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

LETTERS PATENT APPEAL NO.394/2010 IN
WRIT PETITION NO.101/1993(d)

1] Dattatraya Nathuji Yadao,

2] Baliram Ramji Tathe

3] Ananda Yohan Warghat

4] Ramesh Ghasiram Jain.

5] Damodar Ramusa Gujar (Dead) by LRs.

5-A] Smt. Lilabai Damodar Gujar.
5-B] Arun Damodar Gujar.
5-C] Sanjay Damodar Gujar.
5-D] Subhash Damodar Gujar.
5-E] Sunil Damodar Gujar.

All residents of Hariharpeth,
Sontakke Plots, Near Sakhare's House, Akola.

6] Shridhar Dnyaneshwar Arvikar

7] Namdeo Yohan Warghat

8] Sushil Shyam Warghat

9] Prabhakar Baliram Tathe

10] Dipak Pralhad Shinde.

11] Dnyanaeshwar Krishnarao Arvikar (Dead) by L.Rs.

11-A] Smt. Kusum wd/o Dnyaneshwar Arvikar, aged about 55 years.
11-B] Shridhar s/o Dnyaneshwar Arvikar, aged about 35 years.
11-C] Shekhar s/o Dnyaneshwar Arvikar, aged about 30 years.

All residents of Chaware Plots, Akola.

12] Pundlik Motiram Bhagwat
All c/o Working Journalists Karmachari Union,
Shivchhaya Building, Old City. Akola. .... **APPELLANTS**

...V E R S U S...

1] Shri Motilal Gangaram Kanojia,
President of Shioshakti Trust
R/o. Kanojia Sadan, Laxmi Nagar,
Gorakshan Road, Akola.

2] Shri Premlal Gangaram Kanojia,
Secretary, Shioshakti Trust,
R/o Sunlight Dry Cleaners,
Old Radhakisan Plots, Akola.

3] Sau. Sudha Ramesh Saone,
Member, Shioshakti Trust.
C/o Radhadevi Mahila Mahavidyalaya,
Near Government Milk Scheme,
Murtizapur Road, Akola.
.... **RESPONDENTS**

Shri S.T.Harkare, Advocate for appellants.
Shri A.R.Deshpande, Advocate for respondents.

CORAM : A.S.CHANDURKAR and PUSHPA V. GANEDIWALA, JJ.
DATE ON WHICH THE ARGUMENTS WERE HEARD : 24.06.2021
DATE ON WHICH THE JUDGMENT IS PRONOUNCED : 09.07.2021

JUDGMENT (Per A.S.Chandurkar, J.)

In this Letters Patent Appeal the judgment of the learned Single Judge dated 08.04.2009 in Writ Petition No.101/1993 is under challenge. By the said judgment the learned Single Judge was pleased to allow the writ petition and set aside the order dated 14.10.1992 passed by the learned Assistant Commissioner of Labour, Akola. By the order dated 14.10.1992 the learned Assistant Commissioner of Labour had directed the respondent no.20 in the writ petition to pay the arrears of wages to the appellants/employees for the period from 01.04.1989 to 31.03.1991. In default, the respondents herein were directed to pay the same.

2. For considering the challenge raised to the judgment of the learned Single Judge, it would be necessary to first refer to certain facts that are found to be relevant.

The respondents in the letters patent appeal claim to be trustees of Shivshakti Press which was registered under the provisions of Maharashtra Public Trusts Act, 1950. The respondent no.20 in the writ petition is the proprietor of Shivshakti Printing Press, Akola in which the appellants/employees were engaged. Initially a reference under Section 73 (1) (c) of the Bombay Industrial Relations Act, 1946 (for short, the Act of 1946) was made by the Government of Maharashtra which was referred for arbitration to the Industrial Court. The questions referred were whether the recommendations of the Central Wage Board for non-working journalists were applicable to the employees of Shivshakti Printing Press and if yes whether the employees could be paid according to the said recommendations ? The learned Member of the Industrial Court by the award dated 04.01.1973 held that “Shioshakti Daily” (Trust) and “Shivshakti Printing Press” were two distinct and separate entities. While the members of the staff working in

Shioshakti Daily were covered by the definition of “non-journalist employees” as per the recommendations of the Central Wage Board for non-journalist employees of the newspapers establishment, the workmen of the printing press were not covered by the said definition. Consequently it was held that the recommendations of the Central Wage Board were not applicable to the employees of Shivshakti Printing Press and therefore those employees had no right to claim the payment according to the said recommendations. It is common ground that the employees of Shivshakti Printing Press being aggrieved by the aforesaid award had challenged the same by approaching this Court.

3. On 11.07.1973 an agreement was entered into between the employees of Shivshakti Printing Press and its managing partner. In the said agreement it was agreed that by the award passed by the Industrial Court the employees did not have status as non-working journalists. However considering the increase in the cost of living, the employees had made a demand with the Management of the Press to increase their wages which was accepted by the Management after discussion. It was agreed between the parties that the proceedings filed by the employees before the High Court challenging the award of the Industrial Court would be withdrawn and the wages and emoluments of the employees would be partially increased in the manner stated in the agreement. The Management had agreed to pay the

employees wages as per the award applicable to non-working journalists and the agreement was to remain in force for a period of three years. The revision in wages was to be effected from 01.04.1973.

It is further seen from the record that on 14.06.1988 the respondent no.20 in the writ petition - Prabhakar Virghat purchased the printing press from Shri D.G.Bhatiya who was the son of the managing partner who had signed the agreement dated 11.07.1973. The responsibility and liability to pay the wages and other emoluments to the employees was taken up by the purchaser. On the same day the trustees of Shioshakti Daily (Trust) executed bonds by which they undertook to stand as surety for Shri Prabhakar Virghat who had purchased the printing press. The trustees undertook to indemnify and pay the amounts that were liable to be paid by the proprietor to the employees.

4. It appears that the employees of the printing press were not paid their wages for the period from 01.04.1989 to 31.03.1991. The employees thus moved applications before the Assistant Commissioner of Labour and Authorised Officer under the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (for short, 'the Act of 1955'). In the said proceedings the arrears of wages were demanded from the owner as well as the trustees of the Trust who had executed the bonds referred to above. After giving due opportunity to the parties the learned Assistant Commissioner of Labour by his order dated

14.10.1992 held each appellant to be entitled to receive arrears of wages for the period from 01.04.1989 to 31.03.1991. The initial responsibility to pay these arrears was on the owner - Prabhakar Virghat and in default the trustees who are the respondents in the letters patent appeal were held liable to satisfy the award. Recovery certificate to that effect was accordingly issued. This order passed by the learned Assistant Commissioner of Labour was assailed by the trustees by filing Writ Petition No. 101/1993. The learned Single Judge was pleased to allow the writ petition and set aside the order dated 14.10.1992 by holding that the Assistant Commissioner of Labour had no jurisdiction to entertain the claim for arrears of wages on the ground that the employees had no right to seek implementation of recommendations of the Central Wage Board with regard to wages of other newspapers employees under the Act of 1955. Further, in absence of any contract between the workmen, the owner of the printing press and the trustees, the provisions of the Contract Labour (Regulations and Abolition) Act, 1970 (for short, the Act of 1970) as applied by the Assistant Commissioner of Labour would not be attracted. On these grounds the order passed by the Assistant Commissioner of Labour came to be set aside. The proceedings initiated by the employees were quashed and it was directed that if the Trust had paid any amounts to the workmen they were liable to be refunded to the Trust. The employees being aggrieved by the aforesaid adjudication have preferred this letters patent appeal.

5. Shri S.T.Harkare, learned counsel for the appellants submitted that the learned Single Judge committed an error in setting aside the order passed by the Assistant Commissioner of Labour and Competent Officer dated 14.10.1992. Referring to the award dated 04.01.1973 it was submitted that though it was held that the recommendations of the Central Wage Board for non-working journalists would not be applicable to the employees of the Shivshakti Printing Press that order had been subjected to challenge by the employees before this Court. During the pendency of those proceedings the parties entered into an agreement dated 11.07.1973 by which the employer agreed to revise wages of the employees subject to certain terms and conditions. A specific reference was made in the said agreement to the fact that there was an award passed between the parties on 04.01.1973 and that the same was the subject matter of challenge before the High Court. He submitted that in the light of the fact that the employer had agreed to revise the wages of the employees with a view to enhance the productivity of the printing press that agreement ought to have been taken into consideration in its proper perspective by the learned Single Judge. Only by referring to the first paragraph of the said agreement the learned Single Judge misconstrued the same. It was submitted that the agreement ought to be read in its entirety. By failing to taking into consideration the spirit of the said agreement, the order passed by the Assistant Commissioner of Labour had been set aside. He then pointed out that the trustees of Shioshakti Trust had

executed bonds and had undertaken the liability to pay the dues of the employees in case the owner of the printing press failed to discharge that liability. By virtue of execution of the said bonds the trustees had volunteered to pay the dues and thus were rightly held liable to pay the arrears of wages by the Assistant Commissioner of Labour. That direction was to operate in the event the proprietor of the printing press failed to clear that liability. He pointed out that the order dated 14.10.1992 was only challenged by the trustees of Shioshakti Trust in Writ Petition No.101/1993 and that the proprietor of the printing press accepted the award passed by the Assistant Commissioner of Labour. When the proprietor of the printing press on whom the principal liability was saddled had accepted the liability, it was not open for the trustees to dispute the fact that they were liable to satisfy such liability in default. This aspect was also not given due consideration by the learned Single Judge. It was thus urged that the order dated 14.10.1992 had been passed after taking into consideration the earlier litigation between the parties and there was no reason to interfere with the order dated 14.10.1992. According to learned counsel, since all the employees had received their dues and some of the employees were now represented by their legal heirs, it would be inequitable to direct the employees/their legal heirs to repay the amounts received by them to the Trust. He therefore submitted that the letters patent appeal deserves to be allowed and the order passed by the Assistant Commissioner of Labour deserves to be restored.

6. Shri A.R.Deshpande, learned counsel for the respondents supported the impugned judgment of the learned Single Judge. He submitted that in the order dated 14.10.1992 the Assistant Commissioner of Labour had given a specific finding that Shivshakti Printing Press and Shioshakti Trust were different and separate entities. The trustees had an independent identity and the liability incurred by the printing press was that of its proprietor. This liability could not have been saddled on the trustees in the light of this finding. The said aspect was rightly noticed by the learned Single Judge while setting aside the order passed by the Assistant Commissioner of Labour. He then submitted that the agreement dated 11.07.1973 had been entered into between the employees of Shivshakti Printing Press and its managing partner. The trustees were not the signatories of the said agreement and thus there was no basis whatsoever to hold the trustees liable to satisfy the dues of the employees in the event of such dues not being paid by the proprietor. He further submitted that the proprietor of the printing press had been arrayed as respondent no.20 in the writ petition. However the appellants in the letters patent appeal had failed to implead the proprietor of the printing press as a respondent. In absence of the proprietor, no relief ought to be granted to the appellants as a necessary party to the appeal had not been impleaded. He therefore submitted that the learned Single Judge rightly found that in absence of any contract between the employees of the Shivshakti Printing Press, its proprietor and the Trust, the provisions of the Act

of 1970 were not attracted. Thus considering the reasons assigned by the learned Single Judge while setting aside the order passed by the Assistant Commissioner of Labour, there was no ground made out to interfere with the impugned judgment. The letters patent appeal was therefore liable to be dismissed.

7. We have heard the learned counsel for the parties at length and with their assistance we have also gone through the record of Writ Petition No.101/1993. Certain undisputed facts may be first noticed. In the reference made under the provisions of Section 73 (i) (c) of the Act of 1946, the learned Member of the Industrial Court on 04.01.1973 had passed an award holding that the recommendations of the Central Wage Board for non-working journalists were not applicable to the employees of the printing press and they had no right to claim wages according to the said recommendations. A finding was also recorded that "Shioshakti Daily (Trust)" and "Shivshakti Printing Press" were two distinct and separate entities. This award was subjected to challenge by the employees by filing Special Civil Application before this Court. When the said proceedings were pending, on 11.07.1973 the employees of the printing press on one hand and the managing partner of the printing press on the other entered into an agreement in the matter of securing better conditions for the employees of the printing press. At the beginning of the agreement it was recorded as a fact that the employees were

engaged with the printing press and that they had not been recognized as non-working journalists. This was in view of the award of the Industrial Court. After stating this fact it was further stated in the agreement that against the award passed by the Industrial Court the employees had approached this Court by challenging the same. However keeping in view the rising inflation a demand was made by the employees to increase their wages annually by Rs.50/-. There was a discussion between the management of the printing press and the employees after which it was agreed that from 01.04.1973 the employees of the printing press would be entitled to wages that were admissible to non-working journalists under the award. The agreement was duly signed by the employees as well as managing partner of Shioshakti Trust.

8. The record further indicates that on 14.06.1988 the erstwhile proprietor of the printing press sold the business of the printing press to Prabhakar Virghat - respondent no.20 in Writ Petition No.101/1993. On the same day the trustees of Shioshakti Daily Trust executed bonds under which they undertook to satisfy the liability, if any, with regard to payment of the salary of the employees, dues of gratuity, provident fund, etc. It was stated in clear terms that failure on the part of the purchaser of the printing press-Prabhakar Virghat to satisfy the dues, the same would be paid by the trustees. These bonds were executed by each respondent herein individually. Shortly thereafter a dispute arose with regard non-payment of wages to the employees

for the period from 01.04.1989 to 31.03.1991 and hence the employees of the printing press initiated proceedings by approaching the Assistant Commissioner of Labour under the provisions of the Act of 1955. It is pursuant to these proceedings that the Assistant Commissioner of Labour after hearing the proprietor of the printing press as well as the trustees of Shioshakti Trust passed the order dated 14.10.1992. As stated above, the Assistant Commissioner of Labour directed the proprietor of the printing press to satisfy the dues payable to the employees of the printing press towards unpaid wages and on his failure to satisfy the same, the trustees were directed to satisfy the claim of the employees. A recovery certificate was accordingly issued in the proceedings. It is this order dated 14.10.1992 that was challenged by the trustees in Writ Petition No. 101/1993.

9. It is not in dispute that there was relationship of employer and employee between the proprietor of the printing press and the employees. Section 2(c) of the Act of 1955 defines "newspaper employee" to include "any other person employed to do any work in, or in relation to, any newspaper establishment". Section 2 (dd) of the Act of 1955 defines "non-journalist newspaper employee" to mean a person employed to do any work in, or in relation to, any newspaper establishment. However a working journalist or a person employed in a managerial or administrative or supervisory capacity is excluded. The definition of "newspaper employee" under Section 2(c) is in

wide terms and includes any person employed to do any work or in relation to any newspaper establishment. Similar is the position under Section 2 (dd) of the Act of 1955. According to the learned Single Judge since in the agreement dated 11.07.1973 it had been stated by the employees that they were not governed by the provisions of the Act of 1955 there would be no question of employees being entitled to wages that were payable to other newspaper employees under the Act of 1955. With respect, we are unable to subscribe to this reasoning in the impugned judgment. In this context reference can be made to the provisions of Section 16 of the Act of 1955 and more particularly sub-section (2) of Section 16 which reads as under :

> 16 (1) …
> *(2) Nothing contained in this Act shall be construed to preclude any newspaper employee from entering into an agreement with an employer for granting him rights or privileges in respect of any matter which are more favourable to him that those to which he would be entitled under this Act".*

The aforesaid provision clearly recognizes a right to any newspaper employee of entering into an agreement with the employer for granting him rights or privileges that are more beneficial to him than those which he would be entitled under the Act of 1955. The agreement dated 11.07.1973 has to be viewed from this context. When the award dated 04.01.1973 which was in favour of the employer was under challenge before this Court the employer and the employees entered into an agreement dated 11.07.1973 notwithstanding such award. This fact has been referred to even in the said agreement. The employer having agreed to grant benefits to the employees as per the award passed in favour of non-working journalists, there would be no reason to deprive the employees herein from getting the benefit of the said agreement. It is not the case of the employer that such agreement was never entered into or that the same ceased to operate. What the employees were doing were merely seeking their wages/dues as per the agreement dated 11.07.1973 as agreed between the employer and the employees. In the light of the aforesaid terms of the agreement read with Section 16(2) of the Act of 1955, we find that the learned Single Judge was not justified in holding that the agreement dated 11.07.1973 would not entitle the employees to wages that were paid to other newspaper employees under the Act of 1955. This is the principal ground on which the order dated 14.10.1992 came to be set aside by the learned Single Judge.

10. The other aspect that has been considered by the learned Single Judge is with regard to wrongful application of the provisions of the Act of 1970 by the Assistant Commissioner of Labour in the order dated 14.10.1992. Though we find that this conclusion recorded by the learned Single Judge that there was no material on record to hold that the provisions of the Act of 1970 would stand attracted is correct, the same however would not make much difference insofar as the liability of the trustees-respondents is concerned. The reason for holding the trustees liable are the bonds dated 14.06.1988

executed by each trustee thereby undertaking to satisfy the liability to pay the employees their wages and other service benefits. Each trustee had undertaken to satisfy such liability on failure of the proprietor to pay the dues of the employees. These bonds were taken into consideration by the Assistant Commissioner of Labour while holding the trustees liable to satisfy the dues of the employees on failure of the proprietor to pay the same. It would not be open now for the trustees to contend that despite having executed such individual bonds on 14.06.1988 they would not be liable to satisfy the claim of the employees and that it was only the proprietor who was liable to pay those dues. Though the provisions of the Act of 1970 would not be attracted in the facts of the present case, on the principle as envisaged by Sections 126 and 128 of the Indian Contract Act, 1872, the trustees cannot escape from their liability. The trustees by executing individual bonds on 14.06.1988 can be said to have executed “contract of guarantee” in favour of the proprietor-principal debtor and that made each trustee a “surety”. We therefore hold that the direction issued by the Assistant Commissioner of Labour in the order dated 14.10.1992 that the trustees would be liable to satisfy the dues of the employees on the failure of the proprietor to do so is a proper direction in the facts of the present case but for the reasons which have been stated hereinabove.

11. As regards the submission made on behalf of the respondents that the proprietor of the printing press who had been arrayed as respondent no.20 in Writ Petition No.101/1993 had not been joined as respondent in the letters patent appeal, we find that in the facts of the present case that nothing much would turn on this aspect. This is for the reason that the order dated 14.10.1992 was passed against the proprietor as well as the trustees. The proprietor however did not choose to challenge that order and accepted the same. It is only the trustees who preferred Writ Petition No.101/1993 in which the proprietor was arrayed as respondent no.20. Thus in the present letters patent appeal the proprietor would only be a proper party and not a necessary party in the light of the fact that the proprietor had accepted the order dated 14.10.1992. The trustees were aggrieved by the liability saddled on them and their challenge to the said direction has been considered.

12. In that view of the matter, we find that the Assistant Commissioner of Labour had rightly held the employees entitled to receive their dues in the light of the agreement dated 11.07.1973. The liability was initially saddled on the proprietor and the trustees having executed individual bonds were required to satisfy that liability on the failure of the proprietor to pay the dues. Interference with the said order was unwarranted. The judgment of the learned Single Judge dated 08.04.2009 is thus set aside. The writ petition

stands dismissed and the order dated 14.10.1992 passed by the Assistant Commissioner of Labour stands restored. The letters patent appeal is allowed. The parties to bear their own costs.

JUDGE **JUDGE**

Andurkar..