

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

WRIT PETITION (WP) NO.668 OF 2020

PETITIONER : Mahindra and Mahindra Ltd,
Plot No.F-1/F7, MIDC Industrial Area,
(Original Hingna Road, Nagpur through it's
Respondent) Manager (ER and D)

--VERSUS--

RESPONDENTS : 1. Satish s/o Tulshiram Burile,
(Orig. Aged about 45 yrs, Occ. Service, C/o P. S.
Complainants) Kanhere, R/o Hianwar Layout, Plot No.7,
Jaitala Road, Nagpur

2. Sahebrao s/o Kisanrao Samudre,
Aged about 54 yrs, Occ. Service R/o Plot
No.17, Gedam layout, LIC Chowk, Hingna
Road, Nagpur

3. Umesh s/o Vitthalrao Tidke,
Aged about 49 yrs, Occ. Service, R/o Plot
No.156, Empress Mills Society Plots, Shri
Nagar Ring Road, Nagpur

4. Panjabrao s/o Gulabrao Kharat,
Aged about 49 yrs, Occ. Service, R/o Plot
No.159, Laxmi Nagar, Kokate Layout,
Wanadongri, Hingna Road, Nagpur

5. Ramesh s/o Anandraoji Lodhe,
Aged about 48 yrs, Occ. Service, R/o Plot
No.16-A, Harikrupa Housing Society,
Sangharsha Nagar, Jaitala, Nagpur

6. Kamlesh s/o Devidas Adhaoo,
Aged about 36 yrs, Occ. Service, R/o c/o
Ramesh Upadhyay, Plot No.25, Pandurang
Nagar, Vaishali Nagar, Hingna Road,
Nagpur

7. Sudhakar s/o Santoshrao Thakre,

Aged about 49 yrs, Occ. Service, R/o Plot No.152, Near Newish Convent, Bhole Baba Nagar, Uday Nagar, Chowk, Ring Road, Nagpur

8. Homeshwar Baburao Nanwatkar,
Aged about 39 yrs. Occ. Service R/o Plot No.45, Hanuman Nagar, Wanadongri, Hingna Road, Nagpur
9. Shrikant s/o Kisanji Deogade,
Aged about 40 yrs. Occ. Service, R/o Plot No.25, Behind MSEB Sub Station, Wanadongri, Hingna Road, Nagpur
10. Ravishekhar s/o Narayan Titare,
Aged about 49 yrs. Occ. Service, R/o 14, Search Valley Colony, Amar Asha Society, Indraprastha Nagar, Bhamti, Nagpur
11. Bhalchand s/o Baliram Dorle,
Aged about 41 yrs, Occ. Service, R/o Plot No.20, Vaibhav Nagar, Wanadongri Hingna Road, Nagpur
12. Ramu s/o Manohar Gajare,
Aged about 42 yrs, Occ. Service, R/o Plot No.120, Subhashwadi, Sangam Road, Wanadongri, Hingna Road, Nagpur
13. Dharmendra s/o Keshaosingh Chavan,
Aged about 41 yrs, Occ. Service, R/o Plot No.262, Near Shivaji Park Maidan, Mahajanwadi, Wanadongri, Hingna Road, Nagpur
14. Lalit s/o Jagdishrao Anjankar,
Aged about 30 yrs, Occ. Service, R/o At Post Loankhairi, Tah. Kamptee, Dist.Nagpur
15. Manoj s/o Bhagwanji Sawarkar,
Aged about 38 yrs, Occ. Service, R/o At Post Lavha, Khadgaon Road, Wadi, Near

(Deleted the R.No.12 as per Court Order dated 17.07.2021)

Hanuman Mandir, Nagpur

16. Government Labour Officer,
Maharashtra Industrial Relations Act, O/o
Additional Commissioner of Labour,
Administrative Building No.2, 4th floor,
Civil Lines, Nagpur
17. Member, Industrial Court, Nagpur, Temple
Road, Civil Lines, Nagpur

Shri. R. B. Puranik, Advocate for the Petitioner

Shri. S. B. Dhande, Advocate for the Respondent Nos.2 to 11 and 13
to 15

Ms. T. H. Khan, Asst. G. P. for the Respondent Nos.16 to 17.

CORAM : **N. B. SURYAWANSHI, J.**

RESERVED ON : **22.07.2021**

PRONOUNCED ON : **20.09.2021**

JUDGMENT

Hearing was conducted through Video Conferencing
and the learned counsel agreed that the audio and visual quality
was proper.

2. **RULE.** Rule made returnable forthwith. Heard finally
with the consent of the parties.

Respondent No.17, being the Industrial Court, is not a
necessary party and stands deleted.

3. This petition filed under Articles 226 and 227 of the Constitution of India raises the following questions.

Whether a complaint of contractual employees seeking to exercise their rights, as provided under the Maharashtra Industrial Relations Act, 1946 and Bombay Industrial Relations Rules, 1947, is maintainable under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ?

Whether contractual employees can file a complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 for challenging the impugned order, which is not passed by the Principal Employer?

4. **Factual matrix :**

The Petitioner – Original Respondent is a Company duly incorporated under the provisions of the Companies Act, 1956 having an establishment at M.I.D.C. Industrial Area, Hingna Road, Nagpur, wherein the manufacturing activity and sale of tractors and its components is undertaken. The establishment of the Petitioner is governed by the provisions of the Maharashtra Industrial Relations Act, 1946 (for short, “the MIR Act”). There are 806 permanent employees working in this establishment. The Petitioner’s

permanent employees work in core production areas. The Petitioner has outsourced its peripheral activities to several contractors and for that purpose, the Petitioner registered itself as the principal employer under Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970 (for short, "the Act of 1970"). The Contractors of the Petitioner have obtained license under Section 13 of the Act of 1970. There is no registered Trade Union in the local area of the Petitioner establishment.

The Labour Officer, who is an authority under Section 6 of the MIR Act, conducts the elections under Section 28 of the MIR Act for electing five representatives of the employees. The elections are held at the interval of every two years. Prior to the year 2007, alongwith the permanent employees of the Petitioner, the employees of the contractors used to take part in the elections held under Section 28 of the MIR Act. Thereafter, in view of the decision of the Division Bench of this Court in *Sunflag Iron and Steel Co. Ltd., ..Vrs.. State of Maharashtra and Others, 2008 III CLR 983*, the names of the employees engaged through the contractors were not included in the subsequent elections from the year 2009 onwards.

5. The Respondent Nos.1 to 15 – Original Complainants are contractual workers working in the Petitioner establishment. On 26.06.2019, the Respondent No.16 - Government Labour Officer

declared the election programme for conducting elections under Section 28 of the MIR Act, for electing five representatives of the employees. On 27.06.2019, the list of the workers was to be published on the notice board and on 28.06.2019, the objections, if any, to the said list were to be submitted in writing. On 29.06.2019, the objections were to be considered. The voting was scheduled on 06.07.2019. A representation dated 22.06.2019 was submitted to the Management by 301 workers working on contract basis to add their names in the voters list and to give them a right to vote. The Management informed the contractual workers that the decision in that regard cannot be taken by the Management and they may approach the Government Labour Officer or the Labour Commissioner. On 27.06.2019, some contractual workers submitted representation to the Labour Commissioner, Nagpur seeking inclusion of their names in the voters list. On 28.06.2019, the Labour Officer-cum-Returning Officer rejected the objection of the contractual workers stating that in view of the decision of the Division Bench of this Court in *Sunflag Iron and Steel Co. Ltd.* (supra), the contractual workers are not directly employed by the principal employer, and therefore, their names cannot be included in the voters list.

6. The Respondents/Complainants then approached the Industrial Court by filing Complaint (ULP) No.143 of 2019 arraying

the Petitioner as the Respondent No.1 and the Government Labour Officer as the Respondent No.2. The Respondents claimed in the complaint that the Petitioner, by not sending the names of the Respondents and other contractual employees to the Respondent No.2 and the Respondent No.2, by rejecting their objection against non inclusion of their names in the voters list, have committed unfair labour practice within meaning of Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, "the MRTU and PULP Act"). A direction was sought from the Respondent No.2 to include the names of the complainants and all contractual employees in the voters list for the biennial election of the representatives of the employees under Section 28 of the MIR Act read with Rule 40 of the MIR Rules, 1947. Alongwith the complaint, an application (Exh-U-2) was filed seeking interim relief of stay to the biennial elections to be held for the term 2019-2021.

7. The Petitioner opposed the complaint by filing a written statement and reply (Annexure-H) to the application for grant of interim relief on various grounds including that there is no employer and employee relationship between the Complainants and the Petitioner. The Respondents/ Complainants have failed to make out any case of commission of unfair labour practice under Item 9 of Schedule IV of the MRTU and PULP Act. The Election Officer under

the provisions of the MIR Act is not an employer, and therefore, he is not amenable to the jurisdiction of the Industrial Court under Sections 28 and 30 of the MRTU and PULP Act. The Industrial Court has no power or authority to give directions to the Respondent No.2 – Government Labour Officer.

8. The Industrial Court rejected the application (Exh-U-2), but *prima facie* held that the complaint is maintainable and it has jurisdiction to entertain it.

9. After rejection of the application (Exh-U-2) on 08.07.2019, the Petitioner on 08.08.2019 moved an application (Exh-C-10) seeking dismissal of the complaint contending that, admittedly the complainants are contractual employees, and hence, there is no employer employee relationship between the complainants and the Respondents. A Court constituted under the provisions of the MRTU and PULP Act, has no power or jurisdiction to decide the issue of employer employee relationship. By placing reliance on the judgments of *Sarva Shramik Sangh .vs. Janprabha Offset Works and Another, 2007(iii) CLR 845* and *Asia Foundation and Construction Ltd., Nagpur and Another .vs. Engineering Kamgar Sanghatana, Nagpur, 2016(2) Mh.L.J 406*, it was contended that the complaint cannot be tried and entertained by the Industrial Court, and therefore, can be dismissed as not maintainable. The said

application was opposed by the Respondents/Complainants by filing reply.

10. The Petitioner also filed an application (Exh-C-15) seeking permission to urge additional grounds in support of Exh-C-10. In the said application, the Petitioner contended that the Respondent No.2 as an Election Officer has all the powers and jurisdiction to decide who should be allowed to vote in the elections to be held under Section 28 of the MIR Act. The request of the Respondents for inclusion of their names in the voters list was rejected by the Respondent No.2. The Respondent No.2, being an Election Officer under the provisions of the MIR Act, is not an employer, and therefore, is not amenable to the jurisdiction of the Industrial Court. The Industrial Court has no power of superintendence over the Respondent No.2, and therefore on this ground also, the complaint is not maintainable and the same is liable to be rejected summarily.

11. After hearing the parties, the Industrial Court rejected the applications (Exh-C-10 and Exh-C-15) by a common order. This order is impugned in the present petition.

Rival Submissions :

12. Heard the learned Advocate for the Petitioner, the learned Advocate for the Respondent Nos.1 to 15 and the learned Assistant Government Pleader for the Respondent Nos.16.

13. The learned Advocate for the Petitioner submitted that the complaint is not maintainable as there is no employer employee relationship between the Petitioner and the Respondents/contractual employees. Since the complainants are not employees of the Petitioner, they are not entitled to file an ULP Complaint. He further submitted that the complaint of unfair labour practice is maintainable only against the employer. The Government Labour Officer-cum-Returning Officer not being an employer, the complaint could not have been filed against him and no relief can be claimed against him. The main relief is claimed against the Respondent No.2 – Government Labour Officer, who is not amenable to the jurisdiction of the Industrial Court, as he is not the employer. The Industrial Court has no power of superintendence over the Respondent No.2. Therefore, no declaration can be given that the Labour Officer/Election Officer has engaged in unfair labour practice. For the same reason, no direction can be given to him to include the names of contractual employees in the voters list. Since no relief is claimed against the Petitioner, as the Petitioner has no power to finalize the voters list and the said power vests only with the Respondent No.2, Labour Officer-cum-Returning Officer and as

the Respondent No.2 is not an employer, the complaint is not maintainable. By pointing out the prayers made in the complaint, he submitted that no case for commission of unfair labour practice under Item 9 of Schedule IV of the MRTU and PULP Act is made out by the Respondents. He further submitted that the decision in *Sunflag Iron and Steel Co. Ltd.* (supra) has not been properly appreciated by the Industrial Court, while passing the impugned order. He therefore urged that the complaint pending before the Industrial Court being not maintainable is liable to be quashed, by allowing the petition.

14. Per contra, the learned Advocate for the Respondents/Complainants submitted that admittedly, the elections are to be held under Section 28 of the MIR Act. The definition of employees given under Section 3(13) of the MIR Act is inclusive definition, which includes the employees engaged on contractual basis. So also, the definition of employer under Section 3(14) includes the employer, who is engaging the contractual employees. Therefore, the Petitioner was duty bound to forward the names of all the employees working in its undertaking including the names of contractual employees, to the Government Labour Officer. According to him, by not forwarding the list of contractual employees, the Petitioner has committed unfair labour practice. He supported the order passed by the Industrial Court by relying on the observations

of the Industrial Court in the order passed below Exh-U-2, he submitted that the said observations are not challenged by the Petitioner. Further submission is that the case of *Sunflag Iron and Steel Company Ltd.* (supra) was the case for verification of the list of Union. Therefore, the ratio of that case cannot be made applicable to the present case. According to him, the Industrial Court has passed a well reasoned order, which is not liable to be interfered with in, extraordinary writ jurisdiction.

15. The learned Assistant Government Pleader for the Respondent Nos.16 submitted that the Labour Officer-cum-Returning Officer cannot be said to be an employer and no relief can be claimed against him.

Conclusion :

16. It is a well settled legal position by catena of the decisions of the Hon'ble Apex Court that the contractual employees are not employees of the principal employer. In *Vividh Kamgar Sabha ..vs.. Kalyani Steels Ltd. and Anr.*, 2001(2) SCC 381, it is held that "the provisions of MRTU and 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 gotten 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 MRTU and PULP Act”

In *Central Labour Union (Red Flag) Bombay .vrs. Ahmedabad Mfg. and Calico Printing Co. Ltd. and Ors.*, 1995 Supp.(1) SCC 175, the Hon’ble Apex Court held that “where the workmen have not been accepted by the Company to be its employees, then no complaint would lie under the MRTU and PULP Act.”

In *Cipla Ltd. (supra)*, the Hon’ble Apex Court held thus:

“..... 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.”

17. In *Sunflag Iron and Steel Company Ltd.*, (*supra*) this Court, after considering the provisions of Section 28, 3(13)(a), 3(14) (e) of the Bombay Industrial Relations Act, 1946 and the Act of 1970 and the Hon’ble Apex Court’s decisions, held that “the contract labour is an employee of the contractor and not of the principal

employer.”

18. In light of the legal position settled by the aforesaid authoritative pronouncements, it is clear that for a complaint to be maintainable under the MRTU and PULP Act, admitted employer and employee relationship is a pre-condition. The provisions of the MRTU and PULP Act can be enforced only after the status of a workman is established before an appropriate forum.

19. There is no dispute that the Respondents are contractual employees working in the Petitioner establishment, therefore they are employees of the contractor and not of the Petitioner. They are therefore not entitled to file a complaint against the Petitioner claiming commission of unfair labour practice. In the entire complaint, the Respondents have failed to make out a case of commission of unfair labour practice under Item 9 Schedule IV of the MRTU and PULP Act. The Government Labour Officer not being an employer, no relief can be claimed against him under the MRTU and PULP Act. In this view of the matter, only irresistible conclusion can be drawn is that the complaint filed under the MRTU and PULP Act by the Respondents/contractual employees, is not maintainable.

20. The MIR Act is enacted to provide for the regulation of

the relations of employers and employees in certain matters, to consolidate and amend the law relating the settlement of the Industrial disputes and to provide for certain other purposes. This Act, is therefore, enacted to regulate the industrial relations in the establishment. The MIR Act in Chapter XI provides for arbitration under Section 71, the State Government is entitled to refer the dispute for arbitration to a Labour Court or Industrial Court. Under Section 73, the State Government can refer industrial dispute to the Industrial Court for arbitration on a report made by the labour officer or otherwise, if it is satisfied that by reason of the continuance of the dispute, there is likelihood of breach of public peace or disorder or serious or prolonged hardship to a large Section of the community is likely to be caused. If the dispute is not likely to be settled by any other means and it is necessary in the interest of the public to do so. Under Chapter-XII of the MIR Act, the Labour Court is vested with the powers to decide the disputes regarding the propriety or legality of an order passed by an employer acting or purporting to the Act under the standing order, the application and interpretation of the standing orders and if any change is made by an employer in respect of industrial matters specified in Schedule III. The Labour Court has the power to decide the industrial disputes referred to it under Sections 71 or 72. Thus, under the MIR Act, jurisdiction is conferred with the Labour Court and the Industrial Court are conferred with the

power to decide the disputes on reference. For enforcing the rights under the MIR Act, forum is provided. Therefore, I am of a considered view, that for enforcing the rights available under the MIR Act, a complaint cannot be filed under the MRTU and PULP Act.

21. The contractual employees are engaged through contractors, their service conditions are governed by the contracts between them. The appointment orders to the contractual employees are not given by the principal employer, but are given by the contractor. They work with the principal employer through contractor, only during the contract period. After the contract period is over, their contractor may enter into a contract with another establishment and shift them to work there. From that view of the matter also, they cannot be treated like permanent employees of the principal employer, and therefore, they cannot claim voting rights at par with the permanent employees.

22. By the elections held under Section 28(5), representatives of the workers are elected to represent the permanent employees, who can settle the service conditions, hike in wages etc. of the permanent employees. Since the Respondents/Complainants are engaged through contractors, the contract between the contractor and the complainants regulates

their service conditions, wages etc. If they have any grievance about the service conditions, wages etc. they have to approach the contractor and not the principal employer. In this view of the matter also, they cannot claim the rights available to the permanent employees under the MIR Act, and therefore, they are not entitled to claim voting rights like that of permanent employees.

23. The Industrial Court has misread and misconstrued the relevant provisions of the MIR Act, the MRTU and PULP Act and the Act of 1970 while concluding that it has jurisdiction to entertain the complaint. The Industrial Court has ignored the settled legal position that the complaint of unfair labour practice is maintainable only if there is admitted employer and employee relationship between the parties. The contractual employee, being the employee of the contractor and not of the principal employer, cannot file a complaint under the MRTU and PULP Act. The Industrial Court has ignored the fact that the MIR Act provides forum for redressal of grievance. For claiming the rights under the MIR Act, a complaint under the MRTU and PULP Act cannot be maintained. The Industrial Court has erred in not considering the fact that the Respondent No.2, not being the employer, no relief can be claimed and granted against him. Since the impugned order passed by the Industrial Court is contrary to the settled legal position, the same is unsustainable in law and facts of the present case.

24. It also cannot be ignored, that the Principal Employer was obliged to inform Respondent No.16 as to who are its permanent employees. It was not to decide as to who would vote in the elections. The decision to decide the status of the workmen as valid voters, was within the domain of Respondent No.16. The impugned order in the ULP Complaint was the refusal of Respondent No.16 from including the names of the contractual workers in the list of voters who were the permanent workmen of the Petitioner Company. Therefore, no decision of the Petitioner can be said to be covered by Item 9 Schedule IV viz. 'Failure to implement a settlement, agreement or an award'. So also, the decision of Respondent No.16 cannot be covered under Item 9, as Schedule IV pertains to 'General Practices by an Employer'.

25. For the aforesaid reasons, the points for adjudication are answered by holding that a complaint filed under the MRTU and PULP Act by the contractual employees for exercising their rights under the MIR Act is not maintainable and the Industrial Court has no jurisdiction to entertain it. Hence, the following order :

ORDER

- i) Writ Petition No.668 of 2020 is allowed.

ii) The impugned order passed below Exhibits “C-10” and “C-15” is hereby quashed and set aside.

ii) Applications Exhibit “C-10” and “C-15” filed before the Industrial Court, Nagpur, by the petitioner are allowed and Complaint (ULP) No.143/2019, pending on the file of Industrial Court, Nagpur, is dismissed.

26. Rule is made absolute in the above terms with no order as to costs.

(N.B.SURYAWANSHI)
JUDGE

TAMBE