

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

WRIT PETITION NO.9432 OF 2016

M/s Konkan Agro Marine Industries
Pvt.Ltd., Babargaon, Tal.Gangapur,
Dist.Aurangabad, Through its Factory
Manager

– PETITIONER

VERSUS

Akhil Maharashtra Akyavardhak
Sarva Shramik Sanghatana,
Arunodaya Niwas, Plot No.191/192,
Galnimb, Tal.Gangapur,
Dist.Aurangabad

– RESPONDENT

Mr.S.V.Dankh, Advocate for the petitioner.
Mr.M.S.Indani, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/11/2016

ORAL JUDGMENT :

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

2. The petitioner has challenged the order dated 26/06/2013 passed by the Labour Court in Complaint (ULP) No.9/2005 thereby concluding that it had jurisdiction to entertain the complaint as there is an employer-employee relationship between the petitioner and the respondent/workers. The petitioner is also aggrieved by the

judgment of the Industrial Court dated 28/06/2016 by which Revision (ULP) No.63/2013 has been dismissed.

3. I have heard the strenuous submissions of Mr.Dankh, learned Advocate for the petitioner and Mr.Indani, learned Advocate for the respondent/Union. With their assistance, I have gone through this voluminous petition paper book running into 1048 pages.

4. Considering the order that I intend to pass in the light of the judgment delivered by the Hon'ble Supreme Court in the matter of Vividh Kamgar Sabha Vs. Kalyani Steels Limited, reported in 2001[11 CLR, page 532 (paragraph 5) and 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 (paragraph Nos. 8 and 9), I am not required to advert to their entire submissions.

5. There is no dispute that in an earlier round of litigation, the Industrial Court, by its judgment dated 14/10/2011 in Revision (ULP) No.8/2010 filed by the petitioner herein, had directed the Labour Court to frame a preliminary issue as regards jurisdiction in the light of the contention of the petitioner that there is no employer-employee relationship between the petitioner/Management and the employees

represented by the respondent/Union. Said judgment has attained finality and neither of the parties can be permitted to go into the validity of the said judgment.

6. The respondent/Union has filed Complaint (ULP) No.9/2005 before the Labour Court alleging illegal termination amounting to retrenchment. It is specifically stated in paragraph No.4 of the complaint that the employees (63 in number) have been terminated on a single day which is 29/11/2004. Their designation, dates of joining, wages drawn and the date of termination have been specifically set out in the body of the complaint. Their prayer in the complaint is that their illegal termination be set aside and they should be reinstated with continuity and full back wages.

7. It is not in dispute that the petitioner has not filed a written statement opposing the complaint in these last 11 years.

8. The grievance of the petitioner is that considering the view taken by the Apex Court in the case of Kalyani Steel and Cipla Limited (supra) coupled with several other judgments of this Court, the complaint is untenable in law and the complaint should be dismissed since the petitioner has denied employer-employee

relationship.

9. I am unable to accept the submissions of the petitioner though the petitioner has placed before this Court a voluminous compilation of judgments. The fact remains that in these proceedings, the petitioner has not filed a written statement, has not set up a defence against the complaint and the reliefs prayed in the complaint. Despite directions of the Labour Court to produce certain documents, which the employees contend to be a testimony of their working with the petitioner, said documents have not been produced and kept away from the Court.

10. Besides placing reliance upon Kalyani Steel and Cipla Limited (supra), the petitioner places reliance upon the judgment of this Court in the matter of Maharashtra Industrial Development Corporation Vs. Member, Industrial Court and others, decided on 17/02/2006 and the judgment of this Court in the matter of Kirloskar Mahle Filter Systems Ltd., Vs. Chandrakant Tukaram Ubhe and others decided on 12/09/2007 to support its contention that even if there is no contractor in the picture and even if the litigation is between an establishment and a worker, the moment the petitioner employer contends that the relationship is disputed, the complaint is

rendered untenable.

11. The contentions of the petitioner are rendered fallacious in the light of the observations of the Hon'ble Supreme Court in paragraph No.5 of Kalyani Steel judgment (supra) and paragraph Nos. 8 and 9 of the Cipla Judgment (supra), which read as under :-

“Paragraph No.5 of Kalyani Steel judgment :- The provisions of MRTU and 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 and PULP Act.

Paragraph Nos. 8 and 9 of the Cipla Judgment :- 8. But one thing is clear - if the employees are working under a 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.

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 workmen 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](#) (supra), which view was reiterated by us in [Vividh Kamgar Sabha v. Kalyani Steels Ltd. & Anr.](#), 2001-I-LLJ-569 (SC)."

12. I cannot lose sight of the fact that the Hon'ble Apex Court in the above stated 2 cases was dealing with a contractor being a camouflage, lifting of the corporate veil and the repudiation of a

contract in between the contract labourers and the contractor. In these set of facts, the Hon'ble Apex Court ruled that even if the contention is that the contractor was *sham* and *bogus*, the Labour Court/Industrial Court cannot acquire jurisdiction since the contractor will have to be eliminated and a relationship will have to be developed between the principal employer and the contract labourers, which can only be done by raising an industrial dispute under an I.D.Act.

13. Even in the M.I.D.C. case (supra), paragraph No.6, 11 and 11-A would indicate that the issue of a contractor and a principal employer was being looked into. The employee was engaged on contractual basis and having accepted a contract to perform the work of a driver, this Court held that a claim for establishing a relationship with the principal employer would not be maintained before the Labour Court.

14. In the Kirloskar Mahle Filter Systems Ltd.,case (supra), this Court dealt with the contractors working as workmen and a prayer that the contracts be declared as sham and bogus. Such facts are missing in the instant case.

15. Reliance is then placed upon the judgment in the case of

Maharashtra State Co.Op. Cotton Growers Mkt.Federation Ltd.,Vs. Asha Joseph D'Mello, 2008(1) M.L.J. 750. Contention is that the employees who were working on purely contractual basis and who were disengaged after the conclusion of the contract, had claimed permanency, which was granted. This Court interfered with the said findings on the ground that when there was a contract between the parties, they could not have been granted permanency. A reference is made to the judgment in Kalyani Steel (supra) and Sarva Shramik Sangh Vs.Indian Smelting and Refining Co.Ltd., and others and it is concluded that the complaint was not maintainable.

16. I do not find that the said ratio would be of any assistance to the petitioner considering the fact that neither a written statement has been filed to set up a stand against the complaint, nor has the petitioner produced the documents before the Labour court as were directed, keeping in view that the said documents would establish supervision and control by the petitioner over the employees.

17. In the light of the above, considering the fact that the Labour Court has concluded by way of a finding on facts and the Industrial Court has dismissed the revision petition and taking into account the conduct of the petitioner in not producing the documents despite

directions of the Labour Court which were sustained by the Industrial Court, I do not find any merit in this petition. Same is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)