

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11005 OF 2022

Raymond Ltd. Through its Manager

Personnel

... Petitioner

Versus

Maruti Tukaram Yadav & Anr.

... Respondents

**WITH
WRIT PETITION NO.11068 of 2022**

Raymond Ltd. Through its Manager

Personnel

... Petitioner

Versus

Tukaram Tanaji Mandhare & Ors.

... Respondents

...

Mr. S. K. Talsania, Senior Advocate a/w. Mr. R. V. Paranjape and Mr. T. R. Yadav for Petitioner.

Mr. Yogendra M. Pendse, for Respondents in both petitions.

...

CORAM : SANDEEP V. MARNE, J.

DATE : 03 NOVEMBER 2023.

Oral Judgment :

‘Tukaram Tanaji Mandhare’ has his name embedded in law reports towards contribution made by Full Bench judgment reported in his name which has provided and would continue to provide a guiding

light to various litigations on the subject. But having contributed to the jurisprudence, 'Tukaram Tanaji Mandhare' has himself received nothing in his 26 year long battle that he has engaged with his employer *Raymond*, one of India's largest fabric manufacturer and nowadays a fashion retailer. Today, 'Tukaram Tanaji Mandhare' a contract worker in Raymond's Mill, who lost his job a quarter century ago, stands before me with a hope that his litigious journey involving determination of various complex and intricate questions of law, ultimately earns for himself something. The Complaint that he filed for seeking declaration of his direct employee relationship with *Raymond* and status of permanency continues to remain pending before the Industrial Court. His employer is before this Court again seeking solving of another complex question of law about jurisdiction of Industrial Court to entertain his Complaint. Instead of making further contribution to the labour jurisprudence, time has come to draw curtains on this endless litigation spree. It is with this idea that I have taken up these two Petitions for final disposal with great deal of assistance provided and efforts taken by Mr. Talsania and Mr. Paranjape for *Raymond* and by Mr. Pendse for workers.

2. At the outset Mr. Talsania, the learned senior advocate appearing for Petitioner would seek leave to delete names of Respondent Nos. 2, 3, 7, 16, 17 and 20. Leave granted. Respondent Nos. 2, 3, 7, 16, 17 and 20 are permitted to be deleted. Amendment be carried out forthwith.

3. This is almost 3-decade old battle going on between the Raymond Ltd. and its contractual workers seeking declaration that they are direct workmen of Raymond. The contractual workers have initiated Complaint (ULP) No. 694 of 1997 and Complaint (ULP) No.631 of 2000 seeking declaration that they are permanent workers of Raymond from the dates of their initial engagements. They have also sought confirmation of status of permanency on completion of 240 days of service.

4. Petitioner raised an objection about maintainability of those Complaints on the ground that jurisdiction of Industrial Court cannot be invoked as Complainants are not 'employees' within the meaning of Section 3(5) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971 (**MRTU & PULP Act**). By Orders dated 20 July 2002 and 25 July 2002 the Industrial Court was pleased to reject both the Complaints as not maintainable. The Complainants approached this Court by filing Writ Petition Nos. 7673 of 2003 and 9449 of 2003. In those petitions, the issue of maintainability of Complaints filed by contract employees under MRTU & PULP Act came to be referred to the Full Bench of this Court. The Full Bench, by its Judgment and Order dated 06 June 2005, answered the reference in *Tukaram Tanaji Mandhare v. Raymond Woollen Mills Ltd.*, (2005) 4 Mah LJ 1045 as under:

19. The position, therefore, is that a person who is employed through a contractor who undertakes contracts for execution of any of the whole of the work or any part of the work which is ordinarily work of the undertaking governed by BIR Act is an employee within the meaning of section 3(5) of the MRTU and PULP Act and a complaint of such an employee is maintainable though no direct relationship of employer-employee exists between him and the principal employer. However, if there is a dispute as to whether the contract workers were doing the work which forms part of the undertaking then the workers will have to get the dispute decided independently under the provisions of the BIR Act before approaching the Industrial Court under the MRTU and PULP Act.

5. The Judgment of the Full Bench of this Court came to be upheld by the Apex Court by its Order dated 17 July 2019.

6. After answering the reference by the Full Bench, the petitions were placed before the learned Single Judge of this Court for decision. The learned Single Judge of this Court disposed of the Petitions by passing following Order on 1 February 2022:

1. I have considered the submissions of the learned counsel for the respective sides. With their assistance, I have perused the judgment delivered by the learned Full Bench of this Court dated 06/06/2005 in these petitions. I have also perused the order passed by the Hon'ble Supreme Court dated 17/07/2019 (Three Judges' Bench) in Civil Appeal No.5077 of 2006 in the matter of Raymond Limited & Anr. Vs. Tukaram Tanaji Mandhare & Anr. Etc.

2. Since the Hon'ble Apex Court has held that the conclusions of the learned Full Bench in paragraph 19 of the judgment dated 06/06/2005 lay down the correct position in law, the learned Advocates representing the Management and the Workers submit that these petitions may be disposed off with a direction to the Industrial Court to decide the pending ULP complaints in the light of paragraph 19.

3. Paragraph 19 of the learned Full Bench judgment reads as under :-

4. Shri Pendse, the learned Advocate submits that the two ULP complaints bearing Nos.589 of 1997 and 667 of 1997 were filed by the two employees apprehending termination, before the Labour Court. They were granted status-quo and protected by this Court in 2004. Such protection continues for almost 18 to 20 years and the same may be continued till the two ULP complaints, pending before the Industrial Court, could be decided in the light of the paragraph 19 reproduced above.

5. The learned Advocate for the Management, though agrees for the disposal of the two complaints before the Labour Court, submits that status-quo need not be continued as there is no work available to be offered to these two employees.

6. In view of the above, these three petitions are disposed off with the following directions :-

(a) The Labour Court at Thane would pass a formal order of disposing off Complaint (ULP) Nos.589 of 1997 and 667 of 1997.

(b) The status-quo that was in favour of these workers, would be notionally continued, till disposal of the cases pending before the Industrial Court.

(c) Complaint (ULP) Nos. 694 of 1997 and 631 of 2000 are restored to the file of the Industrial Court, Thane, by consent as recorded above.

(d) The litigating parties before this Court agree to appear before the Industrial Court in Complaint (ULP) Nos.694 of 1997 and 631 of 2000, at 11.00 a.m. on 04/03/2022.

(e) Pursuant to such appearance, no formal notice is required to be issued by the Industrial Court.

(f) Both the parties are at liberty to proceed with the above stated two cases from the stage at which they were disposed off, meaning thereby that if the Management has not filed it's written state-

ment in the matters, the same shall be done on or before 31/03/2022.

(g) Thereafter, the Industrial Court would proceed to decide the complaints in accordance with the procedure laid down in law.

(h) As the learned Advocate for the workers has made a request with regard to an amendment, it would be appropriate to leave the parties at liberty to address the Industrial Court in the event of any party being desirous of seeking an amendment.

(i) Taking into account the period of more than two decades that have passed by, the Industrial Court, Thane would give highest priority to these two ULP complaints for an expeditious adjudication, in any case on or before 21/10/2022.

(j) All the litigating parties would fully co-operate with the Industrial Court which would be at liberty to refuse the adjournments, if are sought on trivial grounds, alternatively impose costs for such adjournments.

(k) All the contentions of the litigating parties in the light of paragraph 19 of the judgment of the learned Full Bench, are left open.

7. In view of the disposal of the writ petitions, pending interim applications stand disposed off.

8. Rule is discharged in all these petitions.

7. This is how the the Complaint (ULP) Nos. 694 of 1997 and 631 of 2000 came to be restored on the file of Industrial Court for being decided afresh. When the Complaints were taken up for hearing by Industrial Court, Petitioner filed an Application at Exh. C-15 raising the issue of maintainability of the Complaints on the ground that since there is dispute about the nature of execution of work not forming part of

Undertaking by the contract workers, they should first get the dispute adjudicated under the provisions of the BIR Act and till such adjudication, the Complaints filed by them under MRTU & PULP Act cannot be entertained. Those Applications filed by Petitioner came to be rejected by the Industrial Court by Order dated 20 July 2022. These petitions are filed challenging Order passed by the Industrial Court on 20 July 2022.

8. In short, the Complaints filed by the contract workers in the year 1997 / 2000 will continue to remain pending for adjudication on merits on account of raising issue of maintainability of said Complaints.

9. Mr. Talsania, the learned senior advocate appearing for Petitioner would contend that in the meantime the Mill of the Petitioner has been shut down in the year 2010. It also appears that on account of *status quo* Order passed by the Industrial Court in Complaints filed by the contract workers some of them continue to remain employed and are being paid minimum wages by the Petitioner. This is however not true about two workers viz. Tukaram Mandhare and Maruti Yadav who are out of employment since filing of Complaints.

10. Now this Court is tasked upon to to decide as to whether Industrial Court can decide the Complaints on merits in view of the dispute with regard to nature of work performed by contract workers. It is Petitioner's case that since it disputes that the work they performed was not 'ordinarily the work of Undertaking' and that this dispute must first

be adjudicated under the BIR Act. The Industrial Court has arrived at a finding that the contract workers are engaged on work of the Undertaking and this finding is challenged by the Petitioner in the present petitions.

11. On account of disputes amongst parties about maintainability of the Complaints, the Complaints have not been adjudicated for the last 26 long years. In the meantime, several of the contract workers have crossed the age of superannuation. Two of them have expired. Six of the contract workers stopped pursuing the matter after the Complaints were initially dismissed as not maintainable. Now left are total 16 workers.

12. When these petitions came for hearing a suggestion was made by this Court both to Mr. Talsania and Mr. Pendse as to whether any settlement would be possible, under which the contract workers can be paid lump sum compensation so as to put an end to the entire dispute. Petitioner has showed willingness to offer various amounts to the contract workers. Two contract workers namely Shri. Tukaram Mandhare and Shri. Maruti Yadav are offered lump sum compensation of Rs.15,00,000/- each by the Petitioner. Both are present in the Court today. Mr. Pendse, after taking instructions from them, makes a statement that they are willing to settle the dispute by accepting the amounts of Rs.15,00,000/- each towards lump sum compensation.

13. This would leave 14 other contract workers, who are also offered various sums by the Petitioner as under :

Sr. No.	Name of Person	Amount (in Lakh)
1	Parsu Hari Mane (dead)	3.50
2	Mohan Kishan Kate	7.00
3	Kashinath Achutrao Shinde	7.00
4	Satyavijay Dhaku Karalkar	7.00
5	Manohar Shantaram Patil	7.00
6	Vinayak Maruti More	7.00
7	Laxman Dhyanu Phadke	7.00
8	Pandurang Laxman Padane	7.00
9	Chintaman Bhau Sajekar	7.00
10	Hari Bhau Rokade (dead)	3.50
11	Jayram Arjun Bhandari	7.00
12	Shivaji Jagannath Pawar	7.00
13	Ravindra Gangaram Punaskar	7.00
14	Hanmant Sanba Babar	7.00

14. Mr. Pendse would contend that the above 16 contract workers are no longer in touch with him therefore he is unable to take instructions from them about their consent on settlement of disputes by accepting the amounts offered by the Petitioner. It appears that 05 contract workers have already crossed age of 60 years, who are still being paid by the Petitioner on account of *status quo* Order passed by the Industrial Court. Such an arrangement must be brought to an end. Perusal of various amounts offered by the Petitioner would indicate that two contract workers Shri, Tukaram Tanaji Mandhare and Shri. Maruti Tukaram Yadav have not been employed on contract basis in the

interregnum and have not received any amounts during pendency of proceedings. These are the two workers who have however diligently followed the entire journey of litigation. Since they have not received minimum wages during intervening period (which are paid to other 14 workers), Petitioner is willing to offer higher amount of compensation to them. The rest 14 have been employed on contract basis and have earned minimum wages, though according to Mr. Talsania no manufacturing activity is carried in the Mill of the Petitioner, which is long since shut. According to him, those 14 workers are being paid minimum wages virtually without performing any work out of deference to the *status quo* order. Thus those 14 workers have virtually succeeded in their battle in remaining employed during pendency of litigation, except that they haven't become direct employees of Raymond. The payment of minimum wages to those 14 workers is factored in by Raymond for offering them lesser compensation (almost half) that the one offered as accepted by Shri. Tukaram Tanaji Mandhare and Shri. Maruti Tukaram Yadav. In respect of employees, Late Parsu Hari Mane and Late Hari Bhau Rokade, they have expired during pendency of the Complaints and therefore lesser amount of compensation is being offered to their legal heirs.

15. Mr. Pendse, the learned counsel appearing for contract workers would agree that lump sum amount of compensation offered to all the contract workers is fair and that instead of litigating endlessly, the contract workers must put an end to the litigation by accepting amount

of compensation. However, this is just an opinion expressed by Mr. Pendse as an officer of this Court and the Order is not being passed on the basis of any concession made by Mr. Pendse on behalf of those 14 workers. His consent is recorded only in respect of two workers Shri. Tukaram Tanaji Mandhare and Shri. Maruti Tukaram Yadav, who are personally present before this Court.

16. In my view, the litigation has elongated for 26 years. If these petitions are decided on merits and in favour of Petitioner, the workers will have to get the dispute of nature of work performed by them decided under the provisions of BIR Act and then prosecute their ULP Complaints before the Industrial Court. Any Order that may be passed by the Court under BIR Act would again be susceptible to further challenge. If on the other hand, the present petitions are dismissed by upholding the order passed by the Industrial Court, the Complaints will have to be decided on merits by the Industrial Court by letting parties lead evidence. Two workers have already expired, rest are at advanced ages. The Industrial Court's order on merits would again be susceptible to challenge by the aggrieved party. It is unknown how many years more would be spent by parties in litigating this way. In my view, time has come to draw curtains on this endless litigation. The amount of compensation worked out, to my mind, appears to be reasonable considering the facts and circumstances of the case. Once the lump sum amount of compensation is paid to the contract workers, the Complaints pending before the Industrial Court would also be worked out.

17. I accordingly proceed to pass following order:

ORDER

- i) Petitioner shall pay lumpsum compensation of Rs. 15 Lakh to Shri. Tukaram Tanaji Mandhare and Shri. Maruti Tukaram Yadav within 4 weeks from today.
- ii) Petitioner shall deposit in the Industrial Court lumpsum compensation of following amounts within a period of 04 weeks from today:

Sr. No.	Name of Worker	Amount of lumpsum compensation (in Lakh Rs.)
1	Parsu Hari Mane (dead) to his heirs	3.50
2	Mohan Kishan Kate	7.00
3	Kashinath Achutrao Shinde	7.00
4	Satyavijay Dhaku Karalkar	7.00
5	Manohar Shantaram Patil	7.00
6	Vinayak Maruti More	7.00
7	Laxman Dhyanu Phadke	7.00
8	Pandurang Laxman Padane	7.00
9	Chintaman Bhau Sajekar	7.00
10	Hari Bhau Rokade (dead) to his heirs	3.50
11	Jayram Arjun Bhandari	7.00
12	Shivaji Jagannath Pawar	7.00

13	Ravindra Gangaram Punaskar	7.00
14	Hanmant Sanba Babar	7.00

iii) The abovenamed workers shall be entitled to withdraw the amounts so deposited by the Petitioner from Industrial Court.

iv) Upon payment / deposit of the amount of lump sum compensation, the Complaint (ULP) Nos. 694 of 1997 and 631 of 2000 shall stand disposed of and the Industrial Court shall pass a formal order to that effect.

v) The contract workers shall have no further claim against the Petitioner in respect of their services. The status quo order passed by the industrial Court shall come to an end and stands vacated.

18. With the above directions Writ Petitions are disposed of.

SANDEEP V. MARNE, J.

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