

Nikita

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

WRIT PETITION NO.1858 OF 2024

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Indus Towers Limited ... Petitioner

V/s.

Rajendra Patil (Yedravkar) and Anr. ... Respondents

WITH

WRIT PETITION (ST). NO.8608 OF 2024

Rajendra Patil (Yadravkar) Maharashtra
2 Rajya Mobile Tower Surksha Rakshak
Sanghtana ... Petitioner

V/s.

M/s. Indus Towers Ltd. and Anr. ... Respondents

Mr. Kiran S. Bapat, Sr. Adv. a/w Mr. Sungandh
Deshmukh for the Petitioner in WP/1858/2024 and for
Respondent in WP(st)/8608/2024.

Ms. Pavitra Manesh, for the Petitioner in
WP(st)/8608/2024 and for Respondent No.1 in
WP/1858/2024.

Ms. Meena Doshi, for Respondent No.2, in both writ
petitions.

CORAM : AMIT BORKAR, J.

DATED : APRIL 18, 2024

PC.:

1. The petitioner is challenging order dated 28th April 2023,
and the order dated 20th December 2019. By the order dated 20th

December 2019, the Industrial Court allowed the application CA-8 and framed issues. By order dated 28th April 2023 the Industrial Court rejected the petitioner's application to delete petitioner's name from cause title of the complaint on the ground of absence of employee-employer relationship between the first respondent and the petitioner.

2. The learned senior counsel for the petitioner relying on the judgment in the case of **Cipla, Ltd Vs. Maharashtra General Kamgar Union reported in (2001) 2 L.L.N. 19**, submitted that for maintaining proceedings under the provisions of the Act, the relationship between employer-employee must be indisputable or undisputed. He invited my attention to paragraph No.6(d) of the complaint and submitted that the averments indicated disputed relationship and therefore, the complaint was not maintainable. He submitted that the Industrial Court recorded a finding that there is no employer-employee relationship between petitioner and respondent No.1, however, rejected the petitioner's application on the ground that for smooth adjudication of the complaint respondent No.1 is necessary party.

3. Per contra, learned counsel for the respondent No.1 submitted that the material on record indicates that the relationship of employer-employee was indisputable and undisputed. The averments in paragraph No 6(d) indicates grounds which may not be sufficient to record a finding of absence of employer and employee relationship. Hence, the Industrial Court has rightly rejected the petitioner's application on the ground that the petitioner was necessary party.

4. The position of law in relation to maintainability of complaint arising out of provisions of the Act has been succinctly laid down by the Apex Court in the case of **Cipla** (supra). The Apex Court in paragraph No.8 observed a *sunder*.

“8. But one thing is clear — if the employees are working under a contract covered by the Contract Labour (Regulation & 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 I.D.Act.”

5. I have examined the averments in the complaints in the context of law laid down by the Apex Court in the case of **Cipla** (supra).

6. Reading of paragraph 6(d) of the complaint makes it clear that petitioner himself is alleging contract between principal employer and contractor sham as bogus. Therefore, in my opinion, the Industrial Court rightly recorded a finding of absence of relationship of employee-employer between the petitioner and first respondent. Once such finding of fact is recorded by the Industrial Court, the jurisdictional fact which confers jurisdiction on the Industrial Court while entertaining complaint under the Act, is not in existence. In the absence of existence of jurisdictional fact of relation of employer-employee, the Industrial Court could not have entertained a complaint under the provisions of the Act. It appears that the Industrial Court was aware of the position of law and rightly recorded a finding of absence of relationship of employer-employee. However, based on equitable principle and the principle of necessary party, rejected petitioner's application.

7. It is well settled that a person can be said to be necessary party without whose presence complete and effectual adjudication of the dispute involved was impermissible. However as held by the Apex Court in the case of **Cipla** (supra) the jurisdiction of the Industrial Court to entertain complaint is based on existence of indisputable or undisputed relationship of employer-employee and in absence of such nature of relationship, the Industrial Court could not have rejected petitioner's application for deleting him from array in the complaint. Hence, following order.

a) The impugned order dated 28th April 2023 passed by the Member of the Industrial Court, Kolhapur in Complaint ULP No. No.33 of 2019 is quashed and set aside.

b) The application below Exhibit C-7 is allowed.

c) Necessary amendment to that effect by Respondent No.1 to be carried out within four weeks from today.

8. Writ Petition No.1858 of 2024 stand disposed of in above terms. No costs.

9. In view of reasons assigned in Writ Petition No.1858 of 2024, it is established that the complaint against petitioner in Writ Petition No.1858 of 2024 with respondent No.1 was not maintainable. Writ Petition (st.) No.8608 of 2024 cannot be entertained. The same stands disposed of accordingly.

(AMIT BORKAR, J.)