

EXH.NO.:-

IN THE INDUSTRIAL COURT, MAHARASHTRA, AT MUMBAI

COMPLAINT(ULP)NO.138/2008

The Associated Cement Staff Union,
a Trade Union registered under the
Trade Unions Act and having its office
at “Cement House”, 121, M.K.Road,
Mumbai- 400 020

..... Complainant

Versus

1) ACC Ltd., a Company incorporated
under the Companies Act,1956 and
having its office at “Cement House”,
121, M.K.Road, Mumbai- 400 020,

2) Sumit Banerjee, Managing Director,
3) J.S.Patil, Jt.Manager HR & EW,
Respondent no.2 & 3 to be served at
ACC Ltd., “Cement House”,
121, M.K.Road, Mumbai- 400 020.

..... Respondents

Coram :- T.M.Jahagirdar, Member,

Appearances :- 1) Mr.P.M.Patel, Ld.advocate
for the complainant,
2) Mr.B.G.Goyal, Ld.advocate
for the respondents

ORAL JUDGMENT

(DATE :- 03.02.2015)

1) The Complaint is filed under item 9 of Schedule IV of The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act,1971 (hereinafter for the sake of brevity, shall

be referred to as “the MRTU & PULP Act,1971”) claiming the unfair labour practice by the respondents under the provisions of the MRTU & PULP Act,1971.

2) It is contended that the complainant is a trade union registered under The Trade Unions Act,1926. The respondent no.1 is a company, the respondent no.2 is Managing Director and the respondent no.3 is Joint Manager, Human Resources & EW. The respondents have provided the holiday home facility at Matheran and Mahabaleshwar to its staff employed at “Cement House”. The respondent provides accommodation to its employees as well as its family members. Accordingly, the employee was to apply in writing giving details of the person who wants to go to the concerned places and duration of the stay. The charges for Matheran are Rs.4/- per day and for sub-staff i.e. in grade XIII to XI, Rs.6/- per day for staff in grade X to VII. The charges for Mahabaleshwar are Rs.10 per day for all employees from grade XIII to grade VII. The said scheme is continued for years together and it finds place in general demand adjudication in Meher award in Reference(IT)No.111/1959. The said facility is independent and in addition to the service condition. The employee Mr.Vijay R.Prabhu applied for booking at Matheran for stay of him along with his family by letter dated 20.12.2007. The same was replied on 21.12.2007 declining the said facility. Thereafter Mr.Ashok Shirpuram applied for booking at Mahabaleshawar by letter dated 19.12.2007. The same was replied

on 21.12.2007 declining the said facility. Thus, the respondent has declined the existing service condition, thereby committed unfair labour practice. Therefore, prayed to allow the Complaint.

3) The respondents have filed their Written Statement below Exh.C-2. It is contended that the Complaint is misconceived and untenable. It is contended that the respondents have not committed any unfair labour practice as claimed by the complainant vide item 9 of Schedule IV of the MRTU & PULP Act,1971. Further it is contended that the respondent company is engaged in the manufacture of cement and has establishments located all over the country and the respondent being 'controlled industry', Central Government is the appropriate Government in relation to it. It is denied that the employees are entitled for the facility of holiday home extended at Mahabaleshwar and Matheran and it amounts to service condition. It is contended that the said facility was extended to the employees merely as welfare facility. Therefore, it will not amount to any service condition. It is contended that the facility of holiday home came to an end on June 2006 and at that time the respondent no.2 had not joined the respondent company as Managing Director as he joined the respondent company from April 2007. The facility provided to the employees is not based on any settlement or agreement or award. However, it was mere a welfare facility. Even the appointment letters of the employees did not contain a clause that they would be entitled to any facility in respect

of holiday home. As such, the facility extended to the employees in respect of holiday home does not amount to service condition. It is contended that in the year 2005-2006 the occupancy in the said holiday homes had reduced. Therefore, the respondent company took a decision to discontinue the said facility to its employees. Hence, it ceased to exist in the month of June,2006. Therefore, accordingly, the concerned employee Mr.A.C.R.Shirpuram and Mr.V.R.Prabhu were informed vide letter dated 19.12.2007 and 20.12.2007. Lastly, prayed to dismiss the Complaint with costs.

4) On going through the rival contentions of both the parties and documents placed on record, my Ld.predecessor has framed the issues below Exh.O-2. Those issues and my findings thereon with reasons are as follows :

	<u>Issues</u>	<u>Findings</u>
(1)	Does the complainant prove that the respondents have committed unfair labour practice within the scope of MRTU & PULP Act,1971 ?	-No
(2)	Whether the complainant is entitled for declaration as prayed ?	-No
(3)	Whether the complainant is entitled for the amount of Rs.30,000/- towards loss caused to Shri.A.C.R.Shirpuram and Rs. 25,000/- to Shri.V.R.Prabhu for denying the holiday home facility ?	-No

(4)	Whether the complainant is entitled for prohibitory reliefs as prayed ?	-No
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5) Heard Ld.advocate Mr.P.M.Patel for the complainant. He has submitted that the respondent has extended the holiday home facility at Matheran and Mahabaleshwar to its employees at Cement House. Accordingly, the respondent under the said scheme provided the accommodation to its employees as well as to its family members. However, the respondents have denied the said facility to the employees of the complainant namely Mr.Vijay R.Prabhu and Mr.Ashok Shirpuram, thereby committed unfair labour practice. Further it is contended that providing holiday home is a service condition, as such, the respondents have committed a breach of provisions of the MRTU & PULP Act,1971. Even before discontinuing the said scheme the respondents have not given any notice to the complainant. Therefore, he has submitted that the concerned employees are entitled for compensation as the respondents had denied the facility of holiday home to its employees. Hence, prayed to allow the Complaint with costs.

6) On the other hand, Ld.advocate Mr.Goyal for the respondents has submitted that no doubt already the holiday home facility was extended to the members of the complainant union. However, it was extended as welfare facility and not as a service condition. Further he submits that even appointment letter of each employee

does not find place that they are entitled for accommodation in Matheran and Mahabaleshwar as a service condition. Further he submits that as the occupancy in the holiday homes has been reduced in the month of June 2006, the respondent took a decision to discontinue providing the said facility to the employees, thereby the said facility ceased to exist since 2006. Therefore, he has justified the action of the respondents of denying holiday home facility to the members of the complainant union namely Mr.A.C.R.Shirpuram and Mr.V.R.Prabhu. Hence, prayed to dismiss the Complaint with costs.

REASONS

As to issue no.1 to 4 :-

7) The admitted facts in this case are that, the complainant union is recognized union under the MRTU & PULP Act,1971. The respondent company has provided holiday home facility at Matheran and Mahabaleshwar to its staff at Cement House. The said facility was extended to the employees and their family members and to the employees who have already left service by paying token charges as prescribed by the respondent. Accordingly, the employees were enjoying the said facility since long. Further, it is also not in dispute that the members of the complainant union namely Mr.Ashok Shirpuram and Mr.Vijay R.Prabhu had applied for the accommodation in Mahabaleshwar and Matheran respectively vide letter dated 19.12.2007 and 20.12.2007 respectively. However, the same was denied. It is also not in dispute that the respondent

company has discontinued the said facility, which was extended to its employees/ members of the complainant union since June 2006.

8) In the present case the complainant has examined the President of the complainant union Mr.Lakshman Seshadri below Exh.U-9 and thereafter the complainant has closed his oral evidence vide pursis Exh.U-10. Thereafter the respondents have examined his witness Mr.Jayawant Sitaram Patil at Exh.CW-1 and closed their oral evidence by pursis Exh.C-13.

9) Admittedly, the complainant has specifically come with the case that by virtue of Meher award in Reference(IT)No.111/1959 the holiday home facility was given to the members of the complainant union in its independent capacity and in addition to the service condition. However, the copy of the said award is not placed by the complainant on record. Even the said fact has been admitted by the President of the complainant union, who is examined below Exh.U-9 in his cross-examination that, "After going through record and proceedings at present he does not find copy of the settlement." Further he admits that, "Appointment letter was issued to him and there is no such mention of such facility of holiday home". Therefore, it can be very well said that the said facility was extended to the members of the complainant union by way of welfare facility. Even the said fact has been reiterated by the respondent in his evidence. Further he deposed that, "He has gone

through the Meher award of 1959 and denied the suggestion that there is no mention about holiday home facility at Mahabaleshwar and Matheran and deposed that Meher award has not been produced before the Court.” Therefore, in the absence of documentary evidence i.e. Meher award on record, it is difficult to believe on the words of the complainant that the said facility was the part of the Meher award. Further he deposed that, “There is no documentary evidence on record to show that the company had refused to provide the guest house facility to Mr.Shripuram and Mr.Vijay Prabhu.” Under such circumstances, one fails to understand how the complainant has come with the case that these employees had asked for holiday home facility and the same was refused by the respondent.

10) As against this, the respondent has clearly come with the case that the respondent company has extended the facility of giving holiday homes at Mahabaleshwar and Matheran, purely as a welfare facility to its employees. Accordingly, whenever the concerned employees applied for the said facility, the same was given to them depending upon the availability of the accommodation on highly subsidized rates. Further, the witness of the respondents Mr.Jayawant Sitaram Patil at Exh.CW-1 has deposed that, “ The said facility was not extended to the members of the complainant by way of any settlement, agreement or award and the same was merely by way of welfare facility”. The said evidence of the respondent has

gone unchallenged.

11) Admittedly, the provision of item 9 of Schedule IV is applicable when the respondent failed to implement award, settlement or agreement. Looking to the case in hand, the holiday home facility which was extended to the members of the complainant union is not part of award, settlement or agreement. As such, the said provision of the MRTU & PULP Act, 1971 is not at all attracted.

12) Further, the Ld. advocate for the respondents Mr. Goyal has invited my attention to Kareparambil Theyyan Lakshmanan & Ors. v. Air India, 1986 I CLR 136 (H.C. Bombay), wherein it is observed that, “The benefits granted to the retired employee, like free/concessional passage, cannot be treated or considered as a condition of service but it is a mere facility given to the employee who has acted fairly and justly with the employer.”

13) Further Mr. Goyal has invited my attention to Blue Star Workers Union v. Blue Star Ltd. & Ors., 1990 II CLR 258 (H.C. Bombay), wherein it is observed that, “Canteen facility is welfare facility and it cannot be a condition of service.” As such, relying on the same, he has submitted that it is not a part of service condition, as such, the holiday home facility was extended to the members of the complainant union as a welfare facility.

14) Furthermore, it is seen that the complainant has claimed the amount of Rs.30,000/- and Rs.25,000/- towards the loss caused to Shri.A.C.R.Shirpuram and Mr.VR.Prabhu, respectively. However, no specific mention and justification to that effect finds place either in the Complaint or in the evidence. As such, they are not entitled for the same.

15) Thus, in the light of the above observations, it is seen that the complainant has failed to establish that the respondents have committed unfair labour practice. At the same time, the complainant has failed to establish that the complainant is entitled for the declaration, amount and relief claimed. Therefore, I record my findings to the issue no.1 to 4 in the negative. Hence, I proceed to pass the following order.

ORDER

- (1) The Complaint stands dismissed.
- (2) The parties to bear their own costs.

Sd/-

Date :- 03.02.2015.

(T.M.Jahagirdar)
Member,
Industrial Court, Mumbai.

(A.S.Jagdale)
Registrar,
Industrial Court, Maharashtra,
Mumbai,
Date :- .02.2015.