

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8080 OF 2020

M/s Premium Transmission Pvt. Limited
(through Mahesh Bhagwan Vaidya -
Sr. Manager HR)
Plot No.B-36, five Star Shendra MIDC,
Aurangabad

...PETITIONER

VERSUS

1. Auranghabad Mazdoor Union (CITU)
(through its President/ General Secretary)
CITU Bhavan, Near Shivaji High School,
Ajabnagar, Khokadpura,
Aurangabad – 431 001
2. Kishan Subhash Rathod,
Age 30 years, Occu. Service,
R/o H.No.80, Rajnagar,
Railway Station, Mukundwadi,
Aurangabad
3. Ravindra Krushna Wahul,
Age 26 years, Occu. Service,
R/o 04-22/402, Ramnagar,
Galli No.4, Nalanda School,
Kranti Chowk, Aurangabad
4. Sharad Dilip Hivrare,
Age 28 years, Occu. Service,
R/o Brijwadi, MIDC Area,
Chikalthana, Aurangabad
5. Kishor Devidas Patil,
Age 28 years, Occu. Service,
R/o Gokulnagar,
Jadhavwadi, Aurangabad
6. Kalyan Bhanudas Dugale,
Age 33 years, Occu. Service,
R/o Plot No.54/7, Aaisaheb Nagar,

Harshul Pisadevi Road,
Aurangabad

7. Rahul Pandurang Mhaske,
Age 34 years, Occu. Service,
R/o At Post Shevga, Taluka
and District Aurangabad
8. Sachin Janardhan Kakde,
Age 30 years, Occu. Service,
R/o Jay Bhavaninagar,
N-2, CIDCO, Aurangabad
9. Pradip Hari Wahule,
Age 37 years, Occu. Service,
R/o House No.5/11/269,
Galli No.12, Ambedkarnagar
N-7, Aurangabad
10. Dnuaneshwar Damodhar Sangale,
Age 25 years, Occu. Service,
R/o At Satala, Post Chauka,
Taluka and District Aurangabad
11. Ramchandra Sudhakar Suke,
Age 27 years, Occu. Service,
R/o Gokulnagar, Jadhavwadi,
Aurangabad
12. Dadasaheb Shivaji Khandagale,
Age 26 years, Occu. Service,
R/o N-6, CIDCO, Aurangabad
13. Tushar Diliprao Ambulkar,
Age 24 years, Occu. Service,
R/o N-7, Ayodhya Nagar,
CIDCO, Aurangabad
14. Arjun Raosaheb Gaikwad,
Age 23 years, Occu. Service,
R/o Daregaon, Post Padhali,
Tq. Khultabad, District Aurangabad
15. Chetan Babanrao Landge,
Age 30 years, Occu. Service,
R/o Sanjaynagar, Mukundwadi,

Aurangabad

16. Amol Mukundrao Hud,
Age 26 years, occu. Service,
R/o N-2, CIDCO, Jaybhavaninagar,
Aurangabad
17. Bharat Bhausahab Gaikwad,
Age 32 years, Occu. Service,
R/o Satana, Tq. and Dist. Aurangabad
18. Suryabhan Damodhar Salve,
Age 33 years, Occu. Service,
R/o Shevga, Tq. & Dist. Aurangabad
19. Hemant Kailash Dhumal,
Age 22 years, Occu. Service,
R/o N-9, CIDCO,
New Swami Samarth Mandir,
Aurangabad
20. Rahul Ram Jadhav,
Age 28 years, Occu. Service,
R/o N-2, J-8-3,
Sant Dnyaneshwar Colony,
Mukundwadi, Aurangabad
21. Rahul Sidharth Navture
Age 18 years, Occu. Service,
R/o Brijwadi MIDC Area,
Chikalthana, Aurangabad
22. Rahul Bhaurao Jadhav,
Age 26 years, Occu. Service,
R/o Aurangabad
23. Dnyaneshwar Bhanudas Pathade,
Age 30 years, Occu. Service,
R/o Karajgaon, Post Gadhejalgaon,
Tq. & Dist. Aurangabad
24. Hanuman Kakasaheb Ghavate,
Age 26 years, Occu. Service,
R/o at Satara,
Tq. & Dist. Aurangabad

25. Bharat Bhausaheb Ghawate,
Age 32 years, Occu. Service,
R/o at Satara,
Tq. & Dist. Aurangabad
26. Ganesh Devrao Mate,
Age 29 years, occu. Service,
R/o Jalgaon, Taluka and
District Aurangabad
27. Vikramsing Bhilesing Girase,
Age 27 years, Occu. Service,
R/o At Post Shara Swapnagan,
Gangapur Jahangir,
Shendra MIDC, Aurangabad
28. Suresh Damodhar Narwade,
Age 35 years, Occu. Service,
R/o Sanjay Nagar, Mukundwadi,
Aurangabad
29. Mahendra Ramrao Wahul,
Age 33 years, Occu. Service,
R/o Brijwadi,
Chikalthana MIDC, Aurangabad
30. Satish Ramdas Kharat,
Age 32 years, Occu. Service,
R/o At Post Dhasla, Tq. Badnapur,
District Jalna
31. Sachin Dadarao Bankar,
Age 28 years, Occu. Service,
R/o Ramanagar, Kranti Chowk,
Galli No.4, Aurangabad
32. Amol Sahebrao Nannaware,
Age 27 years, Occu. Service,
R/o Brijwadi, MIDC Area,
Chikalthana, Aurangabad
33. Sanjay Sandulal Jaiswal,
Age 35 years, Occu. Service,
R/o Gajanan Maharaj Mandir,
Kumbhefal, Aurangabad

34. Kakasaheb Bajirao Bhosale,
Age 30 years, Occu. Service,
R/o Jalgaon, Post Karmala,
Tq. and Dist. Aurangabad
35. Naser Mujeeb Baig,
age 47 years, Occu. Service,
R/o Plot No.14, Gut No.13,
Ekta Nagar, Itkheda, Aurangabad
36. Dhananjay Sanjay Divekar,
Age 30 years, Occu. Service,
R/o Mukundwadi, CIDCO,
Ramnagar M-2, 26/6,
Aurangabad
37. Raosaheb Damodhar Bhujang,
Age 30 years, Occu. Service,
R/o At Kumbhefal,
Tq. and Dist. Aurangabad
38. Dattatray Radakeshan Nalge,
Age 37 years, Occu. Service,
R/o Mali Galli, Chikalthana,
Aurangabad
39. Abhimanu Narayan Barde,
Age 26 years, Occu. Service,
R/o Ambikanagar, Galli No.4,
Mukundwadi, N-2, CIDCO,
Aurangabad
40. Santosh Anandrao Mudgal,
Age 40 years, Occu. Service,
T/o Kolghar, Tq. & Dist. Aurangabad
41. Mahendra Bhivsan Shirsath,
Age 24 years, Occu. Service,
R/o Savitrinagar, Chikalthana,
Aurangabad
42. Radhakisan Narayan Kakde,
Age 28 years, Occu. Service,
R/o At Wadkha, Post Warzadi,
Tq. Dist. Aurangabad

43. Ganesh Kundlik Kakde,
Age 27 years, Occu. Service,
R/o At Wadkha, Post Warzadi,
Tq. Dist. Aurangabad
44. Mangesh Tatyrao Dehade,
Age 24 years, Occu. Service,
R/o Garkheda, No.2, Post Pimpriraja
Tq. Dist. Aurangabad
45. Ravindra Janardhan Gaikwad,
Age 38 years, Occu. Service,
R/o House No.5-9-2072,
Prakashnagar (East), Ramnagar,
CIDCO, N-2, Aurangabad
46. Prakash Haribhau Nimbalkar,
Age 24 years, Occu. Service,
R/o At Deugaon, Tq. Badnapur,
Dist. Aurangabad
47. Bhagwan Uttam Bankar,
Age 39 years, Occu. Service,
R/o Ambedkarnagar,
N-7, CIDCO, Aurangabad
48. Pradip Parmeshwar Ghodke,
Age 25 years, Occu. Service,
R/o Post Shevga,
Tq. Dist. Aurangabad
49. Krushna Baban Rajale,
Age 24 years, Occu. Service,
R/o At Karal, Post Golatgaon,
Tq. Dist. Aurangabad
50. Krushna Dattatray Sargar
Age 28 years, Occu. Service,
R/o Hanumannagar, N-4, CIDCO,
Aurangabad
51. Baliram Madan Raut,
Age 21 years, Occu. Service,
R/o Karol, Tq. Dist. Aurangabad
52. Atish Arjun Nikalje,

Age 31 years, Occu. Service,
R/o P-4-7/1, Vithalnagar,
N-2, CIDCO, Aurangabad

53. Nitin Baliram Bhosale,
Age 25 years, Occu. Service,
R/o Jalgaon, Karmad,
Dist. Aurangabad
54. Dharmendra Govindrao Ghorpade,
Age 34 years, Occu. Service,
R/o Brijwadi, MIDC, Chikalthana Area,
Aurangabad
55. Shikandar Kakasaheb Wagh,
Age 26 years, occu. Service,
R/o Post Shekta,
Tq. Dist. Aurangabad
56. Santosh Hanumatrao Bhchake
Age 33 years, Occu. Service,
R/o Varud Kajinath Nagar Road,
Aurangabad
57. Sunil Baburao Bankar,
Age 44 years, Occu. Service,
R/o At Post Pisadevi,
Dist. Aurangabad
58. Kishor Shitaram Diwandhothre,
Age 36 years, Occu. Service,
R/o Plot No.58, Mukundnagar,
Mukundwadi, Aurangabad
59. Eknath Pathaji Gaikwad,
Age 46 years, Occu. Service,
R/o Uttaranagari, Brijwadi,
Aurangabad
60. Ganesh Sominath Shelke,
Age 34 years, Occu. Service,
R/o Kumbhefal,
Tq. Dist. Aurangabad
61. Akash Prakash Kasare,
Age 22 years, Occu. Service,

R/o Naygaon, Post Sawangi,
Tq. Dist. Aurangabad

62. Tukaram Pujaram Kulkarni,
Age 32 years, Occu. Service,
R/o Karmad, Tq. Dist. Aurangabad
63. Ganesh Balasaheb Shinde,
Age 28 years, Occu. Service,
R/o Brijwadi MIDC Chikalthana,
Aurangabad
64. Rajendra Bhimrao Shejwal,
Age 26 years, Occu. Service,
R/o CIDCO N-7, Gris Colony,
Indra Market, Plot No.45,
Tq. Dist. Aurangabad
65. Amol Vilasrao Gavli,
Age 30 years, occu. Service,
R/o N-4, Jaybhavaninagar,
Galli No.11, Aurangabad
66. Vitthal Vishwanath Mhetre,
Age 48 years, Occu. Service,
R/o Galli No.5, East Prakashnagre,
N-2, CIDCO, Aurangabad 431 001
67. Aurangabad Multi Services,
Akshay Deep Plaza, Gala No.102,
N-1, CIDCO, Aurangabad
68. Om Sai Manpower Services Ltd.
Plot No.5, Near Saint Lawrence School,
Town Centre, N-5, CIDCO,
Aurangabad

...RESPONDENTS

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Shri B.R. Kawre, Advocate for petitioner
Shri T.K. Prabhakaran, Advocate with
Shri Ashutosh S. Kulkarni, Advocate for respondents No.1 to 66,
Shri Y.R. Marlapalle, Advocate for respondents No.67 & 68

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CORAM : R. G. AVACHAT, J.

Date of reserving order : 18th January, 2021

Date of pronouncing order : 18th March, 2021

ORDER :

Heard learned counsel appearing for the parties.

2. The challenge in this Writ Petition is to the orders dated 28/9/2020 and 9/11/2020, passed by Industrial Court, Aurangabad below application Exh.C-11 and C-18 respectively. Vide impugned orders, the applications moved by the petitioner – Company for deciding the issue as to maintainability of the complaint as a preliminary issue and one raising objection as to maintainability of the complaint have been rejected.

3. The petitioner is a private limited Company engaged in manufacturing of power transmission equipments. The respondent No.1 is a Labour Union. Respondents No.2 to 66 claim to be employees working with the petitioner – Company. Respondents No.67 and 68 are Companies engaged in supply of manpower (labour contractors). Respondent No.1 Union preferred a dispute in conciliation to

Deputy Commissioner of Labour, Aurangabad. The petitioner Company had not been served with pre-intimation/ pre-conciliation regarding admission of dispute in conciliation. Respondent No.1 Union did not issue any demands. The Assistant Labour Commissioner was compelled to admit the dispute. The Conciliation Officer submitted failure report. The dispute thus came to be referred to Industrial Tribunal for adjudication.

Respondents No.67 and 68 provided the petitioner Company some workforce on contract. As the petitioner Company was facing financial constraints, it had instructed the respondents No.67 and 68 to reduce workforce to some extent. These respondents also issued a letter to the petitioner company expressing their inability to provide workforce as labourers were not reporting for duty.

4. The respondents No.1 to 66 filed a complaint before the Industrial Court claiming direct relationship with the petitioner Company. It is Complaint (ULP) No.64/2020. It has been filed to declare the petitioner Company to have committed unfair labour practices falling under Item No.1 of Schedule II and Items No.5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of

Unfair Labour Practices Act, 1971 (the Act for short). It has also been prayed that the petitioner Company be directed to desist from indulging in such unfair labour practices. It be directed to provide work to the complainants No.2 to 65 in the petitioner's factory and pay them full back wages from the date of refusal of employment as detailed in Annexure A to the complaint etc.

5. Relevant averments in the complaint are :-

“2.1. Respondent No.2 & 3 are claimed to be proprietor concerns. They are name-lenders in relation to Respondent no.1. Respondent No.2 & 3 have provided documentary support to Respondent No.1 to show that the workmen are not directly employed by Respondent No.1. Respondent No.2 & 3 create such records such as application for employment; attendance records; payment records; Employees State Insurance Records; Provident Fund records and such other statutory records. It is assumed that the Respondents have secured statutory support also under the Contract Labour (Regulation and Abolition) Act, 1970 such as registration and license in their respective names. For doing so, they have falsified the claim by concealing the actual nature of duties performed by the workmen. The names and details of such workmen who are robbed off their rights under various statutes or shown to be dissociated their relationship directly with Respondent No.1 are shown in the list **Annexure “A”** annexed hereto.

2.2. All these workmen are employed to do the work directly related to manufacturing process of Respondent No.1. Their work is directly integrated in the Factory which manufactures coupling and gear-

boxes required for Conveyor systems of assemble lines for Industrial Applications. The conveyor systems are used in power sector for feeding hold to the furnaces for production of thermal energy and in Sugar Industries for conveying the Sugar canes. The product of the Company are used for domestic consumption as well as for exports to various countries like Germany, Brazil, Australia etc.

2.3 The workmen named in Annexure-A are required to work along with the workmen directly appointed by Respondent No.1. There is no separate or identifiable work performed by these workmen as all these workmen jointly perform their job. They jointly put in their efforts for a common product. The workmen named in Annexure-A are paid between Rs.10,000 – Rs.15,000 per month, whereas the workmen working the same work directly appointed by Respondent No.1 paid Rs.40,000/-. There is no difference in the work in terms of quality or quantity by and between the said groups. The workmen claimed uniformity in wages with respect to work assigned to them.”

6. The petitioner Company appeared before the Industrial Court and disputed employer-employee relationship between it and the complainants No.2 to 65. The petitioner Company, therefore, first preferred the application C-11 for framing of preliminary issue relating to maintainability of the complaint. On the application having been rejected vide order dated 28/9/2020, it preferred another application – C-18 challenging maintainability of the complaint. The said application came to be rejected on 9/11/2020.

7. Both the applications came to be rejected on somewhat similar grounds. The learned Member, Industrial Court, observed : -

“I do agree that unless relationship as employee-employer is established, no relief can be granted, nor question arise about unfair labour practices. Indeed, a question of framing of issue or holding of summary inquiry does not arise at all. Once, it is clear that the Industrial Court under MRTU & PULP Act has no jurisdiction to decide the issue relating to employer-employee relationship, the occasion for framing of issue on the point which is beyond its jurisdiction cannot arise. Consequently said issue cannot be framed. It needless to say the jurisdiction of this Court depends upon the fact of existence of employer-employee relationship between the parties, which is a jurisdictional fact, which should exist to enable this Court to assume jurisdiction to entertain the complaint under the said Act, in the absence of the same, any attempt on the part of this Court to adjudicate upon the issue of such relationship would amount to mistake of fact in relation to jurisdiction. Further, a jurisdictional fact is one on existence or non-existence of which depends assumption or refusal to assume jurisdiction by a Court, Tribunal or an authority, which is a fact which must exist before a Court can properly assume jurisdiction of a particular case. Mistake of fact in relation to jurisdiction is an error of jurisdictional fact. No statutory authority or Tribunal can assume the jurisdiction in respect of subject matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the Court or Tribunal exercises its jurisdiction then the order is vitiated. Error of jurisdictional fact renders the order ultra vires and bad. In short, the issue regarding maintainability of complaint is a mixed question of facts and law.

Consequently, it cannot be framed. Apart from this when issue regarding relationship cannot be adjudicated by this Court, it would be futile exercise to frame the issue and endorse the findings. The issue regarding maintainability of complaint can be decided at the time of final hearing of complaint.”

8. In its order rejecting application C-18, the Industrial Court observed :-

“However, the documents on record clearly show that all the complainants have worked in the premises of respondent No.1 till 18/4/2020 though they are deployed by respondent Nos.2 & 3. In this case the complainants are not seeking the relief of permanency. They are only claiming the relief of status-quo for continuation of allotment of work and payment of wages from the respective dates of refusal of employment. In short, the complainants want to continue and enforce pre-existing relationship and arrangement prior to 18/4/2020 until disposal of Reference (IT) No.1/2020. The claims of the parties on employer-employee relationship shall be a subject matter of Reference (IT) No.1/2020. The determination of respective claims will be adjudicated in the Reference, but that has no relevance to the subject matter of the complaint.”

It also observed that, in case of **Hindustan Lever Ltd. Vs. Hindustan Lever Research Centre Employees Union and another [2010 (1) CLR 309]**, it is held that the complaint for the limited purpose of adjudicating the grievance regarding unfair labour practice within the meaning of MRTU & PULP Act is maintainable.

9. Shri B.R. Kawre, learned counsel for the petitioner Company would submit that, the learned Member, Industrial Court did uphold legal submissions made on behalf of the petitioner Company. It, however, found that issue as to maintainability of the complaint is a mixed question of fact and law and, therefore, would be decided along with the complaint itself. According to learned counsel, the findings recorded by leaned Member are unsustainable in law. According to him, unless and until employer-employee relationship is admitted or indisputable, the Industrial Court does not have jurisdiction to enter into the arena of the dispute between the two. Every Court has, however, the jurisdiction to decide the issue as regards its own jurisdiction. The learned counsel relied on the judgments of Apex Court and this Court as well. A reference thereto would be made in the course of deciding the issue involved in this petition.

10. Shri Y.R. Marlapalle, learned counsel for respondents No.67 and 68 reiterated the submissions made by learned counsel for the petitioner Company. According to learned counsel, the complaint is not maintainable. The Court ought to have allowed the application Exh. C-18.

11. Shri T.K. Prabhakaran, learned counsel for the

respondents No.1 to 66 would, on the other hand, submit that, when the Member, Industrial Court has arrived at a finding based on proper appraisal of material, interference therewith is not warranted in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India. The learned counsel tried to distinguish the authorities relied on by the learned counsel for the petitioner. According to him, in view of Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970. The responsibility to pay wages to employees lies on the person who employees people on contract. If the contractor makes a default in payment of wages, the petitioner company is entitled to have recovered from contractor. Based on authoritative pronouncement, he would submit that, whenever a reference comes before the Industrial Court, the establishment, in order to delay the proceedings, raises the dispute whether it is an industry as defined in Section 2(J). It also raises a question as to whether the employee is workman within the meaning of Section 2(S). A request is also made to decide such question as a preliminary issue, with a view to delay the hearing of complaint.

12. Relying on the judgment of this Court in **Universal Ferro and Allied Chemicals Limited Vs. Member, Industrial**

Court & others [2002(3) All.M.R. 191], learned counsel would submit that, the Tribunal should decide all issues in dispute at the same time without trying some of them as preliminary issues. Learned counsel also relied on the judgment in the case of Hindustan Lever Limited (*supra*) to submit that, relationship of registered employer and Security Guard exists for limited purpose, considering the claim of unfair labour practice. The learned counsel would, therefore, submit for dismissal of the Writ Petition.

13. In case of **CIPLA Ltd. Vs. Maharashtra General Kamgar Union & ors. [(2001) 3 SCC 101]**, it has been observed in paragraph No.8 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 appropriate Industrial Tribunal or Labour Court. Such question cannot be examined by the 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 inquired 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 the ID Act.”

14. In case of **Vividh Kamgar Sabha V/s Kalyani Steel**
[2001 (1) CLR 532 (SC)], the Apex Court observed :-

“5. The provisions of the MRTU & PULP Act can only be enforced by persons who admittedly are workmen. If there is dispute as to whether the employees are employees of the company, then that dispute must first be got resolved by raising a dispute before the appropriate forum. It is only after the status as a workmen is established in an appropriate forum that a complaint could be made under the provisions of the MRTU & PULP Act.”

Same/ similar observations have been made in host of authorities of Apex Court and this Court as well. I do not propose to cite them heareat. Suffice it to say, those authorities have been relied on by the learned counsel for the

petitioner.

15. In view of the aforesaid legal proposition and the averments in the complaint, the Industrial Court ought to have observed the complaint to have not been maintainable. In view of there being Apex Court judgments referred to hereinabove, I have to prefer them over the judgment in case of Hindustan Lever (supra) relied on by the learned counsel for the respondents No.1 to 66.

16. For the reasons given hereinabove, the Writ Petition succeeds. The same is allowed in terms of prayer clause (B).

**(R. G. AVACHAT)
JUDGE**

fmp/-