

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

LETTERS PATENT APPEAL NO. 262 OF 2010
IN
WRIT PETITION NO. 3212 OF 2008
WITH
CIVIL APPLICATION NO. 3371 OF 2019

M/s. Indo-European Breweries Ltd,
Plot No. B/74/2, Waluj IA,
Aurangabad, through
the Executive Director.

....Appellant.

Versus

1. Dnyaneshwar s/o. Shyamrao Dhanwate,
Aged 35 years, Occu. Service,
R/o. Shriram Colony, Shivajinagar,
Waluj, Tq. Gangapur, Dist. Aurangabad.
2. Rameshwar s/o. Kashiram Shegokar,
Aged 38 years, Occu. Service,
R/o. RM 280/1, Bajaj Nagar,
MIDC, Waluj, Aurangabad.
3. Samadhan s/o. Rudrappa Attarkar,
Aged 22 years, Occu. Service,
R/o. Ayodhya Nagar, RX-6/7,
Bajaj Nagar, MIDC, Waluj,
Tq. & Dist. Aurangabad.
4. Bhaulal s/o. Bahadursingh Gadad,
Aged 23 years, Occu. Service,
R/o. At Post : Padalde,
Tq. Malegaon, Dist. Nashik.
5. Somnath s/o. Haribhau Jadhav,
Aged 24 years, Occu. Service,
R/o. At Post : Aalsunde,
Tq. Karjat, Dist. Aurangabad.
6. Vilas s/o. Bhimrao Biradar,
Aged 19 years, Occu. Service,
R/o. RM 198, Bajaj Nagar,

Tq. & Dist. Aurangabad.

7. Vasant s/o. Jaywantrao Pawar,
Aged 26 years, Occu. Service,
R/o. At Post : Borzar, Tq. Vaijapur,
Dist. Aurangabad.
8. Poulas s/o. Jeevan Kshirsagar,
Aged 25 years, Occu. Service,
R/o. At Post : Waluj,
Tq. Gangapur, Dist. Aurangabad.
9. Bhagwan s/o. Seshrao Ghodke,
Aged 25 years, Occu. Service,
R/o. Pachod Ekoda,
At Post : Chttepimpal Gaon,
Tq. & Dist. Aurangabad.
10. Ramdas s/o. Dilaram Yadav,
Aged 35 years, Occu. Service,
R/o. Khandak Naka,
At Post : Tq. Kopargaon,
Dist. Aurangabad.
(Abated as dead as per order
dated 9.2.2009)
11. Shivaji s/o. Bhagawantrao Gaikwad,
Aged 37 years, Occu. Service,
R/o. At Post : Urawali,
Tq. Aundha Nagnath, Dist. Hingoli.
12. Yogesh s/o. Gangadhar Gundre,
Aged 25 years, Occu. Service,
R/o. N-6, G-17/13, Sambhaji Colony,
Cidco, Tq. & Dist. Aurangabad.
13. Vilas s/o. Bhagwanta Thorwe,
Aged 48 years, Occu. Service,
R/o. Waluj, Awinash Colony,
Dutta Nagar, Dist. Aurangabad.
14. Mahendra s/o. Bhagwat Garad,
Aged 32 years, Occu. Service,
R/o. At Post : Pimpalwadi,
Tq. Karmala, Dist. Solapur.

(Dismissed as per Registrar's order dated 9.2.2009)

15. Dnyaneshwar s/o. Dashrath Bahiwal,
Aged 24 years, Occu. Service,
R/o. At Post : Padalde, Taluka Malegaon,
Dist. Nashik.
16. Uddhav s/o. Venkatrao Lohkare,
Aged 30 years, Occu. Service,
R/o. At Post : Jagalpur,
Tq. Jalkot, Dist. Latur.
17. Nandkishor s/o. Machhindra Sable,
Aged 26 years, Occu. Service,
R/o. Koregaon, Post : Chikhli,
Tq. Karjat, Dist. Aurangabad.
18. Sanjay s/o. Sitaram Borse,
Aged 37 years, Occu. Service,
R/o. RM 231/3, Bajaj Nagar, MIDC,
Dist. Aurangabad.
19. Shivraj s/o. Revansiddhappa Mitkari,
Aged 23 years, Occu. Service,
R/o. B-32/8, Sainagar, Cidco,
Dist. Aurangabad.
20. Uttareshwar s/o. Gopinath Haregaonkar,
Aged 23 years, Occu. Service,
R/o. C/o. S.R. Mitkari,
B-32/8, Sainagar, Cidco,
Waluj, Tq. Gangapur,
Dist. Aurangabad.
21. Ankush s/o. Marotirao Gade,
Aged 21 years, Occu. Service,
R/o. Aurad-Shahajani,
Tq. Nilanga, Dist. Latur.
22. Shrikrishna s/o. Nawnathrao Wankhede,
Aged 23 years, Occu. Service,
R/o. Borkhed, At Post : Pohner,
Tq. Parli-Vaijnath, Dist. Beed.

23. A.H. Contractors,
Plot No. RL – 119,
Bajaj Nagar, MIDC,
Waluj, Aurangabad.
Through Proprietor.

....Respondents.

Mr. T.K. Prabhakaran, Advocate for appellant.

Mr. Pradeep Shahane, Advocate for respondent Nos. 1, 2, 4 to 9, 11 to 21.

Mr. R.N. Dhorde, Sr. Counsel i/b. Mr. U.S. Sawaji, Advocate for respondent No. 23.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.**
RESERVED ON : 07/03/2019
PRONOUNCED ON : 20/03/2019

JUDGMENT : [PER T. V. NALAWADE, J.]

1) The appeal is filed to challenge the judgment and order of Writ Petition No. 3212/2008 decided by the learned Single Judge of this Court. The writ petition was filed by the present appellant against judgment and order of Complaint (ULP) No. 52/2005, which was pending before the learned Member of Industrial Court, Aurangabad. The complaint was filed by the present respondents and the learned Member of Industrial Court has given directions to the present appellant to allow the present respondents to resume the duty and direction is given to pay full backwages for the period starting from 8.3.2005, till the respondents, complainants are reinstated. It is held by the learned Member that the present

appellant had engaged in unfair labour practice under item 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as 'the Act' for short). Both the sides are heard.

2) The appellant is a company and it is in the business of bottling Coca-cola soft drink in the factory situated at Waluj Industrial Area, Aurangabad. It is the contention of appellant that it had engaged only 18 workers directly for this factory and respondent No. 23, a licensed contractor was engaged by it for supplying labour on contract basis. It is contended that respondent No. 23 had supplied 96 contract labours, but they were employees of respondent No. 23, contractor and this figure was fluctuating as per the market condition. The respondents were engaged from 24.3.2004 as per the contention of the appellant.

3) It is the contention of the appellant that on 8.3.2005 there was untoward incident and the contract labours tried to ambush the factory in the name of Union activity and they unleashed violence. It is contended that due to such activities, the respondents were prevented from entering the factory premises and then respondent No. 23, contractor had terminated their

services.

4) Before the Industrial Court, stand was taken that present respondents were not employed by the appellant and they were employees of contractor, present respondent No. 23 and so, the relief as claimed cannot be given in their favour. It is contended that proper issues were not framed by the Member, Industrial Court and one specific issue ought to have been about the jurisdiction as the relationship of employer – employee itself was denied by the present appellant. It is contended that the evidence given by the appellant is not at all considered by the Member, Industrial Court and these circumstances are not considered by the learned Single Judge of this Court when the learned Single Judge dismissed the writ petition. It is contended that the decision of the learned Single Judge is *per incuriam* as the point of jurisdiction involved in the matter was already decided by the Apex Court and also by this Court and the learned Single Judge has committed error while deciding the point of jurisdiction and also giving the decision on merits in favour of the present respondents.

5) Under Chapter 17, Rule 18 of Appellate Side Rules of this Court the learned Single Judge is expected to exercise the

jurisdiction of superintendence of this Court when there is order, decision of Industrial Court by using the power given under section 227 of Constitution of India. Ordinarily, every forum, tribunal and Court has inherent jurisdiction to take decision on its own jurisdiction and so, the decision given on the point of jurisdiction also comes before this Court under aforesaid jurisdiction. In view of this apparent position of law, the learned counsel for appellant was asked to satisfy this Court on the point of tenability of the appeal. Both the sides placed reliance on some reported cases on that point. Both the sides argued on merits also and took this Court through relevant record. So, this Court is deciding all the aforesaid the points.

6) To ascertain the relationship, whether the complainants were the employees of the present appellant or whether they were employed by the contractor (original respondent No. 23) the Industrial Court considered both the direct evidence and the documentary evidence. The direct evidence is in the form of evidence of complainants and it is to the following effect :-

(i) The nature of work given to the complainants was permanent in nature. They were appointed to work as water treatment operator, syrup operator, bottle

checker, electrician, refrigeration operator, welder, site inspector, store helper, water treatment helper, syrup helper, E.T.P. operator etc.

(ii) Respondent No. 1 of the complaint, present appellant had given them the appointment directly on aforesaid posts.

(iii) Respondent No. 1, appellant had paid salary to them.

(iv) When the matter was taken to police and also to authority created under the Industrial Dispute Act, the present appellant had agreed to give work to these employees under settlement and he was to give the work to 30 such employees from 14.3.2005 and to the remaining employees from 29.3.2005. The appellant gave the work to most of such employees, but no work was given to the complainants and they were not allowed to resume the duty. Before these authorities, the appellant had never contended that they were appointed by the contractor, original respondent No. 23.

7) The Industrial Court has considered the oral evidence given for present appellant which is to the effect that the work of

house keeping and related services like observing hygienic conditions was outsourced and it was given to original respondent No. 23, contractor. Some documentary evidence is given in that regard which is being considered at later stage. The oral evidence given for the present appellant of aforesaid nature is not consistent with the evidence given by the original complainants as they were working on the posts mentioned above which are not of kind of house keeping or keeping hygienic conditions. Further, in the licence which was obtained by the contractor, the aforesaid nature of work was not covered and it was for services like house keeping and keeping hygienic conditions.

8) The present appellant and the contractor produced some record of payment of wages, but the Industrial Court has held that the record is not convincing and that was apparently created after starting of the dispute. The appellant did not produce complete record to show that appellant was making payment to the contractor in respect of services obtained from the contractor and there are no such entries in the cash book of the present appellant. There were no relevant receipts with the appellant which could have been issued by the contractor every time.

9) The record is not consistent with the aforesaid stand taken by the appellant and the contractor. The Industrial Court has noticed that the circumstances like many employees who were admittedly permanent employees of appellant like Devesh Gupta were shown in the muster roll prepared by the contractor. Even Ram Sagare, Plant Manager of the appellant was shown in the muster roll prepared by the contractor. Many such circumstances which are not consistent with the case of the appellant are considered by the Industrial Court in para No. 39 of the judgment.

10) There are more circumstances like admissions given by the witnesses examined by the present appellant, employer. In the cross examination, he has admitted that in ULP (Complaint) No. 28/2005 no defence was taken by the appellant that the complainants were the workers of original respondent No. 23, contractor. There is also the record to show that in the police complaint filed by the present appellant, it was not specifically contended that the complainants were the workers of respondent No. 23. The witnesses admitted that in the record workload assigned to the contractor was not mentioned and no returns were sent to the authority as per the provisions of Rule 63 (2) of Contract Labour (Regulation and Abolition) Act.

11) The contractor, original respondent No. 23 has admitted that initially his licence was only in respect of unloading and lighting work. His evidence shows that he then had obtained licence for house keeping from 17.2.2005 and thereafter, he obtained licence for cleaning, stacking and bottle handling. The contractor could not explain as to how the work of aforesaid nature was given to the workers if he had given the workers for the work covered under the licence. He could not explain as to how the names of permanent employees like Devesh Gupta and Ram Sagare were appearing in the record of his muster roll when they were admittedly permanent employees. Even in the record which is produced by the contractor, he did not mentioned the other particulars of complainants like their educational qualification, nature of experience etc. The complainants were working as permanent employees in other factories and for the present work, they had left that job. The contractor gave some particulars only in respect of complainants, but not in respect of other workers shown on record and these circumstances showed that the record is afterthought and that is the observation of the Industrial Court.

12) The Industrial Court has considered the documents

produced by the complainants like Exhs. U24, U25, U26, U27, U28, U47, U48 and U49. This record includes the record of negotiations made before the police authorities and before the Deputy Commissioner of Labour (Dy.C.L.). Before these authorities, the appellant had agreed that it would take all the workers on duty. Before Dy.C.L., no defence was taken by the appellant that the complainants were employees of respondent No. 23. As per the record, separate work was given in different shifts to the complainants by the appellant and that record bears signature of the Managers of the appellant. The complainants had produced payment sheet for April and May 2004 maintained by the appellant in respect of such labour. In view of all these circumstances, the Industrial Court has held that the record of contractor and also the employer in support of the contentions made by them and produced by them is highly suspicious in nature. Basically, the licence of contractor did not cover the aforesaid work. The record which is necessary and required to be maintained by the contractor under Labour Contract Act and Rule 59 was not available with the contractor. Due to all these circumstances, inference is drawn by the Industrial Court that the complainants are the employees of appellant and they were not the employees of contractor.

13) The learned Single Judge has considered all the aforesaid circumstances. Many cases were cited before the learned Single Judge also and after considering those cases, position of law, the learned Single Judge has held that there is no illegality in the order made by the Industrial Court. The learned Single Judge has held that to ascertain as to whether there was relationship of employer employee, the Industrial Court had jurisdiction to consider the aforesaid material and only on the basis of defence that they were engaged by the contractor, the Industrial Court could not have denied the consideration of the case of the complainants that they were employees of the present appellant. As it is a question of fact, the finding given by the Industrial Court on this point is not disturbed by the learned Single Judge.

14) The learned counsel for appellant argued the present appeal from many angles. He firstly argued that the Industrial Court ought not to have considered the complaints as the relationship itself was disputed by the present appellant. He submitted that the point of jurisdiction ought to have been decided as the preliminary issue.

15) For respondents, original complainants the learned

counsel placed reliance on following cases :-

(i) (2015) 5 SCC 423 [Radhey Sham and Anr. Vs. Chhabi Nath and Ors.],

(ii) (2015) 9 SCC 1 [Sh. Jogendra Singhji Vijaysinghji Vs. State of Gujarat],

(iii) Judgment of the Hon'ble Bombay High Court Bench at Aurangabad in LPA No. 83/2012 in WP No. 11032/2010 [The Osmanabad District Central Co-operative Bank Ltd. Vs. Anandrao Nagorao Kale and Anr.] dated 22.2.2019,

(iv) Judgment of the Hon'ble Bombay High Court Bench at Aurangabad in LPA No. 48/2011 in WP No. 1972/2009 [The Osmanabad District Central Cooperative Bank Ltd. Vs. Vyankatesh Bapurao Kulkarni] dated 25.2.2019, and

(v) Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in LPA No. 214/2012 [Ahmednagar Municipal Corporation Vs Shahar Palika Kamgar Union and Anr.] dated 26.2.2019.

(vi) 2006 (1) Bom.C.R. 765 [National Textile Corporation (SM) Ltd. Vs. Devraj Chandrabali Pai].

For appellant, the learned counsel placed reliance on following case :-

(i) 1999 (4) LJ (S.C.) 537 [Lokmat Newspaper Pvt. Ltd. Vs. Shankarprasad],

(ii) 2013(12) LJSOFT 34 [Purandas s/o. Lataru Tandekar Vs. Manganese Ore (India) Ltd. & Ors.],

(iii) 2014(1) LJSOFT 74 [Rajendraprasad s/o. Vidyaprasad Tiwari Vs. Secretary, Bal Bhagwan Shikshan Prasarak Mandal & Ors.],

(iv) 2015 (9) SCC 1 [Sh Jogendrasinhji Vijaysinghji Vs. State of Gujarat & Ors.],

(v) 2018 (4) Mh.L.J. 952 [Janardhan Sadashiv Rane Vs. Everkeen Blade Company Ltd; Centron Industrial Alliance Ltd.],

(vi) 2015(6) LFSOFT (S.C.) 33 [Foreshore Co-operative Housing Society Ltd. Vs. Praveen D. Desai (Dead) thr. Lrs. And Ors.],

(vii) 2001 DGLS (SC) 37 [Vvidh Kamgar Sabha Vs. Kalyani Steels Ltd.],

(viii) 2001 DGLS (SC) 303 [Cipla Ltd. Vs. Maharashtra General Kamgar Union & Ors.],

(ix) 2003 DGLS (SC) 877 [Sarva Shramik Sangh Vs. Indian Smeltig and Refining Co. Ltd.],

(x) 2006 SCC (L&S) 699 [Oswal Petrochemicals Vs. Govt. of Maharashtra and Ors.],

(xi) 2003(Suppl.1) Bom.C.R. 39 [Indian Seamless metal Tubes Limited Vs. Sunil Rambhau Iwale & Ors.],

(xii) 2003 III CLR 949 [Sarva Shramik Sangh Vs. M/s. Indian Smelting & Refining Co. Ltd. & Ors.],

(xiii) 2007 III CLR 982 [Maharashtra State Co-op. Cotton Growers Mkt. Federation Ltd. Vs. Asha Joseph D'mello],

(xiv) 2007 (5) LJSOFT 64 [Janprabha Offset Works Vs. Savra Shramik Sangh & Anr.],

(xv) 2007 III CLR 854 [Sarva Shramik Sangh Vs. Janprabha Offset Works and Anr.],

(xvi) 2015 (4) LJSOFT 146 [Managing Director, Epitome Components Ltd. Vs. Swarajya Kamgar Sanghatana & Ors.],

(xvii) Judgment of Supreme Court bearing Appeal (Civil) 6009-6010 of 2001 [Steel Authority of India Ltd. & Ors. Vs. National Union Water Front Workers & Ltd.] dated 30.8.2001.

(xviii) 2002(1) Bom.C.R. 197 [Contract Laghu Udyog Kamgar Union Vs. V.G. Mohite, Assistant Labour],

(xix) (1996) ILLJ 842 Bom [Dilip s/o. Indrabhanji Wawande Vs. Industrial court, Nagpur & Os.],

(xx) 1987 (3) Bom.C.R. 425 [Maharashtra General Kamgar Union Vs. Balkrishna Pen Pvt. Ltd.],

(xxi) 2006-IILLJ (SC) Municipal Council, Sujanpur Vs. Surinder Kumar],

(xxii) 2005 DGLS (SC) 36 [Kendriya Vidyalaya Sangathan Vs. S.C. Sharma],

(xxiii) 2014 (10) LJSOFT 134 [Namdeo Vanji Bachav Vs. Dhule District Central Co-operative Bank Ltd.],

(xxiv) Judgment of Supreme Court in Civil Appeal No.11976-11977 of 2014 decided on 22.8.2016 [M.S. Kazi Vs. Muslim Education Society and Ors.]

16) In the case of **Lokmat Newspaper** cited supra, the facts show that there was violation of section 33 (1) of Industrial Dispute

Act. The employer had violated the provisions of section 9A of the Industrial Dispute Act. The Apex Court held that it was not possible to retrench the employee before giving notice under section 9A prior to introduction of new system. It was held that in view of the facts of that case, the learned Single Judge was considering the petition under Article 226 and 227 of Constitution of India and so, L.P.A. was tenable. In the case of **M.S. Kazi Vs. Muslim Education Society and Ors.** cited supra, the only point whether the Tribunal is necessary party respondent in a petition filed under section 226/227 of Constitution was involved and considered. The Apex Court has laid down that the Tribunal is not necessary party to such proceeding. As the L.P.A. was dismissed by holding that the Tribunal was necessary party, the decision of L.P.A. was set aside and matter was remanded back by the Apex Court.

17) In the case of **Sh Jogendrasinhji Vijaysinghji** cited supra after considering all the cases decided by Supreme Court in the past including the case of **Radhy Shyam** cited supra, the Apex Court has laid down the law as under :-

“25. From the aforesaid pronouncements, it is graphically clear that maintainability of a letters patent appeal would depend upon the pleadings in the writ petition, the nature and character of the order passed

by the learned Single Judge, the type of directions issued regard being had to the jurisdictional perspectives in the constitutional context. Barring the civil court, from which order as held by the three-Judge Bench in *Radhey Shyam* (supra) that a writ petition can lie only under Article 227 of the Constitution, orders from tribunals cannot always be regarded for all purposes to be under Article 227 of the Constitution. Whether the learned Single Judge has exercised the jurisdiction under Article 226 or under Article 227 or both, needless to emphasise, would depend upon various aspects that have been emphasised in the aforestated authorities of this Court. There can be orders passed by the learned Single Judge which can be construed as an order under both the articles in a composite manner, for they can co-exist, coincide and imbricate. We reiterate it would depend upon the nature, contour and character of the order and it will be the obligation of the Division Bench hearing the letters patent appeal to discern and decide whether the order has been passed by the learned Single Judge in exercise of jurisdiction under Article 226 or 227 of the Constitution or both. The Division Bench would also be required to scrutinize whether the facts of the case justify the assertions made in the petition to invoke the jurisdiction under both the articles and the relief prayed on that foundation. Be it stated, one of the conclusions recorded by the High Court in the impugned judgment pertains to demand and payment of court fees. We do

not intend to comment on the same as that would depend upon the rules framed by the High Court.

26.

35. We have stated in the beginning that three issues arise despite the High Court framing number of issues and answering it at various levels. It is to be borne in mind how the jurisdiction under the letters patent appeal is to be exercised cannot exhaustively be stated. It will depend upon the Bench adjudicating the lis how it understands and appreciates the order passed by the learned Single Judge. There cannot be a straight-jacket formula for the same. Needless to say, the High Court while exercising jurisdiction under Article 227 of the Constitution has to be guided by the parameters laid down by this Court and some of the judgments that have been referred to in *Radhey Shyam* (supra).

36. In view of the aforesaid analysis, we proceed to summarise our conclusions as follows:-

(A) Whether a letters patent appeal would lie against the order passed by the learned Single Judge that has travelled to him from the other tribunals or authorities, would depend upon many a facet. The Court fee payable on a petition to make it under Article 226 or Article 227 or both, would depend upon the rules framed by the High Court.

(B) The order passed by the civil court is only amenable to be scrutinized by the High Court in exercise of jurisdiction under Article 227 of the Constitution of India which is different from Article 226 of the Constitution and as per the pronouncement in *Radhey Shyam (supra)*, no writ can be issued against the order passed by the civil court and, therefore, no letters patent appeal would be maintainable.

(C) The writ petition can be held to be not maintainable if a tribunal or authority that is required to defend the impugned order has not been arrayed as a party, as it is a necessary party.

(D) Tribunal being or not being party in a writ petition is not determinative of the maintainability of a letters patent appeal.”

18) This Court has carefully gone through the observations made in various cases cited *supra* and sum and substance of those cases is given **Sh Jogendrasinhji Vijaysinghji** cited *supra*. The case cited *supra* show that this Court is expected to consider the facts and circumstances of every case to ascertain as to whether the learned Single Judge ought to have exercised jurisdiction under Article 226 of Constitution of India or under Article 227 of Constitution of India or whether there was the exercise of

jurisdiction under both these articles. The ratio of the aforesaid cases show that if it is clear that the learned Single Judge has exercised the jurisdiction given under section 226 of Constitution of India, then it would be immaterial whether the proceeding is filed under Articles 226 & 227 of Constitution of India or the learned Single Judge believed that he was exercising the power under Article 227 of Constitution of India. This Court has already observed that every Tribunal, Court or forum has inherent jurisdiction to take the decision as to whether it has jurisdiction over the matter or not. In the case of **National Textile Corporation (SM) Ltd.** cited supra, this Court had occasion to consider similar case. The learned Single Judge had held that there was no jurisdictional error committed by the Industrial Court and there was no possibility of interference in the matter and in view of those circumstances. In L.P.A. this Court held that the L.P.A. was not tenable and the jurisdiction which was exercised by the learned Single Judge was under Article 227 of Constitution of India, the power of superintendence. This Court is also expected to keep in mind while exercising appellate power in a proceeding like present one that this Court is expected only to ascertain as to whether the decision of learned Single Judge is patently illegal. If justice is done, then this Court is not expected to interfere in the appellate jurisdiction.

19) For taking the decision on merits, the contention as to whether there was relationship of employer and employee, many reported cases were cited by both the sides. The learned counsel for respondents placed reliance on following cases :-

(i) 2008 I CRL 1023 (SC) [Hindalco Industries Ltd. Vs. Association of Engineering Workers],

(ii) 2002(2) LJSoft 112 (Bom.H.C.) [Hindoostan Spg. & Wvg. Mills Ltd. & Anr. Vs. Sharad G. Khanolkar and Ors.],

(iii) 2004 (3) Mh.L.J. 142 (Bom.H.C.) [Akhil Bhartiya Shramik Kamgar Union Vs. Buildtech Constructions and Ors.],

(iv) 2002 (92) FLR 538 (Bom.H.C.) [Lokmat Vs. Dnyaneshwar Haribhai Kadu],

(v) 2007 (6) B.C.R. 29 (Bom.H.C.) [Fulchand Gedam Vs. Lokmat],

(vi) MANU/MH/1046/2007 (Bom.H.C.) (A.C.C. Ltd. Vs. Associated Cement Staff Union and Ors.),

(vii) 2001 (III) CLR 632 (Bom.H.C.) [Shaukat Adam Malim Vs. Kokan Mercantile Coop. Bank Ltd. And Ors.],

(viii) 2005(2) L.J. SOFT 48 (Bom.H.C.) [Godrej and Boyce Manufacturing Co. Pvt. Ltd. Vs. Kherulla Hasanali Pathan Co. Association of Engg. Workers and Anr.],

(ix) 2010(3) L.J. SOFT (Bom.H.C.) (Zim Laboratories Ltd. Vs. Nagpur General Labour Union),

(x) 2004(8) L.J. SOFT 100 (Bom.H.C.)
(Doodh Kamgar Sabha Vs. Zurisingh & Co. & Ors.),

(xi) 2000 (12) L.J. SOFT 138 (Bom.H.C.)
[National Textile Corporation (Maharashtra North) Ltd. Vs. Aant Parshuram Joshi,

(xii) Civil Appeal No. 4108/2007, decided by
Hon'ble Supreme Court on 7.9.2007 [The
Commissioner, Karnataka Housing Board Vs.
C. Muddaih),

(xiii) 2002(1) L.J. SOFT (S.C.) 113 (S.C.)
[Roshandeen Vs. Preeti Lal],

(xiv) 2005 (III) C.L.R. 1028 (S.C.) [R.M.
Yellati Vs. The Asstt. Executive Engineer],

(xv) 1991 (II) C.L.R. 635 (S.C.) (Union of
India etc. Vs. K.V. Jankiram etc.)

(xvi) 1992 (II) L.L.J. 140 (J & K H.C.) [Abdul
Majidkhan Vs. State and Ors.].

(xvii) (2011) 15 SCC 209 [Bhilwara Dugdh
Utpadak Sahakari Samiti Ltd. Vs. Vinod Kumar
Sharma deadby Lrs. And Ors.] : 2011 STPL
(Web) 751 SC.

20) In the case of **Bhilwara Dugdh Utpadak Sahakari Samiti Ltd.** cited supra supra recently decided case, the Apex Court has observed that if subterfuge is resorted by employer to show that the workmen were only workmen of contractor, the Court can consider the material to ascertain the relationship. In the present matter, there is one glaring circumstance. As per the employer,

there were only 18 regular employees appointed by it in Coca-Cola Bottling Plant, big factory. As per the record, there were around 150 workers working in shifts in the factory. This circumstance speaks for itself and gives inference as to what kind of modus operandi must have been used by the employer and as to how the employer is trying to exploit the labour force.

21) To answer the objection of the learned counsel for appellant that first the Industrial Court ought to have decided the point of jurisdiction as preliminary issue, then it ought to have decided the case on merits. There are many cases which are as under :-

(i) 2000(1) C.L.R. 818 [Rajiv Bhalchandra Gundewar Vs. Crompton Greaves Ltd.],

(ii) 1996 II. L.L.J. 125 (SC) [National Council for Cement and Building Materials Vs. State of Haryana & Ors.],

(iii) 1983 LAB.I.C. 1629 [D.P. Maheshwari Vs. Delhi Admn. And Ors.],

(iv) 2006(2) C.L.R. 183 [Relene Petrochemicals Pvt. Ltd. Vs. Sunil Sudhakar Sathe & Ors.],

(v) 2010 (3) C.L.R. 77 [Maharashtra Lok Kamgar Sanghataa Vs. Ballarpur Industries Limited and Anr.]

In the case of National Council for Cement and Building

Materials cited supra the Apex Court has made observations at para Nos. 11 to 16 as under :-

"11. Usually, whenever a reference comes up before the Industrial Tribunal, the Establishment, in order to delay the proceedings, raises the dispute whether it is an "industry" as defined in Section 2 (j); or whether the dispute referred to it for adjudication is an 'industrial dispute' within the scope of Section 2 (k) and also whether the employees are "workmen" within the meaning of Section 2 (s). A request is made with that these questions may be determined as preliminary issues so that if the decision on these questions are in the affirmative, the Tribunal may proceed to deal with the real dispute on merits.

12. We, however, cannot shut our eyes to the appalling situation created by such preliminary issues which take long years to settle as the decision of the Tribunal on the preliminary issue is immediately challenged in one or the other forum including the High Court and proceedings in the reference are stayed which continue to lie dormant till, the matter relating to the preliminary issue is finally disposed of.

13. This Court in *Cooper Engineering Ltd. Vs. P.P. Mundhe* (1975-II-LLJ-379), in order to obviate undue delay in the adjudication of the real dispute, observed that the Industrial Tribunals

should decide the preliminary issues as also the main issues on merits all together so that there may not be any further litigation at the interlocutory stage. It was further observed that there was no justification for a party to the proceedings to stall the final adjudication of the dispute referred to the Tribunal by questioning the decision of the Tribunal on the preliminary issue before the High Court.

14. Again in *S.K. Verma vs. Mahesh Chandra* (1983-II-LLJ-429), this Court strongly disapproved the practice of raising frivolous preliminary objections at the instance of the employer to delay and defeat the purpose of adjudication on merits.

15. In *D.P. Maheshwari Vs. Delhi Administration* (1983-II-LLJ-425), this Court speaking through O,Chinnappa Reddy, J. observed that the policy to decide the preliminary issue required a reversal in view of the "unhealthy and injudicious practices resorted to for unduly delaying the adjudication of industrial disputes for the resolution of which an informal forum and simple procedure were devised with avowed object of keeping them from the dilatory practices of Civil Courts". The Court observed that all issues whether preliminary or otherwise, should be decided together so as to rule out the possibility of any litigation at the interlocutory stage. To the same effect is the

decision in *Workmen employed by Hindustan Lever Ltd. Vs. Hindustan Lever Ltd.* 1984-LLC-1573.

16. The facts in the instant case indicate that the appellant adopted the old tactics of raising a preliminary dispute so as to prolong the adjudication of industrial dispute on merits. It raised the question whether its activities constituted an 'Industry' within the meaning of the Industrial Disputes Act and succeeded in getting a preliminary issue framed on that question. The Tribunal was wiser. It first passed an order that it would be heard as a preliminary issue, but subsequently, by change of mind, and we think rightly, it decided to hear the issue along with other issues on merits at a later stage of the proceedings. It was at this stage that the High Court was approached by the appellant with the grievance that the Industrial Tribunal, having once decided to hear the matter as a preliminary issue, could not change its mind and decide to hear that issue along with other issues on merits. The High Court rightly refused to intervene in the proceedings pending before the Industrial Tribunal at an interlocutory stage and dismissed the petition filed under Article 226 of the Constitution. The decision of the High Court is fully in consonance with the law laid down by this Court in its various decisions referred to above and we

do not see any occasion to interfere with the order passed by the High Court. The appeal is dismissed, but without any order as to costs.”

In the case of **D.P. Maheshwari** cited supra, there are more observations of the Apex Court which needs to be adopted by this Court while exercising jurisdiction under Article 226 of Constitution of India. The observations are as under :-

“There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Art. 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Art. 226 of the Constitution nor the jurisdiction of this Court under Art. 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for

adjudication of peripheral issues, avoiding decision on issues more vital to them. Art. 226 and Art. 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections journeyings up and down. It is also worth while remembering that the nature of the jurisdiction under Art. 226 is supervisory and not appellate while that under Art. 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues."

22) In view of the aforesaid discussion made on both merits and jurisdiction of Industrial Court and tenability of the present proceeding, this Court holds that on merits the appellant has no

case. The Industrial Court has not committed any error in exercising the jurisdiction to decide the complaints and there is no possibility of interference in the decision of learned Single Judge on merits also as L.P.A. itself is not tenable. In the result, the L.P.A. stands dismissed. Civil Applications, if any, stand disposed of.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

After declaring the decision, the learned counsel for appellant submitted that from the year 2010 till few days prior to the decision, there was statusquo order, he wants to challenge the order of this Court and for that, he wants the order of statusquo in his favour. It can be said that it is unfortunate that even after the decision given by the Industrial Court in favour of the workers, they are not allowed to resume the duty. However, as there was the relief of aforesaid nature for about eight years in this proceeding, similar relief is given for the period of four weeks from today.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/