EMPLOYMENT RELATIONS TRIBUNAL

ORDER

ERT/ RN 42/22

Before

Indiren Sivaramen	**Acting President**
Vijay Kumar Mohit	**Member**
Karen K. Veerapen	**Member**
Ghianeswar Gokhool	**Member**

In the matter of:-

Union of Bus Industry Workers (Applicant)

And

UBS Transport Ltd (Respondent)

This is an application made by the Applicant union under section 53(5) of the Employment Relations Act, as amended (the "Act"), for an order requiring the employer, that is, the Respondent to start negotiations with the Applicant "to review and update the existing terms and conditions of service of workers of the bargaining unit represented by the union." The Applicant served a notice under section 53 of the Act on the Respondent. The Respondent is resisting the application and was assisted by counsel (another counsel appearing for Disputant was allowed at his request to withdraw from the case and the present Counsel stepped in, in lieu and stead of the former counsel) whereas the Applicant was assisted by a negotiator. The Respondent filed a Statement of Case in reply to the application filed by the Applicant. The Tribunal proceeded to hear the parties. It was agreed that the only dispute between the parties was in relation to the objection raised by Respondent in his statement of case and that save for same there was no other objection to the present application.

For ease of reference, the statement of case of Respondent is reproduced below:

STATEMENT OF CASE OF RESPONDENT

1. *The UNION OF BUS INDUSTRY WORKERS (hereinafter referred to as UBIW) has made an application before the Employment Relations Tribunal as per section 53(5) of the Employment Relations Act of 2008 as amended for an order against the Respondent to start negotiations.*

PRELIMINARY OBJECTIONS

2. *This application should not be entertained by the Employment Relations Tribunal since this would be tantamount to accepting and encouraging a breach of a Supreme Court order dated the 8th of June 2017. (Annex A)*

2.1 The UBIW failed to comply with the said order referred to above in that it has failed to hold elections as stipulated in the said order and has also failed to liaise with the Electoral Commissioner as also stipulated in the said order.

2.2 The UBIW has also failed to comply with the order by holding elections for only compliant members to vote.

2.3 The UBIW has failed to comply with the order of the Learned Judge whereby only the "running of the day to day management of the business" will be carried out and that no "major decision of the Union" will take place pending the holding of elections.

2.4 The matter before the tribunal is a contempt.

2.5 *In the circumstances the UBIW should be debarred from proceeding with this application.*

Evidence was adduced by both the Respondent and the Applicant in relation to the objection raised by Respondent and each party was allowed to cross-examine the deponent who was called to adduce evidence for the other side. The main thrust of the objections of the Respondent to this application is that the Applicant allegedly failed to comply with an order of the Honourable Judge sitting in Chambers delivered in the case of **The Union of Bus Industry Workers v Iqbal Eydatoula *in presence of* The Registrar of Associations, Serial No. 852/2017**. A copy of the order was produced before the Tribunal and marked as 'Annex A' (in reference 'to the statement of case of Respondent' since no copy of the order was in fact annexed to the statement of case of Respondent despite paragraph 2 of the said Statement of Case (vide above)).

Counsel for Respondent referred to the Supreme Court judgments in the cases of **Shardanand Kishtoo v Chandrawtee Matadeen, 2009 SCJ 423** and **Sheik Mohammad Nazeeb Eshaan Maudarbocus & Ors v Mauritius Freezone Logistics Ltd & Anor, 2010 SCJ 106**. He suggested that if the Tribunal is not satisfied that there are enough elements before it to show that elections as contemplated in the order of the

Honourable Judge in Chambers did take place, then the current application could not be entertained because the order of the Supreme Court was not complied with. The Respondent is thus raising this issue of alleged contempt of an order of the Supreme Court as a defence or objection to the application made under section 53(5) of the Act. Even if we assume that the Tribunal has indeed the power or jurisdiction to find that Applicant committed a contempt, it is obvious that (1) anything short of a contempt will not be sufficient for the Tribunal to exercise any discretion not to entertain the present application; and (2) it is not for the Applicant to show first that he complied with the order before he can be heard by the Tribunal. If such a defence is available to a respondent before the Tribunal, it will still be for the respondent on whose behalf the objection has been taken to show that the applicant committed a contempt or that the application before the Tribunal is a contempt. In the case of **Siamduth Hurdoyal v Sheizad Mungar, 2020 SCJ 232**, the Supreme Court referred to the case of **Subhash Ahgun v. Paul Yooun Bow Yew Him Fun *in the presence of* Sum Nian Wong How Tseung & others 2011 SCJ 197** and to the case of **M. Beekarry v The Mauritius Revenue Authority & Ors, 2012 SCJ 500** and stated that the latter case enumerated the threefold conditions that have to be satisfied for an application for contempt of court to succeed namely:

"***1. The terms of the Order must be clear and unambiguous***.

*The Court stated in **Iberian Trust Ltd v Founders trust and Investment Co. Ltd [1932 2KB 87]**: "If the Court is to punish anyone for not carrying out its order, the order must in unambiguous terms direct what is to be done". ...*

2. ***The defendant must have proper notice of the terms of the order***.

   It is an established principle that 'a person cannot be held guilty of contempt in infringing an order of the Court of which he knows nothing'.

3. ***The breach must be proved beyond reasonable doubt.*** *Any breach alleged to constitute contempt must be strictly proved in accordance with the standard of proof which is applicable to criminal cases, so that the breach against the alleged contemnor must be proved beyond reasonable doubt. This is made explicit by Lord Denning in **Re. Bramblevale Ltd [1969] 3 All ER 1062** where he said: "A contempt of Court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be further evidence to incriminate him*."

Immediately, this raises the pertinent question as to whether the Tribunal which deals with employment relations matters can, if at all, find or conclude that Applicant committed a contempt of an order of the Supreme Court or that the matter before the Tribunal is a contempt (vide paragraph 2.4 of the statement of case of Respondent). The Respondent,

if convinced that Applicant has committed a contempt of an order of the Supreme Court and that the present application is a contempt, could have sought an order from the Supreme Court to stay proceedings before the Tribunal. There is no evidence of any such action taken and, on the other hand, this Tribunal is being requested to find positively that Applicant committed a contempt of an order of the Honourable Judge in Chambers in a matter where the Respondent was not even a party, and where the concerned party (the respondent in the case before the Honourable Judge in Chambers) has not even been called to depone before the Tribunal. The objection taken by the Respondent cannot stand because the Tribunal cannot find or conclude that Applicant committed a contempt of an order of the Supreme Court.

In any event, even if the Tribunal is to proceed on the basis that it can enquire in relation to this issue of alleged contempt, the Tribunal will quote from a judgment delivered by Her Ladyship the Chief Justice R.Mungly-Gulbul, who was then Puisne Judge in the case of **Subhash Ahgun (see above)**. In that case, the Supreme Court stated the following:

"Our law of contempt is inspired from English law; the relevant Order dealing with contempt proceedings for the enforcement of an order of the court being Order 45 rule 5 which reads as follows:

"*5. -(1) Where –*

(a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time or, as the case may be, within that time as extended or abridged under Order 3, rule 5, or

(b) a person disobeys a judgment or order requiring him to abstain from doing an act,

then, subject to the provisions of these rules, the judgment or order may be enforced by one or more of the following means, that is to say –

(i) with the leave of the Court, a writ of sequestration against the property of that person;

(ii) where that person is a body corporate, with the leave of the Court, a writ of sequestration against the property of any director or other officer of the body;

(iii) *subject to the provisions of the Debtors Act 1869 and 1878, an order of committal against that person or, where that person is a body corporate, against any such officer*."

Halsbury's Laws Vol. 9(1) Contempt of Court – at paragraph 458 defines the meaning of civil contempt in the following terms:

"It is civil contempt of court to refuse or neglect to do an act required by a judgment or order of the court within the time specified in the judgment or order, or to disobey a judgment or order requiring a person to abstain from doing a specified act. It is

also a civil contempt to act in breach of an undertaking given to the court by a person, on the faith of which the court sanctions a particular course of action or inaction."(Emphasis added)

It is clear from the above that a person is guilty of contempt only in two situations, if–

(i) he fails to comply with a judgment or order of the court or

(ii) he commits a breach of an undertaking given to the court.

An order for contempt is not lightly made by the court and is subject to conditions as appears from the following from **Halsbury's Laws Vol. 9(supra) at paragraph 59**:

> *"The power to order committal for civil contempt is a power to be exercised with great care. The court will only punish disobedience to an order of the court, or non-compliance with an undertaking, if satisfied that the terms of the order or undertaking are clear and unambiguous, that the defendant has proper notice of the terms and that a breach of the order or undertaking has been proved beyond reasonable doubt."*

Turning to the present case, the record reveals that there was an agreement between the parties, which agreement was recorded by the court following which, the court ordered that the matter be struck out and the respondent to pay the costs.

As is apparent from the wording of the agreement recorded, there was no judgment or order from the court nor was there any undertaking on the part of the respondent; there was simply a judicial agreement. A breach of such an agreement does not give rise to contempt proceedings."

It is apposite to note that *ex facie* the copy of the order of the Honourable Judge in Chambers ('Annex A' which was not challenged on behalf of the Applicant), attorneys for the applicant and respondent in that case (UBIW and Mr I.Eydatoula respectively) stated that the "parties have agreed", and the 'agreement' was recorded in the order. In the whole paragraph bearing "the parties have agreed that ... ", there is nowhere an undertaking or at least a clear undertaking given by the Applicant to the Supreme Court (underlining is ours). There was a judicial agreement reached between the 'parties' before the Honourable Judge in Chambers and the judicial agreement was recorded in the order.

As pointed out by Her Ladyship the Chief Justice R.Mungly-Gulbul (then Puisne Judge) in the case of **Subhash Ahgun (above)**, if there was failure by one party to comply with the terms of the judicial agreement, there would no doubt be other remedies available to the other party in respect of such failure. The Respondent cannot rely on the judicial agreement reached between the 'parties' in the Supreme Court case of **The Union of Bus Industry Workers v Iqbal Eydatoula (see above)** (where the Respondent was not

even a party) to show that the Applicant committed a contempt or that the present matter before the Tribunal constitutes a contempt and shall not be entertained by the Tribunal.

As regards the undertakings given by the Applicant as well as by the said Mr Eydatoula, the respondent in the order of the Judge in Chambers (as per 'Annex A'), the Negotiator when deponing before the Tribunal maintained that he represented the Applicant and did liaise with the Electoral Commissioner and that the person mentioned in the order of the Honourable Judge in Chambers was also present at that meeting. He stated that however no officer was delegated to supervise the election. The evidence of the Negotiator has not been challenged before us and is plausible. It was even suggested at one point in time that there was apparently no election which was held at the Respondent after the order of the Judge in Chambers. Clearly, if this is to be believed, then the undertaking complained of, does not even come into play since the undertaking is in relation to liaising "*with the office of the Electoral Commissioner for the presence of an electoral officer when these elections will be held*." There is no basis before the Tribunal to find that the Applicant union failed to comply with the undertaking given, that is, to liaise with the office of the Electoral Commissioner for the presence of an electoral officer when 'these' elections would be held. The evidence of the Negotiator on this issue has not been challenged, and no representative from the office of the Electoral Commissioner or other party such as the respondent or the co-respondent (a representative of the Registrar of Associations) in the order relied upon by the Respondent has been called to depone before us. Also, there is no suggestion at all before us that the Applicant union has not complied with any of its obligations under the Act (including the holding of annual general assemblies (section 18 of the Act), election of officers in accordance with the rules of the Applicant (section 18(3)(b) of the Act) or the submission of annual returns to the Registrar of Associations which will include a list of members of the managing committee, including office bearers of the Applicant for the relevant accounting period (section 25 of the Act)). It is apposite to note that as per section 25(3) of the Act, the Registrar of Associations shall publish in the Gazette and in two daily newspapers the return submitted by a trade union containing the names of its president, secretary and treasurer (amongst others) as at 31 December of the preceding year.

The Tribunal is thus in any event not satisfied that the present matter before the Tribunal 'is a contempt'. The Applicant union is a recognised trade union at the Respondent, and the Tribunal will take notice of the order delivered by the Tribunal in the case of **Union of Bus Industry Workers And UBS Transport Ltd, i.p.o (1) United Bus Service Employees Union & others, ERT/RN 94/13 (**as mentioned by the representative of Applicant before the Tribunal). In that case, the Applicant made an application to the Tribunal pursuant to section 37 (Savings and Transitional provisions) (4)(a)(ii) of the **Employment Relations (Amendment) Act 2013** for a determination as to which trade union the workers in the bargaining unit wish to be their bargaining agent. The Tribunal conducted a referendum on the premises of the Respondent and following the results from the referendum, ordered on 14 July 2016 that the Applicant be recognized as the

bargaining agent to represent the workers in the bargaining unit at Respondent. The Tribunal further ordered that the Applicant and the Respondent were to meet at such time and on such occasions, as the circumstances may reasonably require, for the purposes of collective bargaining. The Tribunal in the abovementioned order described the relevant bargaining unit as consisting of bus conductors, drivers, traffic officers, workshop mechanic employees and cleaners employed by the Respondent.

The Applicant has served a notice under section 53 of the Act on the Respondent to initiate negotiations with the union to review and update the existing terms and conditions of service of workers of the bargaining unit represented by the union. As per section 53(4) of the Act, the Respondent was under the duty to start negotiations within 30 days of the date of receipt of the notice or such longer period as may have been agreed by the parties. The notice is at Annex A to the application of Applicant and the summary of the issues to be discussed is at Annex B to the said application. No issues or objections were raised in relation to the notice served and the Tribunal is satisfied on a balance of probabilities that the notice was duly served in accordance with section 53 of the Act. The Tribunal is also satisfied on a balance of probabilities that the Respondent has up to now refused and failed to start negotiations with the Applicant. For all the reasons given above, the Tribunal finds that the Respondent should have started negotiations with the Applicant after having been served with the notice under section 53 of the Act. In line with section 53 of the Act and relying on section 105(3) of the Act (the more so in the light of the granting of the motion to allow previous counsel to withdraw from the case and the novel objection taken on behalf of the Respondent against this application before this Tribunal), the Tribunal orders the Respondent to start negotiations with the Applicant within 14 days of the date of the present order, in relation to the notice at Annex A to the application and on issues mentioned at Annex B to the said application.

SD Indiren Sivaramen **SD Vijay Kumar Mohit**

Acting President **Member**

SD Karen K. Veerapen **SD Ghianeswar Gokhool**

Member **Member**

12 September 2022