

kps

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4352 OF 2014

BALU SHAMRAO DABHADE AND OTHERS
VERSUS
ALPHA INDUSTRIES

...

Advocate for Petitioners : Shri Barde Parag Vijay.
Advocate for Respondent : Shri S.N.Boiwar h/f Shri S.V.Dankh.

...

**CORAM: RAVINDRA V. GHUGE, J.
DATE :- 28th September, 2015**

Per Court:

1 The Petitioners are aggrieved by the impugned judgment and order dated 10.04.2013 delivered by the Industrial Court, Aurangabad in Complaint (ULP) No.42/2004.

2 Shri Barde, learned Advocate for the Petitioners, submits that the Petitioners, who preferred the complaint, had claimed that the Respondent/ Employer had disallowed them from reporting for duties w.e.f. 01.01.2004. The Complaint (ULP) No.42/2004 was filed on 03.02.2004.

3 The Petitioners had put forth the following prayers in the complaint:-

“(a) *Declare that the Respondents have engaged in unfair*

- labour practice as complained of;*
- (b) Direct the Respondent to cease and desist from such unfair labour practice; and,*
 - (c) Direct the Respondent not to harass, intimidate, discharge or dismiss the complainants for their not tendering the resignation from service;*
 - (d) Direct the Respondent to allow the complainants to resume work in the Factory with full back wages from 01.01.2004 with reasonable interest thereon from month to month till the date of payment, till such time they are allowed to resume work;*
 - (e) Award compensation to the complainants from the Respondent to the tune of 1000%, for subjecting them to the unfair labour practices complained of.”*

4 Shri Barde further submits that the Respondent/ Employer appeared and filed it's Written Statement with preliminary objections on 18.03.2004. The Respondent took a stand that none of the Petitioners were ever appointed or engaged by the Respondent/ Employer. The Petitioners were engaged through the contractor. There was no Employer-Employee relationship between the Petitioners and the Respondent.

5 He further submits that the Respondent stated in the Written Statement that it purchased the welding machine and the said work was outsourced to an independent person, namely, Sunil Ambadas Kadam, Quality Fabricators, Aurangabad, who had engaged the Petitioners and had got the work done from them. It was further stated in the Written Statement that neither had the Respondent paid wages to the Petitioners,

nor did the Respondent get the work done from the Petitioners by direct supervision and control.

6 Shri Barde assails the impugned judgment of the Industrial Court dated 10.04.2013 by which the complaint was dismissed. He submits that an application Exhibit U/23 was filed by the Petitioners calling for certain documents which were in the custody of the Respondent/ Employer. The said documents were not produced despite the orders of the Industrial Court on Exhibit U/23.

7 He, therefore, submits that an adverse inference should have been drawn by the Industrial Court and the complaint should have been allowed since the defence of the Respondent/ Employer that there was no Employer- Employee relationship between the Petitioners and the Respondent, was neither indisputable, nor established before Industrial Court. He, therefore, submits that the impugned judgment deserves to be quashed and set aside.

8 The learned Advocate for the Respondent has supported the impugned judgment and prayed for dismissal of this petition.

9 I have considered the submissions of the learned Advocates

and have gone through the petition paper book and the impugned judgment, with their assistance.

10 It is not in dispute that the Petitioners themselves have not produced any evidence before the Industrial Court. It is also not in dispute that they preferred the complaint on 03.02.2004 after they were not allowed to report for duties w.e.f. 01.01.2004. In effect, they were not in employment as on date of filing of the complaint.

11 The Apex Court in the matter of *Vividh Kamgar Sabha v/s Kalyani Steels*, **AIR 2001 SC 1534 : 2001 (2) SCC 381** has observed in paragraphs 4 and 5 as under:-

- “4. *At this stage it must be mentioned that this Court has also in the case of Central Labour Union (Red Flag) Bombay v. Ahmedabad Mfg. & Calico Printing Co. Ltd. and Ors. reported in (1995) 2 LLJ 765 : 1995 Supp.(1) SCC 175, held that where the workmen have not been accepted by the Company to be its employees, then no complaint would lie under the MRTU & PULP Act. We are in full agreement with the above mentioned view.*
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.”

12 In similar circumstances, the Apex Court, in *Cipla Limited v/s Maharashtra General Kamgar Union* reported in **AIR 2001 SC 1165 : 2001(3) SCC 101**, has observed in paragraphs 7, 8 and 9 as under:-

“7. In this Court it was submitted that the High Court had proceeded entirely on wrong lines. In *Gujarat Electricity Board, Thermal Power Station, Gujarat v. Hind Mazdoor Sabha* (1995(5) SCC 27) the question raised was whether the workers whose services were engaged by the contractors but who were working in the thermal power station of the Gujarat Electricity Board at Ukai can legally claim to be the employees of the Gujarat Electricity Board. The industrial tribunal had adjudicated the matter and held that the workmen concerned in the reference could not be the workmen of the contractors and, therefore, all the workmen employed by the contractor should be deemed to be the workmen of the Board. The industrial tribunal also gave consequential directions to the Board for payment of wages, etc. The award of the industrial tribunal was upheld by the High Court in appeal. The contention put forth before this Court was that after coming into force of the Act it is only the appropriate Government, which can abolish the contract labour system after consulting the Central Board or the State Board, as the case may be, and no other authority including the industrial tribunal has jurisdiction either to entertain such dispute or to direct abolition of the contract labour system and neither the appropriate Government nor the industrial tribunal has the power to direct that the workmen of the erstwhile contractor should be deemed to be the workmen of the Board. The Central Government or the industrial tribunal, as the case may be, can only direct the abolition of the contract labour system as per the provisions of

the Act but it does not permit either of them to declare the erstwhile workmen of the contractor to be the employees of the principal employer. As to what would happen to an employee engaged by the contractor if contract employment is abolished is another moot question yet to be decided by this Court. But that is not a point on which we are called upon to decide in this matter.

8. *But one thing is clear – if the employees are working under a contract covered by 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. By this process, workmen repudiate their relationship with the contractor under whom they are employed but claim relationship of an employee under the appellant. That exercise of repudiation of the contract with one and establishment of a legal relationship with another can be done only in a regular industrial tribunal/court under the I.D.Act.*

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 workman 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. (1995 Supp (1) SCC 175), which view was reiterated by us in Vividh Kamgar Sabha v.*

Kalyani Steels Ltd. & Anr., (2001) 2 SCC 381.”

13 Since the Industrial Court had no evidence before it to draw a conclusion that there was direct supervision and control by the Respondent/ Employer over the Petitioners or there was a privity of contract of employment between the Petitioners and the Respondent, it had no option, but to reject the complaint.

14 Notwithstanding the above, the Petitioners are not remedy-less. In the event, their grievance is that the contract as indicated by the Respondent/ Employer, is sham or bogus or is a camouflage and the corporate veil is required to be lifted to find out whether, there was any direct relationship between the Petitioners and the Respondent, the Petitioners can very well raise an industrial dispute on this count before the appropriate Government in the light of the ratio laid down by the Apex Court in the cases of Kalyani Steel and Cipla (supra).

15 Though there is no limitation prescribed for raising an industrial dispute, time spent by the Petitioners before the Industrial Court from 03.02.2004 and subsequently, before this Court till the passing of this order, shall be a good ground for condonation of delay, if any, while raising an industrial dispute.

16 The grievance of the Petitioners is that once the Industrial Court came to a conclusion that it had no jurisdiction in the matter, it should not have gone into the merits of the claim put forth by the Petitioners. Shri Barde, therefore, rightly submits that these conclusions are likely to come in the way of the Petitioners, if they raise an industrial dispute.

17 I am in agreement with the submissions of Shri Barde that once the complaint was rendered untenable, the Industrial Court should not have gone into the details of the contentions and averments put forth by the Petitioners.

18 Nevertheless, these conclusions are to be restricted only to the issue considered by the Industrial Court whether, it had jurisdiction over the matter or not. As such, the conclusions of the Industrial Court shall stand restricted only to that extent and shall not come in the way of the Petitioners if they raise an industrial dispute.

19 This Writ Petition is, therefore, disposed of with the above observations.

(RAVINDRA V. GHUGE, J.)