

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 11047 OF 2022**

1. Dattu Shankar Dhumal, Age : 52 yrs, Occ : NIL, R/a. 152, Jamshed Bldg, 1<sup>st</sup> Floor, Room No.8, Shivdas Chapsi Marg, Mazgaon, Mumbai-400 010.
2. Dattaram R. Patil, Age : 63 yrs, Occ : Nil R/a. Mansi CHS, Room No.10, Plot No.A/36, Sector 7, Khanda Colony, New Panvel, Pin Code-410 206.
3. Niranjana K. Khandare, Age : 63 yrs, Occ : Nil, R/a. 16/6, Visava Society, Swami Samarth Nagar, Near Sukul Complex, Talegaon, Dabhade, Pincode-410 507. ...**PETITIONERS**

**: V E R S U S :**

1. The Director, M/s. Damani Shipping Pvt. Ltd. 205/206, Verma Chambers, II, Hamaji Street, Fort, Mumbai.
2. The Director, M/s. Shipping Services, 205/206, Verma Chambers, II, Hamaji Street, Fort, Mumbai. ....**RESPONDENTS**

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**Mr. K.P. Anilkumar** with Ms. Priyanka Kumar and Mr. Chinmay Apte, for the Petitioners.

**Ms. Anjali Purav Yajurvedi**, for the Respondent.

**CORAM : SANDEEP V. MARNE, J.**

**Reserved on : 22 August 2023.**

**Pronounced On : 25 August 2023.**

**JUDGMENT :**

1. **Rule.** Rule, made returnable forthwith. With the consent of the parties, taken up for final disposal.

2. Petitioners have filed the present petition challenging Award dated 28 August 2019 passed by the Central Government Industrial Tribunal-II (**Tribunal**) rejecting the Reference. The Reference was filed for deciding the demand of Petitioners for enhancement of wages on par with the wages revised as per the Memorandum of Settlement dated 29 April 2008 signed between the Bombay Customs House Agents Association and Transport & Dock Workers Union.

3. It would be necessary to set out few facts before I advert to the submissions canvassed by both sides. It is Petitioner's case in the Petition that they are members of Bhartiya Kamgar Karmachari Mahasangh. Respondent No.1-M/s. Damani Shipping Pvt. Ltd. is a partnership firm engaged in the business of freight broker and providing manpower services. Respondent no.2-Shipping Services is engaged in the business of Clearing and Shipping Agent, Transport Contractor and Supervision and Administration work. That both the

companies are sister concerns of Damani family, which has floated number of companies in the same field with the objective of saving taxes and depriving workmen of their due wages and benefits. It is pleaded that all the three Petitioners joined the services of Petitioner No.2-M/s. Shipping Services on 1 June 1992, 3 September 1987 and 3 March 1986 respectively.

4. A Memorandum of Settlement dated 29 April 2008 was signed between the Bombay Customs House Agents Association which is an association of customs house agents (employers) and Transport & Dock Workers Union, under which the employers agreed to pay wages to its employees as stipulated in the settlement. The wages so agreed upon in the settlement were however not extended to Petitioners by Respondent No.2-M/s. Shipping Services on the ground that it is neither a Customs House Agent nor a member of the Bombay Customs House Agents Association. A dispute was therefore raised by Bhartiya Kamgar Karmachari Mahasangh and the same was referred to the Tribunal and was registered as Reference No. CGIT- 2/10 of 2014. The workmen filed their Statement of Claims. A notice in the Reference was served on the Respondents who failed to file their written statements. The Tribunal proceeded to declare the Award dated 28 June 2017 holding that the workmen were entitled to receive dues amounting to Rs. 22,70,722/- alongwith interest.

5. Respondent No.2 filed Writ Petition No. 13162/2017 challenging the Award dated 28 June 2017. This Court, by its order dated 8 December 2017, set aside the Award directing the Tribunal to decide the Reference afresh by granting opportunity to Respondent No.2 to file pleadings/evidence before the Tribunal. Respondent No.2 accordingly filed its Written Statement opposing the claim. After recording the evidence, the Tribunal proceeded to reject the Reference by its Award dated 28 August 2019, which is the subject matter of challenge in the present petition.

6. Mr. Anilkumar, the learned counsel appearing for Petitioner would submit that Petitioners had specifically raised the issue of their services being utilised by M/s. Damani Shipping Private Ltd. by showing Petitioners in the employment of M/s. Shipping Services and that the said issue has not been considered by the Tribunal while rejecting the Reference. He would submit that despite Petitioners producing appointment orders issued by M/s. Damani Shipping Pvt Ltd., the Industrial Court has erroneously recorded that no appointment letters were produced to demonstrate that Petitioners are workmen appointed by M/s. Damani Shipping Pvt. Ltd. That a specific case was put up in the Statement of Claim, as well as through the evidence that Damani Family has floated several companies and had arbitrarily shown Petitioners as employees of Shipping Services though they are actually the employees of M/s. Damani Shipping Pvt. Ltd. That since this issue has not been answered by the Industrial Tribunal, the proceedings are required to be remanded.

7. Mr. Anilkumar would further submit that Petitioners are entitled to be granted wages in accordance with the Memorandum of Settlement. That merely because Petitioners were shown as employees of sister concern of M/s. Damani Shipping Private Limited, the same could not have been a ground for denial of wages to them in accordance with the Memorandum of Settlement. He would place reliance on 'Daily Shipping Times', a publication of Custom Brokers Association in support of his contention that M/s. Damani Shipping Private Limited is a member of Brihanmumbai Custom Brokers Association. Inviting my attention to several documents produced alongwith the compilation, he would submit that Petitioners were indeed engaged by M/s. Damani Shipping Private Limited and cannot be denied wages in accordance with the Memorandum of Settlement. In support of his contention that Petitioners were employees of M/s. Damani Shipping Pvt. Ltd., he would place reliance on the Casual Entry Permits issued by the Mumbai Port Trust in the name of one of the Petitioners-Dattu S. Dhumal showing his address as 'Damani Shipping', He would also place reliance on letter dated 8 February 2013 issued by M/s. Shipping Services confirming that it is a sister concern of M/s. Damani Shipping Pvt. Ltd. In support of his contentions, Mr. Anilkumar would rely upon judgments of the Apex Court in (i) **Regional Provident Fund Commissioner and Another Versus. Dharamsi Morarji Chemical Co. Ltd.**, (1998) 2 SCC 446; and of Andhra Pradesh High Court in **Andhra Cement Co. Ltd. Vijayawada**

**Vs. Regional Provident Fund Commissioner, Hyderabad and Another.,(1988) II LLJ 453.**

8. *Per-contra*, Ms. Purav-Yajurvedi would appear on behalf of the Respondents and would oppose the petition. She would submit that all Petitioners were employed by M/s. Shipping Services, which is not a Customs House Agent and hence not a member of the Bombay Customs House Agents Association. Therefore, M/s. Shipping Services is not a party to the Memorandum of Settlement and hence the wages agreed therein would not be binding on the employer. She would submit that Petitioners specifically admitted before the Tribunal that they were the employees of M/s. Shipping Services and that they were paid salary and other benefits only by M/s. Shipping Services. She would take me through the depositions of witnesses examined before the Tribunal in support of her contention that there are clear admissions about employment of Petitioners with M/s. Shipping Services.

9. Ms. Purav-Yajurvedi would further submit that the Tribunal has considered all the documents produced on record by Petitioners and has dealt with the same. So far as reliance placed by Mr. Anilkumar on letter dated 3 September 1987 issued by M/s. Damani Shipping Pvt. Ltd, she would draw my attention to the Final Compensation Statement in respect of Shri. Dattaram R. Patil issued by M/s. Shipping Services showing his date of appointment as 1 April 1990. She would therefore submit that services of Shri. Patil

commenced with M/s. Shipping Services on 1 April 1990 and therefore reliance of Petitioners on letter dated 3 September 1987 issued by M/s. Damani Shipping Pvt. Ltd is completely misplaced.

10. Ms. Purav-Yajurvedi would further submit that merely because M/s. Shipping Services is a sister concern, M/s. Damani Shipping Pvt. Ltd would not make Petitioners *ipso-facto* employees of M/s. Damani Shipping Pvt. Ltd. That Petitioners neither pleaded nor proved before the Tribunal that there was any functional integrality between the two companies. Mere proof of two companies being sister concerns was not sufficient in absence of any proof to the effect that the employees of one company were utilised by another company. She would pray for dismissal of the petition.

11. I have given anxious consideration to the rival submissions and have examined record with reference to the law applicable.

12. The dispute raised by Petitioners before the Tribunal was about their entitlement to wages in accordance with the Memorandum of Settlement entered into between the Bombay Customs House Agents Association on one hand and Transport & Dock Workers Union on the other. It is common ground that the said Memorandum of Settlement was binding on all Customs House Agents, who were members of the Association. There is no dispute to the position that M/s. Shipping Services is neither a Customs House

Agent nor a member of Association. On the contrary, M/s. Damani Shipping Pvt. Ltd is not only a Customs House Agents but also a member of the Association. Therefore, the wages payable to the employees employed by M/s. Damani Shipping Pvt. Ltd would be governed by the Memorandum of Settlement. It is in the light of this position, dispute arose before the Industrial Tribunal as to who was the real employer of Petitioners.

13. Petitioners approached the Tribunal with a claim that though appointed by M/s. Damani Shipping Pvt Ltd. they were treated as employees of M/s. Shipping Services. That since the employer so shown is a sister concern of M/s. Damani Shipping Pvt. Ltd., the wages payable to them are governed by the Memorandum of Settlement applicable to the employees of M/s. Damani Shipping Pvt. Ltd. In the Statement of Claims, a case was set up by Petitioners that though appointment letters were issued to them by M/s. Damani Shipping Pvt. Ltd., they were directed to work for other sister companies floated and registered by Damani family by giving oral instructions. In this regard, following pleadings raised by Petitioners in para-8 of their Statement of Claims would be relevant:

“8. The Second Party concerned workmen submit that the Honorable Supreme Court had time and again held that there cannot be two different conditions of service for the workmen employed under one roof. The concerned workmen submit that they have been in the employment of Messrs. Damani Shipping Pvt. Ltd. for more than 20 years. The concerned workmen submit that though the appointment letters were issued to them by Messrs. Damani

Shipping Pvt. Ltd., the concerned workmen are being required to work for other sister Companies floated and Registered by Damani family, by giving oral instruction and not in writing. The concerned workmen state that they were/ are in the employment of Messrs. Damani Shipping Pvt. Ltd., their names were shown deliberately and with mala fide intention in the list of workmen of M/s. Shipping Services, one of the sister Companies of Damani family.”

14. It would also be relevant to take into consideration the pleadings raised in the present petition on the issue of the exact employer of the Petitioners. Petitioners have pleaded in para-3 of the present petition as under :

“The Petitioners submit that the Petitioner No.1 joined the services of the **Respondent No.2** in the year 01.06.1992 as a clerk, the Petitioner No.2 joined the services of the **Respondent No.2** in the year 03.09.1987 as a clerk and the Petitioner No.3 joined the services of the **Respondent No.2** in the year 03.3.1986 as a clerk.”

*(emphasis added)*

Thus, in the present Petition, Petitioners have pleaded that they joined services of Respondent No. 2 – M/s. Shipping Services Ltd.

15. Thus, there appears to be some contradiction in the pleadings of Statement of Claim and the present petition as to who actually appointed Petitioners initially. In the present petition, it is Petitioners’ case that they were appointed by M/s. Shipping Services

In the light of this admission given in the present petition, reliance of Mr. Anilkumar on appointment letter dated 3 September 1987 issued to Shri. Dattaram R. Patil by M/s. Damani Shipping Pvt. Ltd becomes irrelevant. The Respondents have clarified the confusion created by Petitioners by producing appointment letter dated 3 September 1987 by placing reliance on 'Final Compensation Statement' in respect of Shri. Dattaram R. Patil issued by M/s. Shipping Services showing his date of joining as 1 April 1990. It therefore appears that though Shri. Dattaram R. Patil may have been appointed by M/s. Damani Shipping Pvt. Ltd in the year 1987, he was later on appointed by M/s. Shipping Services on 1 April 1990. For the purposes of present petition, petitioner's services from 1 April 1990 with M/s. Shipping Services would be relevant. Therefore, there is a possibility of discontinuation of services of Shri. Dattaram R. Patil by M/s. Damani Shipping Pvt. Ltd and his reappointment on 1 April 1990 by M/s. Shipping Services. Even otherwise, Shri. Dattaram R. Patil is Petitioner No.2 and there is a specific admission in para-3 of the petition that, he joined the services of Respondent No.2 (M/s. Shipping Services). Thus, in the light of specific admission by Petitioner No.2 that he joined the services of M/s. Shipping Services, his reliance on the appointment order issued by M/s. Damani Shipping Pvt. Ltd. becomes irrelevant. Furthermore Petitioners have adduced evidence admitting that they are employees of M/s. Shipping Services. Thus, though some degree of confusion was created by Mr. Anilkumar with regard to the exact employer who had issued initial appointment orders in favour of Petitioners, there appears to be no

dispute to the position that Petitioners were employed by M/s. Shipping Services.

16. Now I turn to the next issue of entitlement of Petitioners to claim wages as per the Memorandum of Settlement on the ground of M/s. Shipping Services being a sister concern of M/s. Damani Shipping Pvt. Ltd. Having admitted that, they were the employees of M/s. Shipping Services, it was incumbent for Petitioners to prove before the Tribunal that their services were utilised by M/s. Damani Shipping Pvt. Ltd. However far from proving so, Petitioners pleaded to the contrary in their Statement of Claim. It was their case in the Statement of Claim that though appointment letters were issued to them by M/s. Damani Shipping Pvt. Ltd, they were orally directed to work in other sister concerns floated and registered by Damani Family. Thus, there is complete contradiction in the stands taken in the Statement of Claims and in the present petition. In the Statement of Claim, it is claimed that appointment orders were issued to Petitioners by M/s. Damani Shipping Pvt. Ltd and they were orally asked to work in other sister concerns. On the contrary, Petitioners have pleaded in the present petition that their initial joining was with M/s. Shipping Services.

17. There is thus utter confusion created by Petitioners about their exact employer. If Petitioners were indeed appointed by M/s. Damani Shipping Pvt Ltd, they would be automatically be governed by the wages determined under the Memorandum of Settlement.

However, because Petitioners were treated as employees of M/s. Shipping Services, they were denied such wages and were required to approach the Tribunal. In these circumstances, it was incumbent for the Petitioners to set up a case before the Tribunal that though they were treated as employees of M/s. Shipping Services, they were indeed performing duties related to M/s. Damani Shipping Pvt. Ltd. Far from proving so, they raised a contradictory pleading in the Statement of Claim that they were appointed by M/s. Damani Shipping Pvt. Ltd. which orally asked them to work with other sister concerns including M/s. Shipping Services.

18. Petitioners had two courses open. They could have set up a case of functional integrality between the two companies and utilization of their services by M/s. Damani Shipping Pvt Ltd. while being treated as employees of Shipping Services. Alternatively, they could have set up a case that they were appointed by M/s. Damani Shipping Pvt. Ltd, who is their real employer and mere oral directions to work with M/s. Shipping Services did not alter their employer. However far from taking either of the specific stands, Petitioners have created a confusion. Having raised a plea in Statement of Claim that they were appointed by M/s. Damani Shipping Pvt Ltd, Petitioners did not undertake the exercise of proving functional integrality. However in the present petition, they admit that they are employees of M/s. Shipping Services and therefore a lame attempt is made to prove functional integrality by placing reliance on documents such as port permits.

19. It appears that on account of the stand taken by Petitioners in their Statement of Claims about their initial appointment with M/s. Damani Shipping Pvt. Ltd, they possibly did not undertake the exercise of proving that there was functional integrality between the two companies. Thus Petitioners failed to prove before the Tribunal that though they were treated as employees of M/s. Shipping Services, they were utilised for activities of M/s. Damani Shipping Pvt. Ltd. Therefore, reliance of Mr. Anilkumar on the judgment in *Regional Provident Fund Commissioner* (supra) is of little assistance to Petitioners' case.

20. The Industrial Tribunal has rightly arrived at the conclusion that Petitioners failed to prove that they are employees of M/s. Damani Shipping Pvt. Ltd. Tribunal has recorded a finding that mere relation of M/s. Shipping Services as a sister concern of M/s. Damani Shipping Pvt. Ltd was not sufficient for awarding of wages as per Memorandum of Settlement to Petitioners. The Tribunal has considered the admissions given by Petitioners in their cross-examination that they always got salary from M/s. Shipping Services. That one of the employees tendered resignation to M/s. Shipping Services and that their final settlement dues were also paid by M/s. Shipping Services. The Industrial Tribunal, in my view, has not committed any error in holding that Petitioners were indeed employees of M/s. Shipping Services, which not being a Customs House Agent, was not bound by the Memorandum of Settlement

entered between the Association and Union. There is no perversity in findings recorded by the Tribunal.

21. The Tribunal has not committed any error in rejecting the Reference. Petition being devoid of merits is **dismissed** without any orders as to costs. Rule is discharged.

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SANDEEP V. MARNE, J.