

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1550 OF 1999

NAVAPUR MUNICIPAL COUNCIL,
NAVAPUR, THROUGH ITS CHIEF
OFFICER

PETITIONER

VERSUS

1. Rakesh Fattu Kasar,
Age-26 years, Occu-Service,
R/o Shastri Nagar, at Nawapur,
Tal.Nawapur, Dist.Dhule,
2. Sanjay Umarsing Wasave,
Age-26 years, Occu-Service,
R/o Kaman Galli, Nawapur,
Tql.Nawapur, Dist.Dhule,
3. Shyam Kamalbhai Rathod,
Age-23 years, Occu-Service,
R/o Back to Bhagatwadi,
Ice Factory, at Nawapur,
Dist. Dhule.
4. Shantu Lalksha Mawachi,
Age-30 years, Occu-Service,
R/o Old Mahadev Galli,
At Nawapur, Dist. Dhule,
5. Martin Stephan Pandit,
Age-23 years, Occu-Service,
R/o Vakipada, Tal.Nawapur,
District : Dhule,
6. Kamalesh Dhadaku Wadile,
Age-26 years, Occu-Service,
R/o Old Bhoi Galli,
Near Public Urdu High School,
at Nawapur, Dist.Dhule,
7. Chhoalal Chhagan Chavan,

Age-26 years, Occu-Service,
R/o Ambedkar Chowk,
Chambhar Wada at Nawapur,
Dist. Dhule,

8. Navin Umarsing Gavit, **(Dismissed)**

Age-28 years, Occu-Service,
R/o Tin Temba, Nawapur,
at Nawapur, Dist. Dhule,

9. Jamil Khan Fajalkhan Pathan,

Age-23 years, Occu-Service,
R/o Meman Galli, at Nawapur,
Taluka Nawapur, Dist. Dhule,

10. Manish Thakaurbhai Rana,

Age-23 years, Occu-Service,
R/o Gujar Galli, at Nawapur,
Tal. Nawapur, Dist. Dhule,

11. Rajesh Magan Valvi,

Age-28 years, Occu-Service,
R/o Near Ashok Oil Mill,
Shastri Nagar, at Nawapur,
Tal. Nawapur, District : Dhule,

RESPONDENTS

Mr. P.V. Barde h/f Mr. S.P. Shah, Advocate for the petitioner.

Mr. K.C. Sant, Advocate for the respondents.

Writ petition is dismissed against respondent Nos. 8.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 20/10/2015

ORAL JUDGMENT :

1. By order dated 08/06/1999, the impugned orders/judgments dated 24/11/1998 and 11/02/1998 passed by the Labour Court in Complaint (ULP) Nos. 95/1998 to 105/1998 and the judgment of the

Industrial Court dated 21/01/1998 in Revision (ULP) Nos. 12/1999 to 21/1999, were stayed.

2. By order dated 03/10/2001, this petition was Admitted and the interim relief, granted earlier, was continued.

3. I have heard the learned Advocates for the respective sides extensively.

4. All the respondents herein were allegedly terminated by the petitioner. They preferred Complaint (ULP) Nos.95/1998 to 105/1998 before the Labour Court at Dhule. The petitioner had taken a stand that none of these respondents were their employees. All of them were engaged through a Contractor. Specimen copy of the public notice inviting proposals for deploying Contract Labourers dated 21/04/1998 is placed on record at page No.48.

5. The petitioner is aggrieved by the order on preliminary issues dated 24/11/1998, by which it was concluded that though the petitioner has put forth the theory of “no employer-employee relationship”, certain documents would indicate that they were working directly under the supervision and control of the petitioner.

6. Various challans were produced by the employees and the Labour Court concluded that there was employer-employee relationship between the petitioner and the respondents.

7. The petitioner is also aggrieved by the order dated 11/12/1998 by which the respondents were granted reinstatement by way of interim relief.

8. The petitioner preferred Revision (ULP) Nos. 12/1999 to 21/1999 before the Industrial Court. By judgment dated 21/01/1999, the Industrial Court concluded that there is no perversity in the findings of the Labour Court and the revision petitions deserve to be dismissed.

9. Mr.Sant, learned Advocate has strenuously supported the impugned orders placing reliance upon the octroi challans and the tax collection registers to submit that the respondents were performing perennial duties. They were working on the main activity of the petitioner in the Octroi Department. They were abruptly terminated without notice and without compliance of Section 25-F and 25-G of the I.D. Act.

10. He further submits that the theory of the respondents being Contract Labourers is a camouflage and is aimed at ousting the jurisdiction of the Labour Court. As the respondents were collecting octroi on behalf of the petitioner's Octroi Department, the Labour Court rightly concluded that they were the employees of the petitioner.

11. I have considered the submissions of the learned Advocates recorded as above.

12. The complaints were filed before the Labour Court in 1998. The respondents had alleged continuous service from 01/04/1995 till 16/07/1998. Issue of oral termination was raised before the labour Court. The written statement filed by the petitioner evidences that the petitioner had taken a stand that there is no privity of contract between the petitioner and the respondent/employee.

13. The Apex Court in the case of Vividh Kamgar Sabha Vs. Kalyani Steel, 2001(2) SCC 381 has observed in paragraph Nos. 5 as under :-

“5. The provisions of MRTU & PULP Act can only be enforced by persons who admittedly are workmen. If there is dispute as

to whether the employees are employees of the Company, then that dispute must first be got resolved by raising a dispute before the appropriate forum. It is only after the status as a workmen is established in an appropriate Forum that a complaint could be made under the provisions of MRTU & PULP Act.”

14. In a somewhat similar case, in between Cipla Limited Vs. Maharashtra General Kamgar Union, 2001(3) SCC 101, the Apex Court held in paragraph Nos. 8 and 9 as under :-

“8. But one thing is clear - if the employees are working under a the Contract Labour (Regulation & Abolition) Act then it is clear that the labour court or the industrial adjudicating authorities cannot have any jurisdiction to deal with the matter as it falls within the province of an appropriate Government to abolish the same. If the case put forth by the workmen is that they have been directly employed by the appellant- company but the contract itself is a camouflage and, therefore, needs to be adjudicated is a matter which can be gone into by appropriate industrial tribunal or labour court. Such question cannot be examined by the labour court or the industrial court constituted under the Act. The object of the enactment is, amongst other aspects, enforcing provisions relating to unfair labour practices. If that is so, unless it is undisputed or indisputable that there is employer-employee relationship between the parties, the question of unfair practice cannot be inquired into at all. The

respondent union came to the Labour Court with a complaint that the workmen are engaged by the appellant through the contractor and though that is ostensible relationship the true relationship is one of master and servant between the appellant and the workmen in question.

9. *Shri K.K. Singhvi, the learned senior Advocate appearing for the respondent, submitted that under Section 32 of the Act the labour court has the power to decide all matters arising out of any application or complaint referred to it for the decision under any of the provisions of the Act. Section 32 would not enlarge the jurisdiction of the court beyond what is conferred upon it by other provisions of the Act. If under other provisions of the Act the industrial tribunal or the labour court has no jurisdiction to deal with a particular aspect of the matter, Section 32 does not give such power to it. In the cases at hand before us, whether a workmen can be stated to be the workman of the appellant establishment or not, it must be held that the contract between the appellant and the second respondent is a camouflage or bogus and upon such a decision it can be held that the workman in question is an employee of the appellant establishment. That exercise, we are afraid, would not fall within the scope of either Section 28 or Section 7 of the Act. In cases of this nature where the provisions of the Act are summary in nature and give drastic remedies to the parties concerned elaborate consideration of the question as to relationship of employer-employee cannot be gone into. If at any time the employee concerned was indisputably an employee of the establishment and subsequently it is so disputed, such a*

question is an incidental question arising under Section 32 of the Act. Even the case pleaded by the respondent-Union itself is that the appellant establishment had never recognised the workmen mentioned in Exhibit A as its employees and throughout treated these persons as the employees of the second respondent. If that dispute existed throughout, we think, the labour court or the industrial court under the Act is not the appropriate court to decide such question, as held by this Court in General Labour Union (Red Flag), Bombay v. Ahmedabad Mfg. & Calico Printing Co. Ltd & Ors. (supra), which view was reiterated by us in Vividh Kamgar Sabha v. Kalyani Steels Ltd. & Anr., Bom. C.R. (S.C.) 324 : 2001 (1) Scale 82.”

15. In a case involving similar circumstances in the matter of the Managing Director The Managing Director, M/s Epitome Components Limited Vs. Swarajya Kamgar Sanghatana and others, 2015(5) All MR 331, this Court has held in paragraph Nos.16 to 33 as under :-

*“16. It was thus laid down that a complaint (ULP) would not be maintained before the Labour Court or Industrial Court under the MRTU & PULP Act, 1971 which seeks to establish a direct relationship with the principal employer. The conclusions of the **Cipla Ltd.** judgment (supra) clearly indicate that any allegation of a sham and bogus contract with the contractor or a contractor being a camouflage to cover up an ostensible relationship with the principal employer, cannot be gone into by these Courts under the ULP Act.*

17. The Five Judges Bench of the Apex Court in the case of **Steel Authority of India & others Vs. National Union Waterfront Workers & others**, reported at (2001) 7 Supreme Court Cases 1, further clarified the position that even abolition of contract labour system shall not lead to an automatic absorption of contract labour by the principal employer. It was concluded that the contractor on such abolition or termination of contract shall follow the law of retrenchment as enshrined under the Industrial Disputes Act, 1947 and shall retrench the workman. Nevertheless, the option of absorption of such contract labourers was left with the principal employer.

18. This Court in the case of **Indian Seamless Metal Tubes Ltd. (Tubes Division), Ahmednagar Vs. Sunil Rambhau Iwale & Others**, reported at 2001 III CLR 728 has rendered further clarity. This Court has dealt with the issue of disputed relationship or disputable relationship between the contract labourers and the principal employer. In the said case, the Industrial Court, Ahmednagar had assumed employer-employee relationship at a prima facie stage and had proceeded to grant certain reliefs to the contract labourers against the principal employer.

19. In the said case, the issue as to whether the contract labourers established such relationship was kept open to be adjudicated upon later. Dealing with the said situation, this Court has arrived at certain conclusions which are of

assistance while dealing with this case. The conclusions in paragraph Nos. 21, 22 and 23 of the **Indian Seamless judgment** (supra) are reproduced here-in-below :-

21. Reverting to the facts of the case in hands, undisputedly the relationship of employer-employee between the parties has been denied and disputed. The records, prima facie, disclose that the respondents Nos. 1 to 12 were employed by the respondent No. 13 and were paid their wages by the respondent No. 13. There was an agreement executed between the petitioner and the respondent No. 13 for carrying out work regarding cleaning and conservancy in petitioner-factory premises. There was a legal and valid registration with the petitioner and legal and valid licence with the respondent No. 13 under the Contract Labour (Regulation and Abolition) Act, 1970. The agreement between the petitioner and the respondent No. 13 was to expire on 31-10-1999 and notice to that effect was issued by the petitioner to the respondent No. 13 on 31st August, 1999. As rightly submitted by the learned Advocate for the petitioner, these facts, prima facie, disclose that not only the employer-employee relationship between the parties was disputed and denied by the petitioner, there was nothing on record to show that the petitioner had, at any time, accepted the respondents Nos. 1 to 12 as their employees. It is the case of the respondents Nos. 1 to 12 complainants

themselves that they were shown as the contract labour. In the circumstances, to assume the existence of employer-employee relationship between the parties in the absence of any material in that regard and to arrive at such conclusion on assumption of the jurisdiction to decide the issue relating to unfair labour practice is an error of jurisdictional fact. As rightly submitted by the learned Advocate for the petitioner, the Industrial Court, by assuming the existence of employer-employee relationship between the parties, inspite of it having no jurisdiction to decide the said issue, has thereby illegally assumed jurisdiction in respect of the subject-matter, which the said Act has not conferred on it and thereby, by deciding wrongly the fact of existence of such relationship on which depends the jurisdiction of the Industrial Court to deal with the matter, has allowed the application for interim relief, rendering the order to be ultra vires and bad in law.

22. In the circumstances, therefore, the impugned order cannot be sustained and is liable to be quashed and set aside as far as it relates to the petitioner. The petition, therefore, succeeds. The impugned order, as far as it relates to the petitioner, is hereby quashed and set aside. The complaint (U.L.P.) No. 250/1999 pending before the Industrial Court, Ahmednagar, as far as it relates to the petitioner, stands dismissed. It is however, made clear that this will not preclude the

respondents Nos. 1 to 12, if they so desire, from raising the dispute regarding their status in an appropriate forum in accordance with the provisions of law applicable to them and if so raised and in case it is decided in favour of the said respondents, then to approach the Industrial Court under the said Act. The petition as far as it relates to the respondent No. 13, the same is hereby dismissed. Rule is made absolute accordingly with no orders as to costs.

23. Registry to furnish a copy of this judgment to the Secretary, (Labour), Government of Maharashtra, Bombay with a direction to circulate forthwith the copies of the same to the Industrial Courts and Labour Courts constituted under the said Act in the State of Maharashtra.

*20. Shri Barde, learned Advocate for the Union has strenuously contended that the petitioners, merely to oust the jurisdiction of the Industrial Court have raised a dispute as regards employer- employee relationship. The said dispute is aimed at self-serving purposes. The employer could not have raised the issue as there was no such dispute between the parties and, therefore, the same needs to be disregarded in the light of the Judgment of this Court in the case of **Janprabha Offset Works Vs. Sarva Shramik Santh & Anr.**, reported at 2007 (4) Mh.L.J. 97.*

21. In the **Janaprabha** judgment (*supra*), the Single Judge while considering the law laid down in various judgments, arrived at a conclusion that the Court can scrutinise as to whether the employer has merely raised such a dispute in order to oust the jurisdiction of the Industrial Court. In deciding the said issue, this Court concluded that documentary evidence in the form of muster cum wage register, cash register, bonus register etc. could be considered by the Court so as to defeat a frivolous and vexatious contention as regards non existence of employer- employee relationship.

22. The above said judgment would not be applicable to this case for two reasons. Firstly, that in the instant case, the Industrial Court has arrived at a conclusion that the 71 contract labourers were deployed by the contractors and were ostensibly working through such contractors on the basis of signed contracts between the principal employer and the said contractors. Secondly, the judgment of this Court in **Indian Seamless** (*supra*) was not cited before the Single Judge so as to be able to consider the ratio so laid down while deciding the **Janprabha** case.

23. Shri Barde, has relied upon an unreported judgment of this Court delivered on 18-07-2009 in Writ Petition No. 2889 of 2003 in the matter of **Raju Vishwanath Gaikwad & others Vs. Indian Seamless and Metal Tubes Ltd. & another.**

This Court while considering the contentions of the litigating parties has observed in paragraph 10 of the order that merely because there is a denial of relationship, it was not appropriate to oust the jurisdiction of the Court. The Industrial Court should not have inferred that there is an ouster of jurisdiction merely because such relationship is denied by the Company. The Industrial Court should have tried the jurisdictional issue along with other issues as it is a mixed question of facts and law.

*24. It, therefore, appears to me that the learned Single Judge of this Court desired that the jurisdictional issue be decided along with the main issue while deciding the complaint. In the light of the law laid down in the **Kalyani Steels, Cipla and Indian Seamless** case (supra), the judgment of this Court in the **Raju Vishwanath Gaikwad's** case (supra) would not be applicable.*

*25. Learned Advocate for the petitioners has vehemently contended that the Industrial Court should have considered the effect of the conclusions of this Court in the case of **Indian Seamless** (supra) along with the law laid down in the case of **Kalyani Steel** (supra) and in the case of **Cipla Limited** (supra) He contends that besides a mere mention of the citations in paragraph 14 of the impugned order, the Industrial Court has allowed the interim application in a casual manner, without considering the ratio laid down in the judgments cited.*

26. He points out paragraph No. 23 of the **Indian Seamless judgment** (reproduced here-in-above) to contend that the said judgment was brought to the specific attention of each Labour Court and Industrial Court in Maharashtra. The conclusions drawn by this Court in the **Indian Seamless case** (supra) spell out the limitations therefore imposed on the jurisdiction of the Labour and Industrial Courts in dealing with the complaints of the said nature under the ULP Act.

27. I can gather from paragraph 23 of the **Indian Seamless case** (supra) that the Labour and Industrial Courts in Maharashtra, under the ULP Act, need to observe a certain degree of restraint while dealing with such cases in view of the settled law over the past about thirteen years.

28. Granting interim relief without deciding whether the Court has jurisdiction to deal with the complaint, has, time and again been deprecated by the Apex Court as well as by this Court. In the case of **Dalal Engineering Pvt. Ltd. Vs. Ramrao Bhaurao Sawant & Ors.**, reported at 1991 II CLR, 808, this Court (Coram : B.N. Shrikrishna-J, as he was then) has observed that granting interim relief without deciding the jurisdictional issue is like shooting first and asking questions later, which may be the practice in the wild west, but hardly so in the Courts of law.

29. Paragraph 11 and 14 of the **Dalal Engineering Pvt.**

Ltd.'s case (supra) are as under :-

“11. However wide the sweep of the jurisdiction of the Court to prevent unfair labour practices under the Act, however deep and pervasive the doctrine of social justice, the Labour Court and the Industrial Court are both creatures of statute, and have only so much jurisdiction as is conferred upon them thereunder. They cannot assume or usurp jurisdiction which does not directly flow from the statute under which they function. In the instant case, the jurisdiction to entertain the complaint and grant reliefs therein, interim or final, is conferred on the Labour Court by Section 30 of the Act. Sub-section (1) of the said section deals with final relief and sub-section (2) with that of interim relief. By the judgments of this Court in *The Premier Automobiles Ltd. v. The Engineering Mazdoor Sabha and Ors.* (1982-II-LLJ-73), and *Kirloskar Oil Engines Ltd. v. V. B. Dharurkar & Ors.* (1987-I-LLJ-366), the limits of the jurisdiction to issue an interim order under Section 30(2) of the Act, have been surveyed and delineated by this Court. The two judgments have, in unmistakable terms, laid down that the jurisdiction to issue an order comes into existence only upon a finding that there is an unfair labour practice. If it is a final order, there must be a final finding, and, if it is an interim order, there must at least be a *prima facie* finding of unfair labour practice. This is the bare desideratum without which the Court can issue no order under Section 30. Recourse to

the doctrine of social justice of Part III of the Constitution may not be necessary for this purpose. Apart from the jurisdictional limits indicated in these two judgments, the Labour Court must also realise that the general principles of law are still applicable to trials before it. unless the contrary is indicated by statute. One general principle of law is that an interim order is intended to ensure that the proceeding which is pending before the Court arising out of specific cause of action does not become frustrated by any act of a party, pending the hearing of the proceeding. This is really the reason d'être for an interim order, be it under any statute. At the invitation of Mr. Ganguli, I have anxiously perused the provisions of sub-section (2) of Section 30 and I find nothing therein, which makes a radical departure from the aforesaid established general principle of law and the law laid down by the two judgments of our High Court in The Premier Automobiles (supra) and Kirloskar Oil Engines Ltd. (supra) The only departure, if any, discernible is that the Labour Court has been given power to pass even a mandatory order of withdrawing temporarily the practice complained of which is an issue in the proceeding, which though available to a Civil Court, is exercised, only in extremely rare cases.

14. Before concluding this judgment, I must refer to another aspect of the matter, to which my attention was

drawn by Mr. Singh. That it is the practice of the Court exercising jurisdiction under the Act of passing, lightly, ex parte orders with serious consequences. Section 30 of the Act, in term, does not empower either the Industrial or Labour Court to make any ex parte order. However, the provision appended to sub-section (2) of Section 30 gives an indication that an interim order may, perhaps, be made even ex parte and that it may be reviewed on an application made by the aggrieved party. While I am not willing to accede to the argument that there is no power to grant an ex parte interim order, I have to point out that it is necessary to remember that an ex parte order should be the exception and not the rule, the Court should insist upon the party likely to be affected by the order being given notice, however short, If this is done as a matter of prudent practice, then the Court would be in a better position to appreciate the consequences of an ad interim order and decide whether an ad interim order needs to be made at all. It is possible that the party given notice might come before the Court, and ask for time to be able to show cause properly. Nothing prevents the Court from putting such party to terms and thereafter taking up the application for interim relief for hearing. Shooting first, and asking questions later, may be sound practice in the Wild West, but is hardly so in a Court of Law. The practice of issuing ad interim order, ex parte, as a rule, and then repeatedly postponing applications for vacating the

order, is neither just, nor equitable. Instead of rendering justice, it causes serious prejudice, hardship and injustice to parties.”

30. I find a similar situation in this case. The Industrial Court has come to a prima facie conclusion that there are two labour contractors having appropriate licence under the CLRA Act and who had deployed 71 employees mentioned in Annexure-A to the complaint, in the petitioners establishment. The complaint was therefore rendered untenable. When such conclusions drawn by the Industrial Court are based on a prima facie appreciation of the record available before it, it had no jurisdiction to pass an order that the petitioner shall not terminate the services of such contract labourers, virtually thereby directing the petitioner to continue with the contracts with respondent Nos. 2 & 3 contractors.

31. It is noteworthy that respondent No. 1- Union as well as the respondent Nos. 2 & 3 contractors have not challenged the said conclusions drawn by the Industrial Court in paragraph 12 & 13 of the impugned order.

32. As such, in the light of the above and in view of the law laid down by the Apex Court in the judgments referred herein-above, the impugned order deserves to be quashed and set aside. Since the industrial Court has come to a conclusion on the prima facie appreciation of the record that there is no

employer employee relationship between the petitioner and the workers in Annexure A of the complaint represented by the first respondent, the said complaint (ULP) No. 15 of 2014 is rendered untenable.

33. *However, since these conclusions are drawn under the MRTU and PULP Act, 1971 at a prima facie stage and since the complaint is being dismissed only on the basis of such conclusions, the 71 employees mentioned in Annexure A to the complaint as well as the first respondent-union shall not be precluded from raising an industrial dispute under the ID Act, 1947, before the appropriate forum in the light of the observations of the Apex Court in the case of **Kalyani Steel** and **Cipla limited** judgments (supra) and the **Indian Seamless** judgment (supra)."*

16. In the light of the above and the change that the law has undergone in 2001 and onwards in the light of the judgment of the Apex Court in Kalyani Steel (supra), disputed issues with regard to employer-employee relationship cannot be gone into by the Labour / Industrial Court under the MRTU and PULP Act, 1971.

17. As such, the impugned orders dated 24/11/1998, 11/12/1998 and 21/01/1999 delivered by the Labour Court and Industrial Court are quashed and set aside. Complaint (ULP) Nos. 95/1998 to

105/1998 and Revision (ULP) Nos.12/1999 to 21/1999 stand dismissed.

18. Nevertheless, the respondents would be at liberty to raise individual industrial disputes u/s 2-A of the Industrial Disputes Act, 1947 before the appropriate Government and raise a challenge to their termination. In the event, such disputes are raised on or before 15/12/2015, the time spent by the respondents before the Labour Court, Industrial Court and this Court from 1998 onwards, shall be a good ground for condonation of delay and for considering the claims of the respondents inclusive of monetary benefits.

19. Since the petitioner has preferred only one petition, when in fact the petitioner should have filed 11 independent petitions as there were 11 complaints and 11 revision petitions, the petitioner is directed to deposit the court fee for 10 petitions in this Court on or before 21/11/2015, without fail.

20. As such, the petition is allowed and the Rule is made absolute accordingly.

(RAVINDRA V. GHUGE, J.)