

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2805 OF 2002

1. Jalinder Ranganath Lahare,
Age-28 years, Occu-Unemployed,
At Post : Malvi Pimpalgaon,
Tq. And Dist. Ahmednagar,
2. Appasaheb Ramdas Mate,
Age-28 years, Occu-Unemployed,
At Post : Bhorkar, Tq. Shrirampur,
Dist.Ahmednagar,
3. Subhash Vittalrao Ghate,
Age-29 years, Occu-Unemployed,
At Post : Dhotre, Tq.Kopargaon,
Dist.Ahmednagar,
4. Dattatraya Gyandeo Dhangat,
Age-28 years, Occu-Unemployed,
At Post : Berdapur, Tq.Shrirampur,
Dist.Ahmednagar,
5. Kailas Kashinath Mane,
Age-31 years, Occu-Unemployed,
At Post : Gamgaon, Tq.Gangapur,
Dist.Ahmednagar,
6. Lahanu Bansi Rodke,95
Age-28 years, Occu-Unemployed,
At Post : Badgaon Savtal,
Tq.Parner, Dist.Ahmednagar,
7. Bhimrao Sukhdeo Deshmukh,
Age-28 years, Occu-Unemployed,
At Post : Pargaon Ghumra,
Tq.Patoda, Dist. Beed.

PETITIONERS

VERSUS

1. Indian Seamless & Metal Tubes Ltd.,
C-1, Nagapur Industrial Area,
Ahmednagar, Through the Manager,
2. Sodhi Fabricators and Erectors,
Near Sapkal Hospital, Savedi,
Ahmednagar

RESPONDENTS

WITH
WRIT PETITION NO.1087 OF 2003

1. Rajendra Bhanudas Jadhav,
Age-26 years, Occu-Unemployed,
At Post : Sarola Kasar, Tq. And
Dist.Ahmednagar,
2. Banudas Babaji Borate,
Age-42 years, Occu-Unemployed,
At Post : Jamgaon, Tq. Gangapur,
Dist.Ahmednagar,
3. Bhimrao Dada Kharat,
Age-36years, Occu-Unemployed,
At Post : Hinganwade, Dist.Ahmednagar,
4. Yamnaji Kisan Jhavare,
Age-40 years, Occu-Unemployed,
At Post : Takli Tokswar, Tq.Parner,
Dist.Ahmednagar,
5. Keshav Bajirao Jhade,
Age-27 years, Occu-Unemployed,
At Post : Miri, Tq. Pathri,
Dist.Ahmednagar

PETITIONERS

Vs.

1. Indian Seamless & Metal Tubes Ltd.,
C-1, Nagaapur Industrial Area,
Ahmednagar,
Through, the Manager,

2. Sodhi Fabricators and Erectors,
Near Sapkal Hospital, Savedi,
Ahmednagar

Mr.Pradip Shahane, Advocate for the petitioners.
Mr.V.N.Upadhye, Advocate for respondent No.1.
Petition is dismissed as against respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 18/02/2016

ORAL JUDGMENT :

1. These petitions were admitted by this Court on 16/06/2008 and 11/02/2004 respectively and the hearing of these petitions was expedited.

2. I have heard Mr.Shahane, learned Advocate for the petitioners and Mr.Upadhye, learned Advocate on behalf of the respondent / Management for quite some time. Both the learned Advocates have taken me through the minute details of their pleadings before the Industrial Court and the material available. Considering the order that I would be passing hereunder, I am not adverting to their entire submissions since it would result in making certain observations on the merits of the matter, when I am inclined to remand Complaint ULP No.35/1999 and 46/1999 to the Industrial Court, Ahmednagar.

3. The undisputed facts before this Court are as under :-
- [a] The petitioners were performing work in the respondent / premises at the time of the filing of Complaint (ULP) No.35/1999 and 46/1999.
 - [b] The petitioners contended in the complaint that they have been working with the respondent No.1/Management.
 - [c] Respondent No.2 is a Labour Contractor, which is a camouflage at the behest of the Management for preventing a claim for regularization.
 - [d] Respondent No.1 / Management has categorically stated in the written statement that none of these petitioners were employed by it and there is no employer-employee relationship.
 - [e] After the written statements were filed by the respondent /Management as well as the Contractor, issues were cast.
 - [f] The Industrial Court held that all issues can be determined together.
 - [g] The recording of oral and documentary evidence on the part of the petitioners / complainants was complete.
 - [h] Before commencing the recording of evidence of the Management, an application Exh.C-24 and C-18 were filed praying for the dismissal of the complaints in the light of the judgment of the Apex Court in the case of Vividh Kamgar Sabha Vs. Kalyani Steels Ltd., and another, 2001(1) CLR 532 and Cipla Limited Vs. Maharashtra General Kamgar Union and others, 2001(1) CLR 754.
 - [i] The petitioners opposed the applications on the ground that since the issues have been framed and recording of evidence is completed to the extent of the complainants, the evidence of the Management be recorded and the complaint be decided.

- [j] However, the Industrial Court, by its order dated 05/11/2001, has dismissed the two complaints on the basis of the averments made by the respondent No.1/Management and the Contractor.
- [k] It was concluded that since the Management has denied employer-employee relationship and as there is a settlement between the Management and the recognized Union to absorb the contract labourers as per the list annexed to the settlement, the Industrial Court would not have jurisdiction to deal with the complaint.

4. Mr.Shahane, learned Advocate for the petitioners has relied upon the following judgments :-

1. *Bhilwara Dugdh Utpadak Sahakari S.Ltd., Vs. Vinod Kumar Sharma Dead by LR's and others, [2011 STPL (Web) 751 SC],*
2. *Akhil Bhartiya Shramik Kamgar Union Vs.Buildtech Constructions and others, [2004 (II) CLR 179],*
3. *Lokmat Vs. Dnyaneshwar Haribhai Kadu and others, [2002 (93) FLR 538],*
4. *Hindustan Coca Cola Bottling S/W Pvt.Ltd., Vs. Bhartiya Kamgar Sena and Others, [2001(III) CLR 1025]*
5. *Maharashtra State Power Generation Company Ltd., Vs. Anant Narhari Sonar, [2013(6) LJ Soft 390].*

5. Contention is that the Industrial Court could not have passed the impugned order dated 05/11/2001 when the trial of the case had commenced and the recording of oral evidence of the complainants

had concluded. A preliminary point as to whether the complaint is maintainable was already cast and the parties were directed to lead evidence on all the issues.

6. The Industrial Court has dismissed the complaint without there being any evidence led by the respondent / Management to establish that there was a Contractor and the petitioners were contract labourers from the date of their first deployment. In a situation wherein evidence of one side was recorded and the respondent side was to adduce evidence, the Industrial Court could not have suddenly taken up the matter on a preliminary issue without recording of evidence on the said issue.

7. The Industrial Court has only relied upon the contents of the written statement while dismissing the complaint. The evidence adduced by the petitioners was not even referred to, much less discussed and the respondent/Management was yet to lead its evidence when the impugned order dated 05/11/2001 was passed.

8. The petitioners have also challenged an order dated 22/08/2000 by which the proposed amendment has been refused by the Industrial Court. The petitioners had sought to amend the

complaint to the extent that they were retrenched and they deserve to be reinstated with continuity and back wages.

9. Mr.Shahane contends that since they were retrenched during the pendency of the complaint, the Industrial Court would have jurisdiction of dealing with the illegal retrenchment while considering the complaint.

10. In so far as the order dated 22/08/2000 is concerned, I find that the same is sought to be challenged in a petition filed on 10/04/2002 and which has been circulated for the first time on 28/08/2003. Moreover, the complaint preferred by the petitioners was with regard to regularization in service and the said complaint would, therefore, be restricted to the cause of action existing on the date it was filed. The issue as to whether the termination of the petitioners amounts to illegal retrenchment or not, would not be within the domain of the Industrial Court. I, therefore, do not find any perversity in the order dated 22/08/2000 passed by the Industrial Court, by which the amendment application, was rejected.

11. The learned Apex Court in paragraph Nos.3 to 10 of its judgment in the matter of Bhilwara case (supra) has observed as

under :-

“3. This Appeal reveals the unfortunate state of affairs prevailing in the field of labour relations in our country.

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.

4. 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.

5. 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.

7. The facts of the case are given in the judgment of the High Court dated 23.08.2004 and we are not repeating the same here. It has been clearly stated therein that subterfuge was

resorted to by the appellant to show that the workmen concerned were only workmen of a contractor. The Labour Court has held that the workmen were the employees of the appellant and not employees of the contractor. Cogent reasons have been given by the Labour Court to come to this finding. The Labour Court has held that, in fact, the concerned workmen were working under the orders of the officers of the appellant, and were being paid Rs 70/- per day, while the workmen/employees of the contractor were paid Rs. 56/- per day.

8. We are of the opinion that the High Court has rightly refused to interfere with this finding of fact recorded by the Labour court.

9. The Judgment of this Court in [Steel Authority of India vs. National Union Waterfront Workers](#) (2001) 7 SCC 1 has no application in the present case. In that decision the question was whether in view of [Section 10](#) of the Contract Labour (Regulation and Abolition) Act, 1970 the employees of contractors stood automatically absorbed in the service of the principal employer. Overruling the decision in [Air India Statutory Corporation vs. United Labour Union](#), (1997) 9 SCC 377 this Court held that they did not.

10. In the present case that is not the question at all. Here the finding of fact of the Labour Court is that the respondents were not the contractor's employees but were the employees of the appellant. The SAIL judgment (Supra) applies where the employees were initially employees of the contractor and later

claim to be absorbed in the service of the principal employer. That judgment was considering the effect of the notification under [Section 10](#) of the Act. That is not the case here. Hence, that decision is clearly distinguishable.”

12. This Court, in the matter of Buildtech Constructions, Lokmat (supra), Hindustan Coca Cola (supra) and Maharashtra State Power Generation (supra) has laid down the law that a mere denial of employer-employee relationship in the written statement is not enough to oust the jurisdiction of the Labour Court or the Industrial Court. There must be some documents on record to support the plea taken in the written statement. The Labour or Industrial Court cannot dismiss a complaint merely because the employer has denied relationship.

13. In the Hindustan Coca Cola case (supra), the learned Division Bench of this Court concluded that the Trial Court also has to consider whether the employer-employee relationship was recognized at any stage in between the parties and as to whether the relationship is disputed only after a complaint has been filed.

14. It would be apposite to reproduce paragraph Nos. 16 and 17 of

the Hindustan Coca Cola judgment (supra) as under :-

16. Mr. Cama also drew our attention to an unreported decision of the learned single Judge of this Court (Khandeparkar, J.) in Indian Seamless Metal Tubes Limited v. Sunil Iwale and Ors.. Writ Petition No. 1433 of 2000 decided on 5th July, 2001. In that case the learned Judge has not agreed with the view taken by Kochar, J. in the present case and held that in view of the decisions of the Supreme Court in Cipla Ltd. and Kalyctni Steels Ltd. that only precondition to seek remedy under the MRTU & PULP Act is necessity of existence of employer-employee relationship between the parties and when its existence is not already established or is disputable, the party has to first seek relief under the Central Act, i.e. the Industrial Disputes Act or the Bombay Act, i.e. the Bombay Industrial Relations Act, and if successful therein to seek remedy under the said Act thereafter. We are in agreement with the observations of the learned Single Judge but with a rider that in cases where the employer-employee relationship was recognised at some stage and thereafter it was disputed, the Industrial Court has jurisdiction to decide this issue as an incidental issue under Section 32 of the MRTU & PULP Act.

17. In his judgment Khandeparkar, J. has referred to a judgment of another single Judge Rebello, J. in Writ Petition No. 1365 of 2001, Raigad Mazdoor Sangh v. Vikram Bapat. Rebello, J. has, inter alia, held that while deciding the question of maintainability of the complaint under MRTU & PULP Act, the Industrial Court is bound to frame an issue as a preliminary

issue on that count and after framing the preliminary issue decide the point of jurisdiction. Khandeparkar, J. has, however, disagreed with this view and held that the question of framing such issue does not arise if on a perusal of the complaint under the MRTU & PULP Act it is found that there is no jurisdiction to try the complaint. He observed :

"20. It was also sought to be contended that mere denial of status of the complainant as that of employee by the opponent, cannot non-suit the employees and such denial would not oust the jurisdiction to the Industrial Court to ascertain the fact situation by framing issues and asking the parties to lead evidence in mat regard, and to decide the same, possibly by summary manner. In fact, similar was the contention sought to be raised in Vividh Kamgar Sabha's case by saying that such denials can be raised in each and every case to defeat the claim of the employee, the contention was rejected by the Apex Court. Indeed, a question of framing of issue or holding of summary inquiry does not arise at all. Once, it is clear that the Industrial Court under the said Act has no jurisdiction to decide the issue relating to employer-employee relationship, the occasion for framing of issue on the point which is beyond its jurisdiction cannot arise. Once it is clear that the jurisdiction of the Industrial Court depends upon the fact of existence of employer-employees relationship between the parties which is a jurisdictional fact, which should exist to enable the Industrial Court to assume jurisdiction

to entertain the complaint under the said Act, in the absence of the same, any attempt on the part of the Industrial Court to adjudicate upon the issue of such relationship would amount to mistake of fact in relation to jurisdiction."

We are in respectful agreement with the above view expressed by Khandeparkar, J. If, on a bare reading of the complaint, the Industrial Court or the Labour Court as the case may be, is satisfied that it has no jurisdiction to decide the complaint as there is no undisputed or indisputable employer-employee relationship, the occasion for framing an issue on that count would not arise. If the Industrial Court or the Labour Court is satisfied that there is no undisputed or indisputable the employer/employee relationship, it cannot assume jurisdiction to entertain the complaint and the complaint will have to be dismissed as not maintainable."

15. I find that the Industrial Court has delivered the impugned order dated 05/11/2001 in peculiar circumstances. Issues with regard to the pleadings were cast. Parties were permitted to lead oral and documentary evidence. The evidence on behalf of the petitioners / original complainants was recorded and concluded. Only because the respondent/Management filed an application prior to stepping into the witness box, led the Industrial Court to pass the impugned order dismissing the complaint. Neither did it consider the

evidence adduced by the workers, nor could it consider the said evidence since the respondents had not led any evidence. In my view, having framed a jurisdictional issue and having travelled halfway through the recording of oral evidence, the Industrial Court should not have entertained application Exh.C-24 in Complaint (ULP) No.35/1999 and C-18 in Complaint (ULP) No.46/1999.

16. In the light of the above, the impugned order dated 05/11/2001 on Exhibit C-24 and C-18, delivered by the Industrial Court is quashed and set aside. Application C-24 and C-18 stand rejected in the light of the recording of oral evidence being underway. Complaint (ULP) No.35/1999 and 46/1999 are restored to the file of the Industrial Court so as to enable the respondents to lead oral and documentary evidence.

17. The litigating sides shall appear before the Industrial Court on 14/03/2016. Since respondent No.2 has not appeared in this matter, the Industrial Court may issue fresh notice to respondent No.2. Needless to state, after recording the oral evidence of the respondents, the Industrial Court shall decide Complaint (ULP) No.35/1999 and 46/1999 as expeditiously as possible, and preferably on or before 30/12/2016.

18. These petitions are, therefore, partly allowed and Rule is made partly absolute in the above terms.

19. At this stage, Mr.Shahane submits that the petitioners have not challenged their termination and may desire to do so. Needless to state, since the termination is a separate cause of action, which an employee can assail, this Court need not comment upon the said aspect and the said issue is, therefore, left open to the petitioners to deal with as a separate cause of action.

20. R & P in Complaint (ULP) No.35/1999 and 46/1999 be sent back to the Industrial Court, Ahmednagar forthwith.

(RAVINDRA V. GHUGE, J.)