

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

928 WRIT PETITION NO.11386 OF 2019

NAVNATH DIGAMBAR BANSODE
VERSUS
THE CHIEF EXECUTIVE OFFICER MAHARASHTRA
LIVESTOCK DEVELOPMENT BOARD AKOLA AND ANOTHER

WITH
929 WRIT PETITION NO.11392 OF 2019

SHIVSHANKAR MADHAVRAO SWAMI
VERSUS
THE CHIEF EXECUTIVE OFFICER MAHARASHTRA
LIVESTOCK DEVELOPMENT BOARD AKOLA & ANOTHER

WITH
935 WRIT PETITION NO.11398 OF 2019

RANJIT RAGHUNATH KAMBLE
VERSUS
THE CHIEF EXECUTIVE OFFICER MAHARASHTRA
LIVESTOCK DEVELOPMENT BOARD AKOLA & ANOTHER

WITH
936 WRIT PETITION NO.11399 OF 2019

ANANT SHAHURAJ MADJE
VERSUS
THE CHIEF EXECUTIVE OFFICER MAHARASHTRA
LIVESTOCK DEVELOPMENT BOARD AKOLA & ANOTHER

AND
937 WRIT PETITION NO. 11400 OF 2019

UMESH GHANSHAM RATHOD
VERSUS
THE CHIEF EXECUTIVE OFFICER MAHARASHTRA
LIVESTOCK DEVELOPMENT BOARD AKOLA & ANOTHER

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Advocate for the Petitioners : Shri V. G. Sakolkar
AGPs for Respondent Nos. 1 and 2 : Shri S. W. Munde and
Shri S. R. Yadav -Lonikar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 18th SEPTEMBER, 2019.

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PER COURT :

1. In all these petitions, the petitioners are aggrieved by the interlocutory order dated 11/09/2017 passed by the Industrial Court, Latur, by which, their applications Exhibit U-2 filed under Section 30(2) of the MRTU and PULP Act, 1971 seeking interim relief in their respective ULP Complaints, have been rejected.

2. I have considered the strenuous submissions advanced by the learned Advocate on behalf of the petitioners. The learned AGP has appeared on behalf of the respondents.

3. It appears from the pleadings of the parties that these petitioners have been appointed as 'Seva Data' (service provider) under National Agriculture Development Scheme. An appointment order has been issued by respondent No.2

District Deputy Commissioner for Animal Husbandry allegedly on behalf of respondent No.1 - The Chief Executive Officer, Maharashtra Livestock Development Board, Akola. It appears from the nature of duties performed by the petitioners that they have to facilitate artificial insemination of cows and buffaloes. Each of them has executed a security bond of Rs. 5,000/-. 3-4 villages are attached to the centre monitored by each petitioner. The annual target of artificial insemination is 350 animals. For each artificial insemination, each petitioner collects Rs. 40/- from the farmer and remits Rs. 21/- to the Animal polyclinic. They are promised payment of Rs. 400/- on each successful delivery by such a cow or a buffalo, who has undergone artificial insemination. These petitioners claimed employer employee relationship with the respondents.

4. The respondents filed their Written Statement to the main complaints and say to the applications for interim relief. It was specifically pleaded that there is no employer employee relationship between the establishment and the complainants. They are service providers who have entered into a contract for service. Considering the nature of their duties as recorded in

the foregoing paragraph, there cannot be an employer employee relationship and even the commission and payment terms would indicate this aspect.

5. In my view, law prohibits the Labour or the Industrial Court from venturing into the arena of testing employer employee relationship for finding out as to who is the actual employer. This existence is not amenable to the jurisdiction of such Courts in the view of the judgment delivered by the Honourable Apex Court in the matters of *Vividh Kamgar Sabha Vs. Kalyani Steels Ltd. and another*, (2001) 2 Supreme Court Cases 381, *Maharashtra General Kamgar Union and Ors. Vs. Cipla Limited* (2001) 3 SCC 101 and by the Five Judges Bench in the matter of *Steel Authority of India Ltd. and others v/s National Union Waterfront Workers*, (2001) 7 SCC.

6. Considering the above, I find that the Industrial Court has rightly refused interim relief to these petitioners keeping in view the judgment delivered by this Court in the matter of *Dalal Engineering Pvt. Ltd. Vs. Ramrao Bhaurao Sawant*

and others [1991 (4) Bom. CR 571 = (1992) ILLJ 384 Bom. = 1991 (2) Mh.L.J. 1534, wherein it has been held that in a case involving an issue of jurisdiction of the Court, granting relief first and then inquiring as to whether the Court has jurisdiction, would amount to the rule of the wild West of shooting first and asking questions later. I find that it would be appropriate that these petitioners, if so advised, would raise an industrial dispute under Section 2 (k) of the Industrial Disputes Act, 1947, so as to have the case referred to the Industrial Tribunal which can then exercise jurisdiction of discovering the actual relationship between the parties by lifting the corporate veil.

7. As such, these petitions, being devoid of merit are dismissed. Nevertheless, if the petitioners are so advised and are convinced, they would be at liberty to withdraw their pending ULP Complaints and approach the machinery under the Industrial Disputes Act by raising an industrial dispute under Section 2 (k).

(RAVINDRA V. GHUGE, J.)

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