

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9657 OF 2015

Jalgaon Mahanagar Palika Kamgar union
B-7, Old B.J.Market, 3rd floor, Jalgaon
Through its General Secretary
Vikas Kashilatn Alavni,
Age-52 years, Occu-Social Service,
R/o Same as above.

PETITIONER

VERSUS

1. Jalgaon City Municipal Corporation,
Jalgaon,
Through its Commissioner,
2. Miraj Mahila Audyogik Co-operative Society Ltd.,
154, Baliram Peth, Jalgaon,
Through its Secretary,
3. Ganesh Pachuji Sankat,
Age-Major, Occu-Business,
R/o Shani Peth, Gurunanak Nagar,
Mamurabad Road, Jalgaon,
4. Kamlabai Atmacharan Dhandore,
Age-Major, Occu-Business,
R/o Shani Peth, Gurunanak Nagar,
Jalgaon,
5. Prasad Ramesh Sanap,
Age-Major, Occu-Business,
R/o 67, Baliram Peth,
Jalgaon

RESPONDENTS

WITH
WRIT PETITION 10754 OF 2015

The Commissioner,
Jalgaon City Municipal Corporation,
Jalgaon, Dist. Jalgaon

PETITIONER

VERSUS

1. The Workman,
Through the General Secretary,
Jalgaon City Municipal Corporation
Kamgar Union, Jalgaon,
Dist. Jalgaon,
2. Miraj Mahila Audyogik Co-operative
Society LTd.,
154, Baliram Peth, Jalgaon,
3. Ganesh Pachuji Sankat,
Shani Peth, Gurunanak Nagar,
Mamurabad Road, Jalgaon,
4. Kamlabai Atmacharan Dhandhore,
Gurunanak Nagar, Shani Peth,
Jalgaon,
5. Prasad Ramesh Sanap,
Age-75 years, Baliram Peth,
Jalgaon

RESPONDENTS

Mr.P.V.Barde, Advocate for the petitioners.
Mr.S.C.Swamy with Mr.V.D.Gunale, Advocate for the respondents.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/07/2016

ORAL JUDGMENT :

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

2. The First petition has been filed by the Union praying for quashing the award dated 02/04/2015 passed by the Industrial Tribunal Jalgaon in Ref.(IT) No.1/2007, only to the extent of the rejection of the second demand and imposition of conditions for granting permanency.

3. Prayer clause A and B of the first petition read as under :-

“A. By issuing appropriate writ, order, direction or any other appropriate order in the nature of writ, the Hon’ble High Court may be pleased to quash and set aside the Award dated 02/04/2015 passed by Member, Industrial Tribunal, Jalgaon in Reference (IT) No.2/2007 only to the extent of refusal of second demand and conditions for permanency mentioned in order part of Award.

B. By issuing appropriate writ, order, direction or any other appropriate order in the nature of writ, the Hon’ble High Court may be pleased to modify the Award dated 02/04/2015 and direct respondent No.1 to advance permanency to 645 employees in listed in order of reference from the date of their continuous service of one year and/or completion of 240 days.”

4. The Municipal Corporation, which is respondent No.1 in the first petition, is the petitioner in the second petition. The Corporation also challenged the said award and prays that the entire award be quashed and set aside. Relevant prayer clause C and D in the second

petition read as under :-

“C. By issuing writ of certiorari or any other appropriate writ or order or directions in the like nature, the order passed by the respondent bearing No.AZPKSPS/EST-492/2015 dated 27/10/2015 as well as the order passed by the learned Divisional Joint Registrar, Co-operative Societies at Aurangabad in Misc.Appeal No.52/2015 dated 19/05/2016 may kindly be quashed and set aside by reinstating the petitioner with the back wages in the services of respondent.

D. Pending hearing and final disposal of this writ petition, the respondent may kindly be directed not to appoint any person as Manager in place of present petitioner if not already appointed.”

5. I have heard Mr.Barde, learned Advocate for the Union. Mr.Swamy h/f Mr.Gunale, learned Advocate for the Corporation has strenuously criticized the impugned award.

6. I have considered their submissions and have gone through the petition paper book and the record available, with their assistance.

7. Though the Union, representing the cause of the daily wage workers, insists that they are the employees of the Corporation, the Corporation has through out canvassed before the Tribunal that the employees represented by the Union are deployed by various labour

contractors and none of them have employer-employee relationship with the Corporation.

8. In the light of the judgments delivered by the Hon'ble Supreme Court in the matter of Vividh Kamgar Sabha Vs. Kalyani Steels Limited, reported in 2001[1] CLR 532, Cipla Limited Vs. Maharashtra General Kamgar Union, reported in 2001 LLR 305 = 2001(2) Bom.C.R. (S.C.) 822 = (2001) 2 SCC 381 and Steel Authority of India Ltd. and others etc. Vs. National Union Water Front Workers and others, [2001(III) CLR 349], the law has crystallized that the contract labourers or similar labourers can make a grievance only under the Industrial Disputes Act, 1947 raising an issue of the contractor being a camouflage and the principle employer being the real employer. The 5 judges bench of the Hon'ble Supreme court in the Steel Authority of India Ltd. (supra) has also laid down the law that abolition of contract system or doing away with the contract system would not, ipso facto mean that the contract labourers would become the employees of the principle employer, though the principle employer may consider absorption of such employees.

9. Despite the above, the Deputy Commissioner, Labour, by its order dated 22/08/2007 referred the industrial dispute raised by the

Union to the Industrial Tribunal alongwith the annexures consisting 645 Safai Kamgar as being party to the reference proceedings, without referring the issue as to whether the Union proves that the contractors are *sham* and *bogus* and the Corporation is the real employer.

10. Though the issue as to whether the Union proves that the “Corporation is it's real employer” has not been referred, the Industrial Court has framed a similar issue at Sr.No.2. However, it has erroneously placed the burden on the Corporation to prove that it has no employer-employee relationship with the second party Union Workmen. On this count, I am interfering in the impugned award and while remitting the reference to the Industrial Tribunal, I am exercising my writ jurisdiction for re-framing issue No.2 as under :-

“Does the second party Union prove that the Labour Contractors mentioned in the cause title (4 contractors) are a camouflage and whether the Municipal Corporation is the real employer of the 645 Safai Kamgar mentioned in the annexures ?”

The above framed issue shall replace Issue No.2 already framed by the Industrial Tribunal.

11. It is apparent from the conclusions drawn by the Tribunal from paragraph No.11 onwards that though the Municipal Corporation was directed to permit the representative of the Union to peruse and inspect the documents, the Municipal Corporation has declined to permit any inspection of its records. As an outcome of the same, the Industrial Tribunal has drawn an adverse inference against the first party corporation, leading to a serious effect of concluding that the 645 Safar Kamgar are the direct employees of the Corporation. Though this conclusion is likely to have serious ramifications and cannot be sustained, it cannot be ignored that the Corporation is the cause of such adverse inference being drawn by the Industrial Tribunal. It is, in this backdrop, that I am constrained to impose costs on the Corporation.

12. I find from the impugned award that besides the adverse inference drawn by the Tribunal, there was no material before it to conclude that the contractors are *sham* and *bogus* and the Corporation is the actual employer of the 645 Safai Kamgar.

13. Considering the conspectus of the matter, the petition filed by the Corporation is allowed and consequentially the petition filed by the Union is dismissed. The impugned award dated 02/04/2015 is

quashed and set aside and Ref.(IT) No.1/2007 is remitted to the Industrial Tribunal, Jalgaon for deciding the matter afresh on the following conditions :-

- [a] The Corporation shall deposit costs of Rs.1,00,000/- (Rs.One lac only) before the Industrial Tribunal, Jalgaon, within a period of 6 (six) weeks from today.
- [b] Rs.40,000/- from the said costs shall be remitted by the Industrial Tribunal to the District Legal Services Authority, Jalgaon.
- [c] Rs.60,000/- shall be withdrawn by the Union without conditions for the rigours of litigation being suffered by it.
- [d] The Corporation shall deposit all the documents directed by the Industrial Tribunal in the said proceedings within a period of 12 (twelve) weeks from today and shall not pray for any extension of time, failing which, the Industrial Tribunal may consider imposing heavy costs thereafter for ensuring the production of the documents.
- [e] Both the litigating sides are at liberty to lead additional evidence in the light of the documents to be produced by the Corporation.
- [f] In so far as the age factor of the 645 Safai Kamgar is concerned, in the event the Industrial Tribunal comes to a conclusion of granting benefits to these workers, it shall consider their age as on the date of joining the services of the Corporation and not their age as on the date of the award. In short, there shall be no issue of age bar or relaxation unless any Safai Kamgar is age barred as on the date of the order of reference by the Dy. Commissioner, Labour.

14. The Industrial Court shall note that all the contentions of the litigating sides are kept open and it shall not be influenced by any of its observations set out in the impugned award, which now has been set aside.

15. Rule is made absolute in the above terms with regard to the petition filed by the Corporation.

16. Rule is discharged with regard to the petition filed by the Union.

(RAVINDRA V. GHUGE, J.)