contractor named M/s. Trident Services. Even Mr. Deore has submitted that though initially the

workers were directly engaged in the services of the Respondent Company, since the month of March 2024, their wages are deliberately routed through the Contractor M/s.Trident Services. Mr.Deore has submitted that the said arrangement is deliberately done only on account of raising of demands by the Petitioner-Union about service conditions of the concerned workers. Be that as it may. As there is an allegation that members of Union are being routed through a Contractor, the finding recorded by the Industrial Court about absence of employer-employee relationship cannot really be faulted. It is well settled law expounded by judgment of the Apex Court in *Cipla Ltd. Vs. Maharashtra General Kamgar Union* (2001) 3 SCC 101 and *Sarva Shramik Sangh Vs. Indian Smelting and Refining Co.Ltd.* (2003) 10 SCC 455 that once the employer-employee relationship is under dispute, complaint of unfair labour practice cannot be entertained by the Industrial Court under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. In that view of the matter, no fault can be found in the orders passed by the Industrial Court.

3. If the Petitioner-Union believes that its members are direct workers of the Respondent-Employer, they would be at liberty to raise an industrial dispute seeking a declaration that the contractual arrangement made by the employer is sham and bogus. All question in this regard are kept open. It would also be open for the Petitioner-Union to pray for appropriate interim reliefs in the Reference, as and when made.

4. In the event the Petitioner-Union makes a demand before the Assistant Labour Commissioner, he shall act upon the same in an expeditious manner and in the event of failure of the conciliation proceedings, an order on Reference be made in an expeditious manner.
5. With the above observations, the Writ Petition is disposed of.

[SANDEEP V. MARNE, J.]