

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2007 OF 2016

1. Rameshkumar Kisan Ghule,
Age-Major, Occu-Service,
R/o Bakwal Nagar, Waluj,
Aurangabad, Dist.Aurangabad,
2. Dattu Sudam Pawar,
Age-Major, Occu-Service,
R/o C/o Bakwal Nagar, Waluj,
Aurangabad, Dist.Aurangabad,
3. Anil Vasant Pawar,
Age-Major, Occu-Service,
R/o C/o Bakwal Nagar, Waluj,
Aurangabad, Dist.Aurangabad,
4. Sahebrao Nathu Patil,
Age-Major, Occu-Service,
R/o C/o Bakwal Nagar, Waluj,
Aurangabad, Dist.Aurangabad,
5. Kiran Ishwar Mahajan,
Age-Major, Occu-Service,
R/o C/o Bakwal Nagar, Waluj,
Aurangabad, Dist.Aurangabad,
6. Subhash Ishwar Mahajan,
Age-Major, Occu-Service,
R/o C/o Bakwal Nagar, Waluj,
Aurangabad, Dist.Aurangabad,
7. Sanjay Ramnath Rane,
Age-Major, Occu-Service,
R/o C/o Bakwal Nagar, Waluj,
Aurangabad, Dist.Aurangabad,
8. Sunil Ganesh Matlabe,
Age-Major, Occu-Service,
R/o C/o Bakwal Nagar, Waluj,

Aurangabad, Dist.Aurangabad,

9. Prakash Sakharam Sale,
Age-Major, Occu-Service,
R/o C/o Bakwal Nagar, Waluj,
Aurangabad, Dist.Aurangabad,
10. Raju Goma Buwade,
Age-Major, Occu-Service,
R/o C/o Bakwal Nagar, Waluj,
Aurangabad, Dist.Aurangabad,
11. Prakash Kisanrao Borade,
Age-Major, Occu-Service,
R/o C/o Bakwal Nagar, Waluj,
Aurangabad, Dist.Aurangabad,
12. Sukhdeo Haribhau Kharat,
Age-Major, Occu-Service,
R/o C/o Bakwal Nagar, Waluj,
Aurangabad, Dist.Aurangabad,
13. Parmeshwar Sakharam Warpe,
Age-Major, Occu-Service,
R/o C/o Bakwal Nagar, Waluj,
Aurangabad, Dist.Aurangabad,
14. Bharat Mugaji Waghmare,
Age-Major, Occu-Service,
R/o C/o Bakwal Nagar, Waluj,
Aurangabad, Dist.Aurangabad,
15. Santosh Gorakshnath Shisode,
Age-Major, Occu-Service,
R/o C/o Bakwal Nagar, Waluj,
Aurangabad, Dist.Aurangabad,
16. Shivaji Vitthal Sonwane,
Age-Major, Occu-Service,
R/o C/o Bakwal Nagar, Waluj,
Aurangabad, Dist.Aurangabad,

17. Rahul Bhika Choudary,
Age-Major, Occu-Service,
R/o C/o Bakwal Nagar, Waluj,
Aurangabad, Dist.Aurangabad.

PETITIONERS

VERSUS

1. M/s Speciality Polyfilms (I) Pvt.Ltd.,
F-89, MIDC Area, Waluj,
Aurangabad, Dist.Aurangabad,
Through its Factory Manager,

2. Aurangabad Multiservices,
101/102, Akshaydeep Plaza,
9, Town Center, Jalna Road,
Aurangabad,
Through its Proprietor

RESPONDENTS

Mr.T.K.Prabhakaran, Advocate for the petitioners.
Mr.B.R.Kawre, Advocate for respondent No.1.
Mr.Y.R.Marlapalle, Advocate for respondent No.2/Intervenor.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 03/08/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioners/employees are aggrieved by the order dated 02/12/2015 passed by the Industrial Court, Aurangabad, whereby an application Exh.C-8 filed by respondent No.2 herein seeking intervention in Complaint (ULP) No.102/2010, has been allowed.

3. The strenuous submissions of Mr.Prabhakaran, learned Advocate for the petitioners, can be summarized as under :-

- [a] The petitioners, who are original complainants, have not arrayed the intervenor and have not levelled any allegations against it, much less, put forth any prayers for seeking relief against the intervenor.
- [b] The case of the petitioners is that they are the employees of respondent No.1 / Industry and they have been consistently working on the manufacturing process / core activities of the said Industry.
- [c] The details of the work performed by them, have been mentioned below paragraph No.2 of the complaint, extensively.
- [d] Considering the law laid down by the Hon'ble Supreme court in the matter of Vividh Kamgar Sabha Vs. Kalyani Steels Limited, reported in 2001[1] CLR 532 and in the matter of Cipla Limited Vs. Maharashtra General Kamgar Union, reported in 2001 LLR page 305 =2001(2) Bom.C.R. (S.C.) 822 : (2001) 2 SCC 381, the Industrial Court, which is presently dealing with the preliminary issues framed, will have to see as to whether the respondent/Industry has created a camouflage by setting up respondent No.2 / Contractor so as to defeat the claims of the petitioners.
- [e] In the event, the Industrial Court concludes that employer / employee relationship is not visible between the petitioner and the respondent / Industry, the pending complaint would be dismissed in view of the above Apex Court orders.
- [f] The Industrial Court is not required to scrutinize at this stage as to whether the petitioners are the employees of respondent

No.2 / Contractor.

- [g] The respondent/Industry can always lead evidence and produce respondent No.2 / Contractor as it's witness and attempt to prove that there is no relationship between the petitioners and the respondent/Industry.
- [h] The petitioners are the masters of their complaint and if the complaint suffers either for non-joinder or mis-joinder of parties, the petitioners are willing to take the risk.

4. Mr.Kawre, learned Advocate for the respondent No.1/Industry submits that the entire record with regard to the petitioners lies with respondent No.2/Contractor. The documents are in the exclusive custody of respondent No.2. Author of the documents has to prove the documents before the Court. Addition of respondent No.2 would not cause any hardship or grave injustice to the petitioners.

5. Mr.Marlapalle, learned Advocate appearing on behalf of respondent No.2 / Contractor submits that there is employer / employee relationship between the petitioners and respondent No.2 / Contractor. They had applied for contractual employment with respondent No.2/Contractor. Documents with regard to their interviews and selection as "Contract Labourers" is with respondent No.2. Personal details and documents with regard to payment of salaries, PF contributions are in its custody. Presence of respondent

No.2 would assist the Industrial Court in deciding as to whether the complaint would be maintainable or not.

6. I have considered the submissions of the learned Advocates.

7. There is no dispute that the petitioners have not made any averments or prayers against respondent No.2 / Contractor. It is obvious that such claims or prayers could not have been put forth by the petitioners since the complaint would have been rendered untenable in the light of the ratio laid down by the Hon'ble Supreme Court in the matters of Kalyani Steels and Cipla Limited (supra).

8. It is given to understand that the Industrial Court is presently dealing with the issue of the maintainability of the complaint. Naturally, the contention of the petitioners in paragraph No.2 onwards of its complaint, as regards working on the main manufacturing processes, will also have to be scrutinized by the Industrial Court while deciding whether there was any supervision, control or direction over the petitioners by the respondent / Industry in their day to day activities.

9. An interlocutory order is assailed before this Court. The

addition of respondent No.2 would not cause any detriment or inconvenience to the petitioners for the reason that the purported documents with regard to the selection and contractual appointment of the petitioners, could also be scrutinized by the Industrial Court while deciding the preliminary issues.

10. I am not required to deal with the merits of the rival contentions of the parties in this judgment so as to avoid any observations on their respective claims. Nevertheless, the satisfaction of the Industrial Court with regard to the assistance that may be rendered by the addition of the party, does not require an interference unless the conclusion of the Industrial Court is perverse or erroneous.

11. The issue before the Industrial Court is peculiar. The Industrial / Labour Courts frequently deal with such issues in the light of the view taken by the Apex Court in Kalyani Steels and Cipla judgment (supra), which are followed by several other judgments. A claim of the workers would be entertained by the Court under the MRTU and PULP Act, 1971 only if it is against the employer. In short, the exercise of searching as to who is the actual employer, is not to be undertaken by the Court under the Act of 1971 in view of the Apex

Court judgments.

12. As such, since I have observed that the Industrial Court will also consider the effect of the petitioners working in the manufacturing process of the respondent / Industry, provided it is so established, I do not find that any interference is called for in this matter. Needless to state, the addition of respondent No.2/ Contractor shall not lead to unnecessary delay in the proceedings before the Industrial Court and it is expected that the added respondent shall assist the Industrial Court in whatever form as it may think proper without causing delay in the adjudicatory process.

13. As such, this petition is dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)