

EXH.NO.:-

IN THE INDUSTRIAL COURT, MAHARASHTRA, AT MUMBAI

COMPLAINT(ULP)NO.39/2009

Sirpuram Ashok Chakravarthi,
123,B-4238, Mayur CHSL,
Tilak Nagar, Chembur,
Mumbai- 400 089.

.... Complainant

Versus

1) ACC Ltd.,
'Cement House', Maharshi Karve Road,
Opp.Churchgate Rly.Station,
Mumbai- 400 020,

2) The Managing Director,
ACC Ltd.,
'Cement House', Maharshi Karve Road,
Opp.Churchgate Rly.Station,
Mumbai- 400 020.

..... Respondents

Coram :- T.M.Jahagirdar, Member,

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

ORAL JUDGMENT
(DATE :- 06.02.2015)

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”) with the contention that the respondents have engaged in and are continued to engage in unfair labour practice.

2) It is the case of the complainant that he is working as Pharmacist with the respondent no.1 and the respondent no.2 is the Managing Director of the respondent no.1 company and is in-charge and has control over the respondent no.1. The complainant is employed with the respondent since 12.03.1993. He has been Treasurer of the Associated Cement Staff Union. The complainant resisted the unfair labour practices in peaceful manner. It was not liked by the respondent. Therefore, the respondent started taking vindictive action to pressurize the complainant. Therefore, the respondent pending enquiry suspended the complainant on 04.12.2006. He submitted his reply to the charge-sheet on 28.12.2006 and the enquiry was commenced by Mr.Avinash Salve, who was appointed as management representative. Thereafter in place of Mr.Avinash Salve one Mr.V.B.Kamat who is advocate appeared and represented the respondent company. The complainant took objection for the same. The said objection was rejected. Therefore, the complainant challenged the said act of the respondent by filing Complaint. Thereafter the respondent appointed Mr.Vishwas Patil as management representative, who was not employee of the respondent no.1, but he was working in another company namely ACC Concrete Ltd. The complainant took

objection for the appointment of Mr.Vishwas Patil. However, the respondent did not pay any heed to it. Throughout the enquiry proceeding the Enquiry Officer was biased and has not conducted the enquiry in fair manner. Therefore, the appointment of Mr.Vishwas Patil by the respondent amounts to unfair labour practice. Therefore, the complainant has contended that the enquiry be stayed as no prejudice will be caused to the respondents. Hence, prayed to allow the Complaint.

3) The respondents have filed the Written Statement below Exh.C-2 and have come with the contention that the present Complaint is misconceived and untenable in law and have come with the specific case that item 9 of Schedule IV of the MRTU & PULP Act,1971 is not attracted in the present case, as they have not committed any unfair labour practice. Further it is contended that the respondent company is engaged in the manufacture of cement and has establishments located all over the country. Vide circular dated 08.11.1977 the industries engaged in manufacture and production of cement have been declared as “controlled industry” for the purpose of Section 2(a)(i) of The Industrial Disputes Act, 1947. Therefore the Central Government is the appropriate Government in relation to it. Hence, the provisions of the MRTU & PULP Act,1971 would not apply. As such, the Complaint is not maintainable by law, hence, liable to be dismissed. It is contended that the appointment of Mr.Vishwas G.Patil as management

representative was just and proper. He was legally and validly transferred from ACC Concrete Limited to the respondent no.1 company and he is fully competent to represent the management in the domestic enquiry held by the respondent no.1 against the complainant. It is contended that the respondent company is engaged in the manufacture of cement and is having its manufacturing establishments located all over India. It has Technical Support Services(TSS) and Research facilities at Thane. The complainant was issued a charge-sheet-cum-suspension letter dated 04.12.2006 , whereby he was suspended pending enquiry for various types of misconducts committed by him; as the suspension was as per the Industrial Employment(Standing Orders)Act,1946. The complainant submitted explanation. It was not found satisfactory. Therefore, the domestic enquiry was initiated against him. Therefore, Mr.Arun Gadkari was appointed as Enquiry Officer to enquire into the charges levelled against the complainant. Mr.Avinash Salve was representing the management. However, on account of resignation Mr.V.B.Kamat was appointed as representative of the respondent. Moreover, the complainant has been dilly-dallying the proceeding. The company had appointed Mr.Kamat as representative, to which the complainant took objection. However, the complainant filed the Complaint of unfair labour practices before the Industrial Court and challenged the appointment of advocate Mr.Kamat as the management representative. Thereafter the respondent appointed Mr.Vishwas

G.Patil as representative to conduct the enquiry of the complainant. The complainant took objection even to the said appointment. Mr.Patil was authorized to represent the management in the enquiry held against the complainant. Thus, the respondents denied that they have engaged in unfair labour practices by not paying any subsistence allowance. It is contended that the Complaint is totally misconceived and devoid of any merit. 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 practices within the scope of the MRTU & PULP Act,191?	-No
(2)	Whether the complainant is entitled for declaration as prayed ?	-No
(3)	Whether the complainant is entitled for prohibitory reliefs on different counts ?	-No
(4)	Whether the Complaint is maintainable for want of jurisdiction ?	-No

5) Heard Ld.advocate Mr.PM.Patel for the complainant. He has submitted that Exh.U-10 dated 18.11.2013 is not signed by

Managing Director i.e. respondent no.2 but by one Mr.Paramjit Pabby, Head-Corporate Human Resources, which is not permitted by law. Further he submitted that the representative Mr.Vishwas Patil was not employee of the respondent. There is no appointment letter of Mr.Vishwas Patil showing that he was appointed as Enquiry Officer is placed on record. Thus, the appointment of Mr.Vishwas Patil as the Enquiry Officer by the respondent is illegal and bad in law. Hence, prayed to allow the Complaint with costs. Further he submitted that the complainant is working in head office where there is no manufacturing process of cement, hence, it is not a controlled industry. Therefore, the State Government is the appropriate authority/Government and not Central Government. Therefore, the Court has jurisdiction to try and entertain the Complaint.

6) As against this, Ld.advocate Mr.B.G.Goyal for the respondents has submitted that the respondent company has issued charge-sheet to the complainant on 04.12.2006. The complainant took objection to the appointment of management representative who had conducted the domestic enquiry. Moreover, the respondent has appointed Mr.Vishwas Patil as management representative. However, the complainant took objection that he is not employee of the respondent. To substantiate the fact that in fact Mr.Vishwas Patil is employee of the respondent, the respondent has filed documentary evidence on record like Exh.C-3,Exh.C-10 Exh.C-15,

Exh.C-16, Exh.C-17, Exh.C-18 and Exh.C-19. Further he submitted that the Exh.C-16 goes to show that Mr.Vishwas Patil was appointed as representative by the respondent in the enquiry of the complainant. As such, his appointment was just and proper. Further he submits that in the present case Central Government is the appropriate Government. Though the Central Government has delegated the powers to the State Government to deal with the matter, the State Government is delegatee. Therefore, the Central Government is the appropriate Government. Hence, prayed to dismiss the Complaint with costs.

7) On hearing both the sides, it is seen that in the present case the complainant Mr.Sirpuram Ashok Chakravarthi is examined below Exh.U-9. Thereafter the complainant has closed his oral evidence by pursis Exh.U-11. As against this, the respondent has examined Mr.Jayawant Sitaram Patil at Exh.C-14. Thereafter the respondent has closed their oral evidence by pursis Exh.C-22.

8) Admittedly, the present Complaint is come to be filed under item 9 of Schedule IV of the MRTU & PULP Act,1971, wherein the complainant is expected to establish that the respondent has failed to implement any award, settlement or agreement.

9) The complainant has come with the case that the complainant was working with the respondent as Pharmacist since 12.03.1993.

He claimed that he has been Treasurer of the Associated Cement Staff Union. He was suspended from his job on 04.12.2006 pending enquiry. He was charge-sheeted. Thereafter he replied to the charge-sheet. The respondent was not satisfied, therefore, initiated enquiry. Mr.Avinash Salve as well as Mr.V.B.Kamat were appointed as respondent's representative. To which the complainant took objection. Thereafter the complainant took objection for the appointment of the respondent representative i.e. management representative Mr.V.B.Kamat, who was advocate and the same was challenged before the Industrial Court. Thereafter the respondent appointed one Mr.Vishwas Patil as management representative. To which the complainant took objection and filed the present Complaint.

10) As against this, the respondents have come with the case that Mr.Vishwas Patil is their employee. They justified his appointment and refuted the allegation of the complainant in respect of the unfair labour practices.

11) In the background of these facts, it is seen that the evidence of the complainant shows that Mr.Vishwas Patil is not the employee of the respondent no.1. However, he is Welfare Officer and he cannot take part in the enquiry proceeding. Further his evidence shows that Mr.Vishwas Patil is Law Graduate. However, the complainant has no legal background. More so the complainant is

office bearer of the internal union. Therefore, he cannot be said to be on par with the legally trained persons like Mr.Vishwas Patil. Further he deposed that, he is pitted against the Law graduates himself is going to prejudice him to great extent and he has to defend himself against legally trained person. Further he deposed that Mr.Vishwas Patil is an outsider. Thus, it is breach of the Model Standing Orders and it amounts to unfair labour practice. However, it is seen from the cross-examination that of this witness i.e. complainant, wherein he has admitted that, "It is true that one Mr.Vishwas Patil was appointed as management representative." Further he deposed that, "It is true that in October 2006 Mr.Vishwas Patil was employee of the respondent no.1 company."

12) Admittedly, it is seen that the suspension order-cum-charge-sheet was issued to the complainant on 04.12.2006 and the letter Exh.C-15 dated 16th October 2006 shows that it is the appointment letter Exh.C-10 dated 12th March 2008 shows that Mr.Vishwas Patil was appointed as management representative to represent the management in the enquiry held against the complainant vide charge-sheet dated 04th December,2006. Thus, these documents coupled with the cross-examination of the complainant shows that Mr.Vishwas Patil was appointed as management representative to conduct the enquiry against the complainant. Further he deposed that the letter dated 15.02.2008 shows that Mr.Vishwas Patil was earlier working in ACC Concrete Ltd.and thereafter transferred to

ACC Ltd.

13) Even, the evidence of the respondent also shows that Mr.Vishwas Patil was appointed as management representative in the enquiry held against the complainant. Even Mr.Vishwas Patil was informed by the respondent about his appointment as Deputy Manager- HR & Employee Welfare. Further he deposed that the appointment letter dated 06.12.2006 was issued by the respondent company to Mr.Vishwas Patil setting out the terms and conditions of his appointment. Thereafter vide letter dated 12.03.2008 Mr.Vishwas Patil was informed that he would be appointed as the management representative to hold the enquiry against the complainant in respect of charge-sheet dated 04.12.2006. Surprisingly the suggestion was given to the witness of the respondent in cross-examination that Mr.Vishwas Patil was not working in ACC Ltd.when he represented the management. Whereas the complainant himself has deposed in cross-examination that Mr.Vishwas Patil was appointed as management representative and he was employee of the respondent no.1 company. Thus, it is seen from the above discussion that Mr.Vishwas Patil was the employee of the respondent company and accordingly he was appointed by the respondent as management representative vide letter Exh.C-10.

14) The Ld.advocate for the complainant has submitted that the

complainant is working in head office where there is no manufacturing of cement, hence it is not controlled industry. Therefore, the State Government is appropriate Government and not the Central Government. Therefore, the Court has jurisdiction to entertain and try the Complaint.

15) The Ld.advocate for the complainant has invited my attention to Yovan India Cements Employees Union v. Mangement of India Cements Limited, 1993(0)AIJEL-SC 34869(S.C.) and contended that the State Government is the appropriate Government. However, it is seen that in the said judgment it is held that both the Governments i.e. Central and State Governments are the appropriate Governments.

16) As against this, the Ld.advocate for the respondents has vehemently submitted that the respondent company is engaged in the manufacture of cement and has establishments located all over the country and in view of circular dated 08.11.1977 the industries engaged in manufacture and production of cement have been declared as “controlled industry” for the purpose of Section 2(a) (i) of The Industrial Disputes Act, 1947. Therefore, the Central Government is the appropriate Government in relation to it, and therefore, the provisions of the MRTU & PULP Act, 1971 will not apply to the case in hand. In support of his submissions he has invited my attention to Ultra Tech Cement Ltd., Chandrapur v.

Shrinivas Narayanrao Moharil, Chandrapur, 2010 I CLR 656 (H.C.Bombay), wherein in paragraph no.3 it is observed that,

“ It is not in dispute that vide Notification dated 08.11.1977, for the purposes of Section 2(a)(i) of the Act, the industry engaged in manufacture and production of cement has been declared as “controlled industry”. In this background, the petitioner contends that merely because of delegation under Section 39 by Central Government of its power as appropriate Government to State Government, State Government cannot become appropriate Government.”

Further it is seen that in this judgment the authority cited supra by the Ld.advocate for the complainant i.e. Yovan India Cements Employees Union v. Management of India Cements Limited, 1993(0)AIJEL-SC 34869(S.C.) has been referred herein.

Thus, it is held that the Central Government is the appropriate authority in such matters.

17) Further Ld.advocate for the respondents has invited my attention to Mazgaon Dock Limited v. Shivbrat Jagroop Mishra and Anr., 2008 III CLR 755(H.C.Bombay), wherein it is held that,

“ For the purpose of the I.D.Act,1947, the State Government cannot be treated as an appropriate Government in relation to an industrial dispute concerning cement industry in terms of the definition of appropriate Government as set out in Clause(a) of Section 2 of the I.D.Act,1947.”

18) Further he has relied on Workmen of Bagalkot Udyog Ltd. v. Bagalkot Udyog Ltd. and others, 2000 LAB.I.C.3219(Karnataka H.C.), wherein it is observed that,

“So far as cement industry is concerned, in view of definition under Section 2(a)(i) of the I.D.Act,1947, the Central Government is the appropriate authority”.

19) Thus, in view of my foregoing discussion and above observations, in the light of authorities cited supra, I hold that the present Complaint is not maintainable for want of jurisdiction. Therefore, I have recorded 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.

Date :- 06.02.2015.

Sd/-
(T.M.Jahagirdar)
Member,
Industrial Court, Mumbai.

(A.S.Jagdale)
Registrar,
Industrial Court, Maharashtra,
Mumbai.

Date :- .02.2015.