

(2004) 03 BOM CK 0022

In the Bombay High Court

Case No : Writ Petition No"s. 10 to 14 and 18 of 1995

Executive Engineer, Environmental Engineering Division

APPELLANT

Vs

Gokarnaprasad Damodhar Dubey and Another

RESPONDENT

Date of Decision : 03-03-2004

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 2(13), 2(14)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

Citation : (2004) 4 MhLj 596

Hon'ble Judges : A.S. Oka, J

Bench : Single Bench

Advocate : D.M. Kakani, for the Appellant; P.S. Sadavarte and C.S. Samudra, for the Respondent

Judgement

A.S. Oka, J.—The facts of these six Writ Petitions are similar and, therefore, the Petitions are decided by common Judgment. The Writ Petitions arise out of the Complaints filed by the respondent No. 1 in these Petitions before the Labour Court, Nagpur u/s 28 read with Section 7 and item I of Schedule IV of the Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act, 1971 (hereinafter referred to as the Act of 1971). The petitioners challenged the Judgments and Orders of the Labour Court by filing Revision Applications before the Industrial Court at Nagpur. The Industrial Court at Nagpur dismissed the said Revision Applications preferred by the petitioners by a common Judgment and Order. The said Judgments and Orders are impugned in these Petitions. For the sake of convenience the facts in Writ Petition No. 10/95 are considered for the purpose of the Judgment.

2. It is the case of the respondent No. 1 that the State Government constructed a Dam on the River Wena in the year 1966-67. The respondent No. 1 further stated, that after the completion of the construction of the said Dam, the Irrigation Department of the State has handed over the Scheme to the Environmental Engineering division of the State of Maharashtra for the purpose

of making necessary arrangements for supply of water through the said Dam for commercial as well as non-commercial purpose. Accordingly, the petitioner constructed a Pump House and Fitter Plant and started supplying water to various areas. The respondent No. 1 further stated that for the purpose of carrying out the activities as aforesaid, the petitioner had established a Department/Division at Nagpur and employed about 65 to 70 employees including Chowkidars/Security Guards. The work assigned to the said employees was of permanent nature and the work of Security Guards/Chowkidars was part and parcel of the work of the activities of the petitioner. It is contended by the respondent No. 1 that in the year 1982, the petitioner transferred all the workmen employed for Security Arrangements of the Project and appointed 7 Security Guards including respondent No. 1 through respondent No. 2 herein who is running a Supply Agency of Security Guards. The respondent No. 1 further contended that the sole intention of appointing these workmen through the respondent No. 2 was to get rid of Labour Laws applicable to the workmen and to deprive the workmen of the advantages of the permanency in service. The respondent No. 1 alleged that the Security Guards employed through respondent No. 2 performed their duties under the supervision and control of the petitioner through a Jr. Engineer and the respondent No. 2 never attended the Industrial Establishment of the petitioner. It is, thus, a specific case of the respondent No. 1 that he along with other Security Guards (respondent No. 1 in other Petitions) were appointed by the petitioner through the Agency of respondent No. 2 and for all purposes the respondent No. 1 and other Security Guards are the employees of the petitioner. The duty chart of the Security Guards is prepared and fixed by the petitioner. Moreover, the respondent No. 1 was a Member of the General Provident Fund and Employees State Insurance and the contribution is deducted at source. Therefore, the contention of the respondent No. 1 is that his Principal Employer was the petitioner and not the respondent No. 2. A specific case was made out in the Complaint filed by the respondent No. 1 that the Establishment of the petitioner was covered under the provisions of the Bombay Industrial Relations Act, 1946 (hereinafter referred to as the said Act of 1946) and, therefore, in view of the provisions of the said Act of 1946 the petitioner was employer and the respondent No. 1 was an employee. The respondent No. 1 stated that he was required to file the Complaint before the Labour Court as the Jr. Engineer of the petitioner informed the respondent No. 1 that his services were no longer required and that he should not attend the duty from 1st May, 1986 onwards. The respondent No. 1 alleged in the Complaint that the petitioner has not complied with Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act of 1947) and, therefore, the petitioner engaged in Unfair Labour Practices as contemplated by item No. 1 of Schedule IV of the said Act of 1971. Therefore, the respondent No. 1 prayed for relief of reinstatement with backwages and continuity in service.

3. The petitioner filed reply to the Complaint filed by the respondent No. 1. The petitioner denied that after completion of the construction of the Dam, the

Irrigation Department of the State Government has handed over the Scheme to the Environmental Engineering Division. However, it was admitted that the petitioner has constructed the Pump House for supply of water and the petitioner is supplying water to various areas. The petitioner also admitted that the Security Guards employed by the respondent No. 2 had to perform their duties as per the directions given by the petitioner through his Jr. Engineer. However, it was contended that the agency of the respondent No. 2 was exercising its control through his authorised Supervisors and Representatives on the Security Guards and wages were paid by the respondent No. 2 to all the Security Guards. It was contended that the Security Guards were directly under control of respondent No. 2. The petitioner specifically contended that there was no relationship of Master and Servant between him and the respondent No. 1. It is further contended that the Master and Servant Relationship exists between the respondent No. 2 and respondent No. 1. The petitioner denied that the respondent No. 1 was a Government Servant. The petitioner pointed out that since the Agreement between him and the respondent No. 2 for providing Security Guards was to expire on 31st March, 1986, it was informed that the petitioner was not intending to extend the period of the Agreement. The petitioner prayed for dismissal of the Complaints.

4. It appears that after filing the reply to the complaint, the petitioner did not contest the matter before the Labour Court. One of the Complainants was examined on behalf of the complainants in six complaints and was not cross examined by the petitioner. The respondent No. 2 did not file any reply to the Complaint. The learned Judge of the 3rd Labour Court, Nagpur by Judgment and Order dated 22nd January, 1990 allowed the complaints filed by the respondent No. 1 and others and directed the petitioner to reinstate the respondent No. 1 and other Security Guards in the same posts with backwages and continuity in service. The learned Judge of the Labour Court held that the petitioner was a Principal Employer of the respondent No. 1. In view of Section 2(14)(e) of the said Act of 1946, the learned Judge further held that in view of the fact that the respondent No. 1 was a workman within the meaning of the said Act of 1947, the petitioner ought to have complied with the provisions of Sections 25F and 25G of the said Act of 1947.

5. The petitioner, being aggrieved by the Judgments and Orders passed by the Labour Court preferred Revision Applications in all the six Complaints before the Industrial Court at Nagpur. By the Judgment and Order dated 14th December, 1994 the learned Member of the Industrial Court dismissed all the Revision Applications by observing that the respondent No. 1 and other complainants were in the employment of the petitioner and since they were under direct control and supervision of the petitioner, they are the employees of the petitioner. Being aggrieved by the Judgment and Order of the Courts below, the petitioner filed six separate Petitions.

6. On 10th January, 1995 this Court issued Rule in the said Petitions and Rule on

Stay was issued. On 19th November, 1998 this Court passed an Order recording the statement of the learned counsel for the petitioner that instead of reinstating the respondent No. 1 the petitioner was ready to deposit in each month the salary payable to the respondent No. 1 and the amount may be permitted to be withdrawn by the respondent No. 1 on furnishing security to the satisfaction of the Labour Court. In view of the said statement, the execution of the impugned Judgment and Order was stayed subject to the condition of the petitioner depositing the entire backwages in the Labour Court within a period of two weeks and subject to further condition of the petitioner depositing the salary payable to respondent No. 1 on or before 10th day of each month till the disposal of the petition. The respondent No. 1 in each Petition was permitted to withdraw the amount deposited by the petitioner on furnishing security.

7. The learned counsel appearing for the petitioner relied upon the Judgments reported in (i) Hindustan Coca Cola Bottling S/W Pvt. Ltd. and Another Vs. Bhartiya Kamgar Sena and Others, , (hereinafter referred to as the Hindustan Coca Cola case); (ii) 1993 (1) CLR 1003, Krantikari Suraksha Rakshak Sangathana v. S.V. Naik and Ors., (hereinafter referred to as the Case of Krantikari Suraksha Rakshak Sangathana); (iii) 2001 (1) CLR 754, Cipla Limited v. Maharashtra General Kamgar Union and Ors., (hereinafter referred to as the case of Cipla); (iv) 2001 (1) CLR 532, Vividh Kamgar Sabha v. Kalyani Steels Ltd. 1 and Anr., (hereinafter referred to as the case of Vividh Kamgar Sabha); (v) 2001 (3) CLR 349, Steel Authority of India Ltd. and Ors., v. National Union Water Front Workers and Ors. etc, (hereinafter referred to as the case of Steel Authority of India) and (vi) 2003 (3) CLR 949, Sarva Sharmik Sangh v. M/A Indian Smelting and Refining Co. Ltd., (hereinafter referred to as Sarva Shramik Sangh Case) and submitted that the Labour Court had no jurisdiction to entertain the Complaints filed by the respondent No. 1 as the relationship of Master and Servant was disputed by the petitioner. The learned Counsel relying upon the abovesaid Judgments submitted that the Labour Court had no jurisdiction to decide the dispute whether there exists Employer and Employee relationship between the petitioner and the respondent No. 1. He urged that the Labour Court had jurisdiction to entertain a Complaint under the Act of 1971 provided the Employer-Employee relationship was not disputed. He submitted that the Apex Court has laid down the clear proposition of the law that in the case the Employer Employee Relationship is disputed, adjudication on the subject can be made only before the Forum created by the said Act of 1946 and/or 1947 and the Labour Court exercising powers under the said Act of 1971 lacks inherent jurisdiction to decide the said dispute.

8. The learned counsel for the petitioner submitted that the petitioner had denied in the reply filed to the Complaint that the provisions of the said Act of 1946 were applicable to his establishment and the Courts below have not at all decided the question whether the provisions of the said Act of 1946 were applicable to the Establishment of the petitioner. The learned counsel, therefore, submitted that in view of the clear position of law, the impugned Judgments and Orders are

liable to be set aside.

9. The learned Counsel for the respondent No. 1 in all the six petitions submitted that the issue regarding lack of jurisdiction of the Labour Court was never raised by the petitioner either before the Labour Court or before the Industrial Court and even in the Writ Petition the said issue has not been agitated. The learned counsel for the respondent No. 1 further submitted that the Original Complainants were very poor persons and therefore, in Writ Petition under Articles 226 and 227 of the Constitution of India, an issue of Jurisdiction should not be permitted to be raised for the first time at the time of final hearing. He submitted that the Complaints were filed in the year 1986 and after the lapse of 18 years the complaints cannot be dismissed on the ground that the Labour Court had no jurisdiction.

10. The learned counsel for the respondent No. 1 further submitted that the petitioner did not cross-examine the witnesses examined by the respondent No. 1 and did not lead any evidence. Moreover, the petitioner admitted in his Written Statement that the respondent No. 1 has been appointed through the respondent No. 2 and that the Security Guards employed by the respondent No. 2 were performing their duties as per the directions of the petitioner through a Jr. Engineer. The learned counsel for the respondent No. 1, therefore, submitted that there was no dispute raised by the petitioner on factual aspect and averments in the Complaint of the respondent No. 1 were more or less admitted by the petitioner.

11. The learned counsel for the respondent No. 1 relied upon the definition of Employer contained in Section 2(14) and the definition of Employee contained in Section 2(13) of the said Act of 1946 and contended that even it is assumed that the respondent No. 1 was an employee of the Contractor, the petitioner was his Employer. The learned counsel for the respondent No. 1 submitted that by operation of law i.e. the Provisions, of the said Act of 1946, the petitioner was the Employer of the respondent No. 1 and, therefore, it was not at all a case where there was a dispute as regards the Employer Employee relationship. He, therefore, submitted that the Labour Court had jurisdiction to entertain the Complaint. The learned counsel urged that the respondent No. 1 had no remedy available under the said Act of 1946 and the only remedy available is under the said Act of 1971. The learned counsel also relied upon the various Judgments of the Apex Court which lay down the tests for determining whether the Contractor was the Employer or the Principal Employer employing the Contractor was the real Employer. The Learned counsel submitted that the petitioner failed to defend the complaint and enter into the witness box and, therefore, adverse interference has to be drawn against the petitioner. The learned counsel relied upon the following Judgments in support of his case : i) Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others, ; ii) 1982 (II) LLJ 123, Vilas Gangaram v. S.D. Rane; (iii) 1996(1) Mh.L.J. 556 : 1996 L.I.C. 165, Sakhar Kamgar Union v. Shri Chhatrapati Rajaram Sahakari Karkhana; (iv) 1999 L.I.C.

825, ABC Company Ltd. v. Electricity Mazdoor Sabha, (referred to as the case of ABC Company); (v) 2002 L.I.C. 2580, Shaukat Adam v. Konan Mercantile Coop. Bank Ltd.; vi) Indian Seamless Metal Tubes Limited Vs. Sunil Rambhau Iwale and Others, ; vii) Smt. Naseem Bano Vs. State of U.P. and others, ; viii) 2001 (1) Mh.L.J. 206, Shama Prashant Raje v. Ganpatrao; ix) 1999 L.I.C. 1185, Union Carbide v. Ramesh Kumbha; x) 1982 (2) L.L.J. 454 , People's Union for Democratic Rights v. Union of India; xi) Bharat Heavy Electrical Limited Vs. State of U.P. and Others, ; xii) Trambak Rubber Industries Ltd. Vs. Nashik Workers Union and Others, ; xiii) Cipla Ltd. Vs. Maharashtra General Kamgar Union and Others, , and xiv) Ram Singh and Others Vs. Union Territory, Chandigarh and Others, , (hereinafter referred to as the case of Ramsingh).

12. The learned counsel for the respondent No. 1 lastly submitted that in case this Court comes to the conclusion that the Labour Court had no jurisdiction to entertain the Complaint filed by the respondent No. 1, this Court should follow the course adopted by the learned Single Judge of this Court in Judgment reported in Lokmat, Proprietors, Lokmat News Papers Ltd. Vs. Prabhakar Rambhauji Choudhari and Others, directing the State Government to treat the complaints filed by the original complainants as Industrial Disputes and refer them to the Industrial Tribunal for decision in a time bound programme.

13. I have carefully considered the rival submissions. Though I have carefully considered all the Judgments relied upon by both the Parties, I am specifically referring to only those Judgments which are relevant. The controversy involved in the petitions will have to be considered in the light of the law laid down by the Apex Court in the case of Cipla. The Apex Court in the said Judgment examined the scope of powers of the Labour Court entertaining a Complaint u/s 28 of the said Act of 1971. In paragraph No. 7 the Apex Court held that;

"But one thing is clear -- if the employees are working under a contract covered by the Contract Labour (Regulation and 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 Industrial Disputes Act."

The said Judgment of the Apex Court in the case of Cipla was considered by the Division Bench of this Court in the case of Hindustan Coca Cola. In the facts of the said case before the Division Bench, a Complaint was filed before the Industrial Court contending that though the employees concerned were ostensibly employed through Contractor they were working under the supervision and control of the Management of the Hindustan Coca Cola Company and the nature of the work done by the Employees was of permanent and perennial nature. The grievance in the Complaint filed u/s 28 of the said Act of 1971 was that the persons employed were falsely labelled as Contract Labour engaged through Contractor: A case was made out that the employees were to be treated as the regular employees of the Company. A Written Statement was filed by the Company contending that the concerned employees were not the direct or regular employees of the Company and there exists no Master and Servant Relationship between the Company and the said employees. During the pendency of the said Complaint, an application was filed contending that the Industrial Court had no jurisdiction to entertain the Complaint under the said Act of 1971 and to decide a question as to whether the Contract workers were in fact the Direct Workers of the Principal Employer. The said Application was dismissed and the Order passed on the said application was confirmed by the learned Single Judge of this Court. An appeal was preferred before the Division Bench against the Judgment and Order of the learned Single Judge. After relying upon the Judgment of the Supreme Court in the case of Cipla, the Division Bench held that;

"However, in a case where the employer had never recognized the workmen as his employees and throughout treated these persons as employees of the contractors, the Court constituted u/s 28 of the MRTU and PULP Act will have no jurisdiction to entertain the complaint unless the status of relationship of employer-employee is first determined in a proceedings under Industrial Disputes Act."

The Division Bench also approved the view taken by the another learned Single Judge of this Court in a Judgment reported in 2001(3) CLR 728, in the case of Indian Seamless Metal Tubes Limited v. Sunil Iwale and Ors. (hereinafter referred to as the case of Indian Seamless Metal Tubes Ltd.). After considering the said Judgment of the learned Single Judge, the Division Bench held that;

"We are in respectful agreement with the above view expressed by Khandeparkar, J. If, on a bare reading of the complaint, the Industrial Court or the Labour Court as the case may be, is satisfied that it has no jurisdiction to decide the complaint as there is no undisputed or indisputable employer

employee relationship, the occasion for framing an issue on that count would not arise. If the Industrial Court or the Labour Court is satisfied that there is no undisputed or indisputable the employer-employee relationship, it cannot assume jurisdiction to entertain the complaint and the complaint will have to be dismissed as not maintainable."

The Division Bench after considering the hardship which may be caused to the workers directed that the State Government should treat the complaints filed as Industrial Disputes and refer the same to the Industrial Court.

14. Even before the Judgment in case of Cipla was delivered, the Apex Court has taken similar view in the case of Vividh Kamgar Sabha. The Apex Court in the case of Sarva Shramik Sangh considered the prayer made for reconsidering the view taken in the case of Cipla. The Apex Court turned down the said prayer by holding that it was not necessary to reconsider the view taken in the case of Cipla. The Apex Court held that;

"As rightly observed in Cipla's case (supra), it is the relationship existing by contractual arrangement which is sought to be abandoned and negated and in its place the complainant's claim is to the effect that there was in reality a relationship between the employer and the complainant directly. It is the establishment of the existence of such an arrangement which decides the jurisdiction. That being the position, Cipla's case (supra) rightly held that an industrial dispute has to be raised before the Tribunal under the I.D. Act to have the issue relating to actual nature of employment sort out. That being the position, we find that there is no scope for re-considering Cipla's case (supra), the view which really echoed the one taken about almost a decade back."

15. Considering the law laid down by the Apex Court and this Court factual matrix of the case before me will have to be examined. The learned counsel for respondent No. 1 contended that there was no dispute that the respondent No. 1 was employed by the petitioner though respondent No. 2. He relied upon the averments made in the reply filed by the petitioner. He also relied upon the admission given in the reply that Security Guards were performing duties as per the directions given by the petitioner through a Jr. Engineer. However, it is to be noted that the petitioner has stated in his Reply to the Complaint that the respondent No. 2 was exercising his control over the Security Guards through his authorised Supervisors and Representatives. It is also contended by the petitioner that the salary was being paid by the respondent No. 2 to the Security Guards and the Security Guards were working directly under the control of the respondent No. 2. A specific dispute was raised by the petitioner in paragraph No. 6 of the Written Statement which reads as under :--

"Thus, there is absence of relationships of Master and Servant between opponent No. 1 and security guards."

In paragraph No. 7 of the reply, the petitioner contended that the Master and Servant relationship was in existence between the respondent No. 2 and 1. Thus,

the contention of the respondent No. 1 that there was no dispute as regards the existence of Master and Servant relationship between the petitioner and the respondent No. 1 cannot be accepted.

16. The learned counsel appearing for the respondent No. 1 relied upon the definition of Employer and Employee u/s 2(13) and 2(14) of the said Act of 1946 and contended that the petitioner was the employer of the respondent No. 1 within the meaning of the said Act. In particular the learned counsel relied upon Clause (e) of Section 2(14) which reads as under ;

2(14) "Employee" includes

"(e) where the owner of any undertaking in the course of or for the purpose of conducting the undertaking contracts with any person for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the undertaking, the owner of the undertaking."

The learned counsel for the respondent No. 1 invited my attention to Clause (a) of Section 2(13) of the said Act of 1946 which includes a person employed by a Contractor in the definition of "Employee". He further submitted that if as per the provisions of Sections 2(13) and 2(14) of the said Act of 1946, the petitioner is the employer of the respondent No. 1, it cannot be said that there was any dispute as regards the existence of Master and Servant Relationship between the petitioner and the respondent No. 1. The said submission, though prima facie attractive, has no merit in the facts of the present case. The said submission is based on assumption that the provisions of the said Act of 1946 were applicable to the establishment of the petitioner. Though the respondent No. 1 has stated in the Complaint that the provisions of the said Act of 1946 were applicable to the Establishment of the petitioner, in paragraph No. 11 of the reply filed by the petitioner, it is specifically denied that the Industrial Establishment of the petitioner was covered by any of the provisions of the said Act of 1946. Perusal of the impugned Judgments and Orders of the Courts below shows that both the Courts have not really gone into the dispute as regards applicability of the provisions of the said Act of 1946 to the Establishment of the petitioner. Once the applicability of the said Act of 1946 was disputed by the petitioner, the burden was on the respondents to prove that the said Act of 1946 was applicable to the Establishment of the petitioner. Even after the evidence was adduced on behalf of the respondent No. 1, the said burden is not discharged. In any event, when there was a dispute as regards the applicability of the said Act of 1946, the Courts below should have first considered the question whether the said Act of 1946 was applicable to the Establishment of the petitioner and only thereafter could have considered the effect of definitions in the said Act of 1946. Therefore, unless it was established that the Establishment of the petitioner is governed by the said Act of 1946, the arguments advanced by the learned counsel for the respondent No. 1 on the basis of the definition of Employer and Employee under the said Act of 1946 cannot be considered.

17. In this behalf, it is necessary to refer to the Judgment of the Apex Court in the case of Steel Authority of India. The Apex Court formulated issue No. B in the Judgment which reads thus :

"B. Whether on a contractor engaging contract labour in connection with the work entrusted to him by a principal employer, the relationship of master and servant between him (the principle employer) and the contract labour emerges."

The Apex Court in paragraph 104 considered its earlier Judgment in the case of Maharashtra Sugar Mills in which the question that fell for consideration was whether the Contract Labour was covered by the definition of the Employee under the said Act of 1946. The Apex Court considered the definition of Employer as well as Employee under the said Act of 1946. After considering its decision in the case of Maharashtra Sugar Mills and after considering the said definitions the Apex Court held ;

"The decision in that case cannot be read as holding that when a contractor engages contract labourer in connection with the work of the principle employer, the relationship of master and servant is created between the principle employer and the contract labour."

Therefore, it is clear that even after considering the definition of Employer and Employee in the said Act of 1946 and after considering its own Judgment in the case of Maharashtra Sugar Mills, the Apex Court came to the conclusion that it cannot be said that when the Contractor engages a contract labour in connection with the work of Principle Employer, the relationship of Master and Servant is created between the Principle Employer and the contract labour.

18. There is one more aspect of the matter. The learned counsel for the respondent No. 1 has pressed into service an argument based on the definition of Employer and Employee under the said Act of 1946 for the purpose of showing that there exists relationship of Master and Servant between the petitioner and the respondent No. 1. However, it cannot be ignored that the Apex Court in the case of Cipla held that once the Employer disputes the relationship, the Labour Court exercising jurisdiction u/s 30 of the said Act of 1971 has no power to decide the complaint unless the relationship of Employer and Employee is got established in Regular Proceedings under the said Act of 1946 or the said Act of 1947. Therefore, the arguments based on the definition of the Employer and Employee can be considered only by a Competent Forum exercising powers under the said Act of 1946 or 1947 while dealing with the issue of existence of Employer and Employee Relationship. Once, the Apex Court has held that the dispute as regards the said relationship cannot be decided by the Labour Court exercising the jurisdiction u/s 30 of the said Act of 1971, it will not be permissible to decide the said dispute while deciding a Complaint u/s 28 of the said Act of 1971 by relying upon the definitions in the said Act of 1946.

19. The learned counsel appearing for the respondent No. 1 relied upon various Judgments of the Apex Court and especially the Judgment in the case of

Ramsingh and contended that the Apex Court has decided the question whether employees of Contractor were the employees of the Principle employer. The learned counsel submitted that the Apex Court has laid down the test and parameters for determining the Employer and Employee Relationship and has held that multiple pragmatic approach is required. The reliance placed by the learned counsel on the said Judgment may not be relevant as the issue in the present Petition is as regards the Jurisdiction of the Labour Court to decide the disputed relationship. The learned counsel has also relied upon several other Judgments of this Court in support of his case made out on the basis of the definition of Employer and Employee in the said Act of 1946. The learned counsel for respondent No. 1 contended that there was no remedy available to the respondent No. 1 under the provisions of the said Act of 1946. However, the said arguments may not be correct in view of the provisions of Chapter XI of the said Act of 1946.

20. The learned counsel relied upon the Judgment of the Apex Court in the case of Shama Prashant Raje and contended that the scope of the proceedings under Articles 226 and 227 of the Constitution of India is very limited and the High Court cannot sit in appeal over the findings recorded by the competent Tribunal. The learned counsel urged that the issue regarding jurisdiction of the Labour Court was never raised by the petitioner and hence cannot be permitted to be agitated for the first time in the Petition under Articles 226 and 227 of the Constitution of India. It is no doubt true that the said issue is not specifically agitated. However, the argument of the learned counsel for the petitioner is based on the Judgments of the Apex Court in which a clear view is taken that the Labour Court exercising power u/s 28 of the said Act of 1971 lacks jurisdiction to decide the dispute as regards the existence of Employer Employee relationship and that once the employer disputes of existence of relationship the Labour Court cannot decide the said issue and same will have to be dealt with in appropriate proceedings. If the legal position on the basis of the Judgments of the Apex Court is brought to the notice of this Court which shows that the Labour Court had no inherent jurisdiction to entertain the Complaint, the said arguments cannot be brushed aside as the same goes to the root of the matter. Therefore, the effect of the Judgments of the Apex Court will have to be considered though the issue of jurisdiction was not specifically raised. Issue of jurisdiction is not raised on the basis of new facts and the petitioner has relied upon only the pleadings already on record to show that the Labour Court had no jurisdiction.

21. In the facts of the present case apart from exercising the jurisdiction not vesting it, the Labour Court has committed an error by accepting the arguments of the respondent No. 1 on the basis of the definitions of Employer and Employee under the said Act of 1946 without deciding whether the provisions of the said Act of 1946 were applicable to the Establishment of the petitioner. Moreover, the Industrial Court even after accepting that the respondent No. 1 was employed through respondent No. 2 confirmed the order of the Labour Court by which the respondent No. 1 was ordered to be reinstated in the Employment of the

petitioner. In the Writ Petition a specific contention has been raised that the order of reinstatement is totally contrary to the settled position of law laid down by the Apex Court. In support of the said contention raised in the petition, the learned counsel for the respondent No. 1 has relied upon the Judgment of the Division Bench of this Court reported *Krantikari Suraksha Rakshak Sanghatana*. The Division Bench held that the Industrial Court exercising power under the said Act of 1971 has no jurisdiction to abolish the Contract Labour System and treat the Security Guards employed through the Contractor as direct employees of the Principal Employer.

22. The legal position which emerges is that unless the respondent No. 1 and other original Complainants establish that there was Employer and Employee relationship between the petitioner and the Complainants by approaching the appropriate forum, the Complainants were not entitled to maintain a Complaint u/s 28 of the said Act of 1971. Therefore, the impugned Judgments and Orders deserve to be set aside. Considering the fact that the Complaints were filed in the year 1986. I propose to adopt the course adopted by the Division Bench of this Court in a case of *Hindustan Coca Cola* as well as the learned Single Judge of this Court in the case of *Lokmat*. The complaints filed by the respondent No. 1 in all these petitions will have to be treated as applications for reference and the State Government will have to be directed to refer the same to the Industrial Tribunal within eight weeks from today. Till the Industrial Tribunal finally decides the matter, interim arrangement which was in force during the pendency of the petitions must continue to operate.

23. Hence, I pass the following order.

- i) Rule in all the petitions is made absolute with no order as to costs.
- ii) The impugned Judgments and Orders passed by the Labour Court and the Industrial Court are quashed and set aside and the Complaints filed by the respondent No. 1 in all the petitions are dismissed as not maintainable.
- iii) The State Government is directed to treat the complaints filed by the respondent No. 1 in all these petitions as Industrial Disputes and refer the same to the Industrial Tribunal within a period of eight weeks from today. The Industrial Tribunal is directed to decide references made in all these petitions within a period of nine months from the date of the receipt of the reference. Till the References are not decided by the Industrial Tribunal, interim arrangement operating during the pendency of these petitions will continue to operate.