14-9-2010
14-9-2011
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CIVIL WRIT PETITION NO 5493 OF 2013

2(k) 2(A)

IN THE MATTER OF:

M/s. Garment and Allied Workers Union .... Petitioner

Versus

State of Haryana and Ors. .... Respondents

Reply of The Written Statement Submitted By The Respondent No3.

MOST RESPECTFULLY SHOWETH:

PRELIMINARY OBJECTIONS:

1. That the written statement submitted by Respondent 3 is false, fabricated and bad in law. The present Writ petition filed by Garment and Allied Workers Union (herein after referred as GAWU) is legally maintainable as the union is a legal body and the present writ petition is legally maintainable because there is no legal requirement that for raising any industrial dispute the union should be duly registered under Trade Union Act, 1926. The abovementioned union has a wide membership, which runs across various garment sector industries and other allied industries including Ms. Viva Global i.e Respondent No3, so it is wrong to suggest that the said union is only a collection of individuals. The present writ petition was filed by the abovementioned

- ... has also held consultation in front of Union representative.
- R-3 has also participated with the representatives of Union; Admitted fact; Para-13

union and it has membership of workers who were illegally locked out by the Respondent no 3.

2. That the Respondent no 3 states that it had permanently closed down w.e.f 16 April 2012 under section 25FFA of Industrial Disputes Act, 1947 (herein after referred as "the Act") and bare perusal of the section clearly states that the employer should serve a notice in prescribed manner at least sixty days before the date on which the intended closure is to become effective, whereas there is no evidence on record to suggest that the Respondent no 3 has put any notice in this regard. It is further important to note that the Respondent no 3 has not followed the procedure laid under sub section (1) of section 25-O of the Act, which requires that an employer who intends to close down an industrial establishment shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner. Here no such application was ever served upon the representative of the workmen. Also, the appropriate government has not granted permission for the closure and no copy of such order was ever communicated to the workmen as required under sub section (2) of section 25-O of the Act.

3. That the written statement of Respondent no 3 wrongly states that Mr. Nagendra Singh, who has signed and filed the present Writ petition has not been duly authorized by the workers. The present Union of which the workers of Respondent no 3 are the members have duly authorized Mr. Nagendra Singh through passing a necessary resolution for filing the writ petition and the copy of said resolution is attached as annexure P-14(T) with the Writ petition. An allegation of forged and fabricated signature of

the petitioner is false and baseless. The signature on the resolution, on the writ petition, supporting affidavits, on demand notice dated 14-09-2011 and as well as on supporting affidavit in support of the application dated 21-12-2014 are that of the petitioner itself. Respondent no 3 is wrongly trying to divert the issue.

4. That the written statement of the Respondent no 3 wrongly states that they never requested the petitioner to draw up any agreement. However during the conciliation proceedings before the Assistant Labor Commissioner, as per the request of Respondent no 3, which complained that due to the dispute their reputation in the international market had been damaged, it was agreed by the petitioner that it will help the Respondent no 3 in restoring the company's reputation in the international market to attract orders for Respondent no 3. Petitioner was interested in Respondent no 3 staying in the business since it was also the source of livelihood of GAWU members. Then both parties agreed to prepare a joint agreement and the negotiations took place in front of Assistant Labor Commissioner Mr, Suresh yadav, thus the draft of the agreement was prepared and was submitted before the Assistant Labor Commissioner, as annexed as Annexure P-6 in the writ petition.

5. That the Respondent no 3 falsely alleges and tries to manipulate the present issue by stating that the petitioner suppressed the fact that the appropriate government vide its letter no 20083-86 dated 21-06-2011 has rejected the demand of the petitioner, which they raised through demand notice dated 14-09-2010. The petitioner raised the demand notice on 14-09-2010 and when appropriate government mischievously delayed and failed to send the reference letter to the industrial tribunal for adjudication of the said dispute, in view of the situation petitioner had no option than to approach this Hon'ble High court through Civil Writ petition No. 17722/2010 and the Hon'ble High court passed an order dated 07-03-

2011, where the Deputy labor Commissioner Ms. Anuradha Lamba was directed that demand notice dated 14-09-2010 be considered by her and an order be passed in accordance with law, within three weeks from the date of order. Following such order conciliation proceedings were held on 11th March, 21st March, 29th March, 5th April, 26th April and 2nd may 2011. It is pertinent to note that the Hon'ble court in this case had directed the DLC to pass an order considering the demand notice dated 14-09-2010, whereas, the letter dated 21-06-2011 by the Finance Commissioner and Principal Secretary, Government of Haryana, Department of labor and Employment mentions that the demand notice has been rejected as there is no signature of any person on the demand notice, neither there is any signature of workmen in the annexed list nor any identity of them, so in this case such letter not only becomes infructuous but also raises serious concerns on the way how the government agencies are functioning. If the Hon'ble High court had directed the DLC to pass an order and accordingly conciliation took place, then to further say that "obviously on the basis of report submitted by the labor authorities at Gurgaon, the demand was rejected" is false and an attempt to misguide the Hon'ble HIgh court. The petitioner strictly obeyed the order of the Hon'ble High Court.

The written statement also wrongly mentions that the Labor commissioner has passed any order refusing to refer the claim made under demand notice dated 14-09-2011. The appropriate government has failed to send a reference letter regarding the demand notice dated 14-09-2011 till date, even after a failure report was sent by the Labor-cum-Conciliation officer, Circle-1, Gurgaon, where it was clearly mentioned that there is a dispute between the petitioner and the Respondent no 3.

The contents of the written statement are vague and speak on imaginary grounds. It mentions that there is likelihood of rejection of the demand notice dated 14-09-2011, however in present case appropriate government has

mischievously not sent the reference letter till date for adjudication of the industrial dispute raised through the demand notice dated 14-09-2011.

6. That the petitioner only seeks to quash/modify the order of the Industrial tribunal/Labor court, which dismissed the demand and called it not maintainable citing the reason that there is no reference from the appropriate government in this regard. It held that it can only adjudicate upon the dispute once the reference from the appropriate government to the industrial tribunal, is made. So, to directly dismiss the claim frustrates the purpose of the industrial tribunal, so in order to achieve the purpose and to act in spirit and objective of the Act, it should be directed that before dismissing any demand where no reference has been sent by the appropriate government, Industrial tribunal should direct the appropriate government to send the reference so that the dispute can be adjudicated expeditiously.

Without prejudice to the preliminary objections mentioned above, the following is the

Reply on merits:

1. The contents of para 1 are wrong and hence denied. Garment and Allied Workers Union (GAWU) is a gurgaon based trade union which has a wide membership of workers which runs across various garment sector industries and other allied industries. The workers of Respondent no 3 are the members of this Union and have filed this writ petition through GAWU. The said Union has passed a resolution in favor of Mr. Nagendra Singh as its authorized representative for filing this writ petition.

2. That the contents of para 2 are wrong and denied. The respondent no 1 and 2 have wrongly not referred the dispute pertaining to the illegal lock out in respondent no 3 and they have unnecessarily delayed it. The appropriate government should send the reference for adjudication to the industrial tribunal if prima facie any dispute arises and such has been rightly mentioned in the failure report submitted by the Assistant labor Commissioner. It clearly mentions that that the demand raised by the GAWU pertains to a dispute and such can only be decided by the industrial tribunal. The respondent no 3 has continuously engaged in unfair labor practices and has illegally locked-out workmen engaged there and has further terminated services of the workers engaged there as an act of vengeance and with an intent of victimization.

3. The contents of para 3 are wrong and denied. The Respondent no 3 states that it had permanently closed down w.e.f 16 April 2012 under section 25FFA of Industrial Disputes Act, 1947 and bare perusal of the section clearly states that the employer should serve a notice in prescribed manner at least sixty days before the date on which the intended closure is to become effective, whereas there is no evidence on record to suggest that the Respondent no 3 has put any notice in this regard. It is further important to note that the Respondent no 3 has not followed the procedure laid under sub section (1) of section 25-O of the Act, which requires that an employer who intends to close down an industrial establishment shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner. Here no such application was ever served upon

the representative of the workmen. Also, the appropriate government has not granted permission for the closure and no copy of such order was ever communicated to the workmen as required under sub section (2) of section 25-O of the Act. The list of workers which is attached with the writ petition were gainfully employed in Respondent no 3 and were illegally locked-out on two occasions on 25-08-2010 and 28-06-2011. The workers mentioned in the annexure are the members of the petitioner Union.

4. The contents of para 4 are wrong and hence denied. Respondent no 3 has not obeyed the order of the Hon'ble High Court dated March 7, 2011 in Civil Writ Petition No. 17722/2010 in spirit and has further engaged in unfair labor practices and terminated the services of more than 60 employees out of 102 employees. After the Honb'le High court ordered to settle the dispute raised by the petitioner within three weeks from the date of order i.e 07-03-2011, respondent agreed to lift the lock-out only for 42 employees, whereas GAWU has submitted the list of 102 employees who were locked-out by the respondent. When these workers resumed their duties on May 9, 2011, two weeks later on May 23, 2011 one workman was suspended and two days later, another three were suspended and thereafter on June 28, 2011, again factory was locked-out. It is wrongly stated that the workers earlier stopped performing their work in a concerted manner, by way of illegal strike and in support of some employees whose services were legally and validly terminated, however it was Respondent no 3 which locked out and after the intervention of the authorities lifted it. The workers named in the list are all employees of Respondent no 3 and whether they were employees of contractors or not cannot be decided by this Hon'ble court and the same can be adjudicated by the Industrial tribunal.

The respondent no 1 and 2 have wrongly not referred the dispute pertaining to the illegal lock out in respondent no 3 and they have unnecessarily delayed it. The appropriate government should send the reference for adjudication to the industrial tribunal if prima facie any dispute arises and such has been rightly mentioned in the failure report submitted by the Assistant labor Commissioner. It clearly mentions that that the demand raised by the GAWU pertains to a dispute and such can only be decided by the industrial tribunal

5. The contents of para 5 are wrong and hence denied. That the respondent no. 3 has been continuously violating the labour laws and in this regard the petitioner had sent several complaints and representations to the respondent no. 3 as well as to the Respondent No.1 and 2 from July, 2010 onwards. The respondent no. 3 intentionally and forcibly locked out the employees initially on August 25, 2010 and then further on 28-06-2011. It may be noted that the said lock out in respondent no. 3 was for those workers who were associated with Garments and Allied Workers Union. The workers are the member of the petitioner union and the petitioner union has rightly raised their demand before the authorities on different occasions.

6. The contents of para 6 are wrong and hence denied. The respondent no 3 has illegally locked-out without seeking prior permission from the Labor department with an intention to victimize workers associated with the petitioner union.

7. That the contents of para 7 are wrong and hence denied. Respondent no 3 engaged in violent practices and beat up the petitioners. The

reply is same as the averments made in para 7 of the writ petition so the same are not repeated here for the sake of brevity.

8. That the contents of para 8 are wrong and hence denied. The reply is same as the averments made in para 8 of the writ so the same are not repeated here for the sake of brevity.

9. That the contents of para 9 are wrong and hence denied. The respondent no. 3 had illegally locked-out workers to compel them to leave Garment and Allied Workers Union and also to suppress the Petitioner's genuine, legitimate and legal demands. Workers have not been paid their earned wage and other legal dues.

10. That the contents of para 10 are wrong and hence denied. The Respondent no 3 earlier had agreed to reinstate all the workers as per the instructions of the Labor Officer Mr. Suresh yadav on 23rd August 2010 and later they restrained them from entering the premises and thus illegally locked out the company on 25th Aug 2010. They violated section 23(a), (c) and section 24 of the Act. The demand notice dated 14-09-2011 sent by the petitioner was never referred by the appropriate government to industrial tribunal for the adjudication of the dispute.

11. That the contents of para 11 are wrong and hence denied. The workers of Respondent no 3 are the members of the petitioner union and the union has continuously represented the workers of the respondent no 3 before various authorities. Petitioner union is a trade union within the meaning of the Trade Union Act, 1926. Thus the petitioner union is duly authorized to send representation before authorities which they did by sending representation before DLC and general manager of the respondent no 3 on 06-09-2010 and 14-09-

2010, but they failed to take any concrete action against lifting the illegal lock-out in the company.

12. That the contents of para 12 is partially admitted to the extent that the learned single Judge of this Hon'ble High court passed an order in CWP. No. 17722/2010. However the rest part of the para is denied as the respondent no 3 mischievously interprets the order of the Hon'ble High court and has not followed the order in its spirit. It is pertinent to note that the Hon'ble High court in this case had directed the DLC to pass an order considering the demand notice dated 14-09-2010, so to suggest that the High court had not directed necessarily to refer the dispute is wrong interpretation of the order. Every conciliation process has to end by the way of a mutually agreed settlement or as a failure of the conciliation proceeding, and in the latter case, the dispute has to be then adjudicated by the industrial tribunal, after the reference is made by the appropriate government. So, in the present case the appropriate government has failed to send the reference letter and thus the adjudication of the dispute is still pending.

13. That the contents of para 13 are partially admitted to the extent that in accordance with the order of the Honb'le High Court dated 07-03-2011, the conciliation meetings were held between the representative of the petitioner union and the representatives of Respondent no 3, however rest of the contents are wrong and hence denied. It was only after DLC intervened and persuaded the Respondent no 3 to lift the lock-out, it lifted the lockout only for 42 workers whereas the petitioner has submitted a list of 102 workers who were locked-out by the management. The respondent no. 3 pleaded that 20 workers had taken their full and final dues and

therefore not eligible for reinstatement. However, the respondent no. 3 had not provided any proof for this full and final settlement. The respondent no. 3 had refused to lift the lock-out for the remaining 40 workers giving fictitious grounds about the status of such workmen, without providing any reason, documents or any such other evidence to support their contention. The respondent no. 3 did not comply with any procedure of law in conferring such status as probations or suspension as laid down by law. It is wrong to suggest that the workers engaged into any mischief or were creating unrest in the industry, however they were always ready to work in the respondent no 3 but they were not allowed to work by way of illegal lock-out and were threatened and beaten up.

The allegations against the petitioner union and the office bearer of the petitioner union Ms. Anannya Bhattacharjee of her association with a "foreign NGO (regd. In England) for disrupting and unleashing a propaganda campaign against the respondent no 3 is totally false, baseless and defamatory. The respondent no 3 should put strict proof of the averments made in this para. The petitioner union never tried to hamper the business of the respondent no 3, but was legally fighting for the rights of the workers. The petitioner union has acted within the ambit of Indian constitution and it is the fundamental right of the petitioner union to hold demonstrations. The false allegation that the petitioners were acting to benefit other exporters is totally uncalled for and is a concocted story and the respondent no 3 have no strict proof of it, they have made a totally irresponsible remark and have engaged into "conspiracy theory". The petitioner union, however agreed during the conciliation proceeding and had drafted a copy of agreement to attract further orders and to improve the reputation of the respondent no 3 in the global market, which was tarnished because of their non-compliance of the laws.

14. That the contents of para 14 are wrong and hence denied. It is wrongly stated that the 42 workers earlier left their job and after persuasion by the DLC resumed their duty, however they were locked-out from the industry and it was only after the intervention of DLC, who called conciliation meetings as per the order of the Honb'le High court and the respondent no 3 lifted the lock-out, workers resumed their duties. But the respondent no 3 had any intention to give work to these workers, so they again locked-out the company and threatened workers of dire consequences if they continued to fight their legal battle against such illegal lock-out by the Respondent no 3. The rest part of the para is the repetition of the earlier facts, hence needs no reply.

15. The contents of para 15 are wrong and hence denied. The respondent no 3 engaged in various violent acts and regularly threatened workers. No worker associated with the petitioner union ever misbehaved with the lady guard; however it was the management tactics to appoint henchmen, bouncers to intimidate workers. The averments made in the para 15 of the writ petition be read as the reply and the same is not repeated for the sake of brevity. The workers were suspended and no domestic enquiry was ever conducted, neither any suspension allowance was given to them.

16. The contents of para 16 are wrong and hence denied. The respondent no 3 have made false allegations against the petitioner union and its office bearers without putting any strict proof to the claim. The petitioner union never carried out any vilification campaign against the respondent no 3 but acted within the ambit of law in order to secure the rights of the workers, which was grossly violated by the respondent no 3. Further at the request of the respondent no 3 and

with an assurance that they would comply with the provisions of law strictly and will not engage further in any malpractices, petitioner union agreed to draft an agreement to help them to secure more buyers and orders, as it was the matter of livelihood of the workers, working there.

17. The contents of para 17 are wrong and hence denied. The draft agreement was prepared at the request of the respondent no 3 and with an assurance that they would comply with the provisions of law strictly and will not engage further in any malpractices. However, both parties agreed on most of the issues except few.

18. That the contents of para 18 are wrong and hence denied. It has been earlier admitted in para 13 that conciliation proceedings were carried out in the presence of petitioner union representative and the representative of respondent no 3, so to now claim that the respondent no 3 does not recognize the petitioner union is totally false and irrelevant. The officials of respondent no 3 have engaged continuously in violent acts and the details are in para 18 of the writ petition, so the same is not repeated here for the sake of brevity. Such acts clearly shows how the management had coerced the workers and locked-out the company on two occasions, it only shows the continuous malpractices and unfair labor practices of the respondent no 3.

19. That the contents of para 19 are wrong and hence denied. The workers were suspended in contravention of the provisions of law. Neither any domestic enquiry was conducted nor any charge sheet was given to them .They were also not paid suspension allowance, so their suspension was also illegal.

20. That the contents of para 20 are wrong and hence denied. The respondent no 3 use to curtail legal rights of the workers and use to deny casual and sick leaves. They also harassed workers when they use to come back from their permitted leaves.

21. That the contents of para 21 are wrong and hence denied. The respondent no 3 with a malafide intention and by way of victimization, illegally suspended/terminated workers one by one, for their association with the petitioner Union,while conciliation was going on. This is clearly unfair labor practice within the meaning of Schedule V of the Act.

22. That the contents of para 22 are wrong and hence denied. The respondent no 3 engaged in violent acts through its officials and employees and brutally beat workers. The details are mentioned in para 22 of the writ petition and the same is not repeated here for the sake of brevity. It is wrong to suggest that the injuries inflicted upon the workers and reports of the general hospital, gurgaon has no connection whatsoever with the respondent no 3. The respondent no 3 after carrying such attack further locked-out the premises on 28-06-2011.

23. That the contents of para 23 are wrong and hence denied. Till date workers are not paid their earned wage, suspension allowance and other legal dues.

24. That the contents of para 24 are wrong and hence denied. The petitioner union has raised a demand on 14-09-2011 and after the conciliation proceeding failed, Assistant labor commissioner sent a failure report, which clearly states that there arises a dispute. Now the appropriate government should send a reference letter for the

proper adjudication of the dispute by the industrial adjudicator, as it is the right forum for the adjudication of such dispute. It is also important to mention here that the respondent no 3 has participated in the conciliation proceeding and the failure report clearly states their version as well.

25. That the contents of para 25 are wrong and hence denied. The petitioner union seeks that the Labor Court should not directly dismiss the application for adjudication, but should direct the appropriate government to take a final decision on the reference and send the decision to court before returning/dismissing the application.

26. That the contents of para 26 are not denied.

27. That the contents of para 27 are partially admitted to the extent that the labor court dismissed the demand notice as being not maintainable. The petitioner seeks reference from the appropriate government to the industrial tribunal, which can only adjudicate after the reference is made. So, to directly dismiss the claim frustrates the purpose of the industrial tribunal, so in order to achieve the purpose and to act in spirit and objective of the Act, it should be directed that before dismissing any demand where no reference has been sent by the appropriate government, Industrial tribunal should direct the appropriate government to send the reference so that the dispute can be adjudicated expeditiously.

28. That the contents of para 28 are wrong and hence denied. The petitioner union is regularly working since 2010 to ensure their legitimate rights. It is totally wrong and mischievous on the part of the respondent no 3 to allege that the petitioner union tried to create

unrest in the industrial belt or have any association with any foreign NGO, they should put strict proof of such averments. Petitioners have been working continuously to ensure workers rights are safeguarded and no malpractices are carried out. Respondent no 3 due to regular non-compliances and unfair regular labor practice have created unrest and thus lost its reputation and credibility in the market and the petitioner union has nothing to do it, however the petitioner union at one point of time, at the request of respondent no 3 tried to secure their order and client, as it concerned livelihood the workers. The respondent no 3 have illegally locked-out the company and the appropriate government has wrongly failed to refer the dispute to the industrial tribunal.

29. That the contents of para 29 are wrong and hence denied. The law relating to reference orders is clear and The Hon'ble Supreme Court of India has repeatedly declared the law in the last three decades that the government is not going to the merits of the issue, but once it is satisfied that the industrial dispute exists, it must promptly refer the dispute to the labour court. In the instant case, the Concilaition officer in his report have clearly stated that there arises a dispute, even then appropriate government has failed to send the reference to the industrial tribunal. It clearly shows that the labour Department, Haryana has failed to perform its duty in this case and strict action be taken against them.

30. That the contents of para 30 are wrong and hence denied. The petitioner union has membership of the workers engaged in respoendent no 3. The petitioner union passed a resolution and appointed Mr. Nagendra who is general secretary of union their representative for contesting this civil writ petition. The respondent no 3 have not put any evidence on record suggesting that the

establishment is closed; hence it is denied that the establishment is closed. Further it is wrong to suggest that on the date of passing of the resolution i.e on 27-01-2013, workers were not employed in the industry, it is important to note that the present writ petition is regarding a dispute which arose on 25-08-2010 and continued till 28-06-2011 and during that time these workers were duly engaged. Also, the workers are the members of the petitioner union, so they have every right to file the present writ petition, thus the present writ petition is legally maintainable.

31. That the contents of para 31 are wrong and hence denied. The respondent had illegally locked-out second time on 28-06-2011 after 25-08-2010 and also further suspended/terminated workers illegally with a malafide intention and to victimize them for their association with the petitioner union, which clearly amounts to unfair labor practices under schedule V of the Act. The details of all the workers, who were on probation and who took their full and final settlement involves question of fact and the respondent no 3 should put strict proof of it. It cannot be decided before this Hon'ble High court and the same can be decided before the industrial tribunal.

32. That the contents of para 32 are wrong and hence denied. The petitioner union has right to approach this Hon'ble High Court because there is no other efficacious remedy under the Act and only this Hon'ble High court has the jurisdiction.

33. That the contents of para 33 are not denied hence needs no reply.

34. That the contents of para 34 are wrong and hence denied. The respondent no 1 and 2 have wrongly failed to send the reference letter and have not referred the dispute to the industrial tribunal, such

inaction is in violation of the legal obligations conferred upon them. This is clear dereliction from the duty for the reasons mentioned in the preliminary objections.

That in view of the inter-alia the circumstances and reasons mentioned above, the present Writ petition be kindly decided in favor of the petitioners and against the respondent with heavy cost. The Hon'ble High Court may kindly grant the relief as per the prayer clause of the present Writ petition.

The Deputy Director/ State Public Information Officer
Factory Wing, Labor Dept. (I S 4 H)
Fourth Floor, Mini Secratariat,
Gurgaon, Haryana – I.

Subject: Information under Right to Information Act, 2005

Dear Sir/Madam,

Kindly provide us the following information and documents via registered post at the address given below:

1. Name of the Applicant- Gunjan Singh
2. Address of the Applicant- C-23, 1st Floor (Rear Side) Hauz Khas, New Delhi-110016
3. Particulars of the Information required about M/s. Viva-Global , plot no. 413, Phase III, Udyog Vihar, Gurgaon, Haryana.

a) Address at which company is registered and address to which communication relating to the factory may be sent.

b) Name and address of the owner and other board members.

c) Please provide present situation of the factory.

d) The name of the manager of the factory.

e) The name and address of the occupier.

Enclosed here is a pay order of Rs 50 towards the required fee as per the Right to Information Act, 2005. The information is required by registered post and your office is requested to inform me about the additional Fee, if any, I have to pay to acquire the above requested information.

Thanking You

Place: Date: 18/12/14

Postal order - 29195

Regd.

From

The Additional Chief Secretary to Government,
Haryana, Labour Department.

To

Garments and Allied Workers Union,
Plot No. 1, Rao Maichand Complex, Opp. Military Station,
Jwala Mill, Old Delhi-Gurgaon Road, Gurgaon.

No. I.D./3/GGN-1/1/2016/ 15211
Dated: 29/3/16

Subject:- Demand Notice dated 14.9.2011 under section 2(k) of the Industrial Disputes Act, 1947 against the management M/s Viva Global, Plot No. 413, Phase-III, Udyog Vihar, Gurgaon.

.....

Reference the subject quoted demand notice submitted by you.

2. It is submitted that as per record the demand notice in question has not been received in the office of the Labour Commissioner, Haryana, Chandigarh. However, alongwith C.W.P. No. 5493 of 2013 (Garment and Allied Workers Union Versus State of Haryana and others) filed by the Union before the Hon'ble High Court, the Union has attached copy of the failure report submitted by the Labour and Conciliation Officer, Circle-I, Gurgaon at Annexures P-8/T and P-9/T.

3. Your demand notice has been considered. It contains 4 demands. Out of these, only demand notice no.1 i.e. lockout declared by the management has been referred to the Industrial Tribunal-cum-Labour Court-I, Gurgaon for adjudication of its legality and justified.

4. However, other demand nos. 2 and 3 i.e. payment of subsistence allowance under the Industrial Employment (Standing Orders) Act, 1946, earned wages as per section 3 of the Payment of Wages Act, 1936 have not been found referable to the Industrial Tribunal-cum-Labour Court as for these claims the workers may take recourse to the statutory remedy available under the Industrial Employment (Standing Orders) Act, 1946, the Payment of Wages Act, 1936 or under section 33C(2) of the Industrial Disputes Act, 1947, if so desired.

5. Further the demand no. 4 i.e. medical expenses of workers due to attack on women workers, has also been found not referable as the workers are covered under the E.S.I. Act and they can claim medical expenses / reimbursement under the E.S.I. Act.

In view of the reasons given in para nos. 4 and 5, the demand nos. 2, 3 and 4 of your union have not been found referable. Consequently, the request for reference of these is rejected.

for Addl. Chief Secretary to Government,
Haryana, Labour Department.

Endst. No. I.D./3/GGN-1/1/2016/ Dated:

A copy is forwarded to the following for information and necessary action:-

1. M/s Viva Global, Plot No. 413, Phase-III, Udyog Vihar, Gurgaon.
2. The Deputy Labour Commissioner, Gurgaon-I.
3. The Assistant Labour Commissioner, Gurgaon-I.
4. Statistical Officer (Labour), O/o Labour Commissioner, Haryana, Chandigarh.

Sd-
for Addl. Chief Secretary to Government,
Haryana, Labour Department.

Regd

From

Deputy Director
Industrial Safety & Health
Gurgaon-I

To

Sh. Gunjan Singh
C-23, 1st Floor (Rear Side) Hauz Khas,
New Delhi-110016

No. 24 Dated: 05-01-2015

Sub: **Regarding information Application dated 18.12.2014 under the Right to Information Act, 2005. Filled by Sh. Gunjan Singh.**

On the subject cited above.

The required information as per office record Assistant Director, Industrial Safety & Health, Circle-1, Gurgaon Points wise details is as under :-

(On the basis of annual return submitted in the year ending 31st December 2010)

Point No. 1 Communication & Registered Address: - M/s Viva Global, Plot no 413, Phase-III, Udyog Vihar, Gurgaon, 122016
(Registration Number GGN/V-114/10112 & License no 6315)

Point No. 2. Name & Address of owner: - Sh. Vipin Vohra, C-704, New Friends Colony, New Delhi

Point No. 3 Now factory closed

Point No. 4 Name of Factory Manger: - Sh. Mohan Demri

Point No. 5 Name & Address of Occupier: - Sh. Vipin Vohra, C-704, New Friends Colony, New Delhi

This is for your kind information.

Deputy Director
Industrial Safety & Health
Gurgaon-I

P-13

07 August 2012

Gurgaon

To,

Mr. P.K.Gupta, IAS
Additional Chief Secretary,
Labour and Employment Department,
Government of Haryana

Subject: - Complaint regarding not making reference by appropriate government (Government of Haryana) under section 10(1) of the Industrial Disputes Act, 1947 in the case of industrial dispute of illegal lock-out of 102 workers of Viva Global

Dear Sir/Madam,

1. That We, the workers of M/s. Viva Global, a garment factory in Plot No.413, Phase-III, Udyog Vihar, Gurgaon, Haryana, are writing this letter to ask about our legal right to reference under section 10(1) of the Industrial Disputes Act, 1947. Appropriate government is not making reference in our case and we are the aggrieved of this deliberate and intentional delaying process of reference.

2. That workers of M/s. Viva Global were illegally locked-out and violently attacked by the management of the company on dated 28th June, 2011. We have sent complain to Police station, Udyog Vihar, Gurgaon on the same day and also sent complain to Labour Department on dated 29 June 2011. We have filed a

5. That In the case of Telco Convoy Drivers Mazdoor Sangh and others Vs. State of Bihar and others (1989 AIR 1565) the apex court clearly directed in the last Para of judgment state of Bihar to make a reference under section 10(1) of the Act of the dispute raised by Telco Convoy Drivers Mazdoor Sangh by its letter dated October 16, 1986 addressed to the general manager TELCO to an appropriate industrial tribunal within one month.

6. That we are seeking you urgent attention on not making reference in this case and urging you to make reference in this industrial dispute within one week, otherwise we will move Hon'ble High Court of Punjab and Haryana, Chandigarh for Writ of mandamus for proper reference without any delay.

Nagendra Singh

On behalf of workers of Viva Global

Cc. - One copy of this complaint has been sent to Labour Commissioner, Haryana

collective demand notice of workers under section 2 K of the Industrial Disputes Act, 1947 to Labour-cum-conciliation officer, Circle-1 for the purpose of conciliation on dated 14-09-2011. Due to non-cooperation of the management, this industrial dispute has been sent on report to the government of Haryana on dated 15-11-2011.

3. That Labour-cum-conciliation officer, Circle-1 has sent failure report of conciliation under section 12(4) of the Industrial Disputes Act, 1947 to government on dated 15-11-2011, but till date after passing of 10 months, government has not made reference under section 10(1) of the Industrial Disputes Act, 1947. In the confidential report of failure report sent by Labour-cum-conciliation officer to government, it is clearly mentioned in the first point that there is an industrial dispute. Workers have right to get reference in this industrial dispute and government is deliberately and intentionally not making reference for its proper adjudication on merit. Workers have found copy of failure report and confidential report through RTI.

4. That this case is having wider importance and directly related with 102 workers and their family. It is the question of livelihood of more than hundred family and government is not making reference. In various cases of the Hon'ble Supreme Court and different High Courts including High Court of Punjab and Haryana, Chandigarh, it was held that reference must be made in case of industrial dispute or apprehension of industrial dispute. Making reference is not a judicial or quasi-judicial power of government, rather an administrative power. Government cannot deny making a reference to workers.