

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10576 OF 2017

Krishna Traders, Proprietor

.. Petitioner

Smt. Vaiju Vijay Hawal

Vs.

Shri Dilip Balu Shinde

.. Respondent

Mr. Manoj G. Patil for the Petitioner.

Mr. Nitin B. Patil for the Respondent.

CORAM : A.K. MENON, J.

DATED : 4th FEBRUARY, 2019.

P.C. :

1. The challenge in the petition is to an order dated 30th September, 2016 passed by the Labour Court, Kolhapur in Complaint [ULP] No. 29 of 2016 and an order passed in revision [ULP] No. 113 of 2016 dated 23rd January, 2017 by the Industrial Court, Kolhapur.

The facts in brief are as follows

2. Complaint [ULP]29 of 2016 came to be filed on 20th April, 2016 under section 29 of the MRTP and PULP Act alleging unfair labour practices under section 1(a), (b), (d), (f), g) of Schedule IV of the MRTU and PULP Act. The complainant was employed with the petitioner which is stated to be a proprietary firm of one Smt. Vaiju Vijay Hawal engaged in the manufacture of corrugated packing boxes, paper rolls and sheets.

3. The respondent/complainant contended that the petitioner is an industry and that he was working as a helper from November 14 and drawing wages of 7000/- per month. He had completed 240 days services during each year but the petitioner had not obtained factory licence despite employing about 25 persons. On 24th January, 2016 he was injured while pouring oil into a printing machine. He was admitted to a hospital, treated but later suffered amputation of his right hand and thereby suffered from 59% disability. It is his contention that his services were orally terminated on 22nd March, 2016 despite his being fit for duty. Upon services being terminated, the termination was been challenged as being violative of his rights inasmuch as no charge sheet was served upon him nor was an enquiry held. An interim application also came to be filed.

4. In the written statement the petitioner contended that the respondent was not an employee and therefore the complaint is not maintainable. Not being employee, there was no question of engaging in unfair labour practices. That the petitioner was a proprietary concern not a partnership and the respondent was a contractor with the petitioner's establishment who was engaging contract workers and the respondent paid wages to the workers. It was contended that the respondent hired workers, changed and dismissed them as per his requirements. The petitioner moved Exhibit C-12 seeking dismissal of the complaint which was opposed by the respondent on the basis

that the application has not been taken out as per provisions of law and hence not maintainable. The Labour Court came to the conclusion that the respondent had not established that he was a workman and he was directed to lead evidence on that issue.

5. Being aggrieved the petitioner filed revision application before the Industrial Court in which, while denying the contention of the respondent sought rejection of the complaint. The Industrial Court vide impugned order dated 23rd January, 2017 came to the finding that order of the Labour Court need not be interfered with. The Revision Application was dismissed and the Labour Court was directed to issue of maintainability of the complaint on the aspect of employer employee relationship within three months of passing order. The petitioner is therefore aggrieved and has approached this Court vide Article 227 of the Constitution.

6. Mr. Manoj Patil for the petitioner submitted that the impugned orders are incorrect in view of the fact that there was no occasion for the labour Court to direct leading of evidence and that in an application under the MRTPL and PULP Act no evidence could be led if the relationship had been denied. The powers of the Labour Court he submitted under the MRTPL and PULP Act did not permit leading of evidence to establish whether a person was workman or otherwise.

7. He relied upon decision of the Division Bench of this Court in the case of *M/s. Asia Foundation & Constructions Ltd. & Anr. vs. The Engineering Kamgar Sanghatana & Anr.* [(2017) (1) ALL MR 428] and submitted that this Court had clearly held that under the MRTP and PULP Act there is no question of the Court recording evidence to establish whether or not a person was a workman. Only if the complainant was a workman he could approach the Labour Court under the MRTP and PULP Act and not otherwise. In the present case it was clear that the Labour Court and the Industrial Court were undecided on whether the complainant was a workman and therefore called upon the complainant to establish that fact.

8. On behalf of the respondent Mr. Nitin Patil submitted that the respondent was clearly a workman. Reliance was placed on observation of Single Judge of this Court in the case of *Ravindra s/o. Pabhakar Rao Bramhane vs. Executive Engineer (E.G.S.)* [(2018) (5) Mh.L.J. 827] wherein the Court held that evidence can be led in the matter of mixed question of facts and law and to establish his status as workman. In a second judgment *Jalinder Ranghanath Lahare and Ors. vs. Indian Seamless and Metal Tubes Ltd* [(2016) (4) Mh.L.J.] a similar view is taken by the Aurangabad bench,

9. The learned counsel for the respondent therefore submitted that there was no reason to interfere with the impugned orders which were passed in

accordance with law and following the decision of the Supreme Court in the case of *Vividh Kamgar Sabha vs. Kalyani Steels Ltd. [AIR 2001 SC 1534]* and *CIPLA Ltd. vs. Maharashtra General Kamgar Union [AIR 2001 SC 1165]*. It was contended that in the instant case the labour Court had found a group insurance policy had been taken out by the petitioner for numerous persons but that itself was not sufficient to hold that the respondent was a workman.

10. Having heard the learned counsel for the parties and considering the factual background, it is evident that the Labour and Industrial Courts had not rendered any finding whether the respondent was a workman or not. Although a group insurance policy had been subscribed to by the petitioner, it was not enough to show that there existed an employer and employee relationship. It was for these reasons that parties were directed to lead evidence. In my view the order directing recording of evidence on this issue is already covered by the decision of the Division Bench of this Court in *Asia Foundation (supra)* in which case the Court has held that while exercising jurisdiction under section 30 the labour Court could not record evidence to establish the relationship between employer and employee.

11. In my view it is not possible to sustain the impugned order inasmuch as the ascertainment of status of respondent, whether he is a workman or not, cannot be arrived at by leading evidence under section 30 of the MRTF

and PULP Act. Chapter VII sets out the powers of the Industrial and Labour Courts. The scope of section 30 has been now reiterated by the Division Bench in the case of *Asia Foundation (supra)*. The judgments in the case of *Ravindra s/o.Prabhakar Rao Bramhane (supra)* and *Jalinder Ranganath Lahare (supra)* were passed pursuant to disputes under the Industrial disputes Act and therefore leading of evidence was rightly contemplated in those cases. In *Ravindra s/o Prabhakar Rao Bramhane (supra)* reference arose out of an Employment Guarantee Scheme and in the case of *Jalinder Raganath Lahare (supra)* it was a case under section 25F of the Industrial Disputes Act. The factual situation here is also different. In these circumstances it will be open for the respondent to establish his claim to be a “workman” on the basis of material that he may produce before the Industrial Court. For all the aforesaid reasons I am of the view that the impugned order dated 30th September, 2019 Exhibit C-12 permitting the respondent to lead evidence is required to be set aside. I therefore pass the following order :

- (i) Impugned orders dated 30th September, 2016 and 23rd January, 2017 passed by the Labour Court and the Industrial Court are set aside.
- (ii) Respondent is at liberty to establish his claim on that basis of material that may be filed before the Labour Court.

(ii) The Labour Court shall proceed to decide the complaint on the basis of the material on record uninfluenced by the observation of this Court.

(iii) Writ Petition disposed of in the above terms.

(iv) In view of the fact that this Writ Petition is of the year 2017 the lower Court shall consider granting expeditious hearing of the complaint.

(A.K. MENON, J.)