

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

WRIT PETITION NO.13484 OF 2024

Pimpri Chinchwad Municipal Corporation
V/S

....Petitioner

Rashtriya Shramik Aghadi & Ors.

....Respondents

Mr. Kedar B. Dighe *for the Petitioner-Corporation.*

Dr. Uday P. Warunjikar with Mr. Sumit Kate and Mr. Jenish D. Jain *for Respondent No.1-Union.*

CORAM: SANDEEP V. MARNE, J.

DATE : 25 FEBRUARY 2025.

Oral Order:

1) **Rule.** Rule is made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petition is taken up for final hearing and disposal.

2) The Petition challenges Award dated 7 January 2023 passed by Industrial Tribunal, Pune in Reference (IT) No.8 of 2009. By the impugned Award, the Industrial Tribunal has declared that 469 employees, who were identified by the Additional Labour Commissioner vide order dated 28 February 2019, are the employees of the Petitioner-Municipal Corporation. The Industrial Tribunal has accordingly directed payment of difference of wages to the said 469 employees by treating them employees of the Petitioner-Municipal Corporation.

3) I have heard Mr. Dighe, the learned counsel appearing for the Petitioner-Municipal Corporation and Dr. Warunjikar, the learned counsel appearing for Respondent No.1-Union. I have gone through the findings recorded by the Industrial Tribunal as well as the relevant records of the case placed alongwith the Petition.

4) The case has a slightly chequered history. It appears that the Respondent-Union has been espousing the cause about 572 contractual employees, whose services are utilized by the Petitioner-Municipal Corporation through contractors. The Respondent-Union initially filed a Writ Petition No.2193 of 2001 seeking direction against the Petitioner-Municipal Corporation as well as against the respective contractors for conferment of benefit of permanency to the concerned workers and to pay them the scale of Class IV employees and not to terminate their services. The Petition was disposed of by Division Bench of this Court on 24 September 2003 directing the Union to make a representation to the Labour Commissioner who was supposed to hold an enquiry regarding the nature of work performed by the concerned workers. In the meantime, interim relief was granted from termination by permitting the Petitioner-Municipal Corporation to change the contractors with a condition of engagement of same workers by the new contractor. Special Leave Petition filed challenging the order dated 24 September 2003 came to be dismissed by the Supreme Court on 6 November 2006.

5) In pursuance of order passed by Division Bench on 24 September 2003 in Writ Petition No.2193 of 2001, the Union approached the Labour Commissioner by making a representation.

The Labour Commissioner made an enquiry and held that as per Rule 25(2)(iv)(b) of the Maharashtra Contract Labour (Regulation and Abolition) Rules, 1971 the wages payable to the workmen of the contractors (sweepers and scavengers) shall be the same as wages payable to the employees of the Petitioner-Municipal Corporation since they do the same kind of work. The Review Petition filed by the Petitioner-Municipal Corporation before the Labour Commissioner was rejected. The Petitioner-Municipal Corporation thereafter filed Writ Petition No.5214 of 2005 challenging the order passed by the Labour Commissioner. The Petition came to be dismissed by this Court by order dated 2 March 2007. Special Leave Petition filed by the Petitioner Municipal Corporation was also dismissed by the Supreme Court on 12 January 2016.

6) Since the Petitioner-Municipal Corporation failed to take steps in pursuance of the order passed by the Labour Commissioner, Contempt Petition No.58 of 2017 was filed. In the Contempt Petition, this Court passed order dated 17 July 2018 directing the Additional Labour Commissioner to decide the controversy involved in the Contempt Petition with regard to ascertainment of the exact number of workers who would be entitled to the payment in pursuance of the earlier order of the Labour Commissioner. In pursuance of the order passed in the Contempt Petition, parties appeared before the Additional Labour Commissioner who passed order directing that out of 572 workers whose names were submitted by the Union, only 469 workers were eligible to receive same wages as per the earlier order passed by the Labour Commissioner. The order passed by the Additional Labour Commissioner became subject matter of challenge in Writ Petition No.3954 of 2019 filed by the Petitioner-Municipal

Corporation. The Petition came to be dismissed by the Division Bench of this Court by order dated 24 January 2020 in which a mandate was issued to the Petitioner-Municipal Corporation to implement the order passed by the Additional Labour Commissioner. As the Petitioner-Municipal Corporation approached the Supreme Court but Special Leave Petition challenging the order passed by the Division Bench came to be dismissed by the Supreme Court on 11 September 2020.

7) This is how the issue with regard to payment of same wages to 469 contract workers on par with the wages paid to regular employees of the Petitioner-Municipal Corporation attained quietus. It appears that towards implementation of the said order passed by the Additional Labour Commissioner, the Petitioner-Municipal Corporation paid approximately Rs.39 crores inclusive of interest at the rate of 9% per annum to 469 workers in the year 2020. Additional amount of Rs.4 crores was paid to 41 workers in December 2023.

8) During pendency of the above litigation relating to payment same wages to contract workers on par which regular employees of the Petitioner-Municipal Corporation, a Reference was made by the Government of Maharashtra on 14 May 2009 in relation to reinstatement of 572 contract workers with continuity of services and backwages. The Reference was registered as Reference (IT) No.8 of 2009. In that Reference one of the issues formulated by the Industrial Tribunal was “Whether the concerned persons i.e. members of the Second Party were employed by First Party corporation”.

9) Thus one of the issues taken up for consideration by the Industrial Tribunal was whether the concerned workers could be treated as the employees of the Petitioner-Municipal Corporation. By the impugned Award dated 7 January 2023, the Industrial Tribunal has held that out of the 572 workers included in Annexure-A to the Reference, 469 workers identified by the Additional Labour Commissioner vide order dated 28 February 2019 shall be treated as employees of the Petitioner-Municipal Corporation. Consequently, the Industrial Tribunal has directed payment of difference of wages to said 469 workers on being treated as employees of the Petitioner-Municipal Corporation. The operative portion of the above order reads thus:

AWARD

1. The reference is answered in the affirmative.
2. It is hereby declared that only 469 employees who are identified by the Additional Labour Commissioner, Pune vide his order dated 28.02.2019 out of 572 employees shown in Annexure A to the reference are the employees of the First Party Corporation.
3. The said 469 employees who are identified by the Additional Labour Commissioner, Pune vide his order dated 28.02.2019 to receive difference of wages and acted upon by the Hon'ble High Court vide orders dated 15.12.2020 and 22.12.2020 in Contempt Petition (St.) No. 92227 of 2020 filed by the Second Party against the First Party, as well as, vide order dated 24.01.2020 in Writ Petition No. 3954 of 2019 filed by the First Party against the Second Party are only entitled for reinstatement in their service which they were doing for the First Party with continuity of service and back wages which are applicable to the employees of the First Party doing similar work since the date of termination i.e. from 01.10.2004.
4. While calculating and paying back wages to the 469 employees i.e. members of the Second Party identified by the Additional Labour Commissioner, Pune vide order dated 28.02.2019, the amount of Rs. 16,09,79,646/ paid to said 469 workers by virtue of order of Hon'ble High Court towards difference of wages be adjusted/deducted.
5. Two months time after publication of Award is given to the First Party Corporation for implementation of Award.

6. The copy of award be sent to appropriate Government for publication.

7. No order as to the costs.

10) As observed above, one of the issues taken up for consideration by the Industrial Tribunal was whether the 469 workers who were shown to have been engaged through contractors could be treated as the employees of the Petitioner-Municipal Corporation. The Industrial Tribunal has repeatedly held that the contracts executed with the contractors by the Petitioner-Municipal Corporation are sham and bogus and that such contracts were mere paper contracts. One of the reasons why the Industrial Tribunal held the contracts to be sham and bogus is inability on the part of the Petitioner-Municipal Corporation not to file on record contracts/copies whereof before the Industrial Tribunal. The Industrial Tribunal therefore proceeded to draw an adverse inference against the Petitioner- Municipal Corporation. The Industrial Tribunal held in paragraph 17 of the Award as under:

17. Therefore, from the aforesaid discussions, it is apparent that due to nonproduction of alleged contracts/agreements took place between the First Party and the contractors, the presumption arise that those contracts were sham and bogus and the contractors with whom the alleged contracts taken place are mere paper contractors.

11) However, the Tribunal ultimately accepted the position that the concerned workers were not directly appointed by the Petitioner-Municipal Corporation but they were engaged through contractors. This finding is recorded in paragraph 21 of the judgment as under:

However, as already discussed that the members of the Second Party were not directly appointed by the First Party, but through contractors, who are proved as paper contractors.

12) The Tribunal thereafter proceeded on a footing that the workers were engaged through contractors and went on to decide whether the contracts were sham and bogus. However, while deciding the issue of the contracts being sham and bogus, it appears that the Industrial Court did not notice ratio of the judgment of the Apex Court in ***Balwant Rai Saluja and another vs. Air India Limited and others***¹. In my view, the judgment in ***Balwant Rai Saluja*** (supra) is an authoritative pronouncement of the Apex Court for determining the issue of existence of employer-employee relationship. The Apex Court has prescribed the following tests in paragraph 65 of the judgment for establishment of direct employer-employee relationship:

65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia :

- (i) who appoints the workers;
- (ii) who pays the salary/remuneration;
- (iii) who has the authority to dismiss;
- (iv) who can take disciplinary action;
- (v) whether there is continuity in service; and
- (vi) extent of control and supervision i.e. whether there exists complete control and supervision.

As regard extent of control and supervision, we have already taken note of the observations in *Bengal Nagpur Cotton Mills case*, *International Airport Authority of India case* and *Nalco case*.

13) Perusal of the impugned award would indicate that there is absolutely no discussion by the Industrial Tribunal about

¹ (2014) 9 SCC 407

fulfillment of any of the said six tests. In fact, there is no reference to the judgment of ***Balwant Rai Saluja*** (supra) in the entire impugned award passed by the Industrial Tribunal.

14) I had an occasion to decide the issue of existence of direct employer-employee relationship between Municipal Corporation and its contract workers in ***Kalyan Dombivali Municipal Corporation vs. Municipal Labour Union and another***². In paragraphs 24 to 31 of the judgment, this Court has discussed all the six tests in relation to the facts and circumstances of the said case. It would be apposite to reproduce paragraphs 24 to 31 of the judgment as under:

24. Thus, as per judgment in ***Balwant Rai Saluja***, the six tests suggested by the Apex court are required to be satisfied for the purpose of establishment of employer-employee relationship. Let us test the facts of the present case in the context of the said six tests:

(i) Who Appoints The Workers :

In the present case, there is no dispute to the position that the workers, whom Respondent-Union represents, have been appointed by the Contractor, M/s. Antony Waste. The Municipal Corporation had not issued any advertisement or sent any requisition to any recruiting agency for making appointments. No appointment orders are issued by the Municipal Corporation. The workers did not participate in any selection process conducted by the Municipal Corporation. There is nothing on record to indicate that the Municipal Corporation engaged Petitioners directly in their service. Therefore, the first test is not satisfied by the workers.

(ii) Who Pays The Salaries / Remunerations :

In the present case, till currency of the contract with the contractor, the salary was always paid by Contractor alone. There is nothing on record to indicate that the Municipal Corporation paid wages to the workers at any point of time. It is only after the termination of the contract and on account of the interim order initially passed by the Industrial Court, the services of the workers are continued by the Municipal Corporation and

² Writ Petition No.12211 of 2018 decided on 18 October 2023.

since there is no Contractor involved, the wages are also required to be paid by the Municipal Corporation. However, the test is to be applied at the time when the workers were initially engaged. When the demand was made, the Contractor was executing the contract and paying salary to the workers. The terms of agreement, to which a reference is being made in the paragraphs to follow, also make it clear that the entire responsibility of payment of wages rested on the shoulders of the Contractor. It is sought to be argued by Ms. Cox that the wages were deliberately routed through the Contractor. I am unable to agree. The terms and conditions of the contract are such that the payments were to be made to the Contractor on the volume of solid waste managed and handled and transported and not on the basis of number of workers engaged. This aspect is also being dealt separately in the judgment. Therefore, there is nothing on record to indicate that at the time of raising of demand, the Municipal Corporation paid salary to the workers. Thus, the second test is also not satisfied.

(iii) Who Has The Authority To Dismiss; And

(iv) Who Can Take Disciplinary Action :

Since the workers were engaged by the Contractor, the Contractor alone had power to dismiss or to take disciplinary action. The workers have not placed any material on record to indicate that any employee was directly terminated by the Municipal Corporation or that any disciplinary action was initiated against any workers during currency of the contract by the Municipal Corporation. Thus, the third and fourth test are also not satisfied.

(iv) Whether There Is Continuity Of Service :

This test is to be applied in a fact situation where there are multiple contracts and the contractors engage same workers to execute their respective contracts. In the present case, M/s. Antony Waste was the first Contractor engaged by the Municipal Corporation to handle the work of solid waste management. There was no Contractor before M/s. Antony Waste and there is no contractor after termination of contract with M/s. Antony Waste. Therefore, this test is also not satisfied as there are no multiple Contractors. It may well be argued that the test is satisfied on account of the fact that services of workers are continued even after termination of contract of M/s. Antony Waste. However, such continuation is purely towards deference to the interim orders passed by the Industrial Court. Sans such interim order, the Municipal Corporation would not have continued the services of the Contract workers. In my view, therefore even the fifth test is not satisfied.

(vi) Extent Of Control And Supervision :

29. About this test, there is a detailed discussion by the Industrial Court and a finding is recorded that the Municipal Corporation

used to exercise control and supervision over the work performed by the Contractors. Maintaining cleanliness and handling the solid waste are one of the mandatory functions of the Municipal Corporation under the provisions of Section 63 of the Maharashtra Municipal Corporation Act, 1949. Thus, there is a statutory duty imposed upon the Municipal Corporation to collect, transport and dispose of the solid waste generated within its jurisdiction. Merely because the Municipal Corporation employs a Contractor to collect and transport the solid waste generated within its jurisdiction, the same would not absolve it from performing its statutory duties. It therefore can never happen that after contracting out the function of collection and transportation of municipal solid waste, Municipal Corporation would depend entirely on performance of the work by a Contractor. Though a contract may contain stipulations to punish a Contractor for failure to perform the work properly, but on account of statutory duty enshrined upon the Municipal Corporation, it is bound to supervise the overall work performed by the Contractor. However, supervision of performance of work by a Contractor cannot be mixed with the issue of supervision of work of an individual worker. As per test (vi), 'Control and Supervision' would include determination of the question 'whether there exists complete control and supervision'. In **Kirloskar Brothers**, the sixth test is included to mean 'Who can tell the employee the way in which the work should be done?'. In short, who has direct control over the employee. In my view, to satisfy this test, it must be proved that the Municipal Corporation directed which worker should work where. To illustrate, the Municipal Corporation should have an authority to direct the Contractor that worker 'X' should not work in Ward 'A' or that worker 'Y' should work in Ward 'B'. The Municipal Corporation should not only be vested with but must have also exercised the power of transferring the workers from Place-A to Place-B. In the present case, the Contractor was being paid the contract value depending on volume of the municipal solid waste handled and transported. It was for the Contractor to decide how many employees would be required to execute the contract. Apparently, he has changed the workers from time to time which is clear from the list annexed at Annexure-A to the Statement of Claim where fresh faces are engaged every year. There is nothing on record to indicate that the Municipal Corporation played any role in replacement of workers. Therefore, merely because the Sanitary Inspector or a Supervisor of Municipal Corporation is deployed at a relevant place to ensure proper performance of the contract, same would not *ipso-facto* give rise to an assumption that the Municipal Corporation exercised full, complete or direct control or supervision over the workers of the Contractor. It must be borne in mind that for performance of statutory duties under Section 63 of the MMC, 1949, it is incumbent for the Municipal Corporation to supervise the work of the Contractor. This would not mean that it supervises the work of the worker.

30. To my mind, therefore merely because Respondent-Union was able to prove that the some of the employees or Officers of the Municipal Corporation supervised some of the activities such as maintenance of muster roll, issuance of some directions etc. would not satisfy the test of exercise of direct control over the employee.

31. I am therefore of the view that Respondent-Union failed to meet any of the six tests specified by the Apex Court in its judgment in **Balwant Rai Saluja**. Even if some leeway is to be granted to the Respondent-Union by assuming that the sixth test of 'control and supervision' is satisfied in the present case, satisfaction of that test alone would not be sufficient and it is mandatory for it to satisfy tests nos. 1 to 5 as well. Therefore, it is difficult to hold that there was no employer-employee relationship between the Municipal Corporation and the contract workers.

15) It appears that the Special Leave Petition No.25166 of 2023 (Shramik Janta Sangh vs. Kalyan Dombivli Municipal Corporation & Anr.) filed in the Supreme Court challenging the judgment of this Court in **Kalyan Dombivli Municipal Corporation and another vs. Municipal Corporation Labour Union and another** (supra) is dismissed by order dated 20 November 2023.

16) In my view therefore, it would be appropriate to remand the proceedings before the Industrial Tribunal for the purpose of re-examination of the entire issue relating to establishment of direct employer-employee relationship between the workers and the Petitioner-Municipal Corporation by considering the six tests prescribed by the Apex Court in its judgment in **Balwant Rai Saluja** (supra). While doing so, the Industrial Tribunal shall proceed on a presumption that initial engagement of all the workers is through contractors and an attempt is made by the Union to establish that the contracts are sham and bogus. It would not be necessary for the Industrial Tribunal to conduct a factual enquiry about existence of such contracts, nor it would be necessary for the Petitioner-Municipal Corporation to produce or prove various contracts executed

with the contractors from time to time through which the said 469 workers were engaged. If felt necessary, the Petitioner-Municipal Corporation can produce copies of those contracts before the Industrial Tribunal. In the remanded proceedings, the Tribunal shall essentially restrict its consideration to establishment of the six tests prescribed by the Apex Court in ***Balwant Rai Saluja*** (supra). If necessary the parties would be at liberty to lead evidence with regard to the six tests prescribed by the Apex Court in ***Balwant Rai Saluja*** .

17) I accordingly proceed to pass the following order:

- i) The Award dated 7 January 2023 passed in Reference (IT) No.8 of 2009 is set aside.
- ii) Reference (IT) No.8 of 2009 is restored on the file of Industrial Tribunal, Pune which shall proceed to decide the same afresh in the light of observations made in the order.
- iii) Rival parties would be at liberty to lead additional evidence in support of their respective claims.
- iv) Considering the fact that the Reference is pending since the year 2009, the Industrial Tribunal shall make an endeavor to decide the remanded Reference as expeditiously as possible preferably within a period of one year.
- v) All rights and contentions of parties on merits are

expressly kept open.

18) With the above directions, the Writ Petition is **partly allowed**. Rule is made partly absolute. There shall be no order as to costs.

Digitally
signed by
SUDARSHAN
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KATKAM
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(SANDEEP V. MARNE, J.)