

(2012) 07 BOM CK 0131

In the Bombay High Court

Case No : Writ Petition No. 6872 of 1998

Engineering Workers" Union

APPELLANT

Vs

Zoroastrian Automobiles Pvt. Ltd., Additional Nasik Industrial
Area, Ambad, Nasik 422010 and Others

RESPONDENT

Date of Decision : 04-07-2012

Acts Referred:

Citation : (2012) 5 ALLMR 210 : (2012) 135 FLR 112 : (2012) 4 LLJ 16 : (2013) 1 SCT 213

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : P.M. Patel, for the Appellant; Rahul Nerlekar for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Anoop V. Mohta, J.—The Petitioners-Union, have challenged the impugned award dated 26 May 1996, thereby, their complaint was dismissed mainly on the ground of no relationship of employer - employee based upon the evidence and material available on record. Heard both the learned counsel appearing for the parties.

2. The learned counsel appearing for the Petitioners has pointed out that the learned Judge, though recorded the submissions of both the parties, not dealt with all the issues so framed and in para 28 and 29 dealt with only issue of employer-employee relationship. This goes to the root of the matter.

3. The complaint so filed by the Petitioners-Union covering the grievance of 25 workers, but according to the learned counsel appearing for Respondent No. 1, it is only of 6 to 7 workers. The complaint was filed in the year 1996. The Petitioners, thereafter, joined Respondent Nos. 3 and 4, respectively the Manager and the proprietor of M/s. Sabah Fabricators. The positive case against Respondent No. 3, as averred, is referred in para (I) as under:-

The Respondent No. 3 has been brought as an agent to deprive the workmen of their legal rights of minimum wages, Bonus, provident fund, gratuity and also continued employment. There is no genuine contract between respondent No. 1 Company and the respondent No. 3. It is only with a view to defeat the provision of the Industrial Law and deprive the workmen of their rightful claim, the respondents have made paper arrangements.

4. It is, therefore, clear that as per the Petitioners themselves and as averred, Respondent No. 3 was an agent with intention to deprive the workmen of their legal rights of minimum wages, bonus, provident fund, gratuity and all other benefits. The case was also made that they are showing genuine contract between Respondent No. 1 and Respondent No. 3, which is entitled only to deprive their rights. Though, various prayers were made in the complaint, considering the overall averments so made, it was principally revolving around, against Respondent No. 1.

5. The learned Judge, therefore, considering the material, as well no relationship as employer-employee with Respondent Nos. 1 and 2. The finding is clearly given, after considering the evidences laid down by the parties, that the Complainants failed to prove that they were employees of Respondent Nos. 1 and 2. The Complainants' own witnesses and supporting documents, on the contrary, prove that they were not employees and/or wage cum muster-roll of Respondent No. 1.

6. The relationship of employer-employee is the foundation for invoking the Act of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (for short, "M.R.T.U. & P.U.L.P. Act). The findings as recorded above that there exists no relationship between the Complainants and Respondent No. 1, I see there is no reason to interfere with the same findings. Even after considering the rival submissions and pleadings placed on record, I see there is no perversity and there is no contra material placed on record that there exists any relationship between the Complainant and Respondent No. 1. The Complainants are at liberty to establish their rights, if any, before the appropriate forum as observed by the Supreme Court in *Vividh Kamgar Sabha Vs. Kalyani Steels Ltd. and Another*, .

7. The learned Judge, in fact, in concluding para, has recorded as under:-

In my opinion, the complainant Union has failed to establish the relationship of employer-employee and therefore, the complaint itself is not maintainable against the Respondent No. 1 and 2 and therefore all the issues are answered in negative. Since the complainant union has not asked any relief against the Respondent No. 3 and, no relief can be granted to them under this Complaint.

8. Having once given the finding, so recorded above, by the learned Judge with regard to Respondent No. 3, and considering the averments so made by the Complainant referring to Respondent Nos. 3 and 4, but as the basic case was against Respondent No. 1, I am not inclined to interfere with the order so

passed. Even assuming for a moment that the Complainants have raised various prayers including their claim, having referring to minimum wages Act and as the learned Judge has not even observed anything even on that part, though the submission is made by the parties on that ground, that itself cannot be a sufficient reason to return the matter back for rehearing.

9 The Complainants are at liberty to invoke appropriate proceedings before the forum for claiming their respective rights, if any, in accordance with law.

10 The learned counsel appearing for the Petitioners has relied on the Judgment of this Court in (Contract Laghu Udhog Kamgar Union Vs. V.G. Mohite, Assistant Labour Commissioner, Thane & Ors. 2001 II CLR 1011) dealing with the aspect of rights of such contract labour workers. The learned Judge of Industrial Court has also dealt with this aspect in para 28. They have to consider the facts and circumstances of the individual case. The facts of the judgment so cited, are totally distinct and distinguishable. There was allegation of sham and bogus contract. In the present case, the whole pleadings revolved around Respondent No. 1 and so also the prayer clauses. Respondent No. 3 though was party, Respondent No. 4 was made party later on. The evidence so recorded and the reasoning so given, again support the case that they were not directly in employment with Respondent No. 1. The aspect of minimum wages to follow, only if undisputed employment relationship is already established, which cannot be done in this forum. Therefore also, there is no question of granting any relief as prayed, in view of the settled provisions of the M.R.T.U. & P.U.L.P. Act.

11. As observed, I have not concluded and/or decided the rights, whatsoever of the employees, revolving around the minimum wages Act or other benefits. The conclusion and/or dismissal of the present petition, in no way, in the present facts and circumstances covered and/or decided their rights, as already observed in above paragraphs which they have, and as liberty is already granted to take appropriate steps in accordance with law before the appropriate forum as available, this Judgment also no way assists the Petitioner to interfere with the order already passed and/or to remand the matter for rehearing on this issue. The Petition is therefore, dismissed. There shall be no order as to costs. Rule is discharged.