

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

WRIT PETITION NO. 10270 OF 2014

Sarva Udyog Kamgar Sangh,
Tahsil Kacheri Road, Shrirampur,
Taluka Shrirampur, District Ahmednagar.
Through its Secretary,
Vasant Bajirao Ransur,
Age : 72 years, Occ : Social Worker,
R/o As above.

...PETITIONER

-VERSUS-

- 1 Chitali Distilleries Limited,
Chitali, Aaswani Vibhag,
Taluka Rahata, District Ahmednagar.
Through it's Executive Officer.
- 2 Managing Director,
John Distilleries Limited,
Post Chitoli, Taluka Rahata,
District Ahmednagar.

...RESPONDENTS

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Advocate for Petitioner : Shri Barde Parag Vijay

Advocate for Respondents 1 and 2 : Shri Ashok Patil a/w Shri V.P.Golewar
h/f Shri Joshi Arvind Ramakant.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 13th January, 2016

Oral Judgment:

- 1 Rule. Rule made returnable forthwith and heard finally by the

consent of the parties.

2 I have heard Shri Barde, learned Advocate for the Petitioner and Shri A.V. Patil along with Shri Golewar, learned Advocates for the Respondents, at length.

3 A peculiar situation has arisen before this Court. The impugned judgment and award dated 19.10.2013 is delivered on the issues that were not referred to the Labour Court by the order of the Deputy Commissioner of Labour, Nashik Division, Nashik under Section 12(5) of the Industrial Disputes Act, 1947. In the light of the order that I would be passing, I am not required to consider the entire submissions of the learned Advocates which have been canvassed at length.

4 The Deputy Commissioner of Labour, Nashik Division, Nashik by its order dated 19.07.2006 has referred an industrial dispute for adjudication to the Labour Court involving 17 workmen represented by their Union. The industrial dispute that was raised by the Petitioner Union on 17.06.2003 was with regard to the Government Notification dated 04.06.1997 by which the Contract Labour System was abolished in some areas under the erstwhile Western Maharashtra Development Corporation Limited (herein after referred to as “the WMDCL”). The distillery unit of

the WMDCL was transferred to Respondent No.1- Chitali Distilleries Limited. It is only in July, 2008 that Respondent No.2- John Distilleries Limited took over from Respondent No.1.

5 It is not in dispute that a specific agreement was arrived at between Respondent No.2 and Respondent No.1 under Section 25(F) of the Industrial Disputes Act, 1947 whereby, 51 workmen on the rolls of the erstwhile WMDCL as on 04.06.1997 were continued in employment by Respondent No.1. As such, by change in management, the services of these employees were continued. It is also undisputed that 17 workmen represented by the Petitioner Union were not in employment either through a contractor or through any principal employer as on 04.06.1997.

6 The reference was made by the Deputy Commissioner of Labour, Nashik Division, Nashik vide its order dated 19.07.2006 which reads as under:-

“Whether, Shri Meghraj Mahadeo Mokashi & 16 others are entitled to be absorbed with the employer viz. Chitali Distillery Ltd., Chitali, Tal.Rahata, Dist.Ahmednagar, upon abolition of Contract Labour System in the said establishment vide Govt. Notification dated 04.06.1997.”

7 It is apparent from the order of reference that the only issue before the Labour Court was as to whether, these 17 employees are

entitled to be absorbed by Respondent No.1- Chitali Distilleries Limited. Since Respondent No.2 stepped into the shoes of Respondent No.1, an application Exhibit U/16 was moved by the Petitioner Union in Reference (IDA) No.19/2006 and the same was allowed by the Labour Court by the order dated 28.10.2010 by which Respondent No.2 was arrayed as the First Party-2. It is undisputed that the reference was not transmitted to the Deputy Commissioner of Labour by the Labour Court for correction/ addition of a party as is required to be done.

8 It is also undisputed that the Tribunal/ Court to which a reference is referred for adjudication, is required to frame an issue only with regard to the order passed by the Deputy Commissioner of Labour which is under the schedule annexed to the order of reference. Hence, the schedule reproduced above should have been the issue before the Labour Court.

9 The Labour Court has framed the following issues with their answers:-

Sr.No.	Issues	Findings
1	Whether, in view of the provisions of the Section 59 of the MRTU & PULP Act, 1971, the present reference is maintainable in law?	No.

2	Whether, the present reference having been raised after lapse of more than 7 years, is required to be treated as stale and thus, not maintainable in law?	Yes
3	Whether, in view of decision of Labour Court in (ULP) No.111/1991 dated 01.02.1994 the present reference is barred by principles of res-judicata?	Yes
4	Whether the present reference suffers from non-joinder and mis-joinder of parties?	No.
5	Whether, the second party proves that the services of it's members have been illegally terminated by first party w.e.f. 04.06.1997?	No.
6	If yes, whether, the second party further proves that it is entitled for the reliefs of reinstatement of its members with continuity of service and back wages from both, first party No.1 and 2, jointly and severally?	No.
7	What order?	As per final award.

10 These 17 workmen represented by the Petitioner Union were earlier terminated in 1991. They preferred Complaint (ULP) No.111/1991 before the Labour Court. Their prayers against the principal employer were rejected by the judgment dated 01.02.1994. The said judgment of the Labour Court was challenged in Revision (ULP) No.9/1994 before the Industrial Court under Section 44 of the MRTU & PULP Act, 1971.

11 Subsequent to the above development, the Government Notification dated 04.06.1997 was issued. The Petitioner preferred

Complaint (ULP) No.42/1999 before the Industrial Court seeking absorption in service. By the time, the said complaint as well as the revision petition was ripe for hearing, the Apex Court delivered its judgment in the case of *Vividh Kamgar Sabha vs Kalyani Steels Ltd.* reported in **2001(1) CLR 532** followed by the judgment of the Apex Court in the case of *Cipla Limited v/s Maharashtra General Kamgar Union* reported in **2001(1) CLR 754**. By its conclusions in paragraph 5 in Kalyani Steel (supra) and paragraphs 7 and 8 in the Cipla Limited (supra), the Apex Court concluded that no ULP complaint under the MRTU & PULP Act, 1971 (Maharashtra Act) can be entertained by the Labour Court or the Industrial Court and that a dispute as regards a sham and bogus contract, for lifting the corporate veil and to establish relationship with the principal employer, can be raised only under the Industrial Disputes Act, 1947 by raising an industrial dispute.

12 As a result of these judicial pronouncements by the Apex Court, the Industrial Court by its common order dated 30.10.2002 rejected Revision (ULP) No.9/1994 and dismissed Complaint (ULP) No.42/1999 on the ground that they are not tenable.

13 In the peculiar facts as above, on the one hand, the Labour Court adjudicated upon Complaint (ULP) No.111/1991 and on the other

hand, the revision which is a statutory remedy under Section 44 of the MRTU & PULP Act, 1971, has been rejected by the Industrial Court as being untenable as the nature of the cause of action was untenable owing to the judgments of the Apex Court in the cases of Kalyani Steel and Cipla Limited (supra). As a result, though the Labour Court dismissed the complaint of the Petitioner, the Industrial Court did not consider its revision petition on the ground that the law has changed and the grievance of the Petitioner is no maintainable under the MRTU & PULP Act, 1971, thereby rendering the petitioner remedy-less.

14 In my view, the decision of the Industrial Court will relate back to the decision of the Labour Court and as such, in these peculiar facts of the case, it has to be construed that there was no adjudication on the cause of action set out in Complaint (ULP) No.111/1991. The Petitioner Union is, therefore, at liberty to deal with this issue as may be permitted in accordance with law.

15 In the light of the above facts, I find that the Labour Court was not required to frame Issue Nos.1, 2 and 3 as are reproduced above. The reference made to the Labour Court was simply with regard to the abolition of contract labour system by the Government Notification dated 04.06.1997 and whether, the 17 workmen could claim regularization/

absorption.

16 Shri Patil places reliance upon the judgment of the Apex Court in the case of *Steel Authority of India vs. National Union Water Front Workers and others etc. etc.* (a five judges Bench) decided on 30.08.2001, **2001 (III) CLR 349.**

17 In my view, Issue Nos.4, 5 and 6 reproduced above, were the only issues that could be cast since Respondent No.1 had raised an issue that now there is new owner who has stepped into the shoes of the First Party before the Labour Court. Pursuant to the order below application Exhibit U/16, Respondent No.2 herein has been arrayed as the First Party-
2. Issue No.4, therefore, does not survive pursuant to the said order.

18 The Labour Court has rejected Reference (IDA) No.19/2006 by answering it in the negative on the ground that the reference is not maintainable owing to the bar of Section 59 of the MRTU & PULP Act, 1971 (the State Act), the decision of the Labour Court in Complaint (ULP) No.111/1991 dated 01.02.1994 is a Bar by the principles of res-judicata and the reference is also not maintainable because there is a seven years' delay and the industrial dispute is a stale dispute.

19 I have concluded that the decision of the Labour Court dated 01.02.1994 in relation to Complaint (ULP) No.111/1991 is unconnected with the terms of reference dated 19.07.2006. I have also concluded that in peculiar facts of this case, since the decision of the Labour Court dated 01.02.1994 cannot be questioned and its legality cannot be looked into as the Industrial Court has rejected the revision, that would, therefore, amount to no adjudication. The change in law would, therefore, affect the complaint as well in the sense that even if the revision was allowed and the complaint was to be remanded back to the Labour Court, it cannot be adjudicated upon in the light of the judgments of the Apex Court in the cases of Kalyani Steel and Cipla Limited (supra).

20 It is trite law that there is no limitation prescribed under the Industrial Disputes Act, 1947 for raising an industrial dispute under Section 2(A) or under Section 2(k). In any case, lapse of seven years cannot be construed to be delay and the reference could not have been rejected by the Labour Court on this ground.

21 In the light of the above, this Writ Petition is partly allowed as under:-

- (a) The impugned award of the Labour Court dated 19.10.2013 rejecting Reference (IDA) No.19/2006 is quashed and set

aside.

- (b) The said Reference (IDA) No.19/2006 is remanded back to the Labour Court only to the extent of Issue No.5 and the additional issue which is as under:-

“Whether, the Second Party Union/ 17 Workmen are entitled to be absorbed with the Employer i.e. First Party No.1 or First Party No.2 upon abolition of the Contract Labour System in the said establishment vide the Government Notification dated 04.06.1997?”

This additional issue shall replace Issue No.6 framed by the Labour Court.

- (c) Consequent to the above, Issue Nos.1, 2, 3, 4 and 6 framed by the Labour Court shall stand deleted.
- (d) The Labour Court shall refer back the order of reference to the Deputy Commissioner of Labour, Nashik Division, Nashik for seeking correction in the said order pursuant to the allowing of application Exhibit U/16.
- (e) The Petitioner and both the Respondents shall appear before the Labour Court, Ahmednagar on 01.02.2016.
- (f) The litigating sides are at liberty to adduce oral and documentary evidence only in terms of Issue Nos.5, 6 (replaced issue) and 7 which shall now be issue Nos.1, 2 and

3.

- (g) The Labour Court shall decide the said reference on its own merits and without being influenced by its earlier observations in the impugned judgment and award, which has been set aside.

22 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)