

From

The Labour Commissioner-cum-
Registrar, Trade Unions, Haryana,
Chandigarh.

To

The President / General Secretary,
Bellsonica Auto Component India Employees Union,
IMT Manesar, Gurugram,
C/o Sh. Atul Kumar Tyagi,
H.No. 22/12, Vishvakarma Colony,
Ward No. 11, Farukh Nagar,
Gurugram-122506 (Haryana).

No. IR-1/2022/ 41405
Dated: 26/12/22

Subject:- Notice under section 10 of the Trade Unions Act, 1926.

Reference your reply letter dated 28.9.2022 on the subject cited above.

2. It had come to the notice of this office that your Union in contravention of the Trade Union Act, 1926 and its own Constitution / Rules had admitted Sh.Keshav Rajpur and others i.e. the workers of contractor, as Ordinary Members of the Union and accordingly, a notice dated 5.9.2022 was issued to the Union asking it to explain its position.

3. The Union vide its letter dated 28.9.2022 has submitted reply admitting in para nos. 3 to 5 thereof that Sh.Keshav Rajpur, an employee of the contractor, had applied for his admission as 'Ordinary Member' of the Union and the same was granted to him, further stating that section 6 of the Trade Unions Act, 1926 and rule 5 of Constitution / Rules of the Union do not make any distinction between a regular worker and contract worker and that rule 5 of its Constitution / Rules provides that **"Any worker who is working M/s Bellsonica Auto Components India Private Limited, Plot No. 1, Phase-3A, IMT Manesar, Gurgaon-122051 can become an ordinary member of the union provided he pays Rs.50/- per month as**

subscription fee and Rs.100/- as admission fee only one time at the time of joining of the membership.”

4. The reply submitted by the Union has been duly considered and examined, but the same has not been found satisfactory.

5. It is the settled law that no provision of any Act, law / Rules / instrument can be read in isolation. The true and correct import of such Act, law / Rules / instrument can be drawn only after reading the same as a whole. When so, the defence reply of the Union is not satisfactory.

6. Section 4 of the Trade Unions Act, 1926 in sub-section (1) thereof clearly provides that the persons applying for the registration of a Trade Union must be those who are actually engaged or employed in the establishment or industry with which the Union is connected. Such members are called 'Ordinary Members'. This section nowhere provides that a **joint** Union of employees of contractor and the employees of the principal employer can be formed and registered. Further, section 6 of the Trade Unions Act, 1926 provides for making of Constitution / Rules of the Union, and such Constitution / Rules are required to be framed by the Union in accordance with the provisions and requirements prescribed in this section 6. Further, Constitution / Rules of the Union are to be framed by the General Body of the Union and to be approved by the Registrar, Trade Unions. Clause (e) of this section 6 provides about the framing of rules, about provisions for the admission of 'Ordinary Members' in the Union with further prescribing that such 'Ordinary Members' would be those actually engaged or employed in the establishment or industry with which the Trade Union is connected. This clause (e) of section 6 of the Act *ibid* does not provide that persons not actually engaged or employed in an establishment or industry can also be admitted as 'Ordinary Member' of the Union. This clause (e) no doubt also provides for admission of the 'Honorary Members / Temporary Members' but only for the purpose of being elected as Office Bearers as per

prescription in section 22 of the Trade Unions Act, 1926. Section 22 of the Trade Unions Act, 1926 provides as to the proportion of the number 'Ordinary Members' and the 'Honorary Members' who can be 'Office Bearers' to form the Executive Committee of the Trade Union.

From above quoted provisions of sections 4, 6 and 22 of the Trade Unions Act, 1926, and more particularly clause (e) of section 6 of the Act *ibid* clearly provides that 'Ordinary Members' can be only those who are actually engaged and employed with the establishment or industry with which the Union is connected. The establishment of the principal employer and the establishment of the contractor cannot at all mean one establishment / industry. These are distinctly two different establishments.

Rule 5 of the Constitution / rules of the Union also clearly means that directly employed / engaged workers / employees of the establishment of the principal employer, namely, Ballsonica Auto Components India Private Limited, Gurgaon only can become 'Ordinary Members' of this Union. Moreover, any rule of the Constitution / rules of the Union cannot be interpreted and read in contravention of the provisions of the Trade Unions Act, 1926 but only in consonance and harmony with the Trade Unions Act, 1926 as the said Constitution / Rules of the Union have to be only in accordance with the Act *ibid*.

In view of above the said Sh.Keshav Rajpur, an employee of the contractor, cannot be admitted and cannot become an 'Ordinary Member' of the Union of the workers of the principal employer, namely, Bellsonica Auto Components India Private Limited, Gurgaon-122051. Therefore, his admission as an 'Ordinary Member' of the Union of workers / employees of the principal employer is illegal and in contravention of the provisions of the Trade Unions Act, 1926.

7. Still further, it is also settled law that the members of a particular Union can be only those who have the commonness / community

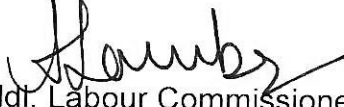
of interests. The persons with different and heterogeneous interests cannot form a joint Trade Union. The working conditions of the workers of the principal employer i.e. M/s Bellsonica Auto Components India Private Limited are regulated by the Certified Standing Orders (Service Rules) of this establishment / employer. Whereas, these Certified Standing Orders are not applicable to the employees of the contractor. A contractor being a separate establishment has to have its own Certified Standing Orders (Service Rules) for regulating the service conditions of its employees, which are separate and distinct from those of the said principal employer M/s Bellsonica Auto Components India Private Limited, Gurgaon.

This aspect of commonness / community of interests has also been upheld and laid down by the Hon'ble Punjab and Haryana High Court in the case of "**All Escorts Employees Union Versus State of Haryana and others.**" In this judgment it has been held that the employees of two different establishments cannot have commonness / community of interests and, therefore, the employees / workers of different establishment cannot form a joint Trade Union. It means that the employees of a particular establishment cannot be the 'Ordinary Members' of a Trade Union connected with some other establishment.

8. Section 10 of the Trade Unions Act, 1926 mandates the cancellation of registration of a Trade Union if the Union is not functioning as per provisions of this Act and has contravened the provisions thereof, and has continued such contravention despite notice. In the present case also despite notice dated 5.9.2022 by this office the Union has removed said Sh.Keshav Rajput from the 'Ordinary Membership' of the Union and has not thus allowed this contravention continue.

Now, therefore, the Union is hereby directed to show cause and explain as to why its registration be not cancelled / revoked in view of the fact that it has allowed to continue the contravention of Trade Unions Act, 1926.

Such explanation must reach this office within a period of two months of the receipt of this notice, failing which this office will be constrained to assume that the Union has nothing to submit in its defence and appropriate decision will be taken as per merits and law. In case the Union wants a personal hearing, it may specifically make a request for that in reply to this show cause notice.


Addl. Labour Commissioner,
for Labour Commissioner-cum-Registrar,
Trade Union, Haryana.