

((1))

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

LETTERS PATENT APPEAL NO.270 OF 2010 IN
WRIT PETITION NO.7352 OF 2009
WITH
CIVIL APPLICATION NO.9420 OF 2010

- 1) Shaikh Khalil Khurshid,
Age 34 years, Occu. Nil,
R/o Jamal Nagar, Ausa,
Taluka Ausa, District Latur.
- 2) Sadik Aamir Shaikh,
Age 38 years, Occu.Nil,
R/o Indira Nagar, Ausa,
Taluka Ausa, District Latur.
- 3) Ram s/o Gopinath Kamble,
Age 38 years, Occu. Nil,
R/o Dhangar Galli, Ausa,
Taluka Ausa, District Latur.
- 4) Shahu s/o Rama Kamble,
Age 37 years, Occu. Nil,
R/o Mahatma Nagar, Ausa,
Taluka Ausa, District Latur.
- 5) Pathan Moyoddinkha Samsherkha
Age 40 years, Occu.Nil,
R/o Kewalram Galli, Ausa,
Taluka Ausa, District Latur.
- 6) Ekbal Abdulhamid Karpude,
Age 37 years, Occu.Nil,
R/o Momeen Galli, Ausa,
Taluka Ausa, District Latur.
- 7) Ramkrishna s/o Shashikant Apsingekar,
Age 35 years, Occu. Nil,
R/o Kapad Galli, Ausa,
Taluka Ausa, District Latur.

((2))

- 8) Prabhakar s/o Goroba Kamble,
Age 34 years, Occu. Nil,
R/o Mukteshwar Road, Ausa,
Taluka Ausa, District Latur.
- 9) Mahboob Rajjaq Tamboli,
Age 44 years, Occu.Nil,
R/o In front of Jain Mandir, Ausa,
Taluka Ausa, District Latur.

... APPELLANTS
(Original Complainants)

VERSUS

- 1) The Municipal Council, Ausa
Through its Chief Officer,
Taluka Ausa, District Latur.
- 2) The State of Maharashtra
through its Secretary,
Department of Urban Development,
Mantralaya, Mumbai – 32
(Copy to be served on Government
Pleader, High Court of Judicature
of Bombay, Bench at Aurangabad) ... RESPONDENTS

.....
Shri Santosh S. Jadhavar, Advocate for appellants
Shri B.L. Sagar Killarikar, Advocate for respondent No.1
Shri M.M. Nerlikar, A.G.P. For respondent No.2
.....

CORAM: T.V. NALAWADE AND
 SUNIL K. KOTWAL, JJ.

DATED: 25th January, 2018.

JUDGMENT (PER SUNIL K. KOTWAL, J.) :

1. This Letters Patent Appeal is filed by original complainants in U.L.P. No.31/2002 against the judgment and order passed by learned Single Judge of this Court in Writ

Petition No.7352/2009.

2. Heard strenuous submissions of respective counsel appearing for the parties. The appellants filed Complaint bearing U.L.P. No.31/2002 making grievance in respect of commission of unfair labour practices under Section 28(1) read with Item No.1(a), (b), (d) & (f) of the Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (for the sake brevity, hereinafter referred as MRTU & PULP Act). The complainants contended that, they used to work with the respondent Municipal Council (hereinafter referred as the 'employer') since last several years and engaged in performing the essential services. According to complainants, they have rendered an unblemished service. However, abruptly, without any cause, their services have been terminated. Their contention is that, they were appointed by employer as a daily rated worker for a period of more than 240 days in a calendar year. However, despite availability of work and without following the due procedure prescribed by law, their services have been terminated. The complainants, therefore, sought direction against the employer, requiring them to desist from engaging in an unfair labour practice and also sought relief of reinstatement in the employment with continuity of service and back wages. By filing written statement (Exh.C-2), the employer opposed the

complaint by specifically denying allegations leveled by the complainants. The employer specifically denied the relationship of employer and employee between the complainants and employer. The employer contended that, the employees were awarded contract for carrying out specific functions, when the tender submitted by employees was accepted and work order was issued for performing the prescribed job. According to employer, the complainants are not employees engaged by the Municipal Council.

3. Before the Labour Court, it was contended on behalf of the employer that, when the relationship of employer and employee itself is disputed, the Labour Court cannot adjudicate upon the issue while entertaining the complaint under the MRTU & PULP Act. The objection raised by the employer was turned down by the Labour Court and the complaint filed by the employees was allowed by the Labour Court by passing order dated 27.1.2009. The Labour Court issued an order restraining the employer from indulging in an unfair labour practice and also further directed to desist from practicing any such unfair labour practice. The complainants were directed to be reinstated with continuity of service, however, without back wages.

4. The Revision Application preferred by the employer

bearing No.ULP No.5/2009 was dismissed by the Industrial Court vide order dated 23.9.2009.

5. Learned counsel appearing for the appellants submitted that, the learned Single Judge erroneously relied on the ratio of CIPLA's case and Sarva Shramik Sangh's case though there was no written contract in between the employer and employees. Learned Advocate for the appellant submitted that, initially the appellants have accepted the work on contract basis in response to tender invited by the employer Municipal Council. Under that contract, the employees have accepted to perform specified functions for the employer. He submits that, though initial entry in the employment was on the basis of the terms of the contract, the same was for limited duration and after completion of said period covered by tender notice, the employees were continued in service and they were treated as employees of the Council. They were paid the wages by the Municipal Council and notices were issued by Chief Officer in respect of performance of work and, therefore, more than sufficient material was available before the Labour Court to show that the relations in between appellants and respondent were of employees and employer.

6. Learned Advocate for respondent employer submits

that, when the employer has specifically denied the relationship with alleged employees, the dispute so raised has to be adjudicated under the provisions of the Industrial Disputes Act and not by the Labour Court under MRTU & PULP Act.

7. While allowing the Writ Petition, the learned Single Judge has placed reliance on **CIPLA Ltd. Vs. Maharashtra General Kamgar Union & others**, reported in **AIR 2001 SC 1165**. The relevant para Nos.8 and 9 of the judgment in CIPLA's case are reproduced as under :

“8. But one thing is clear – if the employees are working under a contract covered by the Contract Labour (Regulation and 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 the appropriate industrial tribunal or labour Court. Such question cannot be examined by 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 enquired 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 I.D. Act.”

9. “Shri K.K. Singhvi, 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 workman 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 recognized 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 Vs. Ahmedabad Mfg. and Calico Printing Co. Ltd.* (1958 Supp (1) SCC 175) (supra) which view was iterated by us in *Vividh Kamgar Sabha Vs. Kalyani Steels Ltd.* 2001(1) SCALE 82 : (2001 AIR SCW 170). "

8. It is to be noted that, the law settled by the Hon'ble Apex Court in CIPLA's case was also approved by the Hon'ble Apex Court in the matter of **Sarva Shramik Sangh Vs. Indian Smelting & Refining Co. Ltd.** reported in **2003 Law Suit (SC) 1036.**

9. After going through the above cases and the judgment of the learned Single Judge, the trite law is absolutely clear, when the relation in between employer and employee is in dispute, the same cannot be adjudicated by Labour Court while dealing with the complaint under MRTU & PULP Act. The contentions of the employees that, contract itself is camouflage and, therefore, needs to be adjudicated, is a matter which can be gone into by appropriate Industrial Tribunal. Such questions cannot be examined by Labour Court or Industrial Court under the MRTU & PULP Act. However, the Labour Court as well as the Industrial Court assumed jurisdiction and proceeded to decide the matter. In view of this situation and above discussed trite law, we do not find any error of law committed by learned Single Judge while allowing the Writ Petition and setting aside the judgment and order passed by the Labour Court, dated 27.1.2009 as well as the judgment and order passed by Industrial Court dated 23.9.2009. It would be

open for the appellants – employees to present appropriate proceedings before the appropriate forum for acquiring appropriate relief.

10. In the result, the Letters Patent Appeal being devoid of merits, deserves to be dismissed. Hence, the following order :

ORDER

- (i) Letters Patent Appeal No.270/2010 is dismissed.
- (ii) The appellants are at liberty to file appropriate proceedings before the appropriate forum within three months from the date of the present decision and if it is filed within that period, the forum is expected to dispose of the matter within six months thereafter.
- (iii) In view of dismissal of the Letters Patent Appeal, Civil Application is disposed of.
- (iv) No order as to costs.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE