

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 9794 OF 2016**

M/s. Raymond Ltd.	]	Petitioner
Vs.		
Bhiku B. Bandal & Ors.	]	Respondents

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Mr. Sudhir Talsania, Sr. Advocate a/w Mr. R.V. Paranjape, for petitioner.

Mr. Kiran Bapat, for respondents No. 2 to 13.

Mr. T.R. Yadav, for respondent No.16.

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CORAM : R.G. KETKAR, J.

DATE : 21ST JULY, 2017.

P.C.

Heard Mr. Talsania, learned Senior Counsel for the petitioner, Mr. Bapat, learned Counsel for respondents No. 2 to 13 and Mr. Yadav, learned Counsel for respondent No. 16.

2. By this Petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 28th April, 2016 passed by the learned Member, Industrial Court, Thane [for short 'Tribunal'] in Complaint (U.L.P) No. 181 of 2010. By that order, the Tribunal partly allowed the complaint filed by respondents No.1 to 15 u/s 28 read with Items No.5,6,9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Union and

Prevention of Unfair Labour Practices Act, 1971 [for short 'Act'] and declared that petitioner and its factory manager have engaged in unfair labour practice under Items 5 and 6 of Schedule IV of the Act and they were directed to cease and desist from continuing the unfair labour practice henceforth. The petitioner was directed to make the complainants permanent in service from the date of filing of the complaint i.e from 6th July, 2010 and give them benefits of VRS as per agreement dated 22nd October, 2010 within a period of two months from the date of the order. Complaint against respondent No.16 herein (respondent No.3) in the complaint was dismissed.

3. It is common ground between the parties that during pendency of complaints, respondent No.1 and respondent No.4 expired and their legal representatives were not brought on record. In view thereof, complaint of respondent No.1 and respondent No.14 herein stand abated.

4. In support of this Petition, Mr. Talsania relied upon definition of 'Employee' in Section 3 (13) and of 'Employer' in Section 3 (14) of the Maharashtra Industrial Relations Act, [for short 'M.I.R Act'.] He invited my attention to the Full Bench decision of this Court in the case of **Tukaram Tanaji Mandhare and Anr. Vs. Raymond Wollen Mills Ltd. And Ors., 2006 I CLR 126** and in particular, paragraphs 2 and 19 thereof. In paragraph 2, Full Bench formulated questions that were referred to it. In particular, Question No.2 was:

“Whether a complaint filed under the MRTU and PULP Act by an employee as defined under section 3(13) of the Bombay Industrial Relations Act, is maintainable although no direct relationship of employer employee exists between him and the principal employer?

5. Mr. Talsania submitted that Question No.2 was formulated on the basis that there is no direct relationship of 'Master' and 'Servant' between the parties. In paragraph 19, Full Bench held that a person who is employed through a contractor who undertakes contracts for execution of any of the whole of the work or any part of the work which is ordinarily work of the undertaking governed by BIR Act is an employee within the meaning of section 3(5) of the M.R.T.U and P.U.L.P Act and a complaint of such an employee is maintainable though no direct relationship of employer-employee exists between him and the principal employer. He gave emphasis on the following words:

“However, if there is a dispute as to whether the contract workers were doing the work which forms part of the undertaking then the workers will have to get the dispute decided independently under the provisions of the BIR Act before approaching the Industrial Court under the MRTU and PULP Act”.

6. He further submitted that Full Bench decision was carried to

the Apex Court in Civil Appeal No. 5077 of 2006. By order dated 9th March, 2011, the Apex Court, having regard to the fact that there is difference of opinion in some of the decisions and having regard to the importance of controversy involved and its application particularly in the State of Maharashtra, referred the matter to a larger Bench for a authoritative decision on the issues involved. He submitted that said reference is pending. He, therefore, submitted that present proceedings may be stayed till the reference is answered or in the alternative, impugned orders may be stayed.

7. He further submitted that in view of the decision of Full Bench of this Court and in particular paragraph 19 thereof, there is dispute as to whether the complainants were doing work which forms part of the undertaking and, therefore, they will have to get dispute decided independently under the provisions of the M.I.R Act before approaching the Industrial Court under the provisions of the M.R.T.U & P.U.L.P Act. Even on this count, the complaints are not maintainable. He submitted that Section 3(14) (e) of the M.I.R Act defines the expression 'employer' which includes where the owner of any undertaking in the course of or for the purpose of conducting the undertaking contracts with any person for the execution by or under the contractor of the whole or any part of work which is ordinarily part of the undertaking, the owner of the undertaking, complainants cannot claim to be employees of respondent No.1.

8. Mr. Talsania has invited my attention to affidavit in lieu of examination-in-chief of Surendra Harishchandra More examined on behalf of the complainants and in particular, paragraphs 3,4 and 5 of examination-in-chief and paragraphs 12 and 14 of cross-examination. He also invited my attention to the affidavit of Vishnu Bahadur Singh by way of examination-in-chief. He was working as senior Manager of the petitioner/Company. In paragraph 4, said witness deposed that complainants are not the employees of the petitioner/Company and that they are employees of respondent No.16- M/s. Satelite Electrical Engineers which had undertaken to do the job work of miscellaneous electrical work. Petitioner also examined another witness Mr. Sadashiv Dnyanu Tawade (Personnel) and Factory Manager of the petitioner-Company. He also deposed that complainants are not employees of the petitioner-Company and that they are employees of the contractor respondent No.16 herein which had undertaken to do the job of miscellaneous electrical maintenance of the petitioner-company as and when required.

9. On the other hand, Mr. Bapat has invited my attention to paragraph 3 of the witness Surendra More's evidence wherein he deposed that workers were working in electrical maintenance department of the petitioner. Electrical maintenance is connected with the core business of the petitioner herein and complainants used to do electrical maintenance job. It is integral part of the business of the petitioner herein. There were about 50 workmen employed on

permanent basis in the department of electrical maintenance apart from the complainants. He further submitted that Vishnu Singh witness examined by the petitioners admitted in paragraph 17 and 18 of cross-examination that prime function of Engineering Department of the petitioner-Company is of maintenance and up keeping of all the different machines and those involved in all engineering technology. In paragraph 18, he has admitted that all the complainants were performing work in engineering department relating to textile. As far as other witness is concerned, he submitted that from the cross-examination of this witness it will be evident that he is not conversant with the facts of the case. He submitted that Tribunal has considered evidence on record and referred to admissions given by the witness of the Company in paragraph 14 of the impugned order. In paragraph 15 of the impugned order, Tribunal held that the complainants were performing work with the permanent employees. After considering material on record, Tribunal held that the complainants have failed to establish commission of unfair labour practice under Item 9 and 10 of Schedule IV of the Act. He, therefore, submitted that no case is made out for invocation of powers under Articles 226 and 227 of the Constitution of India.

10. I have considered rival submission advanced by learned Counsel for the parties. As noted earlier, complainants have examined Shri Surendra More. In paragraph 3 of examination-in-chief, he has stated thus:

“I say that these complainants have also not been issued with the letters of appointment. I say that we all the complainants were working in the electrical maintenance department of the respondents. I say that the electrical maintenance is the connected with the core business of the respondents. I say that we complainants used to do electrical maintenance jobs. I say that it is the integral part of the business of the respondents. I say that there were about 50 workmen employed on permanent basis for doing the work of electrical maintenance in addition to us”.

Mr. More has deposed in paragraph 12 of the cross-examination which is to the following effect.

“Out of 15 complainant, 8 are working in the company. Complainants Bhiku Bandal and Santosh Kadam are expired. Presently, Shantaram Gaikar, Anil Sali, Shivrul Pardeshi, Surendra More, Vinayak Nikam, Rajendra Shinde, Tukaram Bargude, Sunil Valvankar and Vidyadhar Tawade are working in the company. It is true that, we all the complainants were working in the company through Satellite Electrical Engineers i.e respondent No.3. The respondent no.3 used to maintain our muster roll as well as payment register. They used to make our payments. The supervisors of the respondent no.3 used to supervise our work. It is true that, respondent no.1 and 2 used to give the contract for services to the respondent no.3 whenever necessary and we were appointed by respondent no.2. It is not correct to say that, we were not the members of Kamgar Utkarsha Sabha. It is true that, we were not getting the benefits of settlement executed between the company and the Kamgar Utkarsha Sabha.

In paragraph 14 of the cross-examination, witness admitted that 50 employees working in the Electrical Department were employees of

the Company and worked differently than them.

11. A perusal of cross-examination of this witness does not indicate that he was confronted with statements made in paragraph 3 of examination-in-chief. In other words, statements of this witness in paragraph extracted hereinabove remained unchallenged.

12. That apart, in cross-examination, paragraphs 17 and 18 complainants' witness Mr. Vishnu Singh deposed thus:

17. The prime functions of the engineering department is of maintenance and up keeping all the different machineries and those involved in all engineering technology. Financial assessment of the company was being dealt with by Finance and Accounts department. The hierarchy reporting positions is same and similar as referred above for this department.

18. I do not remember when the factory at Chhindwada was established. I know the complainant involved in the complaint by face but not personally by name. It is true that all the complainants were working in the premises of the company i.e known as J.K. Gram. They were performing the work in engineering department relating to textile. Witness volunteers that they were also performing the work for other divisions also of Raymond. It is not correct to say that, they were performing their work of maintenance as a part of engineering and maintenance department. The Excon Company was giving the work of mechanical related jobs. They were related to assets of the company. It is not correct to say that the work of maintenance of up keeping is of regular nature of work. In Engineering maintenance department there were permanent

employees of the company. It is not correct to say that work of fabrication and Excon Engineering work is related to the permanent work of employees. I am not aware whether the company has filed the copy of contract entered into with the Respondent No.3 company. It is true that I have no personal knowledge about the events performed prior to 2005 in the company. It is true that I am not personally aware about the facts mentioned in Portion Mark A of my affidavit”.

13. The Tribunal has considered evidence on record. In paragraph 14, Tribunal observed thus:

“After carefully scanning the oral evidence adduced on behalf of the parties in the light of their respective pleadings, there appears no dispute that, these complainants were the direct employees of the respondent no.3 contractor and they were deputed for the respondent nos. 1 and 2 company. The respondent company engaged respondent no.3 under the Contract Labour (Regulation and Abolition) Act, 1970. The copy of Registration Certificate is available on record. On careful perusal of that certificate, it is clear that respondent no.3 was given the contract of electrical work and the witness of the respondent company fairly admitted in cross-examination that, the complainants were performing the work in Engineering Department relating to textile. The witness of the respondent no.3 contractor deposed before the Court that, the electrical work was continued through out the year. At the same time, the witness of the complainant denied the suggestion given during cross-examination that, they were not working on machine. It goes to show that, the work performed by these complainants were related to Engineering section of the company, the work continued throughout year, as such the work given on contract was permanent of the company”.

14. Thus, perusal of the impugned order shows that the Tribunal has considered the evidence on record and has partly allowed the complaint. The petitioner is not in a position to demonstrate that findings recorded by the Tribunal are contrary to the evidence on record or that they are not supported by the evidence on record. In other words, petitioner was not in a position to demonstrate that findings recorded by the Tribunal are perverse. Merely because on the basis of evidence on record, another view is possible that itself is not a ground for invocation of powers under Articles 226 and 227 of the Constitution of India. Hence, no case is made out for interfering with the impugned order save and except, to the exception of respondent No.1 and 14. Complaint filed by respondent No.1 and 14 stands disposed of as abated. Subject to this modification, Petition fails and hence, same is dismissed.

[R.G. KETKAR, J.]