

BEFORE THE DEPUTY LABOUR COMMISSIONER**DIVISION 1, BANGALORE****Dispute No. 93/2017-18****Between:**

Garment and Textile Workers Union

First Party

AND:

Avery Dennison and Ors.

Second Party

**REJOINDER FILED BY THE FIRST PARTY TO THE OBJECTIONS
FILED BY SECOND PARTY No. 1**

The First Party above named states as follows:

1. It is submitted that all the averments made by the Second Party No. 1 are specifically denied as false and misleading. The Second Party No. 1 has made baseless and false allegations without any substance whatsoever, and the same is denied herein.
2. Reg. Locus Standi: The Second Party No. 1 has questioned the locus standi of the First Party to raise the instant dispute. It is submitted that 237 workers of the Second Party No. 1 are members of the First Party Union, and hence the First Party has the locus standi to raise the instant dispute. The Second Party No. 1 is raising the issue of locus standi of the First Party Union merely as a means of dead locking any attempts towards conciliation and the same is blatantly mala fide. Such objection is without any merit,



and is made with the sole intention of delaying the proceedings and in order to render the conciliation proceedings stalemat. The first party enjoyed sufficient membership of the workers of the second party and when such thing the case even if the second party does not recognize the first party union. The same is totally inconsequential and that by itself does not take away the rights of the workers to seek the relief of the regularization of the workers. The 2nd party has not produced any iota of material to show that the first party union is not supported by its workers. And therefore the bald statement made by the 2nd party is just a routine objections raised by them to take away the legitimate and constitutional rights of the workers.

3. The First Party Union being a registered trade union working with garment and textile industries and garment accessories supply companies and across Karnataka has the right to enrol the workers of the factory as its members, represent them and raise and espouse disputes / demands on their behalf.
4. Being the union which represents the absolute majority of the workers the company is duty bound to recognize our Union as the collective bargaining agent of the workers and negotiate with our union in good faith which the Petitioner has failed to do. The failure of the Company to negotiate and settle with the union which commands the absolute majority membership of the workers of company is an unfair labour practice. The objections raised by the Second Party No. 1 betray their clear attempt to violate and curtail

the constitutional right of all workmen to association and unionization.

5. Hence, the First Party Union has the *locus standi* to raise the instant dispute and this Authority has the jurisdiction to entertain the Petition of the Union and these proceedings are proceedings under the Industrial Disputes Act, 1947.

6. Reg. Sham Contract: At the outset, it is submitted that the Second Party No. 2 and 3 have been made parties in these proceedings only by way of abundant caution, and the contract that subsists between them and the Second Party No. 1 is a sham and the workmen are actually workmen of the Second Party No. 1. The averment made by the Second Party No. 1 that they have obtained registration certificates and the Contractors have obtained licences are all unsubstantiated averments, and not a single piece of paper has been submitted by the Second Party No. 1 to substantiate the same. It is denied that the engagement of the contractors is in conformity with the provisions of the Contract Labour Act. As stated in the Claim Petition, false and sham records have been fabricated and built up by the Second Party No. 1 with the connivance of the Second party No. 2 and 3, to camouflage the direct employer and employee relationship between second party No.1 and the workers of the second party No.1, including the first party workers. Further, second party No.1 used to compel individual workmen to sign on certain documents and blank sheets of paper from time to time even without revealing the contents and hence the workers were

totally unaware of the contents of the said alleged documents and the second party has not provided any copies of the same. Any such document will have to be treated as documents created and fabricated by them to circumvent statutory provisions, and therefore the said alleged documents cannot be relied upon by this Hon'ble Authority.

7. These workers perform the tasks the factory; printing machine operator, cutting machine operator, Quality checker, Assist to the skilled workers, packers, and all these work constitute the core function of the Avery Denison.
8. It is denied that the workers in the list fall under the direct supervision and control of the Contractors, and that there is no privity of contract between the Second Party No. 1 and the Workmen. It is denied that the contractors raise the bill once in a month which is paid by the Second Party. The averments that the contract workers are employees of the contractor and that there is no jural relationship of employer and employee is false.
9. It is reiterated that the contract labour system perpetrated by the Second Parties is nothing but a sham and a camouflage. The Second Party No. 1 has employed the workmen these workers on the guise of contract labourers which is nothing but "bonded labour system" with the sole intention of depriving them of their legitimate rights and also to avoid and evade various benefits which they are entitled to under various other labour laws. The Second Party No. 2 and 3 are merely brought in as an artificial intermediary to deny

these workmen security of service and other benefits on par with the permanent employees. The sham contractor, is merely a name lender who has no role to play in so far as the workmen is concerned except to pay them wages with the intention to deny them their rightful dues. Hence, the arrangement with the alleged labour contractors is neither bonafide nor genuine and is intended to hoodwink and deny workers of their legitimate dues & their legal rights. Pertinently, it has been admitted that the workmen have been working for upto 12 years under such sham and bogus contracts. Hence, it is necessary that the sham and bogus contracts be set aside and the workers recognized as the workmen of the Second Party No. 1.

10. The Hon'ble Supreme Court of India in case of **Bhilwara Dugdh Utpadak Sahakari S. Ltd. [AIR 2011 SC 3546]**, has recognized this subterfuge practiced by companies to deprive workmen of their basic rights where it has held as follows:

"4. In order to avoid their liability under various labour statutes employers are very often resorting to subterfuge by trying to show that their employees are, in fact, the employees of a contractor. It is high time that this subterfuge must come to an end. 5. Labour statutes were meant to protect the employees/workmen because it was realised that the employers and the employees are not on an equal bargaining position. Hence, protection of employees was required so that they may not be exploited. However, this new technique of

subterfuge has been adopted by some employers in recent years in order to deny the rights of the workmen under various labour statutes by showing that the concerned workmen are not their employees but are the employees/workmen of a contractor, or that they are merely daily wage or short term or casual employees when in fact they are doing the work of regular employees.

6. This Court cannot countenance such practices any more. Globalization/liberalization in the name of growth cannot be at the human cost of exploitation of workers."

11. It is evident that the Second party No. 1 is engaging in such gross forms of labour violations depriving the workers of their basic rights by resorting to such unfair labour practices.

12. Reg. Change of Conditions of Service during pendency of dispute: It is pertinent to submit that during the pendency of the dispute, the Second Party No. 1 has terminated the services of 43 workmen.

Hence, it is submitted that this Authority be pleased to take up the matter in conciliation, direct the second party No. 1 to regularize the services of the workers, whose names are shown in the list annexed to this petition and also direct them to provide all the consequential benefits on par with the regular employees, as per the law, and in spite of the same if the 2nd party is adamant inco -operative to resolve the issues the conciliation may be ended in failure the the dispute may be recommended for adjudication

by the compitant and jurisdiction labour court to meet the ends of natural justice and equity.

Place: Bengaluru

Date: 16-01-2018

Prokurista

FIRST PARTY UNION