

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

WRIT PETITION NO.3125 OF 2024

Mahindra and Mahindra Financial Services Limited	Petitioner
V/S	
Maharashtra Kamgar Ekjut Union & Ors.	Respondents

**WITH
WRIT PETITION NO.3126 OF 2024**

Mahindra and Mahindra Financial Services Limited	Petitioner
V/S	
Sharukh Shahabuddin Khan	Respondent

Mr. B.D. Birajdar a/w Mr. Manan Sanghai, Mr. Paarth Singh and Ms. Komal Deshmukh *for the Petitioner.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 25 JULY 2024.**

P.C.:

1 The challenge in the present Petitions is to the order dated 10 October 2023 passed by Member, Industrial Court, Mumbai on applications filed by Petitioner at Exhibit-C-4 in Complaint (ULP) Nos.170 of 2021 and 191 of 2021. It is Petitioner's case that the Complainant-Union in Complaint (ULP) No.170 of 2021 represents contract workers and all the Complainants in Complaint (ULP) No.191 of 2021 are themselves contract workers of the

contractor M/s. Amplinno India Pvt. Ltd. and that there is no employer-employee relationship between Petitioner and the concerned contract workers. It was therefore contended before the Industrial Court that in absence of employer-employee relationship, Complaint under section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**) cannot be filed against the Petitioner.

2 I have heard Mr. Birajdar, the learned counsel appearing for Petitioner and have considered the submissions canvassed by him.

3 Perusal of the prayers made in the Complaints would *prima facie* indicate that one of the prayers in the Complaints is for payment of legal dues as enumerated in paragraph 3(c) of the Complaints. In paragraph 3(c) of the Complaints it is pleaded that both the Respondents in the Complaints have failed to pay legal dues in the form of salaries to the concerned contract workers for the period from 1 April 2021 to 31 May 2021/1 January 2021 to 28 February 2021.

4 The Industrial Court, while rejecting the applications filed by Petitioner has referred to the provisions of section 21(4) of the Contract Labour (Regulation and Abolition) Act, 1970 (**the Act**) under which principal employer is held liable for payment of legal dues of contract workers in the

event the contractor fails to pay the same. *Prima facie* therefore there is relationship between Petitioner and the concerned contract workers in capacity of the Petitioner as principal employer under the provisions of the Act. It is therefore cannot be contended qua the prayer for payment of legal dues, that there is absolutely no relationship between Petitioner-employer and the contract workers.

5 Mr. Birajdar has relied upon judgment of the Apex Court in ***Cipla Limited vs. Maharashtra General Kamgar Union & Ors***¹. in which the Apex Court has held that the Industrial Court does not have jurisdiction when there is dispute between employer and employee relationship and the relief for treatment of contract as sham and bogus cannot be granted by the Industrial Court. Similar view is taken by Division Bench of this Court in ***Hindustan Coca Cola Bottling S/W Pvt. Ltd. vs. Bharatiya Kamgar Sena& Ors.***².

6 In my view the issue involved in the present Petition is altogether different. So far as prayers made by the Complainants with regard to continuous in service etc. are concerned, what Mr. Birajdar contends would be right and the Industrial Court cannot decide Complaint against Petitioner since Petitioner is not the employer of the contract workers. However when it comes non-payment of salary by the contractor, Petitioner would undoubtedly be a principal employer of the contract workers under section 21(4) of the Act. Only to this limited extent, presence of Petitioner in the Complaints would be

1 2001 I CLR 754

2 2002 (1) Mh.L.J. 559 : 2001 III CLR 1025

necessary and it cannot be stated that the Complaint would not be maintainable in absence of employer and employee relationship. Again this finding is only *prima-facie* and the Industrial Court has itself held that the liability of Petitioner as principal employer for payment of legal dues will have to be determined after evidence is laid by the parties. Therefore at this stage, it would be too premature to hold that there is total absence of relationship between the Petitioner and the contract workers. Reliance of Mr. Birajdar on judgment of this Court in ***Mahindra and Mahindra Limited, Nagpur vs. Satish Tulshiram Burile and others***³, does not cut any ice. In that judgment, the issue was with regard to maintainability of Complaint under MRTU and PULP Act in relation to the Complaint filed to espouse right of contractual employees under the Maharashtra Industrial Relations Act, 1946 (**the MIR Act**) to participate in the elections for electing five representatives of employees under section 28 of the MIR Act. This Court held that the Complainant there, being not a direct employee of the Company, the Complaint filed under section 28 of the MRTP & PULP Act was not maintainable. In the present case, the Industrial Court has *prima facie* attempted to establish linkage between Petitioner and contract workers by invoking provisions of section 21(4) of the Act.

7 In my view therefore no interference is warranted in the orders passed by the Industrial Court. It is however clarified that the observations made by Industrial Court in the impugned orders and by this Court in the present

order are only *prima facie* and Petitioner's contention about maintainability of the Complaint qua it as well as its liability to pay alleged legal dues to the contract workers under section 21(4) of the Act will have to be framed and decided by the Industrial Court. With the above observations, the Writ Petitions are disposed of.

(SANDEEP V. MARNE, J.)